



Federal Register

7-21-10

Vol. 75 No. 139

Wednesday

July 21, 2010

Pages 42279-42570



The **FEDERAL REGISTER** (ISSN 0097-6326) is published daily, Monday through Friday, except official holidays, by the Office of the Federal Register, National Archives and Records Administration, Washington, DC 20408, under the Federal Register Act (44 U.S.C. Ch. 15) and the regulations of the Administrative Committee of the Federal Register (1 CFR Ch. I). The Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 is the exclusive distributor of the official edition. Periodicals postage is paid at Washington, DC.

The **FEDERAL REGISTER** provides a uniform system for making available to the public regulations and legal notices issued by Federal agencies. These include Presidential proclamations and Executive Orders, Federal agency documents having general applicability and legal effect, documents required to be published by act of Congress, and other Federal agency documents of public interest.

Documents are on file for public inspection in the Office of the Federal Register the day before they are published, unless the issuing agency requests earlier filing. For a list of documents currently on file for public inspection, see www.federalregister.gov.

The seal of the National Archives and Records Administration authenticates the **Federal Register** as the official serial publication established under the Federal Register Act. Under 44 U.S.C. 1507, the contents of the **Federal Register** shall be judicially noticed.

The **Federal Register** is published in paper and on 24x microfiche. It is also available online at no charge as one of the databases on GPO Access, a service of the U.S. Government Printing Office.

The online edition of the **Federal Register**, www.gpoaccess.gov/nara, available through GPO Access, is issued under the authority of the Administrative Committee of the Federal Register as the official legal equivalent of the paper and microfiche editions (44 U.S.C. 4101 and 1 CFR 5.10). It is updated by 6 a.m. each day the **Federal Register** is published and includes both text and graphics from Volume 59, Number 1 (January 2, 1994) forward.

For more information about GPO Access, contact the GPO Access User Support Team, call toll free 1-888-293-6498; DC area 202-512-1530; fax at 202-512-1262; or via e-mail at gpoaccess@gpo.gov. The Support Team is available between 7:00 a.m. and 9:00 p.m. Eastern Time, Monday–Friday, except official holidays.

The annual subscription price for the **Federal Register** paper edition is \$749 plus postage, or \$808, plus postage, for a combined **Federal Register**, **Federal Register** Index and List of CFR Sections Affected (LSA) subscription; the microfiche edition of the **Federal Register** including the **Federal Register** Index and LSA is \$165, plus postage. Six month subscriptions are available for one-half the annual rate. The prevailing postal rates will be applied to orders according to the delivery method requested. The price of a single copy of the daily **Federal Register**, including postage, is based on the number of pages: \$11 for an issue containing less than 200 pages; \$22 for an issue containing 200 to 400 pages; and \$33 for an issue containing more than 400 pages. Single issues of the microfiche edition may be purchased for \$3 per copy, including postage. Remit check or money order, made payable to the Superintendent of Documents, or charge to your GPO Deposit Account, VISA, MasterCard, American Express, or Discover. Mail to: U.S. Government Printing Office—New Orders, P.O. Box 979050, St. Louis, MO 63197-9000; or call toll free 1-866-512-1800, DC area 202-512-1800; or go to the U.S. Government Online Bookstore site, see bookstore.gpo.gov.

There are no restrictions on the republication of material appearing in the **Federal Register**.

How To Cite This Publication: Use the volume number and the page number. Example: 75 FR 12345.

Postmaster: Send address changes to the Superintendent of Documents, Federal Register, U.S. Government Printing Office, Washington, DC 20402, along with the entire mailing label from the last issue received.

SUBSCRIPTIONS AND COPIES

PUBLIC

Subscriptions:

Paper or fiche 202-512-1800
Assistance with public subscriptions 202-512-1806

General online information 202-512-1530; 1-888-293-6498

Single copies/back copies:

Paper or fiche 202-512-1800
Assistance with public single copies 1-866-512-1800
(Toll-Free)

FEDERAL AGENCIES

Subscriptions:

Paper or fiche 202-741-6005
Assistance with Federal agency subscriptions 202-741-6005

FEDERAL REGISTER WORKSHOP

THE FEDERAL REGISTER: WHAT IT IS AND HOW TO USE IT

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

WHO: Sponsored by the Office of the Federal Register.

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

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

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

WHEN: Tuesday, September 14, 2010
9 a.m.–12:30 p.m.

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

RESERVATIONS: (202) 741-6008



Contents

Federal Register

Vol. 75, No. 139

Wednesday, July 21, 2010

Administration on Aging

See Aging Administration

Aging Administration

NOTICES

Agency Information Collection Activities; Proposals, Submissions, and Approvals:
Extension of Supplemental Form to the Financial Status Report for all AoA Title III Grantees, 42448

Agriculture Department

See Foreign Agricultural Service

See Forest Service

Antitrust Division

NOTICES

National Cooperative Research and Production Act of 1993:
Connected Media Experience, Inc.; Correction, 42461

Centers for Disease Control and Prevention

NOTICES

Charter Amendment:
Board of Scientific Counselors, Coordinating Center for Health Promotion, 42448–42449
Board of Scientific Counselors, Coordinating Office for Terrorism Preparedness and Emergency Response, 42448
Safety and Occupational Health Study Section:
Charter Renewal, 42455

Child Support Enforcement Office

NOTICES

Privacy Act; Systems of Records, 42453–42455

Children and Families Administration

NOTICES

Privacy Act; Systems of Records, 42453–42455

Commerce Department

See Foreign-Trade Zones Board

See International Trade Administration

See National Oceanic and Atmospheric Administration

See National Telecommunications and Information Administration

Commission of Fine Arts

NOTICES

Meetings, 42380

Commodity Futures Trading Commission

NOTICES

Final Orders:
SP–15 Financial Day-Ahead LMP Peak Contract and Contract, etc., 42380–42390
Orders Finding PJM WH Real Time Peak Contract, et al., Offered for Trading on IntercontinentalExchange, Inc., Perform Significant Price Discovery Function, 42390–42399
Orders Finding PJM WH Real Time Peak Daily Contract, et al., Offered for trading on IntercontinentalExchange, Inc., Do Not Perform Significant Price Discovery Function, 42399–42411

Orders Finding SP–15 Financial Day-Ahead LMP Peak Daily Contract, et al., Offered for Trading on IntercontinentalExchange, Inc., Do Not Perform Significant Price Discovery Function, 42411–42430

Consumer Product Safety Commission

RULES

Requirements for Accreditation of Third Party Conformity Assessment Bodies:
Third Party Testing for Certain Children's Products; Carpets and Rugs, 42315–42318
Third Party Testing for Certain Children's Products; Vinyl Plastic Film, 42311–42314

Corporation for National and Community Service

NOTICES

Agency Information Collection Activities; Proposals, Submissions, and Approvals, 42430–42431

Defense Department

See Navy Department

Department of Transportation

See Pipeline and Hazardous Materials Safety Administration

Energy Department

See Federal Energy Regulatory Commission

Environmental Protection Agency

RULES

Elemental Mercury Used in Flow Meters, Natural Gas Manometers, and Pyrometers; Significant New Use Rule, 42330–42336

Exemptions from the Requirements of a Tolerance:
Poly(oxy-1,2-ethanediyl), alpha-isotridecyl-omega-methoxy, 42318–42324

Pesticide Tolerances:
Pyraclostrobin, 42324–42330

PROPOSED RULES

Approval and Disapproval and Promulgation of Air Quality Implementation Plans:

Colorado; Revisions to Regulation 1, 42342–42346

Approvals and Promulgations of Air Quality

Implementation Plans:

Colorado; Attainment Demonstration for 1997 8-Hour Ozone Standard, and Approval of Related Revisions, 42346–42361

National Oil and Hazardous Substances Pollution

Contingency Plan; National Priorities List:

Partial Deletion of the Rocky Mountain Arsenal Federal Facility, 42361–42362

NOTICES

Agency Information Collection Activities; Proposals, Submissions, and Approvals:

Engine Emission Defect Information Reports and Voluntary Emission Recall Reports (Renewal), 42437–42438

Willingness to Pay Survey for Section 316(b) Existing Facilities Cooling Water Intake Structures (New), 42438–42440

Meetings:

Total Coliform Rule Revisions, 42440–42441

Receipt of Report and Request for Comments:
Sixty-Sixth Report of the TSCA Interagency Testing
Committee to the Administrator of the Environmental
Protection Agency, 42441–42443

Executive Office of the President

See Presidential Documents

Family Support Administration

See Child Support Enforcement Office

Federal Aviation Administration**RULES**

Safe, Efficient Use and Preservation of Navigable Airspace,
42296–42308

Standard Instrument Approach Procedures, and Takeoff
Minimums and Obstacle Departure Procedures;
Miscellaneous Amendments, 42308–42311

PROPOSED RULES

Airworthiness Directives:

Sikorsky Aircraft Corp. (Sikorsky) Model S–92A
Helicopters, 42340–42342

Federal Communications Commission**NOTICES**

Agency Information Collection Activities; Proposals,
Submissions, and Approvals, 42443–42444

Federal Election Commission**NOTICES**

Meetings; Sunshine Act, 42444

Federal Emergency Management Agency**NOTICES**

Major Disaster Declaration:
North Dakota, 42458–42459

Federal Energy Regulatory Commission**NOTICES**

Applications:

Onyx Specialty Papers, Inc., 42431

Compliance Filing:

DCP Guadalupe Pipeline, LLC, 42432

Environmental Impact Statements; Availability, etc.:

Matagorda Offshore Pipeline System Abandonment
Project, 42432–42433

Filings, 42434–42436

Filings:

Houston Pipe Line Company LP – Bammel Storage, et al.,
42436–42437

Federal Labor Relations Authority**RULES**

Review of Arbitration Awards; Miscellaneous and General
Requirements, 42283–42292

Federal Maritime Commission**NOTICES**

Agreement Filed, 42445

Filing of Complaint and Assignment:

Yakov Kobel and Victor Berkovich v. Hapag–Lloyd
America, Inc.; Limco Logistics, Inc.; and
International TLC, Inc., 42445–42446

Ocean Transportation Intermediary License Applicants,
42446

Federal Motor Carrier Safety Administration**NOTICES**

Agency Information Collection Activities; Proposals,
Submissions, and Approvals:

Transportation of Household Goods; Consumer
Protection, 42475–42476

Qualification of Drivers; Exemption Applications:
Diabetes Mellitus, 42477–42480

Federal Railroad Administration**NOTICES**

Petition for Waiver of Compliance, 42476–42477

Federal Reserve System**NOTICES**

Change in Bank Control Notices; Acquisition of Shares of
Bank or Bank Holding Companies, 42444

Meetings:

Federal Open Market Committee; Domestic Policy
Directive (June 22 and 23, 2010), 42444–42445

Federal Trade Commission**NOTICES**

Meetings; Sunshine Act, 42446

Fine Arts Commission

See Commission of Fine Arts

Fiscal Service**NOTICES**

Agency Information Collection Activities; Proposals,
Submissions, and Approvals:

Authorization Agreement for Preauthorized Payment,
42486–42487

Fish and Wildlife Service**RULES**

Endangered and Threatened Wildlife and Plants:

Designation of Critical Habitat for *Limnanthes floccosa*
ssp. *grandiflora* (Large-Flowered Woolly
Meadowfoam); et al., 42490–42570

Food and Drug Administration**NOTICES**

Agency Information Collection Activities; Proposals,
Submissions, and Approvals:

Preparing Claim of Categorical Exclusion or
Environmental Assessment for Submission to Center
for Food Safety and Applied Nutrition, 42446–42448

Withdrawal of Approval of 27 New Drug Applications and
58 Abbreviated New Drug Applications:

Novartis Pharmaceuticals Corp. et al., 42455–42458

Foreign Agricultural Service**NOTICES**

Trade Adjustment Assistance for Farmers, 42375–42376

Foreign Assets Control Office**NOTICES**

Additional Designation of Entities and Individuals Pursuant
to Executive Order (12978), 42485–42486

Supplementary Identifying Information of Previously-
Designated Individual, Foreign Narcotics Kingpin
Designation Act, 42487

Foreign-Trade Zones Board**NOTICES**

Application for Reorganization under Alternative Site Framework:
Foreign-Trade Zone 244; Riverside County, CA, 42377

Forest Service**NOTICES**

Environmental Impact Statements; Availability, etc.:
Okanogan-Wenatchee National Forest, Washington, Pack and Saddle Stock Outfitter-Guide Special Use Permits, 42374

Meetings:

Kisatchie National Forest Resource Advisory Committee, 42375
Missoula County Resource Advisory Committee, 42375

Health and Human Services Department

See Aging Administration
See Centers for Disease Control and Prevention
See Child Support Enforcement Office
See Children and Families Administration
See Food and Drug Administration
See National Institutes of Health

PROPOSED RULES

Public Health Security and Bioterrorism Preparedness and Response Act of 2002:
Biennial Review and Republication of the Select Agent and Toxin List, 42363–42364
Responsibility of Applicants for Promoting Objectivity in Research, etc., 42362–42363

Homeland Security Department

See Federal Emergency Management Agency

Interior Department

See Fish and Wildlife Service
See Land Management Bureau
See National Park Service

International Trade Administration**NOTICES**

Application(s) for Duty-Free Entry of Scientific Instruments, 42377–42378
Revocation of Antidumping Duty Order on Sorbitol from France, 42380

Justice Department

See Antitrust Division

NOTICES

Lodging of Consent Decrees under CERCLA, 42461–42462

Land Management Bureau**NOTICES**

Filing of Plat of Survey:
Eastern States, 42459–42460

Maritime Administration**NOTICES**

Requested Administrative Waivers of Coastwise Trade Laws, 42480–42481
Requested Administrative Waivers of Coastwise Trade Laws:
Vessel COMFORTABLY NUMB, 42481–42482

National Institutes of Health**NOTICES**

Meetings:
Center for Scientific Review, 42449, 42451–42452

Center for Scientific Review; Correction, 42450
National Cancer Institute, 42449, 42453
National Institute on Alcohol Abuse and Alcoholism, 42449–42452
Office of Director, 42450

National Oceanic and Atmospheric Administration**RULES**

Fisheries of the Exclusive Economic Zone Off Alaska:
Northern Rockfish for Catcher/Processors Participating in the Rockfish Limited Access Fishery in the Central Regulatory Area of the Gulf of Alaska, 42336–42337
Other Rockfish in the Western Regulatory Area of the Gulf of Alaska, 42337–42338
Pacific Ocean Perch for Catcher/Processors Participating in the Rockfish Limited Access Fishery in the Central Regulatory Area of the Gulf of Alaska, 42337
Pacific Ocean Perch in the Western Regulatory Area of the Gulf of Alaska, 42338

NOTICES

Fisheries of the South Atlantic; Southeast Data, Assessment, and Review:
South Atlantic Red Snapper, 42378–42379
Request for Applications:
Monterey Bay National Marine Sanctuary Advisory Council, 42379

National Park Service**NOTICES**

Agency Information Collection Activities; Proposals, Submissions, and Approvals, 42459
Minor Boundary Revision at Lewis and Clark National Historical Park, 42460
National Register of Historic Places; Notification of Pending Nominations and Related Actions, 42460–42461

National Science Foundation**NOTICES**

Permit Applications Received Under the Antarctic Conservation Act of 1978 (P.L. 95–541), 42462

National Telecommunications and Information Administration**NOTICES**

Agency Information Collection Activities; Proposals, Submissions, and Approvals:
NTIA/FCC Web-based Frequency Coordination System, 42376–42377

Navy Department**NOTICES**

Intent to Grant Partially Exclusive License:
METOCEAN Data System, 42431

Nuclear Regulatory Commission**RULES**

List of Approved Spent Fuel Storage Casks:
NAC-MPC System (Revision 6), 42292–42295

PROPOSED RULES

List of Approved Spent Fuel Storage Casks:
NAC-MPC System, Revision 6, 42339–42340

NOTICES

Acceptance for Docketing the Application, etc. Regarding Renewal of Facility Operating License:
NextEra Energy Seabrook, LLC, Seabrook Station (Unit 1), 42462–42464

Consideration of Issuance of Amendment to Facility Operating License, etc.:
Exelon Generation Co., LLC, 42465–42466
Environmental Impact Statements; Availability, etc.:
AREVA Enrichment Services, LLC; Proposed Eagle Rock Uranium Enrichment Facility; Meeting, 42466–42469
Requests for Licensing Action:
Firstenergy Nuclear Operating Co., 42469

Pipeline and Hazardous Materials Safety Administration

PROPOSED RULES

Hazardous Materials:

Incorporation of Certain Cargo Tank Special Permits into Regulations, 42364–42373

Presidential Documents

PROCLAMATIONS

Special Observances:

Captive Nations Week (Proc. 8541), 42279–42280

ADMINISTRATIVE ORDERS

Liberia, Former Regime of Charles Taylor; Continuation of National Emergency (Notice of July 19, 2010), 42281

Public Debt Bureau

See Fiscal Service

Railroad Retirement Board

NOTICES

Agency Information Collection Activities; Proposals, Submissions, and Approvals, 42469–42470

Securities and Exchange Commission

NOTICES

Self-Regulatory Organizations; Proposed Rule Changes:
NYSE Arca, Inc., 42471–42473

Small Business Administration

NOTICES

Disaster Declarations:

Nebraska, 42470–42471

North Dakota, 42471

Wyoming, 42470

Transportation Department

See Federal Aviation Administration

See Federal Motor Carrier Safety Administration

See Federal Railroad Administration

See Maritime Administration

See Pipeline and Hazardous Materials Safety Administration

NOTICES

Agency Information Collection Activities; Proposals, Submissions, and Approvals, 42473

Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed Under Subpart B (formerly Subpart Q), 42473–42474

Meetings:

The Future of Aviation Advisory Committee (FAAC) Subcommittee on Competitiveness and Viability, 42474

The Future of Aviation Advisory Committee (FAAC) Subcommittee on Labor and World class Workforce, 42474–42475

Treasury Department

See Fiscal Service

See Foreign Assets Control Office

NOTICES

Agency Information Collection Activities; Proposals, Submissions, and Approvals, 42482–42485

Separate Parts In This Issue

Part II

Interior Department, Fish and Wildlife Service, 42490–42570

Reader Aids

Consult the Reader Aids section at the end of this page for phone numbers, online resources, finding aids, reminders, and notice of recently enacted public laws.

To subscribe to the Federal Register Table of Contents LISTSERV electronic mailing list, go to <http://listserv.access.gpo.gov> and select Online mailing list archives, FEDREGTOC-L, Join or leave the list (or change settings); then follow the instructions.

CFR PARTS AFFECTED IN THIS ISSUE

A cumulative list of the parts affected this month can be found in the Reader Aids section at the end of this issue.

3 CFR**Proclamations:**

8541 42279

Administrative Orders:**Notices:**

Notice of June 19,
2010 42281

5 CFR

2425 42283

2429 42283

10 CFR

72 42292

Proposed Rules:

72 42339

14 CFR

77 42296

97 (2 documents) 42308,
42310

Proposed Rules:

39 42340

16 CFR

1611 42311

1630 42315

1631 42315

40 CFR

180 (2 documents) 42318,
42324

721 42330

Proposed Rules:

52 (2 documents) 42342,
42346

300 42361

42 CFR**Proposed Rules:**

50 42362

73 42363

45 CFR**Proposed Rules:**

94 42362

49 CFR**Proposed Rules:**

171 42364

173 42364

50 CFR

17 42490

679 (4 documents) 42336,
42337, 42338

Presidential Documents

Title 3—

Proclamation 8541 of July 16, 2010

The President

Captive Nations Week, 2010

By the President of the United States of America

A Proclamation

In 1959, President Eisenhower issued the first Captive Nations Proclamation in solidarity with those living without personal or political autonomy behind the Iron Curtain. Since that time, once-captive nations have broken free to establish civil liberties, open markets, and allow their people access to information. However, even as more nations have embraced self-governance and basic human rights, there remain regimes that use violence, threats, and isolation to suppress the aspirations of their people.

The Cold War is over, but its history holds lessons for us today. In the face of cynicism and stifled opportunity, the world saw daring individuals who held fast to the idea that the world can change and walls could come down. Their courageous struggles and ultimate success—and the enduring conviction of all who keep the light of freedom alive—remind us that human destiny will be what we make of it.

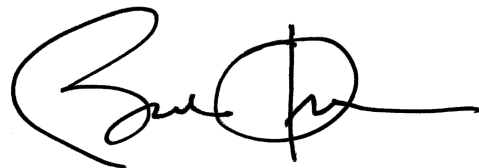
The journey towards worldwide freedom and democracy sought in 1959 remains unfinished. Today, we still observe the profound differences between governments that reflect the will of their people, and those that sustain power by force; between nations striving for equal justice and rule of law, and those that deny their citizens freedom of religion, expression, and peaceful assembly; and between states that are open and accountable, and those that restrict the flow of ideas and information. The United States has a special responsibility to bear witness to those whose voices are silenced, and to stand alongside those who yearn to exercise their universal human rights.

In partnership with like-minded governments, we must reinforce multilateral institutions and international partnerships that safeguard human rights and democratic values. We must empower embattled civil societies and help their people connect with one another and the global community through new technologies. And, with faith in the future, we must always stand with the courageous advocates, organizations, and ordinary citizens around the world who fearlessly fight for limitless opportunity and unfettered freedom.

The Congress, by Joint Resolution, approved July 17, 1959 (73 Stat. 212), has authorized and requested the President to issue a proclamation designating the third week of July of each year as “Captive Nations Week.”

NOW, THEREFORE, I, BARACK OBAMA, President of the United States of America, do hereby proclaim July 18 through July 24, 2010, as Captive Nations Week. I call upon the people of the United States to reaffirm our deep commitment to all those working for human rights and dignity around the globe.

IN WITNESS WHEREOF, I have hereunto set my hand this sixteenth day of July, in the year of our Lord two thousand ten, and of the Independence of the United States of America the two hundred and thirty-fifth.

A handwritten signature in black ink, appearing to be "Barack Obama", with a large circular flourish and a horizontal line extending to the right.

Presidential Documents

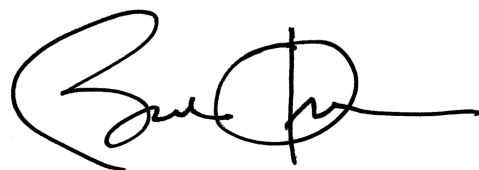
Notice of July 19, 2010

Continuation of the National Emergency With Respect To the Former Liberian Regime of Charles Taylor

On July 22, 2004, by Executive Order 13348, the President declared a national emergency and ordered related measures, including the blocking of the property of certain persons connected to the former Liberian regime of Charles Taylor, pursuant to the International Emergency Economic Powers Act (50 U.S.C. 1701–1706). The President took this action to deal with the unusual and extraordinary threat to the foreign policy of the United States constituted by the actions and policies of former Liberian President Charles Taylor and other persons, in particular their unlawful depletion of Liberian resources and their removal from Liberia and secreting of Liberian funds and property, which have undermined Liberia's transition to democracy and the orderly development of its political, administrative, and economic institutions and resources.

The actions and policies of Charles Taylor and others have left a legacy of destruction that continues to undermine Liberia's transformation and recovery. Because the actions and policies of these persons continue to pose an unusual and extraordinary threat to the foreign policy of the United States, the national emergency declared on July 22, 2004, and the measures adopted on that date to deal with that emergency, must continue in effect beyond July 22, 2010. Therefore, in accordance with section 202(d) of the National Emergencies Act (50 U.S.C. 1622(d)), I am continuing for 1 year the national emergency declared in Executive Order 13348.

This notice shall be published in the *Federal Register* and transmitted to the Congress.



THE WHITE HOUSE,
July 19, 2010.

Rules and Regulations

Federal Register

Vol. 75, No. 139

Wednesday, July 21, 2010

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.

FEDERAL LABOR RELATIONS AUTHORITY

5 CFR Parts 2425 and 2429

Review of Arbitration Awards; Miscellaneous and General Requirements

AGENCY: Federal Labor Relations Authority.

ACTION: Final rule.

SUMMARY: The Chairman and Members of the Federal Labor Relations Authority (the Authority) revise the regulations concerning review of arbitration awards and the Authority's miscellaneous and general requirements to the extent that they set forth procedural rules that apply to the review of arbitration awards. The purpose of the proposed revisions is to improve and expedite review of such awards.

DATES: *Effective Date:* October 1, 2010.

ADDRESSES: Written comments received are available for public inspection during normal business hours at the Case Intake and Publication Office, Federal Labor Relations Authority, Suite 200, 1400 K Street, NW., Washington, DC 20424-0001.

FOR FURTHER INFORMATION CONTACT: Sarah Whittle Spooner, Counsel for Regulatory and External Affairs, (202) 218-7791.

SUPPLEMENTARY INFORMATION: In an effort to improve the Authority's decision-making processes, the Authority established an internal workgroup to study and evaluate the policies and procedures in effect concerning the review of arbitration awards. In order to solicit the input of arbitrators and practitioners, the workgroup held several focus groups, specifically: One focus group in Washington, DC with arbitrators; two focus groups in Washington, DC with practitioners; and focus groups in Chicago, Illinois and Oakland,

California with both arbitrators and practitioners. In addition, through a survey, the Authority solicited input from parties to recent Authority decisions; the Authority also solicited general input through engage@flra.gov.

Subsequently, the Authority proposed revisions to parts 2425 (concerning review of arbitration awards) and 2429 (concerning miscellaneous and general requirements) of the Authority's regulations. The proposed rule was published in the **Federal Register**, and public comment was solicited on the proposed changes (75 FR 22540) (April 29, 2010). Formal written comments were submitted by three agencies, five exclusive representatives, one arbitrator, and four other individuals. All comments have been considered prior to publishing the final rule, and most comments are specifically addressed in the section-by-section analysis below. Several revisions to the proposed rule have been made in response to suggestions and comments received.

Significant Changes

The final rule, like the proposed rule, clarifies the processing of arbitration cases before the Authority. The final rule incorporates one significant change, based on consideration of a comment received. Specifically, based on a comment that parties should not be required to jointly request an expedited, abbreviated decision under § 2425.7, the final rule deletes the requirement of a separate, joint request. Instead, the final rule allows an excepting party to request, in its exceptions, such a decision, and an opposing party to state, in its opposition, whether the opposing party supports or opposes such a request. Under the final rule, the Authority may issue an expedited, abbreviated decision even absent an excepting party's request and without regard to whether an excepting party's request is opposed.

The proposed rule has also been modified in several other respects, primarily in response to specific comments. All of the changes from the proposed rule are described in the following sectional analyses of the final rule.

Sectional Analyses

Sectional analyses of the amendments and revisions to part 2425, Review of Arbitration Awards, and part 2429,

Miscellaneous and General Requirements, are as follows:

Part 2425—Review of Arbitration Awards

Section 2425.1

The final rule as promulgated is the same as the proposed rule.

Section 2425.2

With regard to § 2425.2(b), comments regarding the change in the Authority's practice of calculating the due date for exceptions were generally positive. One commenter suggested that the Authority further clarify this section by adding, after the proposed rule's wording, "The time limit for filing an exception to an arbitration award is thirty (30) days[.]" the following: "after the date of service of the award." The final rule incorporates this suggestion.

One commenter supported the proposed wording of § 2425.2(b) but questioned whether it is consistent with 5 U.S.C. 7122(b), which provides that an award shall be final and binding if no exception is filed "during the 30-day period beginning on the date the award is served on the party[.]" However, the Authority has discretion to interpret 5 U.S.C. 7122(b) to mean that "the 30-day period beginning on the date the award as served" counts "day one" of the thirty-day period as being the day after the award is served. *Cf. AFGE v. FLRA*, 802 F.2d 47, 47-48 (2nd Cir. 1986) (interpreting provision of 5 U.S.C. 7123(a) stating "during the 60-day period beginning on the date on which the order was issued" to exclude issuance date of order in calculating 60-day period). Consequently, the commenter's question does not raise a concern that requires amending the proposed rule.

With regard to § 2425.2(c), one commenter generally supported the proposed rule. In addition, one commenter suggested modifying the proposed wording of § 2425.2(c)(1) to clarify that, if there is no legible postmark on an envelope containing an arbitration award that has been served by regular mail, then the date of service will be the date of the award. The commenter similarly suggested modifying the proposed wording of § 2425.2(c)(2) to clarify that, if there is no indication of the date on which an award was deposited with a commercial-delivery service, then the

date of service will be the date of the award. The final rule incorporates these two suggestions.

In addition, the final rule corrects a typographical error from the proposed rule. Specifically, the final rule refers to “2429.22” rather than “2492.22.”

However, as discussed further below, several additional commenters made suggestions that the final rule does not incorporate.

First, one commenter expressed concern that, as e-mail or fax transmissions of awards may occur outside post-office hours, they could occur late at night or on weekends, including weekends with a Monday holiday, and the excepting party could lose several days of the thirty days allowed for exceptions. The commenter also asserted that both e-mail and fax transmissions are subject to errors and electrical failures, *e.g.*, the arbitrator could type the address incorrectly, an intermediate server could be inoperative, or there could be a power failure at the receiving end of a fax. The commenter suggested revising § 2425.2(c)(3) as follows: “If the award is served by e-mail or fax, then the date of service is the date of successful and complete transmission, and the excepting party will not receive an additional five days for filing exceptions. However, if the arbitrator transmits his/her decision on a non-workday or on a workday after 5 pm, then the decision will be considered as having been served on the following workday.”

Second, and similarly, one commenter suggested that, when an award is sent by e-mail, a second method of service should also be used in calculating the date of service so that the award does not remain unread while its recipient is out of the office or otherwise unavailable.

Third, one commenter stated that overseas organizations are sometimes subject to slow delivery of mailed arbitration awards, and suggested that the proposed rule should be revised to state that timeliness of exceptions for overseas parties will be calculated based on the date of receipt, not the date of mailing. The commenter further suggested that the date of receipt could then be established by an affidavit or sworn declaration. According to the commenter, such an approach would “avoid the artificial constructs of mailing dates established by case[s] such as” *United States Immigration and Naturalization Service*, 33 FLRA 885 (1989).

Fourth, and finally, one commenter suggested modifying § 2425.2(c) to add, after “the arbitrator’s selected method is

controlling for purposes of calculating the time limit for filing exceptions[.]” the following: “provided that the arbitrator gives the parties advance notice of the service method selected.” Similarly, the commenter suggested adding a subparagraph (6) that would state: “If the arbitration award is served by more than one method, and if the parties did not reach an agreement as to an appropriate method(s) of service of the award, and if the arbitrator failed to provide the parties with advance notice of the arbitrator’s selected method of service of the award, then the last method of service used will determine the date of service of the arbitration award for purposes of calculating the time limits for exceptions.”

With regard to these comments, the Authority purposely drafted the proposed rule to leave to the parties (or, absent agreement by the parties, to the arbitrator) decisions regarding how arbitration awards will be served. If parties have concerns similar to those set forth by the commenters, then the parties can agree to a method of service that does not present such concerns. Given the Authority’s view that the determination of appropriate methods of service is best left to the parties, the final rule does not adopt these commenters’ suggestions.

Section 2425.3

With regard to § 2425.3(a), one commenter noted that the Authority’s current regulations provide that “a” party may file exceptions, and that the use of “[a]ny” party in the proposed rule may create unintended ambiguity. As the proposed rule is not intended to change the Authority’s existing standards regarding who may file oppositions (or exceptions), and to avoid any unintended ambiguity, the final rule modifies the proposed rule to state that “[a]” party may file an opposition.

Also with regard to § 2425.3(a), one commenter “assumes that it would continue to allow the agency or primary national subdivision to file oppositions (and exceptions) for its activities.” As stated above, the proposed rule is not intended to change the Authority’s existing standards with respect to who may file oppositions (or exceptions). No change is necessary to the final rule in this regard.

Section 2425.4

Upon review of the proposed rule, the Authority clarifies § 2425.4(a)(3) to state that the excepting party is required to provide copies of documents that are not readily accessible to the Authority, and to give examples of such

documents. In this connection, as § 2425.4(b) gives examples of the types of documents that are readily accessible to the Authority—and thus not required to be submitted with exceptions—the Authority believes that it will provide further clarity to the parties to also give examples of the types of documents that are not readily accessible to the Authority and, thus, required to be included with exceptions.

In addition, as discussed further below in connection with § 2425.7, the final rule is modified to no longer require parties to jointly request an expedited, abbreviated decision. Rather, the excepting party may request, in its exceptions, such a decision, and the opposing party may state, in its opposition, whether it agrees with or opposes the request. Accordingly, § 2425.4 is modified to create a new subsection (a)(4), which requires the excepting party to provide arguments in support of any request for an expedited, abbreviated decision within the meaning of § 2425.7. As a result, § 2425.4(a)(4) and (5) from the proposed rule have been renumbered § 2425.4(a)(5) and (6) in the final rule.

Further, in § 2425.4(b), the final rule deletes, as unnecessary, the word “actual” before “copies.”

Moreover, as discussed further below, one commenter asserted in connection with § 2429.5 that the word “material” implies that the Authority will consider “immaterial” matters that were not raised before an arbitrator. As such, the word “material” has been deleted from both § 2429.5 and § 2425.4(c).

With regard to § 2425.4(a)(3), one commenter stated that the party that files exceptions should be required to serve the other party with copies of any documents that are submitted to the Authority. According to the commenter, without such a requirement, the opposing party may not be able to discern which documents have already submitted and which documents the opposing party will need to submit. However, as § 2429.27 of the Authority’s regulations already requires the excepting party to serve such copies on the other party, there is no need to modify the proposed rule in this regard.

With regard to §§ 2425.4(a)(5) and 2425.4(b), commenters approved of these changes. Consistent with the revision to § 2425.4(a)(3) to clarify that an excepting party is required to provide documents that are not readily accessible to the Authority, the wording, “Notwithstanding subsection (a)(3) of this section,” has been deleted from § 2425.4(b), as that wording is no longer necessary.

With regard to § 2425.4(c), one commenter supported this change. However, two commenters expressed concerns.

The first commenter did not specifically cite § 2425.4(c), but made comments that relate to it. Specifically, the commenter expressed a concern that the proposed rule would require parties to present “the entire Law Library of Congress” to the arbitrator in order “to avoid something being left out.” The same commenter questioned why an award could not be challenged where an arbitrator has reached a conclusion that is not based on evidence or legal issues presented at arbitration.

The second commenter stated that the proposed rule “expands” the Authority’s current practice of declining to resolve issues that were not raised before an arbitrator. Specifically, the commenter asserted that the wording concerning “challenges to an awarded remedy that could have been, but were not, presented to the arbitrator” is particularly problematic. According to this commenter, in many cases, unions request numerous possible remedies, some of which may not be clear, and frequently request “any and all proper relief[.]” The commenter stated that it may not be reasonable for a responding party to be required to anticipate any remedy that an arbitrator may fashion. In addition, the commenter stated that some agencies have expedited arbitration procedures where there is no transcript or post-hearing brief, and this will make it difficult for a party to demonstrate that a particular argument was submitted before the arbitrator. Accordingly, the commenter suggests adding the following wording to the end of proposed § 2425.4(c): “However, this prohibition does not apply where one party could not reasonably foresee a defect or basis for filing exceptions recognized in § 2425.4(c).”

With regard to the concerns raised by these two commenters, § 2425.4(c) is intended merely to incorporate in regulations—not to expand—the Authority’s existing practice under the current version of § 2429.5 of the Authority’s regulations. Under that practice, parties are required to raise arguments—including challenges to remedies—only to the extent that they could reasonably know to do so. *See, e.g., U.S. DHS, U.S. Customs & Border Prot., JFK Airport, Queens, N.Y.*, 64 FLRA 841, 843 (2010) (as agency challenged potential award of overtime on one ground before arbitrator, it could not challenge award of overtime on another ground for the first time before Authority). Thus, if a party could not reasonably know to raise an argument or

a challenge to an awarded remedy, then the party would not be precluded from filing an exception raising that argument or challenge. With regard to the latter commenter’s concern regarding proving that an issue was raised below in an expedited proceeding with no record, the party could assert in its exceptions that it raised an issue below and explain why it cannot provide evidence to support that assertion. *Cf. U.S. DOJ, Fed. Bureau of Prisons, U.S. Penitentiary, Atlanta, Ga.*, 57 FLRA 406, 408–09 (2001) (Chairman Cabaniss dissenting on other grounds) (agency stated in exceptions that it raised argument before arbitrator, and Authority found, “absent evidence in the record to the contrary,” that argument was properly before Authority). Thus, there is no need to modify the proposed rule in the manner suggested by the latter commenter.

With regard to § 2425.4(d), one commenter supported the use of forms, particularly when expedited, abbreviated decisions are requested under § 2425.7.

Section 2425.5

One commenter recommended that the requirements for oppositions be as explicit as the requirements for filing exceptions. According to the commenter, the proposed rule as written provides for interpretation by the opposing party as to what should be included in and with an opposition filing.

However, unlike exceptions, which are provided for by 5 U.S.C. 7122, oppositions are entirely optional. As such, the Authority purposely worded § 2425.5 to not impose specific, mandatory filing requirements, and there is no basis for modifying the rule as suggested.

Nevertheless, the Authority has decided that § 2425.5 can be clarified. In this connection, the final rule adds a statement that the opposing party should submit copies of documents only if they are not readily accessible (such as those discussed in the revision to § 2425.4(a)), not copies of readily accessible documents (such as those discussed in § 2425.4(b)).

In addition, as discussed above in connection with § 2425.4 and below in connection with § 2425.7, the final rule has been modified to eliminate the requirement of joint requests for expedited, abbreviated decisions. Instead, the final rule allows an excepting party to request such a decision, and § 2425.5 has been modified to provide that the opposing party should state whether it supports

or opposes such a request and to provide supporting arguments.

Section 2425.6

As an initial matter, the final rule corrects a typographical error from the proposed rule. Specifically, the final rule states “through (b)(2)(iv)[.]” rather than “through (iv)[.]”

In addition, the Authority has decided to change § 2425.6 to reflect the fact that a party’s failure to support a properly raised ground for review may be subject to “denial” rather than “dismissal[.]” As such, the final rule adds the words: (1) “or denial” after “or dismissal[.]” and “or support” after “raise[.]” in the title of § 2425.6; and (2) “or denial” after the word “dismissal” in the text of § 2425.6(e).

With regard to § 2425.6(b)(2), commenters generally supported listing the private-sector grounds for finding arbitration awards deficient. However, two commenters raised questions about two of those grounds.

The first commenter stated that the ground of “incomplete, ambiguous, or contradictory” set forth in § 2425.6(b)(2)(iii) appears to be inconsistent with controlling Supreme Court precedent, citing *United States Steelworkers of America v. Enterprise Wheel and Car Corp.*, 363 U.S. 593 (1960). In this connection, the commenter stated that ambiguity or imprecision in a private-sector arbitration award is not an appropriate basis for judicial review. The commenter suggested deleting this reference from the regulations, alleging that it represents a significant expansion of the Authority’s role in reviewing arbitration awards beyond what was contemplated by Congress. In addition, the commenter asserted that adding this reference is bad policy because it will undermine the finality of the arbitration process and result in additional appeals and costs to the parties. In this connection, the commenter stated that, even if Authority decisions set forth this ground, setting it forth in regulations will result in an “undesirable expansion of the Authority’s interference in the arbitration process,” which will result in more, not less, litigation and expense. Alternatively, the commenter suggested that the Authority add the word “materially” before “incomplete, ambiguous, or contradictory” in order to make clear that *de minimis* errors or omissions in arbitration awards will not serve as the basis for submitting exceptions. The commenter further stated that the regulation is somewhat ambiguous because it is unclear whether it is aimed at empowering the Authority to correct arbitrator decisions that are

incomplete, ambiguous, or contradictory, or merely arbitrator awards (*i.e.*, remedies) that are unclear. The commenter suggested that, if the Authority keeps the provision, then it would be appropriate to clarify its intent.

In response to that commenter, the private-sector ground of “incomplete, ambiguous, or contradictory” that the Authority has discussed in its decisions requires that the award be so incomplete, ambiguous, or contradictory as to make implementation of the award impossible. *E.g.*, *AFGE, Local 1395*, 64 FLRA 622, 624 (2010). As such, minor incompleteness, ambiguity, or imprecision in the award would not provide a basis for setting aside the award, as long as the award is sufficiently clear so that the parties know how to implement it. Nevertheless, as clarification is warranted in this regard, and in an attempt to avoid an increase in the number of exceptions that allege that an award is deficient merely because it is incomplete, ambiguous, or contradictory in some manner, the final rule adds, after “contradictory[.]” the words “as to make implementation of the award impossible.”

The second commenter questioned whether the “public policy” ground set forth in § 2425.6(b)(2)(iv) has any place in Federal-sector arbitration review because “[a]t best, it is redundant, mirroring the ‘contrary to law, rule, or regulation’” ground. In this regard, the commenter asserted that the “public policy” ground must be well defined and dominant, and is to be ascertained by reference to the laws and legal precedents and not from general consideration of supposed public interests. According to the commenter—citing *United Paperworkers International Union, AFL-CIO v. Misco, Inc.*, 484 U.S. 29 (1987), and *W.R. Grace & Co. v. Local Union 759, International Union of United Rubber Workers*, 461 U.S. 757, 766 (1983)—courts’ refusal to enforce an arbitrator’s interpretation of a contract that contravenes public policy has its roots in the general common-law doctrine that courts may refuse to enforce contracts that violate law or public policy. The commenter noted that, in the Federal sector, parties are not required to bargain over proposals that are inconsistent with Federal law or government-wide regulation, and both the negotiability appeal process and the agency-head review process are intended to ensure that unlawful provisions do not end up in contracts. Thus, the commenter asserted that there is “no real need” to set forth this ground, and if it is listed

as an independent ground, then the Authority should clarify how an award found deficient as contrary to public policy would not also be found to be contrary to law.

In response to that commenter, the Authority is required to assess whether awards are deficient on private-sector grounds. *See* 5 U.S.C. 7122(a)(2). Although the public-policy ground likely overlaps to some degree with the “contrary to law, rule, or regulation” ground that the Authority applies, it is not clear that they are entirely coextensive. As such, it is appropriate to list it as a ground, and to provide guidance as to its meaning through Authority decisional law and informal guidance. Accordingly, no change is necessary to the final rule in this regard.

With regard to § 2425.6(e)(1), one commenter suggested deleting the word “or” and adding, after the word “award”: “, or fails to meet any statutory or regulatory time limit[.]” In effect, the commenter’s suggestion would add a statement that untimely exceptions will be dismissed. However, the purpose of § 2425.6 is to set forth the substantive grounds for review, and to provide that an exception is subject to dismissal or denial either if a party fails to raise and support a recognized ground, or if the award involves a matter over which the Authority lacks jurisdiction. Discussing timeliness and other types of deficiencies would be outside the scope of this purpose. Accordingly, no change is made to the final rule in this regard.

Another commenter suggested that § 2425.6 should clarify that no exception may be based on an argument or claim that was not advanced to the arbitrator, unless the arbitrator’s award initially “injects” the basis for the exception. This point is sufficiently made in §§ 2425.4(c) and 2429.5, and there is no need to repeat it in § 2425.6. Accordingly, no change is made to the final rule in this regard.

Finally, one commenter stated that the Authority should provide arbitrators and parties with the types of arbitration awards over which the Authority lacks jurisdiction, “so that the arbitrator’s award is final without the option of an appeal” if the Authority lacks jurisdiction over the case. To the extent that the commenter has suggested that the regulation should provide that those types of awards automatically become final, without allowing any filing of exceptions, there must be some mechanism for the Authority to determine whether an award concerns a matter over which the Authority lacks jurisdiction. Accordingly, it is inappropriate to modify § 2425.6 to provide that any type of award

automatically becomes final without an opportunity to file exceptions with the Authority. Thus, no change is made to the final rule in this regard. However, under the final rule and consistent with current practice, the Authority will continue to dismiss exceptions in cases where it lacks jurisdiction.

Section 2425.7

As an initial matter, the Authority has decided to delete the use of the term “short-form” from the final rule because that term is used internally at the Authority and is unlikely to have meaning to many people outside the Authority. Instead, § 2425.7 and other pertinent sections of the final rule refer to “expedited, abbreviated” decisions.

One commenter suggested deleting the word “briefly” because even an expedited, abbreviated decision will fully resolve the parties’ arguments; it will just do so without a full explanation of the background, award, arguments, and analysis of those arguments. In the alternative, the commenter suggested substituting the word “summarily” for “briefly.” The final rule adopts the commenter’s suggested deletion of the word “briefly” because it is redundant.

Another commenter suggested a more fundamental change to § 2425.7. Specifically, the commenter suggested that, rather than requiring a joint request for an expedited, abbreviated decision, “a request from one party (*i.e.* the excepting party)” should be sufficient. The commenter also noted that the proposed rule does not address how the Authority will expedite the process and issue a decision and provides no timeline, even if only a target, for the issuance of this type of decision.

Upon consideration of the commenter’s suggestion that the proposed rule delete the requirement of a joint request, the final rule provides that the excepting party may request an expedited, abbreviated decision, and that the opposing party may state whether it agrees with or opposes the request. In this connection, particularly given that the Authority may issue this type of decision without *any* request from the parties, it is appropriate to delete the requirement of a joint request. As such, the final rule allows the excepting party to state whether it is willing to accept an abbreviated Authority decision in exchange for a more expedited decision. An added benefit to deleting the requirement of a joint request is that it reduces the possibility for procedural deficiencies that may attend the creation of a new filing, which could delay the processing of this type of case, contrary to the

intent of § 2425.7. Accordingly, the final rule deletes the requirement of a joint request and makes clear that the excepting party may make this request.

With regard to the commenter's statement that the proposed rule does not state how the Authority will expedite the process and provides no timeline for when it will issue a decision, these matters are best left for development through practice, rather than regulation. Thus, no change is made to the final rule in this regard.

Another commenter suggested that § 2425.7 be modified to make the sentence beginning, "Even absent the parties' joint request," the first sentence of a second paragraph that would then state: "Parties are encouraged to provide a short position statement as to why a short-form decision is appropriate or inappropriate for that particular case. The Authority will consider factors such as: (1) The novelty of the disputed issues; (2) the potential impact of the decision on other cases; (3) the need, if any, to clarify previously issued decisions; (4) the impact an extended timeline for decision will have on labor-management relations."

As discussed previously, § 2425.4(a)(4) has been modified to state that the excepting party must provide supporting arguments for any request for an expedited, abbreviated decision under this section, and § 2425.5 has been modified to state that the opposing party should state whether it supports or opposes such a request and provide supporting arguments. With regard to the commenter's suggestion regarding the factors that the Authority should consider, § 2425.7 is broadly worded to state that the Authority will consider "all of the circumstances of the case," and sets forth certain examples. It is unnecessary to modify the proposed rule to list additional examples, although parties may provide in their briefs whatever arguments that they believe support issuing or not issuing this type of decision. No change is made to the final rule in this regard.

One commenter stated that Authority decisions in arbitration cases may be subject to further review, for example by the Equal Employment Opportunity Commission. Thus, the commenter suggested that § 2425.7 should specify that if a case involves an alleged violation of a civil-rights statute, then an expedited, abbreviated decision would not be appropriate. However, as discussed above, the proposed rule is broadly worded and does not preclude parties from listing these sorts of reasons why an abbreviated decision would not be appropriate in a particular

case. Accordingly, no change is made to the final rule in this regard.

Finally, one commenter agreed with the proposed rule, but suggested that the Authority should decide all of its cases in chronological order. This suggestion is contrary to the intent of § 2425.7, which is to provide for a mechanism for quickly deciding newly filed cases. Accordingly, no change is made to the final rule in this regard.

Section 2425.8

One commenter supported the provision of assistance from the Authority's Collaboration and Alternative Dispute Resolution Program (CADR), "as long as that is a final step and the end of the appeal process by either party." To the extent that the commenter has suggested that parties' decision to use CADR should waive their ability to have the Authority resolve their exceptions, this suggestion would discourage parties from using CADR. Accordingly, no change is made to the final rule in this regard.

Another commenter stated that, after reviewing exceptions and any opposition, if the Authority determines that CADR would be appropriate in a particular case, then the Authority should contact the parties and encourage or suggest the use of CADR, rather than waiting for parties to jointly request it. According to the commenter, parties will rarely jointly request CADR on their own, which will result in missed opportunities to save government resources that could be saved through greater and more effective use of CADR.

It is unnecessary to specify in regulations how the Authority will proceed with regard to contacting parties in appropriate cases. The Authority's current negotiability regulations do not specify how contacts between CADR and parties proceed, and it is appropriate not to so specify here. Accordingly, no change is made to the final rule in this regard. However, the Authority will seek to develop a practice or process that encourages the use of CADR in arbitration cases.

One commenter approved of the opportunity for CADR but suggested that "the requirements and relevant material regarding alternative dispute resolution be set forth explicitly in the regulation rather than an exterior source such as a website." The commenter also suggested that, to avoid delay on the part of the opposing party "after an opposition has been filed," CADR "should have the right to stop the tolling and require the submission of the opposing party's opposition." In this connection, the commenter stated that

requiring an opposing party to place its position "on the table" can assist in the settlement process.

With regard to the commenter's suggestion that the regulation set forth "the requirements and relevant material regarding alternative dispute resolution[.]" the proposed rule is intentionally modeled after the Authority's negotiability regulations concerning CADR. Accordingly, no change is made to the final rule in this regard.

With regard to the commenter's suggestion that CADR should have the authority to stop the tolling and require the submission of the opposing party's opposition, to the extent that the commenter has suggested that CADR should have the authority to immediately demand an opposition statement, this suggestion could discourage some parties from choosing to use CADR because it could result in some opposing parties forfeiting a portion of their time for filing an opposition. Accordingly, no change is made to the final rule in this regard.

Finally, one commenter suggested clarifying how long the time limits will be tolled in cases where CADR assists the parties, and asked whether the party filing an opposition would get a full thirty days in the event that CADR's efforts prove unsuccessful. In negotiability cases where parties agree to use CADR, their case is held in abeyance and their filing deadlines are tolled, but the negotiability regulations do not set forth the details of this practice. Rather, the Authority has found it appropriate to let these details be worked out through practice, and it is appropriate to do so in the arbitration context as well. Accordingly, no change is made to the final rule in this regard.

Section 2425.9

One commenter approved of this regulation but suggested that the Authority reference its "subpoena and enforcement power[.]" It is unnecessary to reference any Authority "powers" in this section. Accordingly, no change is made to the final rule in this regard.

Another commenter stated that the Authority should be circumspect in implementing this section so as not to provide the excepting party a second chance to fully meet the requirements of § 2425.4 and thereby supplement the record. In this connection, the commenter did not object to the Authority seeking clarification where administrative errors are identified, but stated that providing an excepting party an opportunity to "more effectively formulate its exception" could undercut the finality of the arbitration process.

Although the commenter has raised valid concerns, there is no need to modify the rule. Instead, as the commenter's own comment suggests, these concerns are appropriately taken into account in "implementing" this regulation. Accordingly, no change is made to the final rule in this regard.

Finally, one commenter suggested that arbitrators should be qualified to review parties' documentation and testimony to determine whether they are "FLRA worthy." The commenter stated that, if an arbitrator is not trained to make this determination, then: Training should be provided; any decisions about the adequacy of evidence should be resolved during the formal arbitration proceedings; and the arbitrator should ensure that the parties provide adequate evidence prior to an exception being filed with the Authority.

To the extent that the commenter has suggested that the Authority should regulate how the arbitration process works and/or provide arbitrators with the authority to determine the content of filings with the Authority, the former would be an unwarranted intrusion by the Authority in the arbitration process, and the latter would be an unwarranted intrusion by the arbitrator in the exceptions process. Accordingly, no change is made to the final rule in this regard.

Section 2425.10

One commenter acknowledged that this regulation merely restates the Authority's current regulations, but suggested deleting the words "and making such recommendations" because the commenter did not recall ever seeing an Authority decision where the Authority made a "recommendation" regarding an award. In this connection, the commenter stated that the Authority denies an exception, remands an arbitration award, or sets the award aside in whole or in part. However, 5 U.S.C. 7122 expressly provides that the Authority may "make such recommendations concerning the award as it considers necessary," and it is appropriate to include the discussion of "recommendations" in § 2425.10 as well. Accordingly, no change is made to the final rule in this regard.

Part 2429—Miscellaneous and General Requirements

Section 2429.5

One commenter asserted that clarification is needed because the word "material" implies that the Authority will consider "immaterial" evidence. The commenter recommended changing the first sentence of § 2429.5 to the

following: "The Authority will not consider any evidence, issue, assertion, argument, affirmative defense, remedy, or challenge to an awarded remedy, that could have been but was not presented * * *".

The commenter's statement that the use of "material" implies that the Authority will consider "immaterial" evidence is correct. As the Authority did not intend to imply that it will consider immaterial evidence, the final rule deletes the word "material[.]" To the extent that the commenter's suggested wording would result in other, minor changes to the wording of the existing regulation, there is no basis for modifying the remaining wording, and that wording remains unchanged in the final rule.

One commenter repeated the arguments that the commenter made in connection with § 2425.4(c), specifically, that the proposed rule expands the Authority's basis for refusing to decide arguments raised on appeal if those arguments were not previously made to the arbitrator; that it may not always be reasonable for a party to anticipate an awarded remedy; and that parties often have expedited arbitration procedures that do not provide for records that will enable a party to demonstrate that it raised an issue before the arbitrator. For the reasons discussed in connection with § 2425.4(c), it is unnecessary to modify § 2429.5 in response to these concerns.

Another commenter stated that the Authority should entirely withdraw the proposed amendment to § 2429.5. According to the commenter, the amended wording will greatly increase the litigation burden associated with arbitration and undermine Congress's intent in 5 U.S.C. 7121 that Federal workplace disputes be resolved through a quick, efficient, and inexpensive negotiated grievance procedure. In this connection, the commenter asserted that many negotiated grievance procedures provide for the simultaneous submission of post-hearing briefs and do not provide for reply briefs, which minimizes parties' time and expense in connection with litigation but results in parties not challenging remedies that are sought only in post-hearing briefs. The commenter also asserted that the proposed rule's use of the word "could" in connection with whether a challenge "could" have been presented to an arbitrator will force parties whose agreements do not provide for reply briefs to arbitrators to choose between: (1) Moving for permission to file, and filing, a reply brief with the arbitrator, which would prolong litigation and impose additional costs; or (2) filing

exceptions with the Authority to challenge an awarded remedy, and run the risk of the opposing party asserting that the challenge should be dismissed because it could have been, but was not, presented to the arbitrator. According to the commenter, parties could modify their collective bargaining agreements to expressly permit reply briefs in arbitration, but reopening and modifying agreements may only be done at certain times and under certain conditions, and would impose time and expense. According to the commenter, the proposed amendment would discourage the use of faster, less costly, expedited arbitration procedures because parties will be encouraged to raise arguments that they otherwise would not raise. The commenter also asserted that the proposed wording will impose new burdens on the Authority because it will require the Authority to develop case law addressing when a challenged remedy "could" have been presented to an arbitrator. Further, the commenter stated that parties are unable to determine what an awarded remedy will be before an award actually issues, and questioned whether the wording "challenges to an awarded remedy" would require parties to file reply briefs (as discussed above) as well as post-award briefs to the arbitrator to challenge an awarded remedy. The commenter also asserted that the proposed wording imposes burdens not only in the arbitration context, but also in other processes where simultaneous briefs are filed, which would require greater expenditures of time for parties to file motions and for triers of fact to rule on those motions.

With regard to the commenter's concerns, as discussed previously, the proposed amendments to § 2429.5 merely incorporate into regulation the Authority's existing practice under § 2429.5. Thus, they do not impose any new, additional burdens on parties. With regard to the commenter's concern about the fact that post-hearing briefs often are submitted simultaneously, the Authority takes, and will continue to take, this factor into account in determining whether a party could have raised an issue before an arbitrator. *E.g., U.S. Dep't of Labor*, 60 FLRA 737, 738 (2005) (agency could file exception regarding issue that was raised for the first time in union's post-hearing brief to arbitrator, which was submitted at the same time as agency's post-hearing brief). The proposed revisions to § 2429.5 would not change this practice, and would not impose a new burden on parties to move to request an opportunity for additional filings or to

file post-award requests with an arbitrator. With regard to the commenter's statement that the proposed amendment will prolong litigation by encouraging parties to submit additional arguments to arbitrators that they otherwise would not submit, parties should be raising any arguments that they wish to raise to an arbitrator and giving the arbitrator the opportunity to resolve those issues. The Authority believes that clarifying the meaning of § 2429.5 will encourage the finality of arbitration awards and preclude parties from prolonging litigation by filing exceptions with the Authority on issues that they could, and should, have raised to an arbitrator. As for the commenter's assertion regarding other, non-arbitration contexts, as discussed previously, the proposed amendment to § 2429.5 merely incorporates into regulation the Authority's existing practice.

Section 2429.21

One commenter suggested eliminating the last sentence of § 2429.21(a) and inserting the following new subparagraph: "(b) When the period of time prescribed or allowed under this subchapter is 7 days or less, intermediate Saturdays, Sundays, and Federal legal holidays shall be excluded from the computations." However, the Authority's current regulations already have a § 2429.21(b), and there is no need to separate out this one sentence from the rest of § 2429.21(a). Further, the wording set forth in the proposed rule is identical to the existing wording of § 2429.21(a), with the exception of the deletion of "except as to the filing of exceptions to an arbitrator's award under § 2425.1 of this subchapter," which merely reflects the change in how the Authority will calculate the timeliness of exceptions. For these reasons, the final rule as promulgated is the same as the proposed rule.

Section 2429.22

As an initial matter, the final rule corrects a typographical error from the proposed rule. Specifically, the final rule states that "5 days shall be added to the prescribed period[.]" rather than "5 days shall be added to the proscribed period[.]"

One commenter stated that mail to many government offices is subjected to off-site screening for hazardous substances, which sometimes delays mail for as long as a month. In fact, the commenter asserted that this occurred in connection with a recent Authority decision to which the commenter was a party. The commenter recommended adding the following wording: "; and

further provided that if a party certifies under oath that it did not actually receive a notice or other paper until more than 5 days after the date of mailing or deposit with the commercial delivery service, that larger number of days shall be added to the pr[e]scribed period."

The commenter's statement raises valid concerns regarding off-site irradiation of mail. However, as discussed in connection with § 2425.2, the determination of how an award should be served is left to the agreement of the parties, and parties that have concerns regarding receipt of regular mail can make arrangements to have an award served by some other method that does not present the same concerns. Accordingly, a change to the wording is not warranted, and the final rule does not incorporate the commenter's suggestion.

Other Regulatory Requirements

Two commenters made additional suggestions that do not pertain to particular regulations.

The first commenter stated that if "an arbitration award has been previously awarded by the FLRA to Union employees at a similar facility," then that award should be precedential, and the Authority should, "within the five day screening process by FLRA staff[.]" automatically deny any exceptions to a second, similar award. In this connection, the commenter stated that, during the arbitration process, the arbitrator could review the previous, similar case(s) and subsequent Authority decision(s), and include those findings in the "Opinion and Award."

To the extent that the commenter has suggested that the Authority should automatically deny exceptions to an arbitration award merely because that award resolves issues similar to those that were resolved in a previous arbitration award, it is well established that arbitration awards are not precedential. *E.g., U.S. Dep't of Veterans Affairs, Med. Ctr., W. Palm Beach, Fla.*, 63 FLRA 544, 548 (2009). Accordingly, there is no basis for modifying the proposed rule in this connection.

The second commenter suggested that the Authority post a "Q&A" or "FAQ" on the Authority's Web site that might assist agency and union representatives in avoiding procedural mistakes. The Authority does not believe that the commenter's suggestion warrants any modifications to the proposed rule, but will take the suggestion into account in developing other, non-regulatory guidance for parties and arbitrators.

Executive Order 12866

The Authority is an independent regulatory agency, and as such, is not subject to the requirements of E.O. 12866.

Executive Order 13132

The Authority is an independent regulatory agency, and as such, is not subject to the requirements of E.O. 13132.

Regulatory Flexibility Act Certification

Pursuant to section 605(b) of the Regulatory Flexibility Act, 5 U.S.C. 605(b), the Chairman of the Authority has determined that this regulation, as amended, will not have a significant impact on a substantial number of small entities, because this rule applies only to Federal employees, Federal agencies, and labor organizations representing Federal employees.

Unfunded Mandates Reform Act of 1995

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

Small Business Regulatory Enforcement Fairness Act of 1996

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

Paperwork Reduction Act of 1995

The amended regulations contain no additional information collection or record-keeping requirements under the Paperwork Reduction Act of 1995, 44 U.S.C. 3501, *et seq.*

List of Subjects in 5 CFR Parts 2425 and 2429

Administrative practice and procedure, Government employees, Labor management relations.

■ For the reasons stated in the preamble, the Authority amends 5 CFR chapter XIV as follows:

■ 1. Part 2425 is revised to read as follows:

PART 2425—REVIEW OF ARBITRATION AWARDS

Sec.

2425.1 Applicability of this part.

2425.2 Exceptions—who may file; time limits for filing, including determining date of service of arbitration award for the purpose of calculating time limits; procedural and other requirements for filing.

2425.3 Oppositions—who may file; time limits for filing; procedural and other requirements for filing.

2425.4 Content and format of exceptions.

2425.5 Content and format of opposition.

2425.6 Grounds for review; potential dismissal or denial for failure to raise or support grounds.

2425.7 Requests for expedited, abbreviated decisions in certain arbitration matters that do not involve unfair labor practices.

2425.8 Collaboration and Alternative Dispute Resolution Program.

2425.9 Means of clarifying records or disputes.

2425.10 Authority decision.

Authority: 5 U.S.C. 7134.

§ 2425.1 Applicability of this part.

This part is applicable to all arbitration cases in which exceptions are filed with the Authority, pursuant to 5 U.S.C. 7122, on or after October 1, 2010.

§ 2425.2 Exceptions—who may file; time limits for filing, including determining date of service of arbitration award for the purpose of calculating time limits; procedural and other requirements for filing.

(a) *Who may file.* Either party to arbitration under the provisions of chapter 71 of title 5 of the United States Code may file an exception to an arbitrator's award rendered pursuant to the arbitration.

(b) *Timeliness requirements—general.* The time limit for filing an exception to an arbitration award is thirty (30) days after the date of service of the award. This thirty (30)-day time limit may not be extended or waived. In computing the thirty (30)-day period, the first day counted is the day after, not the day of, service of the arbitration award. Example: If an award is served on May 1, then May 2 is counted as day 1, and May 31 is day 30; an exception filed on May 31 would be timely, and an exception filed on June 1 would be untimely. In order to determine the date of service of the award, *see* the rules set forth in subsection (c) of this section, and for additional rules regarding computing the filing date, *see* 5 CFR 2429.21 and 2429.22.

(c) *Methods of service of arbitration award; determining date of service of arbitration award for purposes of calculating time limits for exceptions.* If the parties have reached an agreement as to what is an appropriate method(s) of service of the arbitration award, then that agreement—whether expressed in a collective bargaining agreement or otherwise—is controlling for purposes of calculating the time limit for filing exceptions. If the parties have not reached such an agreement, then the arbitrator may use any commonly used method—including, but not limited to, electronic mail (hereinafter “e-mail”), facsimile transmission (hereinafter “fax”), regular mail, commercial delivery, or personal delivery—and the arbitrator's selected method is controlling for purposes of calculating the time limit for filing exceptions. The following rules apply to determine the date of service for purposes of calculating the time limits for filing exceptions, and assume that the method(s) of service discussed are either consistent with the parties' agreement or chosen by the arbitrator absent such an agreement:

(1) If the award is served by regular mail, then the date of service is the postmark date or, if there is no legible postmark, then the date of the award; for awards served by regular mail, the excepting party will receive an additional five days for filing the exceptions under 5 CFR 2429.22.

(2) If the award is served by commercial delivery, then the date of service is the date on which the award was deposited with the commercial delivery service or, if that date is not indicated, then the date of the award; for awards served by commercial delivery, the excepting party will receive an additional five days for filing the exceptions under 5 CFR 2429.22.

(3) If the award is served by e-mail or fax, then the date of service is the date of transmission, and the excepting party will not receive an additional five days for filing the exceptions.

(4) If the award is served by personal delivery, then the date of personal delivery is the date of service, and the excepting party will not receive an additional five days for filing the exceptions.

(5) If the award is served by more than one method, then the first method of service is controlling when determining the date of service for purposes of calculating the time limits for filing exceptions. However, if the award is served by e-mail, fax, or personal delivery on one day, and by mail or commercial delivery on the same day, the excepting party will not receive an

additional five days for filing the exceptions, even if the award was postmarked or deposited with the commercial delivery service before the e-mail or fax was transmitted.

(d) *Procedural and other requirements for filing.* Exceptions must comply with the requirements set forth in 5 CFR 2429.24 (Place and method of filing; acknowledgment), 2429.25 (Number of copies and paper size), 2429.27 (Service; statement of service), and 2429.29 (Content of filings).

§ 2425.3 Oppositions—who may file; time limits for filing; procedural and other requirements for filing.

(a) *Who may file.* A party to arbitration under the provisions of chapter 71 of title 5 of the United States Code may file an opposition to an exception that has been filed under § 2425.2 of this part.

(b) *Timeliness requirements.* Any opposition must be filed within thirty (30) days after the date the exception is served on the opposing party. For additional rules regarding computing the filing date, *see* 5 CFR 2425.8, 2429.21 and 2429.22.

(c) *Procedural requirements.* Oppositions must comply with the requirements set forth in 5 CFR 2429.24 (Place and method of filing; acknowledgment), 2429.25 (Number of copies and paper size), 2429.27 (Service; statement of service), and 2429.29 (Content of filings).

§ 2425.4 Content and format of exceptions.

(a) *What is required.* An exception must be dated, self-contained, and set forth in full:

(1) A statement of the grounds on which review is requested, as discussed in § 2425.6 of this part;

(2) Arguments in support of the stated grounds, including specific references to the record, citations of authorities, and any other relevant documentation;

(3) Legible copies of any documents referenced in the arguments discussed in subsection (a)(2) of this section, if those documents are not readily available to the Authority (for example, internal agency regulations or provisions of collective bargaining agreements);

(4) Arguments in support of any request for an expedited, abbreviated decision within the meaning of § 2425.7 of this part;

(5) A legible copy of the award of the arbitrator; and

(6) The arbitrator's name, mailing address, and, if available and authorized for use by the arbitrator, the arbitrator's e-mail address or facsimile number.

(b) *What is not required.* Exceptions are not required to include copies of

documents that are readily accessible to the Authority, such as Authority decisions, decisions of Federal courts, current provisions of the United States Code, and current provisions of the Code of Federal Regulations.

(c) *What is prohibited.* Consistent with 5 CFR 2429.5, an exception may not rely on any evidence, factual assertions, arguments (including affirmative defenses), requested remedies, or challenges to an awarded remedy that could have been, but were not, presented to the arbitrator.

(d) *Format.* The exception may be filed on an optional form provided by the Authority, or in any other format that is consistent with subsections (a) and (c) of this section. A party's failure to use, or properly fill out, an Authority-provided form will not, by itself, provide a basis for dismissing an exception.

§ 2425.5 Content and format of opposition.

If a party chooses to file an opposition, then the party should address any assertions from the exceptions that the opposing party disputes, including any assertions that any evidence, factual assertions, arguments (including affirmative defenses), requested remedies, or challenges to an awarded remedy were raised before the arbitrator. If the excepting party has requested an expedited, abbreviated decision under § 2425.7 of this part, then the party filing the opposition should state whether it supports or opposes such a decision and provide supporting arguments. The party filing the opposition must provide copies of any documents upon which it relies unless those documents are readily accessible to the Authority (as discussed in § 2425.4(b) of this part) or were provided with the exceptions. The opposition may be filed on an optional form provided by the Authority, or in any other format that is consistent with this section. A party's failure to use, or properly fill out, an Authority-provided form will not, by itself, provide a basis for dismissing an opposition.

§ 2425.6 Grounds for review; potential dismissal or denial for failure to raise or support grounds.

(a) The Authority will review an arbitrator's award to which an exception has been filed to determine whether the award is deficient—

(1) Because it is contrary to any law, rule or regulation; or

(2) On other grounds similar to those applied by Federal courts in private sector labor-management relations.

(b) If a party argues that an award is deficient on private-sector grounds under paragraph (a)(2) of this section, then the excepting party must explain how, under standards set forth in the decisional law of the Authority or Federal courts:

(1) The arbitrator:

(i) Exceeded his or her authority; or

(ii) Was biased; or

(iii) Denied the excepting party a fair hearing; or

(2) The award:

(i) Fails to draw its essence from the parties' collective bargaining agreement; or

(ii) Is based on a nonfact; or

(iii) Is incomplete, ambiguous, or contradictory as to make implementation of the award impossible; or

(iv) Is contrary to public policy; or

(v) Is deficient on the basis of a private-sector ground not listed in paragraphs (b)(1)(i) through (b)(2)(iv) of this section.

(c) If a party argues that the award is deficient on a private-sector ground raised under paragraph (b)(2)(v) of this section, the party must provide sufficient citation to legal authority that establishes the grounds upon which the party filed its exceptions.

(d) The Authority does not have jurisdiction over an award relating to:

(1) An action based on unacceptable performance covered under 5 U.S.C. 4303;

(2) A removal, suspension for more than fourteen (14) days, reduction in grade, reduction in pay, or furlough of thirty (30) days or less covered under 5 U.S.C. 7512; or

(3) Matters similar to those covered under 5 U.S.C. 4303 and 5 U.S.C. 7512 which arise under other personnel systems.

(e) An exception may be subject to dismissal or denial if:

(1) The excepting party fails to raise and support a ground as required in paragraphs (a) through (c) of this section, or otherwise fails to demonstrate a legally recognized basis for setting aside the award; or

(2) The exception concerns an award described in paragraph (d) of this section.

§ 2425.7 Requests for expedited, abbreviated decisions in certain arbitration matters that do not involve unfair labor practices.

Where an arbitration matter before the Authority does not involve allegations of unfair labor practices under 5 U.S.C. 7116, and the excepting party wishes to receive an expedited Authority decision, the excepting party may

request that the Authority issue a decision that resolves the parties' arguments without a full explanation of the background, arbitration award, parties' arguments, and analysis of those arguments. In determining whether such an abbreviated decision is appropriate, the Authority will consider all of the circumstances of the case, including, but not limited to: whether any opposition filed under § 2425.3 of this part objects to issuance of such a decision and, if so, the reasons for such an objection; and the case's complexity, potential for precedential value, and similarity to other, fully detailed decisions involving the same or similar issues. Even absent a request, the Authority may issue expedited, abbreviated decisions in appropriate cases.

§ 2425.8 Collaboration and Alternative Dispute Resolution Program.

The parties may request assistance from the Collaboration and Alternative Dispute Resolution Program (CADR) to attempt to resolve the dispute before or after an opposition is filed. Upon request, and as agreed to by the parties, CADR representatives will attempt to assist the parties to resolve these disputes. If the parties have agreed to CADR assistance, and the time for filing an opposition has not expired, then the Authority will toll the time limit for filing an opposition until the CADR process is completed. Parties seeking information or assistance under this part may call or write the CADR Office at 1400 K Street, NW., Washington, DC 20424. A brief summary of CADR activities is available on the Internet at <http://www.flra.gov>.

§ 2425.9 Means of clarifying records or disputes.

When required to clarify a record or when it would otherwise aid in disposition of the matter, the Authority, or its designated representative, may, as appropriate:

(a) Direct the parties to provide specific documentary evidence, including the arbitration record as discussed in 5 CFR 2429.3;

(b) Direct the parties to respond to requests for further information;

(c) Meet with parties, either in person or via telephone or other electronic communications systems, to attempt to clarify the dispute or matters in the record;

(d) Direct the parties to provide oral argument; or

(e) Take any other appropriate action.

§ 2425.10 Authority decision.

The Authority shall issue its decision and order taking such action and

making such recommendations concerning the award as it considers necessary, consistent with applicable laws, rules, or regulations.

PART 2429—MISCELLANEOUS AND GENERAL REQUIREMENTS

■ 2. The authority citation for part 2429 continues to read as follows:

Authority: 5 U.S.C. 7134; § 2429.18 also issued under 28 U.S.C. 2122(a).

■ 3. Section § 2429.5 is revised to read as follows:

§ 2429.5 Matters not previously presented; official notice.

The Authority will not consider any evidence, factual assertions, arguments (including affirmative defenses), requested remedies, or challenges to an awarded remedy that could have been, but were not, presented in the proceedings before the Regional Director, Hearing Officer, Administrative Law Judge, or arbitrator. The Authority may, however, take official notice of such matters as would be proper.

■ 4. Section 2429.21(a) is revised to read as follows:

§ 2429.21 Computation of time for filing papers.

(a) In computing any period of time prescribed by or allowed by this subchapter, except in agreement bar situations described in § 2422.12(c), (d), (e), and (f) of this subchapter, the day of the act, event, or default from or after which the designated period of time begins to run shall not be included. The last day of the period so computed is to be included unless it is a Saturday, Sunday, or a Federal legal holiday in which event the period shall run until the end of the next day which is neither a Saturday, Sunday, or a Federal legal holiday. *Provided, however,* in agreement bar situations described in § 2422.12(c), (d), (e), and (f), if the 60th day prior to the expiration date of an agreement falls on a Saturday, Sunday, or a Federal legal holiday, a petition, to be timely, must be filed by the close of business on the last official workday preceding the 60th day. When the period of time prescribed or allowed is 7 days or less, intermediate Saturdays, Sundays, and Federal legal holidays shall be excluded from the computations.

* * * * *

■ 5. Section 2429.22 is revised to read as follows:

§ 2429.22 Additional time after service by mail or commercial delivery.

Except as to the filing of an application for review of a Regional Director's Decision and Order under § 2422.31 of this subchapter, and subject to the rules set forth in § 2425.2 of this subchapter, whenever a party has the right or is required to do some act pursuant to this subchapter within a prescribed period after service of a notice or other paper upon such party, and the notice or paper is served on such party by mail or commercial delivery, 5 days shall be added to the prescribed period: Provided, however, that 5 days shall not be added in any instance where an extension of time has been granted.

Dated: July 14, 2010.

Carol Waller Pope,
Chairman.

[FR Doc. 2010-17648 Filed 7-20-10; 8:45 am]

BILLING CODE 6727-01-P

NUCLEAR REGULATORY COMMISSION

10 CFR Part 72

RIN 3150-AI88

[NRC-2010-0183]

List of Approved Spent Fuel Storage Casks: NAC-MPC System, Revision 6

AGENCY: Nuclear Regulatory Commission.

ACTION: Direct final rule.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is amending its spent fuel storage regulations by revising the NAC International Inc. (NAC) NAC-MPC System listing within the "List of Approved Spent Fuel Storage Casks" to include Amendment No. 6 to Certificate of Compliance (CoC) Number 1025. Amendment No. 6 to the NAC-MPC System CoC will include the following changes to the configuration of the NAC-MPC storage system as noted in Appendix B of the Technical Specifications (TS): Incorporation of a single closure lid with a welded closure ring for redundant closure into the Transportable Storage Canister (TSC) design; modification of the TSC and basket design to accommodate up to 68 La Crosse Boiling Water Reactor (LACBWR) spent fuel assemblies (36 undamaged Exxon fuel assemblies and up to 32 damaged fuel cans (in a preferential loading pattern)) that may contain undamaged Exxon fuel assemblies and damaged Exxon and Allis Chalmers fuel assemblies and/or

fuel debris; the addition of zirconium alloy shroud compaction debris to be stored with undamaged and damaged fuel assemblies; minor design modifications to the Vertical Concrete Cask (VCC) incorporating design features from the MAGNASTOR system for improved operability of the system while adhering to as low as is reasonably achievable (ALARA) principles; an increase in the concrete pad compression strength from 4,000 psi to 6,000 psi; added justification for the 6-ft soil depth as being conservative; and other changes to incorporate minor editorial corrections in CoC No. 1025 and Appendices A and B of the TS. Also, the Definitions in TS 1.1 will be revised to include modifications and newly defined terms; the Limiting Conditions for Operation and associated Surveillance Requirements in TS 3.1 and 3.2 will be revised; and editorial changes will be made to TS 5.2 and 5.4.

DATES: The final rule is effective October 4, 2010, unless significant adverse comments are received by August 20, 2010. A significant adverse comment is a comment where the commenter explains why the rule would be inappropriate, including challenges to the rule's underlying premise or approach, or would be ineffective or unacceptable without a change. If the rule is withdrawn, timely notice will be published in the **Federal Register**.

ADDRESSES: You can access publicly available documents related to this document using the following methods:

Federal e-Rulemaking Portal: Go to <http://www.regulations.gov> and search for documents filed under Docket ID NRC-2010-0183. Address questions about NRC dockets to Carol Gallagher at 301-492-3668; e-mail Carol.Gallagher@nrc.gov.

NRC's Public Document Room (PDR): The public may examine and have copied for a fee publicly available documents at the NRC's PDR, Room O-1F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland.

NRC's Agencywide Documents Access and Management System (ADAMS): Publicly available documents created or received at the NRC are available electronically at the NRC's Electronic Reading Room at <http://www.nrc.gov/reading-rm/adams.html>. From this page, the public can gain entry into ADAMS, which provides text and image files of NRC's public documents. If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the NRC's PDR reference staff at 1-899-397-4209, 301-415-4737, or by e-mail to pdr.resource@nrc.gov. An electronic

copy of the proposed CoC, TS, and preliminary safety evaluation report (SER) can be found under ADAMS Package Number ML100890517. The ADAMS Accession Number for the NAC application, dated January 16, 2009, is ML090270151.

CoC No. 1025, the TS, the preliminary SER, and the environmental assessment are available for inspection at the NRC PDR, Room O-1F21, One White Flint North, 11555 Rockville Pike, Rockville, MD. Single copies of these documents may be obtained from Jayne M. McCausland, Office of Federal and State Materials and Environmental Management Programs, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, telephone (301) 415-6219, e-mail Jayne.McCausland@nrc.gov.

FOR FURTHER INFORMATION CONTACT: Jayne M. McCausland, Office of Federal and State Materials and Environmental Management Programs, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, telephone (301) 415-6219, e-mail Jayne.McCausland@nrc.gov.

SUPPLEMENTARY INFORMATION:

Background

Section 218(a) of the Nuclear Waste Policy Act of 1982, as amended (NWPAA), requires that “[t]he Secretary [of the Department of Energy (DOE)] shall establish a demonstration program, in cooperation with the private sector, for the dry storage of spent nuclear fuel at civilian nuclear power reactor sites, with the objective of establishing one or more technologies that the [Nuclear Regulatory] Commission may, by rule, approve for use at the sites of civilian nuclear power reactors without, to the maximum extent practicable, the need for additional site-specific approvals by the Commission.” Section 133 of the NWPAA states, in part, that “[t]he Commission shall, by rule, establish procedures for the licensing of any technology approved by the Commission under Section 218(a) for use at the site of any civilian nuclear power reactor.”

To implement this mandate, the NRC approved dry storage of spent nuclear fuel in NRC-approved casks under a general license by publishing a final rule in 10 CFR part 72, which added a new Subpart K within 10 CFR part 72, entitled “General License for Storage of Spent Fuel at Power Reactor Sites” (55 FR 29181; July 18, 1990). This rule also established a new subpart L within 10 CFR part 72, entitled “Approval of Spent Fuel Storage Casks,” which contains procedures and criteria for obtaining

NRC approval of spent fuel storage cask designs. The NRC subsequently issued a final rule on March 9, 2000 (65 FR 12444), that approved the NAC-MPC cask design and added it to the list of NRC-approved cask designs in 10 CFR 72.214 as CoC No. 1025.

Discussion

On January 16, 2009, and as supplemented on February 11, April 1, April 30, September 22, 2009, and January 8, 2010, the certificate holder (NAC) submitted an application to the NRC that requested an amendment to CoC No. 1025. NAC requested modifications to the cask design that included the following changes to the configuration of the NAC-MPC storage system as noted in Appendix B of the TS: (1) Incorporation of a single closure lid with a welded closure ring for redundant closure into the TSC design; (2) modification of the TSC and basket design to accommodate up to 68 LACBWR spent fuel assemblies (36 undamaged Exxon fuel assemblies and up to 32 damaged fuel cans (in a preferential loading pattern)) that may contain undamaged Exxon fuel assemblies and damaged Exxon and Allis Chalmers fuel assemblies and/or fuel debris; (3) the addition of zirconium alloy shroud compaction debris to be stored with undamaged and damaged fuel assemblies; (4) minor design modifications to the VCC incorporating design features from the MAGNASTOR system for improved operability of the system while adhering to ALARA principles; (5) an increase in the concrete pad compression strength from 4,000 psi to 6,000 psi; (6) added justification for the 6-ft soil depth as being conservative; and (7) other changes to incorporate minor editorial corrections in CoC No. 1025 and Appendices A and B of the TS. Also, the Definitions in TS 1.1 will be revised to include modifications and newly defined terms; the Limiting Conditions for Operation and associated Surveillance Requirements in TS 3.1 and 3.2 will be revised; and editorial changes will be made to TS 5.2 and 5.4.

As documented in the final SER, the NRC staff performed a detailed safety evaluation of the proposed CoC amendment request and found that an acceptable safety margin is maintained. In addition, the NRC staff has determined that there continues to be reasonable assurance that public health and safety and the environment will be adequately protected.

This direct final rule revises the NAC-MPC System listing in 10 CFR 72.214 by adding Amendment No. 6 to CoC No. 1025. The amendment consists

of the changes described above, as set forth in the revised CoC and TS. The particular TS which are changed are identified in the SER.

The amended NAC-MPC System cask design, when used under the conditions specified in the CoC, the TS, and NRC regulations, will meet the requirements of part 72; thus, adequate protection of public health and safety will continue to be ensured. When this direct final rule becomes effective, persons who hold a general license under 10 CFR 72.210 may load spent nuclear fuel into NAC-MPC System casks that meet the criteria of Amendment No. 6 to CoC No. 1025 under 10 CFR 72.212.

Discussion of Amendments by Section

Section 72.214 List of Approved Spent Fuel Storage Casks

Certificate No. 1025 is revised by adding the effective date of Amendment Number 6.

Procedural Background

This rule is limited to the changes contained in Amendment 6 to CoC No. 1025 and does not include other aspects of the NAC-MPC System. The NRC is using the “direct final rule procedure” to issue this amendment because it represents a limited and routine change to an existing CoC that is expected to be noncontroversial. Adequate protection of public health and safety and the environment continues to be ensured. The amendment to the rule will become effective on October 4, 2010. However, if the NRC receives significant adverse comments on this direct final rule by August 20, 2010, then the NRC will publish a document that withdraws this action and will subsequently address the comments received in a final rule as a response to the companion proposed rule published elsewhere in this issue of the **Federal Register**. Absent significant modifications to the proposed revisions requiring republication, the NRC will not initiate a second comment period on this action.

A significant adverse comment is a comment where the commenter explains why the rule would be inappropriate, including challenges to the rule’s underlying premise or approach, or would be ineffective or unacceptable without a change. A comment is adverse and significant if:

(1) The comment opposes the rule and provides a reason sufficient to require a substantive response in a notice-and-comment process. For example, a substantive response is required when:

(a) The comment causes the NRC staff to reevaluate (or reconsider) its position or conduct additional analysis;

(b) The comment raises an issue serious enough to warrant a substantive response to clarify or complete the record; or

(c) The comment raises a relevant issue that was not previously addressed or considered by the NRC staff.

(2) The comment proposes a change or an addition to the rule, and it is apparent that the rule would be ineffective or unacceptable without incorporation of the change or addition.

(3) The comment causes the NRC staff to make a change (other than editorial) to the rule, CoC, or TS.

For detailed instructions on filing comments, see the companion proposed rule published elsewhere in this issue of the **Federal Register**.

Voluntary Consensus Standards

The National Technology Transfer and Advancement Act of 1995 (Pub. L. 104–113) requires that Federal agencies use technical standards that are developed or adopted by voluntary consensus standards bodies unless the use of such a standard is inconsistent with applicable law or otherwise impractical. In this direct final rule, the NRC will revise the NAC–MPC System cask design listed in § 72.214 (List of NRC-approved spent fuel storage cask designs). This action does not constitute the establishment of a standard that contains generally applicable requirements.

Agreement State Compatibility

Under the “Policy Statement on Adequacy and Compatibility of Agreement State Programs” approved by the Commission on June 30, 1997, and published in the **Federal Register** on September 3, 1997 (62 FR 46517), this rule is classified as Compatibility Category “NRC.” Compatibility is not required for Category “NRC” regulations. The NRC program elements in this category are those that relate directly to areas of regulation reserved to the NRC by the Atomic Energy Act of 1954, as amended (AEA), or the provisions of Title 10 of the Code of Federal Regulations. Although an Agreement State may not adopt program elements reserved to NRC, it may wish to inform its licensees of certain requirements via a mechanism that is consistent with the particular State’s administrative procedure laws but does not confer regulatory authority on the State.

Plain Language

The Presidential Memorandum, “Plain Language in Government Writing,” published June 10, 1998 (63 FR 31883), directed that the Government’s documents be in clear

and accessible language. The NRC requests comments on this direct final rule specifically with respect to the clarity and effectiveness of the language used. Comments should be sent to the address listed under the heading **ADDRESSES**, above.

Finding of No Significant Environmental Impact: Availability

Under the National Environmental Policy Act of 1969, as amended, and the NRC regulations in subpart A of 10 CFR part 51, the NRC has determined that this rule, if adopted, would not be a major Federal action significantly affecting the quality of the human environment and, therefore, an environmental impact statement is not required. The NRC has prepared an environmental assessment and, on the basis of this environmental assessment, has made a finding of no significant impact. This rule will amend the CoC for the NAC–MPC System cask design within the list of approved spent fuel storage casks that power reactor licensees can use to store spent fuel at reactor sites under a general license. Amendment No. 6 to the NAC–MPC System CoC will include the following changes to the configuration of the NAC–MPC storage system as noted in Appendix B of the TS: (1) Incorporation of a single closure lid with a welded closure ring for redundant closure into the TSC design; (2) modification of the TSC and basket design to accommodate up to 68 LACBWR spent fuel assemblies (36 undamaged Exxon fuel assemblies and up to 32 damaged fuel cans (in a preferential loading pattern)) that may contain undamaged Exxon fuel assemblies and damaged Exxon and Allis Chalmers fuel assemblies and/or fuel debris; (3) the addition of zirconium alloy shroud compaction debris to be stored with undamaged and damaged fuel assemblies; (4) minor design modifications to the VCC incorporating design features from the MAGNASTOR system for improved operability of the system while adhering to ALARA principles; (5) an increase in the concrete pad compression strength from 4,000 psi to 6,000 psi; (6) added justification for the 6-ft soil depth as being conservative; and (7) other changes to incorporate minor editorial corrections in CoC No. 1025 and Appendices A and B of the TS. Also, the Definitions in TS 1.1 will be revised to include modifications and newly defined terms; the Limiting Conditions for Operation and associated Surveillance Requirements in TS 3.1 and 3.2 will be revised; and editorial changes will be made to TS 5.2 and 5.4.

The environmental assessment and finding of no significant impact on which this determination is based are available for inspection at the NRC Public Document Room, Room O–1F21, One White Flint North, 11555 Rockville Pike, Rockville, MD. Single copies of the environmental assessment and finding of no significant impact are available from Jayne M. McCausland, Office of Federal and State Materials and Environmental Management Programs, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, telephone (301) 415–6219, e-mail Jayne.McCausland@nrc.gov.

Paperwork Reduction Act Statement

This direct final rule does not contain a new or amended information collection requirement subject to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). Existing requirements were approved by the Office of Management and Budget, Approval Number 3150–0132.

Public Protection Notification

The NRC may not conduct or sponsor, and a person is not required to respond to, a request for information or an information collection requirement unless the requesting document displays a currently valid OMB control number.

Regulatory Analysis

On July 18, 1990 (55 FR 29181), the NRC issued an amendment to 10 CFR PART 72 to provide for the storage of spent nuclear fuel under a general license in cask designs approved by the NRC. Any nuclear power reactor licensee can use NRC-approved cask designs to store spent nuclear fuel if it notifies the NRC in advance, the spent fuel is stored under the conditions specified in the cask’s CoC, and the conditions of the general license are met. A list of NRC-approved cask designs is contained in 10 CFR 72.214. On March 9, 2000 (65 FR 12444), the NRC issued an amendment to part 72 that approved the NAC–MPC System cask design by adding it to the list of NRC-approved cask designs in 10 CFR 72.214. On January 16, 2009, and as supplemented on February 11, April 1, April 30, September 22, 2009, and January 8, 2010, the certificate holder (NAC) submitted an application to the NRC that requested an amendment to CoC No. 1025. Specifically, the amendment will include the following changes to the configuration of the NAC–MPC storage system as noted in Appendix B of the TS: (1) Incorporation of a single closure lid with a welded closure ring for redundant closure into

the TSC design; (2) modification of the TSC and basket design to accommodate up to 68 LACBWR spent fuel assemblies (36 undamaged Exxon fuel assemblies and up to 32 damaged fuel cans (in a preferential loading pattern)) that may contain undamaged Exxon fuel assemblies and damaged Exxon and Allis Chalmers fuel assemblies and/or fuel debris; (3) the addition of zirconium alloy shroud compaction debris to be stored with undamaged and damaged fuel assemblies; (4) minor design modifications to the VCC incorporating design features from the MAGNASTOR system for improved operability of the system while adhering to ALARA principles; (5) an increase in the concrete pad compression strength from 4000 psi to 6000 psi; (6) added justification for the 6-ft soil depth as being conservative; and (7) other changes to incorporate minor editorial corrections in CoC No. 1025 and Appendices A and B of the TS. Also, the Definitions in TS 1.1 will be revised to include modifications and newly defined terms; the Limiting Conditions for Operation and associated Surveillance Requirements in TS 3.1 and 3.2 will be revised; and editorial changes will be made to TS 5.2 and 5.4.

The alternative to this action is to withhold approval of Amendment No. 6 and to require any Part 72 general licensee, seeking to load spent nuclear fuel into NAC-MPC System casks under the changes described in Amendment No. 6, to request an exemption from the requirements of 10 CFR 72.212 and 72.214. Under this alternative, each interested Part 72 licensee would have to prepare, and the NRC would have to review, a separate exemption request, thereby increasing the administrative burden upon the NRC and the costs to each licensee.

Approval of the direct final rule is consistent with previous NRC actions. Further, as documented in the SER and the environmental assessment, the direct final rule will have no adverse effect on public health and safety. This direct final rule has no significant identifiable impact or benefit on other Government agencies. Based on this regulatory analysis, the NRC concludes that the requirements of the direct final rule are commensurate with the NRC's responsibilities for public health and safety and the common defense and security. No other available alternative is believed to be as satisfactory, and thus, this action is recommended.

Regulatory Flexibility Certification

Under the Regulatory Flexibility Act of 1980 (5 U.S.C. 605(b)), the NRC certifies that this rule will not, if issued,

have a significant economic impact on a substantial number of small entities. This direct final rule affects only nuclear power plant licensees and NAC. These entities do not fall within the scope of the definition of "small entities" set forth in the Regulatory Flexibility Act or the size standards established by the NRC (10 CFR 2.810).

Backfit Analysis

The NRC has determined that the backfit rule (10 CFR 72.62) does not apply to this direct final rule because this amendment does not involve any provisions that would impose backfits as defined in 10 CFR chapter I. Therefore, a backfit analysis is not required.

Congressional Review Act

Under the Congressional Review Act of 1996, the NRC has determined that this action is not a major rule and has verified this determination with the Office of Information and Regulatory Affairs, Office of Management and Budget.

List of Subjects in 10 CFR Part 72

Administrative practice and procedure, Hazardous Waste, Nuclear materials, Occupational safety and health, Radiation protection, Reporting and recordkeeping requirements, Security measures, Spent nuclear fuel, Whistle blowing.

■ For the reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended; the Energy Reorganization Act of 1974, as amended; the Nuclear Waste Policy Act of 1982, as amended; and 5 U.S.C. 552 and 553; the NRC is adopting the following amendments to 10 CFR part 72.

PART 72—LICENSING REQUIREMENTS FOR THE INDEPENDENT STORAGE OF SPENT NUCLEAR FUEL, HIGH-LEVEL RADIOACTIVE WASTE, AND REACTOR-RELATED GREATER THAN CLASS C WASTE

■ 1. The authority citation for Part 72 continues to read as follows:

Authority: Secs. 51, 53, 57, 62, 63, 65, 69, 81, 161, 182, 183, 184, 186, 187, 189, 68 Stat. 929, 930, 932, 933, 934, 935, 948, 953, 954, 955, as amended, sec. 234, 83 Stat. 444, as amended (42 U.S.C. 2071, 2073, 2077, 2092, 2093, 2095, 2099, 2111, 2201, 2232, 2233, 2234, 2236, 2237, 2238, 2282); sec. 274, Pub. L. 86–373, 73 Stat. 688, as amended (42 U.S.C. 2021); sec. 201, as amended, 202, 206, 88 Stat. 1242, as amended, 1244, 1246 (42 U.S.C. 5841, 5842, 5846); Pub. L. 95–601, sec. 10, 92 Stat. 2951 as amended by Pub. L. 102–486, sec. 7902, 106 Stat. 3123 (42 U.S.C.

5851); sec. 102, Pub. L. 91–190, 83 Stat. 853 (42 U.S.C. 4332); secs. 131, 132, 133, 135, 137, 141, Pub. L. 97–425, 96 Stat. 2229, 2230, 2232, 2241, sec. 148, Pub. L. 100–203, 101 Stat. 1330–235 (42 U.S.C. 10151, 10152, 10153, 10155, 10157, 10161, 10168); sec. 1704, 112 Stat. 2750 (44 U.S.C. 3504 note); sec. 651(e), Pub. L. 109–58, 119 Stat. 806–10 (42 U.S.C. 2014, 2021, 2021b, 2111).

Section 72.44(g) also issued under secs. 142(b) and 148(c), (d), Pub. L. 100–203, 101 Stat. 1330–232, 1330–236 (42 U.S.C. 10162(b), 10168(c),(d)). Section 72.46 also issued under sec. 189, 68 Stat. 955 (42 U.S.C. 2239); sec. 134, Pub. L. 97–425, 96 Stat. 2230 (42 U.S.C. 10154). Section 72.96(d) also issued under sec. 145(g), Pub. L. 100–203, 101 Stat. 1330–235 (42 U.S.C. 10165(g)). Subpart J also issued under secs. 2(2), 2(15), 2(19), 117(a), 141(h), Pub. L. 97–425, 96 Stat. 2202, 2203, 2204, 2222, 2244 (42 U.S.C. 10101, 10137(a), 10161(h)). Subparts K and L are also issued under sec. 133, 98 Stat. 2230 (42 U.S.C. 10153) and sec. 218(a), 96 Stat. 2252 (42 U.S.C. 10198).

■ 2. In § 72.214, Certificate of Compliance 1025 is revised to read as follows:

§ 72.214 List of approved spent fuel storage casks.

* * * * *

Certificate Number: 1025.

Initial Certificate Effective Date: April 10, 2000.

Amendment Number 1 Effective Date: November 13, 2001.

Amendment Number 2 Effective Date: May 29, 2002.

Amendment Number 3 Effective Date: October 1, 2003.

Amendment Number 4 Effective Date: October 27, 2004.

Amendment Number 5 Effective Date: July 24, 2007.

Amendment Number 6 Effective Date: October 4, 2010.

SAR Submitted by: NAC International, Inc.

SAR Title: Final Safety Analysis Report for the NAC Multi-Purpose Canister System (NAC-MPC System).

Docket Number: 72–1025.

Certificate Expiration Date: April 10, 2020.

Model Number: NAC-MPC.

* * * * *

Dated at Rockville, Maryland, this 6th day of July, 2010.

For the Nuclear Regulatory Commission.

R.W. Borchardt,

Executive Director for Operations.

[FR Doc. 2010–17848 Filed 7–20–10; 8:45 am]

BILLING CODE 7590–01–P

DEPARTMENT OF TRANSPORTATION**Federal Aviation Administration****14 CFR Part 77**

[Docket No. FAA–2006–25002; Amendment No. 77–13]

RIN 2120–AH31

Safe, Efficient Use and Preservation of the Navigable Airspace

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action amends the regulations governing objects that may affect the navigable airspace. These rules have not been revised in several decades, and the FAA has determined it is necessary to update the regulations, incorporate case law and legislative action, and simplify the rule language. These changes will improve safety and promote the efficient use of the National Airspace System.

DATES: This amendment becomes effective January 18, 2011.

FOR FURTHER INFORMATION CONTACT: For technical questions about this final rule contact Ellen Crum, Air Traffic Systems Operations, Airspace and Rules Group, AJR–33, Federal Aviation Administration, 800 Independence Ave., SW., Washington, DC 20591; telephone (202) 267–8783, facsimile (202) 267–9328. For legal questions about this final rule contact Lorelei Peter, Office of the Chief Counsel–Regulations Division, Federal Aviation Administration, 800 Independence Ave., SW., Washington, DC 20591; telephone (202) 267–3134, facsimile 202–267–7971.

SUPPLEMENTARY INFORMATION:**Authority for This Rulemaking**

The Administrator has broad authority to regulate the safe and efficient use of the navigable airspace (49 U.S.C. 40103(a)). The Administrator is also authorized to issue air traffic rules and regulations to govern the flight, navigation, protection, and identification of aircraft for the protection of persons and property on the ground, and for the efficient use of the navigable airspace (49 U.S.C. 40103(b)). The Administrator may also conduct investigations and prescribe regulations, standards, and procedures in carrying out the authority under this part (49 U.S.C. 40113). The Administrator is authorized to protect civil aircraft in air commerce (49 U.S.C. 44070(a)(5)).

Under § 44701(a)(5), the Administrator promotes safe flight of civil aircraft in air commerce by prescribing regulations and minimum standards for other practices, methods, and procedures necessary for safety in air commerce and national security. Also, § 44718 provides that under regulations issued by the Administrator, notice to the agency is required for any construction, alteration, establishment, or expansion of a structure or sanitary landfill, when the notice will promote safety in air commerce, and the efficient use and preservation of the navigable airspace and airport traffic capacity at public use airports. This statutory provision also provides that, under regulations issued by the Administrator, the agency determines whether such construction or alteration is an obstruction of the navigable airspace, or an interference with air navigation facilities and equipment or the navigable airspace. If a determination is made that the construction or alteration creates an obstruction or otherwise interferes, the agency then conducts an aeronautical study to determine adverse impacts on the safe and efficient use of the airspace, facilities, or equipment.

I. Background**A. Summary of the Notice of Proposed Rulemaking (NPRM)**

On June 13, 2006, the FAA published an NPRM that proposed to amend the regulations governing objects that may affect the navigable airspace (71 FR 34028). The FAA proposed to: Establish notification requirements and obstruction standards for transmitting on certain frequencies; revise obstruction standards for civil airport imaginary surfaces to more closely align these standards with FAA airport design and instrument approach procedure (IAP) criteria; revise current definitions and include new definitions; require proponents to file with the FAA a notice of proposed construction or alteration for structures near private use airports that have an FAA-approved IAP; and increase the number of days in which a notice must be filed with the FAA before beginning construction or alteration. The comment period closed on September 11, 2006.

B. Summary of the Final Rule

The following is a discussion of the major changes contained in the final rule. The provisions of the final rule that were modified based on comments the FAA received are discussed in the “Discussion of the Final Rule” section. Most of the amendments implemented

by the rule are intended to simplify the existing regulations.

This rule adds § 77.29 to incorporate the specific factors listed in P.L. 100–223 for consideration during an aeronautical study. The specific factors are listed in Appendix A to this preamble. Including this language in part 77 does not add or remove any of the factors currently considered in an aeronautical study.

This rule provides for an FAA Determination of Hazard or Determination of No Hazard to become effective 40 days after the date of issuance, unless a petition for discretionary review is received by the FAA within 30 days of issuance. In addition, the rule stipulates that a Determination of No Hazard to air navigation will expire 18 months after the effective date of the determination, or on the date the proposed construction or alteration is abandoned. Also, the rule specifies that a Determination of Hazard to Air Navigation does not expire.

This final rule adds information about the processing of petitions for discretionary review. It also excludes determinations for temporary structures and recommendations for marking and lighting from the discretionary review process. Because of the nature of temporary structures, it is not possible to apply the lengthy discretionary review process to these structures. Also, since marking and lighting recommendations are simply recommendations, there is a separate process for a waiver of, or deviation from, the recommendations.

This rule expands the requirements for notice to be sent to the FAA for proposed construction or alteration of structures on or near private use airports that have an IAP. Accordingly, if a private use airport has an FAA-approved IAP, then a construction sponsor must notify the FAA of a proposed construction or alteration that exceeds the notice criteria in § 77.17. This action will give the FAA enough time to adjust the IAP, if needed, and to inform those who use the IAP.

Also, IAPs at private use airports or heliports are not currently listed in any aeronautical publication. Sponsors of construction or alteration at or near a private use airport or heliport should consult the FAA Web site to determine whether an FAA-approved IAP is listed for that airport.¹ If the airport is listed on the Web site, the sponsor must file notice with the FAA.

Lastly, this rule incorporates minor edits to the regulatory text to distinguish

¹ <https://oeaaa.faa.gov>.

FAA surveillance systems from communication facilities.

C. Summary of Comments

The FAA received approximately 115 comments from individuals, aviation associations, industry spectrum users, airlines, and other aviation businesses. Many commenters, including the Air Transport Association, generally supported the NPRM. Commenters supported specific proposals concerning evaluating the aeronautical impact of proposed construction on IAPs at private use airports; evaluating antenna installations that might affect air traffic or navigation; and the update and reformat of the regulations. Comments that did not support the proposed rule, and suggested changes, are discussed more fully in the "Discussion of the Final Rule" section.

The FAA received substantive comments on the following general areas of the proposal:

- Frequency notification requirements
- Time requirement to file notice with the FAA
- Civil Airport Imaginary Surfaces²
- One Engine Inoperative Procedures (OEI)
- Definitions
- Miscellaneous

II. Discussion of the Final Rule

A. Frequency Notification

The FAA's primary focus during the obstruction evaluation process is safety and efficiency of the navigable airspace. It is critical for the agency to be notified of pending construction of physical objects that may affect the safety of aeronautical operations. (See 49 U.S.C. 44718.) In today's National Airspace System (NAS), however, electromagnetic transmissions can adversely affect on-board flight avionics, navigation, communication, and surveillance facilities. The FAA has extensive authority to prescribe regulations and minimum standards necessary for safety in air commerce. (See 49 U.S.C. § 44701(a)(5).) In addition, the FAA has broad authority to develop policy and plans for the use of the navigable airspace. (See 49 U.S.C. 40103.) The FAA relied on these authorities in proposing the notice requirements for broadcast transmissions in the specified bands. As stated in the proposal, broadcast transmission on certain frequencies can

pose serious safety threats to avionics and ground based facilities. At the same time, the FAA recognizes the authority of the National Telecommunications and Information Administration (NTIA) and the Federal Communications Commission (FCC) to manage use of the radio spectrum.

The FAA concludes that its proposal to require notice for the proposed frequency bands was too broad. The proposed frequencies from the NPRM are listed in Appendix B to this preamble. The proposed frequencies in the shared (Federal and Non-Federal) bands are managed by an existing process involving several Federal agencies with an interest in spectrum use, which NTIA oversees under the Department of Commerce. It is not the FAA's intent to add a duplicative review and coordination process to that already stated above. In addition, the FAA has determined that some of the proposed frequencies originally listed and not in shared bands do not present concern. Therefore, the agency withdraws the proposed notice and obstruction standards on the shared frequency bands and those frequency bands that, historically, have not posed electromagnetic concerns,³ when operating under typical specifications.

FM broadcast service transmissions operating in the 88.0–107.9 MHz frequency band pose the greatest concern to FAA navigation signals. The FAA, FCC and NTIA are collaborating on the best way to address this issue. A resolution of this issue is expected soon. Therefore, the proposals on FM broadcast service transmissions in the 88.0–107.9 MHz frequency band remain pending. The FAA will address the comments filed in this docket about the proposed frequency notice requirements and proposed EMI obstruction standards when a formal and collaborative decision is announced.

This rule does include evaluating electromagnetic effect (§§ 77.29 and 77.31), and it codifies the agency's current practices of studying the effects on aircraft navigation and communication facilities. These amendments in no way should be construed to affect the authority of NTIA and the FCC.

B. Time Requirement To File Notice With the FAA

Automation improvements to the FAA's obstruction evaluation program allow the public to file notices of

proposed construction electronically, which facilitates the aeronautical study process and has reduced the overall processing time for these cases. The FAA proposed to require that notices of proposed construction or alterations must be filed with the FAA at least 60 days before construction starts or the application filing date for a construction permit, whichever is earliest. The current rule requires 30 days, which the FAA found inadequate for cases to be processed, particularly if additional information, via public comment period, was necessary to complete the study. At the time the FAA published the NPRM, the automation system was in the early stages, and the full benefits of the automation were not yet known. Commenters were split on their support of this proposal, depending on their interests. Comments from the aviation industry largely supported the extended time period. Comments filed by the building industry, however, opposed the extended time period, saying it was too long and would cause undue delay.

The FAA has seen great success with the automation system and concludes that requiring notice to be filed 60 days before construction or the permit application is not necessary. There are cases where circulating the proposal for public comment may be necessary and, consequently, these cases may require up to 45 days for processing. Therefore, the FAA adopts the requirement that notice must be filed with the FAA for proposed construction or alteration at least 45 days before either the date that construction begins, or the date of the construction permit application, whichever is earliest.

Because applications are required within 45 days of construction, the FAA, Department of Defense, and Department of Homeland Security should work together to conduct timely reviews. To that end, the FAA will respond to inquiries from applicants regarding the status of applications, the reason(s) for any delay, and the projected date of completion. As appropriate, the FAA will engage with other Federal Agencies such as the Department of Defense, the Department of Homeland Security, the Department of Energy, and the Department of Interior to expedite any further regulatory modifications and improvements to 14 CFR Part 77 to ensure there is a predictable, consistent, transparent, and timely application process for the wind industry.

Several commenters recommended separate notice requirements for reviewing a temporary structure that might be necessary under emergency-type circumstances. An example

² Civil airport imaginary surfaces are established surfaces based on the runway that are used to identify objects that may impact airport plans or aircraft departure/arrival procedures or routes. Section 77.19 describes five types of imaginary surfaces: horizontal, conical, primary, approach and transitional.

³ 54–88 MHz; 150–216 MHz; 406–430 MHz; 931–940 MHz; 952–960 MHz; 1390–1400 MHz; 2500–2700 MHz; 3700–4200 MHz; 5000–5650 MHz; 5925–6225 MHz; 7450–8550 MHz; 14.2–14.4 GHz.

submitted in the comments was a construction crane that was necessary to replace air conditioning units on the roof of factories. The commenters contend that it is neither logical nor feasible to shut down a factory for 30 days while the FAA studies this temporary structure.

Situations like the one presented by these commenters are not uncommon. Regardless of whether the structure is temporary, it remains critical for the FAA to have notice of tall structures that can affect aeronautical operations. In most cases, the proponent of the structure contacts the FAA Obstruction Evaluation (OE) specialist and identifies the need for a quick review, for which the agency readily responds. While the FAA regrets any past delay in taking quick action on a particular case, the agency declines to set-up special procedures to address such cases. On the FAA's OE Web site,⁴ the agency lists the contact information for the FAA specialist. If a sponsor is concerned with the time frame for the FAA's review, the agency encourages the sponsor to contact the FAA specialist directly.

C. Civil Airport Imaginary Surfaces

The NPRM proposed, for a visual runway used by small aircraft or restricted to day-only instrument operations, that the width of the imaginary approach surface expand uniformly to 1,250 ft. If the runway is a visual runway, used by other than small aircraft or for instrument night circling, the surface width expands uniformly from 1,500 ft. to 3,500 ft. If the runway is a non-precision instrument or precision instrument runway, the surface width expands uniformly to 4,000 ft. and 16,000 ft., respectively. Other changes include removing approach surface widths of 1,500 ft. and 2,000 ft., and increasing the width for some non-precision runways from 2,000 ft. to 4,000 ft. The NPRM also proposed expanding the width of the primary approach surface of a non-precision instrument runway or precision instrument runway from 500 feet to 1,000 ft.

Many commenters opposed the proposed expansion of the primary surface. They argued that the proposed expansion would require airport operators to remove existing structures that would fall within the proposed expanded surface, which would result in a financial burden to airport owners and managers. Southwest Airlines, on the other hand, supported the proposal and stated the ability to study and

review more proposed structures is positive for airport safety.

Several comments stated that the imaginary surfaces in part 77 do not comport clearly with the surfaces used for obstacle clearance under the United States Standard for Terminal Instrument Procedures (TERPS) and, therefore, makes the part 77 surfaces useless as a project planning tool for airport development.

Similarly, another commenter argued that the Required Navigation Performance (RNP) lateral protection area is greater than the width of the primary surface and the RNP procedures TERPS surface is outside the part 77 imaginary surface. The commenter contends that an obstacle can adversely impact an RNP procedure, but not be characterized as an obstruction. This commenter recommends that the imaginary surfaces be expanded to include RNP procedures.

Several commenters specifically questioned whether current obstructions that fall within the newly expanded primary surface could impact an instrument procedure and result in the airport losing the instrument procedure. One airport authority was concerned about marking and lighting recommendations for existing structures that will now fall under the expanded primary surface.

The FAA proposed these changes to more closely align regulatory provisions in part 77 with TERPS criteria and airport design standards. The inconsistency between IAP criteria, airport design standards, and part 77 surfaces has been a source of confusion for both airport managers and the FAA. These specific proposals would not have altered the notice criteria. Instead, the proposals were meant to identify more proposed structures as obstructions that the FAA could study to determine if they would adversely affect the NAS.

However, since publication of the NPRM, the FAA has begun a coordinated effort to consolidate all agency requirements for the treatment of obstacles in the airport environment. Once completed, the new requirements will form the basis for revised civil airport imaginary surfaces. Thus, it would not be prudent to codify the proposals. Further, amending or expanding any of the civil airport imaginary surfaces at this time would not be in the best interest of the public. The FAA, therefore, withdraws all proposed modifications to the civil airport imaginary surfaces, including the chart format. The FAA will keep the civil airport imaginary surfaces rule as

it is currently described in 14 CFR 77.25.

D. One Engine Inoperative Procedures

The NPRM specifically states that OEI procedures were not a part of the rulemaking. The NPRM further notes that the FAA has tasked the Airport Obstruction Standards Committee (AOSC) with examining this issue. Comments from the Air Transport Association, individual airlines, local airport authorities, and aviation organizations, asked the FAA to address OEI procedures. These comments have been forwarded to the AOSC for consideration. As appropriate, the FAA will advise the aviation industry and other interested persons, through the AOSC, of any policy changes.

E. Definitions

The NPRM proposed replacing the term "utility runway" with the phrase "runway used by small aircraft". In addition, the NPRM proposed amending the definitions for precision, non-precision, and visual runways, as these definitions were no longer up-to-date with industry practices. The term "utility runway" is not widely used in industry so the NPRM proposed replacing the term. In addition, the NPRM proposed amending the definitions for precision and non-precision runways to address approaches that use other than ground based navigational aids, such as flight management systems (FMS) and global navigation satellite systems (GNSS). Because of technological advances, the former definitions for precision and non-precision runways are no longer accurate.

By removing the term "utility runway", commenters stated the portions of the rule that include the term became confusing. They note that the runway classifications and corresponding widths for the primary and approach surfaces in the tables in § 77.19(d)(e) are difficult to understand.

Several commenters confused the proposed definitions for precision and non-precision instrument runways with the definitions for precision and non-precision instrument approach procedures.⁵ One commenter suggested the non-precision runway definition should exclude a runway that has a developed instrument approach procedure with visibility minimums of

⁵ The FAA proposed definitions for the terms "precision instrument runway" and "non-precision instrument runway" to be based on the use of visibility minimums, rather than approach procedure classification, given that visibility is the critical factor during the visual portion of the approach.

⁴ <https://oeaaa.faa.gov>.

one statute mile. This commenter contends that many small, general aviation airports have published procedures with one mile visibility under the current obstruction criteria of a utility runway. The commenter also notes that if the FAA adopts the proposal to limit non-precision runways to procedures with visibility minimums of one statute mile, then these small airports would need to have the more demanding primary surfaces and approach criteria. The commenter further says this could result in financial hardship for these airports and the airports may need to double the designated airspace around the runway. Another commenter stated that the new definition for a non-precision runway conflicts with FAA Advisory Circular 150/5300-13, Airport Design.

Commenters also indicated that the new definition and associated surfaces would take runways that currently qualify as utility into the non-precision category. They say these modifications could result in unfunded economic burdens on outlying airports with IAPs to utility runways that experience lower traffic densities. Additionally, commenters noted that many of these airports are configured with minimal infrastructure and could face significant airport expansion to obtain IAP services if the runway is categorized as non-precision.

Several commenters also stated that the proposed definitions of precision and non-precision runways try to redefine the current precision and non-precision instrument procedures because satellite technology could, in the future, enable non-precision approaches to become precision approaches.

Although the FAA proposed to revise these definitions, on further review, the agency has determined it should not revise them at this time. The definitions were proposed to support implementing satellite-based navigation. However, as the satellite-based navigation program has evolved during development of this rulemaking, the agency has learned of unintended consequences of the proposed definitions. For example, changing the runway definition creates infrastructure requirements that may be needed as the technology evolves. The FAA believes a more measured approach is needed before making any changes to the definitions. Thus, the agency will not adopt the proposed revisions to the definitions in this final rule.

F. Extension to a Determination of No Hazard

The NPRM proposed a provision for which an extension to the expiration date for a Determination of No Hazard may be granted. Specifically, it proposed that for structures not subject to FCC review, a Determination of No Hazard can be extended for a maximum of 18 months, if necessary. If more than 18 months is necessary, then a new aeronautical study would be initiated. For structures that require an FCC construction permit, the NPRM proposed that a Determination of No Hazard can be extended for up to 12 months, provided the sponsor submits evidence that an application for a construction permit was filed within 6 months of the date of issuance. The NPRM also proposed that if the FCC extends the original FCC construction completion date, the sponsor must request an extension of the FAA's Determination of No Hazard.

Many commenters found that the two time periods (18 and 12 months) were confusing. The FAA's review of this matter concluded that it is not necessary to continue the distinction between structures subject to FCC review from structures that do not need this review, simply to extend the expiration date. Therefore, for simplification and standardization, the FAA amends the time period for extensions to determinations of structures to 18 months, regardless of whether an FCC construction permit is necessary.

In addition, the FAA unintentionally omitted a section of the current rule from the NPRM. That section states that if the FCC denies a construction permit, the final determination expires on the date of the denial. The FAA has reinserted that section in this final rule.

G. Effective Date

The effective date of this final rule is 180 days from the date the rule is published in the **Federal Register**. The FAA needs this time to amend the automation system it uses to evaluate obstructions, amend relevant FAA orders, train employees, and educate the public.

H. Miscellaneous

One commenter said the requirement to file notice should extend to structures that would penetrate an imaginary surface relative to a planned or proposed airport. Specifically, this commenter seeks to incorporate the imaginary surfaces for evaluating obstructions under § 77.19(a) in the notice requirements for structures that are on or around a planned airport.

Section 77.9 requires notice for construction on an existing airport or an airport under construction. This section specifies an imaginary surface extending from the runway (in increments of 20,000 feet, 10,000 ft., or 5,000 ft., depending on the length of the airport's runway or heliport) at a specific slope for which notice is required if it would penetrate one of the surfaces for either an existing airport or an airport under construction. The above referenced surfaces, for which the longest surface would extend approximately 3.78 miles from the end of the runway, do not apply to a planned airport for which construction has yet to begin.

The effect of this commenter's request would be to require notice for up to approximately 3.5 miles (for the longest runway) for any construction that penetrates the 100 to 1 surface for a planned or proposed airport.

This comment is outside the scope of the NPRM. The essence of this comment would be a new notice requirement for planned or proposed airports. To accommodate this comment without providing the public an opportunity to comment on its impact would violate the Administrative Procedure Act.

Notwithstanding the above scope issue, to apply the imaginary surface from the notice requirements to planned or proposed airports would be difficult to implement. A planned or proposed airport can be at varying stages of development, with runway(s) location and configuration undetermined, navigational aids not sited, and instrument approach and departure procedures yet to be developed. It would be impossible for the FAA to study (and apply the obstruction standards) with any degree of certainty, to a proposed structure when the above listed airport issues are not defined. In addition, airport development can be subject to environmental laws and lengthy processes with alternative plans that must be analyzed. The FAA cannot "reserve" airspace on such speculative plans. The agency does study the impact of structures that are identified as obstructions on planned or proposed airports that are on file with the FAA. As the details of a planned airport become part of the "plan on file" with the FAA or the Airport Layout Plan, on which the FAA can rely, the FAA includes those details during the study.

Several commenters questioned the proposed removal of the regulatory provisions addressing antenna farms and whether any antenna farms currently exist. The FAA has not established any antenna farm area. Moreover, the regulations governing structures addresses the FAA needs

here. Thus, this rule removes the provisions governing antenna farms.

One commenter questioned why an object that is shielded by another structure is not subject to the notice requirements. This commenter contends that if the structure that shields an unreported structure is dismantled, there is no record of the first structure, nor is there any requirement to notify the FAA of this structure if the shielding structure is dismantled.

Section 77.15(a) provides that notice is not required for a structure if the shielding structure is of a substantial and permanent nature and is located in a congested area of a city, town, or settlement where the shielded structure will not adversely affect safety in air navigation. This exception does not apply in areas where there are only one or two other structures. The FAA has not experienced a situation like the one described by the commenter that can be attributed to this exception. This rule does expand the current supplemental notice requirements in § 77.11, and specifies that if a construction or alteration is abandoned, dismantled, or destroyed, notice must be provided to the FAA within 5 days after the construction is abandoned, dismantled, or destroyed. In the rare case where a shielding structure is abandoned, dismantled, or destroyed, the proponent must notify the FAA so that appropriate actions concerning adjacent structures can be initiated.

Prior to this rule, part 77 provided that a proposed or existing structure was an obstruction to air navigation if it was higher than 500 ft. above ground level (AGL). The minimum altitude to operate an aircraft over non-congested areas is 500 feet above the surface.⁶ Consequently, an aircraft could be operating at 500 ft. AGL and encounter a structure that was 500 ft. AGL that might not have been studied by the FAA during the obstacle evaluation process. The FAA adopts the proposal that lowers the height of a structure identified as an obstruction from above 500 ft. to above 499 ft. Accordingly, all structures that are above 499 ft. tall will be obstructions, and the FAA will study them to determine their effect on the navigable airspace. This will ensure that all usable airspace at and above 500 ft. AGL is addressed during the aeronautical study and that this airspace

is protected from obstructions that may create a hazard to air navigation.

III. Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)) requires that the FAA consider the impact of paperwork and other information collection burdens imposed on the public. According to the 1995 amendments to the Paperwork Reduction Act (5 CFR 1320.8(b)(2)(vi)), an agency may not collect or sponsor the collection of information, nor may it impose an information collection requirement unless it displays a currently valid Office of Management and Budget (OMB) control number. As required by the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)), the FAA submitted a copy of the new information collection requirements(s) discussed below to OMB for its review. Notice of OMB approval for this information collection will be published in a future **Federal Register** document.

Title 49 U.S.C. 44718 states, “By regulation or by order when necessary, the Secretary of Transportation shall require a person to give adequate public notice, in the form and way the Secretary prescribes, of the construction, alteration, establishment, or expansion, of a structure or sanitary landfill when public notice will promote:

- (1) safety in air commerce; and
- (2) the efficient use and preservation of the navigable airspace and of airport traffic capacity at public use airports.”

This final rule implements the requirement for notification by requiring that notice be submitted to the FAA for proposed construction or alteration of structures on or near private use airports that have an IAP. Accordingly, if a private use airport has an FAA-approved IAP, then a construction sponsor is required to notify the FAA of a proposed construction or alteration that exceeds the notice criteria in § 77.17. This action will give the FAA adequate time to adjust the IAP, if needed, and to inform those who use the IAP. While IAPs at private use airports or heliports are not currently listed in any aeronautical publication, sponsors of construction or alteration at or near a private use airport or heliport can consult the FAA Web site⁷ to determine whether an FAA-approved IAP is listed for that airport. If the airport is listed on the Web site, the sponsor must file notice with the FAA. The intent of these changes is to

improve safety and promote the efficient use of the National Airspace System.

The FAA estimates that on average, 3,325 Form 7460–1s would be filed annually. It is estimated to take 19 minutes, or 0.32 hours, to fill out each form. Hence, the estimated hour burden is: 0.32 hours × 3,325 = 1,064 hours.

The average cost for a firm to prepare the form itself is approximately \$40 per form. It is estimated that 20 percent of the forms filed would be filed this way. Thus, the estimated average annual reporting burden for companies to process this form in-house would be: (FAA Form 7460–1) \$40 × 665 = \$26,600.

The average cost for a company to outsource this function to a contractor is approximately \$480 per report. It is estimated that 80 percent of the forms filed would be filed this way. Thus, the estimated average annual reporting burden for companies to outsource this function is: (FAA Form 7460–1) \$480 × 2,660 = \$1,276,800.

It is estimated that roughly 30 percent of firms filing FAA Form 7460–1 will need to perform a site survey to complete the form. The cost of a site survey is \$790. Thus, the estimated annual reporting burden for companies who require a site survey would be: (FAA Form 7460–1) \$790 × 998 = \$788,420.

Hence, the total annual cost to firms that fill out FAA Form 7460–1 is \$2,091,820.

In the proposed rule, the FAA asked for comments on the information collection burden. You may view the FAA’s specific request in the proposed rule.⁸ The FAA received comments from multiple commenters. The following is a summary of the comments with the FAA’s response:

Several commenters stated that the FAA underestimated the costs, in terms of time and paperwork, associated with preparing a Form 7460–1, as well as the costs of filing an OE notice, so the FAA should revise its estimates. One commenter surveyed its members and the survey indicated that the cost of processing a Form 7460–1 in-house was \$406 and took about 1.6 hours per form. Further, the average hourly labor cost was found to be \$36 per hour. The commenter also stated that in addition to maps, a site survey is needed to complete Form 7460–1, which ensures the accuracy of the location and costs an average of \$768. Another commenter supported the notion of including the cost of a site survey in the cost estimation for filing a Form 7460–1. Another commenter suggested that the

⁶ 14 CFR Section 91.119(c) provides that “Except when necessary for takeoff and landing, no person may operate an aircraft below the following altitudes: (b) Over other than congested areas. An altitude of 500 feet above the surface except over open water or sparsely populated areas. In those cases, the aircraft may not be operated closer than 500 feet to any person, vessel, vehicle, or structure.”

⁷ <https://oeaaa.faa.gov>.

⁸ 71 FR 34028; June 13, 2006.

FAA increase its estimate for processing a Form 7460–1 in-house to \$40.

The FAA omitted the cost of a site survey in the preliminary analysis because a site survey is not required to complete a Form 7460–1. However, a site survey must be completed if it is requested by the FAA's Flight Procedure Office. The agency has revised the cost analysis to reflect the wider range of costs as supplied by the commenters. The FAA also revised its cost and paperwork analyses to include the cost of filing a form in-house, as well as the costs of a site survey.

A few commenters claimed that the FAA underestimated the time and paperwork costs associated with filing additional notices. Another commenter believed that the FAA underestimated the paperwork burden that will be placed on radio spectrum users.

The FAA completed a paperwork reduction package for the proposed rule, which did show the estimated paperwork costs. The paperwork costs were also shown in the initial regulatory evaluation and were available for review in the docket. However, the FAA has elected not to adopt the radio frequency notice requirements in this final rule. As a result, there will be no additional paperwork burden placed on radio spectrum users at this time.

A commenter stated that requiring applicants to provide notice to the FAA 60 days in advance could also increase the number of filings because of the rule change. Another commenter stated that extending the notice period for all proposed projects will cause undue delay in securing FAA approval and will delay the ability of utilities to develop new sites.

The FAA has reduced the filing time period from 60 days to 45 days. This should mitigate the delay expected by the commenters and allow them to continue their operations without much change. Thus, the FAA does not expect any delays in construction or operational deficiencies resulting from the final rule.

International Compatibility

In keeping with U.S. obligations under the Convention on International Civil Aviation, it is FAA policy to comply with International Civil Aviation Organization (ICAO) Standards and Recommended Practices to the maximum extent practicable. The FAA has reviewed the corresponding ICAO Standards and Recommended Practices and has identified no new differences with these proposed regulations.

IV. Regulatory Evaluation, Regulatory Flexibility Determination, International Trade Impact Assessment, and Unfunded Mandates Assessment

Changes to Federal regulations must undergo several economic analyses. First, Executive Order 12866 directs that each Federal agency shall propose or adopt a regulation only upon a reasoned determination that the benefits of the intended regulation justify its costs. Second, the Regulatory Flexibility Act of 1980 (Pub. L. 96–354) requires agencies to analyze the economic impact of regulatory changes on small entities. Third, the Trade Agreements Act (Pub. L. 96–39) prohibits agencies from setting standards that create unnecessary obstacles to the foreign commerce of the United States. In developing U.S. standards, this Trade Act requires agencies to consider international standards and, where appropriate, that they be the basis of U.S. standards. Fourth, the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4) requires agencies to prepare a written assessment of the costs, benefits, and other effects of proposed or final rules that include a Federal mandate likely to result in the expenditure by state, local, or tribal governments, in the aggregate, or by the private sector, of \$100 million or more annually (adjusted for inflation with base year of 1995). This portion of the preamble summarizes the FAA's analysis of the economic impacts of this final rule. Readers seeking greater detail should read the full regulatory evaluation, a copy of which is in the docket for this rulemaking.

In conducting these analyses, the FAA has determined that this final rule has benefits that justify its costs and is not economically significant under Executive Order 12866; however, it is otherwise "significant" because of concerns raised by the National Telecommunications and Information Administration (NTIA) and the Federal Communications Commission (FCC) regarding the FAA's evaluation of potential electromagnetic effect during aeronautical studies. The final rule, if adopted, will not have a significant economic impact on a substantial number of small entities, will not create unnecessary obstacles to international trade, and will not impose an unfunded mandate on state, local, tribal governments, or on the private sector.

This final rule amends 14 CFR part 77. These amendments refer to the rules for obstruction evaluation standards, aeronautical studies, and notice provisions about objects that could create hazards to air navigation.

The FAA estimates the cost of this final rule to private industry will be approximately \$20.9 million (\$14.1 million, present value) over the next 10 years. The estimated cost of the final rule to the FAA will be approximately \$18.7 million (\$12.6 million, present value) over the next 10 years. Therefore, the total cost associated with the final rule will be approximately \$39.6 million (\$26.8 million, present value) over the next 10 years.

The final rule will enhance protection of aircraft approaches from unknown obstructions and unknown alteration projects on or near private use airports with FAA-approved instrument approach procedures (IAPs). The FAA contends that these qualitative benefits justify the costs of the final rule.

Final Regulatory Flexibility Analysis

The Regulatory Flexibility Act of 1980 establishes "as a principle of regulatory issuance that agencies shall endeavor, consistent with the objective of the rule and of applicable statutes, to fit regulatory and informational requirements to the scale of the business, organizations, and governmental jurisdictions subject to regulation." To achieve that principle, the Act requires agencies to solicit and consider flexible regulatory proposals and to explain the rationale for their actions. The Act covers a wide range of small entities, including small businesses, not-for-profit organizations and small governmental jurisdictions.

Agencies must perform a review to determine whether a proposed or final rule will have a significant economic impact on a substantial number of small entities. If the determination is that it will, the agency must prepare a regulatory flexibility analysis (RFA) as described in the Act.

However, if an agency determines that a proposed or final rule is not expected to have a significant economic impact on a substantial number of small entities, section 605(b) of the 1980 Act provides that the head of the agency may so certify and an RFA is not required. The certification must include a statement providing the factual basis for this determination, and the reasoning should be clear.

While the FAA does not maintain data on the size of businesses that file notices, the FAA estimates that approximately 40 percent of the OE notices will be filed by small businesses (comprised of business owners and private use airport owners) as defined by the Small Business Administration. Thus, in 2010 when the rule is expected to take effect, the FAA expects approximately 2,400 more OE notices

will be filed by affected parties. Of those applications filed, approximately 960 notices are estimated to be filed by small businesses (using 40 percent assumption).

For those small businesses that are inexperienced in submitting the necessary paperwork, the FAA believes they would either hire a consultant or spend as much as the consultant fee (\$480) in staff time to understand, research, complete, and submit the form(s). For the purpose of this regulatory flexibility assessment, the FAA assumes that it will cost all small entities approximately \$480 per case to meet the requirements of part 77.

It is unlikely that any individual small entity will file more than three OE notices in a calendar year. As a result, the FAA estimates that in virtually all cases, the cost of this rule to small businesses will not exceed \$1500 per small entity, a cost the FAA does not consider significant. Therefore, as the FAA Administrator, I certify that this rule will not have a significant economic impact on a substantial number of small entities.

International Trade Impact Assessment

The Trade Agreements Act of 1979 (Pub. L. 96–39), as amended by the Uruguay Round Agreements Act (Pub. L. 103–465), prohibits Federal agencies from establishing standards or engaging in related activities that create unnecessary obstacles to the foreign commerce of the United States. Pursuant to these Acts, the establishment of standards is not considered an unnecessary obstacle to the foreign commerce of the United States, so long as the standard has a legitimate domestic objective, such as the protection of safety, and does not operate in a manner that excludes imports that meet this objective. The statute also requires consideration of international standards and, where appropriate, that they be the basis for U.S. standards. The FAA has assessed the potential effect of this final rule and determined that it will have only a domestic impact and, therefore, will not create unnecessary obstacles to the foreign commerce of the United States.

Unfunded Mandates Assessment

Title II of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4) requires each Federal agency to prepare a written statement assessing the effects of any Federal mandate in a proposed or final agency rule that may result in an expenditure of \$100 million or more (in 1995 dollars) in any one year by state, local, and tribal governments, in the aggregate, or by the private sector; such

a mandate is deemed to be a “significant regulatory action.” The FAA currently uses an inflation-adjusted value of \$136.1 million in lieu of \$100 million. This final rule does not contain such a mandate; therefore, the requirements of Title II of the Act do not apply.

Executive Order 13132, Federalism

The FAA has analyzed this final rule under the principles and criteria of Executive Order 13132, Federalism. The FAA determined that this action will not have a substantial direct effect on the States, or the relationship between the Federal Government and the States, or on the distribution of power and responsibilities among the various levels of government, and, therefore, does not have federalism implications.

Environmental Analysis

FAA Order 1050.1E identifies FAA actions that are categorically excluded from preparation of an environmental assessment or environmental impact statement under the National Environmental Policy Act in the absence of extraordinary circumstances. The FAA has determined this rulemaking action qualifies for the categorical exclusion identified in paragraph 312f and involves no extraordinary circumstances.

Regulations That Significantly Affect Energy Supply, Distribution, or Use

The FAA has analyzed this final rule under Executive Order 13211, Actions Concerning Regulations that Significantly Affect Energy Supply, Distribution, or Use (May 18, 2001). We have determined that it is not a “significant energy action” under the executive order because it is not a “significant regulatory action” under Executive Order 12866, and it is not likely to have a significant adverse effect on the supply, distribution, or use of energy.

Availability of Rulemaking Documents

You can get an electronic copy of rulemaking documents using the Internet by—

1. Searching the Federal eRulemaking Portal (<http://www.regulations.gov>);
2. Visiting the FAA’s Regulations and Policies Web page at http://www.faa.gov/regulations_policies/; or
3. Accessing the Government Printing Office’s Web page at <http://www.gpoaccess.gov/fr/index.html>.

You can also get a copy by sending a request to the Federal Aviation Administration, Office of Rulemaking, ARM–1, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 267–9680. Make sure to

identify the amendment number or docket number of this rulemaking.

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

Small Business Regulatory Enforcement Fairness Act

The Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996 requires FAA to comply with small entity requests for information or advice about compliance with statutes and regulations within its jurisdiction. If you are a small entity and you have a question regarding this document, you may contact your local FAA official, or the person listed under the **FOR FURTHER INFORMATION CONTACT** heading at the beginning of the preamble. You can find out more about SBREFA on the Internet at http://www.faa.gov/regulations_policies/rulemaking/sbre_act/.

Appendix A to the Preamble

Under regulations (49 U.S.C. 44718) prescribed by the Secretary, if the Secretary decides that constructing or altering a structure may result in an obstruction of the navigable airspace or an interference with air navigation facilities and equipment or the navigable airspace, the Secretary shall conduct an aeronautical study to decide the extent of any adverse impact on the safe and efficient use of the airspace, facilities, or equipment. In conducting the study, the Secretary shall consider factors relevant to the efficient and effective use of the navigable airspace, including—

(A) The impact on arrival, departure, and en route procedures for aircraft operating under visual flight rules;

(B) The impact on arrival, departure, and en route procedures for aircraft operating under instrument flight rules;

(C) The impact on existing public use airports and aeronautical facilities;

(D) The impact on planned public use airports and aeronautical facilities; and

(E) The cumulative impact resulting from the proposed construction or alteration of a structure when combined with the impact of other existing or proposed structures.

Appendix B to the Preamble

The NPRM proposed that notice must be filed with the FAA for any construction of a new, or modification of an existing facility, *i.e.*—building, antenna structure, or any other man-made structure, which supports a radiating element(s) for the purpose of radio frequency transmissions operating on the following frequencies:

- (i) 54–108 MHz
- (ii) 150–216 MHz
- (iii) 406–430 MHz
- (iv) 931–940 MHz
- (v) 952–960 MHz
- (vi) 1390–1400 MHz
- (vii) 2500–2700 MHz
- (viii) 3700–4200 MHz
- (ix) 5000–5650 MHz
- (x) 5925–6525 MHz
- (xi) 7450–8550 MHz
- (xii) 14.2–14.4 GHz
- (xiii) 21.2–23.6 GHz

In addition, the NPRM proposed that any changes or modification to a system operating on one of the previously mentioned frequencies when specified in the original FAA determination, including:

- (i) Change in the authorized frequency;
- (ii) Addition of new frequencies;
- (iii) Increase in effective radiated power (ERP) equal or greater than 3 decibels;
- (iv) modification of radiating elements, including: (A) Antenna mounting locations(s) if increased 100 feet or more irrespective of whether the overall height is increased; (B) changes in antenna specification (including gain, beam-width, polarization, pattern); and (C) change in antenna azimuth/bearing (e.g. point-to-point microwave systems).

List of Subjects in 14 CFR Part 77

Administrative practice and procedure, Airports, Airspace, Aviation safety, Navigation (air), Reporting and recordkeeping requirements.

V. The Amendment

■ In consideration of the foregoing, the Federal Aviation Administration amends Chapter I of title 14, Code of Federal Regulations by revising part 77 to read as follows:

PART 77—SAFE, EFFICIENT USE, AND PRESERVATION OF THE NAVIGABLE AIRSPACE

Subpart A—General

Sec.

- 77.1 Purpose.
- 77.3 Definitions.

Subpart B—Notice Requirements

- 77.5 Applicability.
- 77.7 Form and time of notice.
- 77.9 Construction or alteration requiring notice.
- 77.11 Supplemental notice requirements.

Subpart C—Standards for Determining Obstructions to Air Navigation or Navigational Aids or Facilities

- 77.13 Applicability.
- 77.15 Scope.
- 77.17 Obstruction standards.
- 77.19 Civil airport imaginary surfaces.
- 77.21 Department of Defense (DOD) airport imaginary surfaces.
- 77.23 Heliport imaginary surfaces.

Subpart D—Aeronautical Studies and Determinations

- 77.25 Applicability.

- 77.27 Initiation of studies.
- 77.29 Evaluating aeronautical effect.
- 77.31 Determinations.
- 77.33 Effective period of determinations.
- 77.35 Extensions, terminations, revisions and corrections.

Subpart E—Petitions for Discretionary Review

- 77.37 General.
- 77.39 Contents of a petition.
- 77.41 Discretionary review results.

Authority: 49 U.S.C. 106 (g), 40103, 40113–40114, 44502, 44701, 44718, 46101–46102, 46104.

Subpart A—General

§ 77.1 Purpose.

This part establishes:

- (a) The requirements to provide notice to the FAA of certain proposed construction, or the alteration of existing structures;
- (b) The standards used to determine obstructions to air navigation, and navigational and communication facilities;
- (c) The process for aeronautical studies of obstructions to air navigation or navigational facilities to determine the effect on the safe and efficient use of navigable airspace, air navigation facilities or equipment; and
- (d) The process to petition the FAA for discretionary review of determinations, revisions, and extensions of determinations.

§ 77.3 Definitions.

For the purpose of this part:

Non-precision instrument runway means a runway having an existing instrument approach procedure utilizing air navigation facilities with only horizontal guidance, or area type navigation equipment, for which a straight-in non-precision instrument approach procedure has been approved, or planned, and for which no precision approach facilities are planned, or indicated on an FAA planning document or military service military airport planning document.

Planned or proposed airport is an airport that is the subject of at least one of the following documents received by the FAA:

- (1) Airport proposals submitted under 14 CFR part 157.
- (2) Airport Improvement Program requests for aid.
- (3) Notices of existing airports where prior notice of the airport construction or alteration was not provided as required by 14 CFR part 157.
- (4) Airport layout plans.
- (5) DOD proposals for airports used only by the U.S. Armed Forces.
- (6) DOD proposals on joint-use (civil-military) airports.

(7) Completed airport site selection feasibility study.

Precision instrument runway means a runway having an existing instrument approach procedure utilizing an Instrument Landing System (ILS), or a Precision Approach Radar (PAR). It also means a runway for which a precision approach system is planned and is so indicated by an FAA-approved airport layout plan; a military service approved military airport layout plan; any other FAA planning document, or military service military airport planning document.

Public use airport is an airport available for use by the general public without a requirement for prior approval of the airport owner or operator.

Seaplane base is considered to be an airport only if its sea lanes are outlined by visual markers.

Utility runway means a runway that is constructed for and intended to be used by propeller driven aircraft of 12,500 pounds maximum gross weight and less.

Visual runway means a runway intended solely for the operation of aircraft using visual approach procedures, with no straight-in instrument approach procedure and no instrument designation indicated on an FAA-approved airport layout plan, a military service approved military airport layout plan, or by any planning document submitted to the FAA by competent authority.

Subpart B—Notice Requirements

§ 77.5 Applicability.

(a) If you propose any construction or alteration described in § 77.9, you must provide adequate notice to the FAA of that construction or alteration.

(b) If requested by the FAA, you must also file supplemental notice before the start date and upon completion of certain construction or alterations that are described in § 77.9.

(c) Notice received by the FAA under this subpart is used to:

(1) Evaluate the effect of the proposed construction or alteration on safety in air commerce and the efficient use and preservation of the navigable airspace and of airport traffic capacity at public use airports;

(2) Determine whether the effect of proposed construction or alteration is a hazard to air navigation;

(3) Determine appropriate marking and lighting recommendations, using FAA Advisory Circular 70/7460–1, Obstruction Marking and Lighting;

(4) Determine other appropriate measures to be applied for continued safety of air navigation; and

(5) Notify the aviation community of the construction or alteration of objects that affect the navigable airspace, including the revision of charts, when necessary.

§ 77.7 Form and time of notice.

(a) If you are required to file notice under § 77.9, you must submit to the FAA a completed FAA Form 7460–1, Notice of Proposed Construction or Alteration. FAA Form 7460–1 is available at FAA regional offices and on the Internet.

(b) You must submit this form at least 45 days before the start date of the proposed construction or alteration or the date an application for a construction permit is filed, whichever is earliest.

(c) If you propose construction or alteration that is also subject to the licensing requirements of the Federal Communications Commission (FCC), you must submit notice to the FAA on or before the date that the application is filed with the FCC.

(d) If you propose construction or alteration to an existing structure that exceeds 2,000 ft. in height above ground level (AGL), the FAA presumes it to be a hazard to air navigation that results in an inefficient use of airspace. You must include details explaining both why the proposal would not constitute a hazard to air navigation and why it would not cause an inefficient use of airspace.

(e) The 45-day advance notice requirement is waived if immediate construction or alteration is required because of an emergency involving essential public services, public health, or public safety. You may provide notice to the FAA by any available, expeditious means. You must file a completed FAA Form 7460–1 within 5 days of the initial notice to the FAA. Outside normal business hours, the nearest flight service station will accept emergency notices.

§ 77.9 Construction or alteration requiring notice.

If requested by the FAA, or if you propose any of the following types of construction or alteration, you must file notice with the FAA of:

(a) Any construction or alteration that is more than 200 ft. AGL at its site.

(b) Any construction or alteration that exceeds an imaginary surface extending outward and upward at any of the following slopes:

(1) 100 to 1 for a horizontal distance of 20,000 ft. from the nearest point of the nearest runway of each airport described in paragraph (d) of this section with its longest runway more than 3,200 ft. in actual length, excluding heliports.

(2) 50 to 1 for a horizontal distance of 10,000 ft. from the nearest point of the nearest runway of each airport described in paragraph (d) of this section with its longest runway no more than 3,200 ft. in actual length, excluding heliports.

(3) 25 to 1 for a horizontal distance of 5,000 ft. from the nearest point of the nearest landing and takeoff area of each heliport described in paragraph (d) of this section.

(c) Any highway, railroad, or other traverse way for mobile objects, of a height which, if adjusted upward 17 feet for an Interstate Highway that is part of the National System of Military and Interstate Highways where overcrossings are designed for a minimum of 17 feet vertical distance, 15 feet for any other public roadway, 10 feet or the height of the highest mobile object that would normally traverse the road, whichever is greater, for a private road, 23 feet for a railroad, and for a waterway or any other traverse way not previously mentioned, an amount equal to the height of the highest mobile object that would normally traverse it, would exceed a standard of paragraph (a) or (b) of this section.

(d) Any construction or alteration on any of the following airports and heliports:

(1) A public use airport listed in the Airport/Facility Directory, Alaska Supplement, or Pacific Chart Supplement of the U.S. Government Flight Information Publications;

(2) A military airport under construction, or an airport under construction that will be available for public use;

(3) An airport operated by a Federal agency or the DOD.

(4) An airport or heliport with at least one FAA-approved instrument approach procedure.

(e) You do not need to file notice for construction or alteration of:

(1) Any object that will be shielded by existing structures of a permanent and substantial nature or by natural terrain or topographic features of equal or greater height, and will be located in the congested area of a city, town, or settlement where the shielded structure will not adversely affect safety in air navigation;

(2) Any air navigation facility, airport visual approach or landing aid, aircraft arresting device, or meteorological device meeting FAA-approved siting criteria or an appropriate military service siting criteria on military airports, the location and height of which are fixed by its functional purpose;

(3) Any construction or alteration for which notice is required by any other FAA regulation.

(4) Any antenna structure of 20 feet or less in height, except one that would increase the height of another antenna structure.

§ 77.11 Supplemental notice requirements.

(a) You must file supplemental notice with the FAA when:

(1) The construction or alteration is more than 200 feet in height AGL at its site; or

(2) Requested by the FAA.

(b) You must file supplemental notice on a prescribed FAA form to be received within the time limits specified in the FAA determination. If no time limit has been specified, you must submit supplemental notice of construction to the FAA within 5 days after the structure reaches its greatest height.

(c) If you abandon a construction or alteration proposal that requires supplemental notice, you must submit notice to the FAA within 5 days after the project is abandoned.

(d) If the construction or alteration is dismantled or destroyed, you must submit notice to the FAA within 5 days after the construction or alteration is dismantled or destroyed.

Subpart C—Standards for Determining Obstructions to Air Navigation or Navigational Aids or Facilities

§ 77.13 Applicability.

This subpart describes the standards used for determining obstructions to air navigation, navigational aids, or navigational facilities. These standards apply to the following:

(a) Any object of natural growth, terrain, or permanent or temporary construction or alteration, including equipment or materials used and any permanent or temporary apparatus.

(b) The alteration of any permanent or temporary existing structure by a change in its height, including appurtenances, or lateral dimensions, including equipment or material used therein.

§ 77.15 Scope.

(a) This subpart describes standards used to determine obstructions to air navigation that may affect the safe and efficient use of navigable airspace and the operation of planned or existing air navigation and communication facilities. Such facilities include air navigation aids, communication equipment, airports, Federal airways, instrument approach or departure procedures, and approved off-airway routes.

(b) Objects that are considered obstructions under the standards

described in this subpart are presumed hazards to air navigation unless further aeronautical study concludes that the object is not a hazard. Once further aeronautical study has been initiated, the FAA will use the standards in this subpart, along with FAA policy and guidance material, to determine if the object is a hazard to air navigation.

(c) The FAA will apply these standards with reference to an existing airport facility, and airport proposals received by the FAA, or the appropriate military service, before it issues a final determination.

(d) For airports having defined runways with specially prepared hard surfaces, the primary surface for each runway extends 200 feet beyond each end of the runway. For airports having defined strips or pathways used regularly for aircraft takeoffs and landings, and designated runways, without specially prepared hard surfaces, each end of the primary surface for each such runway shall coincide with the corresponding end of the runway. At airports, excluding seaplane bases, having a defined landing and takeoff area with no defined pathways for aircraft takeoffs and landings, a determination must be made as to which portions of the landing and takeoff area are regularly used as landing and takeoff pathways. Those determined pathways must be considered runways, and an appropriate primary surface as defined in § 77.19 will be considered as longitudinally centered on each such runway. Each end of that primary surface must coincide with the corresponding end of that runway.

(e) The standards in this subpart apply to construction or alteration proposals on an airport (including heliports and seaplane bases with marked lanes) if that airport is one of the following before the issuance of the final determination:

(1) Available for public use and is listed in the Airport/Facility Directory, Supplement Alaska, or Supplement Pacific of the U.S. Government Flight Information Publications; or

(2) A planned or proposed airport or an airport under construction of which the FAA has received actual notice, except DOD airports, where there is a clear indication the airport will be available for public use; or,

(3) An airport operated by a Federal agency or the DOD; or,

(4) An airport that has at least one FAA-approved instrument approach.

§ 77.17 Obstruction standards.

(a) An existing object, including a mobile object, is, and a future object

would be an obstruction to air navigation if it is of greater height than any of the following heights or surfaces:

(1) A height of 499 feet AGL at the site of the object.

(2) A height that is 200 feet AGL, or above the established airport elevation, whichever is higher, within 3 nautical miles of the established reference point of an airport, excluding heliports, with its longest runway more than 3,200 feet in actual length, and that height increases in the proportion of 100 feet for each additional nautical mile from the airport up to a maximum of 499 feet.

(3) A height within a terminal obstacle clearance area, including an initial approach segment, a departure area, and a circling approach area, which would result in the vertical distance between any point on the object and an established minimum instrument flight altitude within that area or segment to be less than the required obstacle clearance.

(4) A height within an en route obstacle clearance area, including turn and termination areas, of a Federal Airway or approved off-airway route, that would increase the minimum obstacle clearance altitude.

(5) The surface of a takeoff and landing area of an airport or any imaginary surface established under § 77.19, 77.21, or 77.23. However, no part of the takeoff or landing area itself will be considered an obstruction.

(b) Except for traverse ways on or near an airport with an operative ground traffic control service furnished by an airport traffic control tower or by the airport management and coordinated with the air traffic control service, the standards of paragraph (a) of this section apply to traverse ways used or to be used for the passage of mobile objects only after the heights of these traverse ways are increased by:

(1) 17 feet for an Interstate Highway that is part of the National System of Military and Interstate Highways where overcrossings are designed for a minimum of 17 feet vertical distance.

(2) 15 feet for any other public roadway.

(3) 10 feet or the height of the highest mobile object that would normally traverse the road, whichever is greater, for a private road.

(4) 23 feet for a railroad.

(5) For a waterway or any other traverse way not previously mentioned, an amount equal to the height of the highest mobile object that would normally traverse it.

§ 77.19 Civil airport imaginary surfaces.

The following civil airport imaginary surfaces are established with relation to

the airport and to each runway. The size of each such imaginary surface is based on the category of each runway according to the type of approach available or planned for that runway. The slope and dimensions of the approach surface applied to each end of a runway are determined by the most precise approach procedure existing or planned for that runway end.

(a) *Horizontal surface.* A horizontal plane 150 feet above the established airport elevation, the perimeter of which is constructed by SW.ing arcs of a specified radii from the center of each end of the primary surface of each runway of each airport and connecting the adjacent arcs by lines tangent to those arcs. The radius of each arc is:

(1) 5,000 feet for all runways designated as utility or visual;

(2) 10,000 feet for all other runways. The radius of the arc specified for each end of a runway will have the same arithmetical value. That value will be the highest determined for either end of the runway. When a 5,000-foot arc is encompassed by tangents connecting two adjacent 10,000-foot arcs, the 5,000-foot arc shall be disregarded on the construction of the perimeter of the horizontal surface.

(b) *Conical surface.* A surface extending outward and upward from the periphery of the horizontal surface at a slope of 20 to 1 for a horizontal distance of 4,000 feet.

(c) *Primary surface.* A surface longitudinally centered on a runway. When the runway has a specially prepared hard surface, the primary surface extends 200 feet beyond each end of that runway; but when the runway has no specially prepared hard surface, the primary surface ends at each end of that runway. The elevation of any point on the primary surface is the same as the elevation of the nearest point on the runway centerline. The width of the primary surface is:

(1) 250 feet for utility runways having only visual approaches.

(2) 500 feet for utility runways having non-precision instrument approaches.

(3) For other than utility runways, the width is:

(i) 500 feet for visual runways having only visual approaches.

(ii) 500 feet for non-precision instrument runways having visibility minimums greater than three-fourths statute mile.

(iii) 1,000 feet for a non-precision instrument runway having a non-precision instrument approach with visibility minimums as low as three-fourths of a statute mile, and for precision instrument runways.

(iv) The width of the primary surface of a runway will be that width prescribed in this section for the most precise approach existing or planned for either end of that runway.

(d) *Approach surface.* A surface longitudinally centered on the extended runway centerline and extending outward and upward from each end of the primary surface. An approach surface is applied to each end of each runway based upon the type of approach available or planned for that runway end.

(1) The inner edge of the approach surface is the same width as the primary surface and it expands uniformly to a width of:

(i) 1,250 feet for that end of a utility runway with only visual approaches;

(ii) 1,500 feet for that end of a runway other than a utility runway with only visual approaches;

(iii) 2,000 feet for that end of a utility runway with a non-precision instrument approach;

(iv) 3,500 feet for that end of a non-precision instrument runway other than utility, having visibility minimums greater than three-fourths of a statute mile;

(v) 4,000 feet for that end of a non-precision instrument runway, other than utility, having a non-precision instrument approach with visibility minimums as low as three-fourths statute mile; and

(vi) 16,000 feet for precision instrument runways.

(2) The approach surface extends for a horizontal distance of:

(i) 5,000 feet at a slope of 20 to 1 for all utility and visual runways;

(ii) 10,000 feet at a slope of 34 to 1 for all non-precision instrument runways other than utility; and

(iii) 10,000 feet at a slope of 50 to 1 with an additional 40,000 feet at a slope of 40 to 1 for all precision instrument runways.

(3) The outer width of an approach surface to an end of a runway will be that width prescribed in this subsection for the most precise approach existing or planned for that runway end.

(e) *Transitional surface.* These surfaces extend outward and upward at right angles to the runway centerline and the runway centerline extended at a slope of 7 to 1 from the sides of the primary surface and from the sides of the approach surfaces. Transitional surfaces for those portions of the precision approach surface which project through and beyond the limits of the conical surface, extend a distance of 5,000 feet measured horizontally from the edge of the approach surface and at right angles to the runway centerline.

§ 77.21 Department of Defense (DOD) airport imaginary surfaces.

(a) *Related to airport reference points.* These surfaces apply to all military airports. For the purposes of this section, a military airport is any airport operated by the DOD.

(1) *Inner horizontal surface.* A plane that is oval in shape at a height of 150 feet above the established airfield elevation. The plane is constructed by scribing an arc with a radius of 7,500 feet about the centerline at the end of each runway and interconnecting these arcs with tangents.

(2) *Conical surface.* A surface extending from the periphery of the inner horizontal surface outward and upward at a slope of 20 to 1 for a horizontal distance of 7,000 feet to a height of 500 feet above the established airfield elevation.

(3) *Outer horizontal surface.* A plane, located 500 feet above the established airfield elevation, extending outward from the outer periphery of the conical surface for a horizontal distance of 30,000 feet.

(b) *Related to runways.* These surfaces apply to all military airports.

(1) *Primary surface.* A surface located on the ground or water longitudinally centered on each runway with the same length as the runway. The width of the primary surface for runways is 2,000 feet. However, at established bases where substantial construction has taken place in accordance with a previous lateral clearance criteria, the 2,000-foot width may be reduced to the former criteria.

(2) *Clear zone surface.* A surface located on the ground or water at each end of the primary surface, with a length of 1,000 feet and the same width as the primary surface.

(3) *Approach clearance surface.* An inclined plane, symmetrical about the runway centerline extended, beginning 200 feet beyond each end of the primary surface at the centerline elevation of the runway end and extending for 50,000 feet. The slope of the approach clearance surface is 50 to 1 along the runway centerline extended until it reaches an elevation of 500 feet above the established airport elevation. It then continues horizontally at this elevation to a point 50,000 feet from the point of beginning. The width of this surface at the runway end is the same as the primary surface, it flares uniformly, and the width at 50,000 is 16,000 feet.

(4) *Transitional surfaces.* These surfaces connect the primary surfaces, the first 200 feet of the clear zone surfaces, and the approach clearance surfaces to the inner horizontal surface, conical surface, outer horizontal surface

or other transitional surfaces. The slope of the transitional surface is 7 to 1 outward and upward at right angles to the runway centerline.

§ 77.23 Heliport imaginary surfaces.

(a) *Primary surface.* The area of the primary surface coincides in size and shape with the designated take-off and landing area. This surface is a horizontal plane at the elevation of the established heliport elevation.

(b) *Approach surface.* The approach surface begins at each end of the heliport primary surface with the same width as the primary surface, and extends outward and upward for a horizontal distance of 4,000 feet where its width is 500 feet. The slope of the approach surface is 8 to 1 for civil heliports and 10 to 1 for military heliports.

(c) *Transitional surfaces.* These surfaces extend outward and upward from the lateral boundaries of the primary surface and from the approach surfaces at a slope of 2 to 1 for a distance of 250 feet measured horizontally from the centerline of the primary and approach surfaces.

Subpart D—Aeronautical Studies and Determinations

§ 77.25 Applicability.

(a) This subpart applies to any aeronautical study of a proposed construction or alteration for which notice to the FAA is required under § 77.9.

(b) The purpose of an aeronautical study is to determine whether the aeronautical effects of the specific proposal and, where appropriate, the cumulative impact resulting from the proposed construction or alteration when combined with the effects of other existing or proposed structures, would constitute a hazard to air navigation.

(c) The obstruction standards in subpart C of this part are supplemented by other manuals and directives used in determining the effect on the navigable airspace of a proposed construction or alteration. When the FAA needs additional information, it may circulate a study to interested parties for comment.

§ 77.27 Initiation of studies.

The FAA will conduct an aeronautical study when:

(a) Requested by the sponsor of any proposed construction or alteration for which a notice is submitted; or

(b) The FAA determines a study is necessary.

§ 77.29 Evaluating aeronautical effect.

(a) The FAA conducts an aeronautical study to determine the impact of a proposed structure, an existing structure that has not yet been studied by the FAA, or an alteration of an existing structure on aeronautical operations, procedures, and the safety of flight. These studies include evaluating:

- (1) The impact on arrival, departure, and en route procedures for aircraft operating under visual flight rules;
 - (2) The impact on arrival, departure, and en route procedures for aircraft operating under instrument flight rules;
 - (3) The impact on existing and planned public use airports;
 - (4) Airport traffic capacity of existing public use airports and public use airport development plans received before the issuance of the final determination;
 - (5) Minimum obstacle clearance altitudes, minimum instrument flight rules altitudes, approved or planned instrument approach procedures, and departure procedures;
 - (6) The potential effect on ATC radar, direction finders, ATC tower line-of-sight visibility, and physical or electromagnetic effects on air navigation, communication facilities, and other surveillance systems;
 - (7) The aeronautical effects resulting from the cumulative impact of a proposed construction or alteration of a structure when combined with the effects of other existing or proposed structures.
- (b) If you withdraw the proposed construction or alteration or revise it so that it is no longer identified as an obstruction, or if no further aeronautical study is necessary, the FAA may terminate the study.

§ 77.31 Determinations.

(a) The FAA will issue a determination stating whether the proposed construction or alteration would be a hazard to air navigation, and will advise all known interested persons.

(b) The FAA will make determinations based on the aeronautical study findings and will identify the following:

- (1) The effects on VFR/IFR aeronautical departure/arrival operations, air traffic procedures, minimum flight altitudes, and existing, planned, or proposed airports listed in § 77.15(e) of which the FAA has received actual notice prior to issuance of a final determination.
- (2) The extent of the physical and/or electromagnetic effect on the operation of existing or proposed air navigation

facilities, communication aids, or surveillance systems.

(c) The FAA will issue a Determination of Hazard to Air Navigation when the aeronautical study concludes that the proposed construction or alteration will exceed an obstruction standard and would have a substantial aeronautical impact.

(d) A Determination of No Hazard to Air Navigation will be issued when the aeronautical study concludes that the proposed construction or alteration will exceed an obstruction standard but would not have a substantial aeronautical impact to air navigation. A Determination of No Hazard to Air Navigation may include the following:

- (1) Conditional provisions of a determination.
- (2) Limitations necessary to minimize potential problems, such as the use of temporary construction equipment.
- (3) Supplemental notice requirements, when required.
- (4) Marking and lighting recommendations, as appropriate.
- (e) The FAA will issue a Determination of No Hazard to Air Navigation when a proposed structure does not exceed any of the obstruction standards and would not be a hazard to air navigation.

§ 77.33 Effective period of determinations.

(a) A determination issued under this subpart is effective 40 days after the date of issuance, unless a petition for discretionary review is received by the FAA within 30 days after issuance. The determination will not become final pending disposition of a petition for discretionary review.

(b) Unless extended, revised, or terminated, each Determination of No Hazard to Air Navigation issued under this subpart expires 18 months after the effective date of the determination, or on the date the proposed construction or alteration is abandoned, whichever is earlier.

(c) A Determination of Hazard to Air Navigation has no expiration date.

§ 77.35 Extensions, terminations, revisions and corrections.

(a) You may petition the FAA official that issued the Determination of No Hazard to Air Navigation to revise or reconsider the determination based on new facts or to extend the effective period of the determination, provided that:

- (1) Actual structural work of the proposed construction or alteration, such as the laying of a foundation, but not including excavation, has not been started; and
- (2) The petition is submitted at least 15 days before the expiration date of the

Determination of No Hazard to Air Navigation.

(b) A Determination of No Hazard to Air Navigation issued for those construction or alteration proposals not requiring an FCC construction permit may be extended by the FAA one time for a period not to exceed 18 months.

(c) A Determination of No Hazard to Air Navigation issued for a proposal requiring an FCC construction permit may be granted extensions for up to 18 months, provided that:

- (1) You submit evidence that an application for a construction permit/license was filed with the FCC for the associated site within 6 months of issuance of the determination; and
- (2) You submit evidence that additional time is warranted because of FCC requirements; and
- (3) Where the FCC issues a construction permit, a final Determination of No Hazard to Air Navigation is effective until the date prescribed by the FCC for completion of the construction. If an extension of the original FCC completion date is needed, an extension of the FAA determination must be requested from the Obstruction Evaluation Service (OES).

(4) If the Commission refuses to issue a construction permit, the final determination expires on the date of its refusal.

Subpart E—Petitions for Discretionary Review**§ 77.37 General.**

(a) If you are the sponsor, provided a substantive aeronautical comment on a proposal in an aeronautical study, or have a substantive aeronautical comment on the proposal but were not given an opportunity to state it, you may petition the FAA for a discretionary review of a determination, revision, or extension of a determination issued by the FAA.

(b) You may not file a petition for discretionary review for a Determination of No Hazard that is issued for a temporary structure, marking and lighting recommendation, or when a proposed structure or alteration does not exceed obstruction standards contained in subpart C of this part.

§ 77.39 Contents of a petition.

(a) You must file a petition for discretionary review in writing and it must be received by the FAA within 30 days after the issuance of a determination under § 77.31, or a revision or extension of the determination under § 77.35.

(b) The petition must contain a full statement of the aeronautical basis on

which the petition is made, and must include new information or facts not previously considered or presented during the aeronautical study, including valid aeronautical reasons why the determination, revisions, or extension made by the FAA should be reviewed.

(c) In the event that the last day of the 30-day filing period falls on a weekend or a day the Federal government is closed, the last day of the filing period is the next day that the government is open.

(d) The FAA will inform the petitioner or sponsor (if other than the petitioner) and the FCC (whenever an FCC-related proposal is involved) of the filing of the petition and that the determination is not final pending disposition of the petition.

§ 77.41 Discretionary review results.

(a) If discretionary review is granted, the FAA will inform the petitioner and the sponsor (if other than the petitioner) of the issues to be studied and reviewed. The review may include a request for comments and a review of all records from the initial aeronautical study.

(b) If discretionary review is denied, the FAA will notify the petitioner and the sponsor (if other than the petitioner), and the FCC, whenever a FCC-related proposal is involved, of the basis for the denial along with a statement that the determination is final.

(c) After concluding the discretionary review process, the FAA will revise, affirm, or reverse the determination.

Issued in Washington, DC, on July 13, 2010.

J. Randolph Babbitt,
Administrator.

[FR Doc. 2010-17767 Filed 7-20-10; 8:45 am]

BILLING CODE 4910-13-P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 97

[Docket No. 30734; Amdt. No. 3382]

Standard Instrument Approach Procedures, and Takeoff Minimums and Obstacle Departure Procedures; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs) and associated Takeoff Minimums and Obstacle Departure

Procedures for operations at certain airports. These regulatory actions are needed because of the adoption of new or revised criteria, or because of changes occurring in the National Airspace System, such as the commissioning of new navigational facilities, adding new obstacles, or changing air traffic requirements. These changes are designed to provide safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

DATES: This rule is effective July 21, 2010. The compliance date for each SIAP, associated Takeoff Minimums, and ODP is specified in the amendatory provisions.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of July 21, 2010.

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

For Examination—

1. FAA Rules Docket, FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591;
2. The FAA Regional Office of the region in which the affected airport is located;
3. The National Flight Procedures Office, 6500 South MacArthur Blvd., Oklahoma City, OK 73169; or
4. The National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202-741-6030, or go to: http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.

*Availability—*All SIAPs and Takeoff Minimums and ODPs are available online free of charge. Visit <http://www.nfdc.faa.gov> to register. Additionally, individual SIAP and Takeoff Minimums and ODP copies may be obtained from:

1. FAA Public Inquiry Center (APA-200), FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591; or
2. The FAA Regional Office of the region in which the affected airport is located.

FOR FURTHER INFORMATION CONTACT:

Harry J. Hodges, Flight Procedure Standards Branch (AFS-420), Flight Technologies and Programs Divisions, Flight Standards Service, Federal Aviation Administration, Mike Monroney Aeronautical Center, 6500

South MacArthur Blvd., Oklahoma City, OK 73169 (Mail Address: P.O. Box 25082, Oklahoma City, OK 73125) Telephone: (405) 954-4164.

SUPPLEMENTARY INFORMATION: This rule amends Title 14 of the Code of Federal Regulations, Part 97 (14 CFR part 97), by establishing, amending, suspending, or revoking SIAPs, Takeoff Minimums and/or ODPS. The complete regulators description of each SIAP and its associated Takeoff Minimums or ODP for an identified airport is listed on FAA form documents which are incorporated by reference in this amendment under 5 U.S.C. 552(a), 1 CFR part 51, and 14 CFR part 97.20. The applicable FAA Forms are FAA Forms 8260-3, 8260-4, 8260-5, 8260-15A, and 8260-15B when required by an entry on 8260-15A.

The large number of SIAPs, Takeoff Minimums and ODPs, in addition to their complex nature and the need for a special format make publication in the **Federal Register** expensive and impractical. Furthermore, airmen do not use the regulatory text of the SIAPs, Takeoff Minimums or ODPs, but instead refer to their depiction on charts printed by publishers of aeronautical materials. The advantages of incorporation by reference are realized and publication of the complete description of each SIAP, Takeoff Minimums and ODP listed on FAA forms is unnecessary. This amendment provides the affected CFR sections and specifies the types of SIAPs and the effective dates of the associated Takeoff Minimums and ODPs. This amendment also identifies the airport and its location, the procedure, and the amendment number.

The Rule

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

Further, the SIAPs and Takeoff Minimums and ODPS contained in this amendment are based on the criteria contained in the U.S. Standard for Terminal Instrument Procedures

(TERPS). In developing these SIAPS and Takeoff Minimums and ODPs, the TERPS criteria were applied to the conditions existing or anticipated at the affected airports. Because of the close and immediate relationship between these SIAPS, Takeoff Minimums and ODPs, and safety in air commerce, I find that notice and public procedures before adopting these SIAPS, Takeoff Minimums and ODPs are impracticable and contrary to the public interest and, where applicable, that good cause exists for making some SIAPS effective in less than 30 days.

Conclusion

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

List of Subjects in 14 CFR Part 97

Air traffic control, Airports, Incorporation by reference, and Navigation (air).

Issued in Washington, DC, on July 9, 2010.

John M. Allen,

Director, Flight Standards Service.

Adoption of the Amendment

■ Accordingly, pursuant to the authority delegated to me, Title 14, Code of Federal Regulations, Part 97 (14 CFR part 97) is amended by establishing, amending, suspending, or revoking Standard Instrument Approach Procedures and/or Takeoff Minimums and/or Obstacle Departure Procedures effective at 0902 UTC on the dates specified, as follows:

PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

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

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

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

Effective 26 AUG 2010

Windsor Locks, CT, Bradley Intl, RNAV (RNP) Z RWY 15, Orig-A
Orlando, FL, Kissimmee Gateway, ILS OR LOC RWY 15, Amdt 1
Orlando, FL, Kissimmee Gateway, NDB RWY 15, Amdt 1, CANCELLED
Orlando, FL, Kissimmee Gateway, RNAV (GPS) RWY 15, Amdt 1
Orlando, FL, Kissimmee Gateway, RNAV (GPS) RWY 33, Amdt 1
Georgetown, OH, Brown County, Takeoff Minimums and Obstacle DP, Amdt 2
Georgetown, OH, Brown County, VOR/DME—A, Amdt 1
Columbia/Mt Pleasant, TN, Maury County, SDF RWY 24, Amdt 4C, CANCELLED
Knoxville, TN, Knoxville Downtown Island, Takeoff Minimums and Obstacle DP, Amdt 5

Effective 23 SEP 2010

Klawock, AK, Klawock, Takeoff Minimums and Obstacle DP, Amdt 3
Lincoln, CA, Lincoln Rgnl/Karl Harder Field, GPS RWY 15, Orig-A, CANCELLED
Lincoln, CA, Lincoln Rgnl/Karl Harder Field, GPS RWY 33, Orig, CANCELLED
Lincoln, CA, Lincoln Rgnl/Karl Harder Field, ILS OR LOC RWY 15, Amdt 1
Lincoln, CA, Lincoln Rgnl/Karl Harder Field, RNAV (GPS) RWY 15, Orig
Lincoln, CA, Lincoln Rgnl/Karl Harder Field, RNAV (GPS) RWY 33, Orig
Crystal River, FL, Crystal River, RNAV (GPS) RWY 9, Orig
Crystal River, FL, Crystal River, RNAV (GPS) RWY 27, Orig
Crystal River, FL, Crystal River, VOR/DME—A, Amdt 2
Destin, FL, Destin Fort Walton Beach, NDB RWY 32, Amdt 1A, CANCELLED
Ocala, FL, Ocala Intl-Jim Taylor Field, RNAV (GPS) RWY 18, Amdt 2
Perry, FL, Perry-Foley, RNAV (GPS) RWY 18, Amdt 1
Perry, FL, Perry-Foley, RNAV (GPS) RWY 36, Amdt 1
Jefferson, GA, Jackson County, RNAV (GPS) RWY 17, Amdt 2
Jefferson, GA, Jackson County, RNAV (GPS) RWY 35, Amdt 2
Jefferson, GA, Jackson County, VOR/DME RWY 35, Amdt 2
Boise, ID, Boise Air Terminal/Gowen Fld, ILS OR LOC RWY 10R, ILS RWY 10R (CAT II), ILS RWY 10R (CAT III), Amdt 11
Bloomington/Normal, IL, Central IL Rgnl Arpt at Bloomington-Normal, ILS OR LOC/DME RWY 2, Orig-A
Decatur, IL, Decatur, Takeoff Minimums and Obstacle DP, Amdt 3
Mattoon/Charleston, IL, Coles County Memorial, NDB RWY 29, Amdt 5A
Mattoon/Charleston, IL, Coles County Memorial, VOR RWY 6, Amdt 13A
Mattoon/Charleston, IL, Coles County Memorial, VOR RWY 24, Amdt 11A
Paris, IL, Edgar County, VOR/DME—A, Amdt 8
Shelbyville, IL, Shelby County, NDB—A, Amdt 2A
Shelbyville, IL, Shelby County, RNAV (GPS) RWY 36, Orig-A
Taylorville, IL, Taylorville Muni, NDB RWY 18, Amdt 4A

Taylorville, IL, Taylorville Muni, RNAV (GPS) RWY 18, Orig-A
Jeffersonville, IN, Clark Rgnl, Takeoff Minimums and Obstacle DP, Amdt 2
Michigan City, IN, Michigan City Muni, GPS RWY 20, Amdt 1, CANCELLED
Michigan City, IN, Michigan City Muni, RNAV (GPS) RWY 20, Orig
Michigan City, IN, Michigan City Muni, Takeoff Minimums and Obstacle DP, Amdt 2
Michigan City, IN, Michigan City Muni, VOR—A, Amdt 5
Lexington, KY, Blue Grass, RNAV (GPS) RWY 9, Orig
Lexington, KY, Blue Grass, RNAV (GPS) RWY 27, Orig
Lexington, KY, Blue Grass, Takeoff Minimums and Obstacle DP, Amdt 7
Stow, MA, Minute Man Airfield, Takeoff Minimums and Obstacle DP, Amdt 3
Frenchville, ME, Northern Aroostook Rgnl, RNAV (GPS) RWY 14, Amdt 1
Frenchville, ME, Northern Aroostook Rgnl, RNAV (GPS) RWY 32, Amdt 1
Lincoln, ME, Lincoln Rgnl, NDB RWY 17, Amdt 1, CANCELLED
Faribault, MN, Faribault Muni, GPS RWY 30, Orig-A, CANCELLED
Faribault, MN, Faribault Muni, RNAV (GPS) RWY 12, Orig
Faribault, MN, Faribault Muni, RNAV (GPS) RWY 30, Orig
Faribault, MN, Faribault Muni, VOR—A, Amdt 6
Faribault, MN, Faribault Muni, VOR/DME RNAV OR GPS RWY 12, Amdt 5, CANCELLED
Minneapolis, MN, Flying Cloud, RNAV (GPS) RWY 10R, Orig
Perham, MN, Perham Muni, GPS RWY 30, Orig, CANCELLED
Perham, MN, Perham Muni, RNAV (GPS) RWY 30, Orig
Atlantic City, NJ, Atlantic City Intl, RNAV (GPS) RWY 22, Amdt 3
Newburgh, NY, Stewart Intl, COPTER ILS OR LOC RWY 9, Orig-A, CANCELLED
Newburgh, NY, Stewart Intl, ILS OR LOC RWY 9, Amdt 11
Newburgh, NY, Stewart Intl, RNAV (GPS) RWY 16, Amdt 1
Newburgh, NY, Stewart Intl, RNAV (GPS) RWY 34, Amdt 1
Urbana, OH, Grimes Field, Takeoff Minimums and Obstacle DP, Amdt 1
Corvallis, OR, Corvallis Muni, RNAV (GPS) RWY 35, Amdt 1
Butler, PA, Butler County/K.W. Scholter Field, Takeoff Minimums and Obstacle DP, Amdt 3
Meadville, PA, Port Meadville, Takeoff Minimums and Obstacle DP, Amdt 4
Philadelphia, PA, Wings Field, RNAV (GPS) RWY 6, Amdt 1
Philadelphia, PA, Wings Field, RNAV (GPS) RWY 24, Amdt 1
Philadelphia, PA, Wings Field, Takeoff Minimums and Obstacle DP, Amdt 2
San Juan, PR, Luis Munoz Marin Intl, ILS OR LOC RWY 8, Amdt 16
San Juan, PR, Luis Munoz Marin Intl, ILS OR LOC RWY 10, Amdt 5
San Juan, PR, Luis Munoz Marin Intl, RNAV (GPS) RWY 8, Amdt 1

San Juan, PR, Luis Munoz Marin Intl, RNAV (GPS) RWY 10, Amdt 1
 Charleston, SC, Charleston AFB/Intl, ILS OR LOC/DME RWY 33, Amdt 7
 Charleston, SC, Charleston AFB/Intl, RNAV (GPS) RWY 15, Amdt 2
 Charleston, SC, Charleston AFB/Intl, RNAV (GPS) RWY 33, Amdt 2
 Knoxville, TN, Knoxville Downtown Island, LOC RWY 26, Amdt 4
 Knoxville, TN, Knoxville Downtown Island, RNAV (GPS) RWY 26, Orig
 Knoxville, TN, Knoxville Downtown Island, VOR/DME-B, Amdt 7
 Murfreesboro, TN, Murfreesboro Muni, NDB RWY 18, Amdt 1
 Murfreesboro, TN, Murfreesboro Muni, Takeoff Minimums and Obstacle DP, Amdt 3
 Abingdon, VA, Virginia Highlands, Takeoff Minimums and Obstacle DP, Amdt 2
 Friday Harbor, WA, Friday Harbor, NDB RWY 34, Amdt 2
 Ashland, WI, John F. Kennedy Memorial, NDB RWY 2, Amdt 9A, CANCELLED
 Cable, WI, Cable Union, NDB OR GPS-B, Amdt 10, CANCELLED
 Cumberland, WI, Cumberland Muni, NDB OR GPS RWY 9, Amdt 2, CANCELLED
 Hayward, WI, Sawyer County, LOC/DME RWY 20, Amdt 1A

[FR Doc. 2010-17499 Filed 7-20-10; 8:45 am]

BILLING CODE 4910-13-P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 97

[Docket No. 30735; Amdt. No. 3383]

Standard Instrument Approach Procedures, and Takeoff Minimums and Obstacle Departure Procedures; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

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

DATES: This rule is effective July 21, 2010. The compliance date for each

SIAP, associated Takeoff Minimums, and ODP is specified in the amendatory provisions.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of July 21, 2010.

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

For Examination—

1. FAA Rules Docket, FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591;
2. The FAA Regional Office of the region in which the affected airport is located;
3. The National Flight Procedures Office, 6500 South MacArthur Blvd., Oklahoma City, OK 73169 or,
4. The National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202-741-6030, or go to: <http://www.archives.gov/federal-register/code-of-federal-regulations/ibr-locations.html>.

*Availability—*All SIAPs are available online free of charge. Visit nfdc.faa.gov to register. Additionally, individual SIAP and Takeoff Minimums and ODP copies may be obtained from:

1. FAA Public Inquiry Center (APA-200), FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591; or
2. The FAA Regional Office of the region in which the affected airport is located.

FOR FURTHER INFORMATION CONTACT:

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

SUPPLEMENTARY INFORMATION: This rule amends Title 14, Code of Federal Regulations, Part 97 (14 CFR part 97) by amending the referenced SIAPs. The complete regulatory description of each SIAP is listed on the appropriate FAA Form 8260, as modified by the National Flight Data Center (FDC)/Permanent Notice to Airmen (P-NOTAM), and is incorporated by reference in the amendment under 5 U.S.C. 552(a), 1 CFR part 51, and § 97.20 of Title 14 of the Code of Federal Regulations.

The large number of SIAPs, their complex nature, and the need for a

special format make their verbatim publication in the **Federal Register** expensive and impractical. Further, airmen do not use the regulatory text of the SIAPs, but refer to their graphic depiction on charts printed by publishers of aeronautical materials. Thus, the advantages of incorporation by reference are realized and publication of the complete description of each SIAP contained in FAA form documents is unnecessary. This amendment provides the affected CFR sections and specifies the types of SIAP and the corresponding effective dates. This amendment also identifies the airport and its location, the procedure and the amendment number.

The Rule

This amendment to 14 CFR part 97 is effective upon publication of each separate SIAP as amended in the transmittal. For safety and timeliness of change considerations, this amendment incorporates only specific changes contained for each SIAP as modified by FDC/P-NOTAMs.

The SIAPs, as modified by FDC P-NOTAM, and contained in this amendment are based on the criteria contained in the U.S. Standard for Terminal Instrument Procedures (TERPS). In developing these changes to SIAPs, the TERPS criteria were applied only to specific conditions existing at the affected airports. All SIAP amendments in this rule have been previously issued by the FAA in a FDC NOTAM as an emergency action of immediate flight safety relating directly to published aeronautical charts. The circumstances which created the need for all these SIAP amendments requires making them effective in less than 30 days.

Because of the close and immediate relationship between these SIAPs and safety in air commerce, I find that notice and public procedure before adopting these SIAPs are impracticable and contrary to the public interest and, where applicable, that good cause exists for making these SIAPs effective in less than 30 days.

Conclusion

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a “significant regulatory action” under Executive Order 12866; (2) is not a “significant rule” under DOT regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory

evaluation as the anticipated impact is so minimal. For the same reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 97

Air traffic control, Airports, Incorporation by reference, and Navigation (air).

Issued in Washington, DC on July 9, 2010.

John M. Allen,

Director, Flight Standards Service.

Adoption of the Amendment

■ Accordingly, pursuant to the authority delegated to me, Title 14, Code of Federal regulations, Part 97, 14 CFR part 97, is amended by amending Standard Instrument Approach Procedures, effective at 0901 UTC on the dates specified, as follows:

PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

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

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

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

§§ 97.23, 97.25, 97.27, 97.29, 97.31, 97.33, 97.35 [Amended]

By amending: § 97.23 VOR, VOR/DME, VOR or TACAN, and VOR/DME or TACAN; § 97.25 LOC, LOC/DME, LDA, LDA/DME, SDF, SDF/DME; § 97.27 NDB, NDB/DME; § 97.29 ILS, ILS/DME, MLS, MLS/DME, MLS/RNAV; § 97.31 RADAR SIAPs; § 97.33 RNAV SIAPs; and § 97.35 COPTER SIAPs, Identified as follows:

* * * *Effective Upon Publication*

AIRAC Date	State	City	Airport	FDC No.	FDC Date	Subject
26-Aug-10 ..	KS	HAYS	HAYS RGNL	0/0772	7/1/10	ILS OR LOC RWY 34, ORIG-D.
26-Aug-10 ..	KS	HAYS	HAYS RGNL	0/0773	7/1/10	VOR/DME RWY 34, AMDT 2E.
26-Aug-10 ..	KS	HAYS	HAYS RGNL	0/0774	7/1/10	VOR RWY 34, AMDT 5C.
26-Aug-10 ..	KS	HAYS	HAYS RGNL	0/0777	7/1/10	VOR RWY 16, AMDT 3C.
26-Aug-10 ..	AZ	CASA GRANDE	CASA GRANDE MUNI ..	0/3488	6/28/10	ILS/DME RWY 5, AMDT 6B.
26-Aug-10 ..	OK	HINTON	HINTON MUNI	0/3898	6/22/10	RNAV (GPS) RWY 17, AMDT 1.
26-Aug-10 ..	TX	BONHAM	JONES FIELD	0/4790	6/22/10	RNAV (GPS) RWY 17, AMDT 1.
26-Aug-10 ..	TX	BONHAM	JONES FIELD	0/4791	6/22/10	VOR/DME RWY 17, AMDT 1.
26-Aug-10 ..	TX	ORANGE	ORANGE COUNTY	0/4808	6/22/10	VOR/DME RWY 22, AMDT 2.
26-Aug-10 ..	IA	FORT DODGE	FORT DODGE RGNL ...	0/4810	6/22/10	ILS OR LOC RWY 6, AMDT 7A.
26-Aug-10 ..	TX	BEAUMONT	BEAUMONT MUNI	0/4814	7/6/10	VOR/DME RWY 31, AMDT 4B.
26-Aug-10 ..	TX	BEAUMONT	BEAUMONT MUNI	0/4815	7/6/10	VOR/DME RWY 13, AMDT 3B.
26-Aug-10 ..	TX	BEAUMONT/PORT AR- THUR.	SOUTHEAST TEXAS RGNL.	0/4819	7/6/10	VOR A, AMDT 6A.
26-Aug-10 ..	TX	BEAUMONT/PORT AR- THUR.	SOUTHEAST TEXAS RGNL.	0/4821	7/6/10	VOR/DME RWY 34, AMDT 7C.
26-Aug-10 ..	TX	BEAUMONT/PORT AR- THUR.	SOUTHEAST TEXAS RGNL.	0/4824	7/6/10	VOR C, AMDT 5A.
26-Aug-10 ..	TX	BEAUMONT/PORT AR- THUR.	SOUTHEAST TEXAS RGNL.	0/4825	7/6/10	VOR B, AMDT 6A.
26-Aug-10 ..	TX	BEAUMONT/PORT AR- THUR.	SOUTHEAST TEXAS RGNL.	0/4826	7/6/10	VOR/DME D, AMDT 2.
26-Aug-10 ..	TX	BEAUMONT/PORT AR- THUR.	SOUTHEAST TEXAS RGNL.	0/4827	7/6/10	VOR RWY 12, AMDT 9A.
26-Aug-10 ..	MI	CADILLAC	WEXFORD COUNTY	0/5052	6/22/10	NDB RWY 7, AMDT 2A.
26-Aug-10 ..	WY	POWELL	POWELL MUNI	0/6297	6/28/10	TAKEOFF MINIMUMS AND OB- STACLE DP, AMDT 1.

[FR Doc. 2010-17501 Filed 7-20-10; 8:45 am]

BILLING CODE 4910-13-P

CONSUMER PRODUCT SAFETY COMMISSION

16 CFR Part 1611

[CPSC Docket No. CPSC-2010-0079]

Third Party Testing for Certain Children's Products; Vinyl Plastic Film: Requirements for Accreditation of Third Party Conformity Assessment Bodies

AGENCY: Consumer Product Safety Commission.

ACTION: Notice of requirements.

SUMMARY: The Consumer Product Safety Commission (CPSC or Commission) is issuing a notice of requirements that provides the criteria and process for Commission acceptance of accreditation of third party conformity assessment bodies for testing pursuant to the CPSC regulations under the Flammable Fabrics Act relating to vinyl plastic film. The Commission is issuing this notice of requirements pursuant to the Consumer Product Safety Act (CPSA).

DATES: *Effective Date:* The requirements for accreditation of third party conformity assessment bodies to assess conformity with 16 CFR part 1611 are effective upon publication of this document in the **Federal Register**.¹

¹ The Commission voted 3-2 to publish this notice of requirements. Chairman Inez M.

Comments in response to this notice of requirements should be submitted by August 20, 2010. Comments should be captioned "Third Party Testing for Certain Children's Products; Vinyl Plastic Film: Requirements for Accreditation of Third Party Conformity Assessment Bodies."

ADDRESSES: You may submit comments, identified by Docket No. CPSC-2010-0079, by any of the following methods:

- *Electronic Submissions:* Submit electronic comments in the following way:
- *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the instructions for submitting comments.

Tenenbaum, Commissioner Nancy A. Nord, and Commissioner Anne Meagher Northup each issued a statement, and the statements can be found at <http://www.cpsc.gov/pr/statements.html>.

To ensure timely processing of comments, the Commission is no longer accepting comments submitted by electronic mail (e-mail) except through <http://www.regulations.gov>.

- **Written Submissions:** Submit written submissions in the following way:

Mail/Hand delivery/Courier (for paper, disk, or CD-ROM submissions) preferably in five copies, to: Office of the Secretary, U.S. Consumer Product Safety Commission, Room 820, 4330 East-West Highway, Bethesda, Maryland 20814; telephone (301) 504-7923.

Instructions: All submissions received must include the agency name and docket number for this notice. All comments received may be posted without change to <http://www.regulations.gov>, including any personal information provided. Do not submit confidential business information, trade secret information, or other sensitive or protected information (such as a Social Security Number) electronically; if furnished at all, such information should be submitted in writing.

Docket: For access to the docket to read background documents or comments received, go to <http://www.regulations.gov>.

FOR FURTHER INFORMATION CONTACT: Robert “Jay” Howell, Assistant Executive Director for Hazard Identification and Reduction, U.S. Consumer Product Safety Commission, 4330 East-West Highway, Bethesda, Maryland 20814; e-mail rhowell@cpsc.gov.

SUPPLEMENTARY INFORMATION:

I. Introduction

Section 14(a)(3)(B)(vi) of the CPSA, as added by section 102(a)(2) of the Consumer Product Safety Improvement Act of 2008 (CPSIA), Public Law 110-314, directs the CPSC to publish a notice of requirements for accreditation of third party conformity assessment bodies to assess children’s products for conformity with “other children’s product safety rules.” Section 14(f)(1) of the CPSA defines “children’s product safety rule” as “a consumer product safety rule under [the CPSA] or similar rule, regulation, standard, or ban under any other Act enforced by the Commission, including a rule declaring a consumer product to be a banned hazardous product or substance.” Under section 14(a)(3)(A) of the CPSA, each manufacturer (including the importer) or private labeler of products subject to those regulations must have products that are manufactured more than 90 days after the **Federal Register** publication date of a notice of the

requirements for accreditation, tested by a third party conformity assessment body accredited to do so, and must issue a certificate of compliance with the applicable regulations based on that testing. Section 14(a)(2) of the CPSA, as added by section 102(a)(2) of the CPSIA, requires that certification be based on testing of sufficient samples of the product, or samples that are identical in all material respects to the product. The Commission also emphasizes that, irrespective of certification, the product in question must comply with applicable CPSC requirements (*see, e.g.,* section 14(h) of the CPSA, as added by section 102(b) of the CPSIA).

The Commission also is recognizing limited circumstances in which it will accept certifications based on product testing conducted before the third party conformity assessment body is accepted as accredited by the CPSC. The details regarding those limited circumstances can be found in part IV of this document below.

This notice provides the criteria and process for Commission acceptance of accreditation of third party conformity assessment bodies for testing pursuant to 16 CFR part 1611, *Standard for the Flammability of Vinyl Plastic Film*, which sets a minimum standard for flammability of vinyl plastic film which are subject to the requirements of the Flammable Fabrics Act (15 U.S.C. 1191 *et seq.*) (FFA).

Section 3(a)(2) of the CPSA defines a children’s product as “a consumer product designed or intended primarily for children 12 years of age or younger.” Although vinyl plastic film used in wearing apparel or fabric is often for general use (that is, it is produced for general consumption rather than being produced specifically for use by children), some vinyl plastic film wearing apparel or fabric is “designed or intended primarily for children 12 years of age or younger.” (For convenience, we will refer to vinyl plastic film products designed or intended primarily for use in wearing apparel or fabric for children 12 years of age or younger as “youth vinyl plastic film products.”) Youth vinyl plastic film products are subject to the third party testing and certification requirements in section 14(a)(2) of the CPSA. Accordingly, this notice of requirements addresses the accreditation of conformity assessment bodies to test youth vinyl plastic film for conformity with 16 CFR part 1611.

Although section 14(a)(3)(B)(vi) of the CPSA directs the CPSC to publish a notice of requirements for accreditation of third party conformity assessment bodies to assess conformity with “all other children’s product safety rules,”

this notice of requirements is limited to the regulations identified immediately above.

The CPSC also recognizes that section 14(a)(3)(B)(vi) of the CPSA is captioned as “All Other Children’s Product Safety Rules,” but the body of the statutory requirement refers only to “other children’s product safety rules.” Nevertheless, section 14(a)(3)(B)(vi) of the CPSA could be construed as requiring a notice of requirements for “all” other children’s product safety rules, rather than a notice of requirements for “some” or “certain” children’s product safety rules. However, whether a particular rule represents a “children’s product safety rule” may be subject to interpretation, and the Commission staff is continuing to evaluate which rules, regulations, standards, or bans are “children’s product safety rules.” The CPSC intends to issue additional notices of requirements for other rules which the Commission determines to be “children’s product safety rules.”

This notice of requirements applies to all third party conformity assessment bodies as described in section 14(f)(2) of the CPSA. Generally speaking, such third party conformity assessment bodies are: (1) Third party conformity assessment bodies that are not owned, managed, or controlled by a manufacturer or private labeler of a children’s product to be tested by the third party conformity assessment body for certification purposes; (2) “firewalled” conformity assessment bodies (those that are owned, managed, or controlled by a manufacturer or private labeler of a children’s product to be tested by the third party conformity assessment body for certification purposes and that seek accreditation under the additional statutory criteria for “firewalled” conformity assessment bodies); and (3) third party conformity assessment bodies owned or controlled, in whole or in part, by a government.

The Commission requires baseline accreditation of each category of third party conformity assessment body to the International Organization for Standardization (ISO)/International Electrotechnical Commission (IEC) Standard 17025:2005, “General Requirements for the Competence of Testing and Calibration Laboratories.” The accreditation must be by an accreditation body that is a signatory to the International Laboratory Accreditation Cooperation-Mutual Recognition Arrangement (ILAC-MRA), and the scope of the accreditation must include testing in accordance with the regulations identified earlier in part I of this document for which the third party

conformity assessment body seeks to be accredited.

(A description of the history and content of the ILAC-MRA approach and of the requirements of the ISO/IEC 17025:2005 laboratory accreditation standard is provided in the CPSC staff briefing memorandum "Third Party Conformity Assessment Body Accreditation Requirements for Testing Compliance with 16 CFR Part 1501 (Small Parts Regulations)," dated November 2008 and available on the CPSC's Web site at <http://www.cpsc.gov/library/foia/foia09/brief/smallparts.pdf>.)

The Commission has established an electronic accreditation registration and listing system that can be accessed via its Web site at <http://www.cpsc.gov/ABOUT/Cpsia/labaccred.html>.

The Commission stayed the enforcement of certain provisions of section 14(a) of the CPSA in a notice published in the **Federal Register** on February 9, 2009 (74 FR 6396); the stay applied to testing and certification of various products, including vinyl plastic film. On December 28, 2009, the Commission published a notice in the **Federal Register** (74 FR 68588) revising the terms of the stay. One section of the December 28, 2009, notice addressed "Consumer Products or Children's Products Where the Commission Is Continuing the Stay of Enforcement Until Further Notice," due to factors such as pending rulemaking proceedings affecting the product or the absence of a notice of requirements. The vinyl plastic film testing and certification requirements were included in that section of the December 28, 2009, notice. As the factor preventing the stay from being lifted in the December 28, 2009, notice with regard to testing and certifications of vinyl plastic film was the absence of a notice of requirements, publication of this notice has the effect of lifting the stay with regard to 16 CFR part 1611.

The Commission noted in the December 28, 2009, notice that the stay of enforcement did not extend to guaranties under the FFA. The manufacturer or supplier of vinyl plastic film may issue a guaranty, based on reasonable and representative testing, that the vinyl plastic film complies with FFA standards. The holder of a valid guaranty is not subject to criminal prosecution under section 7 of the FFA (penalties) for a violation of section 3 of the FFA (prohibited transactions).

The reasonable and representative tests sufficient for the issuance of an FFA guaranty are generally performed by the manufacturer; those tests are sufficient for the issuance of a general conformity certification for

nonchildren's products under section 14(a)(1) of the CPSA. However, because section 14(a)(2) of the CPSA requires children's products subject to a children's product safety rule to be tested by an accredited third party conformity assessment body, reasonable and representative tests sufficient for the issuance of an FFA guaranty which are performed by a manufacturer are not sufficient for the issuance of a certification of compliance with 16 CFR part 1611 for youth vinyl plastic film products (unless the manufacturer's facility is a CPSC-accredited firewalled conformity assessment body).

This notice of requirements is effective on July 21, 2010. Further, as the publication of this notice of requirements effectively lifts the stay of enforcement with regard to testing and certifications related to 16 CFR part 1611, each manufacturer of a children's product subject to 16 CFR part 1611 must have any such product manufactured after October 19, 2010 tested by a third party conformity assessment body accredited to do so and must issue a certificate of compliance with 16 CFR part 1611 based on that testing. (Under the CPSA, the term "manufacturer" includes anyone who manufactures or imports a product.)

This notice of requirements is exempt from the notice and comment rulemaking requirements of the Administrative Procedure Act, 5 U.S.C. 553 (see section 14(a)(3)(G) of the CPSA, as added by section 102(a)(2) of the CPSIA (15 U.S.C. 2063(a)(3)(G)).

II. Accreditation Requirements

A. Baseline Third Party Conformity Assessment Body Accreditation Requirements

For a third party conformity assessment body to be accredited to test children's products for conformity with the test methods in the regulations identified earlier in part I of this document, it must be accredited by an ILAC-MRA signatory accrediting body, and the accreditation must be registered with, and accepted by, the Commission. A listing of ILAC-MRA signatory accrediting bodies is available on the Internet at <http://ilac.org/membersbycategory.html>. The accreditation must be to ISO Standard ISO/IEC 17025:2005, "General Requirements for the Competence of Testing and Calibration Laboratories," and the scope of the accreditation must expressly include testing to the regulations in 16 CFR part 1611, *Standard for the Flammability of Vinyl Plastic Film*. A true copy, in English, of the accreditation and scope documents

demonstrating compliance with the requirements of this notice must be registered with the Commission electronically. The additional requirements for accreditation of firewalled and governmental conformity assessment bodies are described in parts II.B and II.C of this document below.

The Commission will maintain on its Web site an up-to-date listing of third party conformity assessment bodies whose accreditations it has accepted and the scope of each accreditation. Subject to the limited provisions for acceptance of "retrospective" testing noted in part IV below, once the Commission adds a third party conformity assessment body to that list, the third party conformity assessment body may commence testing of children's products to support the manufacturer's certification that the product complies with the regulations identified earlier in part I of this document.

B. Additional Accreditation Requirements for Firewalled Conformity Assessment Bodies

In addition to the baseline accreditation requirements in part II.A of this document above, firewalled conformity assessment bodies seeking accredited status must submit to the Commission copies, in English, of their training documents showing how employees are trained to notify the Commission immediately and confidentially of any attempt by the manufacturer, private labeler, or other interested party to hide or exert undue influence over the third party conformity assessment body's test results. This additional requirement applies to any third party conformity assessment body in which a manufacturer or private labeler of a children's product to be tested by the third party conformity assessment body owns an interest of ten percent or more. While the Commission is not addressing common parentage of a third party conformity assessment body and a children's product manufacturer at this time, it will be vigilant to see if this issue needs to be addressed in the future.

As required by section 14(f)(2)(D) of the CPSA, the Commission must formally accept, by order, the accreditation application of a third party conformity assessment body before the third party conformity assessment body can become an accredited firewalled conformity assessment body.

C. Additional Accreditation Requirements for Governmental Conformity Assessment Bodies

In addition to the baseline accreditation requirements of part II.A of this document above, the CPSC permits accreditation of a third party conformity assessment body owned or controlled, in whole or in part, by a government if:

- To the extent practicable, manufacturers or private labelers located in any nation are permitted to choose conformity assessment bodies that are not owned or controlled by the government of that nation;
- The third party conformity assessment body's testing results are not subject to undue influence by any other person, including another governmental entity;
- The third party conformity assessment body is not accorded more favorable treatment than other third party conformity assessment bodies in the same nation who have been accredited;
- The third party conformity assessment body's testing results are accorded no greater weight by other governmental authorities than those of other accredited third party conformity assessment bodies; and
- The third party conformity assessment body does not exercise undue influence over other governmental authorities on matters affecting its operations or on decisions by other governmental authorities controlling distribution of products based on outcomes of the third party conformity assessment body's conformity assessments.

The Commission will accept the accreditation of a governmental third party conformity assessment body if it meets the baseline accreditation requirements of part II.A of this document above and meets the additional conditions stated here. To obtain this assurance, CPSC staff will engage the governmental entities relevant to the accreditation request.

III. How does a third party conformity assessment body apply for acceptance of its accreditation?

The Commission has established an electronic accreditation acceptance and registration system accessed via the Commission's Internet site at <http://www.cpsc.gov/about/cpsia/labaccred.html>. The applicant provides, in English, basic identifying information concerning its location, the type of accreditation it is seeking, and electronic copies of its ILAC-MRA accreditation certificate and scope

statement, and firewalled third party conformity assessment body training document(s), if relevant.

Commission staff will review the submission for accuracy and completeness. In the case of baseline third party conformity assessment bodies and government-owned or government-operated conformity assessment bodies, when that review and any necessary discussions with the applicant are satisfactorily completed, the third party conformity assessment body in question is added to the CPSC's list of accredited third party conformity assessment bodies at <http://www.cpsc.gov/about/cpsia/labaccred.html>. In the case of a firewalled conformity assessment body seeking accredited status, when the staff's review is complete, the staff transmits its recommendation on accreditation to the Commission for consideration. (A third party conformity assessment body that may ultimately seek acceptance as a firewalled third party conformity assessment body also can initially request acceptance as a third party conformity assessment body accredited for testing of children's products other than those of its owners.) If the Commission accepts a staff recommendation to accredit a firewalled conformity assessment body, the firewalled conformity assessment body will then be added to the CPSC's list of accredited third party conformity assessment bodies. In each case, the Commission will notify the third party conformity assessment body electronically of acceptance of its accreditation. All information to support an accreditation acceptance request must be provided in the English language.

Subject to the limited provisions for acceptance of "retrospective" testing noted in part IV of this document below, once the Commission adds a third party conformity assessment body to the list, the third party conformity assessment body may then begin testing of children's products to support certification of compliance with the regulations identified earlier in part I of this document for which it has been accredited.

IV. Limited Acceptance of Children's Product Certifications Based on Third Party Conformity Assessment Body Testing Prior to the Commission's Acceptance of Accreditation

The Commission will accept a certificate of compliance with the standard for vinyl plastic film included in 16 CFR part 1611, *Standard for the Flammability of Vinyl Plastic Film*, based on testing performed by an

accredited third party conformity assessment body (including a government-owned or -controlled conformity assessment body, and a firewalled conformity assessment body) prior to the Commission's acceptance of its accreditation if:

- At the time of product testing, the product was tested by a third party conformity assessment body that was ISO/IEC 17025 accredited by an ILAC-MRA member at the time of the test. For firewalled conformity assessment bodies, the firewalled conformity assessment body must be one that the Commission accredited by order at or before the time the product was tested, even though the order will not have included the test methods in the regulations specified in this notice. If the third party conformity assessment body has not been accredited by a Commission order as a firewalled conformity assessment body, the Commission will not accept a certificate of compliance based on testing performed by the third party conformity assessment body before it is accredited, by Commission order, as a firewalled conformity assessment body;
- The third party conformity assessment body's application for testing using the test methods in the regulations identified in this notice is accepted by the CPSC on or before September 20, 2010;
- The product was tested on or after July 21, 2010 with respect to the regulations identified in this notice;
- The accreditation scope in effect for the third party conformity assessment body at the time of testing expressly included testing to the regulations identified earlier in part I of this document;
- The test results show compliance with the applicable current standards and/or regulations; and
- The third party conformity assessment body's accreditation, including inclusion in its scope the standards described in part I of this notice, remains in effect through the effective date for mandatory third party testing and manufacturer certification for conformity with 16 CFR part 1611.

Dated: July 15, 2010.

Todd A. Stevenson,

Secretary, Consumer Product Safety Commission.

[FR Doc. 2010-17722 Filed 7-20-10; 8:45 am]

BILLING CODE 6355-01-P

CONSUMER PRODUCT SAFETY COMMISSION**16 CFR Parts 1630 and 1631****[CPSC Docket No. CPSC–2010–0078]****Third Party Testing for Certain Children's Products; Carpets and Rugs: Requirements for Accreditation of Third Party Conformity Assessment Bodies****AGENCY:** Consumer Product Safety Commission.**ACTION:** Notice of Requirements.

SUMMARY: The Consumer Product Safety Commission (CPSC or Commission) is issuing a notice of requirements that provides the criteria and process for Commission acceptance of accreditation of third party conformity assessment bodies for testing pursuant to the CPSC regulations relating to carpets and rugs. The Commission is issuing this notice of requirements pursuant to the Consumer Product Safety Act (CPSA).

DATES: *Effective Date:* The requirements for accreditation of third party conformity assessment bodies to assess conformity with 16 CFR parts 1630 and/or 1631 are effective upon publication of this document in the **Federal Register**.¹

Comments in response to this notice of requirements should be submitted by August 20, 2010. Comments on this notice should be captioned "Third Party Testing for Certain Children's Products; Carpets and Rugs: Requirements for Accreditation of Third Party Conformity Assessment Bodies."

ADDRESSES: You may submit comments, identified by Docket No. CPSC–2010–0078 by any of the following methods:

Electronic Submissions: Submit electronic comments in the following way:

Federal eRulemaking Portal: <http://www.regulations.gov>. Follow the instructions for submitting comments. To ensure timely processing of comments, the Commission is no longer accepting comments submitted by electronic mail (e-mail) except through <http://www.regulations.gov>.

Written Submissions: Submit written submissions in the following way:

Mail/Hand delivery/Courier (for paper, disk, or CD-ROM submissions) preferably in five copies, to: Office of the Secretary, U.S. Consumer Product Safety Commission, Room 820, 4330

East-West Highway, Bethesda, Maryland 20814; telephone (301) 504–7923.

Instructions: All submissions received must include the agency name and docket number for this notice. All comments received may be posted without change to <http://www.regulations.gov>, including any personal information provided. Do not submit confidential business information, trade secret information, or other sensitive or protected information (such as a Social Security Number) electronically; if furnished at all, such information should be submitted in writing.

Docket: For access to the docket to read background documents or comments received, go to <http://www.regulations.gov>.

FOR FURTHER INFORMATION CONTACT:

Robert "Jay" Howell, Assistant Executive Director for Hazard Identification and Reduction, U.S. Consumer Product Safety Commission, 4330 East-West Highway, Bethesda, Maryland 20814; e-mail rhowell@cpsc.gov.

SUPPLEMENTARY INFORMATION:**I. Introduction**

Section 14(a)(3)(B)(vi) of the CPSA, as added by section 102(a)(2) of the Consumer Product Safety Improvement Act of 2008 (CPSIA), Public Law 110–314, directs the CPSC to publish a notice of requirements for accreditation of third party conformity assessment bodies to assess children's products for conformity with "other children's product safety rules." Section 14(f)(1) of the CPSA defines "children's product safety rule" as "a consumer product safety rule under [the CPSA] or similar rule, regulation, standard, or ban under any other Act enforced by the Commission, including a rule declaring a consumer product to be a banned hazardous product or substance." Under section 14(a)(3)(A) of the CPSA, each manufacturer (including the importer) or private labeler of products subject to those regulations must have products that are manufactured more than 90 days after the **Federal Register** publication date of a notice of the requirements for accreditation, tested by a third party conformity assessment body accredited to do so, and must issue a certificate of compliance with the applicable regulations based on that testing. Section 14(a)(2) of the CPSA, as added by section 102(a)(2) of the CPSIA, requires that certification be based on testing of sufficient samples of the product, or samples that are identical in all material respects to the product. The Commission also emphasizes that, irrespective of certification, the product

in question must comply with applicable CPSC requirements (*see, e.g.*, section 14(h) of the CPSA, as added by section 102(b) of the CPSIA).

The Commission also is recognizing limited circumstances in which it will accept certifications based on product testing conducted before the third party conformity assessment body is accepted as accredited by the CPSC. The details regarding those limited circumstances can be found in part IV of this document below.

This notice provides the criteria and process for Commission acceptance of accreditation of third party conformity assessment bodies for testing pursuant to the following regulations:

- 16 CFR part 1630, *Standard for the Surface Flammability of Carpets and Rugs* (FF 1–70).

- 16 CFR part 1631, *Standard for the Surface Flammability of Small Carpets and Rugs* (FF 2–70).

Section 3(a)(2) of the CPSA defines a children's product as "a consumer product designed or intended primarily for children 12 years of age or younger." Although most carpets and rugs are general use products because they are produced for general consumption rather than being produced specifically for use by children, some carpets and rugs are "designed or intended primarily for children 12 years of age or younger." (For convenience, we will refer to carpets and rugs designed or intended primarily for children 12 years of age or younger as "youth carpets and rugs.") Youth carpets and rugs are subject to the third party testing and certification requirements in section 14(a)(2) of the CPSA. Accordingly, this notice of requirements addresses the accreditation of conformity assessment bodies to test youth carpets and rugs for conformity with 16 CFR parts 1630 and/or 1631.

Although section 14(a)(3)(B)(vi) of the CPSA directs the CPSC to publish a notice of requirements for accreditation of third party conformity assessment bodies to assess conformity with "all other children's product safety rules," this notice of requirements is limited to the regulations identified immediately above.

The CPSC also recognizes that section 14(a)(3)(B)(vi) of the CPSA is captioned as "All Other Children's Product Safety Rules," but the body of the statutory requirement refers only to "other children's product safety rules." Nevertheless, section 14(a)(3)(B)(vi) of the CPSA could be construed as requiring a notice of requirements for "all" other children's product safety rules, rather than a notice of requirements for "some" or "certain"

¹ The Commission voted 3–2 to publish this notice of requirements. Chairman Inez M. Tenenbaum, Commissioner Nancy A. Nord, and Commissioner Anne Meagher Northup each issued a statement, and the statements can be found at <http://www.cpsc.gov/pr/statements.html>.

children's product safety rules. However, whether a particular rule represents a "children's product safety rule" may be subject to interpretation, and the Commission staff is continuing to evaluate which rules, regulations, standards, or bans are "children's product safety rules." The CPSC intends to issue additional notices of requirements for other rules which the Commission determines to be "children's product safety rules."

This notice of requirements applies to all third party conformity assessment bodies as described in section 14(f)(2) of the CPSA. Generally speaking, such third party conformity assessment bodies are: (1) Third party conformity assessment bodies that are not owned, managed, or controlled by a manufacturer or private labeler of a children's product to be tested by the third party conformity assessment body for certification purposes; (2) "firewalled" conformity assessment bodies (those that are owned, managed, or controlled by a manufacturer or private labeler of a children's product to be tested by the third party conformity assessment body for certification purposes and that seek accreditation under the additional statutory criteria for "firewalled" conformity assessment bodies); and (3) third party conformity assessment bodies owned or controlled, in whole or in part, by a government.

The Commission requires baseline accreditation of each category of third party conformity assessment body to the International Organization for Standardization (ISO)/International Electrotechnical Commission (IEC) Standard 17025:2005, "General Requirements for the Competence of Testing and Calibration Laboratories." The accreditation must be by an accreditation body that is a signatory to the International Laboratory Accreditation Cooperation-Mutual Recognition Arrangement (ILAC-MRA), and the scope of the accreditation must include testing in accordance with the regulations identified earlier in part I of this document for which the third party conformity assessment body seeks to be accredited.

(A description of the history and content of the ILAC-MRA approach and of the requirements of the ISO/IEC 17025:2005 laboratory accreditation standard is provided in the CPSC staff briefing memorandum "Third Party Conformity Assessment Body Accreditation Requirements for Testing Compliance with 16 CFR Part 1501 (Small Parts Regulations)," dated November 2008 and available on the CPSC's Web site at <http://www.cpsc.gov/library/foia/foia09/brief/smallparts.pdf>.)

The Commission has established an electronic accreditation registration and listing system that can be accessed via its Web site at <http://www.cpsc.gov/ABOUT/Cpsia/labaccred.html>.

The Commission stayed the enforcement of certain provisions of section 14(a) of the CPSA in a notice published in the **Federal Register** on February 9, 2009 (74 FR 6396); the stay applied to testing and certification of various products, including carpets and rugs. On December 28, 2009, the Commission published a notice in the **Federal Register** (74 FR 68588) revising the terms of the stay. One section of the December 28, 2009, notice addressed "Consumer Products or Children's Products Where the Commission Is Continuing the Stay of Enforcement Until Further Notice," due to factors such as pending rulemaking proceedings affecting the product or the absence of a notice of requirements. The carpets and rugs testing and certification requirements were included in that section of the December 28, 2009, notice. As the factor preventing the stay from being lifted in the December 28, 2009, notice with regard to testing and certifications of carpets and rugs was the absence of a notice of requirements, publication of this notice has the effect of lifting the stay with regard to 16 CFR parts 1630 and/or 1631.

The Commission noted in the December 28, 2009, notice that the stay of enforcement did not extend to guaranties under the Flammable Fabrics Act (15 U.S.C. 1191 *et seq.*) (FFA). The manufacturer or supplier of a carpet or rug may issue a guaranty, based on reasonable and representative tests, that the carpet or rug complies with FFA standards. The holder of a valid guaranty is not subject to criminal prosecution under section 7 of the FFA (penalties) for a violation of section 3 of the FFA (prohibited transactions).

The reasonable and representative tests sufficient for the issuance of an FFA guaranty are generally performed by the manufacturer; those tests are sufficient for the issuance of a general conformity certification for nonchildren's products under section 14(a)(1) of the CPSA. However, because section 14(a)(2) of the CPSA requires children's products subject to a children's product safety rule to be tested by an accredited third party conformity assessment body, reasonable and representative tests sufficient for the issuance of an FFA guaranty which are performed by a manufacturer are not sufficient for the issuance of a certification of compliance with 16 CFR part 1630 and/or part 1631 for youth carpets and rugs (unless the

manufacturer's facility is a CPSC-accredited firewalled conformity assessment body).

This notice of requirements is effective on July 21, 2010. Further, as the publication of this notice of requirements effectively lifts the stay of enforcement with regard to testing and certifications related to 16 CFR parts 1630 and/or 1631, each manufacturer (including the importer) or private labeler of a children's product subject to 16 CFR parts 1630 and/or 1631 must have any such product manufactured after October 19, 2010 tested by a third party conformity assessment body accredited to do so and must issue a certificate of compliance with 16 CFR parts 1630 and/or 1631 based on that testing.

This notice of requirements is exempt from the notice and comment rulemaking requirements of the Administrative Procedure Act, 5 U.S.C. 553 (*see* section 14(a)(3)(G) of the CPSA, as added by section 102(a)(2) of the CPSIA (15 U.S.C. 2063(a)(3)(G)).

II. Accreditation Requirements

A. Baseline Third Party Conformity Assessment Body Accreditation Requirements

For a third party conformity assessment body to be accredited to test children's products for conformity with the test methods in the regulations identified earlier in part I of this document, it must be accredited by an ILAC-MRA signatory accrediting body, and the accreditation must be registered with, and accepted by, the Commission. A listing of ILAC-MRA signatory accrediting bodies is available on the Internet at <http://ilac.org/membersbycategory.html>. The accreditation must be to ISO Standard ISO/IEC 17025:2005, "General Requirements for the Competence of Testing and Calibration Laboratories," and the scope of the accreditation must expressly include testing to the regulations in 16 CFR part 1630, *Standard for the Surface Flammability of Carpets and Rugs (FF 1-70)*, and/or 16 CFR part 1631, *Standard for the Surface Flammability of Small Carpets and Rugs (FF 2-70)*. A true copy, in English, of the accreditation and scope documents demonstrating compliance with the requirements of this notice must be registered with the Commission electronically. The additional requirements for accreditation of firewalled and governmental conformity assessment bodies are described in parts II.B and II.C of this document below.

The Commission will maintain on its Web site an up-to-date listing of third

party conformity assessment bodies whose accreditations it has accepted and the scope of each accreditation. Subject to the limited provisions for acceptance of “retrospective” testing noted in part IV below, once the Commission adds a third party conformity assessment body to that list, the third party conformity assessment body may commence testing of children’s products to support certification by the manufacturer or private labeler of compliance with the regulations identified earlier in part I of this document.

B. Additional Accreditation Requirements for Firewalled Conformity Assessment Bodies

In addition to the baseline accreditation requirements in part II.A of this document above, firewalled conformity assessment bodies seeking accredited status must submit to the Commission copies, in English, of their training documents showing how employees are trained to notify the Commission immediately and confidentially of any attempt by the manufacturer, private labeler, or other interested party to hide or exert undue influence over the third party conformity assessment body’s test results. This additional requirement applies to any third party conformity assessment body in which a manufacturer or private labeler of a children’s product to be tested by the third party conformity assessment body owns an interest of ten percent or more. While the Commission is not addressing common parentage of a third party conformity assessment body and a children’s product manufacturer at this time, it will be vigilant to see if this issue needs to be addressed in the future.

As required by section 14(f)(2)(D) of the CPSA, the Commission must formally accept, by order, the accreditation application of a third party conformity assessment body before the third party conformity assessment body can become an accredited firewalled conformity assessment body.

C. Additional Accreditation Requirements for Governmental Conformity Assessment Bodies

In addition to the baseline accreditation requirements of part II.A of this document above, the CPSIA permits accreditation of a third party conformity assessment body owned or controlled, in whole or in part, by a government if:

- To the extent practicable, manufacturers or private labelers located in any nation are permitted to

choose conformity assessment bodies that are not owned or controlled by the government of that nation;

- The third party conformity assessment body’s testing results are not subject to undue influence by any other person, including another governmental entity;
- The third party conformity assessment body is not accorded more favorable treatment than other third party conformity assessment bodies in the same nation who have been accredited;
- The third party conformity assessment body’s testing results are accorded no greater weight by other governmental authorities than those of other accredited third party conformity assessment bodies; and
- The third party conformity assessment body does not exercise undue influence over other governmental authorities on matters affecting its operations or on decisions by other governmental authorities controlling distribution of products based on outcomes of the third party conformity assessment body’s conformity assessments.

The Commission will accept the accreditation of a governmental third party conformity assessment body if it meets the baseline accreditation requirements of part II.A of this document above and meets the additional conditions stated here. To obtain this assurance, CPSC staff will engage the governmental entities relevant to the accreditation request.

III. How does a third party conformity assessment body apply for acceptance of its accreditation?

The Commission has established an electronic accreditation acceptance and registration system accessed via the Commission’s Internet site at <http://www.cpsc.gov/about/cpsia/labaccred.html>. The applicant provides, in English, basic identifying information concerning its location, the type of accreditation it is seeking, and electronic copies of its ILAC–MRA accreditation certificate and scope statement, and firewalled third party conformity assessment body training document(s), if relevant.

Commission staff will review the submission for accuracy and completeness. In the case of baseline third party conformity assessment bodies and government-owned or government-operated conformity assessment bodies, when that review and any necessary discussions with the applicant are satisfactorily completed, the third party conformity assessment body in question is added to the CPSC’s

list of accredited third party conformity assessment bodies at <http://www.cpsc.gov/about/cpsia/labaccred.html>. In the case of a firewalled conformity assessment body seeking accredited status, when the staff’s review is complete, the staff transmits its recommendation on accreditation to the Commission for consideration. (A third party conformity assessment body that may ultimately seek acceptance as a firewalled third party conformity assessment body also can initially request acceptance as a third party conformity assessment body accredited for testing of children’s products other than those of its owners.) If the Commission accepts a staff recommendation to accredit a firewalled conformity assessment body, the firewalled conformity assessment body will then be added to the CPSC’s list of accredited third party conformity assessment bodies. In each case, the Commission will notify the third party conformity assessment body electronically of acceptance of its accreditation. All information to support an accreditation acceptance request must be provided in the English language.

Subject to the limited provisions for acceptance of “retrospective” testing noted in part IV of this document below, once the Commission adds a third party conformity assessment body to the list, the third party conformity assessment body may then begin testing of children’s products to support certification of compliance with the regulations identified earlier in part I of this document for which it has been accredited.

IV. Limited Acceptance of Children’s Product Certifications Based on Third Party Conformity Assessment Body Testing Prior to the Commission’s Acceptance of Accreditation

The Commission will accept a certificate of compliance with the standards for carpets and rugs included in 16 CFR part 1630, *Standard for the Surface Flammability of Carpets and Rugs (FF 1–70)*, and/or 16 CFR part 1631, *Standard for the Surface Flammability of Small Carpets and Rugs (FF 2–70)*, based on testing performed by an accredited third party conformity assessment body (including a government-owned or -controlled conformity assessment body, and a firewalled conformity assessment body) prior to the Commission’s acceptance of its accreditation if:

- At the time of product testing, the product was tested by a third party conformity assessment body that was ISO/IEC 17025 accredited by an ILAC–

MRA member at the time of the test. For firewalled conformity assessment bodies, the firewalled conformity assessment body must be one that the Commission accredited by order at or before the time the product was tested, even though the order will not have included the test methods in the regulations specified in this notice. If the third party conformity assessment body has not been accredited by a Commission order as a firewalled conformity assessment body, the Commission will not accept a certificate of compliance based on testing performed by the third party conformity assessment body before it is accredited, by Commission order, as a firewalled conformity assessment body;

- The third party conformity assessment body's application for testing using the test methods in the regulations identified in this notice is accepted by the CPSC on or before September 20, 2010;
- The product was tested on or after July 21, 2010 with respect to the regulations identified in this notice;
- The accreditation scope in effect for the third party conformity assessment body at the time of testing expressly included testing to the regulations identified earlier in part I of this document;
- The test results show compliance with the applicable current standards and/or regulations; and
- The third party conformity assessment body's accreditation, including inclusion in its scope the standards described in part I of this notice, remains in effect through the effective date for mandatory third party testing and manufacturer/private labeler certification for conformity with 16 CFR parts 1630 and/or 1631.

Dated: July 15, 2010.

Todd A. Stevenson,
Secretary, Consumer Product Safety Commission.

[FR Doc. 2010-17724 Filed 7-20-10; 8:45 am]

BILLING CODE 6355-01-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[EPA-HQ-OPP-2009-0692; FRL-8830-6]

Poly(oxy-1,2-ethanediyl), α -isotridecyl- ω -methoxy; 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 poly(oxy-1,2-ethanediyl), α -isotridecyl- ω -methoxy (CAS Reg. No. 345642-79-7) when used as an inert ingredient (surfactant) at a maximum concentration of 10% in pesticide formulations under 40 CFR 180.920 on growing crops only. Bayer CropScience submitted a petition to EPA under the Federal Food, Drug, and Cosmetic Act (FFDCA), requesting establishment of an exemption from the requirement of a tolerance. This regulation eliminates the need to establish a maximum permissible level for residues of poly(oxy-1,2-ethanediyl), α -isotridecyl- ω -methoxy.

DATES: This regulation is effective July 21, 2010. Objections and requests for hearings must be received on or before September 20, 2010, 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-2009-0692. 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: Deirdre Sunderland, Registration Division (7505P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460-0001; telephone number: (703) 603-0851; e-mail address: sunderland.deirdre@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. How Can I Get Electronic Access to Other Related Information?

You may access a frequently updated electronic version of 40 CFR part 180 through the Government Printing Office's e-CFR cite at <http://www.gpoaccess.gov/ecfr>. To access the OPPTS Harmonized Test Guidelines referenced in this document electronically, please go to <http://www.epa.gov/oppts> and select "Test Methods and Guidelines."

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. The EPA procedural regulations which govern the submission of objections and requests for hearings appear in 40 CFR part 178. 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-2009-0692 in the subject line on the first page of your submission. All objections and requests for a hearing must be in writing, and must be received by the Hearing Clerk on or before September 20, 2010. Addresses for mail and hand delivery of objections and hearing requests are provided in 40 CFR 178.25(b).

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 your copies, identified by docket ID number EPA-HQ-OPP-2009-0692, 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. Petition for Exemption

In the **Federal Register** of January 6, 2010 (75 FR 864) (FRL-8801-5), EPA issued a notice pursuant to section 408 of FFDCA, 21 U.S.C. 346a, announcing the filing of a pesticide petition (PP 9E7580) by Bayer CropScience, 2 T.X. Alexander Dr., P.O. Box 12014, Research Triangle Park, NC 27709. The petition requested that 40 CFR 180.920 be amended by establishing an exemption from the requirement of a tolerance for residues of poly(oxy-1,2-ethanediyl), α -isotridecyl- ω -methoxy (CAS No. 345642-79-7) when used as an inert ingredient (surfactant) in pesticide formulations applied pre-harvest to all crops without limitation. That notice referenced a summary of the petition prepared by Bayer CropScience, the petitioner, which is available in the docket, <http://www.regulations.gov>. There were no comments received in response to the notice of filing. Based upon review of the data supporting the petition, EPA has limited the amount in formulation to 10%. This limitation is based on the Agency's risk assessment which can be found at <http://www.regulations.gov> in document "Decision Document for Petition Number 9E7580; Poly(oxy-1,2-ethanediyl), α -isotridecyl- ω -methoxy (CAS Reg. No. 345642-79-7)" in docket ID number EPA-HQ-OPP-2009-0692.

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(c)(2)(A)(i) of FFDCA allows EPA to establish an exemption from the requirement for 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 establishes exemptions from the requirement of a tolerance only in those cases where it can be clearly demonstrated that the risks from aggregate exposure to pesticide chemical residues under reasonably foreseeable circumstances will pose no appreciable risks to human health. In order to determine the risks from aggregate exposure to pesticide inert ingredients, the Agency considers the toxicity of the inert in conjunction with possible exposure to residues of the inert ingredient through food, drinking water, and through other exposures that

occur as a result of pesticide use in residential settings. If EPA is able to determine that a finite tolerance is not necessary to ensure that there is a reasonable certainty that no harm will result from aggregate exposure to the inert ingredient, an exemption from the requirement of a tolerance may be established.

Consistent with section 408(c)(2)(A) of FFDCA, and the factors specified in FFDCA section 408(c)(2)(B), 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 poly(oxy-1,2-ethanediyl), α -isotridecyl- ω -methoxy including exposure resulting from the exemption established by this action. EPA's assessment of exposures and risks associated with poly(oxy-1,2-ethanediyl), α -isotridecyl- ω -methoxy follows.

A. Toxicological Profile

EPA has evaluated the available toxicity data and considered their 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. Specific information on the studies received and the nature of the adverse effects caused by poly(oxy-1,2-ethanediyl), α -isotridecyl- ω -methoxy as well as the no-observed-adverse-effect-level (NOAEL) and the lowest-observed-adverse-effect-level (LOAEL) from the toxicity studies are discussed in this unit.

The available toxicity data include an acute toxicity battery, a combined repeated dose toxicity study with the reproduction/developmental toxicity screening test (OPPTS Harmonized Test Guideline 870.3650), and two mutagenicity studies (OPPTS Harmonized Test Guideline 870.5100). In addition, sufficient toxicity data are available on the metabolite. Acute studies (OPPTS Harmonized Test Guidelines 870.1100 and 870.1200 (acute inhalation study not provided)) showed low acute toxicity (Toxicity Category III) with an oral LD₅₀ >2000 milligrams/kilogram (mg/kg) and acute dermal LD₅₀ >2000 mg/kg. Irritation studies (OPPTS Harmonized Test Guidelines 870.2400 and 870.2500) on rabbits revealed slight skin irritation (Toxicity Category IV) and severe eye irritation (Toxicity Category II). In addition, a skin sensitization study (OPPTS Harmonized Test Guidelines

870.2600) in guinea pigs showed skin sensitization when exposed to poly(oxy-1,2-ethanediyl), α -isotridecyl- ω -methoxy.

In an OPPTS Harmonized Test Guideline 870.3650 poly(oxy-1,2-ethanediyl), α -isotridecyl- ω -methoxy was administered by gavage prior to mating through postnatal day 4 (~6–7 weeks). Clinical signs of toxicity included increased incidences of oral and urine staining (≥ 150 milligrams/kilogram/day (mg/kg/day)) and a slight decrease in body weight and body weight gain (300 mg/kg/day male rats, pre-mating period); however, no treatment-related effects were observed during the remainder of the study. Additionally female rats (≥ 150 mg/kg/day) exhibited a decrease in hind-limb strength and rearing in open-field.

At necropsy females in the high dose (300 mg/kg/day) group showed a statistically significant increase in absolute and relative adrenal weight, relative kidney weight, and absolute liver weight. Females in the mid and high dose group (≥ 150 mg/kg/day) showed a statistically significant increase in relative liver weight. In the absence of any collaborative blood or histopathologic findings the effect seen in the liver is considered as an adaptive response. An increased incidence of minimal to moderate epithelial cell hyperplasia was noted in the non-glandular epithelium of the stomach of high-dose male and female rats indicating local irritation which is likely due to the irritation induced by gavage treatment of chemicals with irritative properties.

A LOAEL was not established for poly(oxy-1,2-ethanediyl), α -isotridecyl- ω -methoxy in male Wistar rats. The NOAEL for male rats is the highest dose tested, 300 mg/kg/day. The NOAEL for female rats is 45 mg/kg/day based on the functional observational battery observations (i.e. decrease in rearing in open field and hind limb grip strength) seen at the LOAEL of 150 mg/kg/day.

The OPPTS 870.3650 study on poly(oxy-1,2-ethanediyl), α -isotridecyl- ω -methoxy was also used to evaluate reproductive and developmental toxicity. No test material-related effects were observed on reproductive (e.g., mating, fertility, or gestation indices, days to insemination, gestation length, or number of implants) or developmental (e.g., mean litter size, viability, clinical signs of toxicity, or body weight of the pups) parameters at any dose tested; therefore, the NOAEL for poly(oxy-1,2-ethanediyl), α -isotridecyl- ω -methoxy for reproductive and developmental parameters is 300 mg/kg/day (highest dose tested).

Evidence of neurotoxicity was observed in the OPPTS 870.3650 study which showed a decrease in rearing in open field and hind limb grip strength for mid- and high-dose female rats (≥ 150 mg/kg/day). No evidence of immunotoxicity was observed in the database.

There are no carcinogenicity studies available in the database; however, poly(oxy-1,2-ethanediyl), α -isotridecyl- ω -methoxy tested negative in two mutagenicity assays (OPPTS Harmonized Test Guideline 870.5100) and no evidence of specific target organ toxicity was observed in the OPPTS 870.3650 study. In addition, no evidence of carcinogenicity was observed in studies on the metabolite α -isotridecyl- ω -hydroxy-poly(oxy-1,2-ethanediyl) (CAS Reg. No. 9043–30–5) (**Federal Register**, August 5, 2009 (74 FR 38935, FRL–8430–1)). The Agency does not anticipate poly(oxy-1,2-ethanediyl), α -isotridecyl- ω -methoxy to be carcinogenic.

Based on available information the Agency has concluded that poly(oxy-1,2-ethanediyl), α -isotridecyl- ω -methoxy has a higher toxicity than its metabolite; therefore, conducting the risk assessment on the parent would be protective of the metabolite.

B. Toxicological Points of Departure/ Levels of Concern

Once a pesticide's toxicological profile is determined, EPA identifies toxicological points of departure (POD) and levels of concern to use in evaluating the risk posed by human exposure to the pesticide. For hazards that have a threshold below which there is no appreciable risk, the toxicological POD is used as the basis for derivation of reference values for risk assessment. PODs are developed based on a careful analysis of the doses in each toxicological study to determine the dose at which no adverse effects are observed (the NOAEL) and the lowest dose at which adverse effects of concern are identified (the LOAEL). Uncertainty/safety factors are used in conjunction with the POD to calculate a safe exposure level – generally referred to as a population-adjusted dose (PAD) or a reference dose (RfD) – and a safe margin of exposure (MOE). 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 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://](http://www.epa.gov/pesticides/factsheets/riskassess.htm)

www.epa.gov/pesticides/factsheets/riskassess.htm.

The POD for the risk assessment for all durations and routes of exposure was from the OPPTS Harmonized Test Guideline 870.3650 toxicity study in rats. The NOAEL was 45 mg/kg/day and the LOAEL was 150 mg/kg/day based on rearing in the open field and hind limb grip strength. A 300 fold uncertainty factor was used for the chronic exposure (10X interspecies extrapolation, 10X for intraspecies variability and 3X FQPA factor).

The residential, occupational, and aggregate level of concern (LOC) is for MOEs that are less than 300 and is based on 10X interspecies extrapolation, 10X for intraspecies variability and 3X FQPA factor. Dermal absorption was estimated to be 10% based on the large molecular weight of the chemical and the lack of water solubility. A 100% inhalation was assumed.

C. Exposure Assessment

1. *Dietary exposure from food and feed uses.* In evaluating dietary exposure to poly(oxy-1,2-ethanediyl), α -isotridecyl- ω -methoxy, EPA considered exposure under the proposed exemption from the requirement of a tolerance. EPA assessed dietary exposures from poly(oxy-1,2-ethanediyl), α -isotridecyl- ω -methoxy in food as follows:

i. *Acute exposure.* No adverse effects attributable to a single exposure of poly(oxy-1,2-ethanediyl), α -isotridecyl- ω -methoxy was seen in the toxicity databases. Therefore, acute dietary risk assessments for poly(oxy-1,2-ethanediyl), α -isotridecyl- ω -methoxy is not required.

ii. *Chronic exposure.* In conducting the chronic dietary exposure assessment, 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 poly(oxy-1,2-ethanediyl), α -isotridecyl- ω -methoxy. 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 ingredient. 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 general approach taken to assess inert ingredient risks in the absence of residue data is contained in the memorandum entitled “Alkyl

Amines Polyalkoxylates (Cluster 4): Acute and Chronic Aggregate (Food and Drinking Water) Dietary Exposure and Risk Assessments for the Inerts.” (D361707, S. Piper, 2/25/09) and can be found at <http://www.regulations.gov> in docket ID number EPA-HQ-OPP-2008-0738.

In the dietary exposure 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% 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 in relation to that of the active ingredient. In the case of poly(oxy-1,2-ethanediyl), α -isotridecyl- ω -methoxy, EPA made a specific adjustment to the dietary exposure assessment to account for the use limitations of the amount of poly(oxy-1,2-ethanediyl), α -isotridecyl- ω -methoxy that may be in formulations (no more than 10% by weight in pesticide formulations) and assumed that the poly(oxy-1,2-ethanediyl), α -isotridecyl- ω -methoxy are 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 this percentage.

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% 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 summary, 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.

iii. *Cancer.* Based on the lack of evidence of carcinogenicity and specific organ toxicity in available studies, along with the lack of carcinogenicity in metabolite studies, poly(oxy-1,2-ethanediyl), α -isotridecyl- ω -methoxy is not expected to pose a cancer risk to humans. Therefore, a cancer dietary exposure assessment is not necessary to assess cancer risk.

iv. *Anticipated residue and percent crop treated (PCT) information.* EPA did not use anticipated residue and/or PCT information in the dietary assessment for poly(oxy-1,2-ethanediyl), α -isotridecyl- ω -methoxy. Tolerance level residues and/or 100% were assumed for all food commodities.

2. *Dietary exposure from drinking water.* For the purpose of the screening level dietary risk assessment to support this request for an exemption from the requirement of a tolerance for poly(oxy-1,2-ethanediyl), α -isotridecyl- ω -methoxy, a conservative drinking water concentration value of 100 parts per billion (ppb) based on screening level modeling was used to assess the contribution to drinking water for the chronic dietary risk assessments for parent compound. 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., textiles (clothing and diapers), carpets, swimming pools, and hard surface disinfection on walls, floors, and tables).

There are no known or anticipated residential uses and therefore, a residential risk assessment was not conducted.

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 poly(oxy-1,2-ethanediyl), α -isotridecyl- ω -methoxy to share a common mechanism of toxicity with any other substances, and poly(oxy-1,2-ethanediyl), α -isotridecyl- ω -methoxy does not appear to produce a toxic metabolite produced by other substances. For the purposes of this tolerance action, therefore, EPA has assumed that poly(oxy-1,2-ethanediyl), α -isotridecyl- ω -methoxy does 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 OPPTS Harmonized Test Guideline 870.3650 study on poly(oxy-1,2-ethanediyl), α -isotridecyl- ω -methoxy was also used to evaluate reproductive and developmental toxicity. There was

no evidence of increased susceptibility of infants and children in the available database. No test material-related effects were observed on reproductive or developmental parameters at any dose tested; therefore, the NOAEL for poly(oxy-1,2-ethanediyl), α -isotridecyl- ω -methoxy for reproductive and developmental parameters is 300 mg/kg/day (highest dose tested). The parental systemic toxicity NOAEL is 45 mg/kg/day and the LOAEL of 150 mg/kg/day is based on clinical signs of neurotoxicity.

3. *Conclusion.* Although there is no evidence of increased susceptibility in infants and children, in order to be protective in the absence of a developmental neurotoxicity study and the extrapolation from subchronic to chronic, a 3X FQPA safety factor has been retained.

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

i. There is no evidence that poly(oxy-1,2-ethanediyl), α -isotridecyl- ω -methoxy results in increased susceptibility in *in utero* rats in an OPPTS Harmonized Test Guideline 870.3650 study, a combined repeated dose toxicity study with reproduction/developmental toxicity test parameters.

ii. Evidence of neurotoxicity was observed in the OPPTS 870.3650 Harmonized Test Guideline study which showed a decrease in rearing in open field and hind limb grip strength in females in the mid- and high-dose groups (≥ 150 mg/kg/day). EPA concluded that the 3X FQPA database uncertainty factor is adequate because the evidence of neurotoxicity was observed only in females while males had no effects at doses up to and including 300 mg/kg/day and a lack of a significant dose response in females. No chronic toxicity or carcinogenicity studies are available in the database; however, the Agency notes that surfactants are surface-active materials that can damage the structural integrity of cellular membranes at high dose levels. Thus, surfactants are often corrosive and irritating in concentrated solutions. The observed toxicity seen in the repeated dose studies, such as microscopic lesions or decreased body weight gain, are attributed to the corrosive and irritating nature of these surfactants. The Agency has considerable toxicity information on surfactants, which indicates that the effects do not progressively increase in severity over time. In addition, use of the full 10X interspecies factor will

actually provide an additional margin of safety because it is not expected that humans' response to local irritation/corrosiveness effects would be markedly different from animals. No evidence of immunotoxicity was observed in the database.

iii. There are no residual uncertainties identified in the exposure databases. The dietary food exposure assessments were performed based on 10% in formulation and a default 100 ppb concentration in drinking water. The I DEEM models uses highly conservative assumption and assumes that all crop/crop groups are treated with all pesticide classifications (e.g., fungicides, insecticides, herbicides). There are no currently approved uses of poly(oxy-1,2-ethanediyl), α -isotridecyl- ω -methoxy in pesticide products; therefore, this is a highly conservative estimate. In addition, it is unlikely that poly(oxy-1,2-ethanediyl), α -isotridecyl- ω -methoxy will appear in drinking water. EPA made conservative (protective) assumptions in the ground and surface water modeling used to assess exposure to poly(oxy-1,2-ethanediyl), α -isotridecyl- ω -methoxy in drinking water. These assessments will not underestimate the exposure and risks posed by poly(oxy-1,2-ethanediyl), α -isotridecyl- ω -methoxy.

iv. Sufficient data exist on the metabolite α -isotridecyl- ω -hydroxy-poly(oxy-1,2-ethanediyl) (CAS Reg. No. 9043-30-5) and it has recently been assessed by the Agency (**Federal Register**, August 5, 2009 (74 FR 38935, FRL-8430-1)). Based on available information it has been concluded that poly(oxy-1,2-ethanediyl), α -isotridecyl- ω -methoxy has a higher toxicity than its metabolite and therefore, conducting the risk assessment on the parent would be protective of the metabolite.

E. Aggregate Risks and Determination of Safety

EPA determines whether acute and chronic dietary pesticide exposures are safe by comparing aggregate exposure estimates to the acute PAD (aPAD) and chronic PAD (cPAD). For linear cancer risks, EPA calculates the lifetime probability of acquiring cancer 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 appropriate PODs to ensure that an adequate MOE exists.

1. *Acute risk.* An acute aggregate risk assessment takes into account acute exposure estimates from dietary consumption of food and drinking

water. No adverse effect resulting from a single oral exposure was identified and no acute dietary endpoint was selected. Therefore, poly(oxy-1,2-ethanediyl), α -isotridecyl- ω -methoxy is not expected to pose an acute risk.

2. *Chronic risk.* Using the exposure assumptions described in this unit for chronic exposure, EPA has concluded that chronic exposure to poly(oxy-1,2-ethanediyl), α -isotridecyl- ω -methoxy from food and water will utilize 84.9% of the cPAD for children 1-2 years old, the population group receiving the greatest exposure. There are no residential uses for poly(oxy-1,2-ethanediyl), α -isotridecyl- ω -methoxy.

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).

A short-term adverse effect was identified; however, poly(oxy-1,2-ethanediyl), α -isotridecyl- ω -methoxy is not currently used as an inert ingredient in pesticide products that are registered for any use patterns that would result in short-term residential exposure. Short-term risk is assessed based on short-term residential exposure plus chronic dietary exposure. Because there is no short-term residential exposure and chronic dietary exposure has already been assessed under the appropriately protective cPAD (which is at least as protective as the POD used to assess short-term risk), no further assessment of short-term risk is necessary, and EPA relies on the chronic dietary risk assessment for evaluating short-term risk for poly(oxy-1,2-ethanediyl), α -isotridecyl- ω -methoxy.

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).

An intermediate-term adverse effect was identified; however, poly(oxy-1,2-ethanediyl), α -isotridecyl- ω -methoxy is not currently used as an inert ingredient in pesticide products that are registered for any use patterns that would result in intermediate-term residential exposure. Intermediate-term risk is assessed based on intermediate-term residential exposure plus chronic dietary exposure. Because there is no intermediate-term residential exposure and chronic dietary exposure has already been assessed under the appropriately protective cPAD (which is at least as protective as the POD used to assess intermediate-term risk), no further assessment of intermediate-term

risk is necessary, and EPA relies on the chronic dietary risk assessment for evaluating intermediate-term risk for poly(oxy-1,2-ethanediyl), α -isotridecyl- ω -methoxy.

5. *Aggregate cancer risk for U.S. population.* The Agency has not identified any concerns for carcinogenicity relating to poly(oxy-1,2-ethanediyl), α -isotridecyl- ω -methoxy. Therefore, an aggregate cancer risk was not conducted.

6. *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 poly(oxy-1,2-ethanediyl), α -isotridecyl- ω -methoxy residues.

V. Other Considerations

A. Analytical Enforcement Methodology

An analytical method is not required for enforcement purposes since the Agency is not establishing a numerical tolerance for residues of poly(oxy-1,2-ethanediyl), α -isotridecyl- ω -methoxy in or on any food commodities. EPA is establishing a limitation on the amount of poly(oxy-1,2-ethanediyl), α -isotridecyl- ω -methoxy that may be used in pesticide formulations. That limitation will be enforced through the pesticide registration process under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), 7 U.S.C. 136 *et seq.* EPA will not register any pesticide for sale or distribution that contains greater than 10% of poly(oxy-1,2-ethanediyl), α -isotridecyl- ω -methoxy by weight in the pesticide formulation.

B. International Residue Limits

The Agency is not aware of any country requiring a tolerance for poly(oxy-1,2-ethanediyl), α -isotridecyl- ω -methoxy nor have any CODEX Maximum Residue Levels (MRLs) been established for any food crops at this time.

VI. Conclusions

Therefore, an exemption from the requirement of a tolerance is established under 40 CFR 180.920 for poly(oxy-1,2-ethanediyl), α -isotridecyl- ω -methoxy (CAS Reg. No. 345642-79-7) when used as an inert ingredient (surfactant) in pesticide formulations applied to growing crops at a maximum of 10% in pesticide formulations.

VII. Statutory and Executive Order Reviews

This final rule establishes a tolerance 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).

VIII. 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: July 8, 2010.

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 following inert ingredient to read as follows:

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

* * * * *

Inert ingredients	Limits	Uses
* Poly(oxy-1,2-ethanediyl), α -isotridecyl- ω -methoxy (CAS Reg. No. 345642-79-7)	* At a maximum of 10% in formulation	* Surfactant
*	*	*

[FR Doc. 2010-17402 Filed 7-21-10; 8:45 am]

BILLING CODE 6560-50-S

ENVIRONMENTAL PROTECTION AGENCY**40 CFR Part 180****[EPA-HQ-OPP-2010-0528; FRL-8834-8]****Pyraclostrobin; Pesticide Tolerances****AGENCY:** Environmental Protection Agency (EPA).**ACTION:** Final rule.

SUMMARY: This regulation establishes tolerances for residues of pyraclostrobin in or on alfalfa and poultry, and increases tolerances for residues in or on soybean. BASF Corporation requested these tolerances under the Federal Food, Drug, and Cosmetic Act (FFDCA).

DATES: This regulation is effective July 21, 2010. Objections and requests for hearings must be received on or before September 20, 2010, 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-2010-0528. 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:

Shaunta Hill, Registration Division (7504P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460-0001; telephone number: (703) 347-8961; e-mail address: hill.shaunta@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 Get Electronic Access to Other Related Information?

You may access a frequently updated electronic version of EPA's tolerance regulations at 40 CFR part 180 through the Government Printing Office's e-CFR site at <http://www.gpoaccess.gov/ecfr>.

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

Under FFDCA section 408(g), 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-2010-0528 in the subject line on the first page of your submission. All objections and requests for a hearing must be in writing, and must be received by the Hearing Clerk on or before September 20, 2010. Addresses for mail and hand delivery of objections and hearing requests are provided in 40 CFR 178.25(b).

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. Information not marked confidential pursuant to 40 CFR part 2 may be disclosed publicly by EPA without prior notice. Submit a copy of your non-CBI objection or hearing request, identified by docket ID number EPA-HQ-OPP-2010-0528, 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. Summary of Petitioned-For Tolerance

In the **Federal Register** of February 4, 2010 (75 FR 5792) (FRL-9110-5) and June 8, 2010 (75 FR 32465) (FRL-8827-5), EPA issued notices pursuant to section 408(d)(3) of FFDCA, 21 U.S.C. 346a(d)(3), announcing the filing of pesticide petitions PP 9F7590 and PP 9F7528, respectively, by BASF Corporation, P.O. Box 13528, Research

Triangle Park, NC 27709. The petitions requested that 40 CFR 180.582 be amended by increasing tolerances for residues of the fungicide pyraclostrobin, carbamic acid, [2-[[[1-(4-chlorophenyl)-1H-pyrazol-3-yl]oxy]methyl]phenyl]methoxy-, methyl ester, in or on soybean, forage at 11.0 parts per million (ppm) (PP 9F7590), and soybean, hay at 14.0 ppm (PP 9F7590), and by establishing tolerances for residues for alfalfa, forage at 10 ppm (PP 9F7528), alfalfa, hay at 30 ppm (PP 9F7528), poultry, fat at 0.1 ppm (PP 9F7528); poultry, meat byproducts at 0.1 ppm (PP 9F7528); poultry, meat at 0.1 ppm (PP 9F7528); and poultry, eggs at 0.1 ppm (PP 9F7528). These notices referenced a summary of the petition prepared by BASF Corporation, the registrant, which is available in the docket at <http://www.regulations.gov>. There were no comments received in response to the notice of filing.

III. Aggregate Risk Assessment and Determination of Safety

Section 408(b)(2)(A)(i) of FFDCA allows EPA to establish 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. . . .”

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 pyraclostrobin including exposure resulting from the tolerances established by this action. EPA’s assessment of exposures and risks associated with pyraclostrobin 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.

Pyraclostrobin has a low to moderate acute toxicity via the oral, dermal, and inhalation routes of exposure. Pyraclostrobin produces moderate eye irritation, is a moderate dermal irritant, and is not a dermal sensitizer. The main target organs for pyraclostrobin are the upper gastrointestinal tract (mainly the duodenum and stomach), the spleen/hematopoiesis, and the liver. In the 90-day mouse oral toxicity study, thymus atrophy was seen at doses of 30 milligrams/kilogram (mg/kg) or above, but similar effect was not found in the mouse carcinogenicity study at doses as high as 33 mg/kg. In reproductive and developmental studies, there was evidence of increased qualitative susceptibility following *in utero* exposure in the rabbit, but not in rats. In both the acute and subchronic neurotoxicity studies, there were no indications of treatment-related neurotoxicity. EPA classified pyraclostrobin as “Not Likely to be Carcinogenic to Humans” based on no treatment-related increase in tumors in both sexes of rats and mice, which were tested at doses that were adequate to assess carcinogenicity, and the lack of evidence of mutagenicity.

Specific information on the studies received and the nature of the adverse effects caused by pyraclostrobin 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 “Revised Pyraclostrobin: Human Health Risk Assessment for Proposed Uses on Cotton and Belgian Endive” at page 15 in docket ID number EPA-HQ-OPP-2006-0522.

B. Toxicological Points of Departure/ Levels of Concern

Once a pesticide’s toxicological profile is determined, EPA identifies toxicological points of departure (POD) and levels of concern to use in evaluating the risk posed by human exposure to the pesticide. For hazards that have a threshold below which there is no appreciable risk, the toxicological POD is used as the basis for derivation of reference values for risk assessment. PODs are developed based on a careful analysis of the doses in each toxicological study to determine the dose at which no adverse effects are

observed (the NOAEL) and the lowest dose at which adverse effects of concern are identified (the LOAEL). Uncertainty/safety factors are used in conjunction with the POD to calculate a safe exposure level—generally referred to as a population-adjusted dose (PAD) or a reference dose (RfD)—and a safe margin of exposure (MOE). 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 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 pyraclostrobin used for human risk assessment can be found at <http://www.regulations.gov> in document “Pyraclostrobin: Human Health Risk Assessment for Proposed Uses on Grain Sorghum (PP#8F7385); Increase of Tolerance for the Stone Fruit Crop Group 12 to Satisfy European Union (EU) Import Requirement (PP#8F7390); and Establishment of a Permanent Import Tolerance for Coffee (PP#8E7394)” at page 17 in docket ID number EPA-HQ-OPP-2008-0713.

C. Exposure Assessment

1. *Dietary exposure from food and feed uses.* In evaluating dietary exposure to pyraclostrobin, EPA considered exposure under the petitioned-for tolerances as well as all existing pyraclostrobin tolerances in 40 CFR 180.582. EPA assessed dietary exposures from pyraclostrobin in food as follows:

i. *Acute exposure.* Quantitative acute dietary exposure and risk assessments are performed for a food-use pesticide, if a toxicological study has indicated the possibility of an effect of concern occurring as a result of a 1-day or single exposure.

In estimating acute dietary exposure, 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, EPA performed a slightly refined acute dietary exposure assessment for pyraclostrobin. EPA assumed that 100% of crops covered by existing or proposed tolerances were treated with pyraclostrobin and that these crops either had tolerance-level residues or residues at the highest level found in field trials. Experimentally

derived processing factors were used for fruit juices, tomato, and wheat commodities but for all other processed commodities Dietary Exposure Evaluation Model (DEEM™) default processing factors were assumed.

ii. *Chronic exposure.* In conducting the chronic dietary exposure assessment, EPA used the food consumption data from the USDA 1994–1996 and 1998 CSFII. As to residue levels in food, EPA performed a refined chronic dietary exposure assessment for pyraclostrobin. EPA used data on average percent crop treated (PCT) (when available) and either tolerance-level residues or average field trial residues. Experimentally derived processing factors were used for fruit juices, tomato, and wheat commodities, but for all other processed commodities DEEM™ default processing factors were assumed.

iii. *Cancer.* EPA classified pyraclostrobin as “Not Likely to be Carcinogenic to Humans” based on no treatment-related increase in tumors in both sexes of rats and mice, which were tested at doses that were adequate to assess carcinogenicity, and the lack of evidence of mutagenicity. Accordingly, an exposure assessment to evaluate cancer risk is unnecessary.

iv. *Anticipated residue and PCT information.* Section 408(b)(2)(E) of FFDCA authorizes EPA to use available data and information on the anticipated residue levels of pesticide residues in food and the actual levels of pesticide residues that have been measured in food. If EPA relies on such information, EPA must require pursuant to FFDCA section 408(f)(1) that data be provided 5 years after the tolerance is established, modified, or left in effect, demonstrating that the levels in food are not above the levels anticipated. For the present action, EPA will issue such Data Call-Ins as are required by FFDCA section 408(b)(2)(E) and authorized under FFDCA section 408(f)(1). Data will be required to be submitted no later than 5 years from the date of issuance of these tolerances.

Section 408(b)(2)(F) of FFDCA states that the Agency may use data on the actual percent of food treated for assessing chronic dietary risk only if:

- Condition a: The data used are reliable and provide a valid basis to show what percentage of the food derived from such crop is likely to contain the pesticide residue.
- Condition b: The exposure estimate does not underestimate exposure for any significant subpopulation group.
- Condition c: Data are available on pesticide use and food consumption in a particular area, the exposure estimate

does not understate exposure for the population in such area.

In addition, the Agency must provide for periodic evaluation of any estimates used. To provide for the periodic evaluation of the estimate of PCT as required by FFDCA section 408(b)(2)(F), EPA may require registrants to submit data on PCT.

The Agency estimated the PCT for existing uses as follows:

Commodity	PCT
Almond	35%
Apple	10%
Apricot	10%
Barley	1%
Bell pepper	10%
Black bean seed	5%
Blackberry	20%
Blueberry	20%
Broad bean (succulent)	2.5%
Broad bean seed	5%
Broccoli	5%
Cabbage	10%
Cantaloupe	15%
Carrot	25%
Celery	2.5%
Cherry	30%
Chinese mustard cabbage	10%
Cowpea seed	5%
Cowpea (succulent)	2.5%
Cucumber	5%
Currant	5%
Dry bulb onion	15%
Field corn	5%
Filbert	10%
Garlic	10%
Grape	25%
Grapefruit	25%
Great northern bean seed	5%
Green onion	15%
Head lettuce	5%
Leaf lettuce	5%
Kidney bean seed	5%
Lima bean seed	5%
Lima bean (succulent)	2.5%
Mung bean seed	5%
Napa cabbage	10%
Navy bean seed	5%
Nectarine	15%
Non-bell pepper	10%
Orange	5%
Peach	15%
Peanut	25%
Pear	10%
Pecan	2.5%
Pigeon pea (succulent)	5%
Pink bean seed	5%
Pinto bean seed	5%
Pistachio	25%
Plum	5%
Pop corn	5%
Potato	10%
Pumpkin	20%
Raspberry	35%
Snap bean (succulent)	2.5%
Soybean	5%
Spinach	10%
Strawberry	50%
Succulent pea	5%
Sugar beet	35%
Summer squash	10%
Sweet corn	5%

Commodity	PCT
Tangerine	15%
Tomato	20%
Watermelon	30%
Wheat	5%
Winter squash	10%

In most cases, EPA uses available data from USDA/National Agricultural Statistics Service (USDA/NASS), proprietary market surveys, and the National Pesticide Use Database for the chemical/crop combination for the most recent 6–7 years. EPA uses an average PCT for chronic dietary risk analysis. The average PCT figure for each existing use is derived by combining available public and private market survey data for that use, averaging across all observations, and rounding to the nearest 5%, except for those situations in which the average PCT is less than one. In those cases, 1% is used as the average PCT and 2.5% is used as the maximum PCT. EPA uses a maximum PCT for acute dietary risk analysis. The maximum PCT figure is the highest observed maximum value reported within the recent 6 years of available public and private market survey data for the existing use and rounded up to the nearest multiple of 5%.

The Agency believes that the three conditions discussed in Unit III.C.1.iv. have been met. With respect to Condition a, PCT estimates are derived from Federal and private market survey data, which are reliable and have a valid basis. The Agency is reasonably certain that the percentage of the food treated is not likely to be an underestimation. As to Conditions b and c, regional consumption information and consumption information for significant subpopulations is taken into account through EPA's computer-based model for evaluating the exposure of significant subpopulations including several regional groups. Use of this consumption information in EPA's risk assessment process ensures that EPA's exposure estimate does not understate exposure for any significant subpopulation group and allows the Agency to be reasonably certain that no regional population is exposed to residue levels higher than those estimated by the Agency. Other than the data available through national food consumption surveys, EPA does not have available reliable information on the regional consumption of food to which pyraclostrobin may be applied in a particular area.

2. *Dietary exposure from drinking water.* The Agency used screening level water exposure models in the dietary exposure analysis and risk assessment

for pyraclostrobin in drinking water. These simulation models take into account data on the physical, chemical, and fate/transport characteristics of pyraclostrobin. 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>.

Based on the Pesticide Root Zone Model/Exposure Analysis Modeling System (PRZM/EXAMS) and Screening Concentration in Ground Water (SCI-GROW) models, the estimated drinking water concentrations (EDWCs) of pyraclostrobin for acute exposures are estimated to be 35.6 parts per billion (ppb) for surface water and 0.02 ppb for ground water and for chronic exposures for non-cancer assessments are estimated to be 2.3 ppb for surface water and 0.02 ppb for ground water.

Modeled estimates of drinking water concentrations were directly entered into the dietary exposure model. For acute dietary risk assessment, the water concentration value of 35.6 ppb was used to assess the contribution to drinking water. For chronic dietary risk assessment, the water concentration of value 2.3 ppb was used to assess the contribution to drinking water.

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).

Pyraclostrobin is currently registered for the following uses that could result in residential exposures: Residential turf grass and recreational sites. EPA assessed residential exposure using the following assumptions: Residential and recreational turf applications are applied by professional pest control operators (PCOs) only and, therefore, residential handler exposures do not occur. There is, however, a potential for short- and intermediate-term post-application exposure of adults and children entering lawn and recreation areas previously treated with pyraclostrobin. Exposures from treated recreational sites are expected to be similar to, or in many cases lower than, those from treated residential turf sites so a separate exposure assessment for recreational turf sites was not conducted. EPA assessed exposures from the following residential turf post-application scenarios:

(1) Short-/intermediate-term adult and toddler post-application dermal exposure from contact with treated lawns.

(2) Short-/intermediate-term toddlers' incidental ingestion of pesticide

residues on lawns from hand-to-mouth transfer.

(3) Short-/intermediate-term toddlers' object-to-mouth transfer from mouthing of pesticide-treated turfgrass.

(4) Short-/intermediate-term toddlers' incidental ingestion of soil from pesticide-treated residential areas. The post-application risk assessment was conducted in accordance with the Residential Standard Operating Procedures and recommended approaches of the Health Effects Division's Science Advisory Council for Exposure.

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 pyraclostrobin to share a common mechanism of toxicity with any other substances, and pyraclostrobin does not appear to produce a toxic metabolite produced by other substances. For the purposes of this tolerance action, therefore, EPA has assumed that pyraclostrobin does 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 pre-natal and post-natal 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. *Pre-natal and post-natal sensitivity.* The pre-natal and post-natal toxicology database for pyraclostrobin includes the rat and rabbit developmental toxicity studies and the 2-generation reproduction toxicity study in rats. In

reproductive and developmental studies there was evidence of increased qualitative susceptibility following *in utero* exposure in the rabbit, but not in rats. In the 2-generation reproduction study, the highest dose tested did not cause maternal systemic toxicity, nor did it elicit reproductive or offspring toxicity. There is low concern for pre-natal developmental effects seen in the rabbit because there are clear NOAELs for maternal and developmental effects, this toxicity endpoint is used to establish the acute dietary RfD, and the developmental effect was seen at the same dose level as that produced for the maternal effect.

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 pyraclostrobin is considered adequate to support toxicity endpoint selection for risk assessment and FQPA evaluation. However, under the current 40 CFR 158.500 data requirement guidelines, the immunotoxicity data (780.7800) is required as a condition of approval. In the absence of specific immunotoxicity studies, EPA has evaluated the available pyraclostrobin toxicity data to determine whether an additional database uncertainty factor is needed to account for potential immunotoxicity. For pyraclostrobin, a complete battery of subchronic, chronic, carcinogenicity, developmental and reproductive studies, and acute and subchronic neurotoxicity screening studies are available for consideration. The immunotoxic potential of pyraclostrobin has been well characterized in relationship to other adverse effects seen in the submitted toxicity studies. Under the conditions of the studies, the results do not indicate the immune system to be the primary target. Other than the high-dose thymus effects seen in the 90-day mouse study, no significant evidence of pyraclostrobin-induced immunotoxicity was demonstrated in the studies conducted either in adult animals or in the offspring following pre-natal and post-natal exposures. Increased spleen weights observed in 28-day and 90-day rat studies were accompanied with mild hemolytic anemia (a hematopoieses response) indicating these effects are unrelated to an immunotoxic response. Currently, the point of departure in establishing the chronic RfD is 3.4 mg/kg/day. The Agency does not believe that conducting a special series 870.7800 immunotoxicity study will result in a NOAEL less than 3.4 mg/kg/

day. A similar conclusion was reached in an earlier action on pyraclostrobin. (See 72 FR 52108, 52120 (September 12, 2007)) (FRL-8144-4). In light of these conclusions, EPA does not believe an additional uncertainty or safety factor is needed to address the lack of the required immunotoxicity study.

ii. There is no indication that pyraclostrobin is a neurotoxic chemical and there is no need for a developmental neurotoxicity study or additional UFs to account for neurotoxicity.

iii. There is no evidence that pyraclostrobin results in increased quantitative susceptibility in *in utero* rats or rabbits in the prenatal developmental studies or in young rats in the 2-generation reproduction study. Although there is qualitative evidence of increased susceptibility in the prenatal development study in rabbits, the Agency did not identify any residual uncertainties after establishing toxicity endpoints and traditional UFs to be used in the risk assessment of pyraclostrobin. The degree of concern for pre-natal and/or post-natal toxicity is low.

iv. There are no residual uncertainties identified in the exposure databases. The acute dietary food exposure assessments were performed using tolerance-level or highest field trial residues and 100% crop treated. The chronic dietary food exposure assessments were performed using tolerance-level or average field trial residues and 100% CT or average PCT. Average PCT is conservatively derived from multiple data sources and is averaged by year and then across all years. The field trials represent maximum application rates and minimum PHIs. A limited number of experimentally derived processing factors from pyraclostrobin processing studies were also used to refine the analysis. The results of the refined chronic dietary analysis are based on reliable data and will not underestimate the exposure and risk. Conservative surface water modeling estimates were used. EPA used similarly conservative assumptions to assess post-application exposure of children as well as incidental oral exposure of toddlers. These assessments will not underestimate the exposure and risks posed by pyraclostrobin.

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.

1. *Acute risk.* Using the exposure assumptions discussed in this unit for acute exposure, the acute dietary exposure from food and water to pyraclostrobin will occupy 81% of the aPAD for females 13 to 49 years old, and 3% of the aPAD for children 1–2 years old, the population group receiving the greatest exposure.

2. *Chronic risk.* Using the exposure assumptions described in this unit for chronic exposure, EPA has concluded that chronic exposure to pyraclostrobin from food and water will utilize 24% of the cPAD for children 1 to 2 years old the population group receiving the greatest exposure. Based on the explanation in Unit III.C.3., regarding residential use patterns, chronic residential exposure to residues of pyraclostrobin is not expected.

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).

Pyraclostrobin is 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 pyraclostrobin.

Using the exposure assumptions described in this unit for short-term exposures, EPA has concluded the combined short-term food, water, and residential exposures result in aggregate MOEs of 230 for adults and 120 for children 1 to 2 years old. The aggregate MOE for adults is based on the residential turf scenario and includes combined food, drinking water, and post-application dermal exposures. The aggregate MOE for children includes food, drinking water, and post-application dermal and incidental oral exposures from entering turf areas previously treated with pyraclostrobin. MOEs above 100 are considered to be of no concern.

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).

Pyraclostrobin is 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 pyraclostrobin.

Using the exposure assumptions described in this unit for intermediate-term exposures, EPA has concluded that the combined intermediate-term food, water, and residential exposures result in aggregate MOEs of 230 for adults and 120 for children 1 to 2 years old. The endpoints and points of departure (NOAELs) are identical for short- and intermediate-term exposures, so the aggregate MOEs for intermediate-term exposure are the same as those for short-term exposure. MOEs above 100 are considered to be of no concern.

5. *Aggregate cancer risk for U.S. population.* Based on the lack of evidence of carcinogenicity in two adequate rodent carcinogenicity studies, pyraclostrobin is not expected to pose a cancer risk to humans.

6. *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 pyraclostrobin residues.

IV. Other Considerations

Analytical Enforcement Methodology

There are adequate residue analytical methods for tolerance enforcement. The analytical methods for plant commodities are liquid chromatography with tandem mass spectroscopy/mass spectroscopy detector (LC/MS/MS) and high pressure liquid chromatography with ultraviolet detector (HPLC/UV), which both measure pyraclostrobin and its desmethoxy metabolite. The analytical methods for live stock commodities, gas chromatography with mass spectroscopy detector (GC/MS) and LC/MS/MS, convert pyraclostrobin and related metabolites to chlorophenylpyrazolol (BF 500–5) and hydroxylated chlorophenylpyrazolol (BF 500–8) in goats and chlorophenylpyrazolol (BF 500–5) and hydroxylated chlorophenylpyrazolol (BF 500–9) in poultry.

The method may be requested from: Chief, Analytical Chemistry Branch, Environmental Science Center, 701 Mapes Rd., Ft. Meade, MD 20755–5350; telephone number: (410) 305–2905; e-mail address: residuemethods@epa.gov.

B. International Residue Limits

There are currently no proposed or established Codex, Canadian, or Mexican Maximum Residue Limits (MRLs) for residues of pyraclostrobin on alfalfa and soybeans. However, there are Canadian MRLs for various livestock commodities, including poultry meat, meat byproducts and eggs. The U.S. tolerance and Canadian MRL expressions are the same for both plant and livestock commodities, but several of the recommended changes in tolerances on livestock commodities will result in differences between the U.S. tolerances and the respective Canadian MRLs, due to increase in poultry dietary burden as a result of registration of alfalfa.

V. Conclusion

Therefore, tolerances are established for residues of pyraclostrobin, carbamic acid, [2-[[[1-(4-chlorophenyl)-1H-pyrazol-3-yl]oxy]methyl]phenyl]methoxy-, methyl ester, in or on alfalfa, forage at 10 ppm; alfalfa, hay at 30 ppm; poultry, fat at 0.1 ppm; poultry, meat byproducts at 0.1 ppm; poultry, meat at 0.1 ppm; poultry, eggs at 0.1 ppm; and tolerances are increased for residues in or on soybean; forage at 11 ppm; and soybean, hay; at 14 ppm.

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 tolerances 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: July 12, 2010.

Lois Ann 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. Section 180.582 is amended as follows:

- a. Revise the introductory text of paragraph (a)(1).
- b. Add alphabetically the commodities “Alfalfa, forage” and “Alfalfa, hay” to the table in paragraph (a)(1).
- c. Revise the entries for “Soybean, forage” and “Soybean, hay.” in the table in paragraph (a)(1).
- d. Add alphabetically four commodities to the table in paragraph (a)(2).

§ 180.582 Pyraclostrobin; tolerances for residues.

(a) *General.* (1) Tolerances are established for residues of the fungicide pyraclostrobin, including its metabolites and degradates, in or on the commodities in the table below. Compliance with the tolerance levels specified below is to be determined by measuring only the sum of pyraclostrobin (carbamic acid, [2-[[[1-(4-chlorophenyl)-1H-pyrazol-3-yl]oxy]methyl]phenyl]methoxy-, methyl ester) and its desmethoxy metabolite (methyl-N-[[[1-(4-chlorophenyl)-1H-pyrazol-3-yl]oxy]methyl] phenylcarbamate), calculated as the stoichiometric equivalent of pyraclostrobin, in or on the commodity.

Commodity	Parts per million
Alfalfa, forage	10
Alfalfa, hay	30
* * * * *	
Soybean, forage	11
Soybean, hay	14
* * * * *	
* * * * *	
(2) * * *	
Commodity	Parts per million

* * * * *	
Poultry, eggs	0.10

Commodity	Parts per million
Poultry, fat	0.10
Poultry, meat	0.10
Poultry, meat by-products	0.10
* * *	*

* * *

[FR Doc. 2010-17793 Filed 7-20-10; 8:45 am]

BILLING CODE 6560-50-S

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 721

[EPA-HQ-OPPT-2008-0483; FRL-8832-2]

RIN 2070-AJ36

Elemental Mercury Used in Flow Meters, Natural Gas Manometers, and Pyrometers; Significant New Use Rule

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is promulgating a significant new use rule (SNUR) under section 5(a)(2) of the Toxic Substances Control Act (TSCA) for elemental mercury (CAS No. 7439-97-6) for use in flow meters, natural gas manometers, and pyrometers, except for use in these articles when they are in service as of September 11, 2009. This action will require persons who intend to manufacture (including import) or process elemental mercury for an activity that is designated as a significant new use by this rule to notify EPA at least 90 days before commencing that activity. Persons subject to the provisions of this rule will not be exempt from significant new use reporting if they import into the United States or process elemental mercury as part of an article. The required notification will provide EPA with the opportunity to evaluate the intended use and, if necessary, to prohibit or limit that activity before it occurs.

DATES: This final rule is effective August 20, 2010.

ADDRESSES: EPA has established a docket for this action under docket identification (ID) number EPA-HQ-OPPT-2008-0483. 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 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 legal 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 technical information contact: Peter Gimlin, National Program Chemicals Division (7404T), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460-0001; telephone number: (202) 566-0515; e-mail address: gimlin.peter@epa.gov.

For general information contact: The TSCA-Hotline, ABVI-Goodwill, 422 South Clinton Ave., Rochester, NY 14620; telephone number: (202) 554-1404; e-mail address: TSCA-Hotline@epa.gov.

SUPPLEMENTARY INFORMATION:

I. Does this Action Apply to Me?

You may be potentially affected by this action if you manufacture (defined by statute to include import) or process elemental mercury used in flow meters, natural gas manometers, or pyrometers. Potentially affected entities may include, but are not limited to, manufacturers of instruments and related products for measuring, displaying, and controlling industrial process variables (North American Industrial Classification System (NAICS) code 334513). 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 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 40 CFR 721.5 for SNUR-related obligations. 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**.

This action may also affect certain entities through pre-existing import certification and export notification rules under TSCA. Persons who import any chemical substance governed by a final SNUR are subject to the TSCA section 13 (15 U.S.C. 2612) import certification requirements and the corresponding regulations at 19 CFR 12.118 through 12.127 and 19 CFR 127.28. Those persons must certify that the shipment of the chemical substance complies with all applicable rules and orders under TSCA, including any SNUR requirements. The EPA policy in support of import certification appears at 40 CFR part 707, subpart B. In addition, TSCA section 12(b) (15 U.S.C. 2611(b)) export notification requirements are triggered by publication of a proposed SNUR. Therefore, on or after October 11, 2009, any persons who export or intend to export elemental mercury are subject to the export notification provisions of TSCA section 12(b) (see 40 CFR 721.20) and must comply with the export notification requirements in 40 CFR part 707, subpart D. EPA also notes that, pursuant to the Mercury Export Ban Act of 2008 (Pub. L. 110-414), the export of elemental mercury from the United States will be prohibited as of January 1, 2013, unless an exemption is obtained under TSCA section 12(c)(4).

II. Background

A. What Action is the Agency Taking?

EPA proposed this SNUR for elemental mercury used in flow meters, natural gas manometers, and pyrometers on September 11, 2009 (74 FR 46707) (FRL-8432-3). EPA's response to public comments received on the proposed rule appear in Unit III.C. Please consult the September 11, 2009, **Federal Register** document for further background information for this final rule.

This final SNUR will require persons to notify EPA at least 90 days before commencing the manufacture, import, or processing of elemental mercury for any of the following significant new uses: Flow meters, natural gas manometers, or pyrometers. This rule does not affect the manufacturing and processing of elemental mercury for use in these articles when they are in service as of September 11, 2009. EPA

believes this SNUR is necessary because manufacturing, processing, use, or disposal of mercury associated with these uses may produce significant changes in human and environmental exposures. The rationale and objectives for this SNUR are explained in Unit IV.

B. What is the Agency's Authority for Taking this Action?

Section 5(a)(2) of TSCA (15 U.S.C. 2604(a)(2)) authorizes EPA to determine that a use of a chemical substance is a "significant new use." EPA must make this determination by rule after considering all relevant factors, including those listed in TSCA section 5(a)(2). Once EPA determines that a use of a chemical substance is a significant new use, TSCA section 5(a)(1)(B) requires persons to submit a significant new use notice (SNUN) to EPA at least 90 days before they manufacture or process the chemical substance for that use (15 U.S.C. 2604(a)(1)(B)). As described in Unit II.C., the general SNUR provisions are found at 40 CFR part 721, subpart A.

C. Applicability of General Provisions

General provisions for SNURs appear under 40 CFR part 721, subpart A. These provisions describe persons subject to the rule, recordkeeping requirements, exemptions to reporting requirements, and applicability of the rule to uses occurring before the effective date of the final rule. However, 40 CFR 721.45(f) does not apply to this SNUR.

As a result, persons subject to the provisions of this rule are not exempt from significant new use reporting if they import or process elemental mercury as part of an article (see 40 CFR 721.5). Conversely, the exemption from notification requirements for exported articles (see 40 CFR 707.60(b)) remains in force. Thus, persons who export elemental mercury as part of an article are not required to provide export notification.

Provisions relating to user fees appear at 40 CFR part 700. According to 40 CFR 721.1(c), persons subject to SNURs must comply with the same notice requirements and EPA regulatory procedures as submitters of Premanufacture Notices (PMNs) under TSCA section 5(a)(1)(A). In particular, these requirements include the information submission requirements of TSCA section 5(b) and 5(d)(1), the exemptions authorized by TSCA section 5(h)(1), (h)(2), (h)(3), and (h)(5), and the regulations at 40 CFR part 720. Once EPA receives a SNUN, EPA may take regulatory action under TSCA section 5(e), 5(f), 6, or 7 to control the activities

on which it has received the SNUN. If EPA does not take action, EPA is required under TSCA section 5(g) to explain in the **Federal Register** its reasons for not taking action.

Persons who export or intend to export a chemical substance identified in a proposed or final SNUR are subject to the export notification provisions of TSCA section 12(b). The regulations that interpret TSCA section 12(b) appear at 40 CFR part 707, subpart D. Persons who import a chemical substance identified in a final SNUR are subject to the TSCA section 13 import certification requirements, codified at 19 CFR 12.118 through 12.127 and 19 CFR 127.28. Such persons must certify that the shipment of the chemical substance complies with all applicable rules and orders under TSCA, including any SNUR requirements. The EPA policy in support of import certification appears at 40 CFR part 707, subpart B.

III. Summary of Rule

A. Overview of Mercury and Mercury Uses

1. *Mercury.* This rule applies to elemental mercury (CAS No. 7439-97-6), which is a naturally occurring element. Because of its unique properties (e.g., exists as a liquid at room temperature and forms amalgams with many metals), elemental mercury has been used in many industrial processes and consumer products. In addition to its useful characteristics, mercury also is known to cause adverse health effects in humans and wildlife. These effects can vary depending on the form of mercury to which a person or animal is exposed, as well as the magnitude, length, and frequency of exposure.

The most prevalent human and wildlife exposure to mercury results from ingesting fish contaminated with methylmercury. Methylmercury is an organo-metallic compound that is formed via the conversion of elemental or inorganic mercury compounds by certain microorganisms and other natural processes. For example, elemental mercury may evaporate and be emitted into the atmosphere. Atmospheric mercury can be deposited directly into water bodies or watersheds, where it can be washed into surface waters via overland run-off. Once deposited in sediments, certain microorganisms and other natural processes can convert elemental mercury into methylmercury. Methylmercury bioaccumulates, which means that it is taken up and concentrated in the tissues of aquatic, mammalian, avian, and other wildlife.

Methylmercury is a highly toxic substance; a number of adverse health effects associated with exposure to it have been identified in humans and in animal studies. Most extensive are the data on neurotoxicity, particularly in developing organisms. Fetuses, infants, and young children generally are more sensitive to methylmercury's neurological effects than adults.

In 2004, EPA and the Food and Drug Administration (FDA) issued a national consumption advisory concerning mercury in fish. The advisory contains recommended limits on the amount of certain types of fish and shellfish that pregnant women and young children can safely consume. By 2005, all fifty states had issued fish consumption advisories for fish from certain water bodies known to be contaminated by methylmercury (<http://www.epa.gov/mercury/advisories.htm>).

In addition to methylmercury, exposure to elemental mercury can also pose health risks. Elemental mercury primarily causes health effects when it is breathed as a vapor that can be absorbed through the lungs. These exposures can occur when elemental mercury is spilled or products that contain elemental mercury break, resulting in release of mercury to the air, particularly in warm or poorly-ventilated indoor spaces.

For additional detailed background information (e.g., chemistry, environmental fate, exposure pathways, and health and environmental effects), as well as references pertaining to elemental mercury that EPA considered before proposing this rule, please refer to EPA's proposed SNUR for mercury switches in motor vehicles, issued in the **Federal Register** of July 11, 2006 (71 FR 39035) (FRL-7733-9), or in the docket for the 2006 proposal under docket identification number EPA-HQ-OPPT-2005-0036. All documents in the docket are listed in the docket's index which is available at <http://www.regulations.gov>.

2. *Mercury uses.* Elemental mercury has been used in thousands of products and applications. Over the past two decades, there has been a dramatic drop in elemental mercury use by industries in the United States. In response to increased concerns about exposure to anthropogenic sources of mercury in the environment and also because of the availability of suitable mercury-free products, Federal and State governments have made efforts to limit the use of elemental mercury in certain products. Various states have banned or restricted the manufacture or sale of products containing mercury (see <http://www.epa.gov/epawaste/hazard/tsd/>

[mercury/laws.htm](#)). On October 5, 2007, EPA issued a final SNUR for elemental mercury used in convenience light switches, anti-lock braking system switches, and active ride control system switches in certain motor vehicles (72 FR 56903) (FRL-8110-5).

In the past, elemental mercury was used in the manufacture of flow meters, natural gas manometers, and pyrometers. The latest information available to EPA indicates that the manufacture of these mercury-containing articles has ceased (Ref. 1). In proposing this rule, EPA asked for public comment on ongoing processing or availability of these articles and received no comments indicating that the manufacturing, import, processing, sale, or use of these articles occurs.

i. *Flow meters containing elemental mercury.* Flow meters are instruments which measure the flow rate of liquids or gases. Historically, they have been used in civil engineering applications, e.g., water treatment plants, sewage plants, and power stations. Flow meters contained up to 5 kilograms (kg) of elemental mercury. At present, the sale of mercury-containing flow meters is banned in six states: California, Maine, Massachusetts, New Hampshire, New York, and Vermont (Ref. 4). Many mercury-free alternatives exist, including differential pressure meters, positive displacement meters, velocity meters, and mass meters. EPA found sufficient information to conclude that mercury-containing flow meters are no longer manufactured in or imported into the United States (Ref. 1).

ii. *Natural gas manometers containing elemental mercury.* A manometer is an instrument used to measure the pressure of gases or liquids. For purposes of this rule, a natural gas manometer means a mercury-containing instrument used in the natural gas industry to measure the pressure differential of natural gas in a pipeline. Mercury manometers have been used in the natural gas industry on individual wells, pipeline junctions, pipeline manifolds, compressor stations, and distribution points. The manometers contain between 3.2 and 54.5 kg of mercury. A common design for manometers is a U-shaped tube with one end opened to the atmosphere and the other connected to a process. Contained in the tube is a liquid (mercury, in the past). Pressure differential is measured by comparing the liquid levels in each of the two vertical sections of the tube. Seven states have enacted broad bans on the sale of mercury manometers (Ref. 4), and Louisiana prohibits the sale of mercury-containing natural gas manometers (Ref. 2). Available

information indicates that bellows orifice meters have replaced mercury meters in the natural gas industry. EPA found sufficient information to conclude that mercury-containing manometers are no longer manufactured in or imported into the United States (Ref. 1).

iii. *Pyrometers containing elemental mercury.* A pyrometer is an instrument that is similar to a thermometer but is typically used to measure extremely high temperatures in industrial processes such as in foundries, for pottery and ceramic kiln work, and in automotive applications. Historically, pyrometers contained mercury in sensing units in amounts ranging between 5 and 10 grams of mercury. In recent years, California, Maine, Massachusetts, New Hampshire, New York, and Vermont have banned the sale of mercury-containing pyrometers (Ref. 4). EPA found sufficient information to conclude that mercury-containing pyrometers are no longer manufactured, or imported into the United States (Ref. 1).

3. *Potential exposure and release from these uses.* The typical lifecycle of flow meters, natural gas manometers, and pyrometers includes several stages: Manufacture, distribution in commerce, use, and waste management (landfilling or recycling). At any point in the lifecycle, there is potential for mercury to be released as liquid or vapor. Workers and others can be exposed to the mercury and it can be released into water, air, or onto land as the mercury is transported, stored, and handled during manufacturing. While the flow meters, manometers, and pyrometers are in use, the mercury can vaporize or spill due to breakage during transport, installation, maintenance, refilling, or repair. For example, beginning in the 1920s, mercury-containing manometers were used in the Louisiana natural gas industry, and mercury releases to the environment have been attributed to these manometers. (Ref. 3). Other opportunities for release can occur at the end of the lifecycle of flow meters, manometers, and pyrometers, as the devices are removed from equipment and facilities and handled during waste management.

B. Today's Action

EPA is designating as significant new uses, use of elemental mercury in flow meters, natural gas manometers, or pyrometers. However, use of elemental mercury in these articles when they are in service as of September 11, 2009, will not be covered as a significant new use under this SNUR. Definitions of "flow meter," "natural gas manometer," and

"pyrometer" can be found at 40 CFR 721.10068 of the regulatory text for this final rule.

This action will amend 40 CFR 721.10068 and require persons who intend to manufacture or process elemental mercury for a use designated by this rule as a significant new use to notify EPA at least 90 days before commencing the manufacturing or processing of elemental mercury for such significant new use. The required notification will provide EPA with the opportunity to evaluate the intended use and, if necessary, to prohibit or limit that activity before it occurs.

For this SNUR, EPA is not including the general "article" exemption at 40 CFR 721.45(f). Thus, persons importing or processing elemental mercury (including when part of an article) for a significant new use will be subject to the notification requirements of 40 CFR 721.25. EPA is not including this exemption because flow meters, natural gas manometers, and pyrometers are articles, and a primary concern associated with this SNUR is potential exposures associated with the lifecycle of these uses. Further, it is possible to reclaim elemental mercury from certain articles, which could be used to produce flow meters, natural gas manometers, and pyrometers. EPA notes that, in accordance with TSCA section 12(a) and 40 CFR 721.45(g), persons who manufacture or process elemental mercury solely for export will be exempt from the notification requirements of 40 CFR 721.25, if when distributing the substance in commerce, it is labeled in accordance with TSCA section 12(a)(1)(B). Further, EPA notes that the exemption from the TSCA section 12(b) notification requirements for exported articles (see 40 CFR 707.60(b)) remains in force. Thus, persons who export elemental mercury as part of an article will not be required to provide export notification.

EPA believes elemental mercury is no longer used to manufacture flow meters, natural gas manometers, or pyrometers, but some of these articles may remain in service in the United States (no public comments were received in response to the proposed rule indicating the ongoing use of such articles). The ongoing use of such articles, including maintenance and servicing activities, falls outside the scope of this significant new use rule. Thus, the manufacturing and processing of elemental mercury for use in these articles, provided they are in service as of September 11, 2009, will not be covered by the rule. For example, if an article that is in service as of September 11, 2009, is removed from service for maintenance or servicing,

including the addition of new mercury, and then placed back into service, any manufacturing or processing of mercury associated with that maintenance or servicing will not be covered by the rule. Otherwise, the addition of new mercury to these existing articles after September 11, 2009, could potentially trigger a significant new use notice under this rule (e.g., if it involved processing of the mercury), which is not EPA's intent.

C. Response to Public Comments

EPA received three comments on the proposed rule that was issued in the **Federal Register** of September 11, 2009 (74 FR 46707). Copies of all comments received are in the public docket for this rule. All three commenters expressed general support for the proposed rule. No comments provided any data or made any assertions that manufacture, import, processing, distribution, or use of elemental mercury in these articles is ongoing. A discussion of specific comments suggesting changes to the proposal and EPA's response follows:

1. *Comment.* One commenter believed the language on the requirement to notify EPA "at least 90 days" before commencing a subject activity created ambiguities, and should be changed to "within 90 days." The commenter also thought the factors used to determine a significant new use should be more specific, perhaps by establishing a quantity determination. Finally, the commenter thought the proposed SNUR should be expanded to include mercury-containing products currently in use.

Response. The requirement to notify EPA at least 90 days before (≥ 90 days) commencement is specified by TSCA section 5(a)(1); EPA does not see any ambiguity. Similarly, the factors used to determine a significant new use noted by the commenter are those specified by TSCA section 5(a)(2). EPA notes these are the factors EPA uses when it makes a determination on a significant new use; chemical manufacturers and processors are subject to the new regulations at 40 CFR 721.10068. The commenter's recommended regulation of current uses (if any) of these mercury-containing articles is outside the scope of this TSCA section 5(a) regulation. As discussed in the proposed rule, EPA considered and rejected regulating elemental mercury in these articles under TSCA section 6(a).

2. *Comment.* Another commenter recommended that EPA use this rule to mandate all states to develop a mercury reduction plan. The commenter also asked EPA to work with the FDA to ban the use of mercury in all vaccines.

Response. The actions recommended by the commenter are outside the scope of this regulation.

3. *Comment.* The third commenter proposed EPA take three additional steps in this rulemaking: (1) Require that current owners of manometers and flowmeters disclose the number of meters and their location to EPA; (2) classify the sale of replacement parts as a significant new use; and (3) phase out the use of old manometers through an incentive program for removal.

Response. The disclosure requirement proposed by the commenter is outside the scope of this regulation. As noted previously, EPA considered and rejected regulating elemental mercury in these articles under TSCA section 6(a). The disclosure requirement proposed by the commenter would require a separate rulemaking by EPA under TSCA section 6(a) authority. EPA believes inventories of these articles in use are minimal or non-existent. Regarding the second recommendation, EPA is not aware of any large inventories of either mercury-containing replacement parts or existing equipment that would be kept in service for prolonged periods by their use. EPA wishes to clarify that depending on the exact nature of these replacement parts, if any exist, and the circumstances of their eventual end use, they may or may not fall under the scope of this regulation. Only flow meters, natural gas manometers and pyrometers in service as of September 11, 2009, are specifically exempt. The commenter's third proposal for a phase-out and waste recovery program is outside the scope of this significant new use regulation.

IV. Rationale and Objectives

A. Rationale

As summarized in Unit III.A, EPA has concerns regarding the adverse health effects presented by mercury in humans and wildlife, as well as its environmental fate and the exposure pathways. EPA is encouraged by the discontinuation of the use of elemental mercury in the manufacturing of flow meters, natural gas manometers, and pyrometers. However, EPA is concerned that the manufacturing or processing of elemental mercury for use in flow meters, natural gas manometers, or pyrometers could be reinitiated in the future. Accordingly, EPA wants the opportunity to evaluate and control, where appropriate, activities associated with those uses, if such manufacturing or remanufacturing were to occur again. The required notification provided by a SNUN will provide EPA with the opportunity to evaluate activities associated with a significant new use

and an opportunity to protect against unreasonable risks, if any, from exposure to mercury.

B. Objectives

Based on the considerations in Unit IV.A., EPA has the following objectives with regard to the significant new uses that are designated in this rule:

1. EPA will receive notice of any person's intent to manufacture or process elemental mercury for any of the described significant new uses before that activity begins.

2. EPA will have an opportunity to review and evaluate data submitted in a SNUN before the notice submitter begins manufacturing or processing of elemental mercury for any of the described significant new uses.

3. EPA will be able to regulate prospective manufacturers or processors of elemental mercury before the described significant new uses of the chemical substance occur, provided that regulation is warranted pursuant to TSCA sections 5(e), 5(f), 6 or 7.

V. Significant New Use Determination

Section 5(a)(2) of TSCA states that EPA's determination that a use of a chemical substance is a significant new use must be made after consideration of all relevant factors including:

- The projected volume of manufacturing and processing of a chemical substance.
- The extent to which a use changes the type or form of exposure of human beings or the environment to a chemical substance.
- The extent to which a use increases the magnitude and duration of exposure of human beings or the environment to a chemical substance.
- The reasonably anticipated manner and methods of manufacturing, processing, distribution in commerce, and disposal of a chemical substance.

In addition to these factors enumerated in TSCA section 5(a)(2), the statute authorizes EPA to consider any other relevant factors.

To determine what would constitute a significant new use of elemental mercury, EPA considered the four factors listed in section 5(a)(2) of TSCA. The latest information available to EPA indicates that there is no ongoing use of elemental mercury in the manufacture or remanufacture of flow meters, natural gas manometers, or pyrometers. Resumption of these uses of elemental mercury could result in a significant increase in the magnitude and duration of exposure to workers and the surrounding environment at facilities of all types in the lifecycle, as well as an increase in releases which could

contribute additional mercury to the atmosphere for long-range transport. Resumption of these uses could also result in exposures to workers who had not previously worked in these facilities when elemental mercury was commonly used, as well as exposures to workers who are not currently being exposed to mercury in the manufacture of flow meters, natural gas manometers, or pyrometers. Increases in mercury releases could lead to increases in mercury concentrations in the environment, resulting in overall ecosystem degradation, as well as a deleterious effect on human health from consumption of mercury-contaminated fish.

EPA believes that any of these renewed uses of elemental mercury would increase the magnitude and duration of exposure to humans and the environment over that which would otherwise exist. Based upon the relevant factors as discussed in this unit, EPA has determined that any manufacturing or processing of elemental mercury for use in flow meters, natural gas manometers, or pyrometers is a significant new use.

VI. Applicability of Rule to Uses Occurring Before Effective Date of the Final Rule

As discussed in the **Federal Register** of April 24, 1990 (55 FR 17376), EPA has decided that the intent of section 5(a)(1)(B) of TSCA is best served by designating a use as a significant new use as of the date of publication of the proposed rule rather than as of the effective date of the final rule. If uses begun after publication of the proposed rule were considered ongoing rather than new, it would be difficult for EPA to establish SNUR notice requirements, because a person could defeat the SNUR by initiating the proposed significant new use before the rule became final, and then argue that the use was ongoing as of the effective date of the final rule. Thus, persons who began or begin commercial manufacture or processing of the elemental mercury for a significant new use designated in this rule will have to cease any such activity before the effective date of this rule. To resume their activities, these persons would have to comply with all applicable SNUR notice requirements and wait until the notice review period, including all extensions, expires. EPA has promulgated provisions to allow persons to comply with this SNUR before the effective date. If a person were to meet the conditions of advance compliance under § 721.45(h), that person would be considered to have met

the requirements of the final SNUR for those activities.

Accordingly, this final rule specifies that uses after the date of publication of the proposed rule, September 11, 2009, are subject to this rule. Although the September 11, 2009, date was correctly specified in the regulatory text of the proposed rule document, in several instances in the preamble text to the proposed rule document, the effective date of the final rule was incorrectly given as the applicable date of the SNUR provisions of this rule. No comment was received on the issue.

VII. Test Data and Other Information

EPA recognizes that TSCA section 5 does not require developing any particular test data before submission of a SNUN. Persons are required only to submit test data in their possession or control and to describe any other data known to or reasonably ascertainable by them (15 U.S.C. 2604(d); 40 CFR 721.25). However, as a general matter, EPA recommends that SNUN submitters include data that would permit a reasoned evaluation of risks posed by the chemical substance during its manufacture, processing, use, distribution in commerce, or disposal. EPA encourages persons to consult with the Agency before submitting a SNUN. As part of this optional pre-notice consultation, EPA would discuss specific data it believes may be useful in evaluating a significant new use. SNUNs submitted for significant new uses without any test data may increase the likelihood that EPA will take action under TSCA section 5(e) to prohibit or limit activities associated with this chemical.

SNUN submitters should be aware that EPA will be better able to evaluate SNUNs that provide detailed information on:

1. Human exposure and environmental releases that may result from the significant new uses of the chemical substance.
2. Potential benefits of the chemical substance.
3. Information on risks posed by the chemical substances compared to risks posed by potential substitutes.

VIII. SNUN Submissions

As stated in Unit II.C., according to § 721.1(c), persons submitting a SNUN must comply with the same notice requirements and EPA regulatory procedures as persons submitting a PMN, including submission of test data on health and environmental effects as described in § 720.50. SNUNs must be submitted to EPA, on EPA Form No. 7710-25 in accordance with the

procedures set forth in §§ 721.25 and 720.40. This form is available from the Environmental Assistance Division (7408M), 1200 Pennsylvania Ave., NW., Washington, DC 20460-0001. Forms and information are also available electronically at <http://www.epa.gov/opptintr/newchems>.

IX. Economic Analysis

EPA evaluated the potential costs of establishing SNUR reporting requirements for potential manufacturers and processors of the chemical substance included in this rule. EPA's economic analysis, which is briefly summarized here, is available in the public docket (Ref. 1).

The costs of submission of a SNUN will not be incurred by any company until a company decides to pursue a significant new use as defined in this SNUR. In the event that a SNUN is submitted, costs are estimated at approximately \$8,000 per SNUN submission, and includes the cost for preparing and submitting the SNUN, and the payment of a user fee. Businesses that submit a SNUN are either subject to a \$2,500 user fee required by 40 CFR 700.45(b)(2)(iii), or, if they are a small business with annual sales of less than \$40 million when combined with those of the parent company (if any), a reduced user fee of \$100 (40 CFR 700.45(b)(1)). In its evaluation of this rule, EPA also considered the potential costs a company might incur by avoiding or delaying the significant new use in the future, but these costs have not been quantified.

X. References

The following documents are specifically referenced in the preamble for this rulemaking. In addition to these documents, other materials may be available in the docket established for this rulemaking under Docket ID No. EPA-HQ-OPPT-2008-0483, which you can access through <http://www.regulations.gov>. Those interested in the information considered by EPA in developing this rule, should also consult documents that are referenced in the documents that EPA has placed in the docket, regardless of whether the other documents are physically located in the docket.

1. EPA, 2009. Economic Analysis for the Proposed Significant New Use Rule for Mercury-Containing Flow Meters, Nanometers, and Pyrometers. Washington, D.C. OPPT/EETD/EPAB, July 21, 2009.

2. La. Rev. Stat. Ann. section 2575 (2006).

3. State of Louisiana Mercury Risk Reduction Plan, prepared by the Louisiana Department of Environmental Quality, 2007. Available as of May 13, 2010 at <http://www.ldeq.org/portal/Portals/0/organization/MercuryReportforweb.pdf>.

4. Mercury Reduction and Education Legislation in the IMERC-Member States, prepared by Terri Goldberg and Adam Wienert, NEWMOA, June 2008. Available as of May 13, 2010 at <http://www.newmoa.org/prevention/mercury/imercl/legislation-2008.htm>.

XI. Statutory and Executive Order Reviews

A. Executive Order 12866: Regulatory Planning and Review

Under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993), the Office of Management and Budget (OMB) has determined that this final SNUR is not a “significant regulatory action,” because it does not meet the criteria in section 3(f) of the Executive Order. Accordingly, this action was not submitted to OMB for review under Executive Order 12866.

B. Paperwork Reduction Act

According to the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, an Agency may not conduct or sponsor, and a person is not required to respond to a collection of information that requires OMB approval under the PRA, unless it has been approved by OMB and 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**, are listed in 40 CFR part 9, and included on the related collection instrument, or form, if applicable.

The information collection requirements related to this action have already been approved by OMB pursuant to the PRA under OMB control number 2070–0038 (EPA ICR No. 1188). This action does not impose any burden requiring additional OMB approval. If an entity were to submit a SNUN to the Agency, the annual burden is estimated to average 110 hours per response. This burden estimate includes the time needed to review instructions, search existing data sources, gather and maintain the data needed, and complete, review, and submit the required SNUN.

C. Regulatory Flexibility Act

Pursuant to section 605(b) of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*), the Agency hereby

certifies that promulgation of this SNUR will not have a significant adverse economic impact on a substantial number of small entities. The rationale supporting this conclusion is as follows. A SNUR applies to any person (including small or large entities) who intends to engage in any activity described in the rule as a “significant new use.” By definition of the word “new,” and based on all information currently available to EPA, it appears that no small or large entities presently engage in such activity. Since a SNUR requires a person who intends to engage in such activity in the future to first notify EPA by submitting a SNUN, no economic impact will occur unless someone files a SNUN to pursue a significant new use in the future or forgoes profits by avoiding or delaying the significant new use. Although some small entities may decide to conduct such activities in the future, EPA cannot presently determine how many, if any, there may be. However, EPA’s experience to date is that, in response to the promulgation of over 1,000 SNURs, the Agency receives on average only 5 notices per year. Of those SNUNs submitted, only one appears to be from a small entity in response to any SNUR. Therefore, EPA believes that the potential economic impact of complying with a SNUR is not expected to be significant or adversely impact a substantial number of small entities. In a SNUR that published as a final rule on August 8, 1997 (62 FR 42690) (FRL–5735–4), the Agency presented its general determination that proposed and final SNURs are not expected to have a significant economic impact on a substantial number of small entities, which was provided to the Chief Counsel for Advocacy of the Small Business Administration.

D. Unfunded Mandates Reform Act

Based on EPA’s experience with proposing and finalizing SNURs, State, local, and Tribal governments have not been impacted by these rulemakings, and EPA does not have any reason to believe that any State, local, or Tribal government will be impacted by this rulemaking. As such, EPA has determined that this regulatory action will not impose any enforceable duty, contain any unfunded mandate, or otherwise have any effect on small governments subject to the requirements of sections 202, 203, 204, or 205 of the Unfunded Mandates Reform Act of 1995 (UMRA) (2 U.S.C. 1531–1538).

E. Executive Order 13132: Federalism

This action will not have a substantial direct effect on States, on the

relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, entitled *Federalism* (64 FR 43255, August 10, 1999).

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

This final rule will not have Tribal implications because it is not expected to have substantial direct effects on Indian Tribes. This rule will not significantly or uniquely affect the communities of Indian Tribal governments, nor will it involve or impose any requirements that affect Indian Tribes. Accordingly, the requirements of Executive Order 13175, entitled *Consultation and Coordination with Indian Tribal Governments* (65 FR 67249, November 9, 2000), do not apply to this final rule.

G. Executive Order 13045: Protection of Children from Environmental Health Risks and Safety Risks

This action is not subject to Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997), because this is not an economically significant regulatory action as defined by Executive Order 12866, and this action does not address environmental health or safety risks disproportionately affecting children.

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

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), because this action is not expected to affect energy supply, distribution, or use.

I. National Technology Transfer Advancement Act

In addition, since this action does not involve any technical standards; section 12(d) of the National Technology Transfer and Advancement Act of 1995 section 12(d) (15 U.S.C. 272 note), does not apply to this action.

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

This action does not entail special considerations of environmental justice related issues as delineated by

Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994).

XII. 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 the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This rule is not a "major rule" as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 721

Environmental protection, Chemicals, Hazardous substances, Reporting and recordkeeping requirements

Dated: July 12, 2010.

Wendy C. Hamnett,

Director, Office of Pollution Prevention and Toxics.

■ Therefore, 40 CFR part 721 is amended as follows:

PART 721—[AMENDED]

■ 1. The authority citation for part 721 continues to read as follows:

Authority: 15 U.S.C. 2604, 2607, and 2625(c).

■ 2. In § 721.10068, revise paragraph (a) and add a new paragraph (b)(2)(vii) to read as follows:

§ 721.10068 Elemental mercury.

(a) *Definitions.* The definitions in § 721.3 apply to this section. In addition, the following definitions apply:

Flow meter means an instrument used in various applications to measure the flow rate of liquids or gases.

Motor vehicle has the meaning found at 40 CFR 85.1703.

Natural gas manometer means an instrument used in the natural gas industry to measure gas pressure.

Pyrometer means an instrument used in various applications to measure extremely high temperatures.

(b) * * *

(2) * * *

(vii) Manufacturing or processing of elemental mercury for use in flow meters, natural gas manometers, and pyrometers except for use in these

articles when they are in service as of September 11, 2009.

* * * * *

[FR Doc. 2010-17718 Filed 7-20-10; 8:45 am]

BILLING CODE 6560-50-S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 0910131362-0087-02]

RIN 0648-XX68

Fisheries of the Exclusive Economic Zone Off Alaska; Northern Rockfish for Catcher/Processors Participating in the Rockfish Limited Access Fishery in the Central Regulatory Area of the Gulf of Alaska

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

ACTION: Temporary rule; closure.

SUMMARY: NMFS is prohibiting directed fishing for northern rockfish by catcher/processors participating in the rockfish limited access fishery in the Central Regulatory Area of the Gulf of Alaska (GOA). This action is necessary to prevent exceeding the 2010 total allowable catch (TAC) of northern rockfish allocated to catcher/processors participating in the rockfish limited access fishery in the Central Regulatory Area of the GOA.

DATES: Effective 1200 hrs, Alaska local time (A.l.t.), July 16, 2010, through 2400 hrs, A.l.t., December 31, 2010.

FOR FURTHER INFORMATION CONTACT: Steve Whitney, 907-586-7269.

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fishery in the GOA exclusive economic zone according to the Fishery Management Plan for Groundfish of the Gulf of Alaska (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR part 600 and 50 CFR part 679.

The 2010 TAC of northern rockfish allocated to catcher/processors participating in the rockfish limited access fishery in the Central GOA is 152 metric tons (mt) as established by the final 2010 and 2011 harvest specifications for groundfish of the GOA (75 FR 11749, March 12, 2010), and as

posted as the 2010 Rockfish Program Allocations at <http://alaskafisheries.noaa.gov/sustainablefisheries/goarat/default.htm>.

In accordance with § 679.20(d)(1)(i), the Administrator, Alaska Region, NMFS (Regional Administrator), has determined that the 2010 TAC of northern rockfish allocated to catcher/processors participating in the rockfish limited access fishery in the Central Regulatory Area of the GOA will soon be reached. Therefore, the Regional Administrator is establishing a directed fishing allowance of 102 mt, and is setting aside the remaining 50 mt as bycatch to support other anticipated groundfish fisheries. In accordance with § 679.20(d)(1)(iii), the Regional Administrator finds that this directed fishing allowance has been reached. Consequently, NMFS is prohibiting directed fishing for northern rockfish by catcher/processors participating in the rockfish limited access fishery in the Central Regulatory Area of the GOA.

After the effective date of this closure the maximum retainable amounts at § 679.20(e) and (f) apply at any time during a trip.

Classification

This action responds to the best available information recently obtained from the fishery. The Assistant Administrator for Fisheries, NOAA (AA), finds good cause to waive the requirement to provide prior notice and opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553(b)(B) as such requirement is impracticable and contrary to the public interest. This requirement is impracticable and contrary to the public interest as it would prevent NMFS from responding to the most recent fisheries data in a timely fashion and would delay the closure of northern rockfish for catcher/processors participating in the rockfish limited access fishery in the Central Regulatory Area of the GOA. NMFS was unable to publish a notice providing time for public comment because the most recent, relevant data only became available as of July 15, 2010.

The AA also finds good cause to waive the 30-day delay in the effective date of this action under 5 U.S.C. 553(d)(3). This finding is based upon the reasons provided above for waiver of prior notice and opportunity for public comment.

This action is required by § 679.20 and is exempt from review under Executive Order 12866.

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

Dated: July 16, 2010.

James P. Burgess,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.
[FR Doc. 2010-17828 Filed 7-16-10; 4:15 pm]

BILLING CODE 3510-22-S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 0910131362-0087-02]

RIN 0648-XX71

Fisheries of the Exclusive Economic Zone Off Alaska; Pacific Ocean Perch for Catcher/Processors Participating in the Rockfish Limited Access Fishery in the Central Regulatory Area of the Gulf of Alaska

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

ACTION: Temporary rule; closure.

SUMMARY: NMFS is prohibiting directed fishing for Pacific ocean perch by catcher/processors participating in the rockfish limited access fishery in the Central Regulatory Area of the Gulf of Alaska (GOA). This action is necessary to prevent exceeding the 2010 total allowable catch (TAC) of Pacific ocean perch allocated to catcher/processors participating in the rockfish limited access fishery in the Central Regulatory Area of the GOA.

DATES: Effective 1200 hrs, Alaska local time (A.l.t.), July 16, 2010, through 2400 hrs, A.l.t., December 31, 2010.

FOR FURTHER INFORMATION CONTACT: Steve Whitney, 907-586-7269.

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fishery in the GOA exclusive economic zone according to the Fishery Management Plan for Groundfish of the Gulf of Alaska (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR part 600 and 50 CFR part 679.

The 2010 TAC of Pacific ocean perch allocated to catcher/processors participating in the rockfish limited access fishery in the Central GOA is 663 metric tons (mt) as established by the final 2010 and 2011 harvest specifications for groundfish of the GOA (75 FR 11749, March 12, 2010), and as

posted as the 2010 Rockfish Program Allocations at <http://alaskafisheries.noaa.gov/sustainablefisheries/goarat/default.htm>.

In accordance with § 679.20(d)(1)(i), the Administrator, Alaska Region, NMFS (Regional Administrator), has determined that the 2010 TAC of Pacific ocean perch allocated to catcher/processors participating in the rockfish limited access fishery in the Central Regulatory Area of the GOA will soon be reached. Therefore, the Regional Administrator is establishing a directed fishing allowance of 598 mt, and is setting aside the remaining 65 mt as bycatch to support other anticipated groundfish fisheries. In accordance with § 679.20(d)(1)(iii), the Regional Administrator finds that this directed fishing allowance has been reached. Consequently, NMFS is prohibiting directed fishing for Pacific ocean perch by catcher/processors participating in the rockfish limited access fishery in the Central Regulatory Area of the GOA.

After the effective date of this closure the maximum retainable amounts at § 679.20(e) and (f) apply at any time during a trip.

Classification

This action responds to the best available information recently obtained from the fishery. The Assistant Administrator for Fisheries, NOAA (AA), finds good cause to waive the requirement to provide prior notice and opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553(b)(B) as such requirement is impracticable and contrary to the public interest. This requirement is impracticable and contrary to the public interest as it would prevent NMFS from responding to the most recent fisheries data in a timely fashion and would delay the closure of Pacific ocean perch for catcher/processors participating in the rockfish limited access fishery in the Central Regulatory Area of the GOA. NMFS was unable to publish a notice providing time for public comment because the most recent, relevant data only became available as of July 15, 2010.

The AA also finds good cause to waive the 30-day delay in the effective date of this action under 5 U.S.C. 553(d)(3). This finding is based upon the reasons provided above for waiver of prior notice and opportunity for public comment.

This action is required by § 679.20 and is exempt from review under Executive Order 12866.

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

Dated: July 16, 2010.

James P. Burgess,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.
[FR Doc. 2010-17831 Filed 7-16-10; 4:15 pm]

BILLING CODE 3510-22-S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 0910131362-0087-02]

RIN 0648-XX70

Fisheries of the Exclusive Economic Zone Off Alaska; "Other rockfish" in the Western Regulatory Area of the Gulf of Alaska

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

ACTION: Temporary rule; closure.

SUMMARY: NMFS is prohibiting retention of "other rockfish" in the Western Regulatory Area of the Gulf of Alaska (GOA). This action is necessary because the 2010 total allowable catch (TAC) of "other rockfish" in the Western Regulatory Area of the GOA has been reached.

DATES: Effective 1200 hrs, Alaska local time (A.l.t.), July 16, 2010, through 2400 hrs, A.l.t., December 31, 2010.

FOR FURTHER INFORMATION CONTACT: Josh Keaton, 907-586-7269.

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fishery in the GOA exclusive economic zone according to the Fishery Management Plan for Groundfish of the Gulf of Alaska (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR part 600 and 50 CFR part 679.

The 2010 TAC of "other rockfish" in the Western Regulatory Area of the GOA is 212 metric tons (mt) as established by the final 2010 and 2011 harvest specifications for groundfish of the GOA (75 FR 11749, March 12, 2010).

In accordance with § 679.20(d)(2), the Administrator, Alaska Region, NMFS (Regional Administrator), has determined that the 2010 TAC of "other rockfish" in the Western Regulatory Area of the GOA has been reached. Therefore, NMFS is requiring that "other rockfish" caught in the Western

Regulatory Area of the GOA be treated as prohibited species in accordance with § 679.21(b).

“Other rockfish” in the Western Regulatory Area of the GOA means slope and demersal shelf rockfish.

Classification

This action responds to the best available information recently obtained from the fishery. The Assistant Administrator for Fisheries, NOAA (AA), finds good cause to waive the requirement to provide prior notice and opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553(b)(B) as such requirement is impracticable and contrary to the public interest. This requirement is impracticable and contrary to the public interest as it would prevent NMFS from responding to the most recent fisheries data in a timely fashion and would delay prohibiting the retention of “other rockfish” in the Western Regulatory Area of the GOA. NMFS was unable to publish a notice providing time for public comment because the most recent, relevant data only became available as of July 15, 2010.

The AA also finds good cause to waive the 30-day delay in the effective date of this action under 5 U.S.C. 553(d)(3). This finding is based upon the reasons provided above for waiver of prior notice and opportunity for public comment.

This action is required by § 679.20 and § 679.21 and is exempt from review under Executive Order 12866.

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

Dated: July 16, 2010.

James P. Burgess,

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

[FR Doc. 2010–17833 Filed 7–16–10; 4:15 pm]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 0910131362–0087–02]

RIN 0648–XX72

Fisheries of the Exclusive Economic Zone Off Alaska; Pacific Ocean Perch in the Western Regulatory Area of the Gulf of Alaska

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

ACTION: Temporary rule; closure.

SUMMARY: NMFS is prohibiting retention of Pacific ocean perch in the Western Regulatory Area of the Gulf of Alaska (GOA). This action is necessary because the 2010 total allowable catch (TAC) of Pacific ocean perch in the Western Regulatory Area of the GOA has been reached.

DATES: Effective 1200 hrs, Alaska local time (A.l.t.), July 16, 2010, through 2400 hrs, A.l.t., December 31, 2010.

FOR FURTHER INFORMATION CONTACT:

Steve Whitney, 907–586–7269.

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fishery in the GOA exclusive economic zone according to the Fishery Management Plan for Groundfish of the Gulf of Alaska (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR part 600 and 50 CFR part 679.

The 2010 TAC of Pacific ocean perch in the Western Regulatory Area of the GOA is 2,895 metric tons (mt) as established by the final 2010 and 2011 harvest specifications for groundfish of the GOA (75 FR 11749, March 12, 2010).

In accordance with § 679.20(d)(2), the Administrator, Alaska Region, NMFS (Regional Administrator), has determined that the 2010 TAC of Pacific ocean perch in the Western Regulatory Area of the GOA has been reached. Therefore, NMFS is requiring that Pacific ocean perch caught in the Western Regulatory Area of the GOA be treated as prohibited species in accordance with § 679.21(b).

Classification

This action responds to the best available information recently obtained from the fishery. The Assistant Administrator for Fisheries, NOAA (AA), finds good cause to waive the requirement to provide prior notice and opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553(b)(B) as such requirement is impracticable and contrary to the public interest. This requirement is impracticable and contrary to the public interest as it would prevent NMFS from responding to the most recent fisheries data in a timely fashion and would delay prohibiting the retention of Pacific ocean perch in the Western Regulatory Area of the GOA. NMFS was unable to publish a notice providing time for public comment because the most recent, relevant data only became available as of July 15, 2010.

The AA also finds good cause to waive the 30-day delay in the effective date of this action under 5 U.S.C. 553(d)(3). This finding is based upon the reasons provided above for waiver of prior notice and opportunity for public comment.

This action is required by § 679.20 and § 679.21 and is exempt from review under Executive Order 12866.

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

Dated: July 16, 2010.

James P. Burgess,

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

[FR Doc. 2010–17835 Filed 7–16–10; 4:15 pm]

BILLING CODE 3510–22–S

Proposed Rules

Federal Register

Vol. 75, No. 139

Wednesday, July 21, 2010

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

NUCLEAR REGULATORY COMMISSION

10 CFR Part 72

[NRC-2010-0183]

RIN 3150-A188

List of Approved Spent Fuel Storage Casks: NAC-MPC System, Revision 6

AGENCY: Nuclear Regulatory Commission.

ACTION: Proposed rule.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is proposing to amend its spent fuel storage cask regulations by revising the NAC International, Inc. (NAC), NAC-MPC System listing within the "List of Approved Spent Fuel Storage Casks" to include Amendment No. 6 to Certificate of Compliance (CoC) Number 1025. Amendment No. 6 would include the following changes to the configuration of the NAC-MPC storage system as noted in Appendix B of the Technical Specifications (TS): incorporation of a single closure lid with a welded closure ring for redundant closure into the Transportable Storage Canister (TSC) design; modification of the TSC and basket design to accommodate up to 68 La Crosse Boiling Water Reactor spent fuel assemblies (36 undamaged Exxon fuel assemblies and up to 32 damaged fuel cans (in a preferential loading pattern)) that may contain undamaged Exxon fuel assemblies and damaged Exxon and Allis Chalmers fuel assemblies and/or fuel debris; the addition of zirconium alloy shroud compaction debris to be stored with undamaged and damaged fuel assemblies; minor design modifications to the Vertical Concrete Cask (VCC) incorporating design features from the MAGNASTOR system for improved operability of the system while adhering to as low as is reasonably achievable (ALARA) principles; an increase in the concrete pad compression strength from 4000 psi to 6000 psi; added justification for the 6-ft soil depth as being

conservative; and other changes to incorporate minor editorial corrections in CoC No. 1025 and Appendices A and B of the TS. Also, the Definitions in TS 1.1 will be revised to include modifications and newly defined terms; the Limiting Conditions for Operation and associated Surveillance Requirements in TS 3.1 and 3.2 will be revised; and editorial changes will be made to TS 5.2 and 5.4.

DATES: Comments on the proposed rule must be received on or before August 20, 2010.

ADDRESSES: Please include Docket ID NRC-2010-0183 in the subject line of your comments. For instructions on submitting comments and accessing documents related to this action, see the Section "Submitting Comments and Accessing Information" in the **SUPPLEMENTARY INFORMATION** section of this document. You may submit comments by any one of the following methods:

Federal Rulemaking Web Site: Go to <http://www.regulations.gov> and search for documents filed under Docket ID NRC-2010-0183. Address questions about NRC dockets to Carol Gallagher, telephone 301-492-3668, e-mail Carol.Gallagher@nrc.gov.

Mail comments to: Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, ATTN: Rulemakings and Adjudications Staff.

E-mail comments to: RulemakingComments@nrc.gov. If you do not receive a reply e-mail confirming that we have received your comments, contact us directly at 301-415-1677.

Hand deliver comments to: 11555 Rockville Pike, Rockville, Maryland 20852, between 7:30 am and 4:15 pm Federal workdays (Telephone 301-415-1677).

Fax comments to: Secretary, U.S. Nuclear Regulatory Commission at 301-415-1101.

FOR FURTHER INFORMATION CONTACT: Jayne M. McCausland, Office of Federal and State Materials and Environmental Management Programs, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, telephone (301) 415-6219, e-mail Jayne.McCausland@nrc.gov.

SUPPLEMENTARY INFORMATION: For additional supplementary information, see the direct final rule published in the Rules and Regulations section of this **Federal Register**.

Submitting Comments and Accessing Information

Comments submitted in writing or in electronic form will be posted on the NRC Web site and on the Federal rulemaking Web site <http://www.regulations.gov>. Because your comments will not be edited to remove any identifying or contact information, the NRC cautions you against including any information in your submission that you do not want to be publicly disclosed. The NRC requests that any party soliciting or aggregating comments received from other persons for submission to the NRC inform those persons that the NRC will not edit their comments to remove any identifying or contact information, and therefore, they should not include any information in their comments that they do not want publicly disclosed.

You can access publicly available documents related to this document using the following methods:

NRC's Public Document Room (PDR): The public may examine and have copied for a fee publicly available documents at the NRC's PDR, Room O-1F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland.

NRC's Agencywide Documents Access and Management System (ADAMS): Publicly available documents created or received at the NRC are available electronically at the NRC's Electronic Reading Room at <http://www.nrc.gov/reading-rm/adams.html>. From this page, the public can gain entry into ADAMS, which provides text and image files of NRC's public documents. If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the NRC's PDR reference staff at 1-800-397-4209, or 301-415-4737, or by e-mail to PDR.Resource@nrc.gov. An electronic copy of the proposed CoC, TS, and preliminary safety evaluation report (SER) can be found under ADAMS Package Number ML100890517. The ADAMS Accession Number for the NAC application, dated January 16, 2009, is ML090270151.

CoC No. 1025, the TS, the preliminary SER, and the environmental assessment are available for inspection at the NRC PDR, Public File Area O-1F21, One White Flint North, 11555 Rockville Pike, Rockville, MD. Single copies of these documents may be obtained from Jayne M. McCausland, Office of Federal

and State Materials and Environmental Management Programs, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, telephone (301) 415-6219, e-mail

Jayne.McCausland@nrc.gov.

Federal Rulemaking Web Site: Public comments and supporting materials related to this proposed rule can be found at <http://www.regulations.gov> by searching on Docket ID NRC-2010-0183.

Procedural Background

This rule is limited to the changes contained in Amendment 6 to CoC No. 1025 and does not include other aspects of the NAC-MPC System design. Because NRC considers this action noncontroversial and routine, the NRC is publishing this proposed rule concurrently as a direct final rule in the Rules and Regulations section of this **Federal Register**. Adequate protection of public health and safety and the environment continues to be ensured. The direct final rule will become effective on October 4, 2010. However, if the NRC receives significant adverse comments on the direct final rule by August 20, 2010, then the NRC will publish a document that withdraws the direct final rule. If the direct final rule is withdrawn, the NRC will address the comments received in response to the proposed revisions in a subsequent final rule. Absent significant modifications to the proposed revisions requiring republication, the NRC will not initiate a second comment period on this action in the event the direct final rule is withdrawn.

A significant adverse comment is a comment where the commenter explains why the rule would be inappropriate, including challenges to the rule's underlying premise or approach, or would be ineffective or unacceptable without a change. A comment is adverse and significant if:

(1) The comment opposes the rule and provides a reason sufficient to require a substantive response in a notice-and-comment process. For example, a substantive response is required when:

(a) The comment causes the NRC staff to reevaluate (or reconsider) its position or conduct additional analysis;

(b) The comment raises an issue serious enough to warrant a substantive response to clarify or complete the record; or

(c) The comment raises a relevant issue that was not previously addressed or considered by the NRC staff.

(2) The comment proposes a change or an addition to the rule, and it is apparent that the rule would be ineffective or unacceptable without incorporation of the change or addition.

(3) The comment causes the NRC staff to make a change (other than editorial) to the rule, CoC, or TS.

For additional procedural information and the regulatory analysis, see the direct final rule published in the Rules and Regulations section of this **Federal Register**.

List of Subjects in 10 CFR Part 72

Administrative practice and procedure, Hazardous Waste, Nuclear materials, Occupational safety and health, Radiation protection, Reporting and recordkeeping requirements, Security measures, Spent nuclear fuel, Whistleblowing.

For the reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended; the Energy Reorganization Act of 1974, as amended; the Nuclear Waste Policy Act of 1982, as amended, and 5 U.S.C. 553; the NRC is proposing to adopt the following amendments to 10 CFR Part 72.

PART 72—LICENSING REQUIREMENTS FOR THE INDEPENDENT STORAGE OF SPENT NUCLEAR FUEL, HIGH-LEVEL RADIOACTIVE WASTE, AND REACTOR-RELATED GREATER THAN CLASS C WASTE

1. The authority citation for Part 72 continues to read as follows:

Authority: Secs. 51, 53, 57, 62, 63, 65, 69, 81, 161, 182, 183, 184, 186, 187, 189, 68 Stat. 929, 930, 932, 933, 934, 935, 948, 953, 954, 955, as amended, sec. 234, 83 Stat. 444, as amended (42 U.S.C. 2071, 2073, 2077, 2092, 2093, 2095, 2099, 2111, 2201, 2232, 2233, 2234, 2236, 2237, 2238, 2282); sec. 274, Pub. L. 86-373, 73 Stat. 688, as amended (42 U.S.C. 2021); sec. 201, as amended, 202, 206, 88 Stat. 1242, as amended, 1244, 1246 (42 U.S.C. 5841, 5842, 5846); Pub. L. 95-601, sec. 10, 92 Stat. 2951 as amended by Pub. L. 102-486, sec. 7902, 106 Stat. 3123 (42 U.S.C. 5851); sec. 102, Pub. L. 91-190, 83 Stat. 853 (42 U.S.C. 4332); secs. 131, 132, 133, 135, 137, 141, Pub. L. 97-425, 96 Stat. 2229, 2230, 2232, 2241, sec. 148, Pub. L. 100-203, 101 Stat. 1330-235 (42 U.S.C. 10151, 10152, 10153, 10155, 10157, 10161, 10168); sec. 1704, 112 Stat. 2750 (44 U.S.C. 3504 note); sec. 651(e), Pub. L. 109-58, 119 Stat. 806-10 (42 U.S.C. 2014, 2021, 2021b, 2111).

Section 72.44(g) also issued under secs. 142(b) and 148(c), (d), Pub. L. 100-203, 101 Stat. 1330-232, 1330-236 (42 U.S.C. 10162(b), 10168(c),(d)). Section 72.46 also issued under sec. 189, 68 Stat. 955 (42 U.S.C. 2239); sec. 134, Pub. L. 97-425, 96 Stat. 2230 (42 U.S.C. 10154). Section 72.96(d) also issued under sec. 145(g), Pub. L. 100-203, 101 Stat. 1330-235 (42 U.S.C. 10165(g)). Subpart J also issued under secs. 2(2), 2(15), 2(19), 117(a), 141(h), Pub. L. 97-425, 96 Stat. 2202, 2203, 2204, 2222, 2244 (42 U.S.C. 10101, 10137(a), 10161(h)). Subparts K and L

are also issued under sec. 133, 98 Stat. 2230 (42 U.S.C. 10153) and sec. 218(a), 96 Stat. 2252 (42 U.S.C. 10198).

2. In § 72.214, Certificate of Compliance 1025 is revised to read as follows:

§ 72.214 List of approved spent fuel storage casks.

* * * * *

Certificate Number: 1025.

Initial Certificate Effective Date: April 10, 2000.

Amendment Number 1 Effective Date: November 13, 2001.

Amendment Number 2 Effective Date: May 29, 2002.

Amendment Number 3 Effective Date: October 1, 2003.

Amendment Number 4 Effective Date: October 27, 2004.

Amendment Number 5 Effective Date: July 24, 2007.

Amendment Number 6 Effective Date: October 4, 2010.

SAR Submitted by: NAC International, Inc.

SAR Title: Final Safety Analysis Report for the NAC Multi-Purpose Canister System (NAC-MPC System).

Docket Number: 72-1025.

Certificate Expiration Date: April 10, 2020.

Model Number: NAC-MPC.

* * * * *

Dated at Rockville, Maryland, this 6th day of July 2010.

For the Nuclear Regulatory Commission.

R.W. Borchardt,

Executive Director for Operations.

[FR Doc. 2010-17847 Filed 7-20-10; 8:45 am]

BILLING CODE 7590-01-P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA-2010-0720; Directorate Identifier 2010-SW-050-AD]

RIN 2120-AA64

Airworthiness Directives; Sikorsky Aircraft Corporation (Sikorsky) Model S-92A Helicopters

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes adopting a new airworthiness directive (AD) for Sikorsky Model S-92A helicopters. This proposal would require revising the airworthiness limitations section of the Instructions

for Continued Airworthiness (ICA) to reduce the life limit of the main gearbox housing and replacing any main gearbox housing that exceeds the life limit. This proposal is prompted by a fatigue analysis conducted after a helicopter was found with a severed main gearbox mounting foot pad (foot pad) that failed due to fatigue. The actions specified by this proposed AD are intended to prevent failure of the main gearbox mounting housing foot pad, loss of the main gearbox, and subsequent loss of control of the helicopter.

DATES: Comments must be received on or before September 20, 2010.

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

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

You may examine the comments to this proposed AD in the AD docket on the Internet at <http://www.regulations.gov>.

FOR FURTHER INFORMATION CONTACT:

Michael Schwetz, Aviation Safety Engineer, Boston Aircraft Certification Office, 12 New England Executive Park, Burlington, MA 01803, telephone (781) 238-7761, fax (781) 238-7170.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to submit any written data, views, or arguments regarding this proposed AD. Send your comments to the address listed under the caption

ADDRESSES: Include the docket number “FAA-2010-0720, Directorate Identifier 2010-SW-050-AD” at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of the proposed AD. We will consider all comments received by the closing date and may amend the proposed AD in light of those comments.

We will post all comments we receive, without change, to <http://www.regulations.gov>, including any personal information you provide. We will also post a report summarizing each

substantive verbal contact with FAA personnel concerning this proposed rulemaking. Using the search function of our docket web site, you can find and read the comments to any of our dockets, including the name of the individual who sent or signed the comment. You may review the DOT’s complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477-78).

Examining the Docket

You may examine the docket that contains the proposed AD, any comments, and other information in person at the Docket Operations office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Operations office (telephone (800) 647-5527) is located in Room W12-140 on the ground floor of the West Building at the street address stated in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

Discussion

This document proposes adopting a new AD for Sikorsky Model S-92A helicopters. This proposal would require revising the airworthiness limitations section of the ICA to reduce the life limit of the main gearbox housing from 2700 hours time-in-service (TIS) to 1000 hours TIS and to replace any main gearbox housing that exceeds the lower life limit. This proposal is prompted by review of a fatigue analysis conducted after a helicopter was found with a severed foot pad due to the effect of fatigue of the main gearbox housing. This condition, if not corrected, could result in failure of the main gearbox housing mounting foot pad, loss of the main gearbox, and subsequent loss of control of the helicopter.

This unsafe condition is likely to exist or develop on other helicopters of the same type design. Therefore, the proposed AD would require, within 60 days, revising the airworthiness limitations section of the ICA to reduce the life limit of the main gearbox housing from 2700 hours TIS to 1000 hours TIS and replacing, before further flight, any main gearbox housing that has exceeded the 1000-hour TIS life limit.

We estimate that this proposed AD would affect 15 helicopters of U.S. registry, and the proposed actions would take about 112 work hours per helicopter at an average labor rate of \$85 per work hour. Required parts would cost about \$200,000 per helicopter. Based on these figures, we estimate the total cost impact of the proposed AD on U.S. operators would be \$3,142,800,

assuming all 15 helicopters replace the main gearbox housing.

Regulatory Findings

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

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

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

We prepared a draft economic evaluation of the estimated costs to comply with this proposed AD. See the AD docket to examine the draft economic evaluation.

Authority for This Rulemaking

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Sikorsky Aircraft Corporation: Docket No. FAA-2010-0720; Directorate Identifier 2010-SW-050-AD.

Applicability: Model S-92A helicopters, with main gearbox housing, part number 92351-15110-042, -043, -044, or -045, installed, certificated in any category.

Compliance: Required as indicated, unless done previously.

To prevent failure of the main gearbox housing mounting foot pad, loss of the main gearbox, and subsequent loss of control of the helicopter, do the following:

(a) Within 60 days, revise the airworthiness limitations section of the Instructions for Continued Airworthiness by reducing the life limits of the affected main gearbox housing from 2700 hours time-in-service (TIS) to 1000 hours TIS.

(b) After revising the life limit in accordance with paragraph (a) of this AD, before further flight, replace any main gearbox housing that exceeds the life limit of 1000 hours TIS.

(c) To request a different method of compliance or a different compliance time for this AD, follow the procedures in 14 CFR 39.19. Contact the Manager, Boston Aircraft Certification Office, FAA, *Attn:* Michael Schwetz, Aviation Safety Engineer, 12 New England Executive Park, Burlington, MA 01803, telephone (781) 238-7761, fax (781) 238-7170, for information about previously approved alternative methods of compliance.

(d) The Joint Aircraft System/Component (JASC) Code is 6320: Main Rotor Gearbox.

Issued in Fort Worth, Texas, on July 13, 2010.

Mark R. Schilling,

Acting Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 2010-17756 Filed 7-20-10; 8:45 am]

BILLING CODE 4910-13-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R08-OAR-2007-1033; FRL-9177-7]

Approval and Disapproval and Promulgation of Air Quality Implementation Plans; Colorado; Revisions to Regulation 1

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to partially approve and partially disapprove a State Implementation Plan (SIP) revision submitted by the State of Colorado regarding its Regulation 1. Regulation 1 provides certain emission controls for opacity, particulates, carbon monoxide and sulfur dioxide. The revision involves the deletion of obsolete, the adoption of new, and the clarification of ambiguous provisions within Regulation 1. The intended effect of this proposed action is to make federally enforceable the revised portions of Colorado's Regulation 1 that EPA is proposing to approve and to disapprove portions of the regulation that EPA deems are not consistent with the Clean Air Act. This action is being taken under section 110 of the Clean Air Act.

DATES: Comments must be received on or before August 20, 2010.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA-R08-OAR-2007-1033, by one of the following methods:

- <http://www.regulations.gov>. Follow the on-line instructions for submitting comments.
- *E-mail:* komp.mark@epa.gov.
- *Fax:* (303) 312-6064 (please alert the individual listed in the **FOR FURTHER INFORMATION CONTACT** if you are faxing comments).
- *Mail:* Callie Videtich, Director, Air Program, Environmental Protection Agency (EPA), Region 8, Mailcode 8P-AR, 1595 Wynkoop Street, Denver, Colorado 80202-1129.

• *Hand Delivery:* Callie Videtich, Director, Air Program, Environmental Protection Agency (EPA), Region 8, Mailcode 8P-AR, 1595 Wynkoop Street, Denver, Colorado 80202-1129. Such deliveries are only accepted Monday through Friday, 8 a.m. to 4:30 p.m., excluding Federal holidays. Special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. EPA-R08-OAR-2007-1033. 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 additional instructions on submitting comments, go to Section I. General Information of the **SUPPLEMENTARY INFORMATION** section of this document.

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 Program, Environmental Protection Agency (EPA), Region 8, 1595 Wynkoop Street, Denver, Colorado 80202-1129. EPA requests that if at all possible, you contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section to view the hard copy of the docket. You may view the hard copy of the docket Monday through Friday, 8 a.m. to 4 p.m., excluding Federal holidays.

FOR FURTHER INFORMATION CONTACT: Mark Komp, U. S. Environmental Protection Agency, Region 8, Air Program, Mail Code 8P-AR, 1595 Wynkoop Street, Denver, Colorado 80202-1129, (303) 312-6022, komp.mark@epa.gov.

SUPPLEMENTARY INFORMATION:

Table of Contents

- I. General Information
- II. What is the purpose of this action?
- III. Background Information Regarding Colorado's Submittal
- IV. EPA's Evaluation of State's Submittal
- V. Consideration of Section 110(l) of the CAA
- VI. Proposed Action

VII. Statutory and Executive Order Reviews

Definitions

For the purpose of this document, we are giving meaning to certain words or initials as follows:

- (i) The words or initials *Act* or *CAA* mean or refer to the Clean Air Act, unless the context indicates otherwise.
- (ii) The words *EPA*, *we*, *us* or *our* mean or refer to the United States Environmental Protection Agency.
- (iii) The initials *SIP* mean or refer to State Implementation Plan.
- (iv) The words *State* or *Colorado* mean the State of Colorado, unless the context indicates otherwise.
- (v) The words *Provision* or *Regulation* refer to Colorado's Regulation 1.
- (vi) The initials *SO₂* mean or refer to sulfur dioxide, *HC* mean or refer to hydrocarbons and *CO* mean or refer to Carbon Monoxide.
- (vii) The initials *RACT* mean or refer to Reasonably Available Control Technology.

I. 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:

- a. Identify the rulemaking by docket number and other identifying information (subject heading, **Federal Register** date and page number).
- b. 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.
- c. Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.
- d. Describe any assumptions and provide any technical information and/or data that you used.
- e. If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.

f. Provide specific examples to illustrate your concerns, and suggest alternatives.

g. Explain your views as clearly as possible, avoiding the use of profanity or personal threats.

h. Make sure to submit your comments by the comment period deadline identified.

II. What is the purpose of this action?

EPA is proposing to partially approve and partially disapprove revisions to Colorado's Regulation 1 adopted by the State of Colorado on August 16, 2001 and submitted to EPA on July 31, 2002. The revisions involve the deletion of obsolete, adoption of new, and clarification of ambiguous provisions. Colorado's Regulation 1 governs opacity, and particulate, sulfur dioxide, and carbon monoxide emissions from sources. After our review of these revisions, we believe that some of the revisions are consistent with the Act and should be approved while some of the revisions are not and should be disapproved.

EPA is soliciting public comments on the issues discussed in this document. These comments will be considered before taking final action. Interested parties may participate in the Federal rulemaking procedure by submitting written comments to the EPA Regional office listed in the *Addresses* section of this document.

III. Background Information Regarding Colorado's Submittal

On July 31, 2002, the State of Colorado submitted a formal revision to its SIP. The July 31, 2002 revision deleted obsolete provisions in Sections II.A.6, A.7, and A.9¹ regarding, respectively, alfalfa dehydrating plant drum dryers, wigwam burners, and the static firing of Pershing missiles. The provisions were deleted from the regulation because these sources no longer exist in the State.

Colorado added language to its open burning provisions (Sections II.C.2.d and C.3) to clarify that the open burning of animal parts and carcasses are not exempt from permit requirements. However, a special allowance to conduct open burning activities without a permit is provided where the State Agricultural Commission declares a public health emergency or a contagious or infectious outbreak of disease that imperils livestock is evident. Such activities require a telephone notice to State and local health departments prior

to conducting such open burning activities. All necessary safeguards must be used to minimize impacts on public health or welfare.

The State revised the method in Section III.A.1.d for calculating emissions from multiple fuel burning units ducting to a common stack. Emissions are to be calculated on a pound per million British thermal unit (lbs/mmBtu) input and must be based on a weighted average of the individual allowable limits for each unit.

The State added clarifying language in several provisions of Regulation 1 stating that alternative performance test methods may be used with approval from the State. It also specified that ASTM or equivalent methods approved by the State may be used for fuel sampling from sources subject to Regulation 1.

In sections VI A.3.e. and VI.B.4.g. regarding SO₂ emissions, the State changed the overall emission limit for petroleum and oil shale refineries from 0.3 lbs per barrel of oil processed per day to 0.7 lbs per barrel of oil processed per day. The State also added new language that modifies the method for calculating compliance with emission limits for petroleum refining and cement manufacturing. The State deleted Section VI.B.5, which stipulates that new sources of SO₂ emissions that do not fall in specific source categories are subject to a 2 ton per day emission limit and are to utilize best available control technology.

IV. EPA's Evaluation of State's Submittal

We have evaluated Colorado's July 31, 2002 submittal regarding revisions to the State's Regulation 1. We propose to approve some of the revisions but also propose to disapprove other revisions.

Proposed Approvals

We propose approval of the deletion of emission limits in Sections II.A.6, A.7, and A.9 of Regulation 1 for alfalfa dehydrating plant drum dryers, wigwam burners, and Pershing missiles because these sources no longer exist in the State and the emission limits have effectively become obsolete. For the same reasons, we propose to approve the revision to Section III.C.2 regarding the deletion of process weight emission standards for alfalfa drum dryers.

We also propose to approve clarifying language in Sections II.C.2.d and II.C.3 regarding the incineration of animal parts to prevent the outbreak of disease during a public health emergency. The clarification provides for the prompt notification of both State and local health officials and the use of all

¹ All references in this notice to particular section numbers are to the designated sections within Regulation 1.

necessary safeguards to minimize the impact of emissions from the burning on public health and welfare.

Finally, we propose to approve the State's revision to the method of computing compliance with emission limits for cement manufacturing and petroleum refining (Sections VI.A.3.e, VI.A.3.f, VI.B.4.e, and VI.B.4.g(ii)). The revised method more accurately reflects the daily processed-based SO₂ emissions limits by using actual hours of operations as an averaging time when the facility does not operate for an entire 24-hour period. The State also revised the method in Section III.A.1.d for calculating particulate matter emission rates for two or more fuel burning units connected to a common opening. Previously, the method summed the allowable emissions from the fuel burning units; the revised method uses a weighted average of the individual allowable limits. The revised method more accurately ensures compliance with emission limits, and we, therefore, propose to approve it.

There are several provisions within Regulation 1 that we propose to disapprove. Our reasons are described below. As described separately below, we also propose to partially approve and partially disapprove specific portions of Section V regarding electric arc furnace shops at iron and steel operations.

Director's Discretion

EPA reviewed the July 31, 2002 Regulation 1 SIP revision submittal and found several instances throughout the sections within Regulation 1 where we believe "director's discretion" provisions provide the State with the ability to modify requirements for stationary sources. Such provisions are inconsistent with sections 110(a) and 110(i) of the CAA which provide for the review and approval of SIP revisions by the Administrator. Section 110(i) specifically prohibits States, except in certain limited circumstances, from taking any action to modify any requirement of a SIP with respect to any stationary source, except through a SIP revision.

For this submittal, we propose to disapprove the revised sections within Regulation 1 that contain director's discretion provisions. The revised sections are as follows:

Sections III.A.2 and III.C.3. Performance Tests

EPA proposes to disapprove the revisions to these sections, which specify particulate matter performance tests for fuel burning equipment (III.A.2) and manufacturing processes (III.A.C).

Previously, the sections specified certain EPA-approved methods for performance tests. The revisions add the phrase " * * * or other credible method approved by the Division to determine compliance with this subsection of this regulation." EPA believes these are instances of director's discretion that are inconsistent with section 110(i) of the CAA, because they allow the State to modify stationary source requirements of the SIP without a SIP revision and without corresponding requirements such as public notice and comment and EPA approval.

Section VI.C. Fuel Sampling

EPA proposes to disapprove the revision to this section. The revision allows for the use equivalent test methods approved by the Division in fuel sampling plans. EPA believes that this is an instance of director's discretion that is inconsistent with section 110(i) of the CAA, because it allows the State to modify stationary source requirements of the SIP without a SIP revision and without corresponding requirements such as public notice and comment and EPA approval.

Section VI.F. Alternative Compliance Procedures

The State added Section VI.F to Regulation 1. This section provides for alternative compliance procedures to those in Section VI. Specifically, it provides for alternative test methods, methods of control, compliance periods, emission limits, and monitoring schedules. Section VI.F.3 states that Colorado shall obtain concurrence from EPA prior to approving an alternative test method. However, EPA believes that Section VI.F is inconsistent with section 110(i) of the CAA, as it allows the State to modify stationary source requirements without a SIP revision and without corresponding public notice and comment. Therefore, we propose to disapprove Sections III.A.2, III.C.3, VI.C, and VI.F.

The State may retain some flexibility through the authorities under 40 CFR 70.6(a)(1)(iii) and the policy in EPA's White Paper No. 2.² These authorities allow adoption of enabling language in a SIP to provide for use of alternative, equally stringent requirements in the

² Under regulations in 40 CFR 70.6(a)(1)(iii) and policy expressed in EPA's March 5, 1996 Guidance Memorandum, "White Paper Number 2 for Improved Implementation of the Part 70 Operating Permits Program" by Lydia N. Wegman, a State may adopt enabling language in the SIP that allows the State to apply equivalent or more stringent limits, monitoring techniques, or recordkeeping and reporting requirements through the Title V permitting process.

Title V permitting process so that source specific SIP revisions are not needed.

Sulfur Dioxide Emission Limits

Colorado revised Section VI (pertaining to sulfur dioxide emission regulations) by modifying emission limits for petroleum refineries (Section VI.B.4.e) and shale oil refineries (Section VI.B.4.g(ii)). The existing SIP approved rules for these sources limit SO₂ emissions to 0.3 pounds per barrel of oil processed per day. The State has revised the daily limit to 0.7 pounds per barrel of oil processed per day. Section 110(l) of the CAA provides that we cannot approve a revision to a SIP if the revision would interfere with any applicable requirement concerning attainment and reasonable further progress or any other applicable requirement of the CAA. There has been no demonstration that the proposed relaxation of the SO₂ emission limits satisfies the requirements of Section 110(l). We believe these proposed changes pose a problem under Section 110(l) because they may result in an increase in SO₂ emissions within the State. The relaxation of SO₂ emission limits may also have an impact on the attainment status for other pollutants. Sulfur dioxide is a known precursor to the formation of particulate matter. As a result, the proposed changes may interfere with attainment of the NAAQS or other applicable requirements of the CAA. We therefore propose to disapprove the relaxation of the SO₂ emission limits in Sections VI.B.4.e and VI.B.4.g(ii).

Colorado later revised Section VI pertaining to sulfur dioxide emission regulations with regard to emission limits for petroleum (Section VI.B.4.e) and refining oil produced from shale (Section VI.B.4.g(ii)). The State revised the daily limit back to 0.3 pounds per barrel of oil processed per day. The State submitted this revision to Regulation 1 via the Governor's designee's letter dated August 8, 2006. We are not acting on the August 8, 2006 submittal with today's action but will act on the submittal in a separate action.

In the July 31, 2002 submittal we propose to act on, the State also deleted Section VI.B.5, which stipulates that new sources of SO₂ emissions that do not fall in specific source categories are subject to a 2 ton per day emission limit and are to utilize best available control technology. This deletion is a relaxation of the SIP's requirements. As we stated before, Section 110(l) of the CAA provides that we cannot approve a revision to a SIP if the revision would interfere with any applicable requirement concerning attainment and

reasonable further progress or any other applicable requirement of the CAA. There has been no demonstration that the proposed deletion will satisfy the requirements of Section 110(l). We believe the deletion of Section VI.B.5 poses a problem under Section 110(l) because it may result in an increase in SO₂ emissions within the State and interfere with attainment of the NAAQS or other applicable requirements of the CAA. Therefore, we propose to disapprove the deletion of Section VI.B.5.

Emission Limits for Existing Iron and Steel Operations

Colorado's Regulation 1 Section V provides for specific opacity and emission limits for gas-cleaning devices associated with electric arc furnace shops. Other sources of particulate emissions at iron and steel plants must comply with emission limits set forth in the Smoke and Opacity section of Regulation 1 (Section II). In the revision submitted July 31, 2002, the State deleted language from Section V regarding emission limits for existing iron and steel plant operations, because operations other than electric arc furnaces at the single existing iron and steel plant within the State have ceased, rendering the limits obsolete. EPA proposes to approve the submitted provisions with the following exception.

For the July 31, 2002 submittal, the State added in Section V.A.2 a director's discretion clause regarding the sampling methodology the source may use to determine that the mass emission rate does not exceed 0.00520 grains per dry standard cubic foot. As revised by the State, the source may use a credible method approved by the State. As discussed earlier in this proposal, this director's discretion provision provides the State with the ability to modify stationary source requirements in the SIP without going through the SIP revision process and without corresponding public notice and comment and EPA approval. EPA therefore proposes to disapprove the phrase "or by other credible method approved by the Division."

Locomotive Opacity Limits

Although Colorado did not revise Section II.B, which sets opacity limits for locomotives, EPA is taking this opportunity to note that the provisions in Section II.B appear to be preempted. Under section 209(e)(1)(B) of the CAA, all state standards or other requirements relating to the control of emissions from new locomotives or new engines used in locomotives are expressly preempted. Under section 209(e)(2), state standards

or other requirements relating to the control of emissions from all other locomotives or locomotive engines are impliedly preempted, with the following exception. EPA can authorize California to adopt such standards under certain circumstances; if EPA does so, other states may adopt identical standards.

Section II.B of Colorado's SIP imposes opacity limits on locomotives. These limits would appear to be a standard relating to control of emissions. Therefore, under section 209(e)(1)(B), the standards would be preempted as they relate to new locomotives or new engines used in locomotives, and, as EPA has not authorized California to adopt opacity limits for other locomotives or locomotive engines, the Colorado standards would appear to be preempted as they apply to such sources.

EPA's concern regarding Colorado's opacity limits should not be interpreted to mean that Colorado would be prohibited by the Clean Air Act from regulating the use and operation of locomotives and locomotive engines, although any such regulation would need to be evaluated. As described in 40 CFR Part 89, Appendix A to Subpart A:

"EPA believes that States are not precluded under section 209 from regulating the use and operation of non-road engines, such as regulations on hours of usage, daily mass emission limits, or sulfur limits on fuel; nor are permits regulating such operations precluded, once the engine is no longer new."

V. Consideration of Section 110(l) of the CAA

Section 110(l) of the Clean Air Act states that a SIP revision cannot be approved if the revision would interfere with any applicable requirement concerning attainment and reasonable further progress toward attainment of the National Ambient Air Quality Standards (NAAQS) or any other applicable requirement of the Act. We believe that those portions of the revision to Colorado's Regulation 1 that we propose to approve satisfy section 110(l), because those portions do not relax existing SIP requirements. Instead, the portions of the July 31, 2002 submittal EPA proposes to approve either increase stringency of existing requirements, clarify those requirements, or remove obsolete requirements. Therefore, section 110(l) is satisfied.

VI. Proposed Action

For the reasons expressed above, we are proposing to approve revisions to

the following provisions in Regulation 1: (1) Sections II.A.6, II.A.7, and II.A.9 regarding the deletion of emission limits for sources that no longer exist in the State; (2) Sections II.C.2.d. and II.C.3 regarding the burning of diseased animal carcasses to prevent a public health emergency; (3) Section III.A.1.d involving the State's method for calculating emissions from multiple fuel burning units ducted to a common stack; (4) Section III.C.2 regarding the deletion of process weight emission standards for alfalfa drum dryers; (5) Section V regarding emission standards for electric arc furnaces, except for the director's discretion provision provided for in Section V; (6) Sections VI.A.3.e, VI.A.3.f, VI.B.4.e, and VI.B.4.g(ii) regarding the methods used for the averaging of emissions over a 24 hour period.

For reasons expressed above, we propose to disapprove revisions to the following provisions in Regulation 1: (1) Section III.A.2. and Section III.C.3 involving director's discretion regarding the method for conducting performance tests; (2) the director's discretion provision in Section V regarding the method used to determine compliance with electric arc furnaces' emission standard; (3) Sections VI.B.4.e and VI.B.4.g(ii) regarding changes in the SO₂ emission limits for petroleum and oil shale refining; (4) VI.B.5 regarding SO₂ emission limits for new sources not falling in specified source categories; and (5) Sections VI.C. and VI.F. regarding the use of director's discretion for alternative methods to show compliance with fuel sampling plans and alternative compliance procedures respectively.

VII. Statutory and Executive Order Reviews

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

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

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

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

- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4);

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

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

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

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

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

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

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, 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: July 12, 2010.

Carol Rushin,

Deputy Regional Administrator, Region 8.

[FR Doc. 2010-17790 Filed 7-20-10; 8:45 am]

BILLING CODE 6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R08-OAR-2010-0285; FRL-9177-2]

Approval and Promulgation of Air Quality Implementation Plans; Colorado; Attainment Demonstration for the 1997 8-Hour Ozone Standard, and Approval of Related Revisions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to act on proposed revisions to Colorado's State Implementation Plan (SIP). On June 18, 2009, Colorado submitted proposed SIP revisions intended to ensure attainment of the 1997 ozone National Ambient Air Quality Standards (NAAQS) in the Denver Metro Area/North Front Range nonattainment area by 2010. The June 18, 2009 submittal consists of an ozone attainment plan, which includes emission inventories, a modeled attainment demonstration using photochemical grid modeling, a weight of evidence analysis, and 2010 motor vehicle emissions budgets for transportation conformity. The submittal also includes revisions to Colorado Regulation Numbers 3 and 7 and to Colorado's Ambient Air Quality Standards Regulation. EPA is proposing to approve the attainment demonstration, the rest of the ozone attainment plan, with limited exceptions, and the revisions to Colorado Regulation Number 3, Parts A and B. EPA is proposing to approve portions of the revisions to Colorado Regulation Number 7 and to disapprove other portions. EPA is proposing to disapprove Colorado Regulation Number 3, Part C, and Colorado's Ambient Air Quality Standards Regulation. EPA is proposing to disapprove limited portions of the ozone attainment plan. EPA is proposing these actions pursuant to section 110 and part D of the Clean Air Act (CAA) and EPA's regulations.

DATES: Comments must be received on or before August 20, 2010.

ADDRESSES: Submit your comments, identified by Docket ID Regulation Number EPA-R08-OAR-2010-0285, by one of the following methods:

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

- E-mail: kenney.james@epa.gov.

- Fax: (303) 312-6064 (please alert the individual listed in the **FOR FURTHER INFORMATION CONTACT** if you are faxing comments).

- Mail: James Kenney, Air Program, EPA Region 8, Mailcode 8P-AR, 1595 Wynkoop St., Denver, Colorado 80202-1129.

- Hand Delivery: James Kenney, Air Program, EPA, Region 8, Mailcode 8P-AR, 1595 Wynkoop St., Denver, Colorado 80202-1129. Such deliveries are only accepted Monday through Friday, 8 a.m. to 4:30 p.m., excluding Federal holidays. Special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID Regulation Number EPA-R08-OAR-2010-0285. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at <http://www.regulations.gov>, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through <http://www.regulations.gov> or e-mail. The <http://www.regulations.gov> web site is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA, without going through <http://www.regulations.gov>, your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket, visit the EPA Docket Center homepage at <http://www.epa.gov/epahome/dockets.htm>.

Docket: All documents in the docket are listed in the <http://www.regulations.gov> index. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in <http://www.regulations.gov>

www.regulations.gov or in hard copy at the Air Program, EPA Region 8, 1595 Wynkoop Street, Denver, Colorado 80202–1129. EPA requests that if at all possible, you contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section to view the hard copy of the docket. You may view the hard copy of the docket Monday through Friday, 8 a.m. to 4 p.m., excluding Federal holidays.

FOR FURTHER INFORMATION CONTACT: James C. Kenney, Air Program, EPA Region 8, Mailcode 8P–AR, 1595 Wynkoop St., Denver, Colorado 80202–1129, phone (303) 312–6176, e-mail kenney.james@epa.gov.

SUPPLEMENTARY INFORMATION:

Definitions

For the purpose of this document, we are giving meaning to certain words or initials as follows:

- The words or initials *Act* or *CAA* mean or refer to the Clean Air Act, unless the context indicates otherwise.
- The words *EPA*, *we*, *us* or *our* mean or refer to the United States Environmental Protection Agency.
- The initials *SIP* mean or refer to State Implementation Plan.
- The words *Colorado* and *State* mean the State of Colorado.

Table of Contents

- I. General Information
- II. What action is EPA proposing?
- III. What is the background of this action?
- IV. What is EPA's evaluation of the SIP revision?
 - A. Procedural Requirements
 - B. Monitoring
 - C. Emission Inventories
 - D. Photochemical Grid Modeling
 - E. Modeled Attainment Demonstration
 - F. Weight of Evidence
 - G. Specific OAP Language
 - H. SIP Control Measures
 - I. Transportation Conformity
- V. Consideration of Section 110(l) of the CAA
- VI. Proposed Action
- VII. Statutory and Executive Order Reviews

I. General Information

What should I consider as I prepare my comments for EPA?

1. *Submitting CBI:* Do not submit CBI to EPA through <http://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 the Code of Federal Regulations (CFR) pursuant to 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 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.

II. What action is EPA proposing?

As enumerated below, EPA is proposing various actions on Colorado's proposed revisions to its State Implementation Plan (SIP) that it submitted to EPA on June 18, 2009, to ensure attainment of the 1997 ozone National Ambient Air Quality Standards (NAAQS) in the Denver Metro Area/North Front Range (DMA/NFR) nonattainment area. The DMA/NFR nonattainment area includes Adams, Arapahoe, Boulder, Broomfield, Denver, Douglas, and Jefferson Counties, and portions of Larimer and Weld Counties (40 CFR 81.306).

Colorado's proposed SIP revisions consist of the following parts:

- 8-Hour Ozone Attainment Plan (OAP), which includes monitoring information, emission inventories, a modeled attainment demonstration using photochemical grid modeling, a weight of evidence analysis, and 2010 motor vehicle emissions budgets (MVEBs) for transportation conformity.
- Revisions to Regulation Number 3, Parts A, B, and C.
- Revisions to Regulation Number 7.
- Revisions to Colorado's Ambient Air Quality Standards Regulation.

We are proposing to approve Colorado's 2010 attainment demonstration for the 1997 8-hour ozone NAAQS. We are proposing to approve the motor vehicle emissions budgets contained in the OAP. We are proposing to approve all other aspects of the OAP, with the following limited exceptions: we are proposing to disapprove the last paragraph on page IV–1 and the first paragraph on page IV–2 of the OAP, we are proposing to disapprove the words “federally enforceable” in the second to last paragraph on page V–6 of the OAP, and we are proposing to disapprove the reference to Attachment A in the OAP's Table of Contents and on page IV–3 of the OAP.

We are proposing to approve the revisions to Colorado Regulation Number 3, Parts A and B. We are proposing to disapprove the revisions to Colorado Regulation Number 3, Part C.

We are proposing to approve the following portions of the revisions to Colorado Regulation Number 7:

- Revisions to Sections I through XI, except for Colorado's repeal of Section II.D.
 - Revisions to Sections XIII through XVI.
- We are proposing to disapprove the following portions of the revisions to Colorado Regulation Number 7:
- Colorado's proposed repeal of Section II.D.
 - Revisions to Section XII.

We are proposing to disapprove the revisions to Colorado's Ambient Air Quality Standards Regulation.

The provisions we are proposing to approve meet the requirements of the CAA and our regulations, including 40 CFR 81.300(e)(3)(ii)(D). The provisions we are proposing to disapprove are inconsistent with CAA requirements and our regulations. The specific bases for our proposed actions and our analyses and findings are discussed in this proposed rulemaking. Technical information that we rely upon in this proposal is contained in the State's technical support document (TSD). The TSD is available on-line at <http://www.regulations.gov>, Docket No. EPA–R08–OAR–2010–0285.

III. What is the background of this action?

On July 18, 1997, EPA promulgated a revised 8-hour ozone standard of 0.08 parts per million (ppm) (62 FR 38855). Ozone is formed from the photochemical reaction of nitrogen oxides (NO_x) with volatile organic compounds (VOCs). Under EPA regulations (40 CFR part 50, Appendix I), the 1997 0.08 ppm 8-hour ozone

NAAQS is attained when the 3-year average of the annual fourth highest daily maximum 8-hour average ambient ozone concentrations is less than or equal to 0.08 ppm. Forty CFR part 50, Appendix I, section 2.3, directs that the third decimal place of the computed 3-year average be rounded, with values equal to or greater than 0.005 rounding up. Thus, under our regulations, a computed 3-year average ozone concentration of 0.085 ppm is the smallest value that is considered to be greater than 0.08 ppm and a violation of the standard.

On April 30, 2004, we designated areas as attaining or not attaining the 1997 8-hour ozone NAAQS. As part of that rule, we deferred the effective date of a designation as nonattainment for multiple areas of the country, including the DMA/NFR area. These areas, which were called Early Action Compact (EACs) areas, agreed to follow a program to achieve early reduction of emissions necessary to attain the 1997 8-hour standard in order to attain that standard no later than December 31, 2007 (69 FR 23857). Because the DMA/NFR area violated the 1997 8-hour standard during the summer of 2007, the nonattainment designation for the area became effective on November 20, 2007.

Our regulations addressing EAC areas that failed to attain the 1997 8-hour ozone standard by December 31, 2007 (40 CFR § 81.300(e)(3)(ii)(D)) required that Colorado submit an attainment demonstration SIP for the 1997 8-hour standard. Colorado submitted its revised attainment demonstration SIP for the DMA/NFR area on June 18, 2009.

IV. What is EPA's evaluation of the SIP revision?

A. Procedural Requirements

The CAA requires that states meet certain procedural requirements before submitting SIP revisions to EPA. Specifically, section 110(a)(2) of the CAA requires that states adopt SIP revisions after reasonable notice and public hearing.

The Colorado Air Quality Control Commission (AQCC) provided notice in the Colorado Register on October 10, 2008 and held a public hearing on the SIP revision on December 11 and 12, 2008. The Colorado AQCC adopted the SIP revision on December 12, 2008. The SIP revision became State effective on January 30, 2009.¹ Colorado met the CAA's procedural requirements for reasonable notice and public hearing.

B. Monitoring

The monitoring section of the OAP provides information with respect to the location of ozone monitors in Colorado (from southern Metropolitan Denver to northern Fort Collins, including Rocky Mountain National Park); the State's ambient air quality data assurance program; a description and commitment for continued operation of the ozone monitoring network; and relevant 8-hour average ozone monitoring data and recovery rates from 2000 through September 2008.

Ozone monitoring data was collected following 40 CFR part 58; EPA's "Quality Assurance Handbook for Air Pollution Measurement Systems, Vol. II—Ambient Air Quality Monitoring Program"; the Colorado Air Pollution Control Division's (APCD) Quality Management Plan and Quality Assurance Project Plan documents; and Colorado's Federally-approved monitoring SIP (September, 23, 1993, 58 FR 49435).

Data for 2005–2007 and 2006–2008 reflect violations of the 8-hour ozone NAAQS at the Rocky Flats North monitor (values of 0.085 and 0.086 ppm, respectively). Monitoring data are used as a basis for photochemical grid modeling in the attainment demonstration, a process described below. In the OAP, Colorado indicates that it will continue to operate an appropriate air quality monitoring network in accordance with 40 CFR part 58.

C. Emissions Inventories

In the OAP, Colorado presents three different emissions inventories for the DMA/NFR nonattainment area: 2006 base case, 2010 base case, and 2010 control case. The inventories, in tons per summer day, represent emissions estimates for all source categories during a typical summer day when ozone formation is pronounced. The emissions inventories catalog NO_x and VOC emissions because these pollutants are precursors to ozone formation.

The 2006 base case inventory is the "base year" inventory for the attainment demonstration. Base year inventories are developed to help determine the emissions reductions needed to demonstrate attainment of the NAAQS. A base year emissions inventory serves as the starting point for attainment-demonstration air quality modeling and for determining the need for additional SIP control measures.

Using 2006 as the base year emissions inventory ensures that the inventory reflects one of the years used for calculating the design value that resulted in the area's nonattainment designation. The design value is the 3-year average of the annual fourth highest daily maximum 8-hour average ozone concentration (see 40 CFR part 50, Appendix D). In Colorado's case, the Denver area was violating the ozone standard during the period of 2005–2007, and, therefore, the nonattainment designation became effective.

The 2010 base case emissions inventory assumes the same federally enforceable control measures that were in place in 2006 and all federally enforceable control measures that became effective after 2006. These control measures are described at pages III–1 through III–3 of the OAP. As described in greater detail below, Colorado was able to demonstrate attainment in 2010 based on the 2010 base case emissions inventory.

The 2010 control case emissions inventory assumes the adoption and implementation of additional control measures beyond the measures assumed for the 2010 base case. These additional control measures are described at page V–10 of the OAP (2008 State-only revisions to Regulation Number 11 that tightened tailpipe standards, 2008 State-only revisions to Regulation Number 7 that required low-bleed devices for pneumatic controllers, an increase in the system-wide reduction of condensate tank VOC emissions from 75% to 81% in 2010, and 7.8 psi RVP gasoline in the NFR area). While Colorado was able to demonstrate attainment without these additional control measures, Colorado modeled the 2010 control case emissions inventory to determine whether additional reductions in ozone precursors (NO_x and VOCs) beyond the 2010 base case would result in further reductions of ozone.

The three emissions inventories discussed above (*i.e.*, 2006 base case emissions inventory, 2010 base case emissions inventory, and the 2010 control case emissions inventory) were developed using EPA-approved guidelines for stationary, mobile, and area/off-road emission sources. Point source emissions data were self-reported to the State by individual sources. On-road mobile source emissions data were estimated using EPA models (MOBILE6) and Vehicle Miles Traveled (VMT) data. Area/off-road vehicle emissions were

¹ State revisions to the SIP do not become federally effective unless and until they are approved by EPA. 40 CFR 51.105.

developed using demographic information. Future emissions were projected through the use of economic

growth modeling and analysis. Table 1 shows the emissions by source category,

in tons per day (tpd), from the three emission inventories.

TABLE 1—EMISSIONS INVENTORY DATA FOR SPECIFIC SOURCE CATEGORIES

Source Category (tons/avg. episode day)	2006 Base		2010 Base		2010 Control	
	NO _x	VOC	NO _x	VOC	NO _x	VOC
Point Sources:						
Electric Generation Units	55.6	0.7	58.5	1.6	58.5	1.6
External Combustion Boilers	9.5	0.4	10.0	0.5	10.0	0.5
Industrial Processes	12.5	10.2	14.0	11.0	14.0	11.0
Petroleum and Solvent Evaporation	0.3	19.0	0.3	22.0	0.3	22.0
Other	3.1	1.8	3.6	2.0	3.6	2.0
Point Sources Subtotal	81.0	32.1	86.4	37.0	86.4	37.0
Oil and Gas Point & Area Sources:						
Condensate Tanks		126.5		129.6		105.6
Other O&G Point Sources	22.6	6.8	23.6	8.6	23.6	8.6
Pneumatic Devices (Area Source)		24.8		31.1		12.0
Unpermitted Fugitives (Area Sources)		16.2		20.4		20.4
Other Area Sources	17.1	10.8	22.5	13.7	22.5	13.7
O&G Point & Area Sources Subtotal	39.7	185.2	46.2	203.3	46.2	160.1
Area Sources						
Personal Care Products		7.1		7.0		7.0
Household Products		21.4		17.9		17.9
Automotive Aftermarket Products		11.9		13.0		13.0
Architectural Coatings		20.1		16.8		16.8
Aircraft	7.4	1.3	8.2	1.5	8.2	1.5
Railroad	12.8	0.5	13.8	0.6	13.8	0.6
Other Coatings/Pesticides/Cooking/Misc		3.9		4.1		4.1
Area Source Subtotal	20.2	66.3	22.1	61.0	22.1	61.0
Non-Road Mobile Sources:						
Agricultural Equipment	7.0	0.9	6.3	0.7	6.3	0.7
Airport Equipment	0.7	0.1	0.6	0.1	0.6	0.1
Commercial Equipment	5.3	6.2	5.1	7.0	5.1	7.0
Construction and Mining Equipment	35.7	5.5	31.2	4.5	31.2	4.5
Industrial Equipment	10.5	2.4	6.9	1.4	6.9	1.4
Lawn and Garden Equip. (Commercial)	9.4	35.9	8.9	28.1	8.9	28.1
Lawn and Garden Equip. (Residential)	1.2	7.5	1.2	11.8	1.2	11.8
Boats/Recreational Equip/Misc	0.7	6.9	0.8	7.8	0.8	7.8
Non-Road Mobile Source Subtotal	70.5	65.3	61.0	61.3	61.0	61.3
On-Road Mobile Sources Subtotal	165.5	129.7	122.9	109.2	118.9	106.0
Anthropogenic Subtotal	376.8	478.6	338.5	471.8	334.6	425.4
Biogenic Subtotal	53.0	694.0	53.0	694.0	53.0	694.0
Total	429.8	1172.6	391.5	1165.8	387.6	1119.4

Colorado employed EPA guidelines for rule effectiveness when preparing these emission inventories. Rule effectiveness, expressed as a percentage, represents the ability of a regulatory program to control point sources to achieve emissions reductions. Based on control strategies for the oil and gas source category, Colorado used 83 percent for rule effectiveness. A rule effectiveness of 83 percent discounts the emissions reductions from the control measures by 17 percent. Based on Colorado's analysis, which considered

compliance rates with existing control measures, EPA finds that a value of 83 percent is reasonable for rule effectiveness for oil and gas control measures. For further detail regarding Colorado's analysis, the reader should refer to Colorado's TSD.

For oil and gas point and area sources, the 2010 control case inventory reflects a 43.2 tpd reduction in VOC emissions as compared to the 2010 base case inventory. For on-road mobile sources, the 2010 control case inventory reflects a 3.2 tpd reduction in VOC emissions as

compared to the 2010 base case inventory.

D. Photochemical Grid Modeling

Colorado conducted photochemical grid modeling (hereafter referred to as "modeling") to demonstrate that the emissions control strategy leads to attainment of the NAAQS by 2010. The modeling followed EPA's photochemical modeling guidance (Guidance on the Use of Models and Other Analyses for Demonstrating Attainment of Air Quality Goals for

Ozone, PM_{2.5}, and Regional Haze, EPA-454/B-07-002, April 2007).

The attainment demonstration modeling utilized the Comprehensive Air-quality Model with extensions (CAMx), Sparse Matrix Operating Kernel Emissions (SMOKE) system, and Mesoscale Model 5 (MM5). Colorado applied these models to data from June 2006 and July 2006. These models were set up using a nested 36/12/4 kilometer (km) domain structure. The 36 km domain covering most of North America was used to generate boundary conditions (BCs) for the 12 km modeling domain. CAMx was then used to simulate ozone formation within the 12/4 km modeling domain. The CAMx simulation, sensitivity, and control strategy evaluations runs were made on the 12/4 km modeling domain.

EPA guidance recommends that model performance be tested against certain performance goals. Model performance testing is used to determine the model's reliability in projecting future year ozone concentrations. Using meteorological and emissions data from a historical base period, ozone concentrations predicted by the model are compared to monitored ozone concentrations to determine model performance.

EPA's modeling guidance emphasizes the use of graphical and diagnostic evaluation techniques to assure that the modeling captures the correct chemical regimes and emission sources that result in high ozone concentrations (*i.e.*, assuring that the model is getting the right answer for the right reason). Colorado's model performance evaluation included such graphical and diagnostic evaluation techniques. In addition, EPA modeling guidance includes three numerical performance goals that are useful in evaluating ozone models as part of the attainment demonstration. These include: unpaired accuracy of the peak $\leq \pm 20\%$; normalized mean bias $\leq \pm 15\%$; and normalized mean gross error $\leq 35\%$.

Using a June 1 through July 30, 2006 episode period, Colorado calculated the mean normalized bias and gross error statistical measures using all the predicted and observed hourly ozone pairs, matched by time and location, for which the observed ozone was equal to or greater than 0.060 ppm. The evaluation showed that the modeling achieved the "Unpaired Accuracy of the Peak" performance goal of $\leq \pm 20\%$ for 58 of the 60 simulation days of the episode (*i.e.*, 97% of the modeled days). There

were 58 days rather than 60 with bias and error comparisons during the episode period because two days had no observed ozone values greater than 0.060 ppm; thus, no statistics could be calculated for those two days. Of the 58 days, 50 days (or 86%) achieved EPA's $\leq \pm 15\%$ performance for mean normalized bias and all of them achieved EPA's performance goal for mean normalized gross error.

The CAMx model also exhibited very good agreement for VOC/NO_x ratios on most days, indicating that the model was simulating the correct chemical regimes. The performance of the CAMx model in predicting ozone concentrations, and precursor concentrations, met EPA's guidelines for model performance. The model outputs were consistent with the day-to-day patterns of observed data, with low bias and error. EPA concurs with Colorado's assessment that the model was properly set up, met EPA performance requirements, and was appropriately used in its application.

E. Modeled Attainment Demonstration

The modeled attainment demonstration for ozone is one in which model estimates are used in a relative sense rather than absolute sense. That is, we take the ratio of the model's future (2010) to current (2006) predictions at ozone monitors in the DMA/NFR area. We call these ratios "Relative Response Factors" (RRFs). Future ozone concentrations are estimated at existing monitoring sites by multiplying a modeled RRF at locations near each monitor by the observation-based, monitor-specific, baseline design value. The resulting predicted future concentrations are then compared with the 1997 0.08 ppm 8-hour ozone NAAQS. If the predicted future concentrations of ozone are lower than 0.08 ppm at all monitors, attainment is demonstrated. The test for ozone is based on the calculation of a single mean ozone RRF for each monitor.

Table 2, below, summarizes the estimated concentrations within the Colorado 4 km grid domain for Colorado's 2006 base case, 2010 base case, and final 2010 control measure case modeling. The final 2010 control measure case is not the same as the 2010 control case discussed in section III.C of this action, above. Unlike the 2010 control case, the final 2010 control measure case does not include emission reductions from State-only measures. Also, at the time Colorado prepared the

2010 control case inventory, the AQCC had not yet adopted final changes to Regulation Number 7. The final changes included greater system-wide condensate tank VOC reductions in 2010—85% instead of 81%—and additional control requirements. Colorado used the final adopted version of Regulation Number 7 to create a final 2010 control measure case inventory and then modeled that inventory. For further details, see page V-7 of the OAP and Appendix I of Colorado's TSD.

Table 2, below, displays three scenarios: (1) 2005–2007 8-hour ozone concentration Current Design Values (DVC); (2) projected 2010 base case 8-hour ozone concentration Future Design Values (DVF); and (3) final 2010 control measure case 8-hour ozone concentration DVFs. Per EPA guidance, the first set of DVFs in Table 2 (columns 4 and 5) are shown in ppm to the third decimal place, with additional digits to the right truncated, for comparison with the NAAQS. (See 40 CFR part 51, Appendix W, section 7.2.1.2, 40 CFR part 50, Appendix I, section 2.1.1, and Guidance on the Use of Models and Other Analyses for Demonstrating Attainment of Air Quality Goals for Ozone, PM_{2.5}, and Regional Haze, EPA-454/B-07-002, April 2007.) The last set of DVFs (columns 6 and 7) are displayed to the nearest .0001 of a ppm. Although not relevant to determining attainment of the NAAQS, Colorado included these last columns as part of its evaluation of model performance, to attempt to distinguish any differences in the ozone projections between the 2010 base case and final 2010 control measure modeling and as part of its weight of evidence analysis.

The maximum projected 8-hour ozone design value for the 2010 base case and final 2010 control measure case is 0.084 ppm at the Rocky Flats North and Fort Collins West monitoring sites. Because all projected 2010 8-hour ozone design values are below 0.085 ppm, the 2010 base case and final 2010 control measure case both pass the modeled ozone attainment demonstration test. However, because there are four monitoring sites with projected 2010 DVFs of 0.082 ppm or higher (0.084 ppm at Rocky Flats North and Fort Collins West, 0.083 ppm at Chatfield, and 0.082 ppm at NREL), EPA's modeling guidance indicates a "weight of evidence" (WOE) analysis should be performed.

TABLE 2—PROJECTED 2010 8-HOUR OZONE DVFS FOR THE 2010 BASE CASE AND FINAL 2010 CONTROL MEASURE CASE

Monitor name	County	DVC (2005–2007) (ppm)	2010 DVF (EPA Guidance) (ppm)		2010 DVF (nearest 0.0001 ppm)	
			Base case	Final control measure case	Base case	Final control measure case
Welby	Adams	0.070	0.070	0.070	0.0702	0.0702
Highland	Arapahoe	0.078	0.077	0.077	0.0773	0.0773
S. Boulder Creek	Boulder	0.081	0.080	0.080	0.0808	0.0807
Denver-CAMP	Denver	0.056	0.056	0.056	0.0560	0.0560
Carriage	Denver	0.074	0.074	0.074	0.0741	0.0741
Chatfield State Park	Douglas	0.084	0.083	0.083	0.0834	0.0834
USAF Academy	El Paso	0.073	0.072	0.072	0.0720	0.0720
Manitou Springs	El Paso	0.074	0.073	0.073	0.0737	0.0737
Arvada	Jefferson	0.079	0.079	0.079	0.0792	0.0791
Welch	Jefferson	0.075	0.075	0.075	0.0750	0.0750
Rocky Flats North	Jefferson	0.085	0.084	0.084	0.0849	0.0849
NREL	Jefferson	0.082	0.082	0.082	0.0823	0.0822
Fort Collins West— Note: DVC based on two years of measured data.	Larimer	0.086	0.084	0.084	0.0849	0.0848
Fort Collins	Larimer	0.074	0.073	0.073	0.0730	0.0730
Greeley Weld Tower	Weld	0.078	0.077	0.077	0.0777	0.0775
Gunnison	Gunnison	0.068	0.067	0.067	0.0678	0.0678
Larimer	Larimer	0.076	0.075	0.075	0.0752	0.0752

For values that Colorado reported to the nearest 0.0001 of a ppm, the maximum projected DVF for the 2010 Base Case is 0.0849 ppm at both the Rocky Flats North and Fort Collins West monitoring sites (*see* Table 2). According to Colorado's modeling, Colorado's final 2010 control measures would reduce the DVF at the Fort Collins West monitoring site by 0.0001 ppm (to 0.0848 ppm) and would have no effect at the Rocky Flats North monitoring site (0.0849 ppm). Overall, Colorado's modeling projected that Colorado's final 2010 control measures would reduce the 2010 DVF by 0.0001 ppm at four sites and by 0.0002 ppm at one site, with the remainder of the monitoring sites having identical DVFs for the 2010 base case and final 2010 control measure case. The largest ozone reduction due to Colorado's final 2010 control measures (0.0002 ppm) was projected to occur at the Weld County Tower monitoring site (Greeley), which is expected given the proximity of the monitor to the oil and gas developments in Weld County. Weld County is where the largest VOC emission reductions would occur due to Colorado's final 2010 control measures for condensate storage tanks. These results are consistent with Colorado's 2010 sensitivity modeling, which found that proposed oil and gas emission controls would have a bigger impact on ozone concentrations at Fort Collins West than Rocky Flats North.

Based on our analysis, we are proposing approval of Colorado's modeled attainment demonstration. Both the 2010 base case modeling and

the final 2010 control measure case modeling show that the DMA/NFR area will attain the 8-hour ozone NAAQS by 2010. However, because we are proposing to disapprove Colorado's revisions to Regulation Number 7, Section XII, which Colorado relied on in its final 2010 control measure modeling, our proposed approval of Colorado's attainment demonstration is based on the 2010 base case modeling.

Because Colorado's modeling demonstrates attainment in 2010 based on existing SIP-approved measures, and it is now 2010, such SIP-approved measures represent all measures necessary to demonstrate attainment as expeditiously as practicable as per section 172 of the CAA. Additional control measures would not advance the attainment date.

F. Weight of Evidence

As noted above, since four monitors (Rocky Flats North, Fort Collins West, Chatfield, and NREL) modeled concentrations that fall into the range of 0.082 to 0.087 ppm, a weight of evidence (WOE) analysis is recommended by EPA (*see* "Guidance on the Use of Models and Other Analyses for Demonstrating Attainment of Air Quality Goals for Ozone, PM_{2.5}, and Regional Haze," EPA-454/B-07-002, April 2007). A WOE analysis involves one or more supplemental analyses to enhance the assessment of whether the planned emissions reductions will result in attainment of the 1997 0.08 ppm 8-hour ozone NAAQS. The WOE analysis includes: Monitoring and emission inventory

trend analysis; review of the conceptual model for ozone formation along the North Front Range; additional modeling metrics; alternative attainment test methods; and assessment of the efficacy of Colorado's SIP-approved regulations, state-only regulations, and voluntary control measures. The WOE analysis is then used to determine if the four monitors that modeled ozone concentrations in the range of 0.082 to 0.087 ppm are expected to demonstrate attainment of the NAAQS.

Our review of the WOE analysis identified a number of key points that provide further evidence that the modeling is reliable and that the DMA/NFR area will attain the NAAQS. First, although individual concentrations have been highly variable, the aggregate trend in weather-corrected 4th maximum time series suggests ozone levels have been flat from 2004 through 2008. The WOE analysis suggests that ozone levels are not trending upward in the DMA/NFR and that the modeling conclusions are reasonable. Second, the WOE analysis of the weekend-weekday effect² related to potential disbenefits from NO_x reductions shows a stronger effect in the DMA and a weaker effect in outlying areas. This spatial pattern is consistent with the localized NO_x disbenefit predicted by the photochemical grid modeling; thus, this aspect of the WOE

² Some urban areas show higher ozone levels on weekends. Some studies indicate that this increase in ozone concentrations may result from decreased weekend NO_x emissions due to fewer trucks on the road and differences in the distribution of emissions. Under certain conditions, NO_x acts to reduce ozone concentrations.

analysis supports the validity of the modeling. Third, within the DMA, potential increases in ozone concentrations due to NO_x emissions reductions from the federal motor vehicle control program do not appear significant and should not threaten the NAAQS. At monitoring locations outside the DMA, the WOE analysis suggests that reductions in NO_x emissions will reduce ozone, possibly with greater efficiency than VOC reductions. Fourth, the WOE analysis includes other modeled metrics that indicate reductions by 2010 in total ozone, grid cells over 0.080 and 0.085 ppm 8-hour ozone, and grid cell-hours over 0.080 and 0.085 ppm ozone based on the various control scenarios. For example, these metrics indicate a reduction in total ozone and grid cells greater than 0.085 ppm between the 2006 and 2010 base cases of 21% and 14%, respectively. This suggests that the changes in emissions between the 2006 and 2010 base cases will reduce or have reduced ozone concentrations.

EPA finds the WOE analysis provides further support to the photochemical grid modeling, and the modeling and WOE support a determination that the area will attain the 1997 0.08 ppm 8-hour ozone NAAQS by 2010.

G. Specific OAP Language

We are proposing to disapprove the last paragraph on page IV-1 and the first paragraph on page IV-2 of the OAP because these paragraphs indicate that the OAP revises Section XII of Regulation Number 7 as part of the SIP. We are proposing to disapprove revised Section XII of Regulation Number 7, and approval of this language in the OAP would potentially conflict with our proposed disapproval of revised Section XII. We are proposing to disapprove the words "federally enforceable" in the second to last paragraph on page V-6 of the OAP for the same reason. The language in question reads, "AQCC action on December 12, 2008 adopted a federally enforceable SIP control measure revising Regulation No. 7 * * *" Only our approval can make the revisions federally enforceable.

Elsewhere, the OAP discusses "adopted SIP control measures" or provisions that will be part of the SIP. We interpret these various references as reflecting the AQCC's intent to submit the referenced regulations to us for approval and not as an indication that they are already part of the federally approved SIP or that our approval of the OAP alone will make the referenced regulations part of the federally approved SIP. We are acting on the

referenced regulations as separate elements.

We are also proposing to disapprove the reference to Attachment A in the OAP's Table of Contents and on page IV-3 of the OAP because Attachment A was not submitted to us with the OAP and because the revisions referenced as being included in that Attachment A (revisions to Regulation Number 7, Regulation Number 3, and the Ambient Standards Regulation) were submitted to us separately for our action. As noted, we are acting on the revisions to those regulations as separate elements in this action.

H. SIP Control Measures

Colorado Regulation Number 3

Colorado submitted revisions to Regulation Number 3, Parts A, B, and C, along with the OAP. Among other things, Part A requires stationary sources to submit Air Pollutant Emission Notices (APENs) to Colorado before emitting pollutants. A source's APEN must include information about location and nature of the source and expected emissions. Part A also contains various exemptions from APEN filing. Colorado's proposed revisions to Part A would remove several of these exemptions from the regulation. This would subject the specified source categories to APEN filing and potential regulation under Regulation Number 7, which uses the APEN-filing threshold in Regulation Number 3, Part A, as the trigger for applicability of various requirements.

Regulation Number 3, Part B, contains construction permit requirements for stationary sources. Part B also contains various exemptions from minor source construction permit requirements. Part B contains a generic exemption for sources that are not required to file an APEN. Colorado recognized that its proposed removal of the APEN-filing exemption for certain sources under Part A would also have the effect of subjecting those sources to minor source construction permit requirements under Part B. For four types of sources, Colorado determined that this would not be appropriate and adopted a revision to Part B that would continue to exempt these four types of sources from minor source construction permitting. The premise behind all the minor source construction permitting exemptions in Part B is that the emissions from the specified sources are deemed to have a negligible impact on air quality.

Regulation Number 3, Part C, contains Colorado's operating permit requirements. Colorado submitted

proposed revisions to Part C that remove certain oil and gas activities from Part C's insignificant activity exemption.

For the reasons discussed below, we are proposing to approve Parts A and B.

The proposed revisions to Regulation Number 3, Part A, eliminate provisions that exempt the following specific types of oil and gas-related emission points from the APEN requirements: Petroleum industry flares with emissions of less than 5 tons per year, specified crude oil truck loading equipment, oil and gas production wastewater, crude oil storage tanks, surface water storage impoundments for certain oil production wastewater, and condensate storage tanks where production through the tank amounts to less than 730 barrels per year. The elimination of these exemptions means that the facility will need to file APENs with the State, which should allow Colorado to collect more accurate inventory information regarding emissions related to oil and gas operations. This would also subject the specified source categories to the condensate storage tank VOC control requirements of Regulation Number 7, Section XII, which uses the APEN-filing threshold in Regulation Number 3, Part A, as an applicability threshold.

The proposed revisions to Regulation Number 3, Part B maintain an existing exemption from minor source construction permitting requirements for certain emission points. The emission points consist of certain petroleum industry flares with emissions less than 5 tons per year, crude oil truck loading equipment and condensate truck loading equipment, oil and gas production wastewater, and crude oil storage tanks. As noted above, under the current SIP-approved version of Regulation Number 3, Part B, any emission points exempt from filing APENs are also exempt from minor source construction permit requirements. See Regulation Number 3, Part B, Section III.D.1.a, as contained in the EPA-approved SIP at <https://yosemite.epa.gov/R8/R8Sips.nsf/e5e850cc767bc8b3872573a9004cad73/75c2d810353a706a87256b7b0066624d?OpenDocument>. Thus, approval of Colorado's proposed revisions to Part B would not change the status quo with regard to construction permitting requirements for these emission points.

The revisions to Parts A and B make the SIP more stringent by subjecting additional emission sources to reporting requirements. We are proposing to approve these revisions because they strengthen the SIP.

Regarding Part B of Regulation Number 3, we note that there is a discrepancy between the numbering of

the submitted revisions and the EPA-approved SIP. Colorado added new Sections II.D.1.k, l, m, and n to Part B to specify the four types of emissions points that will continue to be exempt from minor source construction permitting requirements. However, in the current EPA-approved SIP, Section III.D.1 of Part B lists the types of emissions points that are exempt from minor source construction permitting requirements.³ These emissions points are listed in Sections III.D.1.a through j. For purposes of this action, we are interpreting Colorado's proposed revisions to Part B, in the form of Sections II.D.1.k through n, as being an addition to Section III.D.1, and following immediately after Section III.D.1.j of Part B of the EPA-approved SIP. As part of our final rulemaking action, we will craft appropriate regulatory language to effectuate our interpretation.

EPA is proposing to disapprove Colorado's proposed revisions to Regulation Number 3, Part C. As noted above, Regulation Number 3, Part C, contains Colorado's operating permit regulations, which we do not approve into the SIP. Instead, we approve operating permit regulations under our operating permit regulations at 40 CFR part 70. Thus, we intend to consider approval of Colorado's proposed Part C revisions pursuant to our part 70 regulations at such time as Colorado submits an appropriate request under 40 CFR 70.4(i). The revisions are meaningless absent their regulatory context, and that regulatory context is not part of the EPA-approved SIP and is not incorporated by reference into 40 CFR part 52. Instead, the approval status of Colorado's part 70 program is reflected in 40 CFR part 70, Appendix A. Thus, because we are obligated to act on the State's SIP submission, we plan to disapprove these revisions as a revision to the SIP. If the State requests to withdraw Part C from the SIP revision prior to the time we take final action, we would not be obligated to take final action because Part C would no longer be pending before the Agency as a SIP revision. Additionally, if requested by the State, we will separately consider these revisions as a revision to the approved operating permit program for the State.

Colorado Regulation Number 7

Regulation Number 7 contains various requirements intended to reduce

emissions of ozone precursors. These are in the form of specific emission limits applicable to various industries and generic Reasonably Available Control Technology (RACT) requirements. EPA approved the repeal and re-promulgation of Regulation Number 7 in 1981 (46 FR 16687, March 13, 1981) and has approved various revisions to parts of Regulation Number 7 over the years. Most recently, in 2008 EPA approved revisions to the control requirements for condensate storage tanks in Section XII (73 FR 8194, February 13, 2008).

Colorado submitted proposed revisions to Regulation Number 7 along with the OAP. On November 18, 2009, Colorado corrected the version of Regulation Number 7 it had submitted to reposition the words "State Only" in various sections of Regulation Number 7.

Colorado made substantive revisions to certain limited parts of Regulation Number 7, particularly Section XII, and also made non-substantive revisions to numerous parts of the regulation. For ease of consideration, Colorado submitted the full text of Regulation Number 7 as a SIP revision for our approval (with the exception of provisions designated "State Only"). We are only seeking comment on Colorado's proposed changes to the SIP-approved version of Regulation Number 7, which are described below; we do not view this rulemaking as re-opening our past approval of the portions of the regulation that were not substantively modified by the State as part of this submission.

As noted above, Colorado designated various parts of Regulation Number 7 "State Only" and in Section I.A.1.c indicated that sections designated "State Only" are not federally enforceable. Our interpretation is that provisions designated "State Only" have not been submitted to us for approval since one of the key purposes of a SIP approval is to make the submitted regulations federally enforceable. Instead, we interpret these provisions to have been submitted for informational purposes. Hence, we are not proposing to act on the portions of Regulation Number 7 designated "State Only" and do not discuss them further unless they impact the portions of the regulation that Colorado intended to be federally enforceable.

Analysis of Regulation Number 7 Changes by Section

Section I:

Section I contains applicability provisions, definitions of new and existing sources, and related provisions.

Except for minor clerical changes,⁴ this section remains unchanged from the current SIP-approved version. Thus, we are proposing to approve the changes to conform the SIP to Colorado's regulation.

Section II:

Section II contains general provisions. Section II.A contains definitions. The State alphabetized the definitions. Otherwise, the definitions are unchanged. The State made minor clerical changes to Section II.B, which contains an exemption for emissions of organic compounds having negligible photochemical reactivity. The State made minor clerical changes to Section II.C, which contains generic RACT requirements.

Section II as submitted reflects Colorado's repeal of Sections II.E and F. Colorado had previously submitted Sections II.E and F to us for approval, but we never acted on them. Section II.E would have allowed Colorado to approve alternative emission control plans, compliance methods, test methods, and test procedures without EPA approval of a source-specific SIP revision. However, subsequent to submitting Section II.E to us, Colorado repealed it (in November 2003). Section II.F would have allowed Gates Rubber Company to satisfy VOC RACT requirements in Regulation Number 7 related to surface coating operations by obtaining emission reduction credits from Coors Brewing Company. Gates Rubber Company stopped operating a few years ago, and Colorado repealed Section II.F as part of its December 12, 2008 rulemaking.

We are proposing to approve the changes to Sections II.A, B, and C as minor, non-substantive revisions. Because section II.E and F were never approved as part of the SIP, the State repeal of those provisions has no meaning for this action. However, we are proposing to approve the language of Regulation Number 7 that reflects the repeal of II.E and F to conform the SIP to the numbering of Colorado's regulation.

In addition to the changes noted above, the submitted revision to Section II reflects Colorado's repeal of Section II.D.⁵ The SIP-approved version of

⁴ When we describe changes as clerical in this proposed action, we are referring to changes like section renumbering, alphabetizing of definitions, minor grammatical and editorial revisions, and changes in capitalization.

⁵ In March of 1996, Colorado adopted changes to Section II.D as a matter of State law and submitted the revisions to us for approval. The revisions were part of an effort by Colorado at that time to establish a de minimis exemption from Regulation Number 7's RACT requirements. EPA never approved

³ Colorado previously submitted revisions to Part B that contain changes to the numbering of Part B provisions; we will be acting on those revisions separately.

Section II.D requires sources to seek a revision to the SIP to gain approval of alternative control plans and test methods and indicates that no alternative is effective until the alternative is approved as a revision to the SIP. Colorado originally adopted Section II.D in September 1989 to address specific EPA concerns that Colorado's RACT rule would allow changes to control requirements or test methods without EPA approval.

We are proposing to disapprove the repeal of Section II.D for the following reasons: (1) A court might interpret the repeal to allow the State to approve alternative control requirements and test methods without EPA approval, and without public involvement, which could undermine the enforceability of Regulation Number 7's RACT requirements and would be inconsistent with the CAA, particularly section 110(i); (2) the State has offered no explanation or justification for the repeal; and (3) other sections of Regulation Number 7 still cross-

reference Section II.D as specifying necessary procedures for gaining approval of alternative control requirements and test methods (See, e.g., Section IX.A.5.c of Regulation Number 7), and, therefore, removing Section II.D would introduce ambiguity into the Regulation.

Our proposed disapproval of the repeal of Section II.D does not undermine the validity of the attainment demonstration. Rather, it strengthens it by ensuring that EPA and public review will be required before a source may use an alternative control requirement or test method. Such review will help ensure that any such alternative would not interfere with the effectiveness of the program as relied on for purposes of demonstrating attainment. Although we are proposing to disapprove the repeal of Section II.D, our disapproval would not trigger sanctions or a FIP obligation. This is because the repeal of Section II.D is not required by the CAA (see CAA section 179), and our disapproval of the repeal

of Section II.D would not leave a deficiency in the SIP. Section II.D will remain in the SIP after disapproval of Colorado's proposed repeal, and it will be incumbent on sources and the State to comply with Section II.D's requirements. Thus, there would be nothing for the State to correct through a SIP revision and nothing for us to correct through a FIP.

Sections III through XI:

The changes are clerical in nature and do not affect the substance of the requirements. Therefore, we are proposing to approve the changes.

Section XII:

Section XII contains the emission control requirements for condensate storage tanks. The State reorganized Section XII and included additional control requirements for condensate tanks. The following table outlines the reorganization/renumbering contained in Colorado's proposed revisions to Section XII:

Colorado revised section XII section number	Corresponding EPA-approved section XII section number	Subject
XII.A	XII.A	Applicability.
XII.A.1	XII.A.1	Applicability.
XII.A.1.a through c	XII.A.1.a through c	Applicability.
XII.A.1.d	None	Applicability.
XII.A.2	XII.D.4	Exception to applicability for oil refineries.
XII.A.3	None	Applicability for natural gas processing plants and certain natural gas compressor stations. Indicates they are subject to Section XII.G.
XII.A.4	None	Applicability for certain glycol natural gas dehydrators, natural gas compressor stations, drip stations, or gas processing plants. Indicates they are only subject to XII.B and XII.H.
XII.A.5	XII.A.8	Exception to applicability based on uncontrolled actual VOC emissions threshold of 30 tons per year.
XII.B.1, 2, 3, 9, 12, and 14	XII.D.1; XII.D.5 through 9	Definitions of various terms.
XII.B.4, 5, 6, 7, 8, 10, 11, and 13	None	Definitions of various terms. XII.B.13 contains a State-only definition.
XII.C.1.a	XII.D.2.a	General requirements for operation/maintenance of control equipment.
XII.C.1.b	XII.D.2.b	General requirement to minimize leakage VOCs.
XII.C.1.c	XII.A.7 and XII.A.4.h	Air pollution control equipment control efficiency. Failure to operate and maintain control equipment at indicated locations is a violation.
XII.C.1.d	XII.D.2.c	Requirements for combustion devices.
XII.C.1.e and f	None	State-only requirements related to combustion devices.
XII.C.2 and XII.C.2.a	XII.D.3	Emission factors for emission estimates.
XII.C.2.b	None	State-only. Emission factors for emission estimates in areas other than the 8-hour ozone control area (DMA/NFR non-attainment area).
XII.D	XII.A.2	Emission control requirements for condensate tanks.
XII.D.1	None	Control requirement for new and modified condensate tanks.
XII.D.2.a(i) through (x)	XII.A.2.a through h	System-wide control requirements for condensate storage tanks.
XII.D.2.b	XII.A.9	Alternative emission control equipment.
XII.E	XII.A.3	Monitoring.
XII.E.1	None	Requirements for control equipment other than a combustion device.
XII.E.2	None	State only requirement related to new and modified tanks controlled by a combustion device.

Colorado's 1996 changes to Section II.D. Based on EPA's indication that it intended to disapprove Colorado's 1996 changes to Section II.D, Colorado

repealed Section II.D entirely in November 2003. Colorado did not re-adopt the pre-1996 version of Section II.D, and the version of Regulation Number

7 that we are considering in this action indicates that Section II.D has been repealed.

Colorado revised section XII section number	Corresponding EPA-approved section XII section number	Subject
XII.E.3., XII.E.3.a and b	XII.A.3.a and b	Checks for combustion devices.
XII.E.4	XII.A.4.j	Documentation of inspections.
XII.E.4.a–d	XII.A.3.c–f	Requirements for the weekly check.
XII.E.5	None	State-only requirements for surveillance systems.
XII.F	XII.A.4 and XII.A.5	Recordkeeping and reporting requirements.
XII.F.1 and 2	XII.A.10 and 11	Marking of AIRS numbers on tanks.
XII.F.3	XII.A.4	Introductory language for recordkeeping.
XII.F.3.a(i)	XII.A.4.a	List of tanks and production volumes.
XII.F.3.a(ii) and (iii)	XII.A.4.b and c	Listing of emission factors and location and control efficiencies.
XII.F.3.a(iv)	XII.A.4.d.i	List weekly and monthly production values. Describes how to determine the averages.
XII.F.3.a(v)–(vii)	XII.A.4.d.ii–iv	List weekly and monthly uncontrolled actual and controlled actual emissions by tank and system-wide. List percent reductions weekly and monthly.
XII.F.3.a(viii)	XII.A.4.e	Note any downtime and account for it.
XII.F.3.a(ix)–(x)	XII.A.4.f–g	Maintaining and mailing of spreadsheet.
XII.F.3.b–d	XII.A.4.h–j	Failure to have control equipment as indicated on spread sheet is violation. Retain spread sheets for five years. Maintain records of inspections.
XII.F.3.e	None	State only. Maintain records of required surveillance system.
XII.F.3.f	None	State only. Keep records for new and modified tanks—when installed, etc.
XII.F.4	XII.A.5	Reporting for system-wide requirements.
XII.F.4.a	XII.A.5.a	List tanks and production volumes.
XII.F.4.b–c	XII.A.5.b–c	List emission factor and location and control efficiency.
XII.F.4.d	XII.A.5.d	What different reports must show based on time of year. Emissions individual tanks.
XII.F.4.e	XII.A.5.e	What different reports must show based on time of year. Emissions system-wide.
XII.F.4.f	XII.A.5.f	What different reports must show based on time of year. Percent reduction system-wide.
XII.F.4.g	XII.A.5.g	Note shutdown of control equipment and account for same in totals.
XII.F.4.h	XII.A.5.h	State whether required reductions were achieved.
XII.F.4.i	XII.A.5.i	Include any information requested by the Division.
XII.F.4.j	XII.A.5.j	Retention period.
XII.F.4.k	XII.A.5.k	Additional reporting, monthly reporting of problems and corrective actions.
XII.F.4.l	XII.A.5.l	Identify before ozone season tanks being controlled to meet system-wide control requirements.
XII.F.4.m–n	None	State-only additional requirements for certifications.
XII.F.5	XII.A.6	Exemption from record-keeping and reporting requirements for natural gas compressor stations and drip stations authorized to operate pursuant to a construction or operating permit.
XII.G	XII.B	Requirements for gas processing plants. Introductory statement.
XII.G.1	XII.B.1	Part 60 leak detection applies.
XII.G.2	XII.B.2	Applicability of control equipment.
XII.G.3	XII.B.3	Compliance date for existing plants.
XII.G.4	XII.B.4	Compliance date for new plants.
XII.G.5	None	New exemption for natural gas compressor stations and drip stations if certain conditions are met.
XII.G.6	None	Says that natural gas compressor station or natural gas drip station that has a glycol natural gas dehydrator and/or natural gas-fired stationary or portable engine is subject to Section XII.H and/or XVI.
XII.H	XII.C	Requirements that apply to vents from gas-condensate-glycol separators on glycol natural gas dehydrators at an oil and gas exploration and production operation, natural gas compressor station, drip station or gas-processing plant.

The main feature of Section XII remains the requirement for system-wide reductions in condensate storage tank VOC emissions. The current EPA-approved Section XII requires that uncontrolled actual condensate tank VOC emissions in the DMA/NFR area be reduced on a weekly basis during the

summer ozone season by 75% system-wide beginning May 1, 2007, and 78% beginning May 1, 2012. Revised Section XII (Section XII.D.2) requires an 81% system-wide reduction in uncontrolled actual weekly condensate tank VOC emissions during the summer ozone season beginning May 1, 2009, an 85%

reduction beginning May 1, 2010, and a 90% reduction beginning May 1, 2011. Also, most of the definitions and monitoring, recordkeeping, and reporting requirements in Section XII are unchanged. However, because of deficiencies in Colorado's proposed revisions to Section XII, we cannot

approve revised Section XII. Below, we describe in detail Colorado's proposed revisions to Section XII and the basis for our proposed disapproval of such revisions.

As noted above, Colorado was able to demonstrate attainment using the 2010 base case inventory. This inventory assumed the continuation of Section XII requirements as contained in the current EPA-approved SIP, and no new SIP control measures. Thus, disapproval of Colorado's proposed Section XII revisions would not invalidate the attainment demonstration and, thus, would not trigger sanctions or a FIP obligation.

Analysis of Specific Section XII Revisions

Section XII.A.

Section XII.A defines the applicability of Section XII requirements and is consistent with the current EPA-approved applicability provisions in Section XII.

Section XII.B.

Section XII.B contains definitions specific to Section XII. The substance of the definitions contained in Sections XII.B.1, 2, 3, 9, 12, and 14 is unchanged from the definitions contained in SIP-approved Sections XII.D.1 and XII.D.5 through 9. The other definitions in revised Section XII.B define the following terms that are used in Section XII: auto-igniter, calendar week, condensate storage tank, downtime, existing, modified or modification, and new. The definitions are clear, straightforward, and accurate. The definitions of auto-igniter and existing are only pertinent to State-only provisions and thus have no meaning for our SIP action.

Section XII.C.1.

Section XII.C.1 contains general requirements for air pollution control equipment and prevention of leakage. Colorado did not change the substance of the corresponding EPA-approved provisions.

Section XII.C.2.

Section XII.C.2 describes the emission factors to be used for estimating emissions and emissions reductions from condensate storage tanks under Section XII. Colorado made one change to the substance of the corresponding EPA-approved provisions: In the current EPA-approved SIP (Sections XII.D.3.b and 3.b.i), the emission factors to be used are specified for condensate storage tanks at natural gas compressor stations, natural gas drip stations, and gas-condensate-glycol separators. In

revised Sections XII.C.2.a(ii) and a.(ii)(A), Colorado deleted the reference to gas-condensate-glycol separators. Revised Section XII.H still requires a 90 percent reduction in emissions at certain gas-condensate-glycol separators, and Colorado has not explained why an emission factor specified or determined under Section XII.C.2 will not be needed to determine compliance with Section XII.H. We believe an emission factor will be needed to ensure that the reduction requirement in Section XII.H can be enforced. Thus, this is a deficiency in revised Section XII that forms part of the basis for our proposed disapproval of Section XII.D.

Section XII.D contains an introductory statement regarding the control requirements for atmospheric condensate storage tanks. The changes to current SIP-approved Section XII.A.2 are minor. While the statement that "[e]mission reductions shall not be required for each and every unit" is misleading because the control requirement in revised Section XII.D.1 for new and modified condensate tanks applies to every tank, this misstatement would not undermine the enforceability of the requirements in Section XII.D.1. However, Colorado should correct this statement.

Section XII.D.1.

Section XII.D.1 requires owners or operators of any new or modified condensate tank at exploration and production sites to route emissions to air pollution control equipment that has a control efficiency of at least 95% for VOCs. This requirement applies for the first 90 days after the date of first production or after a well is newly drilled, re-completed, re-fractured, or otherwise stimulated. After the initial 90 days, the emission controls required by this subsection may be removed provided the source can demonstrate compliance with the system-wide provisions specified in other subsections of section XII. This new requirement would strengthen the SIP.

Section XII.D.2.a.

Section XII.D.2.a contains the system-wide control requirements for condensate storage tanks. The current SIP provides for a weekly 75% system-wide VOC reduction during the summer ozone season beginning in 2010. As noted above, the revised section significantly increases the summer ozone season weekly VOC reduction requirements from the current EPA-approved requirements, to 85% beginning in 2010 and 90% beginning

in 2011. However, the revised provisions specify no system-wide weekly VOC reduction requirement after the 2012 summer ozone season.⁶

As noted previously, Colorado was able to demonstrate attainment based on a 75% system-wide weekly VOC reduction from condensate storage tanks beginning in 2010. While revised Section XII would provide more stringent reductions in the short term, including the attainment year, it contains no weekly emission reduction requirement after the 2012 summer ozone season. Thus, although it is more stringent in the short term, it is less stringent over the long term, and the State has not demonstrated how this weakening of the SIP will not interfere with maintenance of the NAAQS. This deficiency forms part of the basis for our proposed disapproval of revised Section XII.

Section XII.D.2.b.

Section XII.D.2.b is a re-numbered version of current EPA-approved Section XII.A.9. This section contains a process for approval of alternative emissions control equipment and pollution prevention devices and processes. Among other things, the section specifies requirements for public participation and EPA approval. Colorado did not change the substance of this provision, but simply renumbered it from Section XII.A.9 to now be section XII.D.2.b.

The revised section contains typographical errors that Colorado should correct. In Section XII.D.2.b, Colorado should delete the word "this" in "this Section XII.D.2.a" because Section XII.D.2.a is not part of Section XII.D.2.b. In Section XII.D.2.b.(i)(E), the reference to "the spreadsheet and annual report required by Sections XII.F.4 and XII.F.5" should be to "the spreadsheet and annual report required by Sections XII.F.3 and XII.F.4."

Section XII.E.

Section XII.E contains the monitoring requirements that are currently specified in EPA-approved Sections XII.A.3 and XII.A.4.j. Colorado retained the basic requirement for weekly inspections or monitoring.

Colorado improved certain provisions. For example, under revised Section XII.E, an owner or operator must ensure that the control equipment is not only operating, but that it is operating properly. Revised Section XII.E.1 adds a requirement that owners

⁶ We note that the system-wide weekly reduction requirement of 78% that commences in May 2012 in the current EPA-approved version of Section XII contains no termination date.

or operators of control equipment other than a combustion device follow manufacturer's recommended maintenance and inspect the equipment to ensure proper maintenance and operation. Revised Section XII.E.4 (current XII.A.4.j) adds a requirement that the owner or operator document any corrective actions taken and the name of the individual performing the corrective actions resulting from a weekly inspection. Revised Sections XII.E.4.a through d add the requirement that the owner or operator not only perform certain checks, but that the owner or operator document those checks.

Revised Section XII.E.3 is deficient. It specifies certain inspection and/or monitoring requirements for combustion devices. It introduces two possible means to monitor/inspect the combustion device, but one of them—use of a surveillance system—is designated as a State Only option. The federally-enforceable SIP cannot provide a compliance option that is only available as a matter of State law. Discussions with the State have revealed that use of a surveillance system was not intended as an alternative to the monitoring method contained in Section XII.E.3.a, but as a technique that owners/operators could use on a trial basis in addition to the method contained in Section XII.E.3.a. Thus, the word “either” in Section XII.E.3 and the words “and/or” in XII.E.3.a are not appropriate. This deficiency forms part of the basis for our proposed disapproval of revised Section XII.

Section XII.F.

Section XII.F contains recordkeeping and reporting requirements that are currently specified in EPA-approved Sections XII.A.4 and XII.A.5. The recordkeeping requirements specify information that must be listed on a spreadsheet that owners/operators must maintain. Many of the provisions are identical to those in the current EPA-approved SIP.

Sections XII.F.1 through 4.

In Sections XII.F.1 through 4, Colorado made a few substantive changes to the existing provisions. In revised Section XII.F.3, Colorado added a sentence requiring the owner or operator to track VOC reductions on a calendar weekly and calendar monthly basis to demonstrate compliance with system-wide VOC reduction requirements. Colorado also specified that owners/operators would need to use the Division-approved spreadsheet to track VOC emissions and reductions,

not just any spreadsheet. These changes are reasonable and consistent with CAA requirements.

In revised Section XII.F.3.a(i), which requires the spreadsheet to list the condensate storage tanks subject to Section XII and the production volumes for each tank, Colorado specified that the spreadsheet must list monthly production volumes. It is unclear why Colorado added the word “monthly” because the following sentence, which Colorado did not change, requires the owner/operator to list the most recent measurement of such production and the time period covered by the measurement. Also, revised Section XII.F.3.a(iv) requires the owner/operator to list the production volume for each tank as a weekly and monthly average based on the most recent measurement available and specifies the method for pro-rating that measurement over the weekly or monthly period. Given the specificity of Section XII.F.3.a(iv), we are not concerned that the addition of the word “monthly” in revised Section XII.F.3.a(i) would undermine the enforceability of the regulation. However, Colorado should remove the word “monthly” in revised Section XII.F.3.a(i).

Revised Section XII.F.3.c requires owners/operators to retain a copy of each weekly and monthly spreadsheet for five years instead of the three years required by current EPA-approved Section XII.A.4.i.

Revised Section XII.F.3.d requires owners/operators to maintain records of inspections required by Section XII.E but does not specify a period for maintenance of the records. This is consistent with EPA-approved Section XII.A.4.j. However, we consider this something that Colorado should address. Typically, EPA recommends that such records be kept for a minimum of five years.

Revised Section XII.F.3 does not contain adequate recordkeeping for the control requirement that applies to new and modified condensate tanks under Section XII.D.1. As noted above, for new and modified condensate tanks, owners or operators are required to use air pollution control equipment with a control efficiency of at least 95% for the first 90 days. However, the regulation only specifies State-only recordkeeping requirements relevant to this requirement—in Section XII.F.3.f—and includes no reporting requirements that would be federally enforceable. To meet CAA requirements, the regulation, at a minimum, should specify that owners/operators provide notification and maintain certain records. We believe relevant records would include, but may

not be limited to: The date a new atmospheric condensate storage tank was installed, or the date a well was newly drilled, re-completed, re-fractured or otherwise stimulated; the date the control equipment was installed and, if applicable, removed; the manufacturer's design specifications for the control equipment; the manufacturer's operation and maintenance specifications/instructions for the control equipment; and any downtime of the control equipment or other operational problems and corrective action taken. The regulation should also specify a record retention period for such records. The regulation specifies a five-year retention period for other records, and it would be appropriate to specify the same retention period for these records. The regulation should also specify that owners/operators need to report within a reasonable period of time after the date the new atmospheric condensate storage tank was installed or the date the well was newly drilled, re-completed, re-fractured or otherwise stimulated. The regulation should also require the owner/operator to report any non-compliance with the requirements of Section XII.D.1 within a reasonable time frame. The deficiencies in recordkeeping and reporting requirements pertaining to the control requirements of revised Section XII.D.1 form part of the basis for our proposed disapproval of revised Section XII.

In revised Section XII.F.4, Colorado made minor changes to current EPA-approved reporting requirements. Revised Section XII.F.4.a requires the semi-annual reports to list all condensate storage tanks subject to or used to comply with the system-wide reduction requirements, not just those subject to such requirements. This reflects the change to the regulation that allows owners/operators to control tanks with emissions below the APEN filing levels to meet the percent reduction requirement in Section XII.D.2. In revised Sections XII.F.4.d through f Colorado clarified that the April 30 reports must include the monthly emissions information and the November 30 reports must include the weekly emissions information. In revised Section XII.F.4.g, Colorado deleted the requirement in current EPA-approved Section XII.A.5.g that the owner/operator note in the report “the date the source believes the shutdown [of control equipment] occurred, including the basis for such belief.” We believe this deletion is reasonable because the owner/operator is not likely to be able to make an accurate estimate

of the date the shutdown occurred, and, thus, the information is not likely to be meaningful in an enforcement context. In revised Section XII.F.4.h, Colorado clarified monthly versus weekly reporting requirements. In revised Section XII.F.4.j, Colorado increased the retention period for reports from three years to five years. These changes are consistent with CAA requirements.

Revised Section XII.F.4.l contains a reference to “this Section XII.D.2.” The word “this” should be deleted. This typographical error is not significant enough to undermine the enforceability of the regulation, but Colorado should correct it.

Section XII.F.5.

Section XII.F.5 contains an exemption from Section XII’s record-keeping and reporting requirements for owners/operators of natural gas compressor stations (NGCSs) or natural gas drip stations (NGDSs) authorized to operate pursuant to a construction permit or Title V operating permit if certain conditions are met. Colorado removed one of the conditions for this exemption contained in current EPA-approved Section XII.A.6. The removed condition provided that total emissions from condensate storage tanks associated with such NGCSs and NGDSs could not exceed 30 tons per year. If we approve the deletion of this condition, the recordkeeping and reporting requirements for the relevant sources with emissions exceeding the 30 tons per year threshold would need to be established through construction or Title V operating permits. Our interpretation of the CAA is that provisions such as monitoring, recordkeeping, and reporting requirements that are needed to ensure the enforceability of the applicable control requirements contained in a SIP must also be contained in the SIP and cannot be left to development in a permit. See, e.g., CAA sections 110(a)(2)(A) and (F), 40 CFR part 51, Subpart K, and 40 CFR part 51, Appendix V. This deficiency forms part of the basis for our proposed disapproval of revised Section XII.

We approved the prior version of the exemption because Section XII’s system-wide VOC reduction requirements were limited to systems with emissions over 30 tons per year. In other words, all owners/operators, including owners/operators of NGCSs and NGDSs, were exempt from Section XII’s main requirements, including the recordkeeping and reporting requirements, if emissions from their units were under 30 tons per year. Revised Section XII.F.5 also contains

typographical errors. In the first line, the reference to “Sections XII” should be to “Section XII.” In XII.F.5.a, the reference to “this Section XII.A” should be to “Section XII.D.”

Section XII.G.

Section XII.G specifies the control requirements applicable to gas-processing plants and corresponds to current EPA-approved Section XII.B. EPA-approved Section XII.B requires gas-processing plants to meet the requirements in Section XII.B specifically applicable to such plants as well as the requirements in current EPA-approved Section XII.C, pertaining to certain still vents and vents from gas-condensate-glycol separators, and Section XVI, pertaining to emissions from stationary and portable engines. Revised Section XII.G requires gas-processing plants to additionally comply with the requirements of revised Section XII.B, the definitions section, and revised Sections XII.C.1.a and XII.C.1.b, which specify maintenance and design requirements for control equipment and the obligation to minimize leakage of VOCs to the atmosphere. It appears that this change would strengthen the requirements applicable to gas-processing plants.

Section XII.G.1.

Section XII.G.1 specifies that NSPS leak detection and repair requirements apply regardless of the date of construction of the facility. Colorado made no substantive changes to this provision.

Section XII.G.2.

Section XII.G.2 specifies the applicability threshold for installation of control equipment at gas-processing plants and the efficiency requirement for the control equipment. In current EPA-approved Section XII.B.2, installation of control equipment is triggered if condensate storage tank throughput exceeds “APEN de minimis levels.” In revised Section XII.G.2, installation is triggered if uncontrolled emissions from a tank or tank battery are greater than or equal to two tons per year. We cannot determine whether this change would strengthen the regulation, weaken it, or leave it the same because we cannot determine whether the same tanks or tank batteries would have to install control equipment or not. Colorado also revised the control efficiency requirement from 95%, with no averaging period specified, to 95% with a rolling 12-month averaging period. We are not convinced this change is consistent with CAA requirements. The revised regulation

contains no provisions for testing or determining whether the 95% control has been achieved on a rolling 12-month basis, and if the goal is to have owners/operators install and operate flares with a control efficiency of at least 95%, specifying an averaging period is not particularly meaningful. These issues form part of the basis for our proposed disapproval of revised Section XII.

Section XII.G.3.

Section XII.G.3 specifies the compliance date for existing natural gas processing plants. Colorado did not change the substance of this provision.

Section XII.G.4.

Revised Section XII.G.4, which specifies the compliance date for new gas processing plants, contains typographical errors. The reference to “this Section XII.B” should be to “this Section XII.G.” The reference to Section XII.C should be to Section XII.H.

Section XII.G.5.

Section XII.G.5 is entirely new. It adds an exemption from the otherwise applicable requirements of Section XII for an owner or operator of any NGCS or NGDS, but only if the owner or operator applies control equipment designed to achieve a VOC control efficiency of at least 95% to each condensate storage tank or tank battery with uncontrolled VOC emissions greater than or equal to two tons per year and meets certain other requirements. While this is a more stringent requirement than the system-wide requirement because it requires 95% control at each tank or tank battery over the threshold rather than a maximum of 90% control system-wide, Section XII does not specify recordkeeping and reporting requirements to support the provisions of revised Section XII.G.5. Adequate recordkeeping and reporting requirements in the SIP are necessary to ensure the enforceability of the control requirement and to meet CAA requirements. This deficiency forms part of the basis for our proposed disapproval of revised Section XII.

Section XII.G.6.

Section XII.G.6 is new. It specifies that a NGCS or NGDS subject to Section XII.G at which a glycol natural gas dehydrator or natural gas-fired stationary or portable engine is operated shall be subject to Section XII.H and/or XVI. We interpret this to mean that the provisions of Sections XII.H and XVI, as applicable, would apply to such facilities in addition to the provisions of Section XII.G. We view this as a

clarifying change that is consistent with CAA requirements.

Section XII.H.

Section XII.H specifies control requirements for still vents and vents from gas-condensate-glycol separators on glycol natural gas dehydrators located at oil and gas exploration and production operations, natural gas compressor stations, drip stations, or gas-processing plants. In revised Section XII.H, Colorado attempted to clarify current EPA-approved Section XII.C's applicability threshold for control requirements. The relevant language in revised Section XII.H reads as follows:

This Section XII.C shall not apply to any single natural gas dehydrator, or grouping of dehydrators at an oil and gas exploration and production operation, natural gas compressor station, drip station or gas-processing plant, with uncontrolled actual emissions of volatile organic compounds of less than 15 tons per year. To determine if a grouping of dehydrators exceeds the 15 tons per year threshold aggregate emissions from all dehydrators on site (contiguous and adjacent). The control requirement in this Section XII.H. shall apply to each natural gas dehydrator within a grouping that has actual uncontrolled emissions above one ton per year. The control requirement in this Section XII.H. shall not apply to a natural gas dehydrator with emissions below the APEN reporting thresholds in Regulation Number 3, Part A, Section II.D that is part of a grouping of dehydrators, but the emissions from such dehydrator shall be included in the calculation.

As written, this passage lacks clarity and contains redundant language that EPA cannot approve. While we think we understand the intent—that emissions from all dehydrators are counted in determining whether the 15-ton-per-year threshold is exceeded, but the control requirement only applies to dehydrators with actual uncontrolled emissions above one ton per year—the redundant language and lack of punctuation or missing words in the third sentence of revised Section XII.H create uncertainty. The same is true of stating the threshold for control in two different ways: Controls apply where emissions exceed one ton per year versus controls don't apply where emissions are below the APEN reporting thresholds. This deficiency forms part of the basis for our proposed disapproval of revised Section XII.

We also note that in the quoted passage above, the reference to “This

section XII.C” should be to “This section XII.H” and that Colorado should correct this typographical error.

Proposed Action on Section XII Revisions

Based on the deficiencies noted above, we are proposing to disapprove the Section XII revisions. While several of the changes contained in revised Section XII would strengthen the SIP, we are unable to use our authority for partial or limited approval. First, under the circumstances involved here and based on our interpretation of the CAA, it is not appropriate to replace a fully approved Section XII in the SIP with a revised Section XII that contains deficiencies. Second, we have no means to approve only those provisions that strengthen the SIP and reject the rest because Colorado completely reorganized and renumbered Section XII's provisions. The numbering of any relevant subsections that we could approve would not match the numbering of the current EPA-approved subsections; the resulting SIP rule would be unintelligible. Thus, we find that our only available course of action is to propose to disapprove all of revised Section XII.

Sections XIII through XVI

Sections XIII through XVI changes are clerical in nature and do not affect the substance of the requirements. Therefore, we are proposing to approve the changes in Sections XIII through XVI.

Ambient Air Quality Standards Regulation

We are proposing to disapprove Colorado's proposed revisions to its ambient air quality standards regulation. Colorado's ambient air quality standards regulation duplicates information contained in other parts of the SIP and in our regulations. For example, the ambient air quality standards regulation restates the motor vehicle emissions budgets for various areas. However, under our regulations, the budgets are determined by the applicable control strategy SIP or maintenance plan, not by Colorado's ambient air quality standards regulation. Similarly, the ambient air quality standards regulation defines the boundaries and designations of various areas in Colorado. However, EPA defines the designations and boundaries of areas in its own regulations. Approval

of the ambient air quality standards regulation could lead to confusion in the event of conflict between the ambient air quality standards regulation and our regulations or other parts of the SIP.

Because we are obligated to act on the State's SIP submission, we plan to disapprove these revisions to the ambient air quality standards regulation as a revision to the SIP. If the State requests to withdraw the regulation from the SIP revision prior to the time we take final action, we would not be obligated to take final action because the revisions to the ambient air quality standards regulation would no longer be pending before the Agency as a SIP revision.

I. Transportation Conformity

Under section 176(c) of the CAA, transportation plans, transportation improvement programs, and new transportation projects, such as the construction of new highways, must “conform” to (*i.e.*, be consistent with) applicable SIPs. Conformity to a SIP means that transportation activities will not produce new air quality violations, worsen existing violations, or delay timely attainment of the NAAQS. EPA's conformity rule provisions in 40 CFR part 93 establish the criteria and procedures for determining whether or not these plans, programs, and projects conform to the SIP. In particular, our regulations require a demonstration that emissions from these plans, programs, and projects will be consistent with the motor vehicle emissions budgets (MVEBs) in the SIP (40 CFR 93.118). The MVEBs are defined as that portion of the total allowable emissions defined in the SIP for a certain date, for the purpose of meeting reasonable further progress milestones or demonstrating attainment or maintenance of the NAAQS, allocated to highway and transit vehicle use and emissions.

EPA's requirements on MVEBs are found in 40 CFR 93.118 and 93.124, and MVEBs are further explained in the preamble to the November 24, 1993, transportation conformity rule (58 FR 62193–62196). Colorado derived the MVEBs for NO_x and VOCs from its 2010 base case attainment demonstration and defined the MVEBs in Chapter VI of the OAP. We list the MVEBs in Table 3, below.

TABLE 3—IDENTIFICATION OF 2010 NO_x AND VOC MVEBS

Area of applicability	2010 NO _x Emissions (tons per day)	2010 VOC Emissions (tons per day)
Northern Subarea	20.5	19.5
Southern Subarea	102.4	89.7
Total Nonattainment Area	122.9	109.2

Once Colorado submitted the OAP to us, we determined the adequacy of the MVEBs per the procedures and criteria contained in 40 CFR 93.118. On October 15, 2009, we announced the availability of the attainment demonstration and the MVEBs on EPA's transportation conformity adequacy Web site and solicited public comment. The public comment period closed on November 16, 2009; we received no comments. All of this information is available at EPA's conformity Web site: <http://www.epa.gov/otaq/stateresources/transconf/currstips.htm#denver-me>.

In a January 21, 2010 letter to the Colorado Department of Public Health and Environment, we found that the 2010 NO_x and VOC MVEBs in the OAP were adequate. We announced our adequacy finding in the **Federal Register** on March 4, 2010, and the OAP's MVEBs became effective on March 19, 2010. As a result, as of that date, the Denver Regional Council of Governments (DRCOG), the North Front Range Transportation and Air Quality Planning Council (NFRT), the Colorado Department of Transportation, and the U.S. Department of Transportation were required to use these MVEBs for transportation conformity determinations. However, we note that we are not bound by our prior adequacy determination in this action.

Our analysis indicates that the MVEBs are consistent with and clearly related to the emissions inventory and the control measures in the SIP, and that the MVEBs, when considered together with all other emissions sources, are consistent with attainment of the 1997 8-hour ozone NAAQS in 2010. (See 40 CFR 93.118(e)(4).) Therefore we are proposing approval of the MVEBs as reflected in Table 3 above.

We note that our proposed approval applies to the Northern Subarea and Southern Subarea MVEBs as well as the Total Nonattainment Area MVEBs. The Northern Subarea is defined in the OAP as the area denoted by the ozone nonattainment area north of the Boulder County northern boundary and extended through southern Weld County to the Morgan County line. This area includes NFRT's regional planning

area as well as part of the Upper Front Range Transportation Planning Region (TPR) in Larimer and Weld counties.

The Southern Subarea is defined in the OAP as the area denoted by the ozone nonattainment area south of the Boulder County northern boundary and extended through southern Weld County to the Morgan County line. This area includes the nonattainment portion of DRCOG's regional planning area and the southern Weld County portion of the Upper Front Range TPR. We note that both subareas are further identified in Figure 2: "8-hour Ozone Emission Budget Subareas" at page VI-6 in the OAP.

In addition to proposing approval of the MVEBs, we are also proposing to approve the process described in the OAP for use of the Total Nonattainment Area MVEBs and the subarea MVEBs. Per the OAP, the initial conformity determination must use the Total Nonattainment Area MVEBs for NO_x and VOCs. After the initial conformity determination, DRCOG and NFRT may switch from using the Total Nonattainment Area MVEBs to using the subarea MVEBs for determining conformity. To switch to use of the subarea MVEBs (or to subsequently switch back to use of the Total Nonattainment Area MVEBs,) DRCOG and the NFRT must use the process described in the OAP at pages VI-4 and VI-5.

V. Consideration of Section 110(l) of the CAA

Section 110(l) of the CAA states that a SIP revision cannot be approved if the revision would interfere with any applicable requirement concerning attainment and reasonable further progress towards attainment of a NAAQS or any other applicable requirement of the CAA. The parts of the OAP and the regulation revisions we are proposing to approve will not interfere with attainment, reasonable further progress, or any other applicable requirement of the CAA. The OAP contains a valid modeled attainment demonstration showing the area will attain by 2010. As described elsewhere in this action, we are proposing to

disapprove Colorado's proposed repeal of Section II.D of Regulation Number 7, Colorado's revisions to Section XII of Regulation Number 7, Colorado's revisions to Part C of Regulation Number 3, Colorado's revisions to its Ambient Air Quality Standards regulation, and specific limited portions of the OAP because those provisions do not meet all applicable requirements of the CAA.

VI. Proposed Action

We are proposing to approve Colorado's 2010 attainment demonstration for the 1997 8-hour ozone NAAQS. We are proposing to approve the motor vehicle emissions budgets contained in the OAP. We are proposing to approve all other aspects of the OAP, with the following limited exceptions: we are proposing to disapprove the last paragraph on page IV-1 and the first paragraph on page IV-2 of the OAP, we are proposing to disapprove the words "federally enforceable" in the second to last paragraph on page V-6 of the OAP, and we are proposing to disapprove the reference to Attachment A in the OAP's Table of Contents and on page IV-3 of the OAP.

We are proposing to approve the revisions to Colorado Regulation Number 3, Parts A and B. We are proposing to disapprove the revisions to Colorado Regulation Number 3, Part C.

We are proposing to approve the following portions of the revisions to Colorado Regulation Number 7:

- Revisions to Sections I through XI, except for Colorado's repeal of Section II.D.
- Revisions to Sections XIII through XVI.

We are proposing to disapprove the following portions of the revisions to Colorado Regulation Number 7:

- Colorado's proposed repeal of Section II.D.
- Revisions to Section XII.

We are proposing to disapprove the revisions to Colorado's Ambient Air Quality Standards Regulation.

The provisions we are proposing to approve meet the requirements of the CAA and our regulations, including 40 CFR 81.300(e)(3)(ii)(D). The provisions

we are proposing to disapprove are inconsistent with CAA requirements and our regulations. Our specific analyses and findings are discussed above in the body of this proposed rulemaking.

EPA is soliciting public comments on its proposed rulemaking as discussed in this document. EPA will consider these comments before taking final action. Interested parties may participate in the Federal rulemaking process by submitting written comments to EPA as discussed in this action.

VII. Statutory and Executive Order Reviews

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

- Is not a "significant regulatory action" subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because

application of those requirements would be inconsistent with the CAA; and

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

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

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Intergovernmental relations, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

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

Dated: July 12, 2010.

Carol Rushin,

Acting Regional Administrator, Region 8.

[FR Doc. 2010-17810 Filed 7-20-10; 8:45 am]

BILLING CODE 6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 300

[EPA-HQ-SFUND-1987-0002; FRL-9177-1]

National Oil and Hazardous Substances Pollution Contingency Plan; National Priorities List: Partial Deletion of the Rocky Mountain Arsenal Federal Facility

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule, reopening of public comment period.

SUMMARY: The Environmental Protection Agency (EPA) Region 8 issued a Notice of Intent to Delete portions of the Rocky Mountain Arsenal Federal Facility (RMA) from the National Priorities List (NPL) on June 17, 2010. The portions proposed for deletion are the Central and Eastern Surface Areas of the On-Post Operable Unit (OU3) including surface media and structures (CES) and the surface media of the entire Off-Post Operable Unit (OU4) (OPS). A formal request was made to extend the public comment period which is scheduled to end on July 19, 2010. In response, EPA is reopening the public comment period for an additional 30 days concluding on August 16, 2010.

The NPL, promulgated pursuant to section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) of 1980, as amended, is an appendix of the National Oil and Hazardous Substances Pollution Contingency Plan (NCP). The EPA and the State of Colorado, through the Colorado Department of Public Health and Environment (CDPHE), have determined that all appropriate response actions under CERCLA at the CES and OPS, other than operation, maintenance, and five-year reviews, have been completed.

This rationale for deleting the CES and OPS from RMA has not changed. The **Federal Register** notice for the proposed deletion (75 FR 34405) discusses this rationale in detail.

DATES: The comment period for the proposed rule published June 17, 2010, at 75 FR 34405, is reopened. Comments concerning the proposed partial deletion may be submitted to EPA on or before August 16, 2010.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA-HQ-SFUND-1987-0002, by one of the following methods:

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

- *E-mail:* chergo.jennifer@epa.gov.
- *Fax:* 303-312-7110.

- *Mail:* Ms. Jennifer Chergo, Community Involvement Coordinator (8OC), U.S. EPA, Region 8, 1595 Wynkoop Street, Denver, Colorado 80202-1129.

- *Hand Delivery:* 1595 Wynkoop Street, Denver, Colorado 80202-1129. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Docket: All documents in the docket are listed in the <http://www.regulations.gov> index. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in <http://www.regulations.gov> or in hard copy at:

—EPA's Region 8 Superfund Records Center, 1595 Wynkoop Street, Denver, Colorado 80202-2466. Hours: 8 a.m. to 4 p.m. by appointment (call 303-312-6473), Monday through Friday, excluding legal holidays; and the
—Joint Administrative Records Document Facility, Rocky Mountain

Arsenal, 5650 Havana Street, Building 129, Commerce City, Colorado 80022–1748. Hours: 12 p.m. to 4 p.m., Monday through Friday, excluding legal holidays, or by appointment (call 303–289–0983).

FOR FURTHER INFORMATION CONTACT: Ms. Jennifer Chergo, Community Involvement Coordinator (8OC), U.S. Environmental Protection Agency, Region 8, 1595 Wynkoop Street, Denver, Colorado 80202–1129; *telephone number:* 1–800–227–8917 or 303–312–6601; *fax number:* 303–312–7110; *e-mail address:* chergo.jennifer@epa.gov.

Dated: July 13, 2010.

Stephen S. Tuber,

Acting Regional Administrator, Region 8.

[FR Doc. 2010–17714 Filed 7–20–10; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

42 CFR Part 50

45 CFR Part 94

[Docket Number NIH–2010–0001]

RIN 0925–AA53

Responsibility of Applicants for Promoting Objectivity in Research for Which Public Health Service Funding Is Sought and Responsible Prospective Contractors

AGENCY: Department of Health and Human Services.

ACTION: Proposed rule; extension of comment period; request for comments.

SUMMARY: The Department of Health and Human Services (HHS or the Department), including the HHS Public Health Service (PHS), is extending the comment period for a proposed rule that would amend the regulations on the Responsibility of Applicants for Promoting Objectivity in Research for which PHS Funding is Sought and Responsible Prospective Contractors, and is clarifying certain elements of the proposed rule for which we are seeking additional comment. The proposed rule was published in the **Federal Register** on May 21, 2010 (75 FR 28688). The comment period is extended by 30 days and thus will end on August 19, 2010.

DATES: Comments must be received on or before August 19, 2010 in order to ensure we will be able to consider the comments when preparing the final rule.

ADDRESSES: Individuals, organizations and institutions interested in submitting comments identified by RIN 0925–AA53

and Docket Number [NIH–2010–0001] may do so by any of the following methods:

Electronic Submissions

You may submit electronic comments in the following way:

- *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the instructions for submitting comments.
- To ensure timely processing of comments, NIH is no longer accepting comments submitted to the agency by e-mail.

Written Submissions

You may submit written comments in the following ways:

- *Fax:* 301–402–0169.
- *Mail:* Jerry Moore, NIH Regulations Officer, Office of Management Assessment, National Institutes of Health, 6011 Executive Boulevard, Suite 601, MSC 7669, Rockville, MD 20852–7669.
- Hand Delivery/Courier (for paper, disk, or CD–ROM submissions). *Attention:* Jerry Moore, 6011 Executive Boulevard, Suite 601, Rockville, MD 20852–7669.

Instructions: All submissions received must include the agency name and Regulatory Information Number (RIN) [0925–AA53] and docket number [NIH–2010–0001] for this rulemaking action. All comments may be posted without change, including any personal information provided.

Docket: For access to the docket to read background documents or comments received concerning this rulemaking action, go to the eRulemaking.gov Portal: <http://www.regulations.gov> and follow the instructions provided for conducting a search, using the docket number [NIH–2010–0001].

FOR FURTHER INFORMATION CONTACT: Jerry Moore, NIH Regulations Officer, Office of Management Assessment, National Institutes of Health, 6011 Executive Boulevard, Suite 601, MSC 7669, Rockville, MD 20852–7669, telephone 301–496–4607, fax 301–402–0169, e-mail jm40z@nih.gov, concerning questions about the rulemaking process and Dr. Sally Rockey, NIH Deputy Director for Extramural Research, concerning substantive questions about the proposed rule, e-mail FCOI-NPRM@mail.nih.gov.

SUPPLEMENTARY INFORMATION: HHS published a Notice of Proposed Rulemaking (NPRM) in the **Federal Register** on May 21, 2010 (75 FR 28688), with a deadline for written comments of July 20, 2010. The NPRM proposed changes to 42 CFR Part 50, Subpart F,

and 45 CFR Part 94 (the regulations) to expand and add transparency to Investigator disclosure of significant financial interests (SFIs) to Institutions, as well as enhance regulatory compliance and effective oversight of financial conflicts of interest (FCOIs). The current regulations at 42 CFR Part 50, Subpart F, are applicable to each Institution that applies for PHS grants or cooperative agreements for research and, through implementation of the regulations by each Institution, to each Investigator participating in such research.¹ The current PHS contracting regulations at 45 Part 94 similarly apply to each Institution that seeks PHS funding for research and, through implementation of the regulations, to each Investigator who participates in such research.²

Since the NPRM was published, the Department has received questions concerning the authorities that exist under the current regulations and the proposed revisions to enable the PHS to enforce compliance by Institutions and Investigators with the regulations. In addition, the Department has considered whether, as part of the proposed revisions, it should clarify how the regulations apply in circumstances in which an Investigator or a PHS-funded research project transfers from one Institution to another, or in which a new Institution, and Investigators at the new Institution, become involved in an ongoing PHS-funded research project (e.g., where the new Institution becomes a subgrantee on the project). The Department recognizes that scientific discovery is a fluid process, and sometimes necessitates the movement of people and projects between Institutions. Under most ordinary circumstances, this type of movement presents no concerns. However, the Department is fully committed to protecting the objectivity of PHS-funded research and wants to be sure that the transfer of an Investigator or research project from one Institution to another does not compromise the integrity of PHS-funded research. As a result, we are seeking comment whether the recently-published proposed rule should be

¹ In those few cases where an individual, rather than an institution, is an applicant for PHS grants or cooperative agreements for research, PHS Awarding Components will make case-by-case determinations on the steps to be taken to ensure that the design, conduct, and reporting of the research will not be biased by any conflicting financial interest of the individual.

² In neither case do the regulations currently apply to Small Business Innovation Research (SBIR)/Small Business Technology Transfer (STTR) Phase I applications.

further enhanced for clarity in protecting research integrity.

With regard to enforcement authorities, the current regulations include in 42 CFR 50.606 and 45 CFR 94.6 a description of remedies available to HHS and a PHS Awarding Component when identifying concerns regarding FCOI or compliance with the regulations. In addition, 42 CFR 50.607 identifies other HHS regulations that apply, including uniform administrative requirements, as well as debarment and suspension procedures. The NPRM includes proposed revisions to all three of these sections. Among the proposed changes, with regard to matters determined to require corrective action under the regulations, we proposed revising paragraph 50.606(b) to incorporate by reference 45 CFR 74.14 (special award conditions), and proposed revising paragraph 94.6(b) to reference "other enforcement action" in addition to, or in lieu of, a Stop Work Order by the Contracting Officer. In section 50.607, we proposed minor revisions to update the CFR location or title of the existing references, but also specifically requested comment with regard to the necessity of this section.

In conjunction with the comment period extension, we seek public comment on whether the proposed changes to the regulations' references to the enforcement authorities available to the PHS, including those discussed above, should be further revised and clarified in the regulations. This includes comment on whether the regulations should include one or more descriptions of specific measures that the Department, including a PHS Awarding Component, may initiate as a result of particular types of identified FCOI or non-compliance under the regulations. As one example, the regulations potentially could describe situations in which an Investigator's identified FCOI or an Investigator's failure to comply with an Institution's FCOI policy or FCOI management plan necessitates notification to other Institutions (e.g., when the Investigator, or the PHS-funded research project on which he or she is working, transfers from one Institution to another).

In addition to possible clarification of enforcement authorities, the Department also seeks comment as to whether it should clarify how the regulations apply in circumstances in which an Investigator or a PHS-funded research project transfers from one Institution to another, or in which a new Institution, and Investigators at the new Institution, become involved in an ongoing PHS-funded research project (e.g., where the new Institution becomes a subgrantee

on the project). As one example, we proposed in the NPRM to revise substantially 42 CFR 50.604(f) and 45 CFR 94.4(f) such that these paragraphs would require an Institution, through its designated officials, to determine whether an Investigator's SFI is related to PHS-funded research and, if so related, whether the SFI is a FCOI. We request comment as to whether the regulations should further clarify that, as part of the Institution's FCOI determination process, institutional officials must consider whether an Investigator's SFI was previously determined to be a FCOI and subject to a management plan with regard to other PHS-funded research project(s). Such consideration could be based on information in the Institution's own records or from publicly accessible sources (e.g., the Web site of an Institution that previously employed the Investigator). We welcome additional public comment on alternative approaches or additional clarifications that may be incorporated into the regulations to protect further the objectivity of PHS-funded research in situations involving a transfer of an Investigator or PHS-funded project between Institutions, or the introduction of a new Institution and Investigators to an existing PHS-funded project.

Dated: June 22, 2010.

Francis S. Collins,
Director, National Institutes of Health.

Approved: July 6, 2010.

Kathleen Sebelius,
Secretary.

[FR Doc. 2010-17739 Filed 7-20-10; 8:45 am]

BILLING CODE 4140-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

42 CFR Part 73

RIN 0920-AA34

Public Health Security and Bioterrorism Preparedness and Response Act of 2002; Biennial Review and Republication of the Select Agent and Toxin List

AGENCY: Centers for Disease Control and Prevention (CDC), Department of Health and Human Services (HHS).

ACTION: Advance notice of proposed rulemaking and request for comments.

SUMMARY: The Public Health Security and Bioterrorism Preparedness and Response Act of 2002 (42 U.S.C. 262a) (the Bioterrorism Act) requires the biennial review and republication of the HHS list of select agents and toxins.

Accordingly, we are soliciting public comment on the current HHS list of select agents and toxins, including whether any biological agent or toxin should be added to or removed from the list. We are also seeking comments as to whether we should "tier" the HHS select agent list based on the relative bioterrorism risk of each agent or toxin and possibly further "stratify" the security requirements for agents in the highest tier based on type of use or other factors.

DATES: We will consider all comments received on or before August 20, 2010.

ADDRESSES: Comments in response to this notice should be marked "Comments on the changes to the list of select agents and toxins" and mailed to: Centers for Disease Control and Prevention, Division of Select Agents and Toxins, 1600 Clifton Road, MS A-46, Atlanta, GA 30333. Comments may be e-mailed to: SAPcomments@cdc.gov.

FOR FURTHER INFORMATION CONTACT:

Robbin Weyant, Director, Division of Select Agents and Toxins, Centers for Disease Control and Prevention, 1600 Clifton Rd., MS A-46, Atlanta, GA 30333. Telephone: (404) 718-2000.

SUPPLEMENTARY INFORMATION: The Bioterrorism Act requires the HHS Secretary to establish by regulation a list of each biological agent and toxin that has the potential to pose a severe threat to public health and safety. In determining whether to include an agent or toxin on the list, the HHS Secretary considers the effect on human health upon exposure to the agent or toxin; the degree of contagiousness of the agent; the methods by which the agent or toxin is transferred to humans; the availability and effectiveness of pharmacotherapies and immunizations to treat and prevent illnesses resulting from the agent or toxin; the potential for the agent or toxin to be used as a biological weapon; and the needs of children and other vulnerable populations. The current list of HHS biological select agents and toxins can be found at <http://www.selectagents.gov/Select%20Agents%20and%20Toxins%20List.html>. The Bioterrorism Act requires that the HHS Secretary review and republish the HHS list of select agents and toxins on at least a biennial basis.

Background

The HHS Secretary last republished the HHS select agent and toxin list in the **Federal Register** on October 16, 2008 (73 FR 61363). The HHS select agent and toxin list, found in part 73 of Title 42 of the Code of Federal Regulations (42 CFR part 73), is divided

into two sections. The select agents and toxins listed in § 73.3 (HHS select agents and toxins) are those regulated only by HHS under the authority of the Bioterrorism Act. The select agents and toxins listed in § 73.4 (Overlap select agents and toxins) are those regulated by HHS under the authority of the Bioterrorism Act and regulated by Secretary of Agriculture (USDA) under the authority of the Agricultural Bioterrorism Protection Act of 2002 (7 U.S.C. 8401).

To fulfill this statutory mandate, CDC's Division of Select Agents and Toxins (DSAT) has initiated its biennial review process which will include consultation with subject matter experts including the Intragovernmental Select Agents and Toxins Technical Advisory Committee (ISATTAC). The ISATTAC is comprised of Federal government employees from the CDC, the National Institutes of Health (NIH), the Food and Drug Administration (FDA), the USDA/Animal and Plant Health Inspection Service (APHIS), USDA/Agricultural Research Service (ARS), USDA/Center for Veterinary Biologics (CVB), the Department of Homeland Security (DHS), and the Department of Defense (DOD).

The purpose of this advanced notice of proposed rulemaking is to seek public comment on (1) the appropriateness of the current HHS list of select agents and toxins, (2) whether there are other agents or toxins that should be added to the HHS list, (3) whether agents or toxins currently on the HHS list should be deleted from the list, (4) whether the HHS select agent list should be tiered based on the relative bioterrorism risk of each agent or toxin, and (5) whether the security requirements for agents in the highest tier should be further stratified based on type of use or other factors.

A recent report by the National Research Council recommended that the select agent list should be ordered based on the potential of an agent to be used as a biothreat, and a graded series of security procedures should be applied so that the greatest resources and scrutiny go to securing agents that pose a maximum risk (<http://www8.nationalacademies.org/onpinews/newsitem.aspx?RecordID=12774>). As noted above, we are also seeking public comment on whether the HHS list should be tiered based on the relative bioterrorism risk of each agent or toxin and whether the security requirements for agents in the highest tier should be further stratified based on type of use or other factors. If a commenter believes that the HHS list should be tiered and/or stratified, we would also be

interested in what criteria should be used to designate higher-risk agents, and what, if any, changes we should make in security requirements for what would be determined to be higher-risk agents.

If implemented, tiering of the HHS select agent list could allow for the application of more stringent security measures for those select agents or toxins which pose a higher risk to public health and safety if stolen or misused. If implemented, stratification of the HHS select agent list could allow for varying levels of security requirements for entities that possess the highest tier agents, based on use of the agent or other factors. If a commenter believes that tiering and/or stratification of the HHS select agent list is advisable, we would be interested in comments as to what criteria should be used to designate which agents and toxins pose a higher bioterrorism risk and what criteria should be used for stratifying the highest risk agents. For example, the tiering and/or stratification of the HHS select agent list might consider the relative ease with which a particular agent or toxin might be disseminated or transmitted between humans or throughout the environment; the potential for high mortality rates; the potential for a major public health impact; whether misuse of an agent or toxin might result in public panic or other social or economic disruption; and whether the agent or toxin requires Federal, State and local officials to take special action in planning for major public health disasters (quarantine needs, eradicated agent or toxin). Additionally, we would also be interested in what corresponding changes should be made to the security requirements found in 42 CFR 73.11 to increase protection for higher tier agents or toxins; whether those security requirements should be stratified based on the use of the agent or other factors; and whether such changes should be prescriptive (the imposition of specific restraints, restrictions, or requirements) or risk-based (security requirement based on a security risk assessment), or a combination of prescriptive and risk-based.

Following the conclusion of CDC review, we will publish another notice in the **Federal Register** either proposing that the select agent and toxin list remain the same, or that specific biological agents or toxins be added to or deleted from the list. If appropriate, we will also propose any changes to the Select Agent regulations (42 CFR Part 73) to implement a tiering and/or stratification schema along with any corresponding amendments to the current security requirements in the

Select Agent regulations that might be required for higher-risk agents and toxins.

This action has been determined to be significant for the purposes of Executive Order 12866 and, therefore, has been reviewed by the Office of Management and Budget.

Authority: 42 U.S.C. 262a.

Dated: January 8, 2010.

Kathleen Sebelius,
Secretary.

Editorial Note: This document was received in the Office of the Federal Register on July 15, 2010.

[FR Doc. 2010-17728 Filed 7-20-10; 8:45 am]

BILLING CODE 4163-18-P

DEPARTMENT OF TRANSPORTATION

Pipeline and Hazardous Materials Safety Administration

49 CFR Parts 171 and 173

[Docket No. PHMSA-2010-0017 (HM-245)]

RIN 2137-AE56

Hazardous Materials: Incorporation of Certain Cargo Tank Special Permits Into Regulations

AGENCY: Pipeline and Hazardous Materials Safety Administration (PHMSA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The Pipeline and Hazardous Materials Safety Administration is proposing to amend the Hazardous Materials Regulations to incorporate provisions contained in certain widely used or longstanding cargo tank special permits that are granted to multiple parties and have an established safety record. Special permits allow a company or individual to package or ship a hazardous material in a manner that varies from the regulations provided an equivalent level of safety is maintained. The proposed revisions are intended to provide wider access to the regulatory flexibility offered in the special permits and eliminate the need for numerous renewal requests, thereby, facilitating commerce activity and reducing paperwork burdens while maintaining an appropriate level of safety.

DATES: Comments must be received by August 20, 2010. A 30 day comment period is appropriate for this rulemaking because it proposes to incorporate long-standing, widely used special permits into the HMR. These

special permits have well-established safety records. Incorporation of these special permits would reduce the compliance burden and cost on both industry and government by removing the need to apply for special permits.

ADDRESSES: You may submit comments by identification of the docket number (PHMSA–2010–0017 (HM–245)) by any of the following methods:

- *Federal eRulemaking Portal:* Go to <http://www.regulations.gov>. Follow the online instructions for submitting comments.

- *Fax:* 1–202–493–2251.

- *Mail:* Docket Operations, U.S. Department of Transportation, West Building, Ground Floor, Room W12–140, Routing Symbol M–30, 1200 New Jersey Avenue, SE., Washington, DC 20590.

- *Hand Delivery:* To Docket Operations, Room W12–140 on the ground floor of the West Building, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Instructions: All submissions must include the agency name and docket number for this notice at the beginning of the comment. All comments received will be posted without change to the Federal Docket Management System (FDMS), including any personal information.

Docket: For access to the dockets to read background documents or comments received, go to <http://www.regulations.gov> or DOT's Docket Operations Office (see **ADDRESSES**).

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

FOR FURTHER INFORMATION CONTACT: Joan McIntyre or Matthew Nickels, Office of Hazardous Materials Standards, (202) 366–8553, Pipeline and Hazardous Materials Safety Administration (PHMSA), or John Van Steenburg, Office of Enforcement and Compliance, (202) 366–5125, Federal Motor Carrier Safety Administration (FMCSA), 1200 New Jersey Avenue, SE., Washington, DC 20590.

SUPPLEMENTARY INFORMATION:

I. Background

II. Overview of Proposed Amendments

III. Summary Review of Amendments

IV. Regulatory Analyses and Notices

I. Background

The Pipeline and Hazardous Materials Safety Administration (PHMSA) is proposing to amend the Hazardous Materials Regulations (HMR; 49 CFR Parts 171–180) to incorporate certain requirements based on existing special permits issued by PHMSA under 49 CFR Part 107, Subpart B (§§ 107.101 to 107.127). A special permit sets forth alternative requirements (variances) to the requirements in the HMR by means that achieve a safety level that at the least corresponds to the safety level required under the regulations and that is consistent with the public interest. Congress expressly authorized DOT to issue these variances in the Hazardous Materials Transportation Act of 1975.

The HMR generally are performance oriented regulations, which provides the regulated community with a certain amount of flexibility in meeting safety requirements. Even so, not every transportation situation can be anticipated and built into the regulations. Innovation is a strength of our economy and the hazardous materials community is particularly strong at developing new materials and technologies and innovative ways of moving materials. Special permits enable the hazardous materials industry to quickly, effectively and safely integrate new products and technologies into the production and transportation stream. Thus, special permits provide a mechanism for testing new technologies, promoting increased transportation efficiency and productivity, and ensuring global competitiveness.

A special permit must achieve at least an equivalent level of safety to that specified in the HMR. Implementation of new technologies and operational techniques can enhance safety because the authorized operations or activities achieve a greater level of safety than currently required under the regulations. Special permits also reduce the volume and complexity of the HMR by addressing unique or infrequent transportation situations that would be difficult to accommodate in regulations intended for use by a wide range of shippers and carriers. PHMSA conducts ongoing reviews of special permits to identify widely used and longstanding special permits with an established safety record for adoption into regulations for broader applicability. Converting these special permits into regulations reduces paperwork burdens and facilitates commerce while maintaining an acceptable level of safety. Additionally, adoption of special

permits as rules of general applicability provides wider access to the benefits and regulatory flexibility of the provisions granted in the special permits. Factors that influence whether a specific special permit is a candidate for regulatory action include: the safety record for hazardous materials transported; transportation operations conducted under a special permit; the potential for broad application of a special permit; suitability of provisions in the special permit for incorporation into the HMR; rulemaking activity in related areas; and agency priorities.

Although PHMSA does not issue a special permit to an industry association, PHMSA may issue a special permit to members of an industry association when many of its members have a common interest in obtaining authority to perform a specific transportation activity, there is no large business entity to take the lead in seeking such authority, and the association has the resources to gather the necessary information and perform any necessary research. Special permits issued to the members of associations are potentially among the most suitable types of special permit for later adoption into the HMR. Such special permits have broad applicability; moreover, many of them have been in effect for a number of years and have demonstrated safety records.

The six special permits addressed in this notice of proposed rulemaking (NPRM), which authorize cargo tank transportation operations not specifically permitted under the HMR, were initially issued to members of industry associations or similar organizations. They have well-established safety records and, thus, are candidates for incorporation into the HMR. Incorporating these special permits into the HMR would eliminate the need for over 10,000 current grantees to reapply for the renewal of six special permits every four years and for PHMSA to process the renewal applications.

Incorporation of these special permits into the HMR also eliminates a significant paperwork burden. Unless otherwise excepted by this agency, a copy of each special permit must be maintained at each facility where a packaging is manufactured under a special permit, at each facility where a package is offered or re-offered for transportation under a special permit carried on board each cargo vessel or aircraft, and in some cases must be carried aboard each transport vehicle used to transport a hazardous material under a special permit.

II. Overview of Proposed Amendments

In this NPRM, PHMSA is proposing to revise the HMR by providing:

- Authorization to transport liquefied petroleum gas (LPG) in non-DOT specification cargo tank motor vehicles known as moveable fuel storage tenders that are used exclusively for agricultural purposes.

- Authorization to transport Division 6.1 liquid soil pesticide fumigants in DOT Specification MC 306 and DOT 406 cargo tank motor vehicles and DOT 57 portable tanks, used exclusively for agricultural purposes.

- Authorization to transport certain hazardous materials used for roadway striping in non-DOT specification cargo tanks.

- Authorization for private motor carriers to transport LPG in consumer storage containers with quantities greater than 5 percent of the container's water capacity.

- Authorization to transport nurse tanks securely mounted on field trucks.

- Authorization for nurse tanks with missing or illegible ASME plates to continue to be used in anhydrous ammonia service under specified conditions.

III. Summary Review of Amendments

A. Moveable Fuel Storage Tenders

Special permit SP 11209 authorizes the transportation of LPG in non-DOT specification cargo tank motor vehicles, commonly known as moveable fuel storage tenders, used exclusively for agricultural purposes. Moveable fuel storage tenders are used to supply LPG fuel to farmers for crop drying, crop irrigation, flame weeding, plant defoliation prior to harvest, and other agricultural operations.

The special permit has been in effect since 1994 and has been utilized by upwards of 3,400 grantees. A review of the Hazardous Materials Incident Data library did not reveal any incidents related to this special permit over, at least, the past ten years. Each vehicle operated under this special permit conforms to the ASME Code in effect at the time of its manufacture. The design and use of these vehicles is included in the provisions of the National Fire Protection Association pamphlet no. 58, *Storage and Handling of Liquefied Petroleum Gases*.

PHMSA proposes to incorporate the terms of special permit SP 11209 into the HMR by amending § 173.5 to authorize the transportation of LPG in moveable fuel storage tenders used exclusively for agricultural purposes and operated by a private motor carrier. (A "private motor carrier," as defined in

interpretation letters issued by PHMSA, is a carrier who transports the business's own products and does not provide such transportation service to other businesses). As proposed, a non-DOT specification cargo tank motor vehicle used as a moveable fuel storage tender must: (1) Have a minimum design pressure of 250 psig; (2) conform to the requirements of the ASME Code in effect at the time the cargo tank was manufactured and marked accordingly; (3) have a water capacity of 1,200 gallons or less; (4) conform to applicable requirements in National Fire Protection Association (NFPA) Pamphlet No. 58; and (5) be mounted securely on a motor vehicle. In addition, the cargo tank must be filled as prescribed in § 173.315(b). When filled, transportation of a moveable fuel storage tender would be limited to movements over local roads between fields using the shortest practical distance. In addition, transportation of a moveable storage fuel tender to an LPG distribution facility for re-filling would be permitted only if it contains no more than 5 percent of its water capacity.

B. Liquid Soil Pesticide Fumigants

Special permit SP 13113 authorizes the transportation of Division 6.1 liquid soil pesticide fumigants in MC 306 and DOT 406 cargo tank motor vehicles and DOT 57 portable tanks used exclusively for agricultural purposes.

Transportation of these materials is limited to private motor carriage and must be between a bulk loading facility and farms (including between farms) not exceeding 150 miles from one another. Liquid soil pesticide fumigants are used by farmers as an alternative to the agricultural use of methyl bromide to ensure the adequate protection of crops from pesticide infestation, and consequently, to preserve agricultural productivity.

This special permit has been in effect since 2002 and has been utilized by hundreds of grantees. A review of the Hazardous Materials Incident Data library did not reveal any incidents related to this special permit since the date of its issuance. Prior to 2002, when this material was classed as Dichloropropenes, 6.1, UN2047, PG III, it was routinely shipped, according to 49 CFR 173.242 in MC 306 and DOT 406 cargo tanks and DOT 57 portable tanks. The same tanks have been widely used to transport gasoline, a low flashpoint PGII liquid. The pressure relief systems and bottom discharge equipment on the cargo tanks offer equivalent safety in terms of containment and operation of pressure relief systems. Also, stainless steel DOT 57 portable tanks provide

comparable containment to metal, rigid plastic, and composite Intermediate Bulk Containers (IBCs), which are authorized for transport of Division 6.1 liquid soil pesticide fumigants under § 173.202.

PHMSA proposes to incorporate the terms of special permit SP 13113 into the HMR by also amending § 173.5 to authorize the transportation of Division 6.1 liquid soil pesticide fumigants in MC 306 and DOT 406 cargo tank motor vehicles and DOT 57 portable tanks by a private motor carrier, exclusively for agricultural purposes. As proposed, MC 306 and DOT 406 cargo tank motor vehicles used for the transportation of these fumigants must: (1) Meet qualification and maintenance requirements (including periodic testing and inspection) in accordance with Subpart E of Part 180; and (2) conform to the pressure relief system requirements specified in § 173.243(b)(1). In addition, MC 306 cargo tank motor vehicles must be equipped with stop-valves capable of being remotely closed by manual and mechanical means; and DOT 406 cargo tanks must conform to the bottom outlet requirements specified in § 173.243(b)(2). Also as proposed, DOT 57 portable tanks used to transport Division 6.1 liquid soil pesticide fumigants must be constructed of stainless steel. Finally, MC 306 and DOT 406 cargo tank motor vehicles and DOT 57 portable tanks used to transport Division 6.1 liquid soil pesticide fumigants must be used exclusively for agricultural purposes, operated by a private motor carrier; and limited to transport between a bulk loading facility and farms (including between farms) not to exceed 150 miles from one another.

C. Non-DOT Specification Cargo Tanks Used for Roadway Striping

Special permit SP 12284 authorizes the transportation in commerce of certain hazardous materials used for roadway striping in non-DOT specification cargo tanks. These non-DOT specification cargo tanks are used for the low hazard job of applying roadway striping to paved roads throughout the United States.

The special permit has been in effect since 1999 and has been utilized by over 100 grantees. A review of the Hazardous Materials Incident Data library did not reveal any incidents related to this special permit since the date of its issuance. Based on the safety record, PHMSA is proposing to incorporate the provisions of special permit SP 12284 into the HMR by adding a new paragraph (c) to § 173.5a to authorize the transportation of certain hazardous

materials used for roadway striping to be transported in non-DOT specification cargo tanks provided the conditions specified in the new paragraph are met. The new paragraph (c) would specify conditions that include packaging specifications, inspection and testing requirements, requirements for maintaining records, and operational controls. Consistent with the special permit, paragraph (c) also would include marking requirements in addition to applicable marking and placarding requirements in subparts D and F. The section title heading would also be revised to reflect the addition of non-DOT specification cargo tanks used for roadway striping into this section. Finally, § 173.242(b) would be revised to include the authorization to use non-DOT specification cargo tanks used for roadway striping.

D. LPG Storage Containers

Currently, in accordance with § 173.315(j)(4), LPG may not be transported in consumer storage containers that contain greater than 5 percent of the container's water capacity. Special permit SP 13341 authorizes the transportation by private motor carrier of LPG in consumer storage containers in quantities greater than 5 percent of the container's water capacity. The storage containers are designed for permanent installation on consumer premises. The special permit authorizes the transportation of a storage container from the consumer location to the container owner's nearest LPG plant.

The special permit has been in effect since 2004 and has been utilized by several thousand grantees. A review of the Hazardous Materials Incident Data library did not reveal any incidents related to this special permit since the date of its issuance. Prior to 1998, consumer storage containers containing greater than 5 percent water capacity were routinely transported without any known incidents. The prohibition of transporting containers with more than 5 percent water capacity resulted from concern of the potential for confusion between ASME and DOT tanks, as ASME tanks are not designed to be lifted by the lugs with product inside. This proposal requires lifting with slings, not by the lugs. Also, transporting a tank with some product is sometimes preferable from a safety standpoint than removing LPG from a tank at a residence.

PHMSA proposes to incorporate the terms of special permit SP 13341 into the HMR by revising § 173.315(j) to authorize the transportation of LPG in consumer storage containers containing

greater than 5 percent of the container's water capacity. As proposed, the storage container must have a water capacity not exceeding 500 gallons and be ASME "U" stamped to indicate that it was designed and constructed in accordance with ASME Code requirements. In addition, the container must be inspected for leaks, corroded or abraded areas, dents, weld distortions, or any other conditions that could make the container unsafe for transportation. PHMSA also proposes to require that: (1) Only one storage container may be transported at one time on a motor vehicle; (2) the storage container must be lifted by slings, not lifting lugs; and (3) the storage container must be loaded and secured on the motor vehicle so that the container is well-secured against movement and completely within the envelope of the vehicle. Finally, PHMSA proposes to limit transportation to one-way movement from the consumer's premises to the container owner's nearest facility.

E. Nurse Tanks

Nurse tanks are non-DOT specification cargo tanks used to transport and apply anhydrous ammonia fertilizers. The HMR authorize the use of nurse tanks operated by private motor carriers exclusively for agricultural purposes provided that the nurse tank: (1) Has a minimum design pressure of 250 psig and meets the requirements of Section VIII of the ASME code in effect at the time the nurse tank was manufactured; (2) is equipped with pressure relief valves; (3) has a capacity of 3,000 gallons or less; (4) is loaded to a filling density no greater than 56 percent; and (5) is securely mounted on a farm wagon. Because they are non-DOT specification containers, currently nurse tanks are not subject to periodic inspection, testing, or requalification requirements.

Nurse tanks mounted on field trucks. Special permit SP 10950 authorizes the use of a nurse tank securely mounted on a field truck. Field trucks are specifically designed and equipped to improve safety and efficiency by being more maneuverable and more stable than a farm wagon when moving over hilly terrain. These trucks are operated in remote rural areas in eastern Washington, Oregon, and northern Idaho within a short distance of the fertilizer distribution point. The special permit has been in effect since 1993 and has been utilized by over a hundred grantees. A review of the Hazardous Materials Incident Data library did not reveal any incidents related to this special permit since the date of its issuance. Tanks operated under this

special permit are subject to the periodic testing requirements under Subpart E of Part 180.

Based on the safety record, PHMSA is proposing to incorporate the provisions of SP 10950 into the HMR by adding a new paragraph (m)(2) to § 173.315. As proposed, nurse tanks mounted on field trucks would be required to be inspected and tested in accordance with Subpart E of Part 180 as specified for MC 331 cargo tanks. Operations would be restricted to rural roads within 50 miles of the distribution site where the nurse tank is loaded.

Nurse tanks with missing or illegible ASME plates. As indicated above, nurse tanks must be manufactured in accordance with the applicable ASME Code requirements in effect at the time of manufacture. The ASME Code requires tanks built to its specifications to have an attached plate that lists the manufacturer, maximum allowable working pressure, minimum design metal temperature, and the year of manufacture. A number of nurse tanks are missing the required ASME plates or have illegible ASME plates. Special permit SP 13554 permits the continued use in anhydrous ammonia service of nurse tanks with missing or illegible ASME plates provided the tanks are inspected and tested. Specifically, the tanks must undergo an external visual inspection and testing using the procedures specified in § 180.407(d), thickness tested using the procedures specified in § 180.407(i), and pressure tested using the procedures specified in § 180.407(g). The special permit also establishes minimum head and shell thickness, below which the nurse tank must be removed from service.

The special permit has been in effect since 2004 and has been utilized by thousands of grantees. A review of the Hazardous Materials Incident Data library did not reveal any incidents related to this special permit since the date of its issuance. Although 49 CFR 173.315(m) requires that a nurse tank "meet the requirements of the edition of Section VIII of the ASME Code in effect at the time it was manufactured and is marked accordingly," if the plate is missing or illegible the nurse tank can not be used. Therefore, these additional requirements that nurse tanks operating under the special permit must follow (*i.e.* the thickness testing, the pressure testing, and the external visual inspection), safely provides for the continued use of these tanks.

In this NPRM, PHMSA is proposing to incorporate the terms of special permit SP 13554 into the HMR by adding a new paragraph (m)(3) in § 173.315. As proposed, existing nurse tanks with

missing or illegible ASME plates that successfully pass the required inspections and tests and are marked with a unique identifier would be authorized to remain in service.

Finally, in § 171.7, we are proposing to revise the entries, American Society of Mechanical Engineers (ASME), National Board of Boiler and Pressure Vessel Inspectors (NBIC) and the National Fire Protection Association (NFPA) to reflect the addition of the incorporated by reference materials to the applicable newly proposed regulatory text.

IV. Rulemaking Analyses and Notices

A. Statutory/Legal Authority for This Rulemaking

This NPRM is published under the authority of 49 U.S.C. 5103(b) which authorizes the Secretary to prescribe regulations for the safe transportation, including security, of hazardous material in intrastate, interstate, and foreign commerce. 49 U.S.C. 5117(a) authorizes the Secretary of Transportation to issue a special permit from a regulation prescribed in 5103(b), 5104, 5110, or 5112 of the Federal Hazardous Materials Transportation Law to a person transporting, or causing to be transported, hazardous material in a way that achieves a safety level at least equal to the safety level required under the law, or consistent with the public interest, if a required safety level does not exist. If adopted as proposed, the final rule would amend the regulations incorporating provisions from certain widely used and longstanding special permits that have established a history of safety and which may, therefore, be converted into the regulations for general use.

B. Executive Order 12866 and DOT Regulatory Policies and Procedures

This proposed rule is not considered a significant regulatory action under section 3(f) and was not reviewed by the Office of Management and Budget (OMB). The proposed rule is not considered a significant rule under the Regulatory Policies and Procedures order issued by the Department of Transportation [44 FR 11034].

In this notice, PHMSA proposes to amend the HMR by incorporating alternatives this agency has permitted under widely used and longstanding special permits with established safety records that we have determined meet the safety criteria for inclusion in the HMR. Incorporation of these special permits into regulations of general applicability will provide shippers and carriers with additional flexibility to

comply with established safety requirements, thereby reducing transportation costs and increasing productivity. In addition, the proposals in this NPRM will reduce the paperwork burden on industry and this agency caused by continued renewals of special permits. The provisions of this proposed rule will promote the continued safe transportation of hazardous materials while reducing transportation costs for the industry and administrative costs for the agency.

C. Executive Order 13132

This proposed rule was analyzed in accordance with the principles and criteria contained in Executive Order 13132 ("Federalism"). This proposed rule would preempt State, local and Indian Tribe requirements but does not propose any regulation that has substantial direct effects on the States, the relationship between the national government and the States, or the distribution of power and responsibilities among the various levels of governments. Therefore, the consultation and funding requirements of Executive Order 13132 do not apply. Federal hazardous material transportation law, 49 U.S.C. 5101–5128, contains an express preemption provision (49 U.S.C. 5125(b)) preempting State, local and Indian Tribe requirements on certain covered subjects. Covered subjects are:

- (1) The designation, description, and classification of hazardous materials;
- (2) The packing, repacking, handling, labeling marking, and placarding of hazardous materials;
- (3) The preparation, execution, and use of shipping documents related to hazardous materials and requirements related to the number, contents, and placement of those documents;
- (4) The written notification, recording, and reporting of the unintentional release in transportation of hazardous materials; or
- (5) The design, manufacture, fabrication, marking, maintenance, reconditioning, repair, or testing of a packaging or container represented, marked, certified, or sold as qualified for use in transporting hazardous materials.

This proposed rule addresses covered subject items 2, 3, and 5 and would preempt any State, local, or Indian Tribe requirements not meeting the "substantively the same" standard. Federal hazardous materials transportation law provides at 49 U.S.C. 5125(b)(2) that if PHMSA issues a regulation concerning any of the covered subjects, PHMSA must determine and publish in the **Federal**

Register the effective date of Federal preemption. The effective date may not be earlier than the 90th day following the date of issuance of the final rule and not later than two years after the date of issuance. PHMSA proposes the effective date of Federal preemption be 90 days from publication of a final rule in this matter in the **Federal Register**.

D. Executive Order 13175

This proposed rule was analyzed in accordance with the principles and criteria contained in Executive Order 13175 ("Consultation and Coordination with Indian Tribal Governments"). Because this proposed rule does not have Tribal implications and does not impose substantial direct compliance costs on Indian Tribal governments, the funding and consultation requirements of Executive Order 13175 do not apply.

E. Regulatory Flexibility Act, Executive Order 13272, and DOT Procedures and Policies

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) requires an agency to review regulations to assess their impact on small entities. An agency must conduct a regulatory flexibility analysis unless it determines and certifies that a rule is not expected to have a significant impact on a substantial number of small entities. This proposed rule incorporates into the HMR certain widely used special permits. Incorporation of these special permits into regulations of general applicability will provide shippers and carriers with additional flexibility to comply with established safety requirements, thereby reducing transportation costs and increasing productivity. Therefore, I certify this rule will not have a significant economic impact on a substantial number of small entities.

This proposed rule has been developed in accordance with Executive Order 13272 ("Proper Consideration of Small Entities in Agency Rulemaking") and DOT's procedures and policies to promote compliance with the Regulatory Flexibility Act to ensure that potential impacts of draft rules on small entities are properly considered.

F. Paperwork Reduction Act

This proposed rule does not impose new information collection requirements. PHMSA has an approved information collection under OMB Control Number 2137–0051, "Rulemaking, Special Permits, and Preemption Requirements," currently being reviewed for renewal by OMB. This NPRM may result in a decrease in the annual burden and costs under OMB Control Number 2137–0051 due to

proposed changes to incorporate provisions contained in certain widely used or longstanding special permits that have an established safety record.

Under the Paperwork Reduction Act of 1995, no person is required to respond to an information collection unless it has been approved by OMB and displays a valid OMB control number. Section 1320.8(d), title 5, Code of Federal Regulations requires that PHMSA provide interested members of the public and affected agencies an opportunity to comment on information and recordkeeping requests.

This notice identifies a revised information collection request that PHMSA will submit to OMB for approval based on the requirements in this proposed rule. PHMSA has developed burden estimates to reflect changes in this proposed rule. PHMSA estimates that the information collection and recordkeeping burden as proposed in this rule would be decreased as follows:

OMB Control No. 2137-0051

Decrease in Annual Number of Respondents: 185.

Decrease in Annual Responses: 185.

Decrease in Annual Burden Hours: 185.

Decrease in Annual Burden Costs: \$7,400.

PHMSA specifically requests comments on the information collection and recordkeeping burdens associated with developing, implementing, and maintaining these requirements for approval under this proposed rule.

Requests for a copy of this information collection should be directed to Deborah Boothe or T. Glenn Foster, Office of Hazardous Materials Standards (PHH-11), Pipeline and Hazardous Materials Safety Administration, 1200 New Jersey Avenue, SE., Washington, DC 20590-0001, Telephone (202) 366-8553.

Address written comments to the Dockets Unit as identified in the **ADDRESSES** section of this rulemaking. We must receive comments regarding information collection burdens prior to the close of the comment period identified in the **DATES** section of this rulemaking. In addition, you may submit comments specifically related to the information collection burden to the PHMSA Desk Officer, Office of Management and Budget, at fax number (202) 395-6974.

G. Regulation Identifier Number (RIN)

A regulation identifier number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal

Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN contained in the heading of this document may be used to cross-reference this action with the Unified Agenda.

H. Unfunded Mandates Reform Act of 1995

This proposed rule does not impose unfunded mandates under the Unfunded Mandates Reform Act of 1995. It does not result in costs of \$141.3 million or more to either State, local or Tribal governments, in the aggregate, or to the private sector, and is the least burdensome alternative that achieves the objective of the rule.

I. Environmental Assessment

The National Environmental Policy Act of 1969 (NEPA), as amended (42 U.S.C. 4321-4347), requires Federal agencies to consider the consequences of major Federal actions and prepare a detailed statement on actions that significantly affect the quality of the human environment.

The hazardous materials regulatory system is a risk management system that is prevention oriented and focused on identifying a hazard and reducing the probability and quantity of a hazardous materials release. Hazardous materials are categorized by hazard analysis and experience into hazard classes and packing groups. The regulations require each shipper to classify a material in accordance with these hazard classes and packing groups; the process of classifying a hazardous material is itself a form of hazard analysis. Further, the regulations require the shipper to communicate the material's hazards by identifying the hazard class, packing group, and proper shipping name on shipping papers and with labels on packages and placards on transport vehicles. Thus, the shipping paper, labels, and placards communicate the most significant findings of the shipper's hazard analysis. Most hazardous materials are assigned to one of three packing groups based upon its degree of hazard, from a high hazard Packing Group I material to a low hazard Packing Group III material. The quality, damage resistance, and performance standards for the packagings authorized for the hazardous materials in each packing group are appropriate for the hazards of the material transported.

Hazardous materials are transported by aircraft, vessel, rail, and highway. The potential for environmental damage or contamination exists when packages of hazardous materials are involved in

transportation incidents. The need for hazardous materials to support essential services means transportation of highly hazardous materials is unavoidable. However, these shipments frequently move through densely populated or environmentally sensitive areas where the consequences of an incident could be loss of life, serious injury, or significant environmental damage. The ecosystems that could be affected by a hazardous materials release during transportation include atmospheric, aquatic, terrestrial, and vegetal resources (for example, wildlife habitats). The adverse environmental impacts associated with releases of most hazardous materials are short-term impacts that can be greatly reduced or eliminated through prompt clean-up of the incident scene. In this NPRM, we are requesting comments on the potential environmental impacts of the proposals.

In this NPRM, PHMSA proposes to incorporate the terms of six special permits into the HMR. Several of the proposals in this NPRM involve the transportation of LPG. LPG is a Division 2.1 (flammable gas) material that poses an explosive, fire, blast, or projection hazard. If released, LPG may cause eye or skin irritation and, if inhaled, it may irritate the respiratory tract. Moderate exposure may cause headache or dizziness. Elevated exposure may cause unconsciousness or respiratory arrest. Further, by diluting the oxygen concentration in air below the level necessary to support life, LPG can act as an asphyxiant. LPG is not known to cause long-term ecological damage. The proposals in this NPRM are intended to ensure that LPG will be transported in a variety of applications with no release from its packaging and, thus, no adverse safety or environmental impacts.

One of the proposals in this NPRM involves Division 6.1 liquid soil pesticide fumigants. Soil fumigation is a chemical control strategy used independently or in conjunction with cultural and physical control methods to reduce populations of soil organisms. Soil fumigants can effectively control soil-borne organisms, such as nematodes, fungi, bacteria, insects, weed seeds, and weeds. Different fumigants have varying effects on the control of these pests. Some are pest specific, while others are broad spectrum biocides that kill most soil organisms. Soil fumigants are used in agriculture, nurseries, ornamental beddings, forest systems, and other areas where soil-borne pests can harm or devastate desirable plants. Because of treatment costs, applicators use soil fumigants primarily on high value

crops, such as vegetables, fruits, and ornamentals. Control of soil-borne pests increases plant aesthetics, plant quality and vigor, crop yields, and ultimately profitability. Soil fumigants are closely regulated by the Environmental Protection Agency to prevent adverse health impacts to agricultural workers or bystanders (people who live, work, or otherwise spend time near fields that are fumigated). The proposals in this NPRM will help to ensure that liquid soil pesticide fumigants are transported without incident on or between farms and the bulk loading facility.

Several proposals in this NPRM address the transportation of anhydrous ammonia. Anhydrous ammonia is a poisonous by inhalation (PIH) material. When anhydrous ammonia is released into water, it floats on the surface, rapidly dissolving into the water as ammonium hydroxide while simultaneously boiling into the atmosphere as gaseous ammonia. High concentrations of ammonia (greater than 1700 parts per million (ppm)) in the atmosphere cause compulsive coughing and death, while lower concentrations (lower than 700 ppm) cause eye and throat irritation. Ammonia is lighter than air so that it dissipates in the atmosphere, the rate of dissipation depending on weather.

In an aquatic or wetland environment, ammonium hydroxide would cause fish, planktonic, and benthic organism mortality in the vicinity of the release—the size depending on the volume of anhydrous ammonia released. The chemical would also strip protective oils from the feathers of shore birds, causing drowning or infection. Such die-offs could spur high nutrient levels that could stimulate noxious blooms of algae. Terrestrial vegetation would also be either damaged or killed, depending on atmospheric concentrations.

The cleanup effort from a release of anhydrous ammonia would require the removal of soil containing anhydrous ammonia quickly to avoid contamination of the water table. Ammonia emissions would be released during the cleanup effort as contaminated soil is disturbed.

The proposals in this NPRM will require certain nurse tanks used to transport anhydrous ammonia to, from, and between farm fields to be inspected and tested periodically to identify problems that would result in a leak or release.

There are no significant environmental impacts associated with the proposals in this NPRM, although PHMSA solicits comments on the potential environmental impacts of the proposals in this NPRM. The process

through which special permits are issued requires the applicant to demonstrate that the alternative transportation method or packaging proposed provides an equivalent level of safety as that provided in the HMR. Implicit in this process is that the special permit must provide an equivalent level of environmental protection as that provided in the HMR. Thus, incorporation of special permits as regulations of generally applicability maintains the existing environmental protections built into the HMR. In addition, the proposals applicable to nurse tanks will enhance the integrity of those tanks, thereby reducing the possibility of an anhydrous ammonia release.

J. Privacy Act

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

List of Subjects

49 CFR Part 171

Exports, Hazardous materials transportation, Hazardous waste, Imports, Incorporation by reference, Reporting and recordkeeping requirements.

49 CFR Part 173

Hazardous materials transportation, Packaging and containers, Radioactive materials, Reporting and recordkeeping requirements, Uranium.

In consideration of the foregoing, we propose to amend 49 CFR Chapter I as follows:

PART 171—GENERAL INFORMATION, REGULATIONS, AND DEFINITIONS

1. The authority citation for part 171 continues to read as follows:

Authority: 49 U.S.C. 5101–5128, 44701; 49 CFR 1.45 and 1.53; Pub. L. 101–410 section 4 (28 U.S.C. 2461 note); Pub. L. 104–134 section 31001.

§ 171.7 [Amended]

2. In § 171.7, in the paragraph (a)(3) table, in the second column, “49 CFR reference,” the following changes are made:

a. Under the entry, *American Society of Mechanical Engineers*, the entry “‘ASME Code’; ASME Code, Sections II

(Parts A and B), V, VIII (Division 1), and IX of 1998 Edition of American Society of Mechanical Engineers Boiler and Pressure Vessel Code” is amended by adding sections “173.5” and “173.5a” in appropriate numerical order;

b. Under the entry, *National Board of Boiler and Pressure Vessel Inspectors*, the entry “National Board Inspection Code, A Manual for Boiler and Pressure Vessel Inspectors, NB–23, 1992 Edition” is amended by adding section “173.315” in appropriate alphabetical order; and

c. Under the entry, *National Fire Protection Association*, the entry “NFPA 58—Liquefied Petroleum Gas Code, 2001 Edition” is amended by adding the sections “173.5” and “173.315” in appropriate alphabetical order.

PART 173—SHIPPERS—GENERAL REQUIREMENTS FOR SHIPMENTS AND PACKAGINGS

3. The authority citation for part 173 continues to read as follows:

Authority: 49 U.S.C. 5101–5128, 44701; 49 CFR 1.45, 1.53.

4. In § 173.5, redesignate paragraphs (d), (e), and (f) as paragraphs (f), (g) and (h), respectively, and add new paragraphs (d) and (e) to read as follows:

§ 173.5 Agricultural operations.

* * * * *

(d) *Moveable fuel storage tenders.* A non-DOT specification cargo tank motor vehicle may be used to transport Liquefied petroleum gas, UN1075, including Propane, UN1978, as moveable fuel storage tender used exclusively for agricultural purposes when operated by a private carrier under the following conditions:

(1) The cargo tank must have a minimum design pressure of 250 psig.

(2) The cargo tank must meet the requirements of the ASME Code in effect at the time of its manufacture and must be marked accordingly.

(3) The cargo tank must have a water capacity of 1,200 gallons or less.

(4) The cargo tank must conform to applicable requirements in National Fire Protection Association (NFPA) Pamphlet No. 58 (IBR, *see* § 171.7 of this subchapter).

(5) The cargo tank must be securely mounted on a motor vehicle.

(6) The cargo tank must be filled in accordance with § 173.315(b) for liquefied petroleum gas.

(7) The cargo tank must be painted white, aluminum, or other light reflecting color.

(8) Transportation of the filled moveable fuel storage tender is limited to movements over local roads between fields using the shortest practical distance.

(9) Transportation of the moveable fuel storage tender between its point of use and a liquefied petroleum gas distribution facility is authorized only if the cargo tank contains no more than 5 percent of its water capacity.

(e) *Liquid soil pesticide fumigants.* MC 306 and DOT 406 cargo tank motor vehicles and DOT 57 portable tanks may be used to transport liquid soil pesticide fumigants, Pesticides, liquid, toxic, flammable, n.o.s., flash point not less than 23 degrees C, 6.1, UN2903, PG II, exclusively for agricultural operations by a private motor carrier between a bulk loading facility and a farm (including between farms). However, transportation is not to exceed 150 miles between the loading facility and the farm, and not more than five days are permitted for intermediate stops for temporary storage. Additionally, transport is permitted only under the following conditions:

(1) *Cargo tanks.* MC 306 and DOT 406 cargo tank motor vehicles must:

(i) Meet qualification and maintenance requirements (including periodic testing and inspection) in accordance with Subpart E of Part 180 of this subchapter;

(ii) Conform to the pressure relief system requirements specified in § 173.243(b)(1);

(iii) MC 306 cargo tanks must be equipped with stop-valves capable of being remotely closed by manual and mechanical means; and

(iv) For DOT 406 cargo tanks, must conform to the bottom outlet requirements specified in § 173.243(b)(2).

(2) *Portable tanks.* DOT 57 portable tanks must—

(i) Be constructed of stainless steel; and

(ii) Meet qualification and maintenance requirements of Subpart G of Part 180 of this subchapter.

* * * * *

5. In § 173.5a, revise the section heading and add new paragraph (c) to read as follows:

§ 173.5a Oilfield service vehicles, mechanical displacement meter provers, and roadway striping vehicles exceptions.

* * * * *

(c) *Roadway striping.* In addition to conformance with all other applicable requirements of this subchapter, non-DOT specification cargo tanks used for roadway striping are authorized provided all the following conditions in this paragraph (c) are met.

(1) *Authorized materials.* Only the hazardous materials listed in the table below may be transported in roadway striping vehicles. The cargo tank may not be filled to be liquid full at less than or equal to 130° F.

HAZARDOUS MATERIALS DESCRIPTION

Proper shipping name	Hazard class/division	Identification number	Packing group
Adhesives, containing a flammable liquid	3	UN1133	II
Paint including paint, lacquer, enamel, stain, shellac solution, varnish, polish, liquid filler, and liquid lacquer base.	3	UN1263	II
Paint related material including paint thinning drying, removing, or reducing compound	3	UN1263	II
Flammable liquids, n.o.s. ^a	3	UN1993	II
Gasoline	3	UN1203	II
Acetone ^b	3	UN1090	II
Dichloromethane ^b	6.1	UN1593	III
Ethyl methyl ketone or Methyl ethyl ketone ^b	3	UN1193	II
Ethyl acetate ^b	3	UN1173	II
Methanol ^b	3	UN1230	II
Organic peroxide type E, liquid (Dibenzoyl peroxide) ^c	5.2	UN3107	II
Petroleum distillates, n.o.s. or Petroleum products, n.o.s. ^b	3	UN1268	III
1,1,1-Trichloroethane ^b	6.1	UN2831	III
Toluene ^b	3	UN1294	II
Xylenes ^b	3	UN1307	II, III
Environmentally hazardous substance, liquid, n.o.s. ^c	9	UN3082	III
Corrosive liquid, basic, organic, n.o.s. ^c	8	UN3267	III
Corrosive liquids, n.o.s. ^c	8	UN1760	III
Elevated temperature liquid, n.o.s., at or above 100 C and below its flash point (including molten metals, molten salts, etc.). ^d	9	UN3257	III

^a Adhesive containing ethyl acetate.

^b Solvent.

^c Catalyst.

^d Thermoplastic material non-hazardous at room temperature.

(2) *Cargo tank requirements.* Each non-DOT specification cargo tank used for roadway striping must be securely bolted to a motor vehicle and must—

(i) Be constructed and certified in conformance with the ASME Code in effect at the time of its manufacture;

(ii) Have a minimum design pressure of 100 psig;

(iii) Have a maximum capacity of 500 gallons;

(iv) For solvents and organic peroxides, the cargo tank may not contain more than 50 gallons;

(v) Be given an external visual inspection prior to each use to ensure that it has not been damaged on the previous trip;

(vi) Be retested and reinspected in accordance with § 180.407(c) of this subchapter as specified for an MC 331 cargo tank motor vehicle; and

(vii) Be securely mounted to a motor vehicle in accordance with the

securement provisions prescribed in §§ 393.100 through 393.106 of this title.

(3) *Test records.* The owner or operator of the roadway striping vehicle must maintain hydrostatic test records in accordance with § 180.417(b) and must make those records available to any representative of the Department of Transportation upon request.

(4) *Marking.* A non-DOT specification cargo tank used for roadway striping must be plainly marked on both sides near the middle in letters at least two

inches in height on a contrasting background "ROADWAY STRIPING".

(5) *Operational controls.* A non-DOT specification cargo tank used for roadway striping may not be pressurized when the motor vehicle is traveling to and from job sites. Additionally, the distance traveled by a non-DOT specification cargo tank used for roadway striping may not exceed 750 miles.

* * * * *

6. In § 173.242, revise paragraph (b) introductory text to read as follows:

§ 173.242 Bulk packagings for certain medium hazard liquids and solids, including solids with dual hazards.

* * * * *

(b) *Cargo tanks:* Specification MC 300, MC 301, MC 302, MC 303, MC 304, MC 305, MC 306, MC 307, MC 310, MC 311, MC 312, MC 330, MC 331, DOT 406, DOT 407, and DOT 412 cargo tank motor vehicles; and non-DOT specification cargo tank motor vehicles when in compliance with § 173.5a(c). Cargo tanks used to transport Class 3, Packing Group I or II, or Packing Group III with a flash point of less than 38 °C (100 °F); Class 6, Packing Group I or II; and Class 8, Packing Group I or II materials must conform to the following special requirements:

* * * * *

7. In § 173.315, revise paragraphs (j) and (m) to read as follows:

§ 173.315 Compressed gases in cargo tanks and portable tanks.

* * * * *

(j) *Consumer storage containers.* (1) Storage containers for liquefied petroleum gas or propane charged to 5 percent of their capacity or less and intended for permanent installation on consumer premises may be shipped by private motor carrier under the following conditions:

(i) Each container must be constructed in compliance with the requirements in Section VIII of the ASME Code (IBR, *see* § 171.7 of this subchapter) and must be marked to indicate compliance in the manner specified by the respective Code. Containers built in compliance with earlier editions starting with 1943 are authorized.

(ii) Each container must be equipped with safety devices in compliance with the requirements for safety devices on containers as specified in NFPA 58 (IBR, *see* § 171.7 of this subchapter).

(iii) The containers must be braced or otherwise secured on the vehicle to prevent relative motion while in transit. Valves or other fittings must be adequately protected against damage

during transportation. (*See* § 177.834(a) of this subchapter).

(2) Storage containers with a water capacity not exceeding 500 gallons charged with liquefied petroleum gas to more than 5 percent of their capacity and intended for permanent installation on consumer premises may be transported by private motor carrier one-way only from the consumer's premises to the container owner's nearest facility under the following conditions:

(i) Each container must be constructed in compliance with the requirements in Section VIII of the ASME Code and must be marked to indicate compliance in the manner specified by the respective Code.

(ii) Maximum permitted filling density may not exceed that specified in paragraph (b) of this section.

(iii) Prior to loading on a motor vehicle, the container must be inspected by a trained and qualified person for leaks, corroded or abraded areas, dents, distortions, weld defects, or other condition that may render the container unsafe for transportation. A record of the inspection must be legibly signed and dated by the person performing the inspection and retained by the container owner for two years. The record of inspection must include the date of inspection, inspector's contact information, such as a telephone number, the container's serial number and container size (water capacity), estimated amount of hazardous material, and the origin and destination of shipment.

(iv) Only one storage container may be transported on a motor vehicle.

(v) For loading on a motor vehicle, the container must be lifted by slings. Lifting lugs may not be used. The slings must be rated to a weight sufficient to accommodate the container and its lading and shall comply with ASME B30.9 on slings used for lifting purposes, and must be visually inspected prior to each use. A sling showing evidence of tears, fraying, or other signs of excessive wear may not be used.

(vi) The storage container must be secured on a motor vehicle so that the container is completely within the envelope of the vehicle and does not extend beyond the vehicle frame.

(vii) The storage container must be placed on the vehicle in a manner, such as in a cradle, which ensures that no weight is placed on the supporting legs during transportation.

(viii) The storage container must be secured against movement during transportation. Bracing must conform with the requirements of paragraph

(j)(1)(iii) of this section and § 177.834(a) of this subchapter and with Section 6–5.2 of the NFPA Pamphlet No. 58. Straps or chains used as tie-downs must be rated to exceed the maximum load to be transported and conform to the requirements in §§ 393.100 through 393.106 of this title.

(ix) Tow trailers used to transport storage containers in accordance with this paragraph (j)(2) must provide rear end protection that conforms to requirements in § 393.86 of this title.

(3) Storage containers of less than 1,042 pounds water capacity (125 gallons) may be shipped when charged with liquefied petroleum gas in compliance with DOT filling density.

* * * * *

(m) *General.* (1) A cargo tank that is commonly known as a nurse tank and considered an implement of husbandry transporting anhydrous ammonia and operated by a private motor carrier exclusively for agricultural purposes is excepted from the specification requirements of Part 178 of this subchapter if it:

(i) Has a minimum design pressure of 250 psig, meets the requirements of the edition of Section VIII of the ASME Code in effect at the time it was manufactured, and is marked with a valid ASME plate.

(ii) Is equipped with pressure relief valves meeting the requirements of CGA Standard S–1.2 (IBR, *see* § 171.7 of this subchapter);

(iii) Is painted white or aluminum;

(iv) Has capacity of 3,000 gallons or less;

(v) Is loaded to a filling density no greater than 56 percent;

(vi) Is securely mounted on a farm wagon or meets paragraph (m)(3) of this section; and

(vii) Is in conformance with the requirements of Part 172 of this subchapter except that shipping papers are not required; and it need not be marked or placarded on one end if that end contains valves, fittings, regulators or gauges when those appurtenances prevent the markings and placard from being properly placed and visible.

(2) *Nurse tanks with missing or illegible ASME plates.* Nurse tanks with missing or illegible ASME plates may continue to be operated provided they conform to the following requirements:

(i) Each nurse tank must undergo an external visual inspection and testing in accordance with § 180.407(d) of this subchapter.

(ii) Each nurse tank must be thickness tested in accordance with § 180.407(i) of this subchapter. A nurse tank with a capacity of less than 1,500 gallons must

have a minimum head thickness of 0.203 inch and a minimum shell thickness of 0.239 inch. A nurse tank with a capacity of 1,500 gallons or more must have a minimum thickness of 0.250 inch. Any nurse tank with a thickness test reading of less than that specified in this paragraph at any point must be removed from hazardous materials service.

(iii) Each nurse tank must be pressure tested in accordance with § 180.407(g) of this subchapter. The minimum test pressure is 375 psig. Pneumatic testing is not authorized.

(iv) Each nurse tank must be inspected and tested by a person meeting the requirements of § 180.409(d) of this subchapter. Furthermore, each nurse tank must have the tests performed at least once every five years after the completion of the initial tests.

(v) After each nurse tank has successfully passed the visual, thickness, and pressure tests, welded repairs on the tank are prohibited.

(vi) After the nurse tank has successfully passed the visual, thickness, and pressure tests, it must be marked in accordance with § 180.415(b), and permanently marked near the test and inspection markings with a unique owner's identification number in letters and numbers at least ½ inch in height and width.

(vii) Each nurse tank owner must maintain a copy of the test inspection report prepared by the inspector. The test report must contain the results of the test and meet the requirements in § 180.417(b) and be made available to a DOT representative upon request.

(3) *Field truck mounted tanks.* A non-DOT specification cargo tank (nurse tank) securely mounted on a field truck

is authorized under the following conditions:

(i) Is in conformance with all the requirements of paragraph (m)(1) of this section, except that the requirement in paragraph (m)(1)(vi) does not apply;

(ii) Is inspected and tested in accordance with Subpart E of Part 180 of this subchapter as specified for an MC 331 cargo tank; and

(iii) Is restricted to rural roads in areas within 50 miles of the fertilizer distribution point where the nurse tank is loaded.

* * * * *

Issued in Washington, DC on July 14, 2010, under authority delegated in 49 CFR part 1.

Magdy El-Sibaie,

Associate Administrator for Hazardous Materials Safety, Pipeline and Hazardous Materials Safety Administration.

[FR Doc. 2010-17712 Filed 7-20-10; 8:45 am]

BILLING CODE 4910-60-P

Notices

Federal Register

Vol. 75, No. 139

Wednesday, July 21, 2010

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Forest Service

Okanogan-Wenatchee National Forest, Washington, Pack and Saddle Stock Outfitter-Guide Special Use Permits Issuance Environmental Impact Statement

AGENCY: Forest Service, USDA.

ACTION: Revised Notice of intent to prepare an environmental impact statement.

SUMMARY: On June 22, 2005, the USDA, Forest Service, Okanogan-Wenatchee National Forest, published a notice of intent to prepare an environmental impact statement for Pack and Saddle Stock Outfitter-Guide Special Use Permit Issuance in the **Federal Register** (FR, Vol. 70, No. 119, 36112). The purpose of this revised notice of intent is to update the Purpose and Need, change the number of service days proposed, to describe a proposed forest plan amendment, and to revise the planned release date.

FOR FURTHER INFORMATION CONTACT: Jennifer Zbyszewski, Project Team Leader, Methow Valley Ranger District, Okanogan-Wenatchee National Forest, Forest Service, (509) 996-4021 or Laurie Dowie, Special Use Permit Administrator, Methow Valley Ranger District, Okanogan-Wenatchee National Forest, (509) 996-4071.

SUPPLEMENTARY INFORMATION:

Purpose and Need for Action

A part of the original purpose and need in the notice of intent was based on a Need Assessment completed in 1996. The Forest Service has prepared a new Need Assessment titled "Determination of Need and Extent Necessary for Commercial Service (Outfitters and Guides) in the Pasayten Wilderness and the Lake Chelan-Sawtooth Wilderness", July 2010 (Need Assessment) and confirmed that there is

a need for pack and saddle stock outfitter-guides in these wilderness areas. It evaluated the service in terms of wilderness dependency and education of clients about wilderness practices, in addition to the public need for the service based on skill, equipment, knowledge, safety, and current interest and demand.

The Wilderness Act prohibits commercial services in wilderness except to the extent necessary to provide for wilderness appropriate activities. The Need Assessment established that the minimum number of service days needed to meet this need for pack and saddle stock commercial services in the Pasayten and Lake Chelan-Sawtooth wilderness areas is 2,720.

Currently both the Okanogan and Wenatchee Land and Resource Management Plans (Forest Plans, 1989, 1990) have inconsistent management direction regarding party sizes and maximum vegetation loss sizes. The Okanogan Forest Plan currently does not allow vegetation loss to exceed 400 square feet (MA15B-22B). The Wenatchee Forest Plan allows vegetation loss of up to 1,000 square feet (Table IV-15, page IV-77). Both Forest Plans allow party sizes of up to 12 people and 18 head of stock in these wildernesses. It is physically impracticable to fit camps with 12 people and 18 head of stock inside areas of 400 to 1,000 square feet. Using computations included in the analysis file, 5,250 square feet was identified as an area in which 12 people and 18 head of stock could reasonably camp. Due to historical use, including large party-sizes and livestock grazing, some existing camps exceed 5,250 square feet. Continued use and short growing seasons have perpetuated some of these camps even though livestock grazing is no longer occurring and party size is now limited. There is a need to make camp sizes consistent with party sizes in the existing Forest Plans.

These needs are added to the need published in the original **Federal Register** notice of intent.

Proposed Action

The USDA Forest Service, Okanogan-Wenatchee National Forest, is changing the total number of service days (including both wilderness and non-wilderness) that would be divided between the pack and saddle stock

outfitter-guides to 4,620 from what was published in the original **Federal Register** notice of intent. These days are specifically divided in separate sub-units, and include 2,720 service days in wilderness.

The Forest is also proposing a non-significant amendment to the Forest Plans that would make standards for outfitter-guide campsites more compatible with party size limitations and provide for non-degradation of wilderness conditions as required in the Okanogan Forest Plan (MA15B-21D, page 4-91). For the Wenatchee Forest Plan the amendment would improve the compatibility of outfitter-guide campsites with some 'limits of acceptable change' indicators (Table IV-15, page IV-77). These amendments would only apply to pack and saddle stock outfitter-guides in the Pasayten and Lake Chelan-Sawtooth Wilderness Areas. The following standard and guideline would be added to the Okanogan and Wenatchee Forest Plans:

- Pack and saddle stock outfitter-guides shall not be allowed to increase the existing amount of barren core (bare, mineral soil) in established campsites. In campsites where the existing amount of barren core exceeds 5,250 square feet, outfitter-guides shall not use more than 5,250 square feet of the barren core. All pack and saddle outfitter-guides shall use the same delineated, 5250 square foot area for each camp and shall not use any area outside of the delineated 5,250 square foot area.

This amendment would require outfitter-guides to jointly identify the portion of the impacted area for consistent use. This would be included in the Camp Management Plan for each campsite. Areas outside of the designated area would not be used, allowing recovery to proceed.

DATES: Due to delays because of other work priorities and the need for completion of the Need Assessment, the draft environmental impact statement will now be available in August 2010, and the final will be available in March 2011.

Dated: July 14, 2010.

Stuart M. Woolley,

Acting Forest Supervisor.

[FR Doc. 2010-17755 Filed 7-20-10; 8:45 am]

BILLING CODE 3410-11-P

DEPARTMENT OF AGRICULTURE**Forest Service****Kisatchie National Forest Resource Advisory Committee****AGENCY:** Forest Service, USDA.**ACTION:** Notice of meeting.

SUMMARY: The Kisatchie National Forest Resource Advisory Committee will meet in Natchitoches, Louisiana. The committee is meeting as authorized under the Secure Rural Schools and Community Self-Determination Act (Pub. L. 110-343) and in compliance with the Federal Advisory Committee Act.

DATES: The meeting will be held on August 11, 2010, and will begin at 6 p.m.

ADDRESSES: The meeting will be held at the Northwestern State University Friedman Student Union, President's Room, 735 University Parkway, Natchitoches, LA. Written comments should be sent to Holly Morgan, Kisatchie National Forest, 2500 Shreveport Highway, Pineville, LA 71360. Comments may also be sent via e-mail to hmorgan@fs.fed.us, or via facsimile to 318-473-7117.

All comments, including names and addresses when provided, are placed in the record and are available for public inspection and copying. The public may inspect comments received at Kisatchie National Forest, 2500 Shreveport Highway, Pineville, LA 71360. Visitors are encouraged to call ahead to 318-473-7160 to facilitate entry into the building.

FOR FURTHER INFORMATION CONTACT: Holly Morgan, RAC coordinator, USDA, Kisatchie National Forest, 2500 Shreveport Highway, Pineville, LA 71360; (318) 473-7194; E-mail hmorgan@fs.fed.us.

Individuals who use telecommunication devices for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1-800-877-8339 between 8 a.m. and 8 p.m., Eastern Standard Time, Monday through Friday.

SUPPLEMENTARY INFORMATION: The meeting is open to the public. The following business will be conducted: (1) Introductions of all committee members, replacement members and Forest Service personnel in attendance. (2) Review and approval of the minutes from the last meeting. (3) Discussion on RAC Committee operational guidelines or bylaws. (4) Discussion on a project proposal acceptance process. (5) Development of future meeting schedule; and (6) Public Comment.

Persons who wish to bring related matters to the attention of the Committee may file written statements with the Committee staff before or after the meeting.

Dated: July 14, 2010.

Michael L. Balboni,*Designated Federal Officer.*

[FR Doc. 2010-17656 Filed 7-20-10; 8:45 am]

BILLING CODE 3410-11-M**DEPARTMENT OF AGRICULTURE****Forest Service****Missoula County Resource Advisory Committee****AGENCY:** Forest Service, USDA.**ACTION:** Notice of meeting.

SUMMARY: The Lolo National Forest's Missoula County Resource Advisory Committee (RAC) will meet on Tuesday, July 27, 2010 from 9 a.m. to 3 p.m., in Missoula, Montana. The purpose of the meeting is to conduct welcomes and introductions, provide an overview of the RAC legislation and RAC mission, establish a process for project proposal evaluation and decision making, set future meeting dates and receive public comment on the meeting subjects and proceedings.

DATES: Tuesday, July 27, 2010 from 9 a.m. to 3 p.m.

ADDRESSES: Missoula County Courthouse, Room 201; 200 West Broadway, Missoula, Montana 59802.

FOR FURTHER INFORMATION CONTACT: Boyd Hartwig; Address: Lolo National Forest, Building 24A Fort Missoula, Missoula, Montana 59804; Phone: 406-329-1024; e-mail: bchartwig@fs.fed.us.

SUPPLEMENTARY INFORMATION: Agenda items to be covered include: (1) Welcome and introductions; (2) provide overview of RAC legislation and RAC mission; (3) establish a process for project evaluation and project recommendations; (4) set next meeting purpose, location and date; (5) receive public comment; and (6) select RAC chairperson. The meeting is open to the public. Public input opportunity will be provided and individuals will have the opportunity to address the Committee at that time.

Dated: July 14, 2010.

Paul Matter,*Missoula District Ranger.*

[FR Doc. 2010-17754 Filed 7-20-10; 8:45 am]

BILLING CODE 3410-11-P**DEPARTMENT OF AGRICULTURE****Foreign Agricultural Service****Trade Adjustment Assistance for Farmers****AGENCY:** Foreign Agricultural Service, USDA.**ACTION:** Notice.

The Administrator of the Foreign Agricultural Service (FAS) today accepted and began a review of a petition for trade adjustment assistance filed under the FY 2011 Program by the Southern Shrimp Alliance on behalf of shrimp producers in Alabama, Florida, Georgia, Louisiana, Mississippi, North Carolina, South Carolina, and Texas. The Administrator will determine within 40 days whether or not increasing imports of shrimp contributed importantly to a greater than 15-percent decrease in the production quantity of shrimp compared to the average of the 3 preceding marketing years. If the determination is affirmative, shrimpers who land and market shrimp in Alabama, Florida, Georgia, Louisiana, Mississippi, North Carolina, South Carolina, and Texas will be eligible to apply to the Farm Service Agency for free technical assistance and cash benefits.

FOR FURTHER INFORMATION CONTACT:

Trade Adjustment Assistance for Farmers Staff, FAS, USDA, by *phone*: (202) 720-0638, or (202) 690-0633; or by *e-mail*: tradeadjustment@fas.usda.gov; or visit the TAA for Farmers' Web site: <http://www.fas.usda.gov/itp/taa>.

Dated: July 14, 2010.

John D. Brewer,*Administrator, Foreign Agricultural Service.*

[FR Doc. 2010-17799 Filed 7-20-10; 8:45 am]

BILLING CODE 3410-10-P**DEPARTMENT OF AGRICULTURE****Foreign Agricultural Service****Trade Adjustment Assistance for Farmers****AGENCY:** Foreign Agricultural Service, USDA.**ACTION:** Notice.

The Administrator of the Foreign Agricultural Service (FAS) today accepted and began a review of a petition for trade adjustment assistance filed under the FY 2011 Program by the Maine Lobstermen's Association on behalf of American lobster (*Homarus*

americanus) fishermen who catch and market their lobster in Maine. The Administrator will determine within 40 days whether or not increasing imports of American lobster contributed importantly to a greater than 15-percent decrease in the production value of lobster compared to the average of the three preceding marketing years. If the determination is affirmative, fishermen who land and market American lobster in Maine will be eligible to apply to the Farm Service Agency for free technical assistance and cash benefits.

FOR FURTHER INFORMATION CONTACT:

Trade Adjustment Assistance for Farmers Staff, FAS, USDA, by phone: (202) 720-0638, or (202) 690-0633; or by *e-mail*: tradeadjustment@fas.usda.gov; or visit the TAA for Farmers' Web site: <http://www.fas.usda.gov/itp/taa>.

Dated: July 14, 2010.

John D. Brewer,

Administrator, Foreign Agricultural Service.

[FR Doc. 2010-17804 Filed 7-20-10; 8:45 am]

BILLING CODE 3410-10-P

DEPARTMENT OF AGRICULTURE

Foreign Agricultural Service

Trade Adjustment Assistance for Farmers

AGENCY: Foreign Agricultural Service, USDA.

ACTION: Notice.

The Administrator of the Foreign Agricultural Service (FAS) today accepted and began a review of a petition for trade adjustment assistance filed under the FY 2011 Program by 100% Puerto Rico Coffee Export Board, Inc. on behalf of coffee producers in Puerto Rico. The Administrator will determine within 40 days whether increasing imports of coffee contributed importantly to a greater than 15-percent decrease in the average annual price, production quantity, or production value of coffee compared to the average of the 3 preceding marketing years. If the determination is affirmative, producers who produce and market coffee in Puerto Rico will be eligible to apply to the Farm Service Agency for free technical assistance and cash benefits.

FOR FURTHER INFORMATION CONTACT:

Trade Adjustment Assistance for Farmers Staff, FAS, USDA, by phone: (202) 720-0638, or (202) 690-0633; or by *e-mail*: tradeadjustment@fas.usda.gov; or visit

the TAA for Farmers' Web site: <http://www.fas.usda.gov/itp/taa>.

Dated: July 14, 2010.

John D. Brewer,

Administrator, Foreign Agricultural Service.

[FR Doc. 2010-17801 Filed 7-20-10; 8:45 am]

BILLING CODE 3410-10-P

DEPARTMENT OF AGRICULTURE

Foreign Agricultural Service

Trade Adjustment Assistance for Farmers

AGENCY: Foreign Agricultural Service, USDA.

ACTION: Notice.

The Administrator of the Foreign Agricultural Service (FAS) today accepted and began a review of a petition for trade adjustment assistance filed under the FY 2011 Program by three wool producers on behalf of wool producers in Idaho, Utah, and Wyoming. The Administrator will determine within 40 days whether increasing imports of wool contributed importantly to a greater than 15-percent decrease in the value of production of wool, compared to the average of the 3 preceding marketing years. If the determination is affirmative, producers who produce and market wool in Idaho, Utah, and Wyoming will be eligible to apply to the Farm Service Agency for free technical assistance and cash benefits.

FOR FURTHER INFORMATION CONTACT:

Trade Adjustment Assistance for Farmers Staff, FAS, USDA, by phone: (202) 720-0638, or (202) 690-0633; or by *e-mail*: tradeadjustment@fas.usda.gov; or visit the TAA for Farmers' Web site: <http://www.fas.usda.gov/itp/taa>.

Dated: July 14, 2010.

John D. Brewer,

Administrator, Foreign Agricultural Service.

[FR Doc. 2010-17805 Filed 7-20-10; 8:45 am]

BILLING CODE 3410-10-P

DEPARTMENT OF COMMERCE

National Telecommunications and Information Administration

Proposed Information Collection; Comment Request; NTIA/FCC Web-based Frequency Coordination System

AGENCY: National Telecommunications and Information Administration, Commerce.

ACTION: Notice.

SUMMARY: The U.S. Department of Commerce (DOC), as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to comment on this proposed information, as required by the Paperwork Reduction Act of 1995, Public Law 104-13 (44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments must be submitted on or before September 20, 2010.

ADDRESSES: Direct all written comments to Diana Hynek, Departmental Paperwork Clearance Officer, U.S. Department of Commerce, Room 6616, 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 Charles Franz at cfranz@ntia.doc.gov, (202) 482-1826.

SUPPLEMENTARY INFORMATION:

I. Abstract

The National Telecommunications and Information Administration (NTIA) hosts a Web-based system that collects specific identification information (e.g., company name, location and projected range of the operation, etc.) from applicants seeking to operate in existing and planned radio frequency (RF) bands that are shared on a co-primary basis by federal and non-federal users. The Web-based system provides a means for non-federal applicants to rapidly determine the availability of RF spectrum in a specific location, or the need for detailed frequency coordination of a specific newly proposed assignment within the shared portions of the radio spectrum. The Web site allows non-federal applicants proposed radio site information to be analyzed, and a real-time determination made as to whether there is a potential for interference to, or from, existing Federal government radio operations in the vicinity of the proposed site. This Web-based coordination helps expedite the coordination process for non-federal applicants while assuring protection of government data relating to national security. The information provided by non-federal applicants will also assure the protection of the applicant's station from radio frequency interference from future government operations.

II. Method of Collection

NTIA collects the data by means of an Internet Web-based system. The applications on the Web site provide

real-time responses: (1) Obtain a validation of the coordination of a single frequency, or (2) a notification of the unavailability of a frequency at one site and further coordination will be required by the Federal Communications Commission and NTIA.

III. Data

OMB Control No: 0660–0018.

Form No.: N/A.

Type of Review: Regular submission.

Affected Public: Applicants seeking to operate in the 71–76 GHz, 81–86 GHz, and 92–95 GHz radio frequency bands today, and additional bands as frequency coordination procedures allow.

Estimated Number of Respondents: 3,000.

Estimated Time per Response: 15 minutes.

Estimated Total Annual Burden Hours: 750.

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 a 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: July 15, 2010.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 2010–17701 Filed 7–20–10; 8:45 am]

BILLING CODE 3510–60–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Docket 45–2010]

Foreign-Trade Zone 244—Riverside County, CA; Application for Reorganization Under Alternative Site Framework

An application has been submitted to the Foreign-Trade Zones (FTZ) Board (the Board) by the March Joint Powers Authority, grantee of FTZ 244, requesting authority to reorganize the zone under the alternative site framework (ASF) adopted by the Board (74 FR 1170, 1/12/09; correction 74 FR 3987, 1/22/09). The ASF is an option for grantees for the establishment or reorganization of general-purpose zones and can permit significantly greater flexibility in the designation of new “usage-driven” FTZ sites for operators/users located within a grantee’s “service area” in the context of the Board’s standard 2,000-acre activation limit for a general-purpose zone project. The application was submitted pursuant to the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a–81u), and the regulations of the Board (15 CFR part 400). It was formally filed on July 14, 2010.

FTZ 244 was approved by the Board on August 21, 2000 (Board Order 1104, 65 FR 54196, 09/07/2000). The current zone project includes the following site: *Site 1* (2,480 acres)—March Inland Port area, 23572 N St., Riverside, CA.

The grantee’s proposed service area under the ASF would be western Riverside County, as described in the application. If approved, the grantee would be able to serve sites throughout the service area based on companies’ needs for FTZ designation. The proposed service area is adjacent to the Los Angeles/Long Beach, California Customs and Border Protection port of entry.

The applicant is requesting authority to reorganize its existing zone project to include the existing site as a “magnet” site. The ASF allows for the possible exemption of one magnet site from the “sunset” time limits that generally apply to sites under the ASF, and the applicant proposes that Site 1 be so exempted.

In accordance with the Board’s regulations, Christopher Kemp of the FTZ Staff is designated examiner to evaluate and analyze the facts and information presented in the application and case record and to report findings and recommendations to the Board.

Public comment is invited from interested parties. Submissions (original

and 3 copies) shall be addressed to the Board’s Executive Secretary at the address below. The closing period for their receipt is September 20, 2010. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period to October 4, 2010.

A copy of the application will be available for public inspection at the Office of the Executive Secretary, Foreign-Trade Zones Board, Room 2111, U.S. Department of Commerce, 1401 Constitution Avenue, NW., Washington, DC 20230–0002, and in the “Reading Room” section of the Board’s Web site, which is accessible via <http://www.trade.gov/ftz>. For further information, contact Christopher Kemp at Christopher.Kemp@trade.gov or (202) 482–0862.

Dated: July 14, 2010.

Andrew McGilvray,

Executive Secretary.

[FR Doc. 2010–17802 Filed 7–20–10; 8:45 am]

BILLING CODE P

DEPARTMENT OF COMMERCE

International Trade Administration

Application(s) for Duty-Free Entry of Scientific Instruments

Pursuant to Section 6(c) of the Educational, Scientific and Cultural Materials Importation Act of 1966 (Pub. L. 89–651, as amended by Pub. L. 106–36; 80 Stat. 897; 15 CFR part 301), we invite comments on the question of whether instruments of equivalent scientific value, for the purposes for which the instruments shown below are intended to be used, are being manufactured in the United States.

Comments must comply with 15 CFR 301.5(a)(3) and (4) of the regulations and be postmarked on or before August 10, 2010. Address written comments to Statutory Import Programs Staff, Room 3720, U.S. Department of Commerce, Washington, DC 20230. Applications may be examined between 8:30 a.m. and 5 p.m. at the U.S. Department of Commerce in Room 3720.

Docket Number: 10–044. *Applicant:* University of Massachusetts Amherst, Biology Department, 611 N. Pleasant St., Amherst, MA 01003. *Instrument:* Electron Microscope. *Manufacturer:* FEI Company, Czech Republic. *Intended Use:* The instrument will be used to provide 3-dimensional images and support structural analysis using backscattered electrons and non-destructive chemical analysis using X-rays. Further, this instrument is capable

of imaging with accelerating voltages as low as 50 V and has a resolution limit of 0.9 nm. *Justification for Duty-Free Entry:* There are no instruments of the same general category being manufactured in the United States. Application accepted by Commissioner of Customs: July 8, 2010.

Docket Number: 10–047. *Applicant:* Appalachian State University, 572 Rivers Street, Boone, NC 28608. *Instrument:* Electron Microscope. *Manufacturer:* JEOL, Ltd., Japan. *Intended Use:* Samples of plants, mouse, fish and optical fibers will be examined. Microtubules of the cells, proteins of the tissues and metallic nanostructures will be analyzed with the instrument. *Justification for Duty-Free Entry:* There are no instruments of the same general category being manufactured in the United States. Application accepted by Commissioner of Customs: June 30, 2010.

Docket Number: 10–048. *Applicant:* The University of Texas at El Paso, 500 West University Ave., El Paso, Texas 79968. *Instrument:* Electron Microscope. *Manufacturer:* JEOL, Ltd., Japan. *Intended Use:* The instrument will be used to collect images of highly magnified samples of proteins, protein complexes and supra-molecular assemblies such as bacteriophages and viruses. These images are then computationally processed to generate a 3-dimensional reconstruction of the original sample that was imaged in the microscope in only two dimensions. *Justification for Duty-Free Entry:* There are no instruments of the same general category being manufactured in the United States. Application accepted by Commissioner of Customs: July 1, 2010.

Docket Number: 10–050. *Applicant:* Stanford University School of Medicine, Board of Trustees of the Leland Stanford Junior University, Beckman Center, B001, 279 Campus Drive, Stanford, CA 94305–5301. *Instrument:* Electron Microscope. *Manufacturer:* JEOL, Ltd., Japan. *Intended Use:* The instrument will be used to discover new genes with essential functions in myelination, define new zebrafish models of important myelin disorders in humans, and provide new avenues toward therapies for myelin repair and prevention of axonal damage after demyelination. A reliable electron microscope with digital image acquisition is required for the lab's ultrastructural studies of myelination. *Justification for Duty-Free Entry:* There are no instruments of the same general category being manufactured in the United States. Application accepted by Commissioner of Customs: July 7, 2010.

Dated: July 14, 2010.

Christopher Cassel,

Director, IA Subsidies Enforcement Office.

[FR Doc. 2010–17797 Filed 7–20–10; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN: 0648–XX73

Fisheries of the South Atlantic; Southeast Data, Assessment, and Review (SEDAR); South Atlantic red snapper

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

ACTION: Notice of SEDAR 24 Assessment Webinar 2b for South Atlantic red snapper.

SUMMARY: The SEDAR assessment of the South Atlantic stock of red snapper will consist of a series of workshops and webinars: a Data Workshop, a series of Assessment webinars, and a Review Workshop. This is the twenty-fourth SEDAR. This is notice of additional Assessment Webinars for SEDAR 24. See **SUPPLEMENTARY INFORMATION.**

DATES: Assessment Webinar 2b will occur August 6, 2010; Assessment Webinar 2c will occur August 9, 2010; Assessment Webinar 2d will occur August 11, 2010. Assessment Webinar 3b will occur August 18, 2010; Assessment Webinar 3c will occur August 20, 2010. See **SUPPLEMENTARY INFORMATION.**

ADDRESSES: The Assessment Webinar will be held live online via an internet based conferencing service. The Webinar may be attended by the public. Those interested in participating should contact Kari Fenske at SEDAR. See **FOR FURTHER INFORMATION CONTACT** to request an invitation providing webinar access information.

FOR FURTHER INFORMATION CONTACT: Kari Fenske, SEDAR Coordinator, 4055 Faber Place Drive, Suite 201, North Charleston, SC 29405; (843) 571–4366; kari.fenske@safmc.net.

SUPPLEMENTARY INFORMATION: The Gulf of Mexico, South Atlantic, and Caribbean Fishery Management Councils, in conjunction with NOAA Fisheries and the Atlantic and Gulf States Marine Fisheries Commissions have implemented the Southeast Data, Assessment and Review (SEDAR) process, a multi-step method for determining the status of fish stocks in

the Southeast Region. SEDAR includes a Data Workshop, a Stock Assessment Process and a Review Workshop. The product of the Data Workshop is a data report which compiles and evaluates potential datasets and recommends which datasets are appropriate for assessment analyses. The product of the Stock Assessment Process is a stock assessment report which describes the fisheries, evaluates the status of the stock, estimates biological benchmarks, projects future population conditions, and recommends research and monitoring needs. The assessment is independently peer reviewed at the Review Workshop. The product of the Review Workshop is a Peer Review Evaluation Report documenting Panel opinions regarding the strengths and weaknesses of the stock assessment and input data. Participants for SEDAR Workshops and Assessment Process are appointed by the Gulf of Mexico, South Atlantic, and Caribbean Fishery Management Councils; the Atlantic and Gulf States Marine Fisheries Commissions; and NOAA Fisheries Southeast Regional Office and Southeast Fisheries Science Center. Participants include data collectors and database managers; stock assessment scientists, biologists, and researchers; constituency representatives including fishermen, environmentalists, and NGO's; International experts; and staff of Councils, Commissions, and state and federal agencies.

SEDAR 24 Assessment Webinar 2b Schedule:

August 6, 2010: 12 p.m. - 4 p.m.

Assessment panelists will (1) discuss red snapper model base runs, (2) select a preferred model, (3) provide guidance on model projections, and (4) discuss any additional outstanding data issues. Please note that meeting times are subject to change and meetings may run longer than scheduled. To be advised of such changes, contact the coordinator listed under **FOR FURTHER INFORMATION CONTACT.**

SEDAR 24 Assessment Webinar 2b Schedule:

August 9, 2010: 12 p.m. - 4 p.m.

Assessment panelists may use this meeting to discuss agenda items not covered in Assessment Webinar 2b. Please note that meeting times are subject to change and meetings may run longer than scheduled. To be advised of such changes, contact the coordinator listed under **FOR FURTHER INFORMATION CONTACT.**

SEDAR 24 Assessment Webinar 2d Schedule:

August 11, 2010: 12 p.m. - 4 p.m.

Assessment panelists may use this meeting to discuss agenda items not covered in Assessment Webinar 2c. Please note that meeting times are subject to change and meetings may run longer than scheduled. To be advised of such changes, contact the coordinator listed under **FOR FURTHER INFORMATION CONTACT**.

SEDAR 24 Assessment Webinar 3b Schedule:

August 18, 2010: 12 p.m. - 4 p.m.

Assessment panelists may use this meeting to discuss agenda items not covered in Assessment Webinar 3. Please note that meeting times are subject to change and meetings may run longer than scheduled. To be advised of such changes, contact the coordinator listed under **FOR FURTHER INFORMATION CONTACT**.

SEDAR 24 Assessment Webinar 3c Schedule:

August 20, 2010: 12 p.m. - 4 p.m.

Assessment panelists may use this meeting to discuss agenda items not covered in Assessment Webinar 3b. Please note that meeting times are subject to change and meetings may run longer than scheduled. To be advised of such changes, contact the coordinator listed under **FOR FURTHER INFORMATION CONTACT**.

Although non-emergency issues not contained in this agenda may come before these groups for discussion, in accordance with the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), those issues may not be the subject of formal action during these meetings. Actions will be restricted to those issues specifically identified in this notice and any issues arising after publication of this notice that require emergency action under Section 305(c) of the Magnuson-Stevens Act, provided the public has been notified of the Council's intent to take final action to address the emergency.

Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to the Council office (see **ADDRESSES**) at least 3 business days prior to each workshop.

Dated: July 16, 2010.

Tracey L. Thompson,
Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 2010-17782 Filed 7-20-10; 8:45 am]

BILLING CODE 3510-22-S

DEPARTMENT OF COMMERCE**National Oceanic and Atmospheric Administration****Availability of Seats for the Monterey Bay National Marine Sanctuary Advisory Council**

AGENCY: Office of National Marine Sanctuaries (ONMS), National Ocean Service (NOS), National Oceanic and Atmospheric Administration (NOAA), Department of Commerce (DOC).

ACTION: Notice and request for applications.

SUMMARY: The ONMS is seeking applications for the following vacant seat on the Monterey Bay National Marine Sanctuary Advisory Council: Conservation primary. Applicants are chosen based upon their particular expertise and experience in relation to the seat for which they are applying; community and professional affiliations; philosophy regarding the protection and management of marine resources; and possibly the length of residence in the area affected by the sanctuary. Applicants who are chosen should expect to serve until February 2013.

DATES: Applications are due by August 20, 2010.

ADDRESSES: Application kits may be obtained from 299 Foam Street, Monterey, CA, 93940 or online at <http://montereybay.noaa.gov/>. Completed applications should be sent to the same address.

FOR FURTHER INFORMATION CONTACT: Nicole Capps, 299 Foam Street, Monterey, CA, 93940, (831) 647-4206, nicole.capps@noaa.gov.

SUPPLEMENTARY INFORMATION: The MBNMS Advisory Council was established in March 1994 to assure continued public participation in the management of the Sanctuary. Since its establishment, the Advisory Council has played a vital role in decisions affecting the Sanctuary along the central California coast.

The Advisory Council's twenty voting members represent a variety of local user groups, as well as the general public, plus seven local, State and Federal governmental jurisdictions. In addition, the respective managers or superintendents for the four California National Marine Sanctuaries (Channel

Islands National Marine Sanctuary, Cordell Bank National Marine Sanctuary, Gulf of the Farallones National Marine Sanctuary and the Monterey Bay National Marine Sanctuary) and the Elkhorn Slough National Estuarine Research Reserve sit as non-voting members.

Four working groups support the Advisory Council: The Research Activity Panel ("RAP") chaired by the Research Representative, the Sanctuary Education Panel ("SEP") chaired by the Education Representative, the Conservation Working Group ("CWG") chaired by the Conservation Representative, and the Business and Tourism Activity Panel ("BTAP") chaired by the Business/Industry Representative, each dealing with matters concerning research, education, conservation and human use. The working groups are composed of experts from the appropriate fields of interest and meet monthly, or bi-monthly, serving as invaluable advisors to the Advisory Council and the Sanctuary Superintendent.

The Advisory Council represents the coordination link between the Sanctuary and the State and Federal management agencies, user groups, researchers, educators, policy makers, and other various groups that help to focus efforts and attention on the central California coastal and marine ecosystems.

The Advisory Council functions in an advisory capacity to the Sanctuary Superintendent and is instrumental in helping develop policies, program goals, and identify education, outreach, research, long-term monitoring, resource protection, and revenue enhancement priorities. The Advisory Council works in concert with the Sanctuary Superintendent by keeping him or her informed about issues of concern throughout the Sanctuary, offering recommendations on specific issues, and aiding the Superintendent in achieving the goals of the Sanctuary program within the context of California's marine programs and policies.

Authority: 16 U.S.C. Sections 1431, *et seq.* (Federal Domestic Assistance Catalog Number 11.429 Marine Sanctuary Program)

Date: July 8, 2010.

Daniel J. Basta,
Director, Office of National Marine Sanctuaries, National Office Service, National Oceanic and Atmospheric Administration.

[FR Doc. 2010-17445 Filed 7-20-10; 8:45 am]

BILLING CODE 3510-NK-M

DEPARTMENT OF COMMERCE**International Trade Administration**

[A-427-001]

Revocation of Antidumping Duty Order on Sorbitol From France

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: On July 1, 2009, the Department of Commerce (the Department) initiated the sunset review of the antidumping duty order on sorbitol from France. *See Initiation of Five-year ("Sunset") Review*, 74 FR 31412 (July 1, 2009). Pursuant to section 751(c) of the Tariff Act of 1930, as amended (the Act), the U.S. International Trade Commission (the Commission) determined that revocation of the existing antidumping duty order on sorbitol from France would not be likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time. *Sorbitol From France; Determination*, 75 FR 39277 (July 8, 2010) (*ITC Final*). Therefore, pursuant to section 751(d)(2) of the Act and 19 CFR 351.222(i)(1)(iii), the Department is revoking the antidumping duty order on sorbitol from France.

DATES: *Effective Date:* August 5, 2009.

FOR FURTHER INFORMATION CONTACT: Steve Bezirgianian or Robert James, AD/CVD Operations Office 7, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482-1131 and (202) 482-0649, respectively.

SUPPLEMENTARY INFORMATION:**Background**

On April 9, 1982, the Department published the antidumping duty order on sorbitol from France. *See Sorbitol From France; Antidumping Duty Order*, 47 FR 15391 (April 9, 1982). On June 29, 1984, the order was revoked, in part. *See Sorbitol From France; Revocation in Part of Antidumping Duty Order*, 49 FR 26773 (June 29, 1984). On July 1, 2009, the Department initiated its most recent sunset review of the antidumping duty order on sorbitol from France. *See Initiation of Five-year ("Sunset") Review*. On July 2, 2009, the Commission instituted its most-recent five-year review of the order. *See Sorbitol From France*, 74 FR 31762 (July 2, 2009).

As a result of the Department's sunset review, the Department determined that revocation of the antidumping duty

order would be likely to lead to the continuation or recurrence of dumping. *See Sorbitol from France: Final Results of Expedited Five-year (Sunset) Review of Antidumping Duty Order*, 74 FR 56793 (November 3, 2009). The Department notified the Commission of the magnitude of the margin likely to prevail were the antidumping duty order to be revoked.

On July 8, 2010, the Commission published its determination that, pursuant to section 751(c) of the Act, revocation of the antidumping duty order on sorbitol from France would not be likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time. *See ITC Final and USITC Publication 4164* (June 2010), titled *Sorbitol from France* (Investigation No. 731-TA-44 (Third Review)).

Scope of the Order

The products covered by the order are shipments of crystalline sorbitol. Crystalline sorbitol is a polyol produced by the catalytic hydrogenation of sugars (glucose). It is used in the production of sugarless gum, candy, groceries, and pharmaceuticals. The above-described sorbitol is currently classifiable under item 2905.44.00 of the Harmonized Tariff Schedule of the United States (HTSUS). Although the HTSUS subheading is provided for convenience and customs purposes, the written description remains dispositive.

Determination

As a result of the determination by the Commission that revocation of the antidumping duty order is not likely to lead to the continuation or recurrence of material injury to an industry in the United States, the Department, pursuant to section 751(d) of the Act, is revoking the antidumping duty order on sorbitol from France. Pursuant to section 751(d)(2) of the Act and 19 CFR 351.222(i)(2)(i), the effective date of revocation is August 5, 2009 (*i.e.*, the fifth anniversary of the publication in the **Federal Register** of the notice of continuation of this order). The Department will notify U.S. Customs and Border Protection to terminate suspension of liquidation and collection of cash deposits on entries of the subject merchandise entered or withdrawn from warehouse on or after August 5, 2009. Entries of subject merchandise prior to the effective date of revocation will continue to be subject to suspension of liquidation and antidumping duty deposit requirements. The Department will complete any pending administrative reviews of this order.

This five-year sunset review and notice are in accordance with section 751(d)(2) of the Act and published pursuant to section 777(i)(1) of the Act.

Dated: July 15, 2010.

Ronald K. Lorentzen,
Deputy Assistant Secretary for Import Administration.

[FR Doc. 2010-17800 Filed 7-20-10; 8:45 am]

BILLING CODE 3510-DS-P

COMMISSION OF FINE ARTS**Notice of Meeting**

The next meeting of the U.S. Commission of Fine Arts is scheduled for 15 July 2010, at 10 a.m. in the Commission offices at the National Building Museum, Suite 312, Judiciary Square, 401 F Street, NW., Washington, DC 20001-2728. Items of discussion may include buildings, parks and memorials.

Draft agendas and additional information regarding the Commission are available on our Web site: <http://www.cfa.gov>. Inquiries regarding the agenda and requests to submit written or oral statements should be addressed to Thomas Luebke, Secretary, U.S. Commission of Fine Arts, at the above address; by e-mailing staff@cfa.gov; or by calling 202-504-2200. Individuals requiring sign language interpretation for the hearing impaired should contact the Secretary at least 10 days before the meeting date.

Dated: July 6, 2010 in Washington, DC.

Thomas Luebke,
AIA, Secretary.

[FR Doc. 2010-17653 Filed 7-20-10; 8:45 am]

BILLING CODE 6330-01-M

COMMODITY FUTURES TRADING COMMISSION

Orders Finding That the SP-15 Financial Day-Ahead LMP Peak Contract and SP-15 Financial Day-Ahead LMP Off-Peak Contract Offered for Trading on the IntercontinentalExchange, Inc., Perform a Significant Price Discovery Function

AGENCY: Commodity Futures Trading Commission.

ACTION: Final orders.

SUMMARY: On October 6, 2009, the Commodity Futures Trading Commission ("CFTC" or "Commission") published for comment in the **Federal Register**¹ a notice of its intent to

¹ 74 FR 51264 (October 6, 2009).

undertake a determination whether the SP-15² Financial Day-Ahead LMP Peak ("SPM") contract and SP-15 Financial Day-Ahead LMP Off-Peak ("OFP") contract,³ which are listed for trading on the IntercontinentalExchange, Inc. ("ICE"), an exempt commercial market ("ECM") under sections 2(h)(3)–(5) of the Commodity Exchange Act ("CEA") or the "Act"), perform a significant price discovery function pursuant to section 2(h)(7) of the CEA. The Commission undertook this review based upon an initial evaluation of information and data provided by ICE as well as other available information. The Commission has reviewed the entire record in this matter, including all comments received, and has determined to issue orders finding that the SPM and OFP contracts perform a significant price discovery function. Authority for this action is found in section 2(h)(7) of the CEA and Commission rule 36.3(c) promulgated thereunder.

DATES: *Effective Date:* July 9, 2010.

FOR FURTHER INFORMATION CONTACT:

Gregory K. Price, Industry Economist, Division of Market Oversight, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW., Washington, DC 20581. *Telephone:* (202) 418–5515. *E-mail:* gprice@cftc.gov; or Susan Nathan, Senior Special Counsel, Division of Market Oversight, same address. *Telephone:* (202) 418–5133. *E-mail:* snathan@cftc.gov.

SUPPLEMENTARY INFORMATION:

I. Introduction

The CFTC Reauthorization Act of 2008 ("Reauthorization Act")⁴ significantly broadened the CFTC's regulatory authority with respect to ECMs by creating, in section 2(h)(7) of the CEA, a new regulatory category—ECMs on which significant price discovery contracts ("SPDCs") are traded—and treating ECMs in that category as registered entities under the CEA.⁵ The legislation authorizes the CFTC to designate an agreement, contract or transaction as a SPDC if the Commission determines, under criteria

established in section 2(h)(7), that it performs a significant price discovery function. When the Commission makes such a determination, the ECM on which the SPDC is traded must assume, with respect to that contract, all the responsibilities and obligations of a registered entity under the Act and Commission regulations, and must comply with nine core principles established by new section 2(h)(7)(C).

On March 16, 2009, the CFTC promulgated final rules implementing the provisions of the Reauthorization Act.⁶ As relevant here, rule 36.3 imposes increased information reporting requirements on ECMs to assist the Commission in making prompt assessments whether particular ECM contracts may be SPDCs. In addition to filing quarterly reports of its contracts, an ECM must notify the Commission promptly concerning any contract traded in reliance on the exemption in section 2(h)(3) of the CEA that averaged five trades per day or more over the most recent calendar quarter, and for which the exchange sells its price information regarding the contract to market participants or industry publications, or whose daily closing or settlement prices on 95 percent or more of the days in the most recent quarter were within 2.5 percent of the contemporaneously determined closing, settlement or other daily price of another contract.

Commission rule 36.3(c)(3) established the procedures by which the Commission makes and announces its determination whether a particular ECM contract serves a significant price discovery function. Under those procedures, the Commission will publish notice in the **Federal Register** that it intends to undertake an evaluation whether the specified agreement, contract or transaction performs a significant price discovery function and to receive written views, data and arguments relevant to its determination from the ECM and other interested persons. Upon the close of the comment period, the Commission will consider, among other things, all relevant information regarding the subject contract and issue an order announcing and explaining its determination whether or not the contract is a SPDC. The issuance of an affirmative order signals the effectiveness of the Commission's regulatory authorities over an ECM with respect to a SPDC; at that time such an ECM becomes subject to all provisions of the CEA applicable to registered

entities.⁷ The issuance of such an order also triggers the obligations, requirements and timetables prescribed in Commission rule 36.3(c)(4).⁸

II. Notice of Intent To Undertake SPDC Determination

On October 6, 2009, the Commission published in the **Federal Register** notice of its intent to undertake a determination whether the SPM and OFP contracts⁹ perform a significant price discovery function and requested comment from interested parties.¹⁰ Comments were received from the Federal Energy Regulatory Commission ("FERC"), Electric Power Supply Association ("EPSA"), Financial Institutions Energy Group ("FIEG"), Working Group of Commercial Energy Firms ("WGCEF"), ICE, California Public Utilities Commission ("CPUC"), Edison Electric Institute ("EEI"), Western Power Trading Forum ("WPTF") and Public Utility Commission of Texas ("PUCT").¹¹ The comment letters from

⁷ Public Law 110–246 at 13203; *Joint Explanatory Statement of the Committee of Conference*, H.R. Rep. No. 110–627, 110 Cong., 2d Sess. 978, 986 (Conference Committee Report). See also 73 FR 75888, 75894 (Dec. 12, 2008).

⁸ For an initial SPDC, ECMs have a grace period of 90 calendar days from the issuance of a SPDC determination order to submit a written demonstration of compliance with the applicable core principles. For subsequent SPDCs, ECMs have a grace period of 30 calendar days to demonstrate core principle compliance.

⁹ As noted above, the **Federal Register** notice also requested comment on the SP-15 Financial Day-Ahead LMP Peak Daily ("SDP") contract; SP-15 Financial Day-Ahead LMP Off-Peak Daily ("SQP") contract; SP-15 Financial Swap Real Time LMP–Peak Daily ("SRP") contract; NP-15 Financial Day-Ahead LMP Peak Daily ("DPN") contract and NP-15 Financial Day-Ahead LMP Off-Peak Daily ("UNP") contract. These contracts will be addressed in a separate **Federal Register** release.

¹⁰ The Commission's Part 36 rules establish, among other things, procedures by which the Commission makes and announces its determination whether a specific ECM contract serves a significant price discovery function. Under those procedures, the Commission publishes a notice in the **Federal Register** that it intends to undertake a determination whether a specified agreement, contract or transaction performs a significant price discovery function and to receive written data, views and arguments relevant to its determination from the ECM and other interested persons.

¹¹ FERC is an independent federal regulatory agency that, among other things, regulates the interstate transmission of natural gas, oil and electricity. EPSA describes itself as the "national trade association representing competitive power suppliers, including generators and marketers." FIEG describes itself as an association of investment and commercial banks who are active participants in various sectors of the natural gas markets, "including acting as marketers, lenders, underwriters of debt and equity securities, and proprietary investors." WGCEF describes itself as "a diverse group of commercial firms in the domestic energy industry whose primary business activity is the physical delivery of one or more energy

Continued

² The acronym "SP" stands for "South Path."

³ The **Federal Register** notice also requested comment on the SP-15 Financial Day-Ahead LMP Peak Daily ("SDP") contract; SP-15 Financial Day-Ahead LMP Off-Peak Daily ("SQP") contract; SP-15 Financial Swap Real Time LMP–Peak Daily ("SRP") contract; NP-15 Financial Day-Ahead LMP Peak Daily ("DPN") contract and NP-15 Financial Day-Ahead LMP Off-Peak Daily ("UNP") contract; these contracts will be addressed in a separate **Federal Register** release.

⁴ Incorporated as Title XIII of the Food, Conservation and Energy Act of 2008, Public Law No. 110–246, 122 Stat. 1624 (June 18, 2008).

⁵ 7 U.S.C. 1a(29).

⁶ 74 FR 12178 (Mar. 23, 2009); these rules became effective on April 22, 2009.

FERC¹² and PUCT did not directly address the issue of whether or not the subject contracts are SPDCs. CPUC stated that the subject contracts are SPDCs but did not provide reasons for how the contracts meet the criteria for SPDC determination. The remaining comment letters raised substantive issues with respect to the applicability of section 2(h)(7) to the subject contracts and generally expressed the opinion that the contracts are not SPDCs because they do not meet the material price reference or material liquidity criteria for SPDC determination. These comments are more extensively discussed below, as applicable.

III. Section 2(h)(7) of the CEA

The Commission is directed by section 2(h)(7) of the CEA to consider the following criteria in determining a contract's significant price discovery function:

- **Price Linkage**—the extent to which the agreement, contract or transaction uses or otherwise relies on a daily or final settlement price, or other major price parameter, of a contract or contracts listed for trading on or subject to the rules of a designated contract market (“DCM”) or derivatives transaction execution facility (“DTEF”), or a SPDC traded on an electronic trading facility, to value a position,

commodities to customers, including industrial, commercial and residential consumers” and whose membership consists of “energy producers, marketers and utilities.” ICE is an ECM, as noted above. CPUC is a “constitutionally established agency charged with the responsibility for regulating electric corporations within the State of California.” EEI is the “association of shareholder-owned electric companies, international affiliates and industry associates worldwide.” WPTF describes itself as a “broad-based membership organization dedicated to encouraging competition in the Western power markets * * * WPTF strives to reduce the long-run cost of electricity to consumers throughout the region while maintaining the current high level of system reliability.” PUCT is the independent organization that oversees the Electric Reliability Council of Texas (“ERCOT”) to “ensure nondiscriminatory access to the transmission and distribution systems, to ensure the reliability and adequacy of the regional electrical network, and to perform other essential market functions.” The comment letters are available on the Commission's Web site: <http://www.cftc.gov/lawandregulation/federalregister/federalregistercomments/2009/09-012.html>.

¹² FERC expressed the opinion that a determination by the Commission that either of the subject contracts performs a significant price discovery function “would not appear to conflict with FERC's exclusive jurisdiction under the Federal Power Act (FPA) over the transmission or sale for resale of electric energy in interstate commerce or with its other regulatory responsibilities under the FPA” and further that “FERC staff will monitor proposed SPDC determinations and advise the CFTC of any potential conflicts with FERC's exclusive jurisdiction over RTOs, [(regional transmission organizations)], ISOs [(independent system operators)] or other jurisdictional entities.”

transfer or convert a position, cash or financially settle a position, or close out a position.

- **Arbitrage**—the extent to which the price for the agreement, contract or transaction is sufficiently related to the price of a contract or contracts listed for trading on or subject to the rules of a DCM or DTEF, or a SPDC traded on or subject to the rules of an electronic trading facility, so as to permit market participants to effectively arbitrage between the markets by simultaneously maintaining positions or executing trades in the contracts on a frequent and recurring basis.

- **Material price reference**—the extent to which, on a frequent and recurring basis, bids, offers or transactions in a commodity are directly based on, or are determined by referencing or consulting, the prices generated by agreements, contracts or transactions being traded or executed on the electronic trading facility.

- **Material liquidity**—the extent to which the volume of agreements, contracts or transactions in a commodity being traded on the electronic trading facility is sufficient to have a material effect on other agreements, contracts or transactions listed for trading on or subject to the rules of a DCM, DTEF or electronic trading facility operating in reliance on the exemption in section 2(h)(3).

Not all criteria must be present to support a determination that a particular contract performs a significant price discovery function, and one or more criteria may be inapplicable to a particular contract.¹³ Moreover, the statutory language neither prioritizes the criteria nor specifies the degree to which a SPDC must conform to the various criteria. In Guidance issued in connection with the Part 36 rules governing ECMs with SPDCs, the Commission observed that these criteria do not lend themselves to a mechanical checklist or formulaic analysis.

Accordingly, the Commission has indicated that in making its determinations it will consider the circumstances under which the presence of a particular criterion, or combination of criteria, would be sufficient to support a SPDC determination.¹⁴ For example, for contracts that are linked to other

contracts or that may be arbitrated with other contracts, the Commission will consider whether the price of the potential SPDC moves in such harmony with the other contract that the two markets essentially become interchangeable. This co-movement of prices would be an indication that activity in the contract had reached a level sufficient for the contract to perform a significant price discovery function. In evaluating a contract's price discovery role as a price reference, the Commission the extent to which, on a frequent and recurring basis, bids, offers or transactions are directly based on, or are determined by referencing, the prices established for the contract.

IV. Findings and Conclusions

The Commission's findings and conclusions with respect to the SPM and OFP contracts are discussed separately below.

a. The SP-15 Financial Day-Ahead LMP Peak (SPM) Contract and the SPDC Indicia

The SPM contract is cash settled based on the arithmetic average of peak-hour, day-ahead locational marginal prices (“LMPs”) ¹⁵ posted by the California ISO ¹⁶ (“CAISO”) for the SP-15 Existing Zone Generation (“EZ Gen”) hub for all peak hours during the contract month. The LMPs are derived from power trades that result in physical delivery. The size of the SPM contract is 400 megawatt hours (“MWh”), and the SPM contract is listed for up to 110 calendar months.

In general, electricity is bought and sold in an auction setting on an hourly basis at various point along the electrical grid. An LMP associated with a specific hour is derived as a volume-weighted average price of all of the transactions where electricity is to be supplied and consumed during that hour.

Electricity is traded in a day-ahead market as well as a real-time market. Typically, the bulk of energy transactions occur in the day-ahead market. The day-ahead market establishes prices for electricity that is to be delivered during the specified hour on the following day. Day-ahead prices are determined based on generation and energy transaction

¹³ In its October 6, 2009, **Federal Register** release, the Commission identified material price reference and material liquidity as the possible criteria for SPDC determination of the SPM and OFP contracts. Arbitrage and price linkage were not identified as possible criteria. As a result, arbitrage and price linkage will not be discussed further in this document and the associated Orders.

¹⁴ 17 CFR 36, Appendix A.

¹⁵ An LMP represents the additional cost associated with producing an incremental amount of electricity. LMPs account for generation costs, congestion along the transmission lines, and electricity loss.

¹⁶ The acronym “ISO” signifies “Independent System Operator,” which is an entity that coordinates electricity generation and transmission, as well as grid reliability, throughout its service area.

quotes offered in advance. Because the power quotes are dependent on estimates of supply and demand, electricity needs usually are not perfectly satisfied in the day-ahead market. In this regard, on the day the electricity is transmitted and used, auction participants typically realize that they bought or sold either too much power or too little power. A real-time auction is operated to alleviate this problem by serving as a balancing mechanism. Specifically, electricity traders use the real-time market to sell excess electricity and buy additional power to meet demand. Only a relatively small amount of electricity is traded in the real-time market as compared to the day-ahead market.

Path 15 is an 84-mile portion of the north-south power transmission corridor in California, forming part of the Pacific AC Intertie and the California-Oregon Transmission Project.¹⁷ Path 15, along with the Pacific DC Intertie running far to the east, completes an important transmission interconnection between the hydroelectric plants to the north and the fossil fuel plants to the south. Path 15 currently consists of three lines at 500 kilovolts (“kV”) and four lines at 230 kV.¹⁸ The 500 kV lines connect Los Banos to Gates (two lines) and Los Banos to Midway (one line); all four 230 kV lines have Gates at one end with the other ends terminating at the Panoche #1, Panoche #2, Gregg, or McCall

substations. “NP-15” refers to the northern half of Path 15; conversely, “SP-15” refers to the lower half of Path 15.

When the weather is hot in California and the Desert Southwest, it is comparatively cool in the Pacific Northwest. Conversely, when the weather is cold in the Pacific Northwest it is comparatively warm in California and the Desert Southwest. Consumers on the West Coast take advantage of seasonal weather differences to share large amounts of power between the Desert Southwest and the Pacific Northwest. In the spring and summer, when generators (mostly hydroelectric plants) generally have surplus power in the Northwest and temperatures climb in the Southwest, power is shipped south to help meet increasing power demand, particularly for air conditioning. Conversely in the winter, when generators in the Southwest generally have surplus power and temperatures drop in the Northwest, power is shipped north to meet increasing electricity demand, particularly for heating.

CAISO is charged with operating the high-voltage grid in California. Because CAISO’s service area is basically the entire state of California, it is responsible for serving millions of businesses and households, particularly in the Los Angeles and San Francisco areas. CAISO’s current mission is to ensure the efficient and reliable operation of the power grid, provide fair and open transmission access, promote environmental stewardship, facilitate effective markets, promote infrastructure development and support the timely and accurate dissemination of information. CAISO is responsible for operating the hourly auctions in which the power is traded, and CAISO publishes LMP data on its Web site.

1. Material Price Reference Criterion

The Commission’s October 6, 2009, **Federal Register** notice identified the SPM contract as a potential SPDC based on the material price reference and material liquidity statutory criteria. The Commission considered the fact that ICE sells its price data to market participants in a number of different packages which vary in terms of the hubs covered, time periods, and whether the data are daily only or historical. For example, ICE offers the “West Power of Day” package with access to all price data or just current prices plus a selected number of months (*i.e.*, 12, 24, 36 or 48 months) of historical data. This package includes price data for the SPM contract.

The Commission also noted that its October 2007 *Report on the Oversight of*

Trading on Regulated Futures Exchanges and Exempt Commercial Markets (“ECM Study”) found that in general, market participants view ICE as a price discovery market for certain electricity contracts. The study did not specify which markets performed this function; nevertheless, the Commission determined that the SPM contract, while not mentioned by name in the ECM Study, warranted further review.

The Commission explains in its Guidance to the statutory criteria that in evaluating a contract under the material price reference criterion, it will rely on one of two sources of evidence—direct or indirect—to determine that the price of a contract was being used as a material price reference and therefore, serving a significant price discovery function.¹⁹ With respect to direct evidence, the Commission will consider the extent to which, on a frequent and recurring basis, cash market bids, offers or transactions are directly based on or quoted at a differential to, the prices generated on the ECM in question. Direct evidence may be established when cash market participants are quoting bid or offer prices or entering into transactions at prices that are set either explicitly or implicitly at a differential to prices established for the contract in question. Cash market prices are set explicitly at a differential to the section 2(h)(3) contract when, for instance, they are quoted in dollars and cents above or below the reference contract’s price. Cash market prices are set implicitly at a differential to a section 2(h)(3) contract when, for instance, they are arrived at after adding to, or subtracting from the section 2(h)(3) contract, but then quoted or reported at a flat price. With respect to indirect evidence, the Commission will consider the extent to which the price of the contract in question is being routinely disseminated in widely distributed industry publications—or offered by the ECM itself for some form of remuneration—and consulted on a frequent and recurring basis by industry participants in pricing cash market transactions.

The SP-15 power market is a major pricing center for electricity on the West Coast. Traders, including producers, keep abreast of the electricity prices in the SP-15 power market when conducting cash deals. These traders look to a competitively determined price as an indication of expected values of power at the SP-15 hub when entering into cash market transactions for electricity, especially those trades providing for physical delivery in the

¹⁷ The Pacific Intertie comprises three alternating current (“AC”) lines and one direct current (“DC”) line. Together, these lines comprise the largest single electricity transmission program in the United States. The northern end of the DC line is at the Bonneville Power Administration’s Celilo Converter Station, which is just south of The Dalles Dam about 90 miles east of Portland. The southern end is 846 miles away at the Sylmar Converter Station on the northern outskirts of Los Angeles. That station is operated by utilities including the Los Angeles Department of Water and Power (“LADWP”) and Southern California Edison. The AC lines follow generally the same path but terminate in Northern California. Only a few parties actually own the Intertie, but numerous entities have contracts to share its transmission capacity. The California-California border is a dividing line for Intertie ownership and capacity sharing. Depending on seasonal conditions, the Intertie is capable of transmitting up to 7,900 MW—4,800 MW of AC power (1,600 MW of this amount is in the California-Oregon Transmission Project, also known as the “Third AC Line”) and 3,100 MW of DC power. Over the past five years, the limit has ranged between about 6,300 MW and 7,900 MW. Most of the power transmitted on the Intertie is surplus to regional needs, but some firm power also is transmitted. See <http://www.nwccouncil.org/LIBRARY/2001/2001-11.pdf>.

¹⁸ The third 500 kV line was installed between 2003 and 2004 in order to relieve constraints on the existing north-south transmission lines. This capacity constraint contributed to the California energy crisis in 2000 and 2001. See <http://www.wapa.gov/sn/ops/transmission/path15/factSheet.pdf>.

¹⁹ 17 CFR 36, Appendix A.

future. Traders use the ICE SPM contract, as well as other ICE power contracts, to hedge cash market positions and transactions—activities which enhance the SPM contract's price discovery utility. The substantial volume of trading and open interest in the SPM contract appears to attest to its use for this purpose. While the SPM contract's settlement prices may not be the only factor influencing spot and forward transactions, electricity traders consider the ICE price to be a critical factor in conducting OTC transactions.²⁰ As a result, the SPM contract satisfies the direct price reference test.

The fact that ICE's SPM monthly contract is used more widely as a source of pricing information rather than the daily contract (*i.e.*, the SDP contract)²¹ bolsters the argument that it serves as a direct price reference. In this regard, the SPM contract prices power at the SP-15 hub up to almost five years into the future. Thus, market participants can use the SPM contract to lock-in electricity prices far into the future. Traders use monthly power contracts like the SPM contract to price future electric power commitments, where such commitments are based on long range forecasts of power supply and demand. In contrast, the SDP contract is listed for a much shorter length of time—up to 75 days in the future. As generation and usage nears, market participants have a better understanding of actual power supply and needs. As a result, they can modify previously-established hedges with daily contracts, like the SDP contract.

The Commission notes that SP-15 is a major trading point for electricity, and the SPM contract's prices are well regarded in the industry as indicative of the value of power at the SP-15 hub. Accordingly, the Commission believes that it is reasonable to conclude that market participants purchase the data packages that include the SPM contract's prices in substantial part because the SPM contract's prices have particular value to them. Moreover, such prices are consulted on a frequent and recurring basis by industry participants in pricing cash market

transactions. In these circumstances, the SPM contract meets the indirect price reference test.

i. Federal Register Comments:

WGCEF, EPSA, WPTF, FIEG, EEI and ICE stated that no other contract directly references or settles to the SPM contract's price. Moreover, the commenters argued that the underlying cash price series against which the SPM contract is settled (in this case, the average day-ahead peak-hour SP-15 electricity prices over the contract month, which is derived from cash market transactions) is the authentic reference price and not the ICE contract itself. The Commission believes that this interpretation of price reference is too narrow and believes that a cash-settled derivatives contract could meet the price reference criterion if market participants "consult on a frequent and recurring basis" the derivatives contract when pricing forward, fixed-price commitments or other cash-settled derivatives that seek to "lock in" a fixed price for some future point in time to hedge against adverse price movements.

As noted above, the SP-15 hub is a major trading center for electricity in the western United States. Traders, including producers, keep abreast of the prices of the SPM contract when conducting cash deals. These traders look to a competitively determined price as an indication of expected values of electricity at the SP-15 hub when entering into cash market transaction for power, especially those trades that provide for physical delivery in the future. Traders use the ICE SPM contract to hedge cash market positions and transactions, which enhances the SPM contract's price discovery utility. While the SPM contract's settlement prices may not be the only factor influencing spot and forward transactions, natural gas traders consider the ICE price to be a crucial factor in conducting OTC transactions.

In addition, WGCEF and EPSA stated that the publication of price data for the SPM contract price is weak justification for material price reference. Market participants generally do not purchase ICE data sets for one contract's prices, such as those for the SPM contract. Instead, traders are interested in the settlement prices, so the fact that ICE sells the SPM prices as part of a broad package is not conclusive evidence that market participants are buying the ICE data sets because they find the SPM prices have substantial value to them. As noted above, the Commission notes that publication of the SPM contract's prices is indirect evidence of routine dissemination. The SPM contract's prices, while sold as a package, are of

particular interest to market participants. Thus, the Commission has concluded that traders likely specifically purchase the ICE data packages for the SPM contract's prices and consult such prices on a frequent and recurring basis in pricing cash market transactions.

Lastly, EEI argued that the ECM Study did not specifically identify the SPM contract as a contract that is referred to by market participants on a frequent and recurring basis. In response, the Commission notes that it cited the ECM Study's general finding that some ICE electricity contracts appear to be regarded as price discovery markets merely as indication that an investigation of certain ICE contracts may be warranted. The ECM Study was not intended to serve as the sole basis for determining whether or not a particular contract meets the material price reference criterion.

ii. Conclusion Regarding Material Price Reference:

The Commission finds that the ICE SPM contract meets the material price reference criterion because cash market transactions are priced either explicitly or implicitly on a frequent and recurring basis at a differential to the SPM contract's price (direct evidence). Moreover, the SPM contract's price data are sold to market participants, and those individuals likely purchase the ICE data packages specifically for the SPM contract's prices and consult such prices on a frequent and recurring basis in pricing cash market transactions (indirect evidence).

2. Material Liquidity Criterion

As noted above, in its October 6, 2009, **Federal Register** notice, the Commission identified the SPM contract as a potential SPDC based on the material price reference and material liquidity criteria. To assess whether a contract meets the material liquidity criterion, the Commission first examines trading activity as a general measurement of the contract's size and potential importance. If the Commission finds that the contract in question meets a threshold of trading activity that would render it of potential importance, the Commission will then perform a statistical analysis to measure the effect that changes to the subject-contract's prices potentially may have on prices for other contracts listed on an ECM or a DCM.

The total number of transactions executed on ICE's electronic platform in the SPM contract was 3,235 in the second quarter of 2009, resulting in a daily average of 50.5 trades. During the same period, the SPM contract had a

²⁰ In addition to referencing ICE prices, firms participating in the SP-15 power market may rely on other cash market quotes as well as industry publications and price indices that are published by third-party price reporting firms in entering into power transactions.

²¹ The SDP contract is cash settled based on the arithmetic average of peak-hour, day-ahead LMPs posted by CAISO for the SP-15 EZ Gen hub for all peak hours on the day prior to generation. The LMPs are derived from power trades that result in physical delivery. The size of the SDP contract is 400 MWh, and the SDP contract is listed for 75 consecutive calendar days.

total trading volume of 143,717 contracts and an average daily trading volume of 2,245.6 contracts. Moreover, open interest as of June 30, 2009, was 460,583 contracts, which included trades executed on ICE's electronic trading platform, as well as trades executed off of ICE's electronic trading platform and then brought to ICE for clearing. In this regard, ICE does not differentiate between open interest created by a transaction executed on its trading platform and that created by a transaction executed off its trading platform.²²

In a subsequent filing dated March 24, 2010, ICE reported that total trading volume in the fourth quarter of 2009 was 311,819 contracts (or 4,797.2 contracts on a daily basis). In terms of number of transactions, 6,199 trades occurred in the fourth quarter of 2009 (95.4 trades per day). As of December 31, 2009, open interest in the SPM contract was 622,503 contracts, which included trades executed on ICE's electronic trading platform, as well as trades executed off of ICE's electronic trading platform and then brought to ICE for clearing.

The number of trades per day was substantial between the second and fourth quarters of 2009. In addition, trading activity in the SPM contract, as characterized by total quarterly volume, indicates that the SPM contract experiences trading activity that is greater than that of thinly-traded futures markets.²³ Thus, it is reasonable to infer that the SPM contract could have a material effect on other ECM contracts or on DCM contracts.

To measure the effect that the SPM contract potentially could have on another ECM contract staff performed a statistical analysis²⁴ using daily

settlement prices (between July 1, 2008 and December 31, 2009) for the ICE SPM and OFP contracts. The simulation suggest that, on average over the sample period, a one percent rise in the SPM contract's price elicited a 0.7 percent increase in ICE OFP contract's price.

i. Federal Register Comments:

ICE and WGCEF stated that the SPM contract lacks a sufficient number of trades to meet the material liquidity criterion. These two commenters, along with WPTF, EPSA, FIEG and EEI argued that the SPM contract cannot have a material effect on other contracts, such as those listed for trading by the New York Mercantile Exchange ("NYMEX"), a DCM. The commenters pointed out that it is not possible for the SPM contract to affect a DCM contract because price linkage and the potential for arbitrage do not exist. The DCM contracts do not cash settle to the SPM contract's price. Instead, the DCM contracts and the SPM contract are both cash settled based on physical transactions, which neither the ECM or the DCM contracts can influence. The Commission's statistical analysis shows that changes in the ICE SPM contract's price significantly influences the prices of other ECM contracts (namely, the OFP contract).

WGCEF and ICE noted that the Commission's Guidance had posited concepts of liquidity that generally assumed a fairly constant stream of prices throughout the trading day, and noted that the relatively low number of trades per day in the SPM contract did not meet this standard of liquidity. The Commission observes that a continuous stream of prices would indeed be an indication of liquidity for certain markets but the Guidance also notes that "quantifying the levels of immediacy and price concession that would define material liquidity may differ from one market or commodity to another."²⁵

ICE opined that the Commission "seems to have adopted a five trade per day test for material liquidity." To the contrary, the Commission adopted a five trades-per-day threshold as a reporting requirement to enable it to "independently be aware of ECM contracts that may develop into SPDCs"²⁶ rather than solely relying upon an ECM on its own to identify any

hypothesis that power prices in the same market affect each other. The prices of ICE's SPM and OFP contracts are positively related to each other in a cointegrating relationship and display a high level of statistical strength. On average, during the sample period, each percentage rise in SPM contract's price elicited a 0.7 percent rise in OFP contract's price.

²⁵ Guidance, *supra*.

²⁶ 73 FR 75892 (December 12, 2008).

such potential SPDCs to the Commission. Thus, any contract that meets this threshold may be subject to scrutiny as a potential SPDC; however, the contract will not be found to be a SPDC merely because it met the reporting threshold.

ICE argued that the statistics provided by ICE were misinterpreted and misapplied by the Commission. In particular, ICE stated that the volume figures used in the Commission's analysis (cited above) "include trades made in all months" as well as in strips of contract months. ICE suggested that a more appropriate method of determining liquidity is to examine the activity in a single traded month of a given contract.²⁷ It is the Commission's opinion that liquidity, as it pertains to the SPM contract, is typically a function of trading activity in particular lead months and, given sufficient liquidity in such months, the ICE SPM contract itself would be considered liquid. ICE's analysis of its own trade data confirms this to be the case for the SPM contract, and thus, the Commission believes that it applied the statistical data cited above in an appropriate manner for gauging material liquidity.

ii. Conclusion Regarding Material Liquidity:

For the reasons discussed above, the Commission finds that the SPM satisfies the material liquidity criterion. Specifically, there is sufficient trading activity in the SPM contract to have a material effect on "other agreements, contracts or transactions listed for trading on or subject to the rules of a designated contract market...or an electronic trading facility operating in reliance on the exemption in section 2(h)(3) of the Act."

²⁷ In addition, ICE stated that the trades-per-day statistics that it provided to the Commission in its quarterly filing and which were cited in the Commission's October 6, 2009, **Federal Register** notice includes 2(h)(1) transactions, which were not completed on the electronic trading platform and should not be considered in the SPDC determination process. The Commission staff asked ICE to review the data it sent in its quarterly filings; ICE confirmed that the volume data it provided and which the Commission cited includes only transaction data executed on ICE's electronic trading platform. As noted above, supplemental data supplied by ICE confirmed that block trades are in addition to the trades that were conducted on the electronic platform; block trades comprise about 66 percent of all transactions in the SPM contract (as of the fourth quarter of 2009). Commission acknowledges that the open interest information it provided in its October 6, 2009, **Federal Register** notice includes transactions made off the ICE platform. However, once open interest is created, there is no way for ICE to differentiate between "on-exchange" versus "off-exchange" created positions, and all such positions are fungible with one another and may be offset in any way agreeable to the position holder regardless of how the position was initially created.

²² 74 FR 51264 (October 6, 2009).

²³ Staff has advised the Commission that in its experience, a thinly-traded contract is, generally, one that has a quarterly trading volume of 100,000 contracts or less. In this regard, in the third quarter of 2009, physical commodity futures contracts with trading volume of 100,000 contracts or fewer constituted less than one percent of total trading volume of all physical commodity futures contracts.

²⁴ Specifically, Commission staff econometrically estimated a cointegrated vector autoregression (CVAR) model using daily settlement prices. CVAR methods permit a dichotomization of the data relationships into long run equilibrium components (called the cointegration space or cointegrating relationships) and a short run component. A CVAR model was chosen over the more traditional vector autoregression model in levels because the statistical properties of the data (lack of stationarity and ergodicity) precluded the more traditional modeling treatment. Moreover, the statistical properties of the data necessitated the modeling of the contracts' prices as a CVAR model containing both first differences (to handle stationarity) and an error-correction term to capture long run equilibrium relationships. The prices were treated as a single reduced-form model in order to test

3. Overall Conclusion Regarding the SPM Contract

After considering the entire record in this matter, including the comments received, the Commission has determined that the ICE SPM contract performs a significant price discovery function under two of the four criteria established in section 2(h)(7) of the CEA. Specifically, the Commission has determined that the SPM contract meets the material price reference and material liquidity criteria at this time. Accordingly, the Commission is issuing the attached Order declaring that the SPM contract is a SPDC.

Issuance of this Order signals the immediate effectiveness of the Commission's authorities with respect to ICE as a registered entity in connection with its SPM contract,²⁸ and triggers the obligations, requirements—both procedural and substantive—and timetables prescribed in Commission rule 36.3(c)(4) for ECMs.

b. The SP-15 Financial Day-Ahead LMP Off-Peak (OFP) Contract and the SPDC Indicia

The OFP contract is cash settled based on the arithmetic average of off-peak hour, day-ahead LMPs posted by CAISO for the SP-15 EZ Gen hub for all peak hours during the contract month. The LMPs are derived from power trades that result in physical delivery. The size of the OFP contract is 25 MWh, and the SPM contract is listed for up to 86 calendar months.

In general, electricity is bought and sold in an auction setting on an hourly basis at various points along the electrical grid. An LMP associated with a specific hour is derived as a volume-weighted average price of all of the transactions where electricity is to be supplied and consumed during that hour.

Electricity is traded in a day-ahead market as well as a real-time market. Typically, the bulk of energy transactions occur in the day-ahead market. The day-ahead market establishes prices for electricity that is to be delivered during the specified hour on the following day. Day-ahead prices are determined based on generation and energy transaction quotes offered in advance. Because power quotes are dependent on estimates of supply and demand, electricity needs usually are not perfectly satisfied in the day-ahead market. Consequently, on the day the electricity is transmitted and used, auction participants typically realize

that they bought or sold either too much power or too little power. A real-time auction is operated to alleviate this problem by serving as a balancing mechanism. Specifically, electricity traders use the real-time market to sell excess electricity and buy additional power to meet demand. Only a relatively small amount of electricity is traded in the real-time market as compared to the day-ahead market.

Path 15 is an 84-mile portion of the north-south power transmission corridor in California, forming part of the Pacific AC Intertie and the California-Oregon Transmission Project.²⁹ Path 15, along with the Pacific DC Intertie running far to the east, completes an important transmission interconnection between the hydroelectric plants to the north and the fossil fuel plants to the south. Path 15 currently consists of three lines at 500 kilovolts (“kV”) and four lines at 230 kV.³⁰ The 500 kV lines connect Los Banos to Gates (two lines) and Los Banos to Midway (one line); all four 230 kV lines have Gates at one end with the other ends terminating at the Panoche #1, Panoche #2, Gregg, or McCall substations. “NP-15” refers to the northern half of Path 15; conversely, “SP-15” refers to the lower half of Path 15.

When the weather is hot in California and the Desert Southwest, it is comparatively cool in the Pacific Northwest. Conversely, when the weather is cold in the Pacific Northwest

it is comparatively warm in California and the Desert Southwest. Consumers on the West Coast take advantage of seasonal weather differences to share large amounts of power between the Desert Southwest and the Pacific Northwest. In the spring and summer, when generators (mostly hydroelectric plants) generally have surplus power in the Northwest and temperatures climb in the Southwest, power is shipped south to help meet increasing power demand, particularly for air conditioning. Conversely in the winter, when generators in the Southwest generally have surplus power and temperatures drop in the Northwest, power is shipped north to meet increasing electricity demand, particularly for heating.

CAISO is charged with operating the high-voltage grid in California. Because CAISO's service area is basically the entire state of California, it is responsible for serving millions of businesses and households, particularly in the Los Angeles and San Francisco areas. CAISO's current mission is to ensure the efficient and reliable operation of the power grid, provide fair and open transmission access, promote environmental stewardship, facilitate effective markets, promote infrastructure development and support the timely and accurate dissemination of information. CAISO is also responsible for operating the hourly auctions in which the power is traded and publishing the LMP data on its Web site.

1. Material Price Reference Criterion

The Commission's October 6, 2009, **Federal Register** notice identified the OFP contract as a potential SPDC based on the material price reference and material liquidity criteria. The Commission considered the fact that ICE sells its price data to market participants in a number of different packages which vary in terms of the hubs covered, time periods, and whether the data are daily only or historical. For example, ICE offers the “West Power of Day” package with access to all price data or just current prices plus a selected number of months (*i.e.*, 12, 24, 36 or 48 months) of historical data. This package includes price data for the OFP contract.

The Commission also noted that its October 2007 ECM Study found that in general, market participants view ICE as a price discovery market for certain electricity contracts. The study did not specify which markets performed this function; nevertheless, the Commission determined that the OFP contract, while not mentioned by name in the ECM Study, warranted further review.

²⁹ The Pacific Intertie comprises three alternating current AC lines and one direct current DC line. Together, these lines comprise the largest single electricity transmission program in the United States. The northern end of the DC line is at the Bonneville Power Administration's Celilo Converter Station, which is just south of The Dalles Dam about 90 miles east of Portland. The southern end is 846 miles away at the Sylmar Converter Station on the northern outskirts of Los Angeles. That station is operated by utilities including LADWP and Southern California Edison. The AC lines follow generally the same path but terminate in Northern California. Only a few parties actually own the Intertie, but numerous entities have contracts to share its transmission capacity. The California-Oregon border is a dividing line for Intertie ownership and capacity sharing. Depending on seasonal conditions, the Intertie is capable of transmitting up to 7,900 MW–4,800 MW of AC power (1,600 MW of this amount is in the California-Oregon Transmission Project, also known as the Third AC Line) and 3,100 MW of DC power. Over the past five years, the limit has ranged between about 6,300 MW and 7,900 MW. Most of the power transmitted on the Intertie is surplus to regional needs, but some firm power also is transmitted. See <http://www.nwccouncil.org/LIBRARY/2001/2001-11.pdf>.

³⁰ The third 500 kV line was installed between 2003 and 2004 in order to relieve constraints on the existing north-south transmission lines. This capacity constraint contributed to the California energy crisis in 2000 and 2001. See <http://www.wapa.gov/sn/ops/transmission/path15/factSheet.pdf>.

²⁸ See 73 FR 75888, 75893 (Dec. 12, 2008).

The Commission explains in its Guidance to the statutory criteria that in evaluating a contract under the material price reference criterion, it will rely on one of two sources of evidence—direct or indirect—to determine that the price of a contract was being used as a material price reference and therefore, serving a significant price discovery function.³¹ With respect to direct evidence, the Commission will consider the extent to which, on a frequent and recurring basis, cash market bids, offers or transactions are directly based on or quoted at a differential to, the prices generated on the ECM in question. Direct evidence may be established when cash market participants are quoting bid or offer prices or entering into transactions at prices that are set either explicitly or implicitly at a differential to prices established for the contract in question. Cash market prices are set explicitly at a differential to the section 2(h)(3) contract when, for instance, they are quoted in dollars and cents above or below the reference contract's price. Cash market prices are set implicitly at a differential to a section 2(h)(3) contract when, for instance, they are arrived at after adding to, or subtracting from the section 2(h)(3) contract, but then quoted or reported at a flat price. With respect to indirect evidence, the Commission will consider the extent to which the price of the contract in question is being routinely disseminated in widely distributed industry publications—or offered by the ECM itself for some form of remuneration—and consulted on a frequent and recurring basis by industry participants in pricing cash market transactions.

The SP-15 power market is a major pricing center for electricity on the West Coast. Traders, including producers, keep abreast of the electricity prices in the SP-15 power market when conducting cash deals. These traders look to a competitively determined price as an indication of expected values of power at the SP-15 hub when entering into cash market transaction for electricity, especially those trades providing for physical delivery in the future. Traders use the OFP contract, as well as other ICE power contracts, to hedge cash market positions and transactions—activities which enhance the OFP contract's price discovery utility. The substantial volume of trading and open interest in the OFP contract appear to attest to its use for this purpose. While the OFP contract's settlement prices may not be the only factor influencing spot and forward

transactions, electricity traders consider the ICE price to be a critical factor in conducting OTC transactions.³² In these circumstances, the OFP contract satisfies the direct price reference test.

The fact that ICE's OFP monthly contract is used more widely as a source of pricing information rather than the daily contract (*i.e.*, the SQP contract)³³ is further evidence of direct price reference. In this regard, OFP contract prices power at the SP-15 hub up to six years into the future. Thus, market participants can use the OFP contract to lock-in electricity prices far into the future. Traders use monthly power contracts like the OFP contract to price future power electricity commitments, where such commitments are based on long range forecasts of power supply and demand. In contrast, the SQP contract is listed for a much shorter length of time—up to 38 days in the future. As generation and usage nears, market participants have a better understanding of actual power supply and needs. As a result, they can modify previously-established hedges with daily contracts, like the SQP contract.

The Commission notes that SP-15 is a major trading point for electricity, and the OFP contract's prices are well regarded in the industry as indicative of the value of power at the SP-15 hub. Accordingly, the Commission believes that it is reasonable to conclude that market participants purchase the data packages that include the OFP contract's prices in substantial part because the SPM contract's prices have particular value to them. Moreover, such prices are consulted on a frequent and recurring basis by industry participants in pricing cash market transactions. In light of the above, the OFP contract satisfies the indirect price reference test.

i. Federal Register Comments:

WGCEF, EPSPA, WPTF, FIEG, EEI and ICE stated that no other contract directly references or settles to the OFP contract's price. Moreover, the commenters argued that the underlying cash price series against which the SPM contract is settled (in this case, the average day-ahead peak-hour SP-15 electricity prices over the contract

month, which is derived from cash market transactions) is the authentic reference price and not the ICE contract itself. The Commission believes that this interpretation of price reference is too narrow and believes that a cash-settled derivatives contract could meet the price reference criterion if market participants "consult on a frequent and recurring basis" the derivatives contract when pricing forward, fixed-price commitments or other cash-settled derivatives that seek to "lock in" a fixed price for some future point in time to hedge against adverse price movements.

As noted above, the SP-15 hub is a major trading center for electricity in the western United States. Traders, including producers, keep abreast of the prices of the OFP contract when conducting cash deals. These traders look to a competitively determined price as an indication of expected values of electricity at the SP-15 hub when entering into cash market transactions for power, especially those trades that provide for physical delivery in the future. Traders use the ICE OFP contract to hedge cash market positions and transactions, which enhances the OFP contract's price discovery utility. While the OFP contract's settlement prices may not be the only factor influencing spot and forward transactions, natural gas traders consider the ICE price to be a crucial factor in conducting OTC transactions.

In addition, WGCEF and EPSPA stated that the publication of price data for the OFP contract price is weak justification for material price reference. Market participants generally do not purchase ICE data sets for one contract's prices, such as those for the OFP contract. Instead, traders are interested in the settlement prices, so the fact that ICE sells the OFP prices as part of a broad package is not conclusive evidence that market participants are buying the ICE data sets because they find the OFP prices have substantial value to them. As noted above, the Commission notes that publication of the OFP contract's prices is indirect evidence of routine dissemination. The OFP contract's prices, while sold as a package, are of particular interest to market participants. Thus, the Commission has concluded that traders likely purchase the ICE data packages specifically for the OFP contract's prices and consult such prices on a frequent and recurring basis in pricing cash market transactions.

Lastly, EEI argued that the ECM Study did not specifically identify the OFP contract as a contract that is referred to by market participants on a frequent and recurring basis. The Commission notes

³¹ 17 CFR 36, Appendix A.

³² In addition to referencing ICE prices, firms participating in the SP-15 power market may rely on other cash market quotes as well as industry publications and price indices that are published by third-party price reporting firms in entering into power transactions.

³³ The SDP contract is cash settled based on the arithmetic average of peak-hour, day-ahead LMPs posted by CAISO for the SP-15 EZ Gen hub for all peak hours on the day prior to generation. The LMPs are derived from power trades that result in physical delivery. The size of the SDP contract is 400 MWh, and the SDP contract is listed for 75 consecutive calendar days.

that it cited the ECM Study's general finding that some ICE electricity contracts appear to be regarded as price discovery markets merely as indication that an investigation of certain ICE contracts may be warranted. The ECM Study was not intended to serve as the sole basis for determining whether or not a particular contract meets the material price reference criterion.

ii. Conclusion Regarding Material Price Reference:

The Commission finds that the ICE OFP contract meets the material price reference criterion because cash market transactions are priced either explicitly or implicitly on a frequent and recurring basis at a differential to the OFP contract's price (direct evidence). Moreover, the OFP contract's price data are sold to market participants, and those individuals likely purchase the ICE data packages specifically for the OFP contract's prices and consult such prices on a frequent and recurring basis in pricing cash market transactions (indirect evidence).

2. Material Liquidity Criterion

As noted above, in its October 6, 2009, **Federal Register** notice, the Commission identified the OFP contract as a potential SPDC based on the material price reference and material liquidity criteria. To assess whether a contract meets the material liquidity criterion, the Commission first examines trading activity as a general measurement of the contract's size and potential importance. If the Commission finds that the contract in question meets a threshold of trading activity that would render it of potential importance, the Commission will then perform a statistical analysis to measure the effect that changes to the subject-contract's prices potentially may have on prices for other contracts listed on an ECM or a DCM.

The total number of transactions executed on ICE's electronic platform in the OFP contract was 187 in the second quarter of 2009, resulting in a daily average of 2.9 trades. During the same period, the OFP contract had a total trading volume of 116,559 contracts and an average daily trading volume of 1,793.2 contracts. Moreover, open interest as of June 30, 2009, was 1,408,870 contracts, which included trades executed on ICE's electronic trading platform, as well as trades executed off of ICE's electronic trading platform and then brought to ICE for clearing. In this regard, ICE does not differentiate between open interest created by a transaction executed on its trading platform and that created by a

transaction executed off its trading platform.³⁴

In a subsequent filing dated March 24, 2010, ICE reported that total trading volume in the fourth quarter of 2009 was 406,418 contracts (or 6,252.6 contracts on a daily basis). In terms of number of transactions, 329 trades occurred in the fourth quarter of 2009 (5.1 trades per day). As of December 31, 2009, open interest in the OFP contract was 2,009,556 contracts, which included trades executed on ICE's electronic trading platform, as well as trades executed off of ICE's electronic trading platform and then brought to ICE for clearing.

The number of trades per day during the period between the second and fourth quarters of 2009 was not substantial. However, trading activity in the OFP contract, as characterized by total quarterly volume, indicates that the OFP contract experiences trading activity that is greater than that of thinly-traded futures markets.³⁵ Thus, it is reasonable to infer that the OFP contract could have a material effect on other ECM contracts or on DCM contracts.

To measure the effect that the SPM contract potentially could have on another ECM contract staff performed a statistical analysis³⁶ using daily settlement prices (between July 1, 2008 and December 31, 2009) for the ICE SPM and OFP contracts. The simulation suggest that, on average over the sample period, a one percent rise in the OFP

contract's price elicited a 1.4 percent increase in ICE SPM contract's price.

i. Federal Register Comments:
ICE and WGCEF stated that the OFP contract lacks a sufficient number of trades to meet the material liquidity criterion. These two commenters, along with WPTF, EPSA, FIEG and EEI argued that the OFP contract cannot have a material effect on other contracts, such as those listed for trading by the NYMEX. The commenters pointed out that it is not possible for the OFP contract to affect a DCM contract because price linkage and the potential for arbitrage do not exist. The DCM contracts do not cash settle to the OFP contract's price. Instead, the DCM contracts and the OFP contract are both cash settled based on physical transactions, which neither the ECM or the DCM contracts can influence. The Commission's statistical analysis shows that changes in the ICE OFP contract's price significantly influences the prices of other ECM contracts (namely, the SPM contract).

WGCEF and ICE noted that the Commission's Guidance had posited concepts of liquidity that generally assumed a fairly constant stream of prices throughout the trading day, and noted that the relatively low number of trades per day in the OFP contract did not meet this standard of liquidity. The Commission observes that a continuous stream of prices would indeed be an indication of liquidity for certain markets but the Guidance also notes that "quantifying the levels of immediacy and price concession that would define material liquidity may differ from one market or commodity to another."³⁷

ICE opined that the Commission "seems to have adopted a five trade per day test for material liquidity." To the contrary, the Commission adopted a five trades-per-day threshold as a reporting requirement to enable it to "independently be aware of ECM contracts that may develop into SPDCs"³⁸ rather than solely relying upon an ECM on its own to identify any such potential SPDCs to the Commission. Thus, any contract that meets this threshold may be subject to scrutiny as a potential SPDC; however, the contract will not be found to be a SPDC merely because it met the reporting threshold.

ICE argued that the statistics provided by ICE were misinterpreted and misapplied by the Commission. In particular, ICE stated that the volume figures used in the Commission's analysis (cited above) "include trades

³⁴ 74 FR 51264 (October 6, 2009).

³⁵ Staff has advised the Commission that in its experience, a thinly-traded contract is, generally, one that has a quarterly trading volume of 100,000 contracts or less. In this regard, in the third quarter of 2009, physical commodity futures contracts with trading volume of 100,000 contracts or fewer constituted less than one percent of total trading volume of all physical commodity futures contracts.

³⁶ Specifically, Commission staff econometrically estimated a cointegrated vector autoregression (CVAR) model using daily settlement prices. CVAR methods permit a dichotomization of the data relationships into long run equilibrium components (called the cointegration space or cointegrating relationships) and a short run component. A CVAR model was chosen over the more traditional vector autoregression model in levels because the statistical properties of the data (lack of stationarity and ergodicity) precluded the more traditional modeling treatment. Moreover, the statistical properties of the data necessitated the modeling of the contracts' prices as a CVAR model containing both first differences (to handle stationarity) and an error-correction term to capture long run equilibrium relationships. The prices were treated as a single reduced-form model in order to test the hypothesis that power prices in the same market affect each other. The prices of ICE's SPM and OFP contracts are positively related to each other in a cointegrating relationship and display a high level of statistical strength. On average during the sample period, each percentage rise in OFP contract's price elicited a 1.4 percent rise in SPM contract's price.

³⁷ Guidance, *supra*.

³⁸ 73 FR 75892 (December 12, 2008).

made in all months” as well as in strips of contract months. ICE suggested that a more appropriate method of determining liquidity is to examine the activity in a single traded month of a given contract.”³⁹ It is the Commission’s opinion that liquidity, as it pertains to the SPM contract, is typically a function of trading activity in particular lead months and, given sufficient liquidity in such months, the ICE OFP contract itself would be considered liquid. ICE’s analysis of its own trade data confirms this to be the case for the OFP contract, and thus, the Commission believes that it applied the statistical data cited above in an appropriate manner for gauging material liquidity.

ii. Conclusion Regarding Material Liquidity:

For the reasons discussed above, the Commission finds that the OFP meets the material liquidity criterion. Specifically, there is sufficient trading activity in the OFP contract to have a material effect on “other agreements, contracts or transactions listed for trading on or subject to the rules of a designated contract market * * * or an electronic trading facility operating in reliance on the exemption in section 2(h)(3) of the Act.”

3. Overall Conclusion Regarding the OFP Contract

After considering the entire record in this matter, including the comments received, the Commission has determined that the ICE OFP contract performs a significant price discovery function under the two of the four criteria established in section 2(h)(7) of the CEA. Specifically, the Commission has determined that the OFP contract meets the material price reference and

material liquidity criteria at this time. Accordingly, the Commission is issuing the attached Order declaring that the OFP contract is a SPDC.

Issuance of this Order signals the immediate effectiveness of the Commission’s authorities with respect to ICE as a registered entity in connection with its OFP contract,⁴⁰ and triggers the obligations, requirements—both procedural and substantive—and timetables prescribed in Commission rule 36.3(c)(4) for ECMs.

V. Related Matters

a. Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (“PRA”) ⁴¹ imposes certain requirements on Federal agencies, including the Commission, in connection with their conducting or sponsoring any collection of information as defined by the PRA. Certain provisions of Commission rule 36.3 impose new regulatory and reporting requirements on ECMs, resulting in information collection requirements within the meaning of the PRA. OMB previously has approved and assigned OMB control number 3038–0060 to this collection of information.

b. Cost-Benefit Analysis

Section 15(a) of the CEA ⁴² requires the Commission to consider the costs and benefits of its actions before issuing an order under the Act. By its terms, section 15(a) does not require the Commission to quantify the costs and benefits of an order or to determine whether the benefits of the order outweigh its costs; rather, it requires that the Commission “consider” the costs and benefits of its actions. Section 15(a) further specifies that the costs and benefits shall be evaluated in light of five broad areas of market and public concern: (1) Protection of market participants and the public; (2) efficiency, competitiveness and financial integrity of futures markets; (3) price discovery; (4) sound risk management practices; and (5) other public interest considerations. The Commission may in its discretion give greater weight to any one of the five enumerated areas and could in its discretion determine that, notwithstanding its costs, a particular order is necessary or appropriate to protect the public interest or to effectuate any of the provisions or accomplish any of the purposes of the Act.

When a futures contract begins to serve a significant price discovery

function, that contract, and the ECM on which it is traded, warrants increased oversight to deter and prevent price manipulation or other disruptions to market integrity, both on the ECM itself and in any related futures contracts trading on DCMs. An Order finding that a particular contract is a SPDC triggers this increased oversight and imposes obligations on the ECM calculated to accomplish this goal. The increased oversight engendered by the issue of a SPDC Order increases transparency and helps to ensure fair competition among ECMs and DCMs trading similar products and competing for the same business. Moreover, the ECM on which the SPDC is traded must assume, with respect to that contract, all the responsibilities and obligations of a registered entity under the CEA and Commission regulations. Additionally, the ECM must comply with nine core principles established by section 2(h)(7) of the Act—including the obligation to establish position limits and/or accountability standards for the SPDC. Section 4(i) of the CEA authorize the Commission to require reports for SPDCs listed on ECMs. These increased responsibilities, along with the CFTC’s increased regulatory authority, subject the ECM’s risk management practices to the Commission’s supervision and oversight and generally enhance the financial integrity of the markets.

c. Regulatory Flexibility Act

The Regulatory Flexibility Act (“RFA”) ⁴³ requires that agencies consider the impact of their rules on small businesses. The requirements of CEA section 2(h)(7) and the Part 36 rules affect ECMs. The Commission previously has determined that ECMs are not small entities for purposes of the RFA.⁴⁴ Accordingly, the Chairman, on behalf of the Commission, hereby certifies pursuant to 5 U.S.C. 605(b) that these Orders, taken in connection with section 2(h)(7) of the Act and the Part 36 rules, will not have a significant impact on a substantial number of small entities.

VI. Orders

a. Order Relating to the SP-15 Financial Day-Ahead LMP Peak Contract

After considering the complete record in this matter, including the comment letters received in response to its request for comments, the Commission has determined to issue the following Order:

The Commission, pursuant to its authority under section 2(h)(7) of the

³⁹ In addition, ICE stated that the trades-per-day statistics that it provided to the Commission in its quarterly filing and which were cited in the Commission’s October 6, 2009, **Federal Register** notice includes 2(h)(1) transactions, which were not completed on the electronic trading platform and should not be considered in the SPDC determination process. The Commission staff asked ICE to review the data it sent in its quarterly filings; ICE confirmed that the volume data it provided and which the Commission cited includes only transaction data executed on ICE’s electronic trading platform. As noted above, supplemental data supplied by ICE confirmed that block trades are in addition to the trades that were conducted on the electronic platform; block trades comprise about 79 percent of all transactions in the OFP contract (as of the fourth quarter of 2009). Commission acknowledges that the open interest information it provided in its October 6, 2009, **Federal Register** notice includes transactions made off the ICE platform. However, once open interest is created, there is no way for ICE to differentiate between “on-exchange” versus “off-exchange” created positions, and all such positions are fungible with one another and may be offset in any way agreeable to the position holder regardless of how the position was initially created.

⁴⁰ See 73 FR 75888, 75893 (Dec. 12, 2008).

⁴¹ 44 U.S.C. 3507(d).

⁴² 7 U.S.C. 19(a).

⁴³ 5 U.S.C. 601 *et seq.*

⁴⁴ 66 FR 42256, 42268 (Aug. 10, 2001).

Act, hereby determines that the SP-15 Financial Day-Ahead LMP Peak contract, traded on the IntercontinentalExchange, Inc., satisfies the material price preference and material liquidity criteria for significant price discovery contracts. Consistent with this determination, and effective immediately, the IntercontinentalExchange, Inc., must comply with, with respect to the SP-15 Financial Day-Ahead LMP Peak contract, the nine core principles established by new section 2(h)(7)(C). Additionally, the IntercontinentalExchange, Inc., shall be and is considered a registered entity⁴⁵ with respect to the SP-15 Financial Day-Ahead LMP Peak contract and is subject to all the provisions of the Commodity Exchange Act applicable to registered entities.

Further with respect to the SP-15 Financial Day-Ahead LMP Peak contract, the obligations, requirements and timetables prescribed in Commission rule 36.3(c)(4) governing core principle compliance by the IntercontinentalExchange, Inc., commence with the issuance of this Order.⁴⁶

b. Order Relating to the SP-15 Financial Day-Ahead LMP Off-Peak Contract

After considering the complete record in this matter, including the comment letters received in response to its request for comments, the Commission has determined to issue the following Order:

The Commission, pursuant to its authority under section 2(h)(7) of the Act, hereby determines that the SP-15 Financial Day-Ahead LMP Off-Peak contract, traded on the IntercontinentalExchange, Inc., satisfies the statutory material price reference and material liquidity criteria for significant price discovery contracts. Consistent with this determination, and effective immediately, the IntercontinentalExchange, Inc., must comply with, with respect to the SP-15 Financial Day-Ahead LMP Off-Peak contract, the nine core principles established by new section 2(h)(7)(C). Additionally, the IntercontinentalExchange, Inc., shall be and is considered a registered entity⁴⁷ with respect to the SP-15 Financial

Day-Ahead LMP Off-Peak contract and is subject to all the provisions of the Commodity Exchange Act applicable to registered entities.

Further with respect to the SP-15 Financial Day-Ahead LMP Off-Peak contract, the obligations, requirements and timetables prescribed in Commission rule 36.3(c)(4) governing core principle compliance by the IntercontinentalExchange, Inc., commence with the issuance of this Order.⁴⁸

Issued in Washington, DC, on July 9, 2010, by the Commission.

David A. Stawick,

Secretary of the Commission.

[FR Doc. 2010-17747 Filed 7-20-10; 8:45 am]

BILLING CODE 6351-01-P

COMMODITY FUTURES TRADING COMMISSION

Orders Finding That the PJM WH Real Time Peak Contract and PJM WH Real Time Off-Peak Contract Offered for Trading on the IntercontinentalExchange, Inc., Perform a Significant Price Discovery Function

AGENCY: Commodity Futures Trading Commission.

ACTION: Final orders.

SUMMARY: On October 26, 2009, the Commodity Futures Trading Commission ("CFTC" or "Commission") published for comment in the **Federal Register**¹ a notice of its intent to undertake a determination whether the PJM² WH³ Real Time Peak ("PJM") contract and PJM WH Real Time Off-Peak ("OP") contract,⁴ which are listed for trading on the IntercontinentalExchange, Inc. ("ICE"), an exempt commercial market ("ECM") under sections 2(h)(3)–(5) of the

⁴⁸ Because ICE already lists for trading a contract (*i.e.*, the Henry Financial LD1 Fixed Price contract) that was previously declared by the Commission to be a SPDC, ICE must submit a written demonstration of compliance with the Core Principles within 30 calendar days of the date of this Order. 17 CFR 36.3(c)(4).

¹ 74 FR 54966 (October 26, 2009).

² The acronym "PJM" stands for Pennsylvania New Jersey Maryland Interconnection, LLC ("PJM Interconnection"), and signifies the regional electricity transmission organization ("RTO") that coordinates the generation and distribution of electricity in all or parts of 13 states and the District of Columbia.

³ The acronym "WH" signifies the PJM's Western Hub.

⁴ The **Federal Register** notice also requested comment on the PJM WH Real Time Peak Daily ("PDP") contract, PJM WH Day Ahead LMP Peak Daily ("PDA") contract and PJM WH Real Time Off-Peak Daily ("ODP") contract. Those contracts will be addressed in a separate **Federal Register** release.

Commodity Exchange Act ("CEA" or the "Act"), perform a significant price discovery function pursuant to section 2(h)(7) of the CEA. The Commission undertook this review based upon an initial evaluation of information and data provided by ICE as well as other available information. The Commission has reviewed the entire record in this matter, including all comments received, and has determined to issue orders finding that the PJM and OPJ contracts perform a significant price discovery function. Authority for this action is found in section 2(h)(7) of the CEA and Commission rule 36.3(c) promulgated thereunder.

DATES: *Effective Date:* July 9, 2010.

FOR FURTHER INFORMATION CONTACT:

Gregory K. Price, Industry Economist, Division of Market Oversight, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW., Washington, DC 20581. *Telephone:* (202) 418-5515. *E-mail:* gprice@cftc.gov; or Susan Nathan, Senior Special Counsel, Division of Market Oversight, same address. *Telephone:* (202) 418-5133. *E-mail:* snathan@cftc.gov.

SUPPLEMENTARY INFORMATION:

I. Introduction

The CFTC Reauthorization Act of 2008 ("Reauthorization Act")⁵ significantly broadened the CFTC's regulatory authority with respect to ECMs by creating, in section 2(h)(7) of the CEA, a new regulatory category—ECMs on which significant price discovery contracts ("SPDCs") are traded—and treating ECMs in that category as registered entities under the CEA.⁶ The legislation authorizes the CFTC to designate an agreement, contract or transaction as a SPDC if the Commission determines, under criteria established in section 2(h)(7), that it performs a significant price discovery function. When the Commission makes such a determination, the ECM on which the SPDC is traded must assume, with respect to that contract, all the responsibilities and obligations of a registered entity under the Act and Commission regulations, and must comply with nine core principles established by new section 2(h)(7)(C).

On March 16, 2009, the CFTC promulgated final rules implementing the provisions of the Reauthorization Act.⁷ As relevant here, rule 36.3

⁵ Incorporated as Title XIII of the Food, Conservation and Energy Act of 2008, Public Law No. 110-246, 122 Stat. 1624 (June 18, 2008).

⁶ 7 U.S.C. 1a(29).

⁷ 74 FR 12178 (Mar. 23, 2009); these rules became effective on April 22, 2009.

⁴⁵ 7 U.S.C. 1a(29).

⁴⁶ Because ICE already lists for trading a contract (*i.e.*, the Henry Financial LD1 Fixed Price contract) that was previously declared by the Commission to be a SPDC, ICE must submit a written demonstration of compliance with the Core Principles within 30 calendar days of the date of this Order. 17 CFR 36.3(c)(4).

⁴⁷ 7 U.S.C. 1a(29).

imposes increased information reporting requirements on ECMs to assist the Commission in making prompt assessments whether particular ECM contracts may be SPDCs. In addition to filing quarterly reports of its contracts, an ECM must notify the Commission promptly concerning any contract traded in reliance on the exemption in section 2(h)(3) of the CEA that averaged five trades per day or more over the most recent calendar quarter, and for which the exchange sells its price information regarding the contract to market participants or industry publications, or whose daily closing or settlement prices on 95 percent or more of the days in the most recent quarter were within 2.5 percent of the contemporaneously determined closing, settlement or other daily price of another contract.

Commission rule 36.3(c)(3) established the procedures by which the Commission makes and announces its determination whether a particular ECM contract serves a significant price discovery function. Under those procedures, the Commission will publish notice in the **Federal Register** that it intends to undertake an evaluation whether the specified agreement, contract or transaction performs a significant price discovery function and to receive written views, data and arguments relevant to its determination from the ECM and other interested persons. Upon the close of the comment period, the Commission will consider, among other things, all relevant information regarding the subject contract and issue an order announcing and explaining its determination whether or not the contract is a SPDC. The issuance of an affirmative order signals the effectiveness of the Commission's regulatory authorities over an ECM with respect to a SPDC; at that time such an ECM becomes subject to all provisions of the CEA applicable to registered entities.⁸ The issuance of such an order also triggers the obligations, requirements and timetables prescribed in Commission rule 36.3(c)(4).⁹

II. Notice of Intent To Undertake SPDC Determination

On October 26, 2009, the Commission published in the **Federal Register** notice of its intent to undertake a determination whether the PJM and OPJ contracts¹⁰ perform a significant price discovery function and requested comment from interested parties.¹¹ Comments were received from PJM Interconnection, Federal Energy Regulatory Commission ("FERC"), Electric Power Supply Association ("EPSA"), Financial Institutions Energy Group ("FIEG"), Edison Electric Institute ("EEI"), ICE and Public Utility Commission of Texas ("PUCT").¹² The comment letters from PJM Interconnection,¹³ FERC¹⁴ and PUCT

¹⁰ As noted above, the **Federal Register** notice also requested comment on the PJM WH Real Time Peak Daily ("PDP") contract, PJM WH Day Ahead LMP Peak Daily ("PDA") contract and PJM WH Real Time Off-Peak Daily ("ODP") contract. Those contracts will be addressed in a separate **Federal Register** release.

¹¹ The Commission's Part 36 rules establish, among other things, procedures by which the Commission makes and announces its determination whether a specific ECM contract serves a significant price discovery function. Under those procedures, the Commission publishes a notice in the **Federal Register** that it intends to undertake a determination whether a specified agreement, contract or transaction performs a significant price discovery function and to receive written data, views and arguments relevant to its determination from the ECM and other interested persons.

¹² PJM Interconnection, as noted above, is the RTO that coordinates the generation and distribution of electricity in all or parts of 13 states and the District of Columbia. FERC is an independent federal regulatory agency that, among other things, regulates the interstate transmission of natural gas, oil and electricity. EPSA describes itself as the "national trade association representing competitive power suppliers, including generators and marketers." FIEG describes itself as an association of investment and commercial banks who are active participants in various sectors of the natural gas markets, "including acting as marketers, lenders, underwriters of debt and equity securities, and proprietary investors." EEI is the "association of shareholder-owned electric companies, international affiliates and industry associates worldwide." ICE is an ECM, as noted above. PUCT is the independent organization that oversees the Electric Reliability Council of Texas ("ERCOT") to "ensure nondiscriminatory access to the transmission and distribution systems, to ensure the reliability and adequacy of the regional electrical network, and to perform other essential market functions." The comment letters are available on the Commission's Web site: <http://www.cftc.gov/lawandregulation/federalregister/federalregistercomments/2009/09-032.html>.

¹³ PJM Interconnection stated that it "takes no position as to whether the ICE [contracts] * * * perform significant price discovery functions."

¹⁴ FERC expressed the opinion that a determination by the Commission that any of the subject contracts performs a significant price discovery function "would not appear to conflict with FERC's exclusive jurisdiction under the Federal Power Act (FPA) over the transmission or sale for resale of electric energy in interstate commerce or with its other regulatory responsibilities under the FPA" and further that

did not directly address the issue of whether or not the subject contracts are SPDCs. The remaining comment letters raised substantive issues with respect to the applicability of section 2(h)(7) to the subject contracts and generally expressed the opinion that the contracts are not SPDCs because they do not meet the material price reference or material liquidity criteria for SPDC determination. These comments are more extensively discussed below, as applicable.

III. Section 2(h)(7) of the CEA

The Commission is directed by section 2(h)(7) of the CEA to consider the following criteria in determining a contract's significant price discovery function:

- **Price Linkage**—the extent to which the agreement, contract or transaction uses or otherwise relies on a daily or final settlement price, or other major price parameter, of a contract or contracts listed for trading on or subject to the rules of a designated contract market ("DCM") or derivatives transaction execution facility ("DTEF"), or a SPDC traded on an electronic trading facility, to value a position, transfer or convert a position, cash or financially settle a position, or close out a position.

- **Arbitrage**—the extent to which the price for the agreement, contract or transaction is sufficiently related to the price of a contract or contracts listed for trading on or subject to the rules of a DCM or DTEF, or a SPDC traded on or subject to the rules of an electronic trading facility, so as to permit market participants to effectively arbitrage between the markets by simultaneously maintaining positions or executing trades in the contracts on a frequent and recurring basis.

- **Material price reference**—the extent to which, on a frequent and recurring basis, bids, offers or transactions in a commodity are directly based on, or are determined by referencing or consulting, the prices generated by agreements, contracts or transactions being traded or executed on the electronic trading facility.

- **Material liquidity**—the extent to which the volume of agreements, contracts or transactions in a commodity being traded on the electronic trading facility is sufficient to have a material effect on other agreements, contracts or transactions

"FERC staff will monitor proposed SPDC determinations and advise the CFTC of any potential conflicts with FERC's exclusive jurisdiction over RTOs, [(regional transmission organizations)], ISOs [(independent system operators)] or other jurisdictional entities."

⁸ Public Law 110-246 at 13203; *Joint Explanatory Statement of the Committee of Conference*, H.R. Rep. No. 110-627, 110 Cong., 2d Sess. 978, 986 (Conference Committee Report). See also 73 FR 75888, 75894 (Dec. 12, 2008).

⁹ For an initial SPDC, ECMs have a grace period of 90 calendar days from the issuance of a SPDC determination order to submit a written demonstration of compliance with the applicable core principles. For subsequent SPDCs, ECMs have a grace period of 30 calendar days to demonstrate core principle compliance.

listed for trading on or subject to the rules of a DCM, DTEF or electronic trading facility operating in reliance on the exemption in section 2(h)(3).

Not all criteria must be present to support a determination that a particular contract performs a significant price discovery function, and one or more criteria may be inapplicable to a particular contract.¹⁵ Moreover, the statutory language neither prioritizes the criteria nor specifies the degree to which a SPDC must conform to the various criteria. In Guidance issued in connection with the Part 36 rules governing ECMs with SPDCs, the Commission observed that these criteria do not lend themselves to a mechanical checklist or formulaic analysis. Accordingly, the Commission has indicated that in making its determinations it will consider the circumstances under which the presence of a particular criterion, or combination of criteria, would be sufficient to support a SPDC determination.¹⁶ For example, for contracts that are linked to other contracts or that may be arbitrated with other contracts, the Commission will consider whether the price of the potential SPDC moves in such harmony with the other contract that the two markets essentially become interchangeable. This co-movement of prices would be an indication that activity in the contract had reached a level sufficient for the contract to perform a significant price discovery function. In evaluating a contract's price discovery role as a price reference, the Commission the extent to which, on a frequent and recurring basis, bids, offers or transactions are directly based on, or are determined by referencing, the prices established for the contract.

IV. Findings and Conclusions

The Commission's findings and conclusions with respect to the PJM and OPJ contracts are discussed separately below.

a. The PJM WH Real Time Peak (PJM) Contract and the SPDC Indicia

The PJM contract is cash settled based on the arithmetic average of peak-hour, real-time locational marginal prices ("LMPs")¹⁷ published by PJM

Interconnection for its Western Hub for all peak hours during the contract month. The hourly LMPs are derived from power trades that result in physical delivery. The size of the PJM contract is 800 megawatt hours ("MWh"), and the PJM contract is listed for 110 calendar months.

In general, electricity is bought and sold in an auction setting on an hourly basis at various point along the electrical grid. An LMP associated with a specific hour is calculated as the volume-weighted average price of all of the transactions where electricity is to be supplied and consumed during that hour.

Electricity is traded in a day-ahead market as well as a real-time market. The day-ahead market establishes prices for electricity that is to be delivered during the specified hour on the following day. Day-ahead prices are determined based on generation and energy transaction quotes offered in advance. Because the offers and bids are dependent on estimates of supply and demand, electricity needs usually are not perfectly satisfied in the day-ahead market. In this regard, on the day the electricity is transmitted and used, auction participants typically realize that they bought or sold either too much power or too little power. A real-time auction is operated to alleviate this problem by serving as a balancing mechanism. Specifically, electricity traders use the real-time market to sell excess electricity and buy additional power to meet demand.

PJM Interconnection is an RTO that coordinates the movement of wholesale electricity in all or parts of Delaware, Illinois, Indiana, Kentucky, Maryland, Michigan, New Jersey, North Carolina, Ohio, Pennsylvania, Tennessee, Virginia, West Virginia and the District of Columbia. PJM Interconnection's transmission network is the largest centrally-dispatched grid in North America. PJM Interconnection dispatches about 163,500 MW of generating capacity over 56,350 miles of transmission lines and serves more than 51 million customers. The RTO's members, totaling more than 500, include power generators, transmission owners, electricity distributors, power marketers and large consumers.

PJM Interconnection is responsible for operating a competitive wholesale electricity market as well as maintaining the reliability of the grid. The RTO acts as a neutral, independent party, and its activities are regulated by FERC. The

company coordinates the continuous buying, selling and delivery of wholesale electricity through robust, open and competitive spot markets. In operating the markets, PJM balances the needs of suppliers, wholesale customers and other market participants, and it continuously monitors market behavior.

Electricity is priced at individual points along the transmission network called nodes. An electric grid has many interconnections or buses. RTOs group certain buses together to form hubs, which do not necessarily follow along state lines or geographic boundaries. Power also is priced at the hub level and serves as a basis for trading electricity. PJM Interconnection has 11 hubs, including AEP GEN, AEP-Dayton, Chicago GEN, Chicago, Dominion, Eastern, Northern Illinois, New Jersey, Ohio, West INT and Western Hub.¹⁸ The Western Hub is basket of 109 buses that stretch all the way from Erie, PA, to Washington, DC.¹⁹

1. Material Price Reference Criterion

The Commission's October 26, 2009, **Federal Register** notice identified the PJM contract as a potential SPDC based on the material price reference and material liquidity criteria. The Commission considered the fact that ICE sells its price data to market participants in a number of different packages which vary in terms of the hubs covered, time periods, and whether the data are daily only or historical. For example, ICE offers the "East Power of Day" package with access to all price data or just current prices plus a selected number of months (i.e., 12, 24, 36 or 48 months) of historical data. This package includes price data for the PJM contract.

The Commission also noted that its October 2007 *Report on the Oversight of Trading on Regulated Futures Exchanges and Exempt Commercial Markets* ("ECM Study") found that in general, market participants view ICE as a price discovery market for certain electricity contracts. The study did not specify which markets performed this function; nevertheless, the Commission determined that the PJM contract, while not mentioned by name in the ECM Study, warranted further review.

The Commission explains in its Guidance to the statutory criteria that in evaluating a contract under the material price reference criterion, it will rely on one of two sources of evidence—direct or indirect—to determine that the price of a contract was being used as a

¹⁵ In its October 26, 2009, **Federal Register** release, the Commission identified material price reference and material liquidity as the possible criteria for SPDC determination of the PJM and OPJ contracts. Arbitrage and price linkage were not identified as possible criteria. As a result, arbitrage and price linkage will not be discussed further in this document and the associated Orders.

¹⁶ 17 CFR 36, Appendix A.

¹⁷ An LMP represents the additional cost associated with producing an incremental amount

of electricity. LMPs account for generation costs, congestion along the transmission lines, and electricity loss.

¹⁸ <http://www.ferc.gov/market-oversight/mkt-electric/pjm.asp>.

¹⁹ <http://www.ferc.gov/market-oversight/mkt-electric/pjm/2010/05-2010-elec-pjm-archive.pdf>.

material price reference and therefore, serving a significant price discovery function.²⁰ With respect to direct evidence, the Commission will consider the extent to which, on a frequent and recurring basis, cash market bids, offers or transactions are directly based on or quoted at a differential to, the prices generated on the ECM in question. Direct evidence may be established when cash market participants are quoting bid or offer prices or entering into transactions at prices that are set either explicitly or implicitly at a differential to prices established for the contract in question. Cash market prices are set explicitly at a differential to the section 2(h)(3) contract when, for instance, they are quoted in dollars and cents above or below the reference contract's price. Cash market prices are set implicitly at a differential to a section 2(h)(3) contract when, for instance, they are arrived at after adding to, or subtracting from the section 2(h)(3) contract, but then quoted or reported at a flat price. With respect to indirect evidence, the Commission will consider the extent to which the price of the contract in question is being routinely disseminated in widely distributed industry publications—or offered by the ECM itself for some form of remuneration—and consulted on a frequent and recurring basis by industry participants in pricing cash market transactions.

The PJM Western hub is a major pricing center for electricity in the eastern portion of the United States. Traders, including producers, keep abreast of the electricity prices at PJM's Western Hub when conducting cash deals. These traders look to a competitively determined price as an indication of expected values of power at the Western Hub when entering into cash market transaction for electricity, especially those trades providing for physical delivery in the future. Furthermore, power prices in other neighboring markets, such as New York ISO's Zone A (Western New York), Zone G (Hudson Valley region) and Zone J (New York City) as well as Midwest ISO's Cinergy hub are typically based implicitly relative to the prices reported for PJM Interconnection's Western hub. Traders use the ICE PJM contract, as well as other ICE power contracts, to hedge cash market positions and transactions—activities which enhance the PJM contract's price discovery utility. The substantial volume of trading and open interest in the PJM contract appears to attest to its use for this purpose. While the PJM contract's

settlement prices may not be the only factor influencing spot and forward transactions, electricity traders consider the ICE price to be a critical factor in conducting OTC transactions.²¹ In these circumstances, the PJM contract satisfies the direct price reference test.

The fact that ICE's PJM monthly contract is used more widely as a source of pricing information than the daily contract (*i.e.*, the "PDP" contract)²² bolsters the argument that it serves as a direct price reference. In this regard, PJM contract prices power at the Western hub up to almost ten years into the future. Thus, market participants can use the PJM contract to lock in electricity prices far into the future. Traders use monthly power contracts like the PJM contract to price future power electricity commitments, where such commitments are based on long-range forecasts of power supply and demand. In contrast, the PDP contract is listed for a much shorter length of time—up to 38 days in the future. As generation and usage nears, market participants have a better understanding of actual power supply and needs. As a result, they can modify previously-established hedges with daily contracts, like the PDP contract.

The Commission notes that the Western hub is a major trading point for electricity, and that the PJM contract's prices are well regarded in the industry as indicative of the value of power at the Western hub. Accordingly, the Commission believes that it is reasonable to conclude that market participants purchase the data packages that include the PJM contract's prices in substantial part because the PJM contract's prices have particular value to them. Moreover, such prices are consulted on a frequent and recurring basis by industry participants in pricing cash market transactions. In light of the above, the PJM contract also meets the indirect price reference test.

The New York Mercantile Exchange ("NYMEX") lists a futures contract on its ClearPort platform—the PJM Western Hub Peak Calendar-Month Real-Time LMP Swap futures contract—that is comparable to the ICE PJM contract.

²¹ In addition to referencing ICE prices, firms participating in PJM's Western hub power market may rely on other cash market quotes as well as industry publications and price indices that are published by third-party price reporting firms in entering into power transactions.

²² The PDP contract is cash settled based on the arithmetic average of peak-hour, real-time LMPs posted by PJM for the Western hub for all peak hours on the day of generation. The LMPs are derived from power trades that result in physical delivery. The size of the SDP contract is 800 MWh, and the PDP contract is listed for 38 consecutive calendar days.

However, unlike the ICE contract, none of the trades in the NYMEX version are executed in NYMEX's centralized marketplace; instead, all of the transactions originate as bilateral swaps that are submitted to NYMEX for clearing. The daily settlement prices of NYMEX's monthly, peak-hour Western hub contract are influenced, in part, by the daily settlement prices of the ICE PJM contract. NYMEX determines the daily settlement prices for its power contracts through a survey of cash market voice brokers. Voice brokers, in turn, refer to the ICE PJM price, among other information, as an important indicator as to where the market is trading. In this manner, the ICE PJM price influences the settlement price for the NYMEX monthly, peak-hour Western hub power contract. This conclusion is supported by an analysis of the daily settlement prices for the PJM contract and the NYMEX equivalent which indicates that 81 percent of the daily settlement prices²³ for the NYMEX version of the contract are within one standard deviation of the PJM contract's price settlement prices.

i. Federal Register Comments:

EPSA, FIEG, EEI and ICE stated that no other contract directly references or settles to the PJM contract's price. Moreover, the commenters argued that the underlying cash price series against which the PJM contract is settled²⁴ is the authentic reference price and not the ICE contract itself. Commission staff believes that this interpretation of price reference is too narrow and believes that a cash-settled derivatives contract could meet the price reference criterion if market participants "consult [the derivatives contract] on a frequent and recurring basis" when pricing forward, fixed-price commitments or other cash-settled derivatives that seek to "lock in" a fixed price for some future point in time to hedge against adverse price movements.

As noted above, PJM's Western hub is a major trading center for electricity in the eastern United States. Traders, including producers, keep abreast of the prices of the PJM contract when conducting cash deals. These traders look to a competitively determined price as an indication of expected values of electricity at the Western hub when entering into cash market transaction for power, especially those trades that provide for physical delivery in the future. Traders use the ICE PJM

²³ The price data covered the period December 2008 through December 2009.

²⁴ In this case, the average of the real-time peak-hour Western hub electricity prices over the contract month, which are derived from cash market transactions.

²⁰ 17 CFR 36, Appendix A.

contract to hedge cash market positions and transactions, which enhances the PJM contract's price discovery utility. While the PJM contract's settlement prices may not be the only factor influencing spot and forward transactions, natural gas traders consider the ICE price to be a crucial factor in conducting OTC transactions.

In addition, EPSA stated that the publication of price data for the PJM contract price is a weak justification for material price reference because market participants generally do not purchase ICE data sets for one contract's prices, such as those for the PJM contract. Instead, traders are interested in the settlement prices, so the fact that ICE sells the PJM prices as part of a broad package is not conclusive evidence that market participants are buying the ICE data sets because they find the PJM prices have substantial value. As noted above, the Commission recognizes that publication of the PJM contract's prices is indirect evidence of routine dissemination. Thus, the Commission has concluded that traders likely purchase the ICE data packages specifically for the PJM contract's prices and consult such prices on a frequent and recurring basis in pricing cash market transactions.

Lastly, ICE and EEI criticized the ECM Study since it did not specifically identify the PJM contract as a contract that is referred to by market participants on a frequent and recurring basis. In response, the Commission notes that it cited the ECM Study's general finding that some ICE electricity contracts appear to be regarded as price discovery markets merely as indication that an investigation of certain ICE contracts may be warranted. The ECM Study was not intended to serve as the sole basis for determining whether or not a particular contract meets the material price reference criterion.

ii. Conclusion Regarding Material Price Reference:

The Commission finds that the ICE PJM contract meets the material price reference criterion because cash market transactions are priced either explicitly or implicitly on a frequent and recurring basis at a differential to the PJM contract's price (direct evidence). Moreover, the PJM contract's price data are sold to market participants, and those individuals likely purchase the ICE data packages specifically for the PJM contract's prices and consult such prices on a frequent and recurring basis in pricing cash market transactions (indirect evidence).

2. Material Liquidity Criterion

In its October 26, 2009, **Federal Register** notice, the Commission identified the PJM contract as a potential SPDC based on the material price reference and material liquidity criteria. To assess whether a contract meets the material liquidity criterion, the Commission first examines trading activity as a general measurement of the contract's size and potential importance. If the Commission finds that the contract in question meets a threshold of trading activity that would render it of potential importance, the Commission will then perform a statistical analysis to measure the effect that changes to the subject-contract's prices potentially may have on prices for other contracts listed on an ECM or a DCM.

The Commission's Guidance to the statutory criteria (Appendix A to Part 36) notes that "[t]raditionally, objective measures of trading such as volume or open interest have been used as measures of liquidity." In this regard, the total number of transactions executed on ICE's electronic platform in the PJM contract was 7,990 in the second quarter of 2009, resulting in a daily average of 124.8 trades. During the same period, the PJM contract had a total trading volume of 268,489 contracts and an average daily trading volume of 4,195.1 contracts. Moreover, open interest as of June 30, 2009, was 318,788 contracts, which included trades executed on ICE's electronic trading platform, as well as trades executed off of ICE's electronic trading platform and then brought to ICE for clearing. In this regard, ICE does not differentiate between open interest created by a transaction executed on its trading platform and that created by a transaction executed off its trading platform.²⁵

In a subsequent filing dated March 24, 2010, ICE reported that total trading volume in the fourth quarter of 2009 was 371,885 contracts (or 5,721.3 contracts on a daily basis). In terms of number of transactions, 9,913 trades occurred in the fourth quarter of 2009 (152.5 trades per day). As of December 31, 2009, open interest in the PJM contract was 344,754 contracts, which included trades executed on ICE's electronic trading platform, as well as trades executed off of ICE's electronic trading platform and then brought to ICE for clearing.

The number of trades per day was substantial during the period between the second and fourth quarters of 2009.

In addition, trading activity in the PJM contract, as characterized by total quarterly volume, indicates that the PJM contract experiences trading activity that is greater than that of thinly-traded futures markets.²⁶ Thus, it is reasonable to infer that the PJM contract could have a material effect on other ECM contracts or on DCM contracts.

To measure the effect that the PJM contract potentially could have on another ECM contract staff performed a statistical analysis²⁷ using daily settlement prices (between July 1, 2008 and December 31, 2009) for the ICE PJM and OPJ contracts. The simulation suggest that, on average over the sample period, a one percent rise in the PJM contract's price elicited a 2.15 percent increase in ICE OPJ contract's price.

i. Federal Register Comments:

ICE stated that the PJM contract lacks a sufficient number of trades to meet the material liquidity criterion. Along with EPSA and EEI, ICE argued that the PJM contract cannot have a material effect on DCM contracts or other ECM contracts because these other contracts do not cash settle to the PJM contract's price. Instead, the DCM contracts and the PJM contract are both cash settled based on physical transactions, which neither the ECM or the DCM contracts can influence. The Commission's statistical analysis shows that changes in the ICE PJM contract's price significantly influences the prices of other ECM contracts (namely, the OPJ contract). In this regard, a one-percent rise in the PJM contract's price leads to a 2.15 percent rise in OPJ contract's price.

²⁶ Staff has advised the Commission that in its experience, a thinly-traded contract is, generally, one that has a quarterly trading volume of 100,000 contracts or less. In this regard, in the third quarter of 2009, physical commodity futures contracts with trading volume of 100,000 contracts or fewer constituted less than one percent of total trading volume of all physical commodity futures contracts.

²⁷ Specifically, Commission staff econometrically estimated a cointegrated vector autoregression (CVAR) model using daily settlement prices. CVAR methods permit a dichotomization of the data relationships into long run equilibrium components (called the cointegration space or cointegrating relationships) and a short run component. A CVAR model was chosen over the more traditional vector autoregression model in levels because the statistical properties of the data (lack of stationarity and ergodicity) precluded the more traditional modeling treatment. Moreover, the statistical properties of the data necessitated the modeling of the contracts' prices as a CVAR model containing both first differences (to handle stationarity) and an error-correction term to capture long run equilibrium relationships. The prices were treated as a single reduced-form model in order to test hypothesis that power prices in the same market affect each other. The prices of ICE's PJM and OPJ contracts are positively related to each other in a cointegrating relationship and display a high level of statistical strength. On average during the sample period, each percentage rise in PJM contract's price elicited a 2.15 percent rise in OPJ contract's price.

²⁵ 74 FR 54966 (October 26, 2009).

ICE noted that the Commission's Guidance had posited concepts of liquidity that generally assumed a fairly constant stream of prices throughout the trading day, and noted that the relatively low number of trades per day in the PJM contract did not meet this standard of liquidity. The Commission observes that a continuous stream of prices would indeed be an indication of liquidity for certain markets but the Guidance also notes that "quantifying the levels of immediacy and price concession that would define material liquidity may differ from one market or commodity to another."²⁸

ICE opined that the Commission "seems to have adopted a five trade per day test for material liquidity." To the contrary, the Commission adopted a five trades-per-day threshold as a reporting requirement to enable it to "independently be aware of ECM contracts that may develop into SPDCs"²⁹ rather than solely relying upon an ECM on its own to identify any such potential SPDCs to the Commission. Thus, any contract that meets this threshold may be subject to scrutiny as a potential SPDC; however, the contract will not be found to be a SPDC merely because it met the reporting threshold.

ICE argued that the statistics provided by ICE were misinterpreted and misapplied by the Commission. In particular, ICE stated that the volume figures used in the Commission's analysis (cited above) "include trades made in all months" as well as in strips of contract months. ICE suggested that a more appropriate method of determining liquidity is to examine the activity in a single traded month of a given contract."³⁰ It is the Commission's

opinion that liquidity, as it pertains to the PJM contract, is typically a function of trading activity in particular lead months and, given sufficient liquidity in such months, the ICE PJM contract itself would be considered liquid. ICE's analysis of its own trade data confirms this to be the case for the PJM contract, and thus, the Commission believes that it applied the statistical data cited above in an appropriate manner for gauging material liquidity.

ii. Conclusion Regarding Material Liquidity:

For the reasons discussed above, the Commission finds that the PJM contract meets the material liquidity criterion. Specifically, there is sufficient trading activity in the PJM contract to have a material effect on "other agreements, contracts or transactions listed for trading on or subject to the rules of a designated contract market * * * or an electronic trading facility operating in reliance on the exemption in section 2(h)(3) of the Act" (that is, an ECM).

3. Overall Conclusion Regarding the PJM Contract

After considering the entire record in this matter, including the comments received, the Commission has determined that the ICE PJM contract performs a significant price discovery function under two of the four criteria established in section 2(h)(7) of the CEA. Specifically, the Commission has determined that the PJM contract meets the material price reference and material liquidity criteria at this time. Accordingly, the Commission is issuing the attached Order declaring that the PJM contract is a SPDC.

Issuance of this Order signals the immediate effectiveness of the Commission's authorities with respect to ICE as a registered entity in connection with its PJM contract,³¹ and triggers the obligations, requirements—both procedural and substantive—and timetables prescribed in Commission rule 36.3(c)(4) for ECMs.

b. The PJM WH Real Time Off-Peak (OPJ) Contract and the SPDC Indicia

The OPJ contract is cash settled based on the arithmetic average of off-peak hour, real-time LMPs published by PJM Interconnection for its Western Hub for all off-peak hours during the contract month. The hourly LMPs are derived from power trades that result in physical delivery. The size of the OPJ contract is 50 MWh, and the OPJ

contract is listed for up to 86 calendar months.

In general, electricity is bought and sold in an auction setting on an hourly basis at various points along the electrical grid. An LMP associated with a specific hour is calculated as the volume-weighted average price of all of the transactions where electricity is to be supplied and consumed during that hour.

Electricity is traded in a day-ahead market as well as a real-time market. The day-ahead market establishes prices for electricity that is to be delivered during the specified hour on the following day. Day-ahead prices are determined based on generation and energy transaction quotes offered in advance. Because the offers and bids are dependent on estimates of supply and demand, electricity needs usually are not perfectly satisfied in the day-ahead market. In this regard, on the day the electricity is transmitted and used, auction participants typically realize that they bought or sold either too much power or too little power. A real-time auction is operated to alleviate this problem by serving as a balancing mechanism. Specifically, electricity traders use the real-time market to sell excess electricity and buy additional power to meet demand.

PJM Interconnection is an RTO that coordinates the movement of wholesale electricity in all or parts of Delaware, Illinois, Indiana, Kentucky, Maryland, Michigan, New Jersey, North Carolina, Ohio, Pennsylvania, Tennessee, Virginia, West Virginia and the District of Columbia. PJM Interconnection's transmission network is the largest centrally dispatched grid in North America. PJM Interconnection dispatches about 163,500 MW of generating capacity over 56,350 miles of transmission lines and serves more than 51 million customers. The RTO's members, totaling more than 500, include power generators, transmission owners, electricity distributors, power marketers and large consumers.

PJM Interconnection is responsible for operating a competitive wholesale electricity market as well as maintaining the reliability of the grid. The RTO acts as a neutral, independent party, and its activities are monitored by FERC. The company coordinates the continuous buying, selling and delivery of wholesale electricity through robust, open and competitive spot markets. In operating the markets, PJM balances the needs of suppliers, wholesale customers and other market participants, and it continuously monitors market behavior.

Electricity is priced at individual points along the transmission network

²⁸ Guidance, *supra*.

²⁹ 73 FR 75892 (December 12, 2008).

³⁰ In addition, ICE stated that the trades-per-day statistics that it provided to the Commission in its quarterly filing and which were cited in the Commission's October 26, 2009, **Federal Register** notice includes 2(h)(1) transactions, which were not completed on the electronic trading platform and should not be considered in the SPDC determination process. The Commission staff asked ICE to review the data it sent in its quarterly filings; ICE confirmed that the volume data it provided and which the Commission cited includes only transaction data executed on ICE's electronic trading platform. As noted above, supplemental data supplied by ICE confirmed that block trades are in addition to the trades that were conducted on the electronic platform; block trades comprise about 49 percent of all transactions in the PJM contract (as of the fourth quarter of 2009). Commission acknowledges that the open interest information it provided in its October 26, 2009, **Federal Register** notice includes transactions made off the ICE platform. However, once open interest is created, there is no way for ICE to differentiate between "on-exchange" versus "off-exchange" created positions, and all such positions are fungible with one another and may be offset in any

way agreeable to the position holder regardless of how the position was initially created.

³¹ See 73 FR 75888, 75893 (Dec. 12, 2008).

called nodes. An electric grid has many interconnections or buses. RTOs group certain buses together to form hubs for pricing and trading purposes, and these hubs do not necessarily follow along state lines or geographic boundaries. Power also is priced at the hub level and serves as a basis for trading electricity. PJM Interconnection has 11 hubs, including AEP GEN, AEP-Dayton, Chicago GEN, Chicago, Dominion, Eastern, Northern Illinois, New Jersey, Ohio, West INT and Western Hub.³² The Western Hub is a basket of 109 buses that stretch all the way from Erie, PA, to Washington, DC.³³

1. Material Price Reference Criterion

The Commission's October 26, 2009, **Federal Register** notice identified the OPJ contract as a potential SPDC based on the material price reference and material liquidity criteria. The Commission considered the fact that ICE sells its price data to market participants in a number of different packages which vary in terms of the hubs covered, time periods, and whether the data are daily only or historical. For example, ICE offers the "East Power of Day" package with access to all price data or just current prices plus a selected number of months (*i.e.*, 12, 24, 36 or 48 months) of historical data. This package includes price data for the OPJ contract.

The Commission also noted that its October 2007 ECM Study found that in general, market participants view ICE as a price discovery market for certain electricity contracts. The study did not specify which markets performed this function; nevertheless, the Commission determined that the OPJ contract, while not mentioned by name in the ECM Study, warranted further review.

The Commission explains in its Guidance to the statutory criteria that in evaluating a contract under the material price reference criterion, it will rely on one of two sources of evidence—direct or indirect—to determine that the price of a contract was being used as a material price reference and therefore, serving a significant price discovery function.³⁴ With respect to direct evidence, the Commission will consider the extent to which, on a frequent and recurring basis, cash market bids, offers or transactions are directly based on or quoted at a differential to, the prices generated on the ECM in question. Direct evidence may be established when cash market participants are

quoting bid or offer prices or entering into transactions at prices that are set either explicitly or implicitly at a differential to prices established for the contract in question. Cash market prices are set explicitly at a differential to the section 2(h)(3) contract when, for instance, they are quoted in dollars and cents above or below the reference contract's price. Cash market prices are set implicitly at a differential to a section 2(h)(3) contract when, for instance, they are arrived at after adding to, or subtracting from the section 2(h)(3) contract, but then quoted or reported at a flat price. With respect to indirect evidence, the Commission will consider the extent to which the price of the contract in question is being routinely disseminated in widely distributed industry publications—or offered by the ECM itself for some form of remuneration—and consulted on a frequent and recurring basis by industry participants in pricing cash market transactions.

PJM's Western hub is a major pricing center for electricity in the eastern portion of the United States. Traders, including producers, keep abreast of the electricity prices at PJM's Western hub when conducting cash deals. These traders look to a competitively determined price as an indication of expected values of power at the Western hub when entering into cash market transactions for electricity, especially those trades providing for physical delivery in the future. Furthermore, power prices in other neighboring markets, such as New York ISO's Zone A (Western New York), Zone G (Hudson Valley region) and Zone J (New York City) as well as Midwest ISO's Cinergy hub, are typically based implicitly relative to the prices reported for PJM Interconnection's Western hub. Traders use the ICE OPJ contract, as well as other ICE power contracts, to hedge cash market positions and transactions—activities which enhance the OPJ contract's price discovery utility. The substantial volume of trading and open interest in the OPJ contract appears to attest to its use for this purpose. While the OPJ contract's settlement prices may not be the only factor influencing spot and forward transactions, electricity traders consider the ICE price to be a critical factor in conducting OTC transactions.³⁵ As a result, the OPJ

contract satisfies the direct price reference test.

The fact that ICE's OPJ monthly contract is used widely as a source of pricing information is further evidence of direct price reference. In this regard, OPJ contract prices power at the Western hub about seven years into the future. Thus, market participants can use the OPJ contract to lock-in electricity prices far into the future. Traders use monthly power contracts like the OPJ contract to price future power electricity commitments, where such commitments are based on long-range forecasts of power supply and demand.

The Commission notes that the Western hub is a major trading point for electricity, and the OPJ contract's prices are well regarded in the industry as indicative of the value of off-peak power at the Western hub. Accordingly, the Commission believes that it is reasonable to conclude that market participants purchase the data packages that include the OPJ contract's prices in substantial part because the OPJ contract's prices have particular value to them. Moreover, such prices are consulted on a frequent and recurring basis by industry participants in pricing cash market transactions. In light of the above, the OPJ contract meets the indirect price reference test.

NYMEX lists a futures contract that is comparable to the ICE OPJ contract on its ClearPort platform called the PJM Western Hub Off-Peak Calendar-Month Real-Time LMP Swap futures contract. However, unlike the ICE contract, none of the trades in the NYMEX version are executed in NYMEX's centralized marketplace; instead, all of the transactions originate as bilateral swaps that are submitted to NYMEX for clearing. The daily settlement prices of NYMEX's monthly, off-peak hour Western hub contract are influenced, in part, by the daily settlement prices of the ICE OPJ contract. This is because NYMEX determines the daily settlement prices for its power contracts through a survey of cash market voice brokers. Voice brokers, in turn, refer to the ICE OPJ price, among other information, as an important indicator as to where the market is trading. Therefore, the ICE OPJ price influences the settlement price for the NYMEX monthly, off-peak hour Western hub power contract. This conclusion is supported by an analysis of the daily settlement prices for the OPJ contract and the NYMEX equivalent which demonstrates that 94 percent of the daily settlement prices³⁶ for the

³² <http://www.ferc.gov/market-oversight/mkt-electric/pjm.asp>.

³³ <http://www.ferc.gov/market-oversight/mkt-electric/pjm/2010/05-2010-elec-pjm-archive.pdf>.

³⁴ 17 CFR 36, Appendix A.

³⁵ In addition to referencing ICE prices, firms participating in PJM's Western hub power market may rely on other cash market quotes as well as industry publications and price indices that are published by third-party price reporting firms in entering into power transactions.

³⁶ The price data covered the period December 2008 through December 2009.

NYMEX version of the contract are within one standard deviation of the OPJ contract's price settlement prices.

i. Federal Register Comments:

EPSA, FIEG, EEI and ICE stated that no other contract directly references or settles to the OPJ contract's price. Moreover, the commenters argued that the underlying cash price series against which the OPJ contract is settled (in this case, the average of the real-time off-peak hour Western Hub electricity prices over the contract month, which are derived from cash market transactions) is the authentic reference price and not the ICE contract itself. The Commission believes that this interpretation of price reference is too narrow and believes that a cash-settled derivatives contract could meet the price reference criterion if market participants "consult on a frequent and recurring basis" the derivatives contract when pricing forward, fixed-price commitments or other cash-settled derivatives that seek to "lock in" a fixed price for some future point in time to hedge against adverse price movements.

PJM's Western hub is a major trading center for electricity in the eastern United States. Traders, including producers, keep abreast of the prices of the OPJ contract when conducting cash deals. These traders look to a competitively determined price as an indication of expected values of electricity at the Western hub when entering into cash market transaction for power, especially those trades that provide for physical delivery in the future. Traders use the ICE OPJ contract to hedge cash market positions and transactions, which enhances the OPJ contract's price discovery utility. While the OPJ contract's settlement prices may not be the only factor influencing spot and forward transactions, power traders consider the ICE price to be a crucial factor in conducting OTC transactions.

In addition, EPSA stated that the publication of price data for the OPJ contract price is weak justification for material price reference. Market participants generally do not purchase ICE data sets for one contract's prices. Instead, traders are interested in the settlement prices, so the fact that ICE sells the OPJ prices as part of a broad package is not conclusive evidence that market participants are buying the ICE data sets because the OPJ prices have substantial value to them. The Commission notes that publication of the OPJ contract's prices is indirect evidence of routine dissemination. Thus, the Commission has concluded that traders likely specifically purchase the ICE data packages for the OPJ contract's prices and consult such prices

on a frequent and recurring basis in pricing cash market transactions.

Lastly, ICE and EEI criticized the Commission's reliance on the ECM Study since it did not specifically identify the OPJ contract as a contract that is referred to by market participants on a frequent and recurring basis. The Commission notes that it cited the ECM Study's general finding that some ICE electricity contracts appear to be regarded as price discovery markets merely as indication that an investigation of certain ICE contracts may be warranted. The ECM Study was not intended to serve as the sole basis for determining whether or not a particular contract meets the material price reference criterion.

ii. Conclusion Regarding Material Price Reference:

The Commission finds that the ICE OPJ contract meets the material price reference criterion because cash market transactions are priced either explicitly or implicitly on a frequent and recurring basis at a differential to the OPJ contract's price (direct evidence). Moreover, the OPJ contract's price data are sold to market participants, and those individuals likely purchase the ICE data packages specifically for the OPJ contract's prices and consult such prices on a frequent and recurring basis in pricing cash market transactions (indirect evidence).

2. Material Liquidity Criterion

As noted above, in its October 26, 2009, **Federal Register** notice, the Commission identified the OPJ contract as a potential SPDC based on the material price reference and material liquidity criteria. To assess whether a contract meets the material liquidity criterion, the Commission first examines trading activity as a general measurement of the contract's size and potential importance. If the Commission finds that the contract in question meets a threshold of trading activity that would render it of potential importance, the Commission will then perform a statistical analysis to measure the effect that changes to the subject-contract's prices potentially may have on prices for other contracts listed on an ECM or a DCM.

The Commission's Guidance (Appendix A to Part 36) notes that "[t]raditionally, objective measures of trading such as volume or open interest have been used as measures of liquidity." in this regard, the total number of transactions executed on ICE's electronic platform in the OPJ contract was 437 in the second quarter of 2009, resulting in a daily average of 6.8 trades. During the same period, the

OPJ contract had a total trading volume of 325,799 contracts and an average daily trading volume of 5,090.6 contracts. Moreover, open interest as of June 30, 2009, was 2,976,492 contracts, which included trades executed on ICE's electronic trading platform, as well as trades executed off of ICE's electronic trading platform and then brought to ICE for clearing. In this regard, ICE does not differentiate between open interest created by a transaction executed on its trading platform and that created by a transaction executed off its trading platform.³⁷

In a subsequent filing dated March 24, 2010, ICE reported that total trading volume in the fourth quarter of 2009 was 622,984 contracts (or 9,584.4 contracts on a daily basis). In terms of number of transactions, 456 trades occurred in the fourth quarter of 2009 (7.0 trades per day). As of December 31, 2009, open interest in the OPJ contract was 3,293,899 contracts, which included trades executed on ICE's electronic trading platform, as well as trades executed off of ICE's electronic trading platform and then brought to ICE for clearing.

The number of trades per day was substantial during the period between the second and fourth quarters of 2009. In addition, trading activity in the OPJ contract, as characterized by total quarterly volume, indicates that the OPJ contract experiences trading activity that is greater than that of thinly-traded futures markets.³⁸ Thus, it is reasonable to infer that the OPJ contract could have a material effect on other ECM contracts or on DCM contracts.

To measure the effect that the PJM contract could have on another ECM contract staff performed a statistical analysis³⁹ using daily settlement prices

³⁷ 74 FR 54966 (October 26, 2009).

³⁸ Staff has advised the Commission that in its experience, a thinly-traded contract is, generally, one that has a quarterly trading volume of 100,000 contracts or less. In this regard, in the third quarter of 2009, physical commodity futures contracts with trading volume of 100,000 contracts or fewer constituted less than one percent of total trading volume of all physical commodity futures contracts.

³⁹ Specifically, Commission staff econometrically estimated a cointegrated vector autoregression (CVAR) model using daily settlement prices. CVAR methods permit a dichotomization of the data relationships into long run equilibrium components (called the cointegration space or cointegrating relationships) and a short run component. A CVAR model was chosen over the more traditional vector autoregression model in levels because the statistical properties of the data (lack of stationarity and ergodicity) precluded the more traditional modeling treatment. Moreover, the statistical properties of the data necessitated the modeling of the contracts' prices as a CVAR model containing both first differences (to handle stationarity) and an

(between July 1, 2008 and December 31, 2009) for the ICE PJM and OPJ contracts. The simulation suggests that, on average over the sample period, a one percent rise in the OPJ contract's price elicited a 0.47 percent increase in ICE PJM contract's price.

i. Federal Register Comments:

ICE stated that the OPJ contract lacks a sufficient number of trades to meet the material liquidity criterion. Along with EPSA and EEL, ICE argued that the OPJ contract cannot have a material effect on DCM contracts or other ECM contracts because these other contracts do not cash settle to the OPJ contract's price. Instead, the DCM contracts and the OPJ contract are both cash settled based on physical transactions, which neither the ECM nor the DCM contracts can influence. On the contrary, the Commission's statistical analysis shows that changes in the ICE OPJ contract's price significantly influences the prices of other ECM contracts (namely, the PJM contract). In this regard, a one-percent rise in the OPJ contract's price leads to a 0.47 percent rise in PJM contract's price.

ICE noted that the Commission's Guidance had posited concepts of liquidity that generally assumed a fairly constant stream of prices throughout the trading day, and noted that the relatively low number of trades per day in the OPJ contract did not meet this standard of liquidity. The Commission observes that a continuous stream of prices would indeed be an indication of liquidity for certain markets but the Guidance also notes that "quantifying the levels of immediacy and price concession that would define material liquidity may differ from one market or commodity to another."⁴⁰

ICE opined that the Commission "seems to have adopted a five trade per day test for material liquidity." To the contrary, the Commission adopted a five trades-per-day threshold as a reporting requirement to enable it to "independently be aware of ECM contracts that may develop into SPDCs"⁴¹ rather than solely relying upon an ECM on its own to identify any such potential SPDCs to the Commission. Thus, any contract that meets this threshold may be subject to

scrutiny as a potential SPDC; however, the contract will not be found to be a SPDC merely because it met the reporting threshold.

ICE also argued that the statistics provided by ICE were misinterpreted and misapplied by the Commission. In particular, ICE stated that the volume figures used in the Commission's analysis (cited above) "include trades made in all months" as well as in strips of contract months. ICE suggested that a more appropriate method of determining liquidity is to examine the activity in a single traded month of a given contract.⁴² It is the Commission's opinion that liquidity, as it pertains to the OPJ contract, is typically a function of trading activity in particular lead months and, given sufficient liquidity in such months, the ICE OPJ contract itself would be considered liquid. ICE's analysis of its own trade data confirms this to be the case for the OPJ contract, and thus, the Commission believes that it applied the statistical data cited above in an appropriate manner for gauging material liquidity.

ii. Conclusion Regarding Material Liquidity:

For the reasons discussed above, the Commission finds that the OPJ contract satisfies the material liquidity criterion. Specifically, there is sufficient trading activity in the OPJ contract to have a material effect on "other agreements, contracts or transactions listed for trading on or subject to the rules of a designated contract market * * * or an electronic trading facility operating in reliance on the exemption in section 2(h)(3) of the Act" (that is, an ECM).

⁴² In addition, ICE stated that the trades-per-day statistics that it provided to the Commission in its quarterly filing and which were cited in the Commission's October 26, 2009, **Federal Register** notice includes 2(h)(1) transactions, which were not completed on the electronic trading platform and should not be considered in the SPDC determination process. The Commission staff asked ICE to review the data it sent in its quarterly filings; ICE confirmed that the volume data it provided and which the Commission cited includes only transaction data executed on ICE's electronic trading platform. As noted above, supplemental data supplied by ICE confirmed that block trades are in addition to the trades that were conducted on the electronic platform; block trades comprise about 72 percent of all transactions in the OPJ contract (as of the fourth quarter of 2009). Commission acknowledges that the open interest information it provided in its October 26, 2009, **Federal Register** notice includes transactions made off the ICE platform. However, once open interest is created, there is no way for ICE to differentiate between "on-exchange" versus "off-exchange" created positions, and all such positions are fungible with one another and may be offset in any way agreeable to the position holder regardless of how the position was initially created.

3. Overall Conclusion Regarding the OPJ Contract

After considering the entire record in this matter, including the comments received, the Commission has determined that the ICE OPJ contract performs a significant price discovery function under the two of the four criteria established in section 2(h)(7) of the CEA. Specifically, the Commission has determined that the OPJ contract meets the material price reference and material liquidity criteria. Accordingly, the Commission is issuing the attached Order declaring that the PJM contract is a SPDC.

Issuance of this Order signals the immediate effectiveness of the Commission's authorities with respect to ICE as a registered entity in connection with its OPJ contract,⁴³ and triggers the obligations, requirements—both procedural and substantive—and timetables prescribed in Commission rule 36.3(c)(4) for ECMs.

V. Related Matters

a. Paperwork Reduction Act

The Paperwork Reduction Act of 1995 ("PRA")⁴⁴ imposes certain requirements on Federal agencies, including the Commission, in connection with their conducting or sponsoring any collection of information as defined by the PRA. Certain provisions of Commission rule 36.3 impose new regulatory and reporting requirements on ECMs, resulting in information collection requirements within the meaning of the PRA. OMB previously has approved and assigned OMB control number 3038-0060 to this collection of information.

b. Cost-Benefit Analysis

Section 15(a) of the CEA⁴⁵ requires the Commission to consider the costs and benefits of its actions before issuing an order under the Act. By its terms, section 15(a) does not require the Commission to quantify the costs and benefits of an order or to determine whether the benefits of the order outweigh its costs; rather, it requires that the Commission "consider" the costs and benefits of its actions. Section 15(a) further specifies that the costs and benefits shall be evaluated in light of five broad areas of market and public concern: (1) Protection of market participants and the public; (2) efficiency, competitiveness and financial integrity of futures markets; (3) price discovery; (4) sound risk management practices; and (5) other

⁴³ See 73 FR 75888, 75893 (Dec. 12, 2008).

⁴⁴ 44 U.S.C. 3507(d).

⁴⁵ 7 U.S.C. 19(a).

error-correction term to capture long run equilibrium relationships. The prices were treated as a single reduced-form model in order to test hypothesis that power prices in the same market affect each other. The prices of ICE's PJM and OPJ contracts are positively related to each other in a cointegrating relationship and display a high level of statistical strength. On average during the sample period, each percentage rise in OPJ contract's price elicited a 0.47 percent rise in PJM contract's price.

⁴⁰ Guidance, *supra*.

⁴¹ 73 FR 75892 (December 12, 2008).

public interest considerations. The Commission may in its discretion give greater weight to any one of the five enumerated areas and could in its discretion determine that, notwithstanding its costs, a particular order is necessary or appropriate to protect the public interest or to effectuate any of the provisions or accomplish any of the purposes of the Act.

When a futures contract begins to serve a significant price discovery function, that contract, and the ECM on which it is traded, warrants increased oversight to deter and prevent price manipulation or other disruptions to market integrity, both on the ECM itself and in any related futures contracts trading on DCMs. An Order finding that a particular contract is a SPDC triggers this increased oversight and imposes obligations on the ECM calculated to accomplish this goal. The increased oversight engendered by the issue of a SPDC Order increases transparency and helps to ensure fair competition among ECMs and DCMs trading similar products and competing for the same business. Moreover, the ECM on which the SPDC is traded must assume, with respect to that contract, all the responsibilities and obligations of a registered entity under the CEA and Commission regulations. Additionally, the ECM must comply with nine core principles established by section 2(h)(7) of the Act—including the obligation to establish position limits and/or accountability standards for the SPDC. Section 4(i) of the CEA authorize the Commission to require reports for SPDCs listed on ECMs. These increased responsibilities, along with the CFTC's increased regulatory authority, subject the ECM's risk management practices to the Commission's supervision and oversight and generally enhance the financial integrity of the markets.

c. Regulatory Flexibility Act

The Regulatory Flexibility Act ("RFA")⁴⁶ requires that agencies consider the impact of their rules on small businesses. The requirements of CEA section 2(h)(7) and the Part 36 rules affect ECMs. The Commission previously has determined that ECMs are not small entities for purposes of the RFA.⁴⁷ Accordingly, the Chairman, on behalf of the Commission, hereby certifies pursuant to 5 U.S.C. 605(b) that these Orders, taken in connection with section 2(h)(7) of the Act and the Part 36 rules, will not have a significant

impact on a substantial number of small entities.

VI. Orders

a. Order Relating to the PJM WH Real Time Peak Contract

After considering the complete record in this matter, including the comment letters received in response to its request for comments, the Commission has determined to issue the following Order:

The Commission, pursuant to its authority under section 2(h)(7) of the Act, hereby determines that the PJM WH Real Time Peak contract, traded on the IntercontinentalExchange, Inc., satisfies the material price preference and material liquidity criteria for significant price discovery contracts. Consistent with this determination, and effective immediately, the IntercontinentalExchange, Inc., must comply with, with respect to the PJM WH Real Time Peak contract, the nine core principles established by new section 2(h)(7)(C). Additionally, the IntercontinentalExchange, Inc., shall be and is considered a registered entity⁴⁸ with respect to the PJM WH Real Time Peak contract and is subject to all the provisions of the Commodity Exchange Act applicable to registered entities.

Further with respect to the PJM WH Real Time Peak contract, the obligations, requirements and timetables prescribed in Commission rule 36.3(c)(4) governing core principle compliance by the IntercontinentalExchange, Inc., commence with the issuance of this Order.⁴⁹

b. Order Relating to the PJM WH Real Time Off-Peak Contract

After considering the complete record in this matter, including the comment letters received in response to its request for comments, the Commission has determined to issue the following Order:

The Commission, pursuant to its authority under section 2(h)(7) of the Act, hereby determines that the PJM WH Real Time Off-Peak contract, traded on the IntercontinentalExchange, Inc., satisfies the statutory material price reference and material liquidity criteria for significant price discovery contracts. Consistent with this determination, and effective immediately, the

IntercontinentalExchange, Inc., must comply with, with respect to the PJM WH Real Time Off-Peak contract, the nine core principles established by new section 2(h)(7)(C). Additionally, the IntercontinentalExchange, Inc., shall be and is considered a registered entity⁵⁰ with respect to the PJM WH Real Time Off-Peak contract and is subject to all the provisions of the Commodity Exchange Act applicable to registered entities.

Further with respect to the PJM WH Real Time Off-Peak contract, the obligations, requirements and timetables prescribed in Commission rule 36.3(c)(4) governing core principle compliance by the IntercontinentalExchange, Inc., commence with the issuance of this Order.⁵¹

Issued in Washington, DC, on July 9, 2010, by the Commission.

David A. Stawick,

Secretary of the Commission.

[FR Doc. 2010-17743 Filed 7-20-10; 8:45 am]

BILLING CODE 6351-01-P

COMMODITY FUTURES TRADING COMMISSION

Orders Finding That the PJM WH Real Time Peak Daily Contract, PJM WH Real Time Off-Peak Daily Contract and PJM WH Day Ahead LMP Peak Daily Contract Offered for Trading on the IntercontinentalExchange, Inc., Do Not Perform a Significant Price Discovery Function

AGENCY: Commodity Futures Trading Commission.

ACTION: Final orders.

SUMMARY: On October 26, 2009, the Commodity Futures Trading Commission ("CFTC" or "Commission") published for comment in the **Federal Register**¹ a notice of its intent to undertake a determination whether the PJM² WH³ Real Time Peak Daily

⁵⁰ 7 U.S.C. 1a(29).

⁵¹ Because ICE already lists for trading a contract (*i.e.*, the Henry Financial LD1 Fixed Price contract) that was previously declared by the Commission to be a SPDC, ICE must submit a written demonstration of compliance with the Core Principles within 30 calendar days of the date of this Order. 17 CFR 36.3(c)(4).

¹ 74 FR 54966 (October 26, 2009).

² The acronym "PJM" stands for Pennsylvania New Jersey Maryland Interconnection, LLC ("PJM Interconnection"), and signifies the regional electricity transmission organization ("RTO") that coordinates the generation and distribution of electricity in all or parts of 13 states and the District of Columbia.

³ The acronym "WH" signifies the PJM Interconnection's Western Hub.

⁴⁶ 5 U.S.C. 601 *et seq.*

⁴⁷ 66 FR 42256, 42268 (Aug. 10, 2001).

⁴⁸ 7 U.S.C. 1a(29).

⁴⁹ Because ICE already lists for trading a contract (*i.e.*, the Henry Financial LD1 Fixed Price contract) that was previously declared by the Commission to be a SPDC, ICE must submit a written demonstration of compliance with the Core Principles within 30 calendar days of the date of this Order. 17 CFR 36.3(c)(4).

("PDP") contract, PJM WH Real Time Off-Peak Daily ("ODP") contract and PJM WH Day Ahead LMP Peak Daily ("PDA") contract,⁴ which are listed for trading on the IntercontinentalExchange, Inc. ("ICE"), an exempt commercial market ("ECM") under sections 2(h)(3)–(5) of the Commodity Exchange Act ("CEA" or the "Act"), perform a significant price discovery function pursuant to section 2(h)(7) of the CEA. The Commission undertook this review based upon an initial evaluation of information and data provided by ICE as well as other available information. The Commission has reviewed the entire record in this matter, including all comments received, and has determined to issue orders finding that the PDP, ODP and PDA contracts do not perform a significant price discovery function. Authority for this action is found in section 2(h)(7) of the CEA and Commission rule 36.3(c) promulgated thereunder.

DATES: *Effective Date:* July 9, 2010.

FOR FURTHER INFORMATION CONTACT:

Gregory K. Price, Industry Economist, Division of Market Oversight, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW., Washington, DC 20581. *Telephone:* (202) 418–5515. *E-mail:* gprice@cftc.gov; or Susan Nathan, Senior Special Counsel, Division of Market Oversight, same address. *Telephone:* (202) 418–5133. *E-mail:* snathan@cftc.gov.

SUPPLEMENTARY INFORMATION:

I. Introduction

The CFTC Reauthorization Act of 2008 ("Reauthorization Act")⁵ significantly broadened the CFTC's regulatory authority with respect to ECMs by creating, in section 2(h)(7) of the CEA, a new regulatory category—ECMs on which significant price discovery contracts ("SPDCs") are traded—and treating ECMs in that category as registered entities under the CEA.⁶ The legislation authorizes the CFTC to designate an agreement, contract or transaction as a SPDC if the Commission determines, under criteria established in section 2(h)(7), that it performs a significant price discovery function. When the Commission makes

such a determination, the ECM on which the SPDC is traded must assume, with respect to that contract, all the responsibilities and obligations of a registered entity under the Act and Commission regulations, and must comply with nine core principles established by new section 2(h)(7)(C).

On March 16, 2009, the CFTC promulgated final rules implementing the provisions of the Reauthorization Act.⁷ As relevant here, rule 36.3 imposes increased information reporting requirements on ECMs to assist the Commission in making prompt assessments whether particular ECM contracts may be SPDCs. In addition to filing quarterly reports of its contracts, an ECM must notify the Commission promptly concerning any contract traded in reliance on the exemption in section 2(h)(3) of the CEA that averaged five trades per day or more over the most recent calendar quarter, and for which the exchange sells its price information regarding the contract to market participants or industry publications, or whose daily closing or settlement prices on 95 percent or more of the days in the most recent quarter were within 2.5 percent of the contemporaneously determined closing, settlement or other daily price of another contract.

Commission rule 36.3(c)(3) established the procedures by which the Commission makes and announces its determination whether a particular ECM contract serves a significant price discovery function. Under those procedures, the Commission will publish notice in the **Federal Register** that it intends to undertake an evaluation whether the specified agreement, contract or transaction performs a significant price discovery function and to receive written views, data and arguments relevant to its determination from the ECM and other interested persons. Upon the close of the comment period, the Commission will consider, among other things, all relevant information regarding the subject contract and issue an order announcing and explaining its determination whether or not the contract is a SPDC. The issuance of an affirmative order signals the effectiveness of the Commission's regulatory authorities over an ECM with respect to a SPDC; at that time such an ECM becomes subject to all provisions of the CEA applicable to registered entities.⁸ The issuance of such an order

also triggers the obligations, requirements and timetables prescribed in Commission rule 36.3(c)(4).⁹

II. Notice of Intent To Undertake SPDC Determination

On October 26, 2009, the Commission published in the **Federal Register** notice of its intent to undertake a determination whether the PDP, ODP and PDA contracts¹⁰ perform a significant price discovery function and requested comment from interested parties.¹¹ Comments were received from PJM Interconnection, Federal Energy Regulatory Commission ("FERC"), Electric Power Supply Association ("EPSA"), Financial Institutions Energy Group ("FIEG"), Edison Electric Institute ("EEI"), ICE and Public Utility Commission of Texas ("PUCT").¹² The comment letters from PJM

Rep. No. 110–627, 110 Cong., 2d Sess. 978, 986 (Conference Committee Report). See also 73 FR 75888, 75894 (Dec. 12, 2008).

⁹ For an initial SPDC, ECMs have a grace period of 90 calendar days from the issuance of a SPDC determination order to submit a written demonstration of compliance with the applicable core principles. For subsequent SPDCs, ECMs have a grace period of 30 calendar days to demonstrate core principle compliance.

¹⁰ As noted above, the **Federal Register** notice also requested comment on the PJM WH Real Time Peak ("PJM") contract and PJM WH Real Time Off-Peak ("OPJ") contract. The PJM and OPJ contracts will be addressed in a separate **Federal Register** release.

¹¹ The Commission's Part 36 rules establish, among other things, procedures by which the Commission makes and announces its determination whether a specific ECM contract serves a significant price discovery function. Under those procedures, the Commission publishes a notice in the **Federal Register** that it intends to undertake a determination whether a specified agreement, contract or transaction performs a significant price discovery function and to receive written data, views and arguments relevant to its determination from the ECM and other interested persons.

¹² PJM Interconnection, as noted above, is the RTO that coordinates the generation and distribution of electricity in all or parts of 13 states and the District of Columbia. FERC is an independent federal regulatory agency that, among other things, regulates the interstate transmission of natural gas, oil and electricity. EPSA describes itself as the "national trade association representing competitive power suppliers, including generators and marketers." FIEG describes itself as an association of investment and commercial banks who are active participants in various sectors of the natural gas markets, "including acting as marketers, lenders, underwriters of debt and equity securities, and proprietary investors." EEI is the "association of shareholder-owned electric companies, international affiliates and industry associates worldwide." ICE is an ECM, as noted above. PUCT is the independent organization that oversees the Electric Reliability Council of Texas ("ERCOT") to "ensure nondiscriminatory access to the transmission and distribution systems, to ensure the reliability and adequacy of the regional electrical network, and to perform other essential market functions." The comment letters are available on the Commission's Web site: <http://www.cftc.gov/lawandregulation/federalregister/federalregistercomments/2009/09-032.html>.

⁴ The **Federal Register** notice also requested comment on the PJM WH Real Time Peak ("PJM") contract and PJM WH Real Time Off-Peak ("OPJ") contract; these contracts will be addressed in a separate **Federal Register** release.

⁵ Incorporated as Title XIII of the Food, Conservation and Energy Act of 2008, Public Law 110–246, 122 Stat. 1624 (June 18, 2008).

⁶ 7 U.S.C. 1a(29).

⁷ 74 FR 12178 (Mar. 23, 2009); these rules became effective on April 22, 2009.

⁸ Public Law 110–246 at 13203; *Joint Explanatory Statement of the Committee of Conference*, H.R.

Interconnection,¹³ FERC¹⁴ and PUCT did not directly address the issue of whether or not the subject contracts are SPDCs. The remaining comment letters raised substantive issues with respect to the applicability of section 2(h)(7) to the subject contracts and generally expressed the opinion that the contracts are not SPDCs because they do not meet the material price reference or material liquidity criteria for SPDC determination. These comments are more extensively discussed below, as applicable.

III. Section 2(h)(7) of the CEA

The Commission is directed by section 2(h)(7) of the CEA to consider the following criteria in determining a contract's significant price discovery function:

- *Price Linkage*—the extent to which the agreement, contract or transaction uses or otherwise relies on a daily or final settlement price, or other major price parameter, of a contract or contracts listed for trading on or subject to the rules of a designated contract market (“DCM”) or derivatives transaction execution facility (“DTEF”), or a SPDC traded on an electronic trading facility, to value a position, transfer or convert a position, cash or financially settle a position, or close out a position.
- *Arbitrage*—the extent to which the price for the agreement, contract or transaction is sufficiently related to the price of a contract or contracts listed for trading on or subject to the rules of a DCM or DTEF, or a SPDC traded on or subject to the rules of an electronic trading facility, so as to permit market participants to effectively arbitrage between the markets by simultaneously maintaining positions or executing trades in the contracts on a frequent and recurring basis.
- *Material price reference*—the extent to which, on a frequent and recurring basis, bids, offers or transactions in a commodity are directly based on, or are determined by referencing or consulting, the prices generated by

agreements, contracts or transactions being traded or executed on the electronic trading facility.

- *Material liquidity*—the extent to which the volume of agreements, contracts or transactions in a commodity being traded on the electronic trading facility is sufficient to have a material effect on other agreements, contracts or transactions listed for trading on or subject to the rules of a DCM, DTEF or electronic trading facility operating in reliance on the exemption in section 2(h)(3).

Not all criteria must be present to support a determination that a particular contract performs a significant price discovery function, and one or more criteria may be inapplicable to a particular contract.¹⁵ Moreover, the statutory language neither prioritizes the criteria nor specifies the degree to which a SPDC must conform to the various criteria. In Guidance issued in connection with the Part 36 rules governing ECMs with SPDCs, the Commission observed that these criteria do not lend themselves to a mechanical checklist or formulaic analysis. Accordingly, the Commission has indicated that in making its determinations it will consider the circumstances under which the presence of a particular criterion, or combination of criteria, would be sufficient to support a SPDC determination.¹⁶ For example, for contracts that are linked to other contracts or that may be arbitrated with other contracts, the Commission will consider whether the price of the potential SPDC moves in such harmony with the other contract that the two markets essentially become interchangeable. This co-movement of prices would be an indication that activity in the contract had reached a level sufficient for the contract to perform a significant price discovery function. In evaluating a contract's price discovery role as a price reference, the Commission the extent to which, on a frequent and recurring basis, bids, offers or transactions are directly based on, or are determined by referencing, the prices established for the contract.

IV. Findings and Conclusions

The Commission's findings and conclusions with respect to the PDP,

ODP and PDA contracts are discussed separately below.

a. The PJM WH Real Time Peak Daily (PDP) Contract and the SPDC Indicia

The PDP contract is cash settled based on the arithmetic average of peak-hour, real-time locational marginal prices (“LMPs”)¹⁷ published by PJM Interconnection for its Western Hub for all peak hours during the specified day of generation. The hourly LMPs are derived from power trades that result in physical delivery. The size of the PDP contract is 800 megawatt hours (“MWh”), and the PDP contract is listed for 38 consecutive days.

In general, electricity is bought and sold in an auction setting on an hourly basis at various points along the electrical grid. An LMP associated with a specific hour is calculated as the volume-weighted average price of all of the transactions where electricity is to be supplied and consumed during that hour.

Electricity is traded in a day-ahead market as well as a real-time market. The day-ahead market establishes prices for electricity that is to be delivered during the specified hour on the following day. Day-ahead prices are determined based on generation and energy transaction quotes offered in advance. Because the offers and bids are dependent on estimates of supply and demand, electricity needs usually are not perfectly satisfied in the day-ahead market. In this regard, on the day the electricity is transmitted and used, auction participants typically realize that they bought or sold either too much power or too little power. A real-time auction is operated to alleviate this problem by serving as a balancing mechanism. Specifically, electricity traders use the real-time market to sell excess electricity and buy additional power to meet demand.

PJM Interconnection is an RTO that coordinates the movement of wholesale electricity in all or parts of Delaware, Illinois, Indiana, Kentucky, Maryland, Michigan, New Jersey, North Carolina, Ohio, Pennsylvania, Tennessee, Virginia, West Virginia and the District of Columbia. PJM Interconnection's transmission network is the largest centrally-dispatched grid in North America. PJM Interconnection dispatches about 163,500 MW of generating capacity over 56,350 miles of transmission lines and serves more than 51 million customers. The RTO's

¹³ PJM Interconnection stated that it “takes no position as to whether the ICE [contracts] * * * perform significant price discovery functions.”

¹⁴ FERC expressed the opinion that a determination by the Commission that any of the subject contracts performs a significant price discovery function “would not appear to conflict with FERC's exclusive jurisdiction under the Federal Power Act (FPA) over the transmission or sale for resale of electric energy in interstate commerce or with its other regulatory responsibilities under the FPA” and further that “FERC staff will monitor proposed SPDC determinations and advise the CFTC of any potential conflicts with FERC's exclusive jurisdiction over RTOs, ISOs [(independent system operators)] or other jurisdictional entities.”

¹⁵ In its October 26, 2009, **Federal Register** release, the Commission identified material price reference and material liquidity as the possible criteria for SPDC determination of the PDP, ODP and PDA contracts. Arbitrage and price linkage were not identified as possible criteria. As a result, arbitrage and price linkage will not be discussed further in this document and the associated Orders.

¹⁶ 17 CFR Part 36, Appendix A.

¹⁷ An LMP represents the additional cost associated with producing an incremental amount of electricity. LMPs account for generation costs, congestion along the transmission lines, and electricity loss.

members, totaling more than 500, include power generators, transmission owners, electricity distributors, power marketers and large consumers.

PJM Interconnection is responsible for operating a competitive wholesale electricity market as well as maintaining the reliability of the grid. The RTO acts as a neutral, independent party, and its activities are regulated by FERC. The company coordinates the continuous buying, selling and delivery of wholesale electricity through robust, open and competitive spot markets. In operating the markets, PJM Interconnection balances the needs of suppliers, wholesale customers and other market participants, and it continuously monitors market behavior.

Electricity is priced at individual points along the transmission network called nodes. An electric grid has many interconnections or buses. RTOs group certain buses together to form hubs, which do not necessarily follow along state lines or geographic boundaries. Power also is priced at the hub level and serves as a basis for trading electricity. PJM Interconnection has 11 hubs, including AEP GEN, AEP-Dayton, Chicago GEN, Chicago, Dominion, Eastern, Northern Illinois, New Jersey, Ohio, West INT and Western Hub.¹⁸ The Western Hub is a basket of 109 buses that stretch all the way from Erie, PA, to Washington, DC.¹⁹

1. Material Price Reference Criterion

The Commission's October 26, 2009, **Federal Register** notice identified the PDP contract as a potential SPDC based on the material price reference and material liquidity criteria. The Commission considered the fact that ICE sells its price data to market participants in a number of different packages which vary in terms of the hubs covered, time periods, and whether the data are daily only or historical. For example, ICE offers the "East Power of Day" package with access to all price data or just current prices plus a selected number of months (i.e., 12, 24, 36 or 48 months) of historical data. This package includes price data for the PDP contract.

The Commission also noted that its October 2007 *Report on the Oversight of Trading on Regulated Futures Exchanges and Exempt Commercial Markets* ("ECM Study") found that in general, market participants view ICE as a price discovery market for certain electricity contracts. The study did not specify which markets performed this

function; nevertheless, the Commission determined that the PDP contract, while not mentioned by name in the ECM Study, warranted further review.

The Commission explains in its Guidance to the statutory criteria that in evaluating a contract under the material price reference criterion, it will rely on one of two sources of evidence—direct and indirect—to determine that the price of a contract was being used as a material price reference and therefore, serving a significant price discovery function.²⁰ With respect to direct evidence, the Commission will consider the extent to which, on a frequent and recurring basis, cash market bids, offers or transactions are directly based on, or quoted at a differential to, the prices generated on the ECM in question. Direct evidence may be established when cash market participants are quoting bid or offer prices or entering into transactions at prices that are set either explicitly or implicitly at a differential to prices established for the contract in question. Cash market prices are set explicitly at a differential to the section 2(h)(3) contract when, for instance, they are quoted in dollars and cents above or below the reference contract's price. Cash market prices are set implicitly at a differential to a section 2(h)(3) contract when, for instance, they are arrived at after adding to, or subtracting from the section 2(h)(3) contract, but then quoted or reported at a flat price. With respect to indirect evidence, the Commission will consider the extent to which the price of the contract in question is being routinely disseminated in widely distributed industry publications—or offered by the ECM itself for some form of remuneration—and consulted on a frequent and recurring basis by industry participants in pricing cash market transactions.

The PJM Western hub is a major pricing center for electricity in the eastern portion of the United States. Traders, including producers, keep abreast of the electricity prices at PJM Interconnection's Western Hub when conducting cash deals. Power prices in other neighboring markets, such as New York ISO's Zone A (Western New York), Zone G (Hudson Valley region) and Zone J (New York City) as well as Midwest ISO's Cinergy hub are typically based implicitly relative to the prices reported for PJM Interconnection's Western hub. However, ICE's PJM WH Real Time Peak ("PJM") contract, which is a monthly contract, is used more widely as a source of pricing information for electricity than the

daily, peak-hour contract (i.e., the PDP contract). Specifically, the PJM contract prices power at the Western Hub based on the simple average of peak-hour prices over the contract month, as reported by PJM Interconnection. Market participants use the PJM contract to lock-in electricity prices far into the future. (The PJM contract is listed for 110 months into the future.) In contrast, the PDP contract is listed for a much shorter length of time (about five weeks); with such a limited timeframe, the forward pricing capability of the PDP contract is much more constrained than that of the PJM contract. Traders use monthly power contracts like the PJM contract to price electricity commitments in the future, where such commitments are based on long range forecasts of power supply and demand. As generation and usage nears, market participants have a better understanding of actual power supply and needs. As a result, traders can modify previously-established hedges with the daily power contracts, like the PDP contract.

Accordingly, although the Western Hub is a major trading center for electricity and, as noted, ICE sells price information for the PDP contract, the Commission has explained in its Guidance that a contract meeting the material price reference criterion would routinely be consulted by industry participants in pricing cash market transactions. The PDP contract is not consulted in this manner and does not satisfy the material price reference criterion. Thus, the PDP contract does not satisfy the direct price reference test for existence of material price reference. Furthermore, the Commission notes that publication of the PDP contract's prices is not indirect evidence of material price reference. The PDP contract's prices are published with those of numerous other contracts, including ICE's monthly electricity contracts (such as the PJM contract), which are of more interest to market participants. In these circumstances, the Commission has concluded that traders likely do not specifically purchase ICE data packages for the PDP contract's prices and do not consult such prices on a frequent and recurring basis in pricing cash market transactions.

i. Federal Register Comments

EPSA, FIEG, EEI and ICE stated that no other contract directly references or settles to the PDP contract's price. Moreover, the commenters argued that the underlying cash price series against which the PDP contract is settled²¹ is

¹⁸ <http://www.ferc.gov/market-oversight/mkt-electric/pjm.asp>.

¹⁹ <http://www.ferc.gov/market-oversight/mkt-electric/pjm/2010/05-2010-elec-pjm-archive.pdf>.

²⁰ 17 CFR Part 36, Appendix A.

²¹ In this case, the average of the real-time peak-hour Western hub electricity prices over the day of

the authentic reference price and not the ICE contract itself. Commission staff believes that this interpretation of price reference is too narrow and believes that a cash-settled derivatives contract could meet the price reference criterion if market participants “consult [the derivatives contract] on a frequent and recurring basis” when pricing forward, fixed-price commitments or other cash-settled derivatives that seek to “lock-in” a fixed price for some future point in time to hedge against adverse price movements. As noted above, while Western Hub is a major power market, traders do not consider the daily average peak-hour Western Hub price to be as important as the peak electricity price associated with the monthly contract.

In addition, EPSA stated that the publication of price data for the PDP contract price is a weak justification for material price reference because market participants generally do not purchase ICE data sets for one contract's prices, such as those for the PDP contract. Instead, traders are interested in the settlement prices, so the fact that ICE sells the PDP prices as part of a broad package is not conclusive evidence that market participants are buying the ICE data sets because they find the PDP prices have substantial value. As noted above, the Commission indicated that publication of the PDP contract's prices is not indirect evidence of routine dissemination. The PDP contract's prices are published with those of numerous other contracts, which are of more interest to market participants. The Commission has concluded that traders likely do not specifically purchase the ICE data packages for the PDP contract's prices and do not consult such prices on a frequent and recurring basis in pricing cash market transactions.

Lastly, ICE and EEI criticized the ECM Study since it did not specifically identify the PDP contract as a contract that is referred to by market participants on a frequent and recurring basis. In response, the Commission notes that it cited the ECM Study's general finding that some ICE electricity contracts appear to be regarded as price discovery markets merely as indication that an investigation of certain ICE contracts may be warranted. The ECM Study was not intended to serve as the sole basis for determining whether or not a particular contract meets the material price reference criterion.

ii. Conclusion Regarding Material Price Reference

Based on the above, the Commission finds that the ICE PDP contract does not meet the material price reference criterion because cash market transactions are not priced either explicitly or implicitly on a frequent and recurring basis at a differential to the PDP contract's price (direct evidence). Moreover, while the PDP contract's price data is sold to market participants, those individuals likely do not purchase the ICE data packages specifically for the PDP contract's prices and do not consult such prices on a frequent and recurring basis in pricing cash market transactions (indirect evidence).

2. Material Liquidity Criterion

To assess whether a contract meets the material liquidity criterion, the Commission first examines trading activity as a general measurement of the contract's size and potential importance. If the Commission finds that the contract in question meets a threshold of trading activity that would render it of potential importance, the Commission will then perform a statistical analysis to measure the effect that changes to the subject contract's prices potentially may have on prices for other contracts listed on an ECM or a DCM.

The total number of transactions executed on ICE's electronic platform in the PDP contract was 48,072 in the second quarter of 2009, resulting in a daily average of 751.1 trades. During the same period, the PDP contract had a total trading volume of 68,586 contracts and an average daily trading volume of 1,071.7 contracts. Moreover, open interest as of June 30, 2009, was 1,856 contracts, which included trades executed on ICE's electronic trading platform, as well as trades executed off of ICE's electronic trading platform and then brought to ICE for clearing. In this regard, ICE does not differentiate between open interest created by a transaction executed on its trading platform and that created by a transaction executed off its trading platform.²²

In a subsequent filing dated March 24, 2010, ICE reported that total trading volume in the fourth quarter of 2009 was 64,233 contracts (or 988.2 contracts on a daily basis). In terms of number of transactions, 45,167 trades occurred in the fourth quarter of 2009 (694.9 trades per day). As of December 31, 2009, open interest in the PDP contract was 710

contracts, which included trades executed on ICE's electronic trading platform, as well as trades executed off of ICE's electronic trading platform and then brought to ICE for clearing.

The number of trades per day was substantial between the second and fourth quarters of 2009. However, trading activity in the PDP contract, as characterized by total quarterly volume, indicates that the PDP contract experiences trading activity that is similar to that of thinly-traded futures markets.²³ Thus, the PDP contract does not meet a threshold of trading activity that would render it of potential importance and no additional statistical analysis is warranted.²⁴

i. Federal Register Comments

ICE stated that the PDP contract lacks a sufficient number of trades to meet the material liquidity criterion. Along with EPSA and EEI, ICE argued that the PDP contract cannot have a material effect on other contracts, such as those listed for trading by the New York Mercantile Exchange (“NYMEX”), a DCM, because price linkage and the potential for arbitrage do not exist. Moreover, the DCM contracts do not cash settle to the PDP contract's price. Instead, the DCM contracts and the PDP contract are both cash settled based on physical transactions, which neither the ECM nor the DCM contracts can influence.

ICE noted that the Commission's Guidance had posited concepts of liquidity that generally assumed a fairly constant stream of prices throughout the trading day and noted that the PDP contract did not meet this standard of liquidity. The Commission observes that a continuous stream of prices would indeed be an indication of liquidity for certain markets but the Guidance also notes that “quantifying the levels of immediacy and price concession that

²³ Staff has advised the Commission that in its experience, a thinly-traded contract is, generally, one that has a quarterly trading volume of 100,000 contracts or less. In this regard, in the third quarter of 2009, physical commodity futures contracts with trading volume of 100,000 contracts or fewer constituted less than one percent of total trading volume of all physical commodity futures contracts.

²⁴ In establishing guidance to illustrate how it will evaluate the various criteria, or combinations of criteria, when determining whether a contract is a SPDC, the Commission made clear that “material liquidity itself would not be sufficient to make a determination that a contract is a [SPDC], * * * but combined with other factors it can serve as a guidepost indicating which contracts are functioning as [SPDCs].” 17 CFR 36, Appendix A. For the reasons discussed above, the Commission has found that the PDP contract does not meet the material price reference criterion. In light of this finding and the Commission's Guidance cited above, there is no need to evaluate further the material liquidity criteria since the Commission believes it is not useful as the sole basis for a SPDC determination.

generation, which are derived from cash market transactions.

²² 74 FR 54966 (October 26, 2009).

would define material liquidity may differ from one market or commodity to another.”²⁵

ICE opined that the Commission “seems to have adopted a five trade per day test for material liquidity.” To the contrary, the Commission adopted a five trades-per-day threshold as a reporting requirement to enable it to “independently be aware of ECM contracts that may develop into SPDCs”²⁶ rather than solely relying upon an ECM to identify potential SPDCs to the Commission. Thus, any contract that meets this threshold may be subject to scrutiny as a potential SPDC; however, a contract will not be found to be a SPDC merely because it met the reporting threshold.

ICE proposed that the statistics provided by ICE were misinterpreted and misapplied by the Commission. In particular, ICE stated that the volume figures used in the Commission’s analysis (cited above) “include trades made in all months” as well as in strips of contract months. ICE suggested that a more appropriate method of determining liquidity is to examine the activity in a single traded month of a given contract.”²⁷ It is the Commission’s opinion that liquidity, as it pertains to the PDP contract, is typically a function of trading activity in particular lead days and, given sufficient liquidity in such days, the ICE PDP contract itself would be considered liquid. In any event, in light of the fact that the Commission has found that the PDP contract does not meet the material price reference criterion, according to the Commission’s Guidance, it would be unnecessary to evaluate whether the

PDP contract meets the material liquidity criterion since it cannot be used alone for SPDC determination.

ii. Conclusion Regarding Material Liquidity

For the reasons discussed above, the Commission finds that the PDP contract does not meet the material liquidity criterion.

3. Overall Conclusion Regarding the PDP Contract

After considering the entire record in this matter, including the comments received, the Commission has determined that the ICE PDP contract does not perform a significant price discovery function under the criteria established in section 2(h)(7) of the CEA. Specifically, the Commission has determined that the PDP contract does not meet the material price reference or material liquidity criteria at this time. Accordingly, the Commission is issuing the attached Order declaring that the PDP contract is not a SPDC.

Issuance of this Order indicates that the Commission does not at this time regard ICE as a registered entity in connection with its PDP contract.²⁸ Accordingly, with respect to its PDP contract, ICE is not required to comply with the obligations, requirements and timetables prescribed in Commission rule 36.3(c)(4) for ECMs with SPDCs. However, ICE must continue to comply with the applicable reporting requirements for ECMs.

b. The PJM WH Real Time Off-Peak Daily (ODP) Contract and the SPDC Indicia

The ODP contract is cash settled based on the arithmetic average of off-peak hour, real-time LMPs published by PJM Interconnection for its Western Hub for all peak hours during the specified day of generation. The hourly LMPs are derived from power trades that result in physical delivery. The size of the ODP contract is 50 MWh, and the ODP contract is listed for 38 consecutive days.

In general, electricity is bought and sold in an auction setting on an hourly basis at various point along the electrical grid. An LMP associated with a specific hour is calculated as the volume-weighted average price of all of the transactions where electricity is to be supplied and consumed during that hour.

Electricity is traded in a day-ahead market as well as a real-time market. The day-ahead market establishes prices for electricity that is to be delivered

during the specified hour on the following day. Day-ahead prices are determined based on generation and energy transaction quotes offered in advance. Because the offers and bids are dependent on estimates of supply and demand, electricity needs usually are not perfectly satisfied in the day-ahead market. In this regard, on the day the electricity is transmitted and used, auction participants typically realize that they bought or sold either too much power or too little power. A real-time auction is operated to alleviate this problem by serving as a balancing mechanism. Specifically, electricity traders use the real-time market to sell excess electricity and buy additional power to meet demand.

PJM Interconnection is an RTO that coordinates the movement of wholesale electricity in all or parts of Delaware, Illinois, Indiana, Kentucky, Maryland, Michigan, New Jersey, North Carolina, Ohio, Pennsylvania, Tennessee, Virginia, West Virginia and the District of Columbia. PJM Interconnection’s transmission network is the largest centrally-dispatched grid in North America. PJM Interconnection dispatches about 163,500 MW of generating capacity over 56,350 miles of transmission lines and serves more than 51 million customers. The RTO’s members, totaling more than 500, include power generators, transmission owners, electricity distributors, power marketers and large consumers.

PJM Interconnection is responsible for operating a competitive wholesale electricity market as well as maintaining the reliability of the grid. The RTO acts as a neutral, independent party, and its activities are regulated by FERC. The company coordinates the continuous buying, selling and delivery of wholesale electricity through robust, open and competitive spot markets. In operating the markets, PJM Interconnection balances the needs of suppliers, wholesale customers and other market participants, and it continuously monitors market behavior.

Electricity is priced at individual points along the transmission network called nodes. An electric grid has many interconnections or buses. RTOs group certain buses together to form hubs, which do not necessarily follow along state lines or geographic boundaries. Power also is priced at the hub level and serves as a basis for trading electricity. PJM Interconnection has 11 hubs, including AEP GEN, AEP–Dayton, Chicago GEN, Chicago, Dominion, Eastern, Northern Illinois, New Jersey,

²⁵ Guidance, *supra*.

²⁶ 73 FR 75892 (December 12, 2008).

²⁷ In addition, ICE stated that the trades-per-day statistics that it provided to the Commission in its quarterly filing and which were cited in the Commission’s October 26, 2009, **Federal Register** notice includes 2(h)(1) transactions, which were not completed on the electronic trading platform and should not be considered in the SPDC determination process. The Commission staff asked ICE to review the data it sent in its quarterly filings; ICE confirmed that the volume data it provided and which the Commission cited includes only transaction data executed on ICE’s electronic trading platform. As noted above, supplemental data supplied by ICE confirmed that block trades are in addition to the trades that were conducted on the electronic platform; block trades comprise about 10 percent of all transactions in the PDP contract (as of the fourth quarter of 2009). Commission acknowledges that the open interest information it provided in its October 26, 2009, **Federal Register** notice includes transactions made off the ICE platform. However, once open interest is created, there is no way for ICE to differentiate between “on-exchange” versus “off-exchange” created positions, and all such positions are fungible with one another and may be offset in any way agreeable to the position holder regardless of how the position was initially created.

²⁸ See 73 FR 75888, 75893 (Dec. 12, 2008).

Ohio, West INT and Western Hub.²⁹ The Western Hub is a basket of 109 buses that stretch all the way from Erie, PA, to Washington, DC.³⁰

1. Material Price Reference Criterion

The Commission's October 26, 2009, **Federal Register** notice identified the ODP contract as a potential SPDC based on the material price reference and material liquidity criteria. The Commission considered the fact that ICE sells its price data to market participants in a number of different packages which vary in terms of the hubs covered, time periods, and whether the data are daily only or historical. For example, ICE offers the "East Power of Day" package with access to all price data or just current prices plus a selected number of months (*i.e.*, 12, 24, 36 or 48 months) of historical data. This package includes price data for the ODP contract.

The Commission also noted that its October 2007 ECM Study found that in general, market participants view ICE as a price discovery market for certain electricity contracts. The study did not specify which markets performed this function; nevertheless, the Commission determined that the ODP contract, while not mentioned by name in the ECM Study, warranted further review.

The Commission explains in its Guidance to the statutory criteria that in evaluating a contract under the material price reference criterion, it will rely on one of two sources of evidence—direct and indirect—to determine that the price of a contract was being used as a material price reference and therefore, serving a significant price discovery function.³¹ With respect to direct evidence, the Commission will consider the extent to which, on a frequent and recurring basis, cash market bids, offers or transactions are directly based on, or quoted at a differential to, the prices generated on the ECM in question. Direct evidence may be established when cash market participants are quoting bid or offer prices or entering into transactions at prices that are set either explicitly or implicitly at a differential to prices established for the contract in question. Cash market prices are set explicitly at a differential to the section 2(h)(3) contract when, for instance, they are quoted in dollars and cents above or below the reference contract's price. Cash market prices are set implicitly at a differential to a section 2(h)(3) contract when, for

instance, they are arrived at after adding to, or subtracting from the section 2(h)(3) contract, but then quoted or reported at a flat price. With respect to indirect evidence, the Commission will consider the extent to which the price of the contract in question is being routinely disseminated in widely distributed industry publications—or offered by the ECM itself for some form of remuneration—and consulted on a frequent and recurring basis by industry participants in pricing cash market transactions.

The PJM Western hub is a major pricing center for electricity in the eastern portion of the United States. Traders, including producers, keep abreast of the electricity prices at PJM Interconnection's Western Hub when conducting cash deals. Power prices in other neighboring markets, such as New York ISO's Zone A (Western New York), Zone G (Hudson Valley region) and Zone J (New York City) as well as Midwest ISO's Cinergy hub are typically based implicitly relative to the prices reported for PJM Interconnection's Western hub. However, ICE's PJM WH Real Time Off-Peak ("OPJ") contract, which is a monthly contract, is used more widely as a source of pricing information for electricity than the daily, off-peak hour contract (*i.e.*, the ODP contract). Specifically, the OPJ contract prices power at the Western Hub based on the simple average of off-peak hour prices over the contract month, as reported by PJM Interconnection. Market participants use the OPJ contract to lock-in electricity prices far into the future. (The OPJ contract is listed up to 86 months into the future.) In contrast, the ODP contract is listed for a much shorter length of time (about five weeks); with such a limited timeframe, the forward pricing capability of the ODP contract is much more constrained than that of the OPJ contract. Traders use monthly power contracts like the OPJ contract to price electricity commitments in the future, where such commitments are based on long range forecasts of power supply and demand. As generation and usage nears, market participants have a better understanding of actual power supply and needs. As a result, traders can modify previously-established hedges with the daily power contracts, like the ODP contract.

Accordingly, although the Western Hub is a major trading center for electricity and, as noted, ICE sells price information for the ODP contract, the Commission has explained in its Guidance that a contract meeting the material price reference criterion would routinely be consulted by industry

participants in pricing cash market transactions. The ODP contract is not consulted in this manner and does not satisfy the material price reference criterion. Thus, the ODP contract does not satisfy the direct price reference test for existence of material price reference. Furthermore, the Commission notes that publication of the ODP contract's prices is not indirect evidence of material price reference. The ODP contract's prices are published with those of numerous other contracts, including ICE's monthly electricity contracts (such as the OPJ contract), which are of more interest to market participants. In these circumstances, the Commission has concluded that traders likely do not specifically purchase ICE data packages for the ODP contract's prices and do not consult such prices on a frequent and recurring basis in pricing cash market transactions.

i. Federal Register Comments

EPSA, FIEG, EEI and ICE stated that no other contract directly references or settles to the ODP contract's price. Moreover, the commenters argued that the underlying cash price series against which the ODP contract is settled³² is the authentic reference price and not the ICE contract itself. Commission staff believes that this interpretation of price reference is too narrow and believes that a cash-settled derivatives contract could meet the price reference criterion if market participants "consult [the derivatives contract] on a frequent and recurring basis" when pricing forward, fixed-price commitments or other cash-settled derivatives that seek to "lock-in" a fixed price for some future point in time to hedge against adverse price movements. As noted above, while Western Hub is a major power market, traders do not consider the daily average off-peak hour Western Hub price to be as important as the peak electricity price associated with the monthly contract.

In addition, EPSA stated that the publication of price data for the ODP contract price is a weak justification for material price reference because market participants generally do not purchase ICE data sets for one contract's prices, such as those for the ODP contract. Instead, traders are interested in the settlement prices, so the fact that ICE sells the ODP prices as part of a broad package is not conclusive evidence that market participants are buying the ICE data sets because they find the ODP prices have substantial value. As noted

²⁹ <http://www.ferc.gov/market-oversight/mkt-electric/pjm.asp>.

³⁰ <http://www.ferc.gov/market-oversight/mkt-electric/pjm/2010/05-2010-elec-pjm-archive.pdf>.

³¹ 17 CFR Part 36, Appendix A.

³² In this case, the average of the real-time peak-hour Western hub electricity prices over the day of generation, which are derived from cash market transactions.

above, the Commission indicated that publication of the ODP contract's prices is not indirect evidence of routine dissemination. The ODP contract's prices are published with those of numerous other contracts, which are of more interest to market participants. The Commission has concluded that traders likely do not specifically purchase the ICE data packages for the ODP contract's prices and do not consult such prices on a frequent and recurring basis in pricing cash market transactions.

Lastly, ICE and EEI criticized the ECM Study since it did not specifically identify the ODP contract as a contract that is referred to by market participants on a frequent and recurring basis. In response, the Commission notes that it cited the ECM Study's general finding that some ICE electricity contracts appear to be regarded as price discovery markets merely as indication that an investigation of certain ICE contracts may be warranted. The ECM Study was not intended to serve as the sole basis for determining whether or not a particular contract meets the material price reference criterion.

ii. Conclusion Regarding Material Price Reference

Based on the above, the Commission finds that the ICE ODP contract does not meet the material price reference criterion because cash market transactions are not priced either explicitly or implicitly on a frequent and recurring basis at a differential to the ODP contract's price (direct evidence). Moreover, while the ODP contract's price data is sold to market participants, those individuals likely do not purchase the ICE data packages specifically for the ODP contract's prices and do not consult such prices on a frequent and recurring basis in pricing cash market transactions (indirect evidence).

2. Material Liquidity Criterion

To assess whether a contract meets the material liquidity criterion, the Commission first examines trading activity as a general measurement of the contract's size and potential importance. If the Commission finds that the contract in question meets a threshold of trading activity that would render it of potential importance, the Commission will then perform a statistical analysis to measure the effect that changes to the subject contract's prices potentially may have on prices for other contracts listed on an ECM or a DCM.

The total number of transactions executed on ICE's electronic platform in

the ODP contract was 723 in the second quarter of 2009, resulting in a daily average of 11.3 trades. During the same period, the ODP contract had a total trading volume of 7,448 contracts and an average daily trading volume of 116.4 contracts. Moreover, open interest as of June 30, 2009, was 256 contracts, which included trades executed on ICE's electronic trading platform, as well as trades executed off of ICE's electronic trading platform and then brought to ICE for clearing. In this regard, ICE does not differentiate between open interest created by a transaction executed on its trading platform and that created by a transaction executed off its trading platform.³³

In a subsequent filing dated March 24, 2010, ICE reported that total trading volume in the fourth quarter of 2009 was 12,304 contracts (or 189.3 contracts on a daily basis). In terms of number of transactions, 737 trades occurred in the fourth quarter of 2009 (11.3 trades per day). As of December 31, 2009, open interest in the ODP contract was 488 contracts, which included trades executed on ICE's electronic trading platform, as well as trades executed off of ICE's electronic trading platform and then brought to ICE for clearing.

The number of trades per day between the second and fourth quarters of 2009 was not substantial. In addition, trading activity in the ODP contract, as characterized by total quarterly volume, indicates that the ODP contract experiences trading activity that is similar to that of thinly traded futures markets.³⁴ Thus, the ODP contract does not meet a threshold of trading activity that would render it of potential importance and no additional statistical analysis is warranted.³⁵

³³ 74 FR 54966 (October 26, 2009).

³⁴ Staff has advised the Commission that in its experience, a thinly traded contract is, generally, one that has a quarterly trading volume of 100,000 contracts or less. In this regard, in the third quarter of 2009, physical commodity futures contracts with trading volume of 100,000 contracts or fewer constituted less than one percent of total trading volume of all physical commodity futures contracts.

³⁵ In establishing guidance to illustrate how it will evaluate the various criteria, or combinations of criteria, when determining whether a contract is a SPDC, the Commission made clear that "material liquidity itself would not be sufficient to make a determination that a contract is a [SPDC]. * * * but combined with other factors it can serve as a guidepost indicating which contracts are functioning as [SPDCs]." 17 CFR 36, Appendix A. For the reasons discussed above, the Commission has found that the ODP contract does not meet the material price reference criterion. In light of this finding and the Commission's Guidance cited above, there is no need to evaluate further the material liquidity criteria since the Commission believes it is not useful as the sole basis for a SPDC determination.

i. Federal Register Comments

ICE stated that the ODP contract lacks a sufficient number of trades to meet the material liquidity criterion. Along with EPSA and EEI, ICE argued that the ODP contract cannot have a material effect on other contracts, such as those listed for trading by NYMEX, a DCM, because price linkage and the potential for arbitrage do not exist. Moreover, the DCM contracts do not cash settle to the ODP contract's price. Instead, the DCM contracts and the ODP contract are both cash settled based on physical transactions, which neither the ECM nor the DCM contracts can influence.

ICE noted that the Commission's Guidance had posited concepts of liquidity that generally assumed a fairly constant stream of prices throughout the trading day and noted that the relatively low number of trades per day in the ODP contract did not meet this standard of liquidity. The Commission observes that a continuous stream of prices would indeed be an indication of liquidity for certain markets but the Guidance also notes that "quantifying the levels of immediacy and price concession that would define material liquidity may differ from one market or commodity to another."³⁶

ICE opined that the Commission "seems to have adopted a five trade per day test for material liquidity." To the contrary, the Commission adopted a five trades-per-day threshold as a reporting requirement to enable it to "independently be aware of ECM contracts that may develop into SPDCs"³⁷ rather than solely relying upon an ECM to identify potential SPDCs to the Commission. Thus, any contract that meets this threshold may be subject to scrutiny as a potential SPDC; however, a contract will not be found to be a SPDC merely because it met the reporting threshold.

ICE proposed that the statistics provided by ICE were misinterpreted and misapplied by the Commission. In particular, ICE stated that the volume figures used in the Commission's analysis (cited above) "include trades made in all months" as well as in strips of contract months. ICE suggested that a more appropriate method of determining liquidity is to examine the activity in a single traded month of a given contract.³⁸ It is the Commission's

³⁶ Guidance, *supra*.

³⁷ 73 FR 75892 (December 12, 2008).

³⁸ In addition, ICE stated that the trades-per-day statistics that it provided to the Commission in its quarterly filing and which were cited in the Commission's October 26, 2009, **Federal Register** notice includes 2(h)(1) transactions, which were not completed on the electronic trading platform and should not be considered in the SPDC

opinion that liquidity, as it pertains to the ODP contract, is typically a function of trading activity in particular lead days and, given sufficient liquidity in such days, the ICE ODP contract itself would be considered liquid. In any event, in light of the fact that the Commission has found that the ODP contract does not meet the material price reference criterion, according to the Commission's Guidance, it would be unnecessary to evaluate whether the ODP contract meets the material liquidity criterion since it cannot be used alone for SPDC determination.

ii. Conclusion Regarding Material Liquidity

For the reasons discussed above, the Commission finds that the ODP contract does not meet the material liquidity criterion.

3. Overall Conclusion Regarding the ODP Contract

After considering the entire record in this matter, including the comments received, the Commission has determined that the ICE ODP contract does not perform a significant price discovery function under the criteria established in section 2(h)(7) of the CEA. Specifically, the Commission has determined that the ODP contract does not meet the material price reference or material liquidity criteria at this time. Accordingly, the Commission is issuing the attached Order declaring that the ODP contract is not a SPDC.

Issuance of this Order indicates that the Commission does not at this time regard ICE as a registered entity in connection with its ODP contract.³⁹ Accordingly, with respect to its ODP contract, ICE is not required to comply with the obligations, requirements and timetables prescribed in Commission rule 36.3(c)(4) for ECMs with SPDCs. However, ICE must continue to comply

with the applicable reporting requirements for ECMs.

c. The PJM WH Day-Ahead LMP Peak Daily (PDA) Contract and the SPDC Indicia

The PDA contract is cash settled based on the arithmetic average of the peak-hour, day-ahead LMPs published by PJM Interconnection for its Western Hub for all peak hours during the day prior to power generation. The hourly LMPs are derived from power trades that result in physical delivery. The size of the PDA contract is 800 MWh, and the PDA contract is listed for 38 consecutive days.

In general, electricity is bought and sold in an auction setting on an hourly basis at various points along the electrical grid. An LMP associated with a specific hour is calculated as the volume-weighted average price of all of the transactions where electricity is to be supplied and consumed during that hour.

Electricity is traded in a day-ahead market as well as a real-time market. The day-ahead market establishes prices for electricity that is to be delivered during the specified hour on the following day. Day-ahead prices are determined based on generation and energy transaction quotes offered in advance. Because the offers and bids are dependent on estimates of supply and demand, electricity needs usually are not perfectly satisfied in the day-ahead market. In this regard, on the day the electricity is transmitted and used, auction participants typically realize that they bought or sold either too much power or too little power. A real-time auction is operated to alleviate this problem by serving as a balancing mechanism. Specifically, electricity traders use the real-time market to sell excess electricity and buy additional power to meet demand.

PJM Interconnection is an RTO that coordinates the movement of wholesale electricity in all or parts of Delaware, Illinois, Indiana, Kentucky, Maryland, Michigan, New Jersey, North Carolina, Ohio, Pennsylvania, Tennessee, Virginia, West Virginia and the District of Columbia. PJM Interconnection's transmission network is the largest centrally-dispatched grid in North America. PJM Interconnection dispatches about 163,500 MW of generating capacity over 56,350 miles of transmission lines and serves more than 51 million customers. The RTO's members, totaling more than 500, include power generators, transmission owners, electricity distributors, power marketers and large consumers.

PJM Interconnection is responsible for operating a competitive wholesale electricity market as well as maintaining the reliability of the grid. The RTO acts as a neutral, independent party, and its activities are regulated by FERC. The company coordinates the continuous buying, selling and delivery of wholesale electricity through robust, open and competitive spot markets. In operating the markets, PJM Interconnection balances the needs of suppliers, wholesale customers and other market participants, and it continuously monitors market behavior.

Electricity is priced at individual points along the transmission network called nodes. An electric grid has many interconnections or buses. RTOs group certain buses together to form hubs, which do not necessarily follow along state lines or geographic boundaries. Power also is priced at the hub level and serves as a basis for trading electricity. PJM Interconnection has 11 hubs, including AEP GEN, AEP-Dayton, Chicago GEN, Chicago, Dominion, Eastern, Northern Illinois, New Jersey, Ohio, West INT and Western Hub.⁴⁰ The Western Hub is basket of 109 buses that stretch all the way from Erie, PA, to Washington, DC.⁴¹

1. Material Price Reference Criterion

The Commission's October 26, 2009, **Federal Register** notice identified the PDA contract as a potential SPDC based on the material price reference and material liquidity criteria. The Commission considered the fact that ICE sells its price data to market participants in a number of different packages which vary in terms of the hubs covered, time periods, and whether the data are daily only or historical. For example, ICE offers the "East Power of Day" package with access to all price data or just current prices plus a selected number of months (*i.e.*, 12, 24, 36 or 48 months) of historical data. This package includes price data for the PDA contract.

The Commission also noted that its October 2007 ECM Study found that in general, market participants view ICE as a price discovery market for certain electricity contracts. The study did not specify which markets performed this function; nevertheless, the Commission determined that the PDA contract, while not mentioned by name in the ECM Study, warranted further review.

The Commission explains in its Guidance to the statutory criteria that in evaluating a contract under the material

determination process. The Commission staff asked ICE to review the data it sent in its quarterly filings; ICE confirmed that the volume data it provided and which the Commission cited includes only transaction data executed on ICE's electronic trading platform. As noted above, supplemental data supplied by ICE confirmed that block trades are in addition to the trades that were conducted on the electronic platform; block trades comprise about 34 percent of all transactions in the ODP contract (as of the fourth quarter of 2009). Commission acknowledges that the open interest information it provided in its October 26, 2009, **Federal Register** notice includes transactions made off the ICE platform. However, once open interest is created, there is no way for ICE to differentiate between "on-exchange" versus "off-exchange" created positions, and all such positions are fungible with one another and may be offset in any way agreeable to the position holder regardless of how the position was initially created.

³⁹ See 73 FR 75888, 75893 (Dec. 12, 2008).

⁴⁰ <http://www.ferc.gov/market-oversight/mkt-electric/pjm.asp>.

⁴¹ <http://www.ferc.gov/market-oversight/mkt-electric/pjm/2010/05-2010-elec-pjm-archive.pdf>.

price reference criterion, it will rely on one of two sources of evidence—direct and indirect—to determine that the price of a contract was being used as a material price reference and therefore, serving a significant price discovery function.⁴² With respect to direct evidence, the Commission will consider the extent to which, on a frequent and recurring basis, cash market bids, offers or transactions are directly based on, or quoted at a differential to, the prices generated on the ECM in question. Direct evidence may be established when cash market participants are quoting bid or offer prices or entering into transactions at prices that are set either explicitly or implicitly at a differential to prices established for the contract in question. Cash market prices are set explicitly at a differential to the section 2(h)(3) contract when, for instance, they are quoted in dollars and cents above or below the reference contract's price. Cash market prices are set implicitly at a differential to a section 2(h)(3) contract when, for instance, they are arrived at after adding to, or subtracting from the section 2(h)(3) contract, but then quoted or reported at a flat price. With respect to indirect evidence, the Commission will consider the extent to which the price of the contract in question is being routinely disseminated in widely distributed industry publications—or offered by the ECM itself for some form of remuneration—and consulted on a frequent and recurring basis by industry participants in pricing cash market transactions.

The PJM Western hub is a major pricing center for electricity in the eastern portion of the United States. Traders, including producers, keep abreast of the electricity prices at PJM Interconnection's Western Hub when conducting cash deals. Power prices in other neighboring markets, such as New York ISO's Zone A (Western New York), Zone G (Hudson Valley region) and Zone J (New York City) as well as Midwest ISO's Cinergy hub are typically based implicitly relative to the prices reported for PJM Interconnection's Western hub. However, ICE's PJM WH Real Time Peak ("PJM") contract, which is a monthly contract, is used more widely as a source of pricing information for electricity than the daily, peak-hour day-ahead contract (i.e., the PDA contract). Specifically, the PJM contract prices power at the Western Hub based on the simple average of the real time, peak-hour prices over the contract month, as reported by PJM Interconnection.

Market participants use the PJM contract to lock-in electricity prices far into the future. (The PJM contract is listed up to 110 months into the future.) In contrast, the PDA contract is listed for a much shorter length of time (about five weeks); with such a limited timeframe, the forward pricing capability of the PDA contract is much more constrained than that of the PJM contract. Traders use monthly power contracts like the PJM contract to price electricity commitments in the future, where such commitments are based on long range forecasts of power supply and demand. As generation and usage nears, market participants have a better understanding of actual power supply and needs. As a result, traders can modify previously-established hedges with the daily power contracts.

Accordingly, although the Western Hub is a major trading center for electricity and, as noted, ICE sells price information for the PDA contract, the Commission has explained in its Guidance that a contract meeting the material price reference criterion would routinely be consulted by industry participants in pricing cash market transactions. The PDA contract is not consulted in this manner and does not satisfy the material price reference criterion. Thus, the PDA contract does not satisfy the direct price reference test for existence of material price reference. Furthermore, the Commission notes that publication of the PDA contract's prices is not indirect evidence of material price reference. The PDA contract's prices are published with those of numerous other contracts, including ICE's monthly electricity contracts (such as the PJM contract), which are of more interest to market participants. In these circumstances, the Commission has concluded that traders likely do not specifically purchase ICE data packages for the PDA contract's prices and do not consult such prices on a frequent and recurring basis in pricing cash market transactions.

i. Federal Register Comments

EPSA, FIEG, EEI and ICE stated that no other contract directly references or settles to the PDA contract's price. Moreover, the commenters argued that the underlying cash price series against which the PDA contract is settled⁴³ is the authentic reference price and not the ICE contract itself. Commission staff believes that this interpretation of price reference is too narrow and believes that

a cash-settled derivatives contract could meet the price reference criterion if market participants "consult [the derivatives contract] on a frequent and recurring basis" when pricing forward, fixed-price commitments or other cash-settled derivatives that seek to "lock-in" a fixed price for some future point in time to hedge against adverse price movements. As noted above, while Western Hub is a major power market, traders do not consider the daily average peak-hour, day-ahead Western Hub price to be as important as the peak, real-time electricity price associated with the monthly contract.

In addition, EPSA stated that the publication of price data for the PDA contract price is a weak justification for material price reference because market participants generally do not purchase ICE data sets for one contract's prices, such as those for the PDA contract. Instead, traders are interested in the settlement prices, so the fact that ICE sells the PDA prices as part of a broad package is not conclusive evidence that market participants are buying the ICE data sets because they find the PDA prices have substantial value. As noted above, the Commission indicated that publication of the PDA contract's prices is not indirect evidence of routine dissemination. The PDA contract's prices are published with those of numerous other contracts, which are of more interest to market participants. The Commission has concluded that traders likely do not specifically purchase the ICE data packages for the PDA contract's prices and do not consult such prices on a frequent and recurring basis in pricing cash market transactions.

Lastly, ICE and EEI criticized the ECM Study since it did not specifically identify the ODP contract as a contract that is referred to by market participants on a frequent and recurring basis. In response, the Commission notes that it cited the ECM Study's general finding that some ICE electricity contracts appear to be regarded as price discovery markets merely as indication that an investigation of certain ICE contracts may be warranted. The ECM Study was not intended to serve as the sole basis for determining whether or not a particular contract meets the material price reference criterion.

ii. Conclusion Regarding Material Price Reference

Based on the above, the Commission finds that the ICE PDA contract does not meet the material price reference criterion because cash market transactions are not priced either explicitly or implicitly on a frequent

⁴³ In this case, the average of the real-time peak-hour Western hub electricity prices over the day of generation, which are derived from cash market transactions.

⁴² 17 CFR Part 36, Appendix A.

and recurring basis at a differential to the PDA contract's price (direct evidence). Moreover, while the PDA contract's price data is sold to market participants, those individuals likely do not purchase the ICE data packages specifically for the PDA contract's prices and do not consult such prices on a frequent and recurring basis in pricing cash market transactions (indirect evidence).

2. Material Liquidity Criterion

To assess whether a contract meets the material liquidity criterion, the Commission first examines trading activity as a general measurement of the contract's size and potential importance. If the Commission finds that the contract in question meets a threshold of trading activity that would render it of potential importance, the Commission will then perform a statistical analysis to measure the effect that changes to the subject contract's prices potentially may have on prices for other contracts listed on an ECM or a DCM.

The total number of transactions executed on ICE's electronic platform in the PDA contract was 1,063 in the second quarter of 2009, resulting in a daily average of 16.6 trades. During the same period, the PDA contract had a total trading volume of 1,435 contracts and an average daily trading volume of 22.4 contracts. Moreover, open interest as of June 30, 2009, was 75 contracts, which included trades executed on ICE's electronic trading platform, as well as trades executed off of ICE's electronic trading platform and then brought to ICE for clearing. In this regard, ICE does not differentiate between open interest created by a transaction executed on its trading platform and that created by a transaction executed off its trading platform.⁴⁴

In a subsequent filing dated March 24, 2010, ICE reported that total trading volume in the fourth quarter of 2009 was 1,960 contracts (or 30.2 contracts on a daily basis). In terms of number of transactions, 1,181 trades occurred in the fourth quarter of 2009 (19.2 trades per day). As of December 31, 2009, open interest in the PDA contract was 45 contracts, which included trades executed on ICE's electronic trading platform, as well as trades executed off of ICE's electronic trading platform and then brought to ICE for clearing.

The number of trades per day between the second and fourth quarters of 2009 was not substantial. In addition, trading activity in the PDA contract, as

characterized by total quarterly volume, indicates that the PDA contract experiences trading activity that is similar to that of thinly-traded futures markets.⁴⁵ Thus, the PDA contract does not meet a threshold of trading activity that would render it of potential importance and no additional statistical analysis is warranted.⁴⁶

i. Federal Register Comments

ICE stated that the PDA contract lacks a sufficient number of trades to meet the material liquidity criterion. Along with EPSA and EEL, ICE argued that the PDA contract cannot have a material effect on other contracts, such as those listed for trading by NYMEX, a DCM, because price linkage and the potential for arbitrage do not exist. Moreover, the DCM contracts do not cash settle to the PDA contract's price. Instead, the DCM contracts and the PDA contract are both cash settled based on physical transactions, which neither the ECM nor the DCM contracts can influence.

ICE noted that the Commission's Guidance had posited concepts of liquidity that generally assumed a fairly constant stream of prices throughout the trading day and noted that the relatively low number of trades per day in the PDA contract did not meet this standard of liquidity. The Commission observes that a continuous stream of prices would indeed be an indication of liquidity for certain markets but the Guidance also notes that "quantifying the levels of immediacy and price concession that would define material liquidity may differ from one market or commodity to another."⁴⁷

ICE opined that the Commission "seems to have adopted a five trade per day test for material liquidity." To the contrary, the Commission adopted a five trades-per-day threshold as a reporting

requirement to enable it to "independently be aware of ECM contracts that may develop into SPDCs"⁴⁸ rather than solely relying upon an ECM to identify potential SPDCs to the Commission. Thus, any contract that meets this threshold may be subject to scrutiny as a potential SPDC; however, a contract will not be found to be a SPDC merely because it met the reporting threshold.

ICE proposed that the statistics provided by ICE were misinterpreted and misapplied by the Commission. In particular, ICE stated that the volume figures used in the Commission's analysis (cited above) "include trades made in all months" as well as in strips of contract months. ICE suggested that a more appropriate method of determining liquidity is to examine the activity in a single traded month of a given contract.⁴⁹ It is the Commission's opinion that liquidity, as it pertains to the PDA contract, is typically a function of trading activity in particular lead days and, given sufficient liquidity in such days, the ICE PDA contract itself would be considered liquid. In any event, in light of the fact that the Commission has found that the PDA contract does not meet the material price reference criterion, according to the Commission's Guidance, it would be unnecessary to evaluate whether the PDA contract meets the material liquidity criterion since it cannot be used alone for SPDC determination.

ii. Conclusion Regarding Material Liquidity

For the reasons discussed above, the Commission finds that the PDA contract does not meet the material liquidity criterion.

⁴⁸ 73 FR 75892 (December 12, 2008).

⁴⁵ Staff has advised the Commission that in its experience, a thinly-traded contract is, generally, one that has a quarterly trading volume of 100,000 contracts or less. In this regard, in the third quarter of 2009, physical commodity futures contracts with trading volume of 100,000 contracts or fewer constituted less than one percent of total trading volume of all physical commodity futures contracts.

⁴⁶ In establishing guidance to illustrate how it will evaluate the various criteria, or combinations of criteria, when determining whether a contract is a SPDC, the Commission made clear that "material liquidity itself would not be sufficient to make a determination that a contract is a [SPDC]. * * * but combined with other factors it can serve as a guidepost indicating which contracts are functioning as [SPDCs]." 17 CFR Part 36, Appendix A. For the reasons discussed above, the Commission has found that the PDA contract does not meet the material price reference criterion. In light of this finding and the Commission's Guidance cited above, there is no need to evaluate further the material liquidity criteria since the Commission believes it is not useful as the sole basis for a SPDC determination.

⁴⁷ Guidance, *supra*.

⁴⁹ In addition, ICE stated that the trades-per-day statistics that it provided to the Commission in its quarterly filing and which were cited in the Commission's October 26, 2009, **Federal Register** notice includes 2(h)(1) transactions, which were not completed on the electronic trading platform and should not be considered in the SPDC determination process. The Commission staff asked ICE to review the data it sent in its quarterly filings; ICE confirmed that the volume data it provided and which the Commission cited includes only transaction data executed on ICE's electronic trading platform. As noted above, supplemental data supplied by ICE confirmed that block trades are in addition to the trades that were conducted on the electronic platform; block trades comprise about five percent of all transactions in the PDA contract (as of the fourth quarter of 2009). Commission acknowledges that the open interest information it provided in its October 26, 2009, **Federal Register** notice includes transactions made off the ICE platform. However, once open interest is created, there is no way for ICE to differentiate between "on-exchange" versus "off-exchange" created positions, and all such positions are fungible with one another and may be offset in any way agreeable to the position holder regardless of how the position was initially created.

⁴⁴ 74 FR 54966 (October 26, 2009).

3. Overall Conclusion Regarding the PDA Contract

After considering the entire record in this matter, including the comments received, the Commission has determined that the ICE PDA contract does not perform a significant price discovery function under the criteria established in section 2(h)(7) of the CEA. Specifically, the Commission has determined that the PDA contract does not meet the material price reference or material liquidity criteria at this time. Accordingly, the Commission is issuing the attached Order declaring that the PDA contract is not a SPDC.

Issuance of this Order indicates that the Commission does not at this time regard ICE as a registered entity in connection with its PDA contract.⁵⁰ Accordingly, with respect to its PDA contract, ICE is not required to comply with the obligations, requirements and timetables prescribed in Commission rule 36.3(c)(4) for ECMs with SPDCs. However, ICE must continue to comply with the applicable reporting requirements for ECMs.

V. Related Matters

a. Paperwork Reduction Act

The Paperwork Reduction Act of 1995 ("PRA")⁵¹ imposes certain requirements on Federal agencies, including the Commission, in connection with their conducting or sponsoring any collection of information as defined by the PRA. Certain provisions of Commission rule 36.3 impose new regulatory and reporting requirements on ECMs, resulting in information collection requirements within the meaning of the PRA. OMB previously has approved and assigned OMB control number 3038-0060 to this collection of information.

b. Cost-Benefit Analysis

Section 15(a) of the CEA⁵² requires the Commission to consider the costs and benefits of its actions before issuing an order under the Act. By its terms, section 15(a) does not require the Commission to quantify the costs and benefits of an order or to determine whether the benefits of the order outweigh its costs; rather, it requires that the Commission "consider" the costs and benefits of its actions. Section 15(a) further specifies that the costs and benefits shall be evaluated in light of five broad areas of market and public concern: (1) Protection of market participants and the public; (2) efficiency, competitiveness and

financial integrity of futures markets; (3) price discovery; (4) sound risk management practices; and (5) other public interest considerations. The Commission may in its discretion give greater weight to any one of the five enumerated areas and could in its discretion determine that, notwithstanding its costs, a particular order is necessary or appropriate to protect the public interest or to effectuate any of the provisions or accomplish any of the purposes of the Act.

When a futures contract begins to serve a significant price discovery function, that contract, and the ECM on which it is traded, warrants increased oversight to deter and prevent price manipulation or other disruptions to market integrity, both on the ECM itself and in any related futures contracts trading on DCMs. An Order finding that a particular contract is a SPDC triggers this increased oversight and imposes obligations on the ECM calculated to accomplish this goal. The increased oversight engendered by the issue of a SPDC Order increases transparency and helps to ensure fair competition among ECMs and DCMs trading similar products and competing for the same business. Moreover, the ECM on which the SPDC is traded must assume, with respect to that contract, all the responsibilities and obligations of a registered entity under the CEA and Commission regulations. Additionally, the ECM must comply with nine core principles established by section 2(h)(7) of the Act—including the obligation to establish position limits and/or accountability standards for the SPDC. Section 4(i) of the CEA authorize the Commission to require reports for SPDCs listed on ECMs. These increased responsibilities, along with the CFTC's increased regulatory authority, subject the ECM's risk management practices to the Commission's supervision and oversight and generally enhance the financial integrity of the markets.

The Commission has concluded that the PDP, OPD and PDA contracts, which are the subject of the attached Orders, are not SPDCs; accordingly, the Commission's Orders impose no additional costs and no additional statutorily or regulatory mandated responsibilities on the ECM.

c. Regulatory Flexibility Act

The Regulatory Flexibility Act ("RFA")⁵³ requires that agencies consider the impact of their rules on small businesses. The requirements of CEA section 2(h)(7) and the Part 36

rules affect ECMs. The Commission previously has determined that ECMs are not small entities for purposes of the RFA.⁵⁴ Accordingly, the Chairman, on behalf of the Commission, hereby certifies pursuant to 5 U.S.C. 605(b) that these Orders, taken in connection with section 2(h)(7) of the Act and the Part 36 rules, will not have a significant impact on a substantial number of small entities.

VI. Orders

a. Order Relating to the PJM WH Real Time Peak Daily Contract

After considering the complete record in this matter, including the comment letters received in response to its request for comments, the Commission has determined to issue the following Order:

The Commission, pursuant to its authority under section 2(h)(7) of the Act, hereby determines that the PJM WH Real Time Peak Daily contract, traded on the IntercontinentalExchange, Inc., does not at this time satisfy the material price preference or material liquidity criteria for significant price discovery contracts. Consistent with this determination, the IntercontinentalExchange, Inc., is not considered a registered entity⁵⁵ with respect to the PJM WH Real Time Peak Daily contract and is not subject to the provisions of the Commodity Exchange Act applicable to registered entities. Further, the obligations, requirements and timetables prescribed in Commission rule 36.3(c)(4) governing core principle compliance by the IntercontinentalExchange, Inc., are not applicable to the PJM WH Real Time Peak Daily contract with the issuance of this Order.

This Order is based on the representations made to the Commission by the IntercontinentalExchange, Inc., dated July 27, 2009, and March 24, 2010, and other supporting material. Any material change or omissions in the facts and circumstances pursuant to which this order is granted might require the Commission to reconsider its current determination that the PJM WH Real Time Peak Daily contract is not a significant price discovery contract. Additionally, to the extent that it continues to rely upon the exemption in Section 2(h)(3) of the Act, the IntercontinentalExchange, Inc., must continue to comply with all of the applicable requirements of Section

⁵⁰ See 73 FR 75888, 75893 (Dec. 12, 2008).

⁵¹ 44 U.S.C. 3507(d).

⁵² 7 U.S.C. 19(a).

⁵³ 5 U.S.C. 601 *et seq.*

⁵⁴ 66 FR 42256, 42268 (Aug. 10, 2001).

⁵⁵ 7 U.S.C. 1a(29).

2(h)(3) and Commission Regulation 36.3.

b. Order Relating to the PJM WH Real Time Off-Peak Daily Contract

After considering the complete record in this matter, including the comment letters received in response to its request for comments, the Commission has determined to issue the following Order:

The Commission, pursuant to its authority under section 2(h)(7) of the Act, hereby determines that the PJM WH Real Time Off-Peak Daily contract, traded on the IntercontinentalExchange, Inc., does not at this time satisfy the material price preference or material liquidity criteria for significant price discovery contracts. Consistent with this determination, the IntercontinentalExchange, Inc., is not considered a registered entity⁵⁶ with respect to the PJM WH Real Time Off-Peak Daily contract and is not subject to the provisions of the Commodity Exchange Act applicable to registered entities. Further, the obligations, requirements and timetables prescribed in Commission rule 36.3(c)(4) governing core principle compliance by the IntercontinentalExchange, Inc., are not applicable to the PJM WH Real Time Off-Peak Daily contract with the issuance of this Order.

This Order is based on the representations made to the Commission by the IntercontinentalExchange, Inc., dated July 27, 2009, and March 24, 2010, and other supporting material. Any material change or omissions in the facts and circumstances pursuant to which this order is granted might require the Commission to reconsider its current determination that the PJM WH Real Time Off-Peak Daily contract is not a significant price discovery contract. Additionally, to the extent that it continues to rely upon the exemption in Section 2(h)(3) of the Act, the IntercontinentalExchange, Inc., must continue to comply with all of the applicable requirements of Section 2(h)(3) and Commission Regulation 36.3.

c. Order Relating to the PJM WH Day Ahead LMP Peak Daily Contract

After considering the complete record in this matter, including the comment letters received in response to its request for comments, the Commission has determined to issue the following Order:

The Commission, pursuant to its authority under section 2(h)(7) of the

Act, hereby determines that the PJM WH Day Ahead LMP Peak Daily contract, traded on the IntercontinentalExchange, Inc., does not at this time satisfy the material price preference or material liquidity criteria for significant price discovery contracts. Consistent with this determination, the IntercontinentalExchange, Inc., is not considered a registered entity⁵⁷ with respect to the PJM WH Day Ahead LMP Peak Daily contract and is not subject to the provisions of the Commodity Exchange Act applicable to registered entities. Further, the obligations, requirements and timetables prescribed in Commission rule 36.3(c)(4) governing core principle compliance by the IntercontinentalExchange, Inc., are not applicable to the PJM WH Day Ahead LMP Peak Daily contract with the issuance of this Order.

This Order is based on the representations made to the Commission by the IntercontinentalExchange, Inc., dated July 27, 2009, and March 24, 2010, and other supporting material. Any material change or omissions in the facts and circumstances pursuant to which this order is granted might require the Commission to reconsider its current determination that the PJM WH Day Ahead LMP Peak Daily contract is not a significant price discovery contract. Additionally, to the extent that it continues to rely upon the exemption in Section 2(h)(3) of the Act, the IntercontinentalExchange, Inc., must continue to comply with all of the applicable requirements of Section 2(h)(3) and Commission Regulation 36.3.

Issued in Washington, DC, on July 9, 2010, by the Commission.

David A. Stawick,

Secretary of the Commission.

[FR Doc. 2010-17744 Filed 7-20-10; 8:45 am]

BILLING CODE 6351-01-P

COMMODITY FUTURES TRADING COMMISSION

Orders Finding That the SP-15 Financial Day-Ahead LMP Peak Daily Contract; SP-15 Financial Day-Ahead LMP Off-Peak Daily Contract; SP-15 Financial Swap Real Time LMP-Peak Daily Contract; NP-15 Financial Day-Ahead LMP Peak Daily Contract and NP-15 Financial Day-Ahead LMP Off-Peak Daily Contract; Offered for Trading on the IntercontinentalExchange, Inc., Do Not Perform a Significant Price Discovery Function

AGENCY: Commodity Futures Trading Commission.

ACTION: Final orders.

SUMMARY: On October 6, 2009, the Commodity Futures Trading Commission ("CFTC" or "Commission") published for comment in the **Federal Register**¹ a notice of its intent to undertake a determination whether the SP-15² Financial Day-Ahead LMP Peak Daily ("SDP") contract; SP-15 Financial Day-Ahead LMP Off-Peak Daily ("SQP") contract; SP-15 Financial Swap Real Time LMP-Peak Daily ("SRP") contract; NP-15³ Financial Day-Ahead LMP Peak Daily ("DPN") contract; and NP-15 Financial Day-Ahead LMP Off-Peak Daily ("UNP") contract,⁴ which are listed for trading on the IntercontinentalExchange, Inc. ("ICE"), an exempt commercial market ("ECM") under sections 2(h)(3)–(5) of the Commodity Exchange Act ("CEA" or the "Act"), perform a significant price discovery function pursuant to section 2(h)(7) of the CEA. The Commission undertook this review based upon an initial evaluation of information and data provided by ICE as well as other available information. The Commission has reviewed the entire record in this matter, including all comments received, and has determined to issue orders finding that the SDP, SQP, SRP, DPN and UNP contracts do not perform a significant price discovery function. Authority for this action is found in section 2(h)(7) of the CEA and Commission rule 36.3(c) promulgated thereunder.

DATES: *Effective date:* July 9, 2010.

¹ 74 FR 51264 (October 6, 2009).

² The acronym "SP" stands for "South Path."

³ The acronym "NP" stands for "North Path."

⁴ The **Federal Register** notice also requested comment on the SP-15 Financial Day-Ahead LMP Peak ("SPM") contract and SP-15 Financial Day-Ahead LMP Off-Peak ("OFFP") contract; these contracts will be addressed in a separate **Federal Register** release.

⁵⁶ 7 U.S.C. 1a(29).

⁵⁷ 7 U.S.C. 1a(29).

FOR FURTHER INFORMATION CONTACT:

Gregory K. Price, Industry Economist, Division of Market Oversight, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW., Washington, DC 20581. Telephone: (202) 418-5515. E-mail: gprice@cftc.gov; or Susan Nathan, Senior Special Counsel, Division of Market Oversight, same address. Telephone: (202) 418-5133. E-mail: snathan@cftc.gov.

SUPPLEMENTARY INFORMATION:**I. Introduction**

The CFTC Reauthorization Act of 2008 ("Reauthorization Act")⁵ significantly broadened the CFTC's regulatory authority with respect to ECMs by creating, in section 2(h)(7) of the CEA, a new regulatory category—ECMs on which significant price discovery contracts ("SPDCs") are traded—and treating ECMs in that category as registered entities under the CEA.⁶ The legislation authorizes the CFTC to designate an agreement, contract or transaction as a SPDC if the Commission determines, under criteria established in section 2(h)(7), that it performs a significant price discovery function. When the Commission makes such a determination, the ECM on which the SPDC is traded must assume, with respect to that contract, all the responsibilities and obligations of a registered entity under the Act and Commission regulations, and must comply with nine core principles established by new section 2(h)(7)(C).

On March 16, 2009, the CFTC promulgated final rules implementing the provisions of the Reauthorization Act.⁷ As relevant here, rule 36.3 imposes increased information reporting requirements on ECMs to assist the Commission in making prompt assessments whether particular ECM contracts may be SPDCs. In addition to filing quarterly reports of its contracts, an ECM must notify the Commission promptly concerning any contract traded in reliance on the exemption in section 2(h)(3) of the CEA that averaged five trades per day or more over the most recent calendar quarter, and for which the exchange sells its price information regarding the contract to market participants or industry publications, or whose daily closing or settlement prices on 95 percent or more of the days in the most recent quarter

were within 2.5 percent of the contemporaneously determined closing, settlement or other daily price of another contract.

Commission rule 36.3(c)(3) established the procedures by which the Commission makes and announces its determination whether a particular ECM contract serves a significant price discovery function. Under those procedures, the Commission will publish notice in the **Federal Register** that it intends to undertake an evaluation whether the specified agreement, contract or transaction performs a significant price discovery function and to receive written views, data and arguments relevant to its determination from the ECM and other interested persons. Upon the close of the comment period, the Commission will consider, among other things, all relevant information regarding the subject contract and issue an order announcing and explaining its determination whether or not the contract is a SPDC. The issuance of an affirmative order signals the effectiveness of the Commission's regulatory authorities over an ECM with respect to a SPDC; at that time such an ECM becomes subject to all provisions of the CEA applicable to registered entities.⁸ The issuance of such an order also triggers the obligations, requirements and timetables prescribed in Commission rule 36.3(c)(4).⁹

II. Notice of Intent To Undertake SPDC Determination

On October 6, 2009, the Commission published in the **Federal Register** notice of its intent to undertake a determination whether the SDP, SQP, SRP, DPN and UNP contracts¹⁰ perform a significant price discovery function and requested comment from interested parties.¹¹ Comments were received from

the Federal Energy Regulatory Commission ("FERC"), Electric Power Supply Association ("EPSA"), Financial Institutions Energy Group ("FIEG"), Working Group of Commercial Energy Firms ("WGCEF"), ICE, California Public Utilities Commission ("CPUC"), Edison Electric Institute ("EEI"), Western Power Trading Forum ("WPTF") and Public Utility Commission of Texas ("PUCT").¹² The comment letters from FERC¹³ and PUCT did not directly address the issue of whether or not the subject contracts are SPDCs. CPUC stated that the subject contracts are SPDCs but did not provide reasons for how the contracts meet the criteria for

notice in the **Federal Register** that it intends to undertake a determination whether a specified agreement, contract or transaction performs a significant price discovery function and to receive written data, views and arguments relevant to its determination from the ECM and other interested persons.

¹² FERC is an independent Federal regulatory agency that, among other things, regulates the interstate transmission of natural gas, oil and electricity. EPSA describes itself as the "national trade association representing competitive power suppliers, including generators and marketers." FIEG describes itself as an association of investment and commercial banks who are active participants in various sectors of the natural gas markets, "including acting as marketers, lenders, underwriters of debt and equity securities, and proprietary investors." WGCEF describes itself as "a diverse group of commercial firms in the domestic energy industry whose primary business activity is the physical delivery of one or more energy commodities to customers, including industrial, commercial and residential consumers" and whose membership consists of "energy producers, marketers and utilities." ICE is an ECM, as noted above. CPUC is a "constitutionally established agency charged with the responsibility for regulating electric corporations within the State of California." EEI is the "association of shareholder-owned electric companies, international affiliates and industry associates worldwide." WPTF describes itself as a "broad-based membership organization dedicated to encouraging competition in the Western power markets * * * WPTF strives to reduce the long-run cost of electricity to consumers throughout the region while maintaining the current high level of system reliability." PUCT is the independent organization that oversees the Electric Reliability Council of Texas ("ERCOT") to "ensure nondiscriminatory access to the transmission and distribution systems, to ensure the reliability and adequacy of the regional electrical network, and to perform other essential market functions." The comment letters are available on the Commission's Web site: <http://www.cftc.gov/lawandregulation/federalregister/federalregistercomments/2009/-012.html>.

¹³ FERC expressed the opinion that a determination by the Commission that any of the subject contracts performs a significant price discovery function "would not appear to conflict with FERC's exclusive jurisdiction under the Federal Power Act (FPA) over the transmission or sale for resale of electric energy in interstate commerce or with its other regulatory responsibilities under the FPA" and further that "FERC staff will monitor proposed SPDC determinations and advise the CFTC of any potential conflicts with FERC's exclusive jurisdiction over RTOs, [(regional transmission organizations)], ISOs [(independent system operators)] or other jurisdictional entities."

⁵ Incorporated as Title XIII of the Food, Conservation and Energy Act of 2008, Public Law 110-246, 122 Stat. 1624 (June 18, 2008).

⁶ 7 U.S.C. 1a(29).

⁷ 74 FR 12178 (Mar. 23, 2009); these rules became effective on April 22, 2009.

⁸ Public Law 110-246 at 13203; *Joint Explanatory Statement of the Committee of Conference*, H.R. Rep. No. 110-627, 110 Cong., 2d Sess. 978, 986 (Conference Committee Report). See also 73 FR 75888, 75894 (Dec. 12, 2008).

⁹ For an initial SPDC, ECMs have a grace period of 90 calendar days from the issuance of a SPDC determination order to submit a written demonstration of compliance with the applicable core principles. For subsequent SPDCs, ECMs have a grace period of 30 calendar days to demonstrate core principle compliance.

¹⁰ As noted above, the **Federal Register** notice also requested comment on the SP-15 Financial Day-Ahead LMP Peak ("SPM") contract and SP-15 Financial Day-Ahead LMP Off-Peak ("OPF") contract. The SPM and OPF contracts will be addressed in a separate **Federal Register** release.

¹¹ The Commission's Part 36 rules establish, among other things, procedures by which the Commission makes and announces its determination whether a specific ECM contract serves a significant price discovery function. Under those procedures, the Commission publishes a

SPDC determination. The remaining comment letters raised substantive issues with respect to the applicability of section 2(h)(7) to the subject contracts and generally expressed the opinion that the contracts are not SPDCs because they do not meet the material price reference or material liquidity criteria for SPDC determination. These comments are more extensively discussed below, as applicable.

III. Section 2(h)(7) of the CEA

The Commission is directed by section 2(h)(7) of the CEA to consider the following criteria in determining a contract's significant price discovery function:

- **Price Linkage**—The extent to which the agreement, contract or transaction uses or otherwise relies on a daily or final settlement price, or other major price parameter, of a contract or contracts listed for trading on or subject to the rules of a designated contract market (“DCM”) or derivatives transaction execution facility (“DTEF”), or a SPDC traded on an electronic trading facility, to value a position, transfer or convert a position, cash or financially settle a position, or close out a position.

- **Arbitrage**—The extent to which the price for the agreement, contract or transaction is sufficiently related to the price of a contract or contracts listed for trading on or subject to the rules of a DCM or DTEF, or a SPDC traded on or subject to the rules of an electronic trading facility, so as to permit market participants to effectively arbitrage between the markets by simultaneously maintaining positions or executing trades in the contracts on a frequent and recurring basis.

- **Material price reference**—The extent to which, on a frequent and recurring basis, bids, offers or transactions in a commodity are directly based on, or are determined by referencing or consulting, the prices generated by agreements, contracts or transactions being traded or executed on the electronic trading facility.

- **Material liquidity**—The extent to which the volume of agreements, contracts or transactions in a commodity being traded on the electronic trading facility is sufficient to have a material effect on other agreements, contracts or transactions listed for trading on or subject to the rules of a DCM, DTEF or electronic trading facility operating in reliance on the exemption in section 2(h)(3).

Not all criteria must be present to support a determination that a particular contract performs a significant price discovery function, and

one or more criteria may be inapplicable to a particular contract.¹⁴ Moreover, the statutory language neither prioritizes the criteria nor specifies the degree to which a SPDC must conform to the various criteria. In Guidance issued in connection with the Part 36 rules governing ECMs with SPDCs, the Commission observed that these criteria do not lend themselves to a mechanical checklist or formulaic analysis.

Accordingly, the Commission has indicated that in making its determinations it will consider the circumstances under which the presence of a particular criterion, or combination of criteria, would be sufficient to support a SPDC determination.¹⁵ For example, for contracts that are linked to other contracts or that may be arbitrated with other contracts, the Commission will consider whether the price of the potential SPDC moves in such harmony with the other contract that the two markets essentially become interchangeable. This co-movement of prices would be an indication that activity in the contract had reached a level sufficient for the contract to perform a significant price discovery function. In evaluating a contract's price discovery role as a price reference, the Commission the extent to which, on a frequent and recurring basis, bids, offers or transactions are directly based on, or are determined by referencing, the prices established for the contract.

IV. Findings and Conclusions

The Commission's findings and conclusions with respect to the SDP, SQP, SRP, DPN and UNP contracts are discussed separately below.

a. The SP-15 Financial Day-Ahead LMP Peak Daily (SDP) Contract and the SPDC Indicia

The SDP contract is cash settled based on the arithmetic average of peak-hour, day-ahead locational marginal prices (“LMPs”) ¹⁶ posted by the California ISO¹⁷ (“CAISO”) for the SP-15 Existing

Zone Generation (“EZ Gen”) Hun for all peak hours on the day prior to generation. The LMPs are derived from power trades that result in physical delivery. The size of the SDP contract is 400 megawatt hours (“MWh”), and the SDP contract is listed for 75 consecutive calendar days.

In general, electricity is bought and sold in an auction setting on an hourly basis at various points along the electrical grid. An LMP associated with a specific hour is derived as a volume-weighted average price of all of the transactions where electricity is to be supplied and consumed during that hour.

Electricity is traded in a day-ahead market as well as a real-time market. Typically, the bulk of energy transactions occur in the day-ahead market. The day-ahead market establishes prices for electricity that is to be delivered during the specified hour on the following day. Day-ahead prices are determined based on generation and energy transaction quotes offered in advance. Because power quotes are dependent on estimates of supply and demand, electricity needs usually are not perfectly satisfied in the day-ahead market. Consequently, on the day the electricity is transmitted and used, auction participants typically realize that they bought or sold either too much power or too little power. A real-time auction is operated to alleviate this problem by serving as a balancing mechanism. Specifically, electricity traders use the real-time market to sell excess electricity and buy additional power to meet demand. Only a relatively small amount of electricity is traded in the real-time market as compared to the day-ahead market.

Path 15 is an 84-mile portion of the north-south power transmission corridor in California, forming part of the Pacific AC Intertie and the California-Oregon Transmission Project.¹⁸ Path 15, along with the Pacific

as well as grid reliability, throughout its service area.

¹⁸ The Pacific Intertie comprises three alternating current (“AC”) lines and one direct current (“DC”) line. Together, these lines comprise the largest single electricity transmission program in the United States. The northern end of the DC line is at the Bonneville Power Administration's Celilo Converter Station, which is just south of The Dalles Dam about 90 miles east of Portland. The southern end is 846 miles away at the Sylmar Converter Station on the northern outskirts of Los Angeles. That station is operated by utilities including the Los Angeles Department of Water and Power (“LADWP”) and Southern California Edison. The AC lines follow generally the same path but terminate in Northern California. Only a few parties actually own the Intertie, but numerous entities

Continued

¹⁴ In its October 6, 2009, **Federal Register** release, the Commission identified material price reference and material liquidity as the possible criteria for SPDC determination of the SDP, SQP, SRP, DPN and UNP contracts. Arbitrage and price linkage were not identified as possible criteria. As a result, arbitrage and price linkage will not be discussed further in this document and the associated Orders.

¹⁵ 17 CFR Part 36, Appendix A.

¹⁶ An LMP represents the additional cost associated with producing an incremental amount of electricity. LMPs account for generation costs, congestion along the transmission lines, and electricity loss.

¹⁷ The acronym “ISO” signifies “Independent System Operator,” which is an entity that coordinates electricity generation and transmission,

DC Intertie running far to the east, completes an important transmission interconnection between the hydroelectric plants to the north and the fossil fuel plants to the south. Path 15 currently consists of three lines at 500 kilovolts ("kV") and four lines at 230 kV.¹⁹ The 500 kV lines connect Los Banos to Gates (two lines) and Los Banos to Midway (one line); all four 230 kV lines have Gates at one end with the other ends terminating at Panoche #1, Panoche #2, Gregg, or McCall substations. "NP-15" refers to the northern half of Path 15; conversely, "SP-15" refers to the lower half of Path 15.

When the weather is hot in California and the Desert Southwest, it is comparatively cool in the Pacific Northwest. Conversely, when the weather is cold in the Pacific Northwest it is comparatively warm in California and the Desert Southwest. Consumers on the West Coast take advantage of seasonal weather differences to share large amounts of power between the Desert Southwest and the Pacific Northwest. In the spring and summer, when generators (mostly hydroelectric plants) generally have surplus power in the Northwest and temperatures climb in the Southwest, power is shipped south to help meet increasing power demand, particularly for air conditioning. Conversely in the winter, when generators in the Southwest generally have surplus power and temperatures drop in the Northwest, power is shipped north to meet increasing electricity demand, particularly for heating.

CAISO is charged with operating the high-voltage grid in California. Because CAISO's service area is basically the entire State of California, it is responsible for serving millions of businesses and households, particularly in the Los Angeles and San Francisco areas. CAISO's current mission is to ensure the efficient and reliable

operation of the power grid, provide fair and open transmission access, promote environmental stewardship, facilitate effective markets, promote infrastructure development and support the timely and accurate dissemination of information. CAISO is responsible for operating the hourly auctions in which the power is traded, and CAISO publishes the LMP data on its Web site.

1. Material Price Reference Criterion

The Commission's October 6, 2009, **Federal Register** notice identified material price reference and material liquidity as the potential basis for a SPDC determination with respect to the SDP contract. The Commission considered the fact that ICE sells its price data to market participants in a number of different packages which vary in terms of the hubs covered, time periods, and whether the data are daily only or historical. For example, ICE offers the "West Power of Day" package with access to all price data or just current prices plus a selected number of months (*i.e.*, 12, 24, 36 or 48 months) of historical data. This package includes price data for the SDP contract.

The Commission also noted that its October 2007 *Report on the Oversight of Trading on Regulated Futures Exchanges and Exempt Commercial Markets* ("ECM Study") found that in general, market participants view ICE as a price discovery market for certain electricity contracts. The study did not specify which markets performed this function; nevertheless, the Commission determined that the SDP contract, while not mentioned by name in the ECM Study, warranted further review.

The Commission explains in its Guidance to the Part 36 rules that in evaluating a contract under the material price reference criterion, it will rely on one of two sources of evidence—direct and indirect—to determine that the price of a contract was being used as a material price reference and therefore, serving a significant price discovery function.²⁰ With respect to direct evidence, the Commission will consider the extent to which, on a frequent and recurring basis, cash market bids, offers or transactions are directly based on, or quoted at a differential to, the prices generated on the ECM in question. Direct evidence may be established when cash market participants are quoting bid or offer prices or entering into transactions at prices that are set either explicitly or implicitly at a differential to prices established for the contract in question. Cash market prices are set explicitly at a differential to the

section 2(h)(3) contract when, for instance, they are quoted in dollars and cents above or below the reference contract's price. Cash market prices are set implicitly at a differential to a section 2(h)(3) contract when, for instance, they are arrived at after adding to, or subtracting from the section 2(h)(3) contract, but then quoted or reported at a flat price. With respect to indirect evidence, the Commission will consider the extent to which the price of the contract in question is being routinely disseminated in widely distributed industry publications—or offered by the ECM itself for some form of remuneration—and consulted on a frequent and recurring basis by industry participants in pricing cash market transactions.

SP-15 is a major pricing center for electricity on the West Coast. Traders, including producers, keep abreast of electricity prices in the SP-15 power market when conducting cash deals. However, ICE's SP-15 Financial Day-Ahead LMP Peak ("SPM") contract, which is a monthly contract, is used more widely as a source of pricing information for electricity than the daily, peak-hour contract (*i.e.*, the SDP contract). Specifically, the SPM contract prices power at the SP-15 trading point based on the simple average of the peak-hour prices over the contract month, as reported by CAISO. Market participants use the SPM contract to lock-in electricity prices far into the future. (The SPM contract is listed for 110 months into the future.) In contrast, the SDP contract is listed for a much shorter length of time (about 10 weeks); with such a limited timeframe, the forward pricing capability of the SDP contract is much more constrained than that of the SPM contract. Traders use monthly power contracts like the SPM contract to price electricity commitments in the future, where such commitments are based on long range forecasts of power supply and demand. As generation and usage nears, market participants have a better understanding of actual power supply and needs. As a result, traders can modify previously-established hedges with the daily power contracts, like the SDP contract.

Accordingly, although the SP-15 is a major trading center for electricity and, as noted, ICE sells price information for the SDP contract, the Commission has explained in its Guidance that a contract meeting the material price reference criterion would routinely be consulted by industry participants in pricing cash market transactions. The SDP contract is not consulted in this manner and does not satisfy the material price reference criterion. Thus, the SDP contract does

have contracts to share its transmission capacity. The California-Oregon border is a dividing line for Intertie ownership and capacity sharing. Depending on seasonal conditions, the Intertie is capable of transmitting up to 7,900 MW—4,800 MW of AC power (1,600 MW of this amount is in the California-Oregon Transmission Project, also known as the "Third AC Line") and 3,100 MW of DC power. Over the past five years, the limit has ranged between about 6,300 MW and 7,900 MW. Most of the power transmitted on the Intertie is surplus to regional needs, but some firm power also is transmitted. See <http://www.nwccouncil.org/LIBRARY/2001/2001-11.pdf>.

¹⁹ The third 500 kV line was installed between 2003 and 2004 in order to relieve constraints on the existing north-south transmission lines. This capacity constraint contributed to the California energy crisis in 2000 and 2001. See <http://www.wapa.gov/sn/ops/transmission/path15/factSheet.pdf>.

²⁰ 17 CFR 36, Appendix A.

not satisfy the direct price reference test for existence of material price reference. Furthermore, the Commission notes that publication of the SDP contract's prices is not indirect evidence of material price reference. The SDP contract's prices are published with those of numerous other contracts, including ICE's monthly electricity contracts, which are of more interest to market participants. In these circumstances, the Commission has concluded that traders likely do not specifically purchase ICE data packages for the SDP contract's prices and do not consult such prices on a frequent and recurring basis in pricing cash market transactions.

i. Federal Register Comments

WGCEF, EPSA, WPTF, FIEG, EEI and ICE stated that no other contract directly references or settles to the SDP contract's price. Moreover, the commenters argued that the underlying cash price series against which the SDP contract is settled (in this case, the average day-ahead peak-hour SP-15 electricity prices on a particular day, which is derived from cash market transactions) is the authentic reference price and not the ICE contract itself. The Commission believes that this interpretation of price reference is too narrow and believes that a cash-settled derivatives contract could meet the price reference criterion if market participants "consult on a frequent and recurring basis" the derivatives contract when pricing forward, fixed-price commitments or other cash-settled derivatives that seek to "lock-in" a fixed price for some future point in time to hedge against adverse price movements. As noted above, while SP-15 is a major power market, traders do not consider the daily average peak-hour SP-15 price to be as important as the peak electricity price associated with the monthly contract.

In addition, WGCEF and EPSA stated that the publication of price data for the SDP contract price is weak justification for material price reference. Market participants generally do not purchase ICE data sets for one contract's prices, such as those for the SDP contract. Instead, traders are interested in the settlement prices, so the fact that ICE sells the SDP prices as part of a broad package is not conclusive evidence that market participants are buying the ICE data sets because they find the SDP prices have substantial value to them. As noted above, the Commission indicated that publication of the SDP contract's prices is not indirect evidence of routine dissemination. The SDP contract's prices are published with those of numerous other contracts,

which are of more interest to market participants. The Commission has concluded that traders likely do not specifically purchase the ICE data packages for the SDP contract's prices and do not consult such prices on a frequent and recurring basis in pricing cash market transactions.

Lastly, EEI criticized that the ECM Study did not specifically identify the SDP contract as a contract that is referred to by market participants on a frequent and recurring basis. In response, the Commission notes that it cited the ECM Study's general finding that some ICE electricity contracts appear to be regarded as price discovery markets merely as indication that an investigation of certain ICE contracts may be warranted. The ECM Study was not intended to serve as the sole basis for determining whether or not a particular contract meets the material price reference criterion.

ii. Conclusion Regarding Material Price Reference

Based on the above, the Commission finds that the ICE SDP contract does not meet the material price reference criterion because cash market transactions are not priced either explicitly or implicitly on a frequent and recurring basis at a differential to the SDP contract's price (direct evidence). Moreover, while the SDP contract's price data is sold to market participants, those individuals likely do not purchase the ICE data packages specifically for the SDP contract's prices and do not consult such prices on a frequent and recurring basis in pricing cash market transactions (indirect evidence).

2. Material Liquidity Criterion

To assess whether a contract meets the material liquidity criterion, the Commission first examines trading activity as a general measurement of the contract's size and potential importance. If the Commission finds that the contract in question meets a threshold of trading activity that would render it of potential importance, the Commission will then perform a statistical analysis to measure the effect that changes to the subject contract's prices potentially may have on prices for other contracts listed on an ECM or a DCM.

The total number of transactions executed on ICE's electronic platform in the SDP contract was 6,159 in the second quarter of 2009, resulting in a daily average of 96.2 trades. During the same period, the SDP contract had a total trading volume of 23,365 contracts and an average daily trading volume of

365.1 contracts. Moreover, open interest as of June 30, 2009, was 3,387 contracts, which included trades executed on ICE's electronic trading platform, as well as trades executed off of ICE's electronic trading platform and then brought to ICE for clearing. In this regard, ICE does not differentiate between open interest created by a transaction executed on its trading platform and that created by a transaction executed off its trading platform.²¹

In a subsequent filing dated March 24, 2010, ICE reported that total trading volume in the fourth quarter of 2009 was 40,840 contracts (or 628.3 contracts on a daily basis). In terms of number of transactions, 6,664 trades occurred in the fourth quarter of 2009 (102.5 trades per day). As of December 31, 2009, open interest in the SDP contract was 16,786 contracts, which included trades executed on ICE's electronic trading platform, as well as trades executed off of ICE's electronic trading platform and then brought to ICE for clearing.

The number of trades per day was substantial between the second and fourth quarters of 2009. However, trading activity in the SDP contract, as characterized by total quarterly volume, indicates that the SDP contract experiences trading activity that is similar to that of thinly-traded futures markets.²² Thus, the SDP contract does not meet a threshold of trading activity that would render it of potential importance and no additional statistical analysis is warranted.²³

i. Federal Register Comments

ICE and WGCEF stated that the SDP contract lacks a sufficient number of trades to meet the material liquidity criterion. These two commenters, along with WPTF, EPSA, FIEG and EEI argued

²¹ 74 FR 51264 (October 6, 2009).

²² Staff has advised the Commission that in its experience, a thinly-traded contract is, generally, one that has a quarterly trading volume of 100,000 contracts or less. In this regard, in the third quarter of 2009, physical commodity futures contracts with trading volume of 100,000 contracts or fewer constituted less than one percent of total trading volume of all physical commodity futures contracts.

²³ In establishing guidance to illustrate how it will evaluate the various criteria, or combinations of criteria, when determining whether a contract is a SPDC, the Commission made clear that "material liquidity itself would not be sufficient to make a determination that a contract is a [SPDC], * * * but combined with other factors it can serve as a guidepost indicating which contracts are functioning as [SPDCs]." 17 CFR 36, Appendix A. For the reasons discussed above, the Commission has found that the SDP contract does not meet the material price reference criterion. In light of this finding and the Commission's Guidance cited above, there is no need to evaluate further the material liquidity criteria since the Commission believes it is not useful as the sole basis for a SPDC determination.

that the SDP contract cannot have a material effect on other contracts, such as those listed for trading by the New York Mercantile Exchange ("NYMEX"), a DCM, because price linkage and the potential for arbitrage do not exist. Moreover, the DCM contracts do not cash settle to the SDP contract's price. Instead, the DCM contracts and the SDP contract are both cash settled based on physical transactions, which neither the ECM nor the DCM contracts can influence.

WGCEF and ICE noted that the Commission's Guidance had posited concepts of liquidity that generally assumed a fairly constant stream of prices throughout the trading day and noted that the relatively low number of trades per day in the SDP contract did not meet this standard of liquidity. The Commission observes that a continuous stream of prices would indeed be an indication of liquidity for certain markets but the Guidance also notes that "quantifying the levels of immediacy and price concession that would define material liquidity may differ from one market or commodity to another."²⁴

ICE opined that the Commission "seems to have adopted a five trade per day test for material liquidity." To the contrary, the Commission adopted a five trades-per-day threshold as a reporting requirement to enable it to "independently be aware of ECM contracts that may develop into SPDCs"²⁵ rather than solely relying upon an ECM to identify potential SPDCs to the Commission. Thus, any contract that meets this threshold may be subject to scrutiny as a potential SPDC; however, a contract will not be found to be a SPDC merely because it met the reporting threshold.

ICE proposed that the statistics provided by ICE were misinterpreted and misapplied by the Commission. In particular, ICE stated that the volume figures used in the Commission's analysis (cited above) "include trades made in all months" as well as in strips of contract months. ICE suggested that a more appropriate method of determining liquidity is to examine the activity in a single traded month of a given contract."²⁶ It is the Commission's

opinion that liquidity, as it pertains to the SDP contract, is typically a function of trading activity in particular lead days and, given sufficient liquidity in such days, the ICE SDP contract itself would be considered liquid. In any event, in light of the fact that the Commission has found that the SDP contract does not meet the material price reference criterion, according to the Commission's Guidance, it would be unnecessary to evaluate whether the SDP contract meets the material liquidity criterion since it cannot be used alone for SPDC determination.

ii. Conclusion Regarding Material Liquidity

For the reasons discussed above, the Commission finds that the SDP contract does not meet the material liquidity criterion.

3. Overall Conclusion Regarding the SDP Contract

After considering the entire record in this matter, including the comments received, the Commission has determined that the ICE SDP contract does not perform a significant price discovery function under the criteria established in section 2(h)(7) of the CEA. Specifically, the Commission has determined that the SDP contract does not meet the material price reference or material liquidity criteria at this time. Accordingly, the Commission is issuing the attached Order declaring that the SDP contract is not a SPDC.

Issuance of this Order indicates that the Commission does not at this time regard ICE as a registered entity in connection with its SDP contract.²⁷ Accordingly, with respect to its SDP contract, ICE is not required to comply with the obligations, requirements and timetables prescribed in Commission rule 36.3(c)(4) for ECMs with SPDCs. However, ICE must continue to comply with the applicable reporting requirements for ECMs.

transaction data executed on ICE's electronic trading platform. As noted above, supplemental data supplied by ICE confirmed that block trades are in addition to the trades that were conducted on the electronic platform; block trades comprise about 29 percent of all transactions in the SDP contract (as of the fourth quarter of 2009). Commission acknowledges that the open interest information it provided in its October 6, 2009, **Federal Register** notice includes transactions made off the ICE platform. However, once open interest is created, there is no way for ICE to differentiate between "on-exchange" versus "off-exchange" created positions, and all such positions are fungible with one another and may be offset in any way agreeable to the position holder regardless of how the position was initially created.

²⁷ See 73 FR 75888, 75893 (Dec. 12, 2008).

b. The SP-15 Financial Day-Ahead LMP Off-Peak Daily (SQP) Contract and the SPDC Indicia

The SQP contract is cash settled based on the arithmetic average of off-peak hour, day-ahead LMPs posted by CAISO for the SP-15 EZ Gen Hun for all off-peak hours on the day prior to generation. The LMPs are derived from power trades that result in physical delivery. The size of the SQP contract is 25 MWh, and the SQP contract is listed for 75 consecutive calendar days.

As noted above, electricity generally is bought and sold in an auction setting on an hourly basis at various point along the electrical grid. An LMP associated with a specific hour is calculated as the volume-weighted average price of all of the transactions where electricity is to be supplied and consumed during that hour.

Electricity is traded in a day-ahead market as well as a real-time market. Typically, the bulk of energy transactions occur in the day-ahead market. The day-ahead market establishes prices for electricity that is to be delivered during the specified hour on the following day. Day-ahead prices are determined based on generation and energy transaction quotes offered in advance. Because power quotes are dependent on estimates of supply and demand, electricity needs usually are not perfectly satisfied in the day-ahead market. Consequently, on the day the electricity is transmitted and used, auction participants typically realize that they bought or sold either too much power or too little power. A real-time auction is operated to alleviate this problem by serving as a balancing mechanism. Specifically, electricity traders use the real-time market to sell excess electricity and buy additional power to meet demand. Only a relatively small amount of electricity is traded in the real-time market as compared to the day-ahead market.

Path 15 is an 84-mile portion of the north-south power transmission corridor in California, forming part of the Pacific AC Intertie and the California-Oregon Transmission Project.²⁸ Path 15, along with the Pacific

²⁸ The Pacific Intertie comprises three AC lines and one DC line. Together, these lines comprise the largest single electricity transmission program in the United States. The northern end of the DC line is at the Bonneville Power Administration's Celilo Converter Station, which is just south of The Dalles Dam about 90 miles east of Portland. The southern end is 846 miles away at the Sylmar Converter Station on the northern outskirts of Los Angeles. That station is operated by utilities including LADWP and Southern California Edison. The AC lines follow generally the same path but terminate in Northern California. Only a few parties actually

²⁴ Guidance, *supra*.

²⁵ 73 FR 75892 (December 12, 2008).

²⁶ In addition, ICE stated that the trades-per-day statistics that it provided to the Commission in its quarterly filing and which were cited in the Commission's October 6, 2009, **Federal Register** notice includes 2(h)(1) transactions, which were not completed on the electronic trading platform and should not be considered in the SPDC determination process. The Commission staff asked ICE to review the data it sent in its quarterly filings; ICE confirmed that the volume data it provided and which the Commission cited includes only

DC Intertie running far to the east, completes an important transmission interconnection between the hydroelectric plants to the north and the fossil fuel plants to the south. Path 15 currently consists of three 500 kV lines and four 230 kV lines.²⁹ The 500 kV lines connect Los Banos to Gates (two lines) and Los Banos to Midway (one line); all four 230 kV lines have Gates at one end with the other ends terminating at Panoche #1, Panoche #2, Gregg, or McCall substations. As noted above, “NP-15” refers to the northern half of Path 15; conversely, “SP-15” refers to the lower half of Path 15.

When the weather is hot in California and the Desert Southwest, it is comparatively cool in the Pacific Northwest. Conversely, when the weather is cold in the Pacific Northwest it is comparatively warm in California and the Desert Southwest. Consumers on the West Coast take advantage of seasonal weather differences to share large amounts of power between the Desert Southwest and the Pacific Northwest. In the spring and summer, when generators (mostly hydroelectric plants) generally have surplus power in the Northwest and temperatures climb in the Southwest, power is shipped south to help meet increasing power demand, particularly for air conditioning. Conversely in the winter, when generators in the Southwest generally have surplus power and temperatures drop in the Northwest, power is shipped north to meet increasing electricity demand, particularly for heating.

CAISO is charged with operating the high-voltage grid in California. Because CAISO’s service area is basically the entire state, the ISO is responsible for serving millions of businesses and households, particularly in the Los Angeles and San Francisco areas. CAISO’s current mission is to ensure the efficient and reliable operation of the

power grid, provide fair and open transmission access, promote environmental stewardship, facilitate effective markets, promote infrastructure development and support the timely and accurate dissemination of information. This ISO also is responsible for operating the hourly auctions in which power is traded, and CAISO publishes LMP data on its Web site.

1. Material Price Reference Criterion

The Commission’s October 6, 2009, **Federal Register** notice identified material price reference and material liquidity as the potential basis for a SPDC determination with respect to the SQP contract. The Commission considered the fact that ICE sells its price data to market participants in a number of different packages which vary in terms of the hubs covered, time periods, and whether the data are daily only or historical. For example, ICE offers the “West Power of Day” package with access to all price data or just current prices plus a selected number of months (*i.e.*, 12, 24, 36 or 48 months) of historical data. This package includes price data for the SQP contract.

The Commission also noted that its October 2007 ECM Study found that in general, market participants view ICE as a price discovery market for certain electricity contracts. The study did not specify which markets performed this function; nevertheless, the Commission determined that the SQP contract, while not mentioned by name in the ECM Study, warranted further review.

The Commission explains in its Guidance to the statutory criteria for SPDCs that in evaluating a contract under the material price reference criterion, it will rely on one of two sources of evidence—direct or indirect—to determine that the price of a contract was being used as a material price reference and therefore, serving a significant price discovery function.³⁰ With respect to direct evidence, the Commission will consider the extent to which, on a frequent and recurring basis, cash market bids, offers or transactions are directly based on or quoted at a differential to, the prices generated on the ECM in question. Direct evidence may be established when cash market participants are quoting bid or offer prices or entering into transactions at prices that are set either explicitly or implicitly at a differential to prices established for the contract in question. Cash market prices are set explicitly at a differential to the section 2(h)(3) contract when, for

instance, they are quoted in dollars and cents above or below the reference contract’s price. Cash market prices are set implicitly at a differential to a section 2(h)(3) contract when, for instance, they are arrived at after adding to, or subtracting from the section 2(h)(3) contract, but then quoted or reported at a flat price. With respect to indirect evidence, the Commission will consider the extent to which the price of the contract in question is being routinely disseminated in widely distributed industry publications—or offered by the ECM itself for some form of remuneration—and consulted on a frequent and recurring basis by industry participants in pricing cash market transactions.

SP-15 is a major pricing center for electricity on the West Coast. Traders, including producers, keep abreast of the electricity prices in the SP-15 power market when conducting cash deals. However, ICE’s SP-15 Financial Day-Ahead LMP Off-Peak (“OFP”) contract, which is a monthly contract, is used more widely as a source of pricing information for electricity than the daily, off-peak contract (*i.e.*, the SQP contract). Specifically, the OFP contract prices power at the SP-15 trading point based on the simple average of the off-peak hour prices over the contract month, as reported by CAISO. Market participants can use the OFP contract to lock-in electricity prices far into the future (about 10 weeks). In contrast, the SQP contract is listed for a much shorter length of time; with such a limited timeframe, the forward pricing capability of the SQP contract is much more constrained than that of the OFP contract. Traders use monthly power contracts like the OFP contract to price electricity commitments in the future, where such commitments are based on long range forecasts of power supply and demand. As generation and usage nears, market participants have a better understanding of actual power supply and needs. As a result, traders can modify previously-established hedges with the daily power contracts, like the SQP contract.

Accordingly, although the SP-15 is a major trading center for electricity and, as noted, ICE sells price information for the SQP contract, the Commission has explained in its Guidance that a contract meeting the material price reference criterion would routinely be consulted by industry participants in pricing cash market transactions. The SQP contract is not consulted in this manner and does not satisfy the material price reference criterion. Thus, the SQP contract does not satisfy the direct price reference test for existence of material price reference.

own the Intertie, but numerous entities have contracts to share its transmission capacity. The California-Oregon border is a dividing line for Intertie ownership and capacity sharing. Depending on seasonal conditions, the Intertie is capable of transmitting up to 7,900 MW—4,800 MW of AC power (1,600 MW of this amount is in the California-Oregon Transmission Project, also known as the Third AC Line) and 3,100 MW of DC power. Over the past five years, the limit has ranged between about 6,300 MW and 7,900 MW. Most of the power transmitted on the Intertie is surplus to regional needs, but some firm power also is transmitted. See <http://www.nwccouncil.org/LIBRARY/2001/2001-11.pdf>.

²⁹ The third 500 kV line was installed between 2003 and 2004 in order to relieve constraints on the existing north-south transmission lines. This capacity constraint contributed to the California energy crisis in 2000 and 2001. See <http://www.wapa.gov/sn/ops/transmission/path15/factSheet.pdf>.

³⁰ 17 CFR Part 36, Appendix A.

Furthermore, the Commission notes that publication of the SQP contract's prices is not indirect evidence of material price reference. The SQP contract's prices are published with those of numerous other contracts, including ICE's monthly electricity contracts, which are of more interest to market participants. In these circumstances, the Commission has concluded that traders likely do not specifically purchase ICE data packages for the SQP contract's prices and do not consult such prices on a frequent and recurring basis in pricing cash market transactions.

i. Federal Register Comments

WGCEF, EPSA, WPTF, FIEG, EEI and ICE stated that no other contract directly references or settles to the SQP contract's price. Moreover, the commenters argued that the underlying cash price series against which the SQP contract is settled (in this case, the average day-ahead off-peak SP-15 electricity prices on a particular day, which is derived from cash market transactions) is the authentic reference price and not the ICE contract itself. The Commission believes that this interpretation of price reference is too narrow and believes that a cash-settled derivatives contract could meet the price reference criterion if market participants "consult on a frequent and recurring basis" the derivatives contract when pricing forward, fixed-price commitments or other cash-settled derivatives that seek to "lock-in" a fixed price for some future point in time to hedge against adverse price movements. As noted above, while SP-15 is a major power market, traders do not consider the daily average off-peak SP-15 price to be as important as the off-peak electricity price associated with the monthly contract.

In addition, WGCEF and EPSA stated that the publication of price data for the SQP contract price is weak justification for material price reference. Market participants generally do not purchase ICE data sets for one contract's prices, such as those for the SQP contract. Instead, traders are interested in the settlement prices, so the fact that ICE sells the SQP prices as part of a broad package is not conclusive evidence that market participants are buying the ICE data sets because they find the SQP prices have substantial value to them. As noted above, the Commission indicated that publication of the SQP contract's prices is not indirect evidence of routine dissemination. The SQP contract's prices are published with those of numerous other contracts, which are of more interest to market participants. The Commission has

concluded that traders likely do not specifically purchase the ICE data packages for the SQP contract's prices and do not consult such prices on a frequent and recurring basis in pricing cash market transactions.

Lastly, EEI criticized that the ECM Study did not specifically identify the SQP contract as a contract that is referred to by market participants on a frequent and recurring basis. In response, the Commission notes that it cited the ECM Study's general finding that some ICE electricity contracts appear to be regarded as price discovery markets merely as indication that an investigation of certain ICE contracts may be warranted. The ECM Study was not intended to serve as the sole basis for determining whether or not a particular contract meets the material price reference criterion.

ii. Conclusion Regarding Material Price Reference

The Commission finds that the ICE SQP contract does not meet the material price reference criterion because cash market transactions are not priced either explicitly or implicitly on a frequent and recurring basis at a differential to the SQP contract's price (direct evidence). Moreover, while the SQP contract's price data is sold to market participants, those individuals likely do not purchase the ICE data packages specifically for the SQP contract's prices and do not consult such prices on a frequent and recurring basis in pricing cash market transactions (indirect evidence).

2. Material Liquidity Criterion

As noted above, in its October 6, 2009, **Federal Register** notice, the Commission identified the SQP contract as a potential SPDC based on the material price reference and material liquidity as potential criteria. To assess whether a contract meets the material liquidity criterion, the Commission first examines trading activity as a general measurement of the contract's size and potential importance. If the Commission finds that the contract in question meets a threshold of trading activity that would render it of potential importance, the Commission will then perform a statistical analysis to measure the effect that changes to the subject contract's prices potentially may have on prices for other contracts listed on an ECM or a DCM.

The total number of transactions executed on ICE's electronic platform in the SQP contract was 2,086 in the second quarter of 2009, resulting in a daily average of 32.6 trades. During the same period, the SQP contract had a

total trading volume of 57,544 contracts and an average daily trading volume of 899.1 contracts. Moreover, open interest as of June 30, 2009, was 9,904 contracts, which included trades executed on ICE's electronic trading platform, as well as trades executed off of ICE's electronic trading platform and then brought to ICE for clearing. In this regard, ICE does not differentiate between open interest created by a transaction executed on its trading platform and that created by a transaction executed off its trading platform.³¹

In a subsequent filing dated March 24, 2010, ICE reported that total trading volume in the fourth quarter of 2009 was 43,002 contracts (or 661.6 contracts on a daily basis). In terms of number of transactions, 1,939 trades occurred in the fourth quarter of 2009 (29.8 trades per day). As of December 31, 2009, open interest in the SQP contract was 6,424 contracts, which included trades executed on ICE's electronic trading platform, as well as trades executed off of ICE's electronic trading platform and then brought to ICE for clearing.

The number of trades per day between the second and fourth quarters of 2009 was not substantial. In addition, trading activity in the SQP contract, as characterized by total quarterly volume, indicates that the SQP contract experiences trading activity that is similar to that of thinly-traded futures markets.³² Thus, the SQP contract does not meet a threshold of trading activity that would render it of potential importance and no additional statistical analysis is warranted.³³

i. Federal Register Comments

ICE and WGCEF stated that the SQP contract lacks a sufficient number of trades to meet the material liquidity

³¹ 74 FR 51264 (October 6, 2009).

³² Staff has advised the Commission that in its experience, a thinly-traded contract is, generally, one that has a quarterly trading volume of 100,000 contracts or less. In this regard, in the third quarter of 2009, physical commodity futures contracts with trading volume of 100,000 contracts or fewer constituted less than one percent of total trading volume of all physical commodity futures contracts.

³³ In establishing guidance to illustrate how it will evaluate the various criteria, or combinations of criteria, when determining whether a contract is a SPDC, the Commission made clear that "material liquidity itself would not be sufficient to make a determination that a contract is a [SPDC], * * * but combined with other factors it can serve as a guidepost indicating which contracts are functioning as [SPDCs]." 17 CFR Part 36, Appendix A. For the reasons discussed above, the Commission has found that the SQP contract does not meet the material price reference criterion. In light of this finding and the Commission's Guidance cited above, there is no need to evaluate further the material liquidity criteria since the Commission believes it is not useful as the sole basis for a SPDC determination.

criterion. These two commenters, along with WPTF, EPSA, FIEG and EEI argued that the SQP contract cannot have a material effect on other contracts, such as those listed for trading by NYMEX. The commenters pointed out that it is not possible for the SQP contract to affect a DCM contract because price linkage and the potential for arbitrage do not exist. Moreover, the DCM contracts do not cash settle to the SQP contract's price. Instead, the DCM contracts and the SQP contract are both cash settled based on physical transactions, which neither the ECM or the DCM contracts can influence.

WGCEF and ICE noted that the Commission's Guidance had posited concepts of liquidity that generally assumed a fairly constant stream of prices throughout the trading day and noted that the relatively low number of trades per day in the SQP contract did not meet this standard of liquidity. The Commission observes that a continuous stream of prices would indeed be an indication of liquidity for certain markets but the Guidance also notes that "quantifying the levels of immediacy and price concession that would define material liquidity may differ from one market or commodity to another."³⁴

ICE opined that the Commission "seems to have adopted a five trade per day test for material liquidity." To the contrary, the Commission adopted a five trades-per-day threshold as a reporting requirement to enable it to "independently be aware of ECM contracts that may develop into SPDCs"³⁵ rather than solely relying upon an ECM on its own to identify any such potential SPDCs to the Commission. Thus, any contract that meets this threshold may be subject to scrutiny as a potential SPDC; however, the contract will not be found to be a SPDC merely because it met the reporting threshold.

ICE asserted that the statistics provided by ICE were misinterpreted and misapplied by the Commission. In particular, ICE stated that the volume figures used in the Commission's analysis (cited above) "include trades made in all months" as well as in strips of contract months. ICE suggested that a more appropriate method of determining liquidity is to examine the activity in a single traded month of a given contract."³⁶ It is the Commission's

opinion that liquidity, as it pertains to the SQP contract, is typically a function of trading activity in particular lead days and, given sufficient liquidity in such days, the ICE SQP contract itself would be considered liquid. In any event, in light of the fact that the Commission has found that the SQP contract does not meet the material price reference criterion, according to the Commission's Guidance, it would be unnecessary to evaluate whether the SQP contract meets the material liquidity criterion since it cannot be used alone for SPDC determination.

ii. Conclusion Regarding Material Liquidity

For the reasons discussed above, the Commission finds that the SQP contract does not meet the material liquidity criterion.

3. Overall Conclusion Regarding the SQP Contract

After considering the entire record in this matter, including the comments received, the Commission has determined that the ICE SQP contract does not perform a significant price discovery function under the criteria established in section 2(h)(7) of the CEA. Specifically, the Commission has determined that the SQP contract does not meet the material price reference or material liquidity criteria at this time. Accordingly, the Commission is issuing the attached Order declaring that the SQP contract is not a SPDC.

Issuance of this Order indicates that the Commission does not at this time regard ICE as a registered entity in connection with its SQP contract.³⁷ Accordingly, with respect to its SQP contract, ICE is not required to comply with the obligations, requirements and timetables prescribed in Commission rule 36.3(c)(4) for ECMs with SPDCs. However, ICE must continue to comply

should not be considered in the SPDC determination process. The Commission staff asked ICE to review the data it sent in its quarterly filings; ICE confirmed that the volume data it provided and which the Commission cited includes only transaction data executed on ICE's electronic trading platform. As noted above, supplemental data supplied by ICE confirmed that block trades are in addition to the trades that were conducted on the electronic platform; block trades comprise about 60 percent of all transactions in the SQP contract (as of the fourth quarter of 2009). Commission acknowledges that the open interest information it provided in its October 6, 2009, **Federal Register** notice includes transactions made off the ICE platform. However, once open interest is created, there is no way for ICE to differentiate between "on-exchange" versus "off-exchange" created positions, and all such positions are fungible with one another and may be offset in any way agreeable to the position holder regardless of how the position was initially created.

³⁷ See 73 FR 75888, 75893 (Dec. 12, 2008).

with the applicable reporting requirements for ECMs.

c. The SP-15 Financial Swap Real Time LMP-Peak Daily (SRP) Contract and the SPDC Indicia

The SRP contract is cash settled based on the arithmetic average of peak-hour, real-time LMPs posted by CAISO for the SP-15 EZ Gen Hun for all peak hours on the generation day. The LMPs are derived from power trades that result in physical delivery. The size of the SRP contract is 400 MWh, and the SRP contract is listed for 75 consecutive calendar days.

As noted above, electricity is bought and sold in an auction setting on an hourly basis at various point along the electrical grid. An LMP associated with a specific hour is derived as a volume-weighted average price of all of the transactions where electricity is to be supplied and consumed during that hour.

Electricity is traded in a day-ahead market as well as a real-time market. Typically, the bulk of energy transactions occur in the day-ahead market. The day-ahead market establishes prices for electricity that is to be delivered during the specified hour on the following day. Day-ahead prices are determined based on generation and energy transaction quotes offered in advance. Because power quotes are dependent on estimates of supply and demand, electricity needs usually are not perfectly satisfied in the day-ahead market. Consequently, on the day the electricity is transmitted and used, auction participants typically realize that they bought or sold either too much power or too little power. A real-time auction is operated to alleviate this problem by serving as a balancing mechanism. Specifically, electricity traders use the real-time market to sell excess electricity and buy additional power to meet demand. Only a relatively small amount of electricity is traded in the real-time market as compared to the day-ahead market.

Path 15 is an 84-mile portion of the north-south power transmission corridor in California, forming part of the Pacific AC Intertie and the California-Oregon Transmission Project.³⁸ Path 15, along with the Pacific

³⁸ The Pacific Intertie comprises three AC lines and one DC line. Together, these lines comprise the largest single electricity transmission program in the United States. The northern end of the DC line is at the Bonneville Power Administration's Celilo Converter Station, which is just south of The Dalles Dam about 90 miles east of Portland. The southern end is 846 miles away at the Sylmar Converter

³⁴ Guidance, *supra*.

³⁵ 73 FR 75892 (December 12, 2008).

³⁶ In addition, ICE stated that the trades-per-day statistics that it provided to the Commission in its quarterly filing and which were cited in the Commission's October 6, 2009, **Federal Register** notice includes 2(h)(1) transactions, which were not completed on the electronic trading platform and

DC Intertie running far to the east, completes an important transmission interconnection between the hydroelectric plants to the north and the fossil fuel plants to the south. Path 15 currently consists of three 500 kV lines and four 230 kV lines.³⁹ The 500 kV lines connect Los Banos to Gates (two lines) and Los Banos to Midway (one line); all four 230 kV lines have Gates at one end with the other ends terminating at Panoche #1, Panoche #2, Gregg, or McCall substations. “NP–15” refers to the northern half of Path 15; conversely, “SP–15” refers to the lower half of Path 15.

When the weather is hot in California and the Desert Southwest, it is comparatively cool in the Pacific Northwest. Conversely, when the weather is cold in the Pacific Northwest it is comparatively warm in California and the Desert Southwest. Consumers on the West Coast take advantage of seasonal weather differences to share large amounts of power between the Desert Southwest and the Pacific Northwest. In the spring and summer, when generators (mostly hydroelectric plants) generally have surplus power in the Northwest and temperatures climb in the Southwest, power is shipped south to help meet increasing power demand, particularly for air conditioning. Conversely in the winter, when generators in the Southwest generally have surplus power and temperatures drop in the Northwest, power is shipped north to meet increasing electricity demand, particularly for heating.

CAISO is charged with operating of the high-voltage grid in California. Because CAISO’s service area is basically the entire State of California, it is responsible for serving millions of

businesses and households, particularly in the Los Angeles and San Francisco areas. CAISO’s current mission is to ensure the efficient and reliable operation of the power grid, provide fair and open transmission access, promote environmental stewardship, facilitate effective markets, promote infrastructure development and support the timely and accurate dissemination of information. CAISO also is responsible for operating the hourly auctions in which the power is traded, and CAISO publishes the LMP data on its Web site.

1. Material Price Reference Criterion

The Commission’s October 6, 2009, **Federal Register** notice identified the SRP contract as a potential SPDC based on the material price reference and material liquidity statutory criteria. The Commission considered the fact that ICE sells its price data to market participants in a number of different packages which vary in terms of the hubs covered, time periods, and whether the data are daily only or historical. For example, ICE offers the “West Power of Day” package with access to all price data or just current prices plus a selected number of months (*i.e.*, 12, 24, 36 or 48 months) of historical data. This package includes price data for the SRP contract.

The Commission also noted that its October 2007 ECM Study found that in general, market participants view ICE as a price discovery market for certain electricity contracts. The study did not specify which markets performed this function; nevertheless, the Commission determined that the SRP contract, while not mentioned by name in the ECM Study, warranted further review.

The Commission explains in its Guidance to statutory criteria that in evaluating a contract under the material price reference criterion, it will rely on one of two sources of evidence—direct or indirect—to determine that the price of a contract was being used as a material price reference and therefore, serving a significant price discovery function.⁴⁰ With respect to direct evidence, the Commission will consider the extent to which, on a frequent and recurring basis, cash market bids, offers or transactions are directly based on or quoted at a differential to, the prices generated on the ECM in question. Direct evidence may be established when cash market participants are quoting bid or offer prices or entering into transactions at prices that are set either explicitly or implicitly at a differential to prices established for the contract in question. Cash market prices

are set explicitly at a differential to the section 2(h)(3) contract when, for instance, they are quoted in dollars and cents above or below the reference contract’s price. Cash market prices are set implicitly at a differential to a section 2(h)(3) contract when, for instance, they are arrived at after adding to, or subtracting from the section 2(h)(3) contract, but then quoted or reported at a flat price. With respect to indirect evidence, the Commission will consider the extent to which the price of the contract in question is being routinely disseminated in widely distributed industry publications—or offered by the ECM itself for some form of remuneration—and consulted on a frequent and recurring basis by industry participants in pricing cash market transactions.

SP–15 is a major pricing center for electricity on the West Coast. Traders, including producers, keep abreast of the electricity prices in the SP–15 power market when conducting cash deals. However, ICE’s SP–15 Financial Day-Ahead LMP Peak (“SPM”) contract, which is a monthly contract, is used more widely as a source of pricing information for electricity than the real-time daily peak-hour contract (*i.e.*, the SRP contract). Specifically, the SPM contract prices power at the SP–15 trading point based on the simple average of the peak-hour day-ahead prices over the contract month, as reported by CAISO. Market participants use the SPM contract to lock-in electricity prices far into the future. (The SPM contract is listed for 110 calendar months.) In contrast, the SRP contract is listed for a much shorter length of time (about 10 weeks); with such a limited timeframe, the forward pricing capability of the SRP contract is much more constrained than that of the SPM contract. Traders use monthly power contracts like the SPM contract to price electricity commitments in the future, where such commitments are based on long range forecasts of power supply and demand. As generation and usage nears, market participants have a better understanding of actual power supply and needs. As a result, traders can modify previously-established hedges with the daily power contracts, like the SRP contract.

Accordingly, although the SP–15 is a major trading center for electricity and, as noted, ICE sells price information for the SRP contract, the Commission has explained in its Guidance that a contract meeting the material price reference criterion would routinely be consulted by industry participants in pricing cash market transactions. The SRP contract is not consulted in this manner and does

Station on the northern outskirts of Los Angeles. That station is operated by utilities including LADWP and Southern California Edison. The AC lines follow generally the same path but terminate in Northern California. Only a few parties actually own the Intertie, but numerous entities have contracts to share its transmission capacity. The California-Oregon border is a dividing line for Intertie ownership and capacity sharing. Depending on seasonal conditions, the Intertie is capable of transmitting up to 7,900 MW—4,800 MW of AC power (1,600 MW of this amount is in the California-Oregon Transmission Project, also known as the Third AC Line) and 3,100 MW of DC power. Over the past five years, the limit has ranged between about 6,300 MW and 7,900 MW. Most of the power transmitted on the Intertie is surplus to regional needs, but some firm power also is transmitted. See <http://www.nwccouncil.org/LIBRARY/2001/2001-11.pdf>.

³⁹ The third 500 kV line was installed between 2003 and 2004 in order to relieve constraints on the existing north-south transmission lines. This capacity constraint contributed to the California energy crisis in 2000 and 2001. See <http://www.wapa.gov/sn/ops/transmission/path15/factSheet.pdf>.

⁴⁰ 17 CFR 36, Appendix A.

not satisfy the material price reference criterion. Thus, the SRP contract does not satisfy the direct price reference test for existence of material price reference. Furthermore, the Commission notes that publication of the SRP contract's prices is not indirect evidence of material price reference. The SRP contract's prices are published with those of numerous other contracts, including ICE's monthly electricity contracts, which are of more interest to market participants. In these circumstances, the Commission has concluded that traders likely do not specifically purchase ICE data packages for the SRP contract's prices and do not consult such prices on a frequent and recurring basis in pricing cash market transactions.

i. Federal Register Comments

WGCEF, EPSA, WPTF, FIEG, EEI and ICE stated that no other contract directly references or settles to the SRP contract's price. Moreover, the commenters argued that the underlying cash price series against which the SRP contract is settled (in this case, the average real-time peak SP-15 electricity prices on a particular day, which is derived from cash market transactions) is the authentic reference price and not the ICE contract itself. The Commission believes that this interpretation of price reference is too narrow and believes that a cash-settled derivatives contract could meet the price reference criterion if market participants "consult on a frequent and recurring basis" the derivatives contract when pricing forward, fixed-price commitments or other cash-settled derivatives that seek to "lock-in" a fixed price for some future point in time to hedge against adverse price movements. As noted above, while SP-15 is a major power market, traders do not consider the average daily real-time peak-hour SP-15 price to be as important as the peak electricity price associated with the monthly day-ahead contract.

In addition, WGCEF and EPSA stated that the publication of price data for the SRP contract price is weak justification for material price reference. Market participants generally do not purchase ICE data sets for one contract's prices, such as those for the SRP contract. Instead, traders are interested in the settlement prices, so the fact that ICE sells the SRP prices as part of a broad package is not conclusive evidence that market participants are buying the ICE data sets because they find the SRP prices have substantial value to them. As noted above, the Commission indicated that publication of the SRP contract's prices is not indirect evidence of routine dissemination. The SRP

contract's prices are published with those of numerous other contracts, which are of more interest to market participants. The Commission has concluded that traders likely do not specifically purchase the ICE data packages for the SRP contract's prices and do not consult such prices on a frequent and recurring basis in pricing cash market transactions.

Lastly, EEI argued that the ECM Study did not specifically identify the SRP contract as a contract that is referred to by market participants on a frequent and recurring basis. In response, the Commission notes that it cited the ECM Study's general finding that some ICE electricity contracts appear to be regarded as price discovery markets merely as indication that an investigation of certain ICE contracts may be warranted. The ECM Study was not intended to serve as the sole basis for determining whether or not a particular contract meets the material price reference criterion.

ii. Conclusion Regarding Material Price Reference

Based on the above, the Commission finds that the ICE SRP contract does not meet the material price reference criterion because cash market transactions are not priced either explicitly or implicitly on a frequent and recurring basis at a differential to the SRP contract's price (direct evidence). Moreover, while the SRP contract's price data is sold to market participants, those individuals likely do not purchase the ICE data packages specifically for the SRP contract's prices and do not consult such prices on a frequent and recurring basis in pricing cash market transactions (indirect evidence).

2. Material Liquidity Criterion

As noted above, in its October 6, 2009, **Federal Register** notice, the Commission identified material price reference and material liquidity as potentially applicable criteria for SPDC determination of the SRP contract. To assess whether a contract meets the material liquidity criterion, the Commission first examines trading activity as a general measurement of the contract's size and potential importance. If the Commission finds that the contract in question meets a threshold of trading activity that would render it of potential importance, the Commission will then perform a statistical analysis to measure the effect that changes to the subject contract's prices potentially may have on prices for other contracts listed on an ECM or a DCM.

The total number of transactions executed on ICE's electronic platform in the SRP contract was 826 in the second quarter of 2009, resulting in a daily average of 12.9 trades. During the same period, the SRP contract had a total trading volume of 1,014 contracts and an average daily trading volume of 15.8 contracts. Moreover, open interest as of June 30, 2009, was 143 contracts, which included trades executed on ICE's electronic trading platform, as well as trades executed off of ICE's electronic trading platform and then brought to ICE for clearing. In this regard, ICE does not differentiate between open interest created by a transaction executed on its trading platform and that created by a transaction executed off its trading platform.⁴¹

In a subsequent filing dated March 24, 2010, ICE reported that total trading volume in the fourth quarter of 2009 was 691 contracts (or 10.6 contracts on a daily basis). In terms of number of transactions, 772 trades occurred in the fourth quarter of 2009 (11.9 trades per day). As of December 31, 2009, open interest in the SDP contract was 41 contracts, which included trades executed on ICE's electronic trading platform, as well as trades executed off of ICE's electronic trading platform and then brought to ICE for clearing.

The number of trades per day between the second and fourth quarters of 2009 was not substantial. In addition, trading activity in the SDP contract, as characterized by total quarterly volume, indicates that the SDP contract experiences trading activity that is similar to that of thinly-traded futures markets.⁴² Thus, the SRP contract does not meet a threshold of trading activity that would render it of potential importance and no additional statistical analysis is warranted.⁴³

⁴¹ 74 FR 51264 (October 6, 2009).

⁴² Staff has advised the Commission that in its experience, a thinly-traded contract is, generally, one that has a quarterly trading volume of 100,000 contracts or less. In this regard, in the third quarter of 2009, physical commodity futures contracts with trading volume of 100,000 contracts or fewer constituted less than one percent of total trading volume of all physical commodity futures contracts.

⁴³ In establishing guidance to illustrate how it will evaluate the various criteria, or combinations of criteria, when determining whether a contract is a SPDC, the Commission made clear that "material liquidity itself would not be sufficient to make a determination that a contract is a [SPDC], * * * but combined with other factors it can serve as a guidepost indicating which contracts are functioning as [SPDCs]." 17 CFR 36, Appendix A. For the reasons discussed above, the Commission has found that the SRP contract does not meet the material price reference criterion. In light of this finding and the Commission's Guidance cited above, there is no need to evaluate further the material liquidity criteria since the Commission

i. Federal Register Comments

ICE and WGCEF stated that the SRP contract lacks a sufficient number of trades to meet the material liquidity criterion. These two commenters, along with WPTF, EPSA, FIEG and EEI argued that the SRP contract cannot have a material effect on other contracts, such as those listed for trading by NYMEX, a DCM, because price linkage and the potential for arbitrage do not exist. Moreover, the DCM contracts do not cash settle to the SDP contract's price. Instead, the DCM contracts and the SRP contract are both cash settled based on physical transactions, which neither the ECM or the DCM contracts can influence.

WGCEF and ICE noted that the Commission's Guidance had posited concepts of liquidity that generally assumed a fairly constant stream of prices throughout the trading day and noted that the relatively low number of trades per day in the SRP contract did not meet this standard of liquidity. The Commission observes that a continuous stream of prices would indeed be an indication of liquidity for certain markets but the Guidance also notes that "quantifying the levels of immediacy and price concession that would define material liquidity may differ from one market or commodity to another."⁴⁴

ICE opined that the Commission "seems to have adopted a five trade per day test for material liquidity." To the contrary, the Commission adopted a five trades-per-day threshold as a reporting requirement to enable it to "independently be aware of ECM contracts that may develop into SPDCs"⁴⁵ rather than solely relying upon an ECM on its own to identify any such potential SPDCs to the Commission. Thus, any contract that meets this threshold may be subject to scrutiny as a potential SPDC; however, the contract will not be found to be a SPDC merely because it met the reporting threshold.

ICE argued that the statistics provided by ICE were misinterpreted and misapplied by the Commission. In particular, ICE stated that the volume figures used in the Commission's analysis (cited above) "include trades made in all months" as well as in strips of contract months. ICE suggested that a more appropriate method of determining liquidity is to examine the activity in a single traded month of a

given contract."⁴⁶ It is the Commission's opinion that liquidity, as it pertains to the SRP contract, is typically a function of trading activity in particular lead days and, given sufficient liquidity in such days, the ICE SRP contract itself would be considered liquid. In any event, because the Commission has found that the SRP contract does not meet the material price reference criterion, it is unnecessary to evaluate whether the SRP contract meets the material liquidity criterion since under the Commission's Guidance it cannot be used alone for SPDC determination.

ii. Conclusion Regarding Material Liquidity

For the reasons discussed above, the Commission finds that the SRP contract does not meet the material liquidity criterion.

3. Overall Conclusion Regarding the SDP Contract

After considering the entire record in this matter, including the comments received, the Commission has determined that the ICE SRP contract does not perform a significant price discovery function under the criteria established in section 2(h)(7) of the CEA. Specifically, the Commission has determined that the SRP contract does not meet the material price reference or material liquidity criteria at this time. Accordingly, the Commission is issuing the attached Order declaring that the SRP contract is not a SPDC.

Issuance of this Order indicates that the Commission does not at this time regard ICE as a registered entity in connection with its SRP contract.⁴⁷ Accordingly, with respect to its SRP

⁴⁶ In addition, ICE stated that the trades-per-day statistics that it provided to the Commission in its quarterly filing and which were cited in the Commission's October 6, 2009, **Federal Register** notice includes 2(h)(1) transactions, which were not completed on the electronic trading platform and should not be considered in the SPDC determination process. The Commission staff asked ICE to review the data it sent in its quarterly filings; ICE confirmed that the volume data it provided and which the Commission cited includes only transaction data executed on ICE's electronic trading platform. As noted above, supplemental data supplied by ICE confirmed that block trades are in addition to the trades that were conducted on the electronic platform; block trades comprise about 51 percent of all transactions in the SRP contract (as of the fourth quarter of 2009). Commission acknowledges that the open interest information it provided in its October 6, 2009, **Federal Register** notice includes transactions made off the ICE platform. However, once open interest is created, there is no way for ICE to differentiate between "on-exchange" versus "off-exchange" created positions, and all such positions are fungible with one another and may be offset in any way agreeable to the position holder regardless of how the position was initially created.

⁴⁷ See 73 FR 75888, 75893 (Dec. 12, 2008).

contract, ICE is not required to comply with the obligations, requirements and timetables prescribed in Commission rule 36.3(c)(4) for ECMs with SPDCs. However, ICE must continue to comply with the applicable reporting requirements for ECMs.

D. The NP-15 Financial Day-Ahead LMP Peak Daily (DPN) Contract and the SPDC Indicia

The DPN contract is cash settled based on the arithmetic average of peak-hour, day-ahead LMPs posted by CAISO for the NP-15 EZ Gen Hun for all peak hours on the day prior to generation. The LMPs are derived from power trades that result in physical delivery. The size of the DPN contract is 400 MWh, and the DPN contract is listed for 70 consecutive calendar days.

As noted above, electricity is bought and sold in an auction setting on an hourly basis at various points along the electrical grid. An LMP associated with a specific hour is derived as a volume-weighted average price of all of the transactions where electricity is to be supplied and consumed during that hour.

Electricity is traded in a day-ahead market as well as a real-time market. Typically, the bulk of energy transactions occur in the day-ahead market. The day-ahead market establishes prices for electricity that is to be delivered during the specified hour on the following day. Day-ahead prices are determined based on generation and energy transaction quotes offered in advance. Because power quotes are dependent on estimates of supply and demand, electricity needs usually are not perfectly satisfied in the day-ahead market. Consequently, on the day the electricity is transmitted and used, auction participants typically realize that they bought or sold either too much power or too little power. A real-time auction is operated to alleviate this problem by serving as a balancing mechanism. Specifically, electricity traders use the real-time market to sell excess electricity and buy additional power to meet demand. Only a relatively small amount of electricity is traded in the real-time market as compared to the day-ahead market.

Path 15 is an 84-mile portion of the north-south power transmission corridor in California, forming part of the Pacific AC Intertie and the California-Oregon Transmission Project.⁴⁸ Path 15, along with the Pacific

⁴⁸ The Pacific Intertie comprises three AC lines and one DC line. Together, these lines comprise the largest single electricity transmission program in

believes it is not useful as the sole basis for a SPDC determination.

⁴⁴ Guidance, *supra*.

⁴⁵ 73 FR 75892 (December 12, 2008).

DC Intertie running far to the east, completes an important transmission interconnection between the hydroelectric plants to the north and the fossil fuel plants to the south. Path 15 currently consists of three 500 kV lines and four 230 kV lines.⁴⁹ The 500 kV lines connect Los Banos to Gates (two lines) and Los Banos to Midway (one line); all four 230 kV lines have Gates at one end with the other ends terminating at Panoche #1, Panoche #2, Gregg, or McCall substations. “NP-15” refers to the northern half of Path 15; conversely, “SP-15” refers to the lower half of Path 15.

When the weather is hot in California and the Desert Southwest, it is comparatively cool in the Pacific Northwest. Conversely, when the weather is cold in the Pacific Northwest it is comparatively warm in California and the Desert Southwest. Consumers on the West Coast take advantage of seasonal weather differences to share large amounts of power between the Desert Southwest and the Pacific Northwest. In the spring and summer, when generators (mostly hydroelectric plants) generally have surplus power in the Northwest and temperatures climb in the Southwest, power is shipped south to help meet increasing power demand, particularly for air conditioning. Conversely in the winter, when generators in the Southwest generally have surplus power and temperatures drop in the Northwest, power is shipped north to meet increasing electricity demand, particularly for heating.

the United States. The northern end of the DC line is at the Bonneville Power Administration's Celilo Converter Station, which is just south of The Dalles Dam about 90 miles east of Portland. The southern end is 846 miles away at the Sylmar Converter Station on the northern outskirts of Los Angeles. That station is operated by utilities including LADWP and Southern California Edison. The AC lines follow generally the same path but terminate in Northern California. Only a few parties actually own the Intertie, but numerous entities have contracts to share its transmission capacity. The California-Oregon border is a dividing line for Intertie ownership and capacity sharing. Depending on seasonal conditions, the Intertie is capable of transmitting up to 7,900 MW—4,800 MW of AC power (1,600 MW of this amount is in the California-Oregon Transmission Project, also known as the Third AC Line) and 3,100 MW of DC power. Over the past five years, the limit has ranged between about 6,300 MW and 7,900 MW. Most of the power transmitted on the Intertie is surplus to regional needs, but some firm power also is transmitted. See <http://www.nwccouncil.org/LIBRARY/2001/2001-11.pdf>.

⁴⁹ The third 500 kV line was installed between 2003 and 2004 in order to relieve constraints on the existing north-south transmission lines. This capacity constraint contributed to the California energy crisis in 2000 and 2001. See <http://www.wapa.gov/sn/ops/transmission/path15/factSheet.pdf>.

CAISO is charged with operating the high-voltage grid in California. Because CAISO's service area is basically the entire State of California, it is responsible for serving millions of businesses and households, particularly in the Los Angeles and San Francisco areas. CAISO's current mission is to ensure the efficient and reliable operation of the power grid, provide fair and open transmission access, promote environmental stewardship, facilitate effective markets, promote infrastructure development and support the timely and accurate dissemination of information. CAISO also is responsible for operating the hourly auctions in which the power is traded, and CAISO publishes the LMP data on its Web site.

1. Material Price Reference Criterion

The Commission's October 6, 2009, **Federal Register** notice identified the DPN contract as a potential SPDC based on the material price reference and material liquidity criteria. The Commission considered the fact that ICE sells its price data to market participants in a number of different packages which vary in terms of the hubs covered, time periods, and whether the data are daily only or historical. For example, ICE offers the “West Power of Day” package with access to all price data or just current prices plus a selected number of months (*i.e.*, 12, 24, 36 or 48 months) of historical data. This package includes price data for the DPN contract.

The Commission also noted that its October 2007 ECM Study found that in general, market participants view ICE as a price discovery market for certain electricity contracts. The study did not specify which markets performed this function; nevertheless, the Commission determined that the DPN contract, while not mentioned by name in the ECM Study, warranted further review.

The Commission explains in its Guidance to the statutory criteria that in evaluating a contract under the material price reference criterion, it will rely on one of two sources of evidence—direct or indirect—to determine that the price of a contract was being used as a material price reference and therefore, serving a significant price discovery function.⁵⁰ With respect to direct evidence, the Commission will consider the extent to which, on a frequent and recurring basis, cash market bids, offers or transactions are directly based on or quoted at a differential to, the prices generated on the ECM in question. Direct evidence may be established when cash market participants are

quoting bid or offer prices or entering into transactions at prices that are set either explicitly or implicitly at a differential to prices established for the contract in question. Cash market prices are set explicitly at a differential to the section 2(h)(3) contract when, for instance, they are quoted in dollars and cents above or below the reference contract's price. Cash market prices are set implicitly at a differential to a section 2(h)(3) contract when, for instance, they are arrived at after adding to, or subtracting from the section 2(h)(3) contract, but then quoted or reported at a flat price. With respect to indirect evidence, the Commission will consider the extent to which the price of the contract in question is being routinely disseminated in widely distributed industry publications—or offered by the ECM itself for some form of remuneration—and consulted on a frequent and recurring basis by industry participants in pricing cash market transactions.

NP-15 is a major pricing center for electricity on the West Coast. Traders, including producers, keep abreast of the electricity prices in the NP-15 power market when conducting cash deals. However, ICE's NP-15 Financial Day-Ahead LMP Peak (“NPM”) contract, which is a monthly contract, is used more widely as a source of pricing information for electricity than the daily peak-hour contract (*i.e.*, the DPN contract). Specifically, the NPM contract prices power at the NP-15 trading point based on the simple average of the peak-hour prices over the contract month, as reported by CAISO. Market participants use the NPM contract to lock-in electricity prices far into the future. (The NPM contract is listed for up to 86 calendar months.) In contrast, the DPN contract is listed for a much shorter length of time (about 10 weeks); with such a limited timeframe, the forward pricing capability of the DPN contract is much more constrained than that of the NPM contract. Traders use monthly power contracts like the NPM contract to price electricity commitments in the future, where such commitments are based on long range forecasts of power supply and demand. As generation and usage nears, market participants have a better understanding of actual power supply and needs. As a result, traders can modify previously-established hedges with the daily power contracts, like the DPN contract.

Accordingly, although the NP-15 is a major trading center for electricity and, as noted, ICE sells price information for the DPN contract, the Commission has explained in its Guidance that a contract meeting the material price reference

⁵⁰ 17 CFR Part 36, Appendix A.

criterion would routinely be consulted by industry participants in pricing cash market transactions. The DPN contract is not consulted in this manner and does not satisfy the material price reference criterion. Thus, the DPN contract does not satisfy the direct price reference test for existence of material price reference. Furthermore, the Commission notes that publication of the DPN contract's prices is not indirect evidence of material price reference. The DPN contract's prices are published with those of numerous other contracts, including ICE's monthly electricity contracts, which are of more interest to market participants. In these circumstances, the Commission has concluded that traders likely do not specifically purchase ICE data packages for the DPN contract's prices and do not consult such prices on a frequent and recurring basis in pricing cash market transactions.

i. Federal Register Comments

WGCEF, EPSA, WPTF, FIEG, EEI and ICE stated that no other contract directly references or settles to the DPN contract's price. Moreover, the commenters argued that the underlying cash price series against which the DPN contract is settled (in this case, the average day-ahead peak SP-15 electricity prices on a particular day, which is derived from cash market transactions) is the authentic reference price and not the ICE contract itself. The Commission believes that this interpretation of price reference is too narrow and believes that a cash-settled derivatives contract could meet the price reference criterion if market participants "consult on a frequent and recurring basis" the derivatives contract when pricing forward, fixed-price commitments or other cash-settled derivatives that seek to "lock-in" a fixed price for some future point in time to hedge against adverse price movements. As noted above, while NP-15 is a major power market, traders do not consider the daily average peak-hour NP-15 price to be as important as the peak electricity price associated with the monthly contract.

In addition, WGCEF and EPSA stated that the publication of price data for the DPN contract price is weak justification for material price reference. Market participants generally do not purchase ICE data sets for one contract's prices, such as those for the DPN contract. Instead, traders are interested in the settlement prices, so the fact that ICE sells the DPN prices as part of a broad package is not conclusive evidence that market participants are buying the ICE data sets because they find the DPN

prices have substantial value to them. As noted above, the Commission indicated that publication of the DPN contract's prices is not indirect evidence of routine dissemination. The DPN contract's prices are published with those of numerous other contracts, which are of more interest to market participants. The Commission has concluded that traders likely do not specifically purchase the ICE data packages for the DPN contract's prices and do not consult such prices on a frequent and recurring basis in pricing cash market transactions.

Lastly, EEI argued that the ECM Study did not specifically identify the DPN contract as a contract that is referred to by market participants on a frequent and recurring basis. In response, the Commission notes that it cited the ECM Study's general finding that some ICE electricity contracts appear to be regarded as price discovery markets merely as indication that an investigation of certain ICE contracts may be warranted. The ECM Study was not intended to serve as the sole basis for determining whether or not a particular contract meets the material price reference criterion.

ii. Conclusion Regarding Material Price Reference

Based on the above, the Commission finds that the ICE DPN contract does not meet the material price reference criterion because cash market transactions are not priced either explicitly or implicitly on a frequent and recurring basis at a differential to the DPN contract's price (direct evidence). Moreover, while the DPN contract's price data is sold to market participants, those individuals likely do not purchase the ICE data packages specifically for the DPN contract's prices and do not consult such prices on a frequent and recurring basis in pricing cash market transactions (indirect evidence).

2. Material Liquidity Criterion

As noted above, in its October 6, 2009, **Federal Register** notice, the Commission identified material price reference and material liquidity as potentially applicable criteria for SPDC determination of the DPN contract. To assess whether a contract meets the material liquidity criterion, the Commission first examines trading activity as a general measurement of the contract's size and potential importance. If the Commission finds that the contract in question meets a threshold of trading activity that would render it of potential importance, the Commission will then perform a

statistical analysis to measure the effect that changes to the subject contract's prices potentially may have on prices for other contracts listed on an ECM or a DCM.

The total number of transactions executed on ICE's electronic platform in the DPN contract was 2,782 in the second quarter of 2009, resulting in a daily average of 43.5 trades. During the same period, the DPN contract had a total trading volume of 5,766 contracts and an average daily trading volume of 90.1 contracts. Moreover, open interest as of June 30, 2009, was 947 contracts, which included trades executed on ICE's electronic trading platform, as well as trades executed off of ICE's electronic trading platform and then brought to ICE for clearing. In this regard, ICE does not differentiate between open interest created by a transaction executed on its trading platform and that created by a transaction executed off its trading platform.⁵¹

In a subsequent filing dated March 24, 2010, ICE reported that total trading volume in the fourth quarter of 2009 was 5,801 contracts (or 89.2 contracts on a daily basis). In terms of number of transactions, 2,160 trades occurred in the fourth quarter of 2009 (33.2 trades per day). As of December 31, 2009, open interest in the SDP contract was 573 contracts, which included trades executed on ICE's electronic trading platform, as well as trades executed off of ICE's electronic trading platform and then brought to ICE for clearing.

The number of trades per day between the second and fourth quarters of 2009 was not substantial. However, trading activity in the DPN contract, as characterized by total quarterly volume, indicates that the DPN contract experiences trading activity that is similar to that of thinly-traded futures markets.⁵² Thus, the DPN contract does not meet a threshold of trading activity that would render it of potential importance and no additional statistical analysis is warranted.⁵³

⁵¹ 74 FR 51264 (October 6, 2009).

⁵² Staff has advised the Commission that in its experience, a thinly-traded contract is, generally, one that has a quarterly trading volume of 100,000 contracts or less. In this regard, in the third quarter of 2009, physical commodity futures contracts with trading volume of 100,000 contracts or fewer constituted less than one percent of total trading volume of all physical commodity futures contracts.

⁵³ In establishing guidance to illustrate how it will evaluate the various criteria, or combinations of criteria, when determining whether a contract is a SPDC, the Commission made clear that "material liquidity itself would not be sufficient to make a determination that a contract is a [SPDC], * * * but combined with other factors it can serve as a guidepost indicating which contracts are functioning as [SPDCs]." 17 CFR Part 36, Appendix

i. Federal Register Comments

ICE and WGCEF stated that the DPN contract lacks a sufficient number of trades to meet the material liquidity criterion. These two commenters, along with WPTF, EPSA, FIEG and EEI argued that the DPN contract cannot have a material effect on other contracts, such as those listed for trading by NYMEX because price linkage and the potential for arbitrage do not exist. Moreover, the DCM contracts do not cash settle to the DPN contract's price. Instead, the DCM contracts and the DPN contract are both cash settled based on physical transactions, which neither the ECM or the DCM contracts can influence.

WGCEF and ICE noted that the Commission's Guidance had posited concepts of liquidity that generally assumed a fairly constant stream of prices throughout the trading day and noted that the relatively low number of trades per day in the DPN contract did not meet this standard of liquidity. The Commission observes that a continuous stream of prices would indeed be an indication of liquidity for certain markets but the Guidance also notes that "quantifying the levels of immediacy and price concession that would define material liquidity may differ from one market or commodity to another."⁵⁴

ICE opined that the Commission "seems to have adopted a five trade per day test for material liquidity." To the contrary, the Commission adopted a five trades-per-day threshold as a reporting requirement to enable it to "independently be aware of ECM contracts that may develop into SPDCs"⁵⁵ rather than solely relying upon an ECM on its own to identify any such potential SPDCs to the Commission. Thus, any contract that meets this threshold may be subject to scrutiny as a potential SPDC; however, the contract will not be found to be a SPDC merely because it met the reporting threshold.

ICE argued that the statistics provided by ICE were misinterpreted and misapplied by the Commission. In particular, ICE stated that the volume figures used in the Commission's analysis (cited above) "include trades made in all months" as well as in strips of contract months. ICE suggested that a more appropriate method of

determining liquidity is to examine the activity in a single traded month of a given contract."⁵⁶ It is the Commission's opinion that liquidity, as it pertains to the SDP contract, is typically a function of trading activity in particular lead days and, given sufficient liquidity in such days, the ICE DPN contract itself would be considered liquid. In any event, in light of the fact that the Commission has found that the DPN contract does not meet the material price reference criterion, according to the Commission's Guidance, it would be unnecessary to evaluate whether the DPN contract meets the material liquidity criterion since it cannot be used alone for SPDC determination.

ii. Conclusion Regarding Material Liquidity

For the reasons discussed above, the Commission finds that the DPN contract does not meet the material liquidity criterion.

3. Overall Conclusion Regarding the DPN Contract

After considering the entire record in this matter, including the comments received, the Commission has determined that the ICE DPN contract does not perform a significant price discovery function under the criteria established in section 2(h)(7) of the CEA. Specifically, the Commission has determined that the DPN contract does not meet the material price reference or material liquidity criteria at this time. Accordingly, the Commission is issuing the attached Order declaring that the DPN contract is not a SPDC.

Issuance of this Order indicates that the Commission does not at this time regard ICE as a registered entity in

connection with its DPN contract.⁵⁷ Accordingly, with respect to its DPN contract, ICE is not required to comply with the obligations, requirements and timetables prescribed in Commission rule 36.3(c)(4) for ECMs with SPDCs. However, ICE must continue to comply with the applicable reporting requirements for ECMs.

e. The NP-15 Financial Day-Ahead LMP Off-Peak Daily (UNP) Contract and the SPDC Indicia

The UNP contract is cash settled based on the arithmetic average of off-peak hour, day-ahead LMPs posted by CAISO for the NP-15 EZ Gen Hun for all off-peak hours on the day prior to generation. The LMPs are derived from power trades that result in physical delivery. The size of the UNP contract is 25 MWh, and the UNP contract is listed for 75 consecutive calendar days.

As noted above, electricity generally is bought and sold in an auction setting on an hourly basis at various point along the electrical grid. An LMP associated with a specific hour is derived as a volume-weighted average price of all of the transactions where electricity is to be supplied and consumed during that hour.

Electricity is traded in a day-ahead market as well as a real-time market. Typically, the bulk of energy transactions occur in the day-ahead market. The day-ahead market establishes prices for electricity that is to be delivered during the specified hour on the following day. Day-ahead prices are determined based on generation and energy transaction quotes offered in advance. Because power quotes are dependent on the estimates of supply and demand, electricity needs usually are not perfectly satisfied in the day-ahead market. Consequently, on the day the electricity is transmitted and used, auction participants typically realize that they bought or sold either too much power or too little power. A real-time auction is operated to alleviate this problem by serving as a balancing mechanism. Specifically, electricity traders use the real-time market to sell excess electricity and buy additional power to meet demand. Only a relatively small amount of electricity is traded in the real-time market as compared to the day-ahead market.

Path 15 is an 84-mile portion of the north-south power transmission corridor in California, forming part of the Pacific AC Intertie and the California-Oregon Transmission

A. For the reasons discussed above, the Commission has found that the DPN contract does not meet the material price reference criterion. In light of this finding and the Commission's Guidance cited above, there is no need to evaluate further the material liquidity criteria since the Commission believes it is not useful as the sole basis for a SPDC determination.

⁵⁴ Guidance, *supra*.

⁵⁵ 73 FR 75892 (December 12, 2008).

⁵⁶ In addition, ICE stated that the trades-per-day statistics that it provided to the Commission in its quarterly filing and which were cited in the Commission's October 6, 2009, **Federal Register** notice includes 2(h)(1) transactions, which were not completed on the electronic trading platform and should not be considered in the SPDC determination process. The Commission staff asked ICE to review the data it sent in its quarterly filings; ICE confirmed that the volume data it provided and which the Commission cited includes only transaction data executed on ICE's electronic trading platform. As noted above, supplemental data supplied by ICE confirmed that block trades are in addition to the trades that were conducted on the electronic platform; block trades comprise about 34 percent of all transactions in the DPN contract (as of the fourth quarter of 2009). Commission acknowledges that the open interest information it provided in its October 6, 2009, **Federal Register** notice includes transactions made off the ICE platform. However, once open interest is created, there is no way for ICE to differentiate between "on-exchange" versus "off-exchange" created positions, and all such positions are fungible with one another and may be offset in any way agreeable to the position holder regardless of how the position was initially created.

⁵⁷ See 73 FR 75888, 75893 (Dec. 12, 2008).

Project.⁵⁸ Path 15, along with the Pacific DC Intertie running far to the east, completes an important transmission interconnection between the hydroelectric plants to the north and the fossil fuel plants to the south. Path 15 currently consists of three 500 kV lines and four 230 kV lines.⁵⁹ The 500 kV lines connect Los Banos to Gates (two lines) and Los Banos to Midway (one line); all four 230 kV lines have Gates at one end with the other ends terminating at Panoche #1, Panoche #2, Gregg, or McCall substations. As noted above, "NP-15" refers to the northern half of Path 15; conversely, "SP-15" refers to the lower half of Path 15.

When the weather is hot in California and the Desert Southwest, it is comparatively cool in the Pacific Northwest. Conversely, when the weather is cold in the Pacific Northwest it is comparatively warm in California and the Desert Southwest. Consumers on the West Coast take advantage of seasonal weather differences to share large amounts of power between the Desert Southwest and the Pacific Northwest. In the spring and summer, when generators (mostly hydroelectric plants) generally have surplus power in the Northwest and temperatures climb in the Southwest, power is shipped south to help meet increasing power demand, particularly for air conditioning. Conversely in the winter, when generators in the Southwest generally have surplus power and temperatures drop in the Northwest,

power is shipped north to meet increasing electricity demand, particularly for heating.

CAISO is charged with operating the high-voltage grid in California. Because CAISO's service area is basically the entire State of California, it is responsible for serving millions of businesses and households, particularly in the Los Angeles and San Francisco areas. CAISO's current mission is to ensure the efficient and reliable operation of the power grid, provide fair and open transmission access, promote environmental stewardship, facilitate effective markets, promote infrastructure development and support the timely and accurate dissemination of information. CAISO also is responsible for operating the hourly auctions in which the power is traded, and CAISO publishes the LMP data on its Web site.

1. Material Price Reference Criterion

The Commission's October 6, 2009, **Federal Register** notice identified the UNP contract as a potential SPDC based on the material price reference and material liquidity criteria. The Commission considered the fact that ICE sells its price data to market participants in a number of different packages which vary in terms of the hubs covered, time periods, and whether the data are daily only or historical. For example, ICE offers the "West Power of Day" package with access to all price data or just current prices plus a selected number of months (*i.e.*, 12, 24, 36 or 48 months) of historical data. This package includes price data for the UNP contract.

The Commission also noted that its October 2007 ECM Study found that in general, market participants view ICE as a price discovery market for certain electricity contracts. The study did not specify which markets performed this function; nevertheless, the Commission determined that the UNP contract, while not mentioned by name in the ECM Study, might warrant further review.

The Commission explains in its Guidance to the statutory criteria that in evaluating a contract under the material price reference criterion, it will rely on one of two sources of evidence—direct or indirect—to determine that the price of a contract was being used as a material price reference and therefore, serving a significant price discovery function.⁶⁰ With respect to direct evidence, the Commission will consider the extent to which, on a frequent and recurring basis, cash market bids, offers or transactions are directly based on or quoted at a differential to, the prices

generated on the ECM in question. Direct evidence may be established when cash market participants are quoting bid or offer prices or entering into transactions at prices that are set either explicitly or implicitly at a differential to prices established for the contract in question. Cash market prices are set explicitly at a differential to the section 2(h)(3) contract when, for instance, they are quoted in dollars and cents above or below the reference contract's price. Cash market prices are set implicitly at a differential to a section 2(h)(3) contract when, for instance, they are arrived at after adding to, or subtracting from the section 2(h)(3) contract, but then quoted or reported at a flat price. With respect to indirect evidence, the Commission will consider the extent to which the price of the contract in question is being routinely disseminated in widely distributed industry publications—or offered by the ECM itself for some form of remuneration—and consulted on a frequent and recurring basis by industry participants in pricing cash market transactions.

NP-15 is a major pricing center for electricity on the West Coast. Traders, including producers, keep abreast of the electricity prices in the NP-15 power market when conducting cash deals. However, ICE's NP-15 Financial Day-Ahead LMP Off-Peak ("ONP") contract, which is a monthly contract, is used more widely as a source of pricing information for electricity than the daily off-peak hour contract (*i.e.*, the UNP contract). Specifically, the ONP contract prices power at the NP-15 trading point based on the simple average of the off-peak hour prices over the contract month, as reported by CAISO. Market participants can use the ONP contract to lock-in electricity prices far into the future. In contrast, the UNP contract is listed for a much shorter length of time; with such a limited timeframe, the forward pricing capability of the UNP contract is much more constrained than the ONP contract. Traders use monthly power contracts like the ONP contract to price electricity commitments in the future. The ONP contract is listed for up to 86 calendar months.) In contrast, the UNP contract is listed for a much shorter length of time (about 10 weeks). As generation and usage nears, market participants have a better understanding of actual power supply and needs. As a result, traders can modify previously-established hedges with the daily power contracts, like the UNP contract.

Accordingly, although the NP-15 is a major trading center for electricity and, as noted, ICE sells price information for the UNP contract, the Commission has

⁵⁸ The Pacific Intertie comprises three AC lines and one DC line. Together, these lines comprise the largest single electricity transmission program in the United States. The northern end of the DC line is at the Bonneville Power Administration's Celilo Converter Station, which is just south of The Dalles Dam about 90 miles east of Portland. The southern end is 846 miles away at the Sylmar Converter Station on the northern outskirts of Los Angeles. That station is operated by utilities including LADWP and Southern California Edison. The AC lines follow generally the same path but terminate in Northern California. Only a few parties actually own the Intertie, but numerous entities have contracts to share its transmission capacity. The California-Oregon border is a dividing line for Intertie ownership and capacity sharing. Depending on seasonal conditions, the Intertie is capable of transmitting up to 7,900 MW—4,800 MW of AC power (1,600 MW of this amount is in the California-Oregon Transmission Project, also known as the Third AC Line) and 3,100 MW of DC power. Over the past five years, the limit has ranged between about 6,300 MW and 7,900 MW. Most of the power transmitted on the Intertie is surplus to regional needs, but some firm power also is transmitted. See <http://www.nwccouncil.org/LIBRARY/2001/2001-11.pdf>.

⁵⁹ The third 500 kV line was installed between 2003 and 2004 in order to relieve constraints on the existing north-south transmission lines. This capacity constraint contributed to the California energy crisis in 2000 and 2001. See <http://www.wapa.gov/sn/ops/transmission/path15/factSheet.pdf>.

⁶⁰ 17 CFR Part 36, Appendix A.

explained in its Guidance that a contract meeting the material price reference criterion would routinely be consulted by industry participants in pricing cash market transactions. The UNP contract is not consulted in this manner and does not satisfy the material price reference criterion. Thus, the UNP contract does not satisfy the direct price reference test for existence of material price reference. Furthermore, the Commission notes that publication of the UNP contract's prices is not indirect evidence of material price reference. The UNP contract's prices are published with those of numerous other contracts, including ICE's monthly electricity contracts, which are of more interest to market participants. In these circumstances, the Commission has concluded that traders likely do not specifically purchase ICE data packages for the UNP contract's prices and do not consult such prices on a frequent and recurring basis in pricing cash market transactions.

i. Federal Register Comments

WGCEF, EPSA, WPTF, FIEG, EEI and ICE stated that no other contract directly references or settles to the UNP contract's price. Moreover, the commenters argued that the underlying cash price series against which the UNP contract is settled (in this case, the average day-ahead off-peak NP-15 electricity prices on a particular day, which is derived from cash market transactions) is the authentic reference price and not the ICE contract itself. The Commission believes that this interpretation of price reference is too narrow and believes that a cash-settled derivatives contract could meet the price reference criterion if market participants "consult on a frequent and recurring basis" the derivatives contract when pricing forward, fixed-price commitments or other cash-settled derivatives that seek to "lock-in" a fixed price for some future point in time to hedge against adverse price movements. As noted above, while NP-15 is a major power market, traders do not consider the daily average off-peak NP-15 price to be as important as the off-peak electricity price associated with the monthly contract.

In addition, WGCEF and EPSA stated that the publication of price data for the UNP contract price is weak justification for material price reference. Market participants generally do not purchase ICE data sets for one contract's prices, such as those for the UNP contract. Instead, traders are interested in the settlement prices, so the fact that ICE sells the UNP prices as part of a broad package is not conclusive evidence that

market participants are buying the ICE data sets because they find the UNP prices have substantial value to them. As noted above, the Commission indicated that publication of the UNP contract's prices is not indirect evidence of routine dissemination. The UNP contract's prices are published with those of numerous other contracts, which are of more interest to market participants. The Commission has concluded that traders likely do not specifically purchase the ICE data packages for the UNP contract's prices and do not consult such prices on a frequent and recurring basis in pricing cash market transactions.

Lastly, EEI argued that the ECM Study did not specifically identify the UNP contract as a contract that is referred to by market participants on a frequent and recurring basis. In response, the Commission notes that it cited the ECM Study's general finding that some ICE electricity contracts appear to be regarded as price discovery markets merely as indication that an investigation of certain ICE contracts may be warranted. The ECM Study was not intended to serve as the sole basis for determining whether or not a particular contract meets the material price reference criterion.

ii. Conclusion Regarding Material Price Reference

The Commission finds that the ICE UNP contract does not meet the material price reference criterion because cash market transactions are not priced either explicitly or implicitly on a frequent and recurring basis at a differential to the UNP contract's price (direct evidence). Moreover, while the UNP contract's price data is sold to market participants, those individuals likely do not purchase the ICE data packages specifically for the UNP contract's prices and do not consult such prices on a frequent and recurring basis in pricing cash market transactions (indirect evidence).

2. Material Liquidity Criterion

As noted above, in its October 6, 2009, **Federal Register** notice, the Commission identified material price reference and material liquidity as potentially applicable criteria for SPDC determination of the UNP contract. To assess whether a contract meets the material liquidity criterion, the Commission first examines trading activity as a general measurement of the contract's size and potential importance. If the Commission finds that the contract in question meets a threshold of trading activity that would render it of potential importance, the

Commission will then perform a statistical analysis to measure the effect that changes to the subject contract's prices potentially may have on prices for other contracts listed on an ECM or a DCM.

The total number of transactions executed on ICE's electronic platform in the UNP contract was 1,925 in the second quarter of 2009, resulting in a daily average of 30.1 trades. During the same period, the UNP contract had a total trading volume of 36,936 contracts and an average daily trading volume of 577.1 contracts. Moreover, open interest as of June 30, 2009, was 4,152 contracts, which included trades executed on ICE's electronic trading platform, as well as trades executed off of ICE's electronic trading platform and then brought to ICE for clearing. In this regard, ICE does not differentiate between open interest created by a transaction executed on its trading platform and that created by a transaction executed off its trading platform.⁶¹

In a subsequent filing dated March 24, 2010, ICE reported that total trading volume in the fourth quarter of 2009 was 19,859 contracts (or 305.5 contracts on a daily basis). In terms of number of transactions, 1,022 trades occurred in the fourth quarter of 2009 (15.7 trades per day). As of December 31, 2009, open interest in the UNP contract was 3,416 contracts, which included trades executed on ICE's electronic trading platform, as well as trades executed off of ICE's electronic trading platform and then brought to ICE for clearing.

The number of trades per day between the second and fourth quarters of 2009 was not substantial. In addition, trading activity in the UNP contract, as characterized by total quarterly volume, indicates that the UNP contract experiences trading activity that is similar to that of thinly-traded futures markets.⁶² Thus, the UNP contract does not meet a threshold of trading activity that would render it of potential importance and no additional statistical analysis is warranted.⁶³

⁶¹ 74 FR 51264 (October 6, 2009).

⁶² Staff has advised the Commission that in its experience, a thinly-traded contract is, generally, one that has a quarterly trading volume of 100,000 contracts or less. In this regard, in the third quarter of 2009, physical commodity futures contracts with trading volume of 100,000 contracts or fewer constituted less than one percent of total trading volume of all physical commodity futures contracts.

⁶³ In establishing guidance to illustrate how it will evaluate the various criteria, or combinations of criteria, when determining whether a contract is a SPDC, the Commission made clear that "material liquidity itself would not be sufficient to make a determination that a contract is a [SPDC], * * * but combined with other factors it can serve as a

i. Federal Register Comments

ICE and WGCEF stated that the UNP contract lacks a sufficient number of trades to meet the material liquidity criterion. These two commenters, along with WPTF, EPSA, FIEG and EEI argued that the UNP contract cannot have a material effect on other contracts, such as those listed for trading by NYMEX, because price linkage and the potential for arbitrage do not exist. Moreover, the DCM contracts do not cash settle to the UNP contract's price. Instead, the DCM contracts and the UNP contract are both cash settled based on physical transactions, which neither the ECM or the DCM contracts can influence.

WGCEF and ICE noted that the Commission's Guidance had posited concepts of liquidity that generally assumed a fairly constant stream of prices throughout the trading day and noted that the relatively low number of trades per day in the UNP contract did not meet this standard of liquidity. The Commission observes that a continuous stream of prices would indeed be an indication of liquidity for certain markets but the Guidance also notes that "quantifying the levels of immediacy and price concession that would define material liquidity may differ from one market or commodity to another."⁶⁴

ICE opined that the Commission "seems to have adopted a five trade per day test for material liquidity." To the contrary, the Commission adopted a five trades-per-day threshold as a reporting requirement to enable it to "independently be aware of ECM contracts that may develop into SPDCs"⁶⁵ rather than solely relying upon an ECM on its own to identify any such potential SPDCs to the Commission. Thus, any contract that meets this threshold may be subject to scrutiny as a potential SPDC; however, the contract will not be found to be a SPDC merely because it met the reporting threshold.

ICE argued that the statistics provided by ICE were misinterpreted and misapplied by the Commission. In particular, ICE stated that the volume figures used in the Commission's analysis (cited above) "include trades made in all months" as well as in strips

guidepost indicating which contracts are functioning as [SPDCs].¹⁷ 17 CFR 36, Appendix A. For the reasons discussed above, the Commission has found that the UNP contract does not meet the material price reference criterion. In light of this finding and the Commission's Guidance cited above, there is no need to evaluate further the material liquidity criteria since the Commission believes it is not useful as the sole basis for a SPDC determination.

⁶⁴ Guidance, *supra*.

⁶⁵ 73 FR 75892 (December 12, 2008).

of contract months. ICE suggested that a more appropriate method of determining liquidity is to examine the activity in a single traded month of a given contract.⁶⁶ It is the Commission's opinion that liquidity, as it pertains to the UNP contract, is typically a function of trading activity in particular lead days and, given sufficient liquidity in such days, the ICE UNP contract itself would be considered liquid. In any event, in light of the fact that the Commission has found that the UNP contract does not meet the material price reference criterion, according to the Commission's Guidance, it would be unnecessary to evaluate whether the UNP contract meets the material liquidity criterion since it cannot be used alone for SPDC determination.

ii. Conclusion Regarding Material Liquidity

For the reasons discussed above, the Commission finds that the UNP contract does not meet the material liquidity criterion.

3. Overall Conclusion Regarding the UNP Contract

After considering the entire record in this matter, including the comments received, the Commission has determined that the ICE UNP contract does not perform a significant price discovery function under the criteria established in section 2(h)(7) of the CEA. Specifically, the Commission has determined that the UNP contract does not meet the material price reference or material liquidity criteria at this time. Accordingly, the Commission is issuing the attached Order declaring that the UNP contract is not a SPDC.

Issuance of this Order indicates that the Commission does not at this time

⁶⁶ In addition, ICE stated that the trades-per-day statistics that it provided to the Commission in its quarterly filing and which were cited in the Commission's October 6, 2009, **Federal Register** notice includes 2(h)(1) transactions, which were not completed on the electronic trading platform and should not be considered in the SPDC determination process. The Commission staff asked ICE to review the data it sent in its quarterly filings; ICE confirmed that the volume data it provided and which the Commission cited includes only transaction data executed on ICE's electronic trading platform. As noted above, supplemental data supplied by ICE confirmed that block trades are in addition to the trades that were conducted on the electronic platform; block trades comprise about 45 percent of all transactions in the UNP contract (as of the fourth quarter of 2009). Commission acknowledges that the open interest information it provided in its October 6, 2009, **Federal Register** notice includes transactions made off the ICE platform. However, once open interest is created, there is no way for ICE to differentiate between "on-exchange" versus "off-exchange" created positions, and all such positions are fungible with one another and may be offset in any way agreeable to the position holder regardless of how the position was initially created.

regard ICE as a registered entity in connection with its UNP contract.⁶⁷ Accordingly, with respect to its UNP contract, ICE is not required to comply with the obligations, requirements and timetables prescribed in Commission rule 36.3(c)(4) for ECMs with SPDCs. However, ICE must continue to comply with the applicable reporting requirements for ECMs.

V. Related Matters

a. Paperwork Reduction Act

The Paperwork Reduction Act of 1995 ("PRA")⁶⁸ imposes certain requirements on Federal agencies, including the Commission, in connection with their conducting or sponsoring any collection of information as defined by the PRA. Certain provisions of Commission rule 36.3 impose new regulatory and reporting requirements on ECMs, resulting in information collection requirements within the meaning of the PRA. OMB previously has approved and assigned OMB control number 3038-0060 to this collection of information.

b. Cost-Benefit Analysis

Section 15(a) of the CEA⁶⁹ requires the Commission to consider the costs and benefits of its actions before issuing an order under the Act. By its terms, section 15(a) does not require the Commission to quantify the costs and benefits of an order or to determine whether the benefits of the order outweigh its costs; rather, it requires that the Commission "consider" the costs and benefits of its actions. Section 15(a) further specifies that the costs and benefits shall be evaluated in light of five broad areas of market and public concern: (1) Protection of market participants and the public; (2) efficiency, competitiveness and financial integrity of futures markets; (3) price discovery; (4) sound risk management practices; and (5) other public interest considerations. The Commission may in its discretion give greater weight to any one of the five enumerated areas and could in its discretion determine that, notwithstanding its costs, a particular order is necessary or appropriate to protect the public interest or to effectuate any of the provisions or accomplish any of the purposes of the Act.

When a futures contract begins to serve a significant price discovery function, that contract, and the ECM on which it is traded, warrants increased oversight to deter and prevent price

⁶⁷ See 73 FR 75888, 75893 (Dec. 12, 2008).

⁶⁸ 44 U.S.C. 3507(d).

⁶⁹ 7 U.S.C. 19(a).

manipulation or other disruptions to market integrity, both on the ECM itself and in any related futures contracts trading on DCMs. An Order finding that a particular contract is a SPDC triggers this increased oversight and imposes obligations on the ECM calculated to accomplish this goal. The increased oversight engendered by the issue of a SPDC Order increases transparency and helps to ensure fair competition among ECMs and DCMs trading similar products and competing for the same business. Moreover, the ECM on which the SPDC is traded must assume, with respect to that contract, all the responsibilities and obligations of a registered entity under the CEA and Commission regulations. Additionally, the ECM must comply with nine core principles established by section 2(h)(7) of the Act—including the obligation to establish position limits and/or accountability standards for the SPDC. Section 4(i) of the CEA authorize the Commission to require reports for SPDCs listed on ECMs. These increased responsibilities, along with the CFTC's increased regulatory authority, subject the ECM's risk management practices to the Commission's supervision and oversight and generally enhance the financial integrity of the markets.

The Commission has concluded that the SDP, SQP, SRP, DNP and UNP contracts, which are the subject of the attached Orders, are not SPDCs; accordingly, the Commission's Orders impose no additional costs and no additional statutorily or regulatory mandated responsibilities on the ECM.

c. Regulatory Flexibility Act

The Regulatory Flexibility Act ("RFA")⁷⁰ requires that agencies consider the impact of their rules on small businesses. The requirements of CEA section 2(h)(7) and the Part 36 rules affect ECMs. The Commission previously has determined that ECMs are not small entities for purposes of the RFA.⁷¹ Accordingly, the Chairman, on behalf of the Commission, hereby certifies pursuant to 5 U.S.C. 605(b) that these Orders, taken in connection with section 2(h)(7) of the Act and the Part 36 rules, will not have a significant impact on a substantial number of small entities.

VI. Orders

a. Order Relating to the SP-15 Financial Day-Ahead LMP Peak Daily Contract

After considering the complete record in this matter, including the comment letters received in response to its

request for comments, the Commission has determined to issue the following Order:

The Commission, pursuant to its authority under section 2(h)(7) of the Act, hereby determines that the SP-15 Financial Day-Ahead LMP Peak Daily contract, traded on the IntercontinentalExchange, Inc., does not at this time satisfy the material price preference or material liquidity criteria for significant price discovery contracts. Consistent with this determination, the IntercontinentalExchange, Inc., is not considered a registered entity⁷² with respect to the SP-15 Financial Day-Ahead LMP Peak Daily contract and is not subject to the provisions of the Commodity Exchange Act applicable to registered entities. Further, the obligations, requirements and timetables prescribed in Commission rule 36.3(c)(4) governing core principle compliance by the IntercontinentalExchange, Inc., are not applicable to the SP-15 Financial Day-Ahead LMP Peak Daily contract with the issuance of this Order.

This Order is based on the representations made to the Commission by the IntercontinentalExchange, Inc., dated July 27, 2009, and March 24, 2010, and other supporting material. Any material change or omissions in the facts and circumstances pursuant to which this order is granted might require the Commission to reconsider its current determination that the SP-15 Financial Day-Ahead LMP Peak Daily contract is not a significant price discovery contract. Additionally, to the extent that it continues to rely upon the exemption in Section 2(h)(3) of the Act, the IntercontinentalExchange, Inc., must continue to comply with all of the applicable requirements of Section 2(h)(3) and Commission Regulation 36.3.

b. Order Relating to the SP-15 Financial Day-Ahead LMP Off-Peak Daily Contract

After considering the complete record in this matter, including the comment letters received in response to its request for comments, the Commission has determined to issue the following Order:

The Commission, pursuant to its authority under section 2(h)(7) of the Act, hereby determines that the SP-15 Financial Day-Ahead LMP Off-Peak Daily contract, traded on the IntercontinentalExchange, Inc., does not at this time satisfy the material price preference or material liquidity criteria

for significant price discovery contracts. Consistent with this determination, the IntercontinentalExchange, Inc., is not considered a registered entity⁷³ with respect to the SP-15 Financial Day-Ahead LMP Off-Peak Daily contract and is not subject to the provisions of the Commodity Exchange Act applicable to registered entities. Further, the obligations, requirements and timetables prescribed in Commission rule 36.3(c)(4) governing core principle compliance by the IntercontinentalExchange, Inc., are not applicable to the SP-15 Financial Day-Ahead LMP Off-Peak Daily contract with the issuance of this Order.

This Order is based on the representations made to the Commission by the IntercontinentalExchange, Inc., dated July 27, 2009, and March 24, 2010, and other supporting material. Any material change or omissions in the facts and circumstances pursuant to which this order is granted might require the Commission to reconsider its current determination that the SP-15 Financial Day-Ahead LMP Off-Peak Daily contract is not a significant price discovery contract. Additionally, to the extent that it continues to rely upon the exemption in Section 2(h)(3) of the Act, the IntercontinentalExchange, Inc., must continue to comply with all of the applicable requirements of Section 2(h)(3) and Commission Regulation 36.3.

c. Order Relating to the SP-15 Financial Swap Real Time LMP-Peak Daily Contract

After considering the complete record in this matter, including the comment letters received in response to its request for comments, the Commission has determined to issue the following Order:

The Commission, pursuant to its authority under section 2(h)(7) of the Act, hereby determines that the SP-15 Financial Swap Real Time LMP-Peak Daily contract, traded on the IntercontinentalExchange, Inc., does not at this time satisfy the material price preference or material liquidity criteria for significant price discovery contracts. Consistent with this determination, the IntercontinentalExchange, Inc., is not considered a registered entity⁷⁴ with respect to the SP-15 Financial Swap Real Time LMP-Peak Daily contract and is not subject to the provisions of the Commodity Exchange Act applicable to registered entities. Further, the obligations, requirements and timetables

⁷⁰ 5 U.S.C. 601 *et seq.*

⁷¹ 66 FR 42256, 42268 (Aug. 10, 2001).

⁷² 7 U.S.C. 1a(29).

⁷³ 7 U.S.C. 1a(29).

⁷⁴ 7 U.S.C. 1a(29).

prescribed in Commission rule 36.3(c)(4) governing core principle compliance by the IntercontinentalExchange, Inc., are not applicable to the SP-15 Financial Swap Real Time LMP-Peak Daily contract with the issuance of this Order.

This Order is based on the representations made to the Commission by the IntercontinentalExchange, Inc., dated July 27, 2009, and March 24, 2010, and other supporting material. Any material change or omissions in the facts and circumstances pursuant to which this order is granted might require the Commission to reconsider its current determination that the SP-15 Financial Swap Real Time LMP-Peak Daily contract is not a significant price discovery contract. Additionally, to the extent that it continues to rely upon the exemption in Section 2(h)(3) of the Act, the IntercontinentalExchange, Inc., must continue to comply with all of the applicable requirements of Section 2(h)(3) and Commission Regulation 36.3.

d. Order Relating to the NP-15 Financial Day-Ahead LMP Peak Daily Contract

After considering the complete record in this matter, including the comment letters received in response to its request for comments, the Commission has determined to issue the following Order:

The Commission, pursuant to its authority under section 2(h)(7) of the Act, hereby determines that the NP-15 Financial Day-Ahead LMP Peak Daily contract, traded on the IntercontinentalExchange, Inc., does not at this time satisfy the material price preference or material liquidity criteria for significant price discovery contracts. Consistent with this determination, the IntercontinentalExchange, Inc., is not considered a registered entity⁷⁵ with respect to the NP-15 Financial Day-Ahead LMP Peak Daily contract and is not subject to the provisions of the Commodity Exchange Act applicable to registered entities. Further, the obligations, requirements and timetables prescribed in Commission rule 36.3(c)(4) governing core principle compliance by the IntercontinentalExchange, Inc., are not applicable to the NP-15 Financial Day-Ahead LMP Peak Daily contract with the issuance of this Order.

This Order is based on the representations made to the Commission by the IntercontinentalExchange, Inc., dated

July 27, 2009, and March 24, 2010, and other supporting material. Any material change or omissions in the facts and circumstances pursuant to which this order is granted might require the Commission to reconsider its current determination that the NP-15 Financial Day-Ahead LMP Peak Daily contract is not a significant price discovery contract. Additionally, to the extent that it continues to rely upon the exemption in Section 2(h)(3) of the Act, the IntercontinentalExchange, Inc., must continue to comply with all of the applicable requirements of Section 2(h)(3) and Commission Regulation 36.3.

e. Order Relating to the NP-15 Financial Day-Ahead LMP Off-Peak Daily Contract

After considering the complete record in this matter, including the comment letters received in response to its request for comments, the Commission has determined to issue the following Order:

The Commission, pursuant to its authority under section 2(h)(7) of the Act, hereby determines that the NP-15 Financial Day-Ahead LMP Off-Peak Daily contract, traded on the IntercontinentalExchange, Inc., does not at this time satisfy the material price preference or material liquidity criteria for significant price discovery contracts. Consistent with this determination, the IntercontinentalExchange, Inc., is not considered a registered entity⁷⁶ with respect to the NP-15 Financial Day-Ahead LMP Off-Peak Daily contract and is not subject to the provisions of the Commodity Exchange Act applicable to registered entities. Further, the obligations, requirements and timetables prescribed in Commission rule 36.3(c)(4) governing core principle compliance by the IntercontinentalExchange, Inc., are not applicable to the NP-15 Financial Day-Ahead LMP Off-Peak Daily contract with the issuance of this Order.

This Order is based on the representations made to the Commission by the IntercontinentalExchange, Inc., dated July 27, 2009, and March 24, 2010, and other supporting material. Any material change or omissions in the facts and circumstances pursuant to which this order is granted might require the Commission to reconsider its current determination that the NP-15 Financial Day-Ahead LMP Off-Peak Daily contract is not a significant price discovery contract. Additionally, to the extent that it continues to rely upon the exemption

in Section 2(h)(3) of the Act, the IntercontinentalExchange, Inc., must continue to comply with all of the applicable requirements of Section 2(h)(3) and Commission Regulation 36.3.

Issued in Washington, DC on July 9, 2010 by the Commission.

David A. Stawick,

Secretary of the Commission.

[FR Doc. 2010-17736 Filed 7-20-10; 8:45 am]

BILLING CODE 6351-01-P

CORPORATION FOR NATIONAL AND COMMUNITY SERVICE

Information Collection; Submission for OMB Review, Comment Request

AGENCY: Corporation for National and Community Service.

ACTION: Notice.

SUMMARY: The Corporation for National and Community Service (hereinafter the "Corporation"), has submitted a public information collection request (ICR) entitled Corporation Enrollment and Exit Forms to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995, Public Law 104-13, (44 U.S.C. chapter 35). Copies of this ICR, with applicable supporting documentation, may be obtained by calling the Corporation for National and Community Service, Amy Borgstrom at (202) 606-6930. Individuals who use a telecommunications device for the deaf (TTY-TDD) may call (202) 606-3472 between 8:30 a.m. and 5 p.m. e.t., Monday through Friday.

ADDRESSES: Comments may be submitted, identified by the title of the information collection activity, to the Office of Information and Regulatory Affairs, Attn: Ms. Sharon Mar, OMB Desk Officer for the Corporation for National and Community Service, by any of the following two methods within 30 days from the date of publication in this **Federal Register**:

- (1) *By fax to:* (202) 395-6974, Attention: Ms. Sharon Mar, OMB Desk Officer for the Corporation for National and Community Service; and
- (2) *Electronically by e-mail to:* smar@omb.eop.gov.

SUPPLEMENTARY INFORMATION: The OMB is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Corporation, including

⁷⁵ 7 U.S.C. 1a(29).

⁷⁶ 7 U.S.C. 1a(29).

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;
- Propose ways to enhance the quality, utility, and clarity of the information to be collected; and
- Propose ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submissions of responses.

Comments

A 60-day public comment Notice was published in the **Federal Register** on April 14, 2010. This comment period ended June 15, 2010. No public comments were received from this Notice.

Description: The Corporation is seeking approval of the Corporation Enrollment and Exit Forms. Applicants will respond to the questions included in this ICR in order to enroll in the National Service Trust and document their exit from service.

Type of Review: Revision.

Agency: Corporation for National and Community Service.

Title: Corporation Enrollment and Exit forms.

OMB Number: 3045-0006

(Enrollment) and 3045-0015 (Exit).

Agency Number: None.

Affected Public: AmeriCorps members and Summer of Service participants.

Total Respondents: 296,000.

Frequency: Ongoing.

Average Time per Response: 10 minutes

Estimated Total Burden Hours: 49,333 hours.

Total Burden Cost (capital/startup): None.

Total Burden Cost (operating/maintenance): None.

Date: July 15, 2010.

Kristin McSwain,

Chief of Program Operations.

[FR Doc. 2010-17713 Filed 7-20-10; 8:45 am]

BILLING CODE 6050--\$-P

DEPARTMENT OF DEFENSE

Department of the Navy

Notice of Intent To Grant Partially Exclusive License; METOCCEAN Data System

AGENCY: Department of the Navy, DoD.

ACTION: Notice.

SUMMARY: The Department of the Navy gives notice of its intent to grant METOCCEAN Data System a revocable, nonassignable, partially exclusive license, with exclusive fields of use in portable acoustic scoring, acoustic sounding and simulator control, in the United States to practice the Government-owned invention, U.S. Patent 6,995,707 B2, issued February 7, 2006, entitled "Integrated Maritime Portable Acoustic Scoring and Simulator Control and Improvements."

DATES: Anyone wishing to object to the grant of this license must file written objections along with supporting evidence, if any, not later than August 27, 2010.

ADDRESSES: Written objections are to be filed with Indian Head Division, Naval Surface Warfare Center, Code OC4, Bldg. D-31, 3824 Strauss Avenue, Indian Head, MD 20640-5152.

FOR FURTHER INFORMATION CONTACT: Dr. J. Scott Deiter, Head, Technology Transfer Office, Naval Surface Warfare Center Indian Head Division, Code CAB, 3824 Strauss Avenue, Indian Head, MD 20640-5152, telephone 301-744-6111.

Dated: July 13, 2010.

D.J. Werner,

Lieutenant Commander, Judge Advocate General's Corps, U.S. Navy, Federal Register Liaison Officer.

[FR Doc. 2010-17612 Filed 7-20-10; 8:45 am]

BILLING CODE 3810--FF-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2985-008-MA]

Onyx Specialty Papers, Inc; Notice Soliciting Applications

July 14, 2010.

On April 29, 2009, Onyx Specialty Papers, Inc. (Onyx), licensee for the Willow Mill Project No. 2985, filed an application for a subsequent license for the project pursuant to section 15(b)(1) of the Federal Power Act (FPA). The license application was timely filed and an Environmental Assessment was issued on February 2, 2010. On June 1, 2010, Onyx filed a withdrawal of its subsequent license application, and concurrently filed an application to surrender its license.

The project is located on the Housatonic River in the Town of Stockbridge, Berkshire County, Massachusetts. The project consists of: (1) A 14-foot-high, 150-foot-wide stone

masonry gravity dam; (2) an 11-acre impoundment; (3) a 10-foot-deep, 18-foot-wide, 50-foot-long rubble and masonry canal connected to a 10-foot-deep, 18-foot-wide, 260-foot-long rubble and masonry underground headrace; (4) two 5.5-foot-long, 8-foot diameter steel penstocks; (5) a 100-kW turbine generating unit; and (6) a 210-foot-long pipe discharging water back into the Housatonic River. The turbine generating unit is located in the basement of MeadWestvaco's paper mill. There are no transmission lines associated with the project because all of the power is used internally at Willow Mill. The applicant estimates that the total average annual generation, with the proposed minimum flow, would be approximately 256 megawatt-hours.

As a result of the withdrawal of Onyx's application, the Commission is soliciting license applications from potential applicants. This is because the deadline for filing applications for subsequent license was April 30, 2009, and no application other than the licensee's was filed. Thus, the Commission is giving other interested entities the opportunity to file.

The licensee is required to make available to the public certain information described in section 16.7 of the regulations. For more information from the licensee, please contact Mr. John Clements, Counsel for Onyx Specialty Papers, Inc., Van Ness Feldman, PC, 1050 Jefferson Street, NW., Suite 700, Washington, DC 20007-3877, (202) 298-1800.

Pursuant to section 16.25(b), a potential applicant that files a notice of intent within 90 days from the date of this notice: (1) May apply for a license under Part I of the FPA and Part 4 (except section 4.38) of the Commission's Regulations within 18 months of the date on which it files its notice; and (2) must comply with sections 16.8 and 16.10 of the Commission's Regulations.

Questions concerning this notice should be directed to Robert Bell, (202) 502-6062 or robert.bell@ferc.gov.

Kimberly D. Bose,
Secretary.

[FR Doc. 2010-17731 Filed 7-20-10; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY**Federal Energy Regulatory Commission****[Docket No. PR10-55-000]****DCP Guadalupe Pipeline, LLC; Notice of Compliance Filing**

July 14, 2010.

Take notice that on July 1, 2010, DCP Guadalupe Pipeline, LLC (Guadalupe) filed a revised Statement of Operating Conditions for Transportation Services (SOC) reflecting the rates approved by the Federal Energy Regulatory Commission's Letter Order issued June 10, 2010 in Docket No. PR05-17-006.

Any person desiring to participate in this rate filing 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). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the date as indicated below. Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the "eFiling" link at <http://www.ferc.gov>. Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at <http://www.ferc.gov>, using the "eLibrary" link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an "eSubscription" link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail FERCOnlineSupport@ferc.gov, or call (866) 208-3676 (toll free). For TTY, call (202) 502-8659.

Comment Date: 5 p.m. Eastern time on Tuesday, July 27, 2010.

Kimberly D. Bose,
Secretary.

[FR Doc. 2010-17729 Filed 7-20-10; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY**Federal Energy Regulatory Commission****[Docket No. CP10-82-000]**

Northern Natural Gas Company, Southern Natural Gas Company, Florida Gas Transmission Company, LLC, Transcontinental Gas Pipe Line Company, LLC, and Enterprise Field Services, LLC; Notice of Intent To Prepare an Environmental Assessment for the Proposed Matagorda Offshore Pipeline System Abandonment Project and Request for Comments on Environmental Issues

July 14, 2010.

The staff of the Federal Energy Regulatory Commission (FERC or Commission) will prepare an environmental assessment (EA) that will discuss the environmental impacts of the Matagorda Offshore Pipeline System Abandonment Project (Project) which would include the abandonment of facilities by Northern Natural Gas Company, Southern Natural Gas Company, Florida Gas Transmission Company, LLC, Transcontinental Gas Pipe Line Company, LLC, and Enterprise Field Services, LLC, collectively referred to as the Applicants, in Refugio County and offshore Texas. This EA will be used by the Commission in its decision-making process to determine whether the project is in the public convenience and necessity.

This notice announces the opening of the scoping process the Commission will use to gather input from the public and interested agencies on the project. Your input will help the Commission staff determine what issues need to be evaluated in the EA. Please note that the scoping period will close on August 13, 2010. Further details on how to submit written comments are provided in the Public Participation section of this notice.

This notice is being sent to the Commission's current environmental mailing list for this project. State and local government representatives are asked to notify their constituents of this planned project and encourage them to comment on their areas of concern.

Summary of the Proposed Project

The Applicants propose to abandon in place certain facilities known as the Matagorda Offshore Pipeline System (MOPS) located both onshore in Refugio County, Texas, and in State and federal waters offshore Texas. These facilities would include about 86.9 miles of various diameter pipeline, a dehydration plant, and various interconnects located in Texas. The 86.9 miles of pipeline to be abandoned include about 60.3 miles of offshore pipeline and 26.6 miles of onshore pipeline.

The general location of the project facilities is shown in Appendix 1.¹

Land Requirements for Construction

Since the Applicants propose abandoning these facilities in place, there would be no new land use requirements. The project would be, therefore, entirely within the existing offshore and onshore rights-of-way. However, there would be some ground disturbance associated with offshore disconnects within federal waters.

The EA Process

The National Environmental Policy Act (NEPA) requires the Commission to take into account the environmental impacts that could result from an action whenever it considers the issuance of a Certificate of Public Convenience and Necessity. NEPA also requires us² to discover and address concerns the public may have about proposals. This process is referred to as "scoping." The main goal of the scoping process is to focus the analysis in the EA on the important environmental issues. By this notice, the Commission requests public comments on the scope of the issues to address in the EA. All comments received will be considered during the preparation of the EA.

In the EA we will discuss impacts that could occur as a result of the proposed abandonment project under these general headings:

- Land use;
- Water resources, fisheries, and wetlands;
- Cultural resources;
- Vegetation and wildlife;
- Endangered and threatened species; and

¹ The appendices referenced in this notice are not being printed in the **Federal Register**. Copies of appendices were sent to all those receiving this notice in the mail and are available at <http://www.ferc.gov> using the link called "eLibrary" or from the Commission's Public Reference Room, 888 First Street, NE., Washington, DC 20426, or call (202) 502-8371. For instructions on connecting to eLibrary, refer to the last page of this notice.

² "We", "us", and "our" refer to the environmental staff of the Commission's Office of Energy Projects.

- Public safety.

We will also evaluate reasonable alternatives to the proposed project or portions of the project, including abandonment by removal of the pipeline and aboveground facilities, and make recommendations on how to lessen or avoid impacts on the various resource areas.

Our independent analysis of the issues will be presented in the EA. The EA will be placed in the public record and, depending on the comments received during the scoping process, may be published and distributed to the public. A comment period will be allotted if the EA is published for review. We will consider all comments on the EA before we make our recommendations to the Commission. To ensure your comments are considered, please carefully follow the instructions in the Public Participation section beginning on page 4.

With this notice, we are asking agencies with jurisdiction and/or special expertise with respect to environmental issues to formally cooperate with us in the preparation of the EA. These agencies may choose to participate once they have evaluated the proposal relative to their responsibilities. Agencies that would like to request cooperating agency status should follow the instructions for filing comments provided under the Public Participation section of this notice.

Consultations Under Section 106 of the National Historic Preservation Act

In accordance with the Advisory Council on Historic Preservation's implementing regulations, we are using this notice to solicit the views of the public on the project's potential effects on historic properties.³ We will document our findings on the impacts on cultural resources and summarize the status of consultations under section 106 of the National Historic Preservation Act in our EA.

Public Participation

You can make a difference by providing us with your specific comments or concerns about the project. Your comments should focus on the potential environmental effects, reasonable alternatives, and measures to avoid or lessen environmental impacts. The more specific your comments, the more useful they will be. To ensure that

your comments are timely and properly recorded, please send your comments so that they will be received in Washington, DC on or before August 13, 2010.

For your convenience, there are three methods which you can use to submit your comments to the Commission. In all instances please reference the project docket number (CP10-82-000) with your submission. The Commission encourages electronic filing of comments and has expert eFiling 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 at <http://www.ferc.gov> under the link called "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 that is listed under the "Documents and Filings" link. 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 to your submission. New eFiling users must first create an account by clicking on the links called "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 a paper copy of your comments at the following address: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Room 1A, Washington, DC 20426.

Environmental Mailing List

The environmental mailing list includes federal, State, and local government representatives and agencies; elected officials; environmental and public interest groups; Native American Tribes; other interested parties; and local libraries and newspapers. This list also includes all affected landowners (as defined in the Commission's regulations) whose property may be used temporarily for project purposes, or who own homes within certain distances of aboveground facilities, and anyone who submits comments on the project. We will update the environmental mailing list as the analysis proceeds to ensure that we send the information related to this environmental review to all individuals, organizations, and government entities interested in and/or potentially affected by the proposed project.

If the EA is published for distribution, copies will be sent to the environmental mailing list for public review and comment. If you would prefer to receive a paper copy of the document instead of the CD version or would like to remove your name from the mailing list, please return the attached Information Request (Appendix 2).

Becoming an Intervenor

In addition to involvement in the EA scoping process, you may want to become an "intervenor" which is an official party to the Commission's proceeding. Intervenor play a more formal role in the process and are able to file briefs, appear at hearings, and be heard by the courts if they choose to appeal the Commission's final ruling. An intervenor formally participates in the proceeding by filing a request to intervene. Instructions for becoming an intervenor are included in the User's Guide under the "e-filing" link on the Commission's Web site.

Additional Information

Additional information about the project is available from the Commission's Office of External Affairs, at (866) 208-FERC, or on the FERC Web site at <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.*, CP10-82-000). Be sure you have selected an appropriate date range. For assistance, please contact FERC Online Support at FercOnlineSupport@ferc.gov or toll free at (866) 208-3676, or for TTY, contact (202) 502-8659. The eLibrary link also provides access to the text of formal documents issued by the Commission, such as orders, notices, and rulemakings.

In addition, the Commission now offers a free service called eSubscription which 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. Go to <http://www.ferc.gov/esubscribenow.htm>.

Finally, 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.

Kimberly D. Bose,
Secretary.

[FR Doc. 2010-17732 Filed 7-20-10; 8:45 am]

BILLING CODE 6717-01-P

³ The Advisory Council on Historic Preservation's regulations are at Title 36, Code of Federal Regulations, Part 800. Historic properties are defined in those regulations as any prehistoric or historic district, site, building, structure, or object included in or eligible for inclusion in the National Register for Historic Places.

DEPARTMENT OF ENERGY**Federal Energy Regulatory Commission****Combined Notice of Filings #1**

July 13, 2010.

Take notice that the Commission received the following exempt wholesale generator filings:

Docket Numbers: EG10–51–000.

Applicants: Laredo Ridge Wind, LLC.

Description: Self-Certification of EWG status of Laredo Ridge Wind, LLC.

Filed Date: 07/12/2010.

Accession Number: 20100712–5167.

Comment Date: 5 p.m. e.t. on Monday, August 2, 2010.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER01–390–009; ER99–3450–011; ER99–2769–012; ER00–2706–009; ER01–2760–008; ER10–566–003; ER08–1255–005; ER98–4515–011; ER09–1364–003; ER01–138–008; ER06–744–006; ER01–1418–012; ER02–1238–012; ER03–28–006; ER03–398–013; ER09–1488–002; ER02–1884–011.

Applicants: Chandler Wind Partners, LLC, Foote Creek II, LLC, Foote Creek IV, LLC, Ridge Crest Wind Partners, LLC, Oak Creek Wind Power, LLC, Delta Person Limited Partnership, Waterside Power LLC, Michigan Power Limited Partnership, Sabine Cogen LP, Foote Creek III, LLC, Effingham County Power, LLC, MPC Generating, LLC, Walton County Power, LLC, Washington County Power, LLC, Black Bear Hydro Partners, LLC, Coso Geothermal Power Holdings, LLC, Cadillac Renewable Energy LLC.

Description: Notice of Non-Material Change in Status of Chandler Wind Partners, LLC, et. al.

Filed Date: 07/12/2010.

Accession Number: 20100712–5166.

Comment Date: 5 p.m. e.t. on Monday, August 2, 2010.

Docket Numbers: ER07–876–002.

Applicants: Chevron Coalinga Energy Company.

Description: Chevron Coalinga Energy Co submits the Order No. 697 Compliance Filing.

Filed Date: 07/12/2010.

Accession Number: 20100712–0007.

Comment Date: 5 p.m. e.t. on Monday, August 2, 2010.

Docket Numbers: ER10–1276–001.

Applicants: Consumers Energy Company.

Description: Consumers Energy Company submits tariff filing per 35: Wholesale Market-Based Rate Tariff Providing For Sales Of Capacity And Energy to be effective 7/13/2010.

Filed Date: 07/13/2010.

Accession Number: 20100713–5017

Comment Date: 5 p.m. e.t. on Tuesday, August 3, 2010.

Docket Numbers: ER10–1342–001.

Applicants: CP Energy Marketing (US) Inc.

Description: CP Energy Marketing (US) Inc. submits tariff filing per 35: Supplemental Baseline Filing, Docket No. ER10–1342 to be effective 5/27/2010.

Filed Date: 07/13/2010.

Accession Number: 20100713–5000.

Comment Date: 5 p.m. e.t. on Tuesday, August 03, 2010.

Docket Numbers: ER10–1343–001.

Applicants: CPI Energy Services (US) LLC.

Description: CPI Energy Services (US) LLC submits tariff filing per 35: Supplemental Baseline Filing, Docket No. ER10–1343 to be effective 5/27/2010.

Filed Date: 07/13/2010.

Accession Number: 20100713–5005.

Comment Date: 5 p.m. e.t. on Tuesday, August 3, 2010.

Docket Numbers: ER10–1344–001.

Applicants: CPI USA North Carolina LLC.

Description: CPI USA North Carolina LLC submits tariff filing per 35: Supplemental Baseline Filing, Docket No. ER10–1344 to be effective 5/27/2010.

Filed Date: 07/13/2010.

Accession Number: 20100713–5001.

Comment Date: 5 p.m. e.t. on Tuesday, August 3, 2010.

Docket Numbers: ER10–1345–001.

Applicants: CPIDC, Inc.

Description: CPIDC, Inc. submits tariff filing per 35: Supplemental Baseline Filing, Docket No. ER10–1345 to be effective 5/27/2010.

Filed Date: 07/13/2010.

Accession Number: 20100713–5002.

Comment Date: 5 p.m. e.t. on Tuesday, August 3, 2010.

Docket Numbers: ER10–1346–001.

Applicants: Frederickson Power L.P.

Description: Frederickson Power L.P. submits tariff filing per 35: Supplemental Baseline Filing, Docket No. ER10–1346 to be effective 5/27/2010.

Filed Date: 07/13/2010

Accession Number: 20100713–5003.

Comment Date: 5 p.m. e.t. on Tuesday, August 03, 2010.

Docket Numbers: ER10–1348–001.

Applicants: Manchief Power Company LLC.

Description: Manchief Power Company LLC submits tariff filing per 35: Supplemental Baseline Filing,

Docket No. ER10–1348 to be effective 5/27/2010.

Filed Date: 07/13/2010.

Accession Number: 20100713–5004.

Comment Date: 5 p.m. e.t. on Tuesday, August 03, 2010.

Docket Numbers: ER10–1753–000.

Applicants: Mt. Carmel Cogen, Inc.

Description: Mt. Carmel Cogen, Inc. submits tariff filing per 35.12: Mt. Carmel Cogen, Inc. MBR Tariff to be effective 7/12/2010.

Filed Date: 07/12/2010.

Accession Number: 20100712–5105.

Comment Date: 5 p.m. e.t. on Monday, August 2, 2010.

Docket Numbers: ER10–1754–000.

Applicants: American Electric Power Service Corporation.

Description: American Electric Power Corp on behalf of Kentucky Power Co submits the third revised Interconnection and local delivery service agreement.

Filed Date: 07/12/2010.

Accession Number: 20100712–0210.

Comment Date: 5 p.m. e.t. on Monday, August 2, 2010.

Docket Numbers: ER10–1755–000.

Applicants: California Independent System Operator Corporation.

Description: California Independent System Operator Corporation submits tariff filing per 35.13(a)(2)(iii): 2010–07–12 Non Generating Resource Amendment to be effective 9/10/2010.

Filed Date: 07/12/2010.

Accession Number: 20100712–5148.

Comment Date: 5 p.m. e.t. on Monday, August 2, 2010.

Docket Numbers: ER10–1756–000.

Applicants: California Independent System Operator Corporation.

Description: California Independent System Operator Corporation submits tariff filing per 35.13(a)(2)(iii): 2010–07–12 CRR Non Credit Enhancement Amendment to be effective 9/13/2010.

Filed Date: 07/12/2010.

Accession Number: 20100712–5149.

Comment Date: 5 p.m. e.t. on Monday, August 02, 2010.

Docket Numbers: ER10–1756–000.

Applicants: California Independent System Operator Corporation.

Description: California Independent System Operator Corporation submits tariff filing per: 2010–07–13 CRR Non Credit Amendment Errata to be effective 9/13/2010.

Filed Date: 07/13/2010.

Accession Number: 20100713–5068.

Comment Date: 5 p.m. e.t. on Tuesday, August 3, 2010.

Docket Numbers: ER10–1757–000.

Applicants: Florida Power Corporation.

Description: Florida Power Corporation submits tariff filing per 35.12: Baseline Cost-Based Rates Tariff of Florida Power Corporation to be effective 7/13/2010.

Filed Date: 07/13/2010.

Accession Number: 20100713-5033.

Comment Date: 5 p.m. e.t. on Tuesday, August 3, 2010.

Docket Numbers: ER10-1758-000.

Applicants: Florida Power Corporation.

Description: Florida Power Corporation submits tariff filing per 35.12: Baseline Market-Based Rates Tariff of Florida Power Corporation to be effective 7/13/2010.

Filed Date: 07/13/2010.

Accession Number: 20100713-5037.

Comment Date: 5 p.m. e.t. on Tuesday, August 3, 2010.

Docket Numbers: ER10-1759-000.

Applicants: Carolina Power & Light Company.

Description: Carolina Power & Light Company submits tariff filing per 35.12: Baseline Cost-Based Rates Tariff of Carolina Power and Light Company to be effective 7/13/2010.

Filed Date: 07/13/2010.

Accession Number: 20100713-5038.

Comment Date: 5 p.m. e.t. on Tuesday, August 3, 2010.

Docket Numbers: ER10-1760-000.

Applicants: Carolina Power & Light Company.

Description: Carolina Power & Light Company submits tariff filing per 35.12: Baseline Market-Based Rates Tariff of Carolina Power and Light Company to be effective 7/13/2010.

Filed Date: 07/13/2010.

Accession Number: 20100713-5039.

Comment Date: 5 p.m. e.t. on Tuesday, August 03, 2010

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. e.t. 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.

As it relates to any qualifying facility filings, the notices of self-certification [or self-recertification] listed above, do not institute a proceeding regarding qualifying facility status. A notice of self-certification [or self-recertification] simply provides notification that the entity making the filing has determined the facility named in the notice meets the applicable criteria to be a qualifying facility. Intervention and/or protest do not lie in dockets that are qualifying facility self-certifications or self-recertifications. Any person seeking to challenge such qualifying facility status may do so by filing a motion pursuant to 18 CFR 292.207(d)(iii). Intervention and protests may be filed in response to notices of qualifying facility dockets other than self-certifications and self-recertifications.

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.

Kimberly D. Bose,
Secretary.

[FR Doc. 2010-17734 Filed 7-20-10; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

July 14, 2010

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER10-1761-000.

Applicants: California Independent System Operator Corporation.

Description: California Independent System Operator Corporation submits tariff filing per 35.12: Filing of CAISO Rate Schedule No. 68, July 8, 2010 effective date requested to be effective 7/13/2010.

Filed Date: 07/13/2010.

Accession Number: 20100713-5095.

Comment Date: 5 p.m. e.t. on

Tuesday, August 3, 2010.

Docket Numbers: ER10-1762-000.

Applicants: PJM Interconnection, L.L.C.

Description: PJM Interconnection L.L.C. submits modifications to their Open Access Transmission Tariff and the Amended and Restated Operating Agreement.

Filed Date: 07/13/2010.

Accession Number: 20100714-0201.

Comment Date: 5 p.m. e.t. on

Tuesday, August 3, 2010.

Docket Numbers: ER10-1763-000.

Applicants: Entergy Arkansas, Inc.

Description: Entergy Arkansas, Inc. submits tariff filing per 35.12: MBR and CBR Baseline Filing to be effective 7/14/2010.

Filed Date: 07/14/2010.

Accession Number: 20100714-5032.

Comment Date: 5 p.m. e.t. on

Wednesday, August 4, 2010.

Docket Numbers: ER10-1764-000.

Applicants: Entergy Gulf States Louisiana, L.L.C.

Description: Entergy Gulf States Louisiana, L.L.C. submits tariff filing per 35.12: MBR and CBR Baseline Filing to be effective 7/14/2010.

Filed Date: 07/14/2010.

Accession Number: 20100714-5033.

Comment Date: 5 p.m. e.t. on

Wednesday, August 4, 2010.

Docket Numbers: ER10-1765-000.

Applicants: Entergy Louisiana, LLC.

Description: Entergy Louisiana, LLC submits tariff filing per 35.12: MBR and CBR Baseline Filing to be effective 7/14/2010.

Filed Date: 07/14/2010.

Accession Number: 20100714-5034.

Comment Date: 5 p.m. e.t. on

Wednesday, August 4, 2010.

Docket Numbers: ER10-1766-000.

Applicants: Entergy Mississippi, Inc.
Description: Entergy Mississippi, Inc. submits tariff filing per 35.12: MBR and CBR Baseline Filing to be effective 7/14/2010.

Filed Date: 07/14/2010.

Accession Number: 20100714-5035.

Comment Date: 5 p.m. e.t. on Wednesday, August 4, 2010.

Docket Numbers: ER10-1767-000.

Applicants: Entergy Texas, Inc.

Description: Entergy Texas, Inc. submits tariff filing per 35.12: MBR and CBR Baseline Filing to be effective 7/14/2010.

Filed Date: 07/14/2010.

Accession Number: 20100714-5036.

Comment Date: 5 p.m. e.t. on

Wednesday, August 4, 2010.

Docket Numbers: ER10-1768-000.

Applicants: Public Service Electric and Gas Company.

Description: Public Service Electric and Gas Company submits tariff filing per 35: Compliance Filing of PSE&G Market-Based Rate Tariff Volume No. 6 to be effective 7/14/2010.

Filed Date: 07/14/2010.

Accession Number: 20100714-5041.

Comment Date: 5 p.m. e.t. on

Wednesday, August 4, 2010.

Docket Numbers: ER10-1769-000.

Applicants: Entergy New Orleans, Inc.

Description: Entergy New Orleans, Inc. submits tariff filing per 35.12: MBR and CBR Baseline Filing to be effective 7/14/2010.

Filed Date: 07/14/2010.

Accession Number: 20100714-5043.

Comment Date: 5 p.m. e.t. on

Wednesday, August 4, 2010.

Docket Numbers: ER10-1770-000.

Applicants: PSEG Fossil LLC.

Description: PSEG Fossil LLC submits tariff filing per 35: PSEG Fossil LLC Market-Based Rate Tariff FERC Electric Tariff Volume No. 1 to be effective 7/14/2010.

Filed Date: 07/14/2010.

Accession Number: 20100714-5051.

Comment Date: 5 p.m. e.t. on

Wednesday, August 4, 2010.

Docket Numbers: ER10-1771-000.

Applicants: PSEG Nuclear LLC.

Description: PSEG Nuclear LLC submits tariff filing per 35: PSEG

Nuclear LLC Market-Based Rate Tariff FERC Electric Tariff Volume No. 1 to be effective 7/14/2010.

Filed Date: 07/14/2010.

Accession Number: 20100714-5054.

Comment Date: 5 p.m. e.t. on

Wednesday, August 4, 2010.

Docket Numbers: ER10-1772-000.

Applicants: Golden Spread Electric Cooperative, Inc.

Description: Golden Spread Electric Cooperative, Inc. submits tariff filing per 35.12: Baseline Filing to be effective 7/14/2010.

Filed Date: 07/14/2010.

Accession Number: 20100714-5055.

Comment Date: 5 p.m. e.t. on

Wednesday, August 04, 2010.

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. e.t. 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.

As it relates to any qualifying facility filings, the notices of self-certification [or self-recertification] listed above, do not institute a proceeding regarding qualifying facility status. A notice of self-certification [or self-recertification] simply provides notification that the entity making the filing has determined the facility named in the notice meets the applicable criteria to be a qualifying facility. Intervention and/or protest do not lie in dockets that are qualifying facility self-certifications or self-recertifications. Any person seeking to challenge such qualifying facility status may do so by filing a motion pursuant

to 18 CFR 292.207(d)(iii). Intervention and protests may be filed in response to notices of qualifying facility dockets other than self-certifications and self-recertifications.

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.

Kimberly D. Bose,
Secretary.

[FR Doc. 2010-17733 Filed 7-20-10; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Houston Pipe Line Company LP—Bammel Storage, Docket No. PR10-51-000, et. al.; Notice of Baseline Filings

July 14, 2010.

Houston Pipe Line Company LP—Bammel Storage	Docket No. PR10-51-000.
J-W Pipeline Company	Docket No. PR10-54-000.
Acadian Gas Pipeline System	Docket No. PR10-56-000.
Lobo Pipeline Company L.P.	Docket No. PR10-57-000.
Cypress Gas Pipeline, LLC	Docket No. PR10-58-000.
Jackson Pipeline Company	Docket No. PR10-59-000.
DCP Intrastate Network, LLC	Docket No. PR10-60-000.
	(Not Consolidated).

Take notice that on July 1, 2010, July 2, 2010, July 8, 2010, July 9, 2010, and July 13, 2010, respectively the applicants listed above submitted their baseline filing of its Statement of Operating Conditions for services provided under section 311 of the Natural Gas Policy Act of 1978 (NGPA).

Any person desiring to participate in this rate proceeding must file a motion to intervene or to protest this filing must file in accordance with rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the date as indicated below. Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the "eFiling" link at <http://www.ferc.gov>. Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at <http://www.ferc.gov>, using the "eLibrary" link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an "eSubscription" link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail FERCOnlineSupport@ferc.gov, or call (866) 208-3676 (toll free). For TTY, call (202) 502-8659.

Comment Date: 5 p.m. e.t. on Tuesday, July 27, 2010.

Kimberly D. Bose,
Secretary.

[FR Doc. 2010-17730 Filed 7-20-10; 8:45 am]

BILLING CODE 6717-01-P

ENVIRONMENTAL PROTECTION AGENCY

[EPA-HQ-OAR-2006-0895; FRL-9178-1; EPA ICR No. 0282.15; OMB Control No. 2060-0048]

Agency Information Collection Activities; Submission to OMB for Review and Approval; Comment Request; Engine Emission Defect Information Reports and Voluntary Emission Recall Reports (Renewal)

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 an Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval. This is a request to renew an existing approved collection. The ICR, which is abstracted below, describes the nature of the information collection and its estimated burden and cost.

DATES: Additional comments may be submitted on or before August 20, 2010.

ADDRESSES: Submit your comments, referencing Docket ID No. EPA-HQ-OAR-2006-0895 to (1) EPA online using <http://www.regulations.gov> (our preferred method), by e-mail to a-and-r-Docket@epa.gov or by mail to: EPA Docket Center, Environmental Protection Agency, Air Docket, Environmental Protection Agency, Mailcode: 28221T, 1200 Pennsylvania Ave., NW., Washington, DC 20460, and (2) OMB by mail to: Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Attention: Desk Officer for EPA, 725 17th Street, NW., Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT:

Nydia Yanira Reyes-Morales, Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Mail Code 6403J, Washington, DC 20460; telephone number: 202-343-9264; fax number: 202-343-2804; e-mail address: reyes-morales.nydia@epa.gov.

SUPPLEMENTARY INFORMATION: EPA has submitted the following ICR to OMB for review and approval according to the procedures prescribed in 5 CFR 1320.12. On April 30, 2010 (75 FR 22776), EPA sought comments on this ICR pursuant to 5 CFR 1320.8(d). EPA received no comments during the comment period. Any additional comments on this ICR should be submitted to EPA and OMB within 30 days of this notice.

EPA has established a public docket for this ICR under Docket ID No. EPA-HQ-OAR-2006-0895, which is available for online viewing at <http://www.regulations.gov>, or in person viewing at the Air 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 Air Docket is 202-566-1742.

Use EPA's electronic docket and comment system at <http://www.regulations.gov> to submit or view public comments, access the index listing of the contents of the docket, and to access those documents in the docket that are available electronically. Once in the system, select "docket search," then key in the docket ID number identified above. Please note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing at <http://www.regulations.gov> as EPA receives them and without change, unless the comment contains copyrighted material, confidential business information (CBI), or other information whose public disclosure is restricted by statute. For further information about the electronic docket, go to <http://www.regulations.gov>.

Title: Engine Emission Defect Information Reports and Voluntary Emission Recall Reports (Renewal).

ICR numbers: EPA ICR No. 0282.15, OMB Control No. 2060-0048.

ICR Status: This ICR is scheduled to expire on July 31, 2010. Under OMB regulations, the Agency may continue to conduct or sponsor the collection of information while this submission is pending at OMB. An Agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in title 40 of the CFR, after appearing in the **Federal Register** when approved, are listed in 40 CFR part 9 and 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: Under the provisions of the Clean Air Act (CAA), the Administrator is required to promulgate regulations to control air pollutant emissions from motor vehicles and nonroad engines, as

defined in the CAA. Per Sections 207(c)(1) and 213 of the CAA, when a substantial number of properly maintained and used engines produced by a manufacturer do not conform to emission standards, the manufacturer is required to recall the engines. Engine manufacturers are required to submit Defect Information Reports (DIRs) if emission-related defects are found on engines of the same model year that may cause the engines' emissions to exceed the standards. EPA uses these reports to target potentially nonconforming classes of engines for future testing, to monitor compliance with applicable regulations and to order a recall, if necessary. Manufacturers can also initiate a recall voluntarily by submitting a Voluntary Emission Recall Report (VERR). VERRs and VERR updates allow EPA to determine whether the manufacturer conducting the recall is acting in accordance with the CAA and to examine and monitor the effectiveness of the recall campaign.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average 354 hours per respondent. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements which have subsequently changed; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Respondents/Affected Entities: Manufacturers of heavy-duty highway and nonroad engines.

Estimated Number of Respondents: 75.

Frequency of Response: On occasion, quarterly.

Estimated Total Annual Hour Burden: 26,563.

Estimated Total Annual Cost: \$2,293,648, which includes \$2,276,608 in labor costs and \$17,040 in O&M costs.

Changes in the Estimates: There is an increase of 21,537 hours in the total estimated burden currently identified in the OMB Inventory of Approved ICR Burdens. This increase is due to an

increase in the estimated number of respondents. Changes in the burden hours per respondent associated with this ICR renewal are negligible, therefore, the increase in burden is due to an adjustment.

Dated: July 15, 2010.

John Moses,

Director, Collection Strategies Division.

[FR Doc. 2010-17781 Filed 7-20-10; 8:45 am]

BILLING CODE 6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

[EPA-HQ-OW-2010-0595; FRL-9177-3; EPA ICR No. 2402.01; OMB Control No. 2040-NEW]

Agency Information Collection Activities; Proposed Collection; Comment Request; Willingness To Pay Survey for Section 316(b) Existing Facilities Cooling Water Intake Structures (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 September 20, 2010.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA-HQ-OW-2010-0595 by one of the following methods:

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

- *E-mail:* OW-Docket@epa.gov, Attention Docket ID No. EPA-HQ-OW-2010-0595.

- *Mail:* Water Docket, Environmental Protection Agency, Mailcode: 28221T, 1200 Pennsylvania Ave., NW., Washington, DC 20460, Attention Docket ID No. EPA-HQ-OW-2010-0595. Please include a total of 3 copies.

- *Hand Delivery:* Water Docket, EPA Docket Center, EPA West, Room 3334, 1301 Constitution Ave., NW., Washington, DC, Attention Docket ID No. EPA-HQ-OW-2010-0595. Such deliveries are only accepted during the Docket's normal hours of operation and special arrangements should be made.

Instructions: Direct your comments to Docket ID No. EPA-HQ-OW-2010-0595. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at <http://www.regulations.gov>, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through <http://www.regulations.gov> or e-mail. The <http://www.regulations.gov> Web site is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through <http://www.regulations.gov> your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket visit the EPA Docket Center homepage at <http://www.epa.gov/dockets>.

FOR FURTHER INFORMATION CONTACT: Erik Helm, Office of Water, Office of Science and Technology, Engineering and Analysis Division, Economic and Environmental Assessment Branch, 4303T, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: 202-566-1049; fax number: 202-566-1053; e-mail address: Helm.Erik@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-OW-2010-0595 which is available for online viewing at <http://www.regulations.gov>, or in person viewing at the Water 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 Water Docket is 202-566-1752.

Use <http://www.regulations.gov> to obtain a copy of the draft collection of information, submit or view public comments, access the index listing of the contents of the docket, and to access those documents in the public docket that are available electronically. Once in the system, select "search," then key in the docket ID number identified in this document.

What information is EPA particularly interested in?

Pursuant to section 3506(c)(2)(A) of the PRA, EPA specifically solicits comments and information to enable it to:

- (i) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility;
- (ii) Evaluate the accuracy of the Agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- (iii) Enhance the quality, utility, and clarity of the information to be collected; and
- (iv) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses. In particular, EPA is requesting comments from very small businesses (those that employ less than 25) on examples of specific additional efforts that EPA could make to reduce the paperwork burden for very small businesses affected by this collection.

What should I consider when I prepare my comments for EPA?

You may find the following suggestions helpful for preparing your comments:

- 1. Explain your views as clearly as possible and provide specific examples.
- 2. Describe any assumptions that you used.
- 3. Provide copies of any technical information and/or data you used that support your views.
- 4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.

5. Offer alternative ways to improve the collection activity.

6. Make sure to submit your comments by the deadline identified under **DATES**.

7. To ensure proper receipt by EPA, be sure to identify the docket ID number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

What information collection activity or ICR does this apply to?

Affected entities: Entities potentially affected by this action are individuals/households.

Title: Willingness to Pay Survey for Section 316(b) Existing Facilities Cooling Water Intake Structures: Instrument, Pre-test, and Implementation (New).

ICR numbers: EPA ICR No. 2402.01, OMB Control No. 2040-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: Section 316(b) of the Clean Water Act (CWA) requires EPA to ensure that the location, design, construction, and capacity of cooling water intake structures (CWIS) reflect the best technology available (BTA) to protect aquatic organisms from being killed or injured by impingement or entrainment. EPA divided this rulemaking into three phases. At question here are the Phases II and III.

The Phase II rule, which covered existing electric generating plants that withdraw at least 50 million gallons a day (MGD) of cooling water, was completed in July 2004. Industry and environmental stakeholders challenged the Phase II regulations. On judicial review, the Second Circuit remanded several key provisions. In July 2007, EPA suspended the Phase II Rule. Following additional review in 2009 by the U.S. Supreme Court in *Entergy Corp. v. Riverkeeper Inc.*, which decided that "EPA permissibly relied on cost-benefit analysis in setting the national performance standards * * * as part of

the Phase II regulations." EPA has voluntarily remanded the rule.

In June of 2006, EPA promulgated the 316(b) Phase III Rule for existing manufacturers, small flow power plants (facilities that withdraw less than 50 MGD), and new offshore oil and gas facilities. Offshore oil and gas firms and environmental groups petitioned for judicial review, which was to occur in the Fifth Circuit, but was stayed pending the completion of the Phase II litigation. EPA has asked the Fifth Circuit to remand the existing facilities portion of the Phase III rule so that it can consider what might be appropriate requirements for all existing facilities. While the 5th Circuit has not yet issued a decision, EPA is anticipating combining Phases II and III into one rulemaking covering all existing facilities.

Under Executive Order 12866, EPA is required to estimate the potential benefits and costs to society of proposed rule options. To assess the public policy significance or importance of the ecological gains from the section 316(b) regulation for existing facilities, EPA requests approval from the Office of Management and Budget to conduct a stated preference survey. Data from the associated stated preference survey will be used to estimate values (willingness to pay, or WTP) derived by households for changes related to the reduction of fish losses at CWIS, and to provide information to assist in the interpretation and validation of survey responses. EPA has designed the survey to provide data to support the following specific objectives: [a] The estimation of the total values (use plus non-use) that individuals place on preventing losses of fish and other aquatic organisms caused by 316(b) facilities; [b] to understand how much individuals value preventing fish losses, increasing fish populations, and increasing commercial and recreational catch rates; [c] to understand how such values depend on the current baseline level of fish populations and fish losses, the scope of the change in those measures, and the certainty level of the predictions; and [d] to understand how such values vary with respect to individuals' economic and demographic characteristics.

The target population for this stated preference survey is all individuals from continental U.S. households who are 18 years of age or older. The population of households will be stratified by the geographic boundaries of 5 EPA study regions: California, Great Lakes, Inland, Northeast, and Southeast. Survey participants will be recruited randomly through random digit dialing. The

intended sample size for the survey is 2,000 households including only households providing completed surveys. This sample size was chosen to provide statistically robust results while minimizing the cost and burden of the survey. In addition to the sample size, EPA will take steps to both test for and ameliorate survey non-response bias. EPA will follow standard practice in stated preference design, including the extensive use of focus groups and pretesting to develop survey questionnaires.

The key elicitation questions in each of the five regional surveys ask respondents whether or not they would vote for policies that would increase their cost of living, in exchange for specified multi-attribute changes in (a) impingement and entrainment losses of fish, (b) commercial fish sustainability, (c) long-term fish populations, and (d) condition of aquatic ecosystems. This "choice experiment" or "choice modeling" framework allows respondents to state their preferences by making a voting-type selection between two hypothetical multi-attribute regulatory options (and a third "status quo" choice that rejects both options). These stated preferences with respect to levels of environmental goods and cost to households, when used in conjunction with other information collected in the survey on the respondent's use of the affected aquatic resources, household income, and other demographics, can be analyzed statistically (using either a fixed or random effects mixed logit framework) to estimate total WTP for the quantified environmental benefits of the 316(b) existing facilities rulemaking. Data analysis and interpretation is grounded in a standard random utility model.

In addition, to the total values, the survey will allow the estimation of values associated with specific choice attributes (following standard methods for choice experiments), and will also allow the flexibility to provide some insight into the relative importance of use versus non-use values in the 316(b) context. Analysis also allows estimation of the variation in WTP across different types of households, in different areas. As indicated in prior literature, it is virtually impossible to justify, theoretically, the decomposition of empirical total willingness-to-pay estimates into separate use and non-use components. The survey will, however, provide the flexibility to estimate nonuser values, using various nonuser definitions drawn from responses to survey questions. The structure of the choice attribute questions will also allow the analysis to separate value

components related to the most common sources of use values—effect on harvested recreational and commercial fish.

The various welfare values that can be derived from this stated preference survey (discussed above) along with those that are estimated apart from the survey effort will offer insight into the composition of the value people place on the 316(b) environmental impacts. But within rulemaking, among the most crucial concerns is the avoidance of benefit (or cost) double counting. Here, for example, WTP estimates derived from the survey may overlap—to a potentially substantial extent—with estimates that can be provided through some other methods. Therefore, particular care will be given to avoid any possible double counting of values that might be derived from alternative valuation methods. In doing so, the Office of Water will rely upon standard theoretical tools for non-market welfare analysis, as presented by authors including Freeman (2003) and Just et al. (2004).

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average 5 minutes per telephone screening participant and 30 minutes per mail survey respondent including the time necessary to complete and mail back the questionnaire. 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: 8,333 for telephone screening and 2,000 for mailed questionnaires.

Frequency of response: One-time response.

Estimated total average number of responses for each respondent: One-time response.

Estimated total burden hours: 1,527 hours.

Estimated total costs: \$34,600. EPA estimates that there will be no capital and operating and maintenance cost burden to respondents.

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: July 13, 2010.

Ephraim S. King,

Director, Office of Science and Technology.

[FR Doc. 2010-17808 Filed 7-20-10; 8:45 am]

BILLING CODE 6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

[FRL-9177-6]

Total Coliform Rule Revisions—Notice of Public Information Meetings

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Environmental Protection Agency (EPA) is hosting public information meetings on the proposed Revised Total Coliform Rule (RTCR). The proposed RTCR is a proposed revision to the current Total Coliform Rule (TCR) which was promulgated in 1989. The proposed RTCR was published in the **Federal Register** on July 14, 2010. During the public information meetings, EPA will discuss the major provisions of the current TCR, the history of the development of the proposed RTCR, the core elements of the proposed RTCR, the comparison between the current TCR and the proposed RTCR, and specific areas where EPA is requesting comment. Additional topics that will be discussed include the cost and benefit information of the proposed rule and the planned guidance manuals that will be developed to support the implementation of the final rule.

Date and Location: The first public information meeting will be held on

Tuesday, August 3, 2010, 8:30 a.m. to 2:30 p.m., Eastern Time (EDT), at the EPA East Building, Room 1153, 1201 Constitution Ave., NW., Washington, DC 20460. The second meeting will be held on Friday, August 6, 2010, 8:30 a.m. to 2:30 p.m., Central Standard Time (CST), at the Ralph Metcalfe Federal Building, Lake Michigan Room, 77 West Jackson Blvd., Chicago, IL 60604. EPA plans to hold an additional public information meeting in San Francisco and one webcast.

FOR FURTHER INFORMATION CONTACT: To register for the first meeting in Washington, DC, contact Cesar Cordero at (202) 564-3716 or by e-mail at cordero.cesar@epa.gov. Registration for the second meeting in Chicago will be on-site. For technical information, contact Sean Conley (conley.sean@epa.gov, (202) 564-1781, Standards and Risk Management Division, Office of Ground Water and Drinking Water (MC 4607M)), Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460. For a draft agenda for the first two meetings and the most current information about the additional public information meeting and webcast, please visit http://www.epa.gov/safewater/disinfection/tcr/regulation_revisions.html. A copy of the proposed RTRC is also available from this Web site.

SUPPLEMENTARY INFORMATION: *Special Accommodations:* For information on access or accommodations for individuals with disabilities, please contact Cesar Cordero at (202) 564-3716 or by e-mail at cordero.cesar@epa.gov. Please allow at least 3 days prior to the meeting to give EPA time to process your request.

Dated: July 15, 2010.

Cynthia C. Dougherty,
Director, Office of Ground Water and Drinking Water.

[FR Doc. 2010-17795 Filed 7-20-10; 8:45 am]

BILLING CODE 6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

[EPA-HQ-OPPT-2010-0463; FRL-8831-1]

Sixty-Sixth Report of the TSCA Interagency Testing Committee to the Administrator of the Environmental Protection Agency; Receipt of Report and Request for Comments

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Toxic Substances Control Act (TSCA) Interagency Testing Committee (ITC) transmitted its Sixty-Sixth Report to the Administrator of EPA on June 3, 2010. In the 66th ITC Report, which is included with this notice, the ITC is not making any changes to the TSCA section 4(e) *Priority Testing List*.

DATES: Comments must be received on or before August 20, 2010.

ADDRESSES: Submit your comments, identified by docket identification (ID) number EPA-HQ-OPPT-2010-0463, 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-2010-0463. 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-2010-0463. 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 www.regulations.gov or e-mail. The www.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 www.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, 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 legal 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 technical information contact:* Aakruti Shah, Regulatory Coordinator (7408M), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460-0001; telephone number: (202) 564-8183; fax number: (202) 564-8197; e-mail address: shah.aakruti@epa.gov.

For general information contact: The TSCA-Hotline, ABVI-Goodwill, 422 South Clinton Ave., Rochester, NY 14620; telephone number: (202) 554-1404; e-mail address: TSCA-Hotline@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This notice is directed to the public in general. It may, however, be of particular interest to you if you manufacture (defined by statute to include import) and/or process TSCA-covered chemicals and you may be identified by the North American

Industrial Classification System (NAICS) codes 325 and 32411. Because this notice is directed to the general public and other entities may also be interested, the Agency has not attempted to describe all the specific entities that may be interested in 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. 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 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

The Toxic Substances Control Act (TSCA) (15 U.S.C. 2601 *et seq.*) authorizes the Administrator of EPA to promulgate regulations under TSCA section 4(a) requiring testing of chemicals and chemical groups in order to develop data relevant to determining the risks that such chemicals and chemical groups may present to health or the environment. Section 4(e) of TSCA established the ITC to recommend chemicals and chemical groups to the Administrator of EPA for priority testing consideration. Section 4(e) of TSCA directs the ITC to revise the TSCA section 4(e) *Priority Testing List* at least every 6 months.

You may access additional information about the ITC at <http://www.epa.gov/opptintr/itc>.

A. The 66th ITC Report

The ITC is not making any changes to the TSCA section 4(e) *Priority Testing List*.

B. Status of the Priority Testing List

The *Priority Testing List* includes 2 alkylphenols, 12 lead compounds, 16 chemicals with insufficient dermal absorption rate data, and 207 High Production Volume (HPV) Challenge Program orphan chemicals.

List of Subjects

Environmental protection, Chemicals, Hazardous substances.

Dated: July 13, 2010.

Wendy C. Hamnett,
Director, Office of Pollution Prevention and Toxics.

Sixty-Sixth Report of the TSCA Interagency Testing Committee to the Administrator of the Environmental Protection Agency

Table of Contents

Summary

I. Background

II. ITC's Activities During this Reporting Period (December 2009 to May 2010)

III. The TSCA Interagency Testing Committee

Summary

The ITC is not making any changes to the Toxic Substances Control Act (TSCA) section 4(e) *Priority Testing List*.

The TSCA section 4(e) *Priority Testing List* is Table 1 of this unit.

TABLE 1.—TSCA SECTION 4(E) PRIORITY TESTING LIST (MAY 2010)

ITC Report	Date	Chemical Name/Group	Action
31	January 1993	2 Chemicals with insufficient dermal absorption rate data, methylcyclohexane and cyclopentane	Designated
32	May 1993	10 Chemicals with insufficient dermal absorption rate data	Designated
35	November 1994	4 Chemicals with insufficient dermal absorption rate data, cyclopentadiene; formamide; 1,2,3-trichloropropane; and <i>m</i> -nitrotoluene	Designated
37	November 1995	Branched 4-nonylphenol (mixed isomers)	Recommended
41	November 1997	Phenol, 4-(1,1,3,3-tetramethylbutyl)-	Recommended
55	December 2004	203 High Production Volume (HPV) Challenge Program orphan chemicals	Recommended
56	August 2005	4 HPV Challenge Program orphan chemicals	Recommended
60	May 2007	12 Lead and lead compounds	Recommended

I. Background

The ITC was established by section 4(e) of TSCA “to make recommendations to the Administrator respecting the chemical substances and mixtures to which the Administrator should give priority consideration for the promulgation of rules for testing under section 4(a).... At least every six months ..., the Committee shall make such revisions to the *Priority Testing List* as it determines to be necessary and transmit them to the Administrator together with the Committee’s reasons for the revisions” (Public Law 94–469, 90 Stat. 2003 *et seq.*, 15 U.S.C. 2601 *et seq.*). ITC reports are available from the ITC’s website (<http://www.epa.gov/opptintr/itc>) within a few days of submission to the EPA Administrator and from regulations.gov (<http://www.regulations.gov>) after publication in the **Federal Register**. The ITC produces its revisions to the *Priority Testing List* with administrative and technical support from the ITC staff, ITC members, and their U.S. Government organizations, and contract support provided by EPA. ITC members and staff are listed at the end of this report.

II. ITC’s Activities During this Reporting Period (December 2009 to May 2010)

During this reporting period, the ITC reviewed the High Production Volume Challenge Program orphan chemicals proposed rule. The proposed rule was published in the **Federal Register** issue of February 25, 2010 (75 FR 8575) (FRL–8805–8) available on-line at <http://www.gpoaccess.gov/fr>.

III. The TSCA Interagency Testing Committee

Statutory Organizations and Their Representatives

Council on Environmental Quality
Dianne Poster, Alternate

Department of Commerce

National Institute of Standards and Technology
Carlos Gonzalez, Member

National Oceanographic and Atmospheric Administration
Kimani Kimbrough, Member
Tony Pait, Alternate

Environmental Protection Agency
John Schaeffer, Member, Vice-Chair

National Cancer Institute
Vacant

National Institute of Environmental Health Sciences

Nigel Walker, Member
Scott Masten, Alternate

National Institute for Occupational Safety and Health

Gayle DeBord, Member
Dennis W. Lynch, Alternate

National Science Foundation
Margaret Cavanaugh, Alternate

Occupational Safety and Health Administration

Thomas Nerad, Member, Chair

Liaison Organizations and Their Representatives

Agency for Toxic Substances and Disease Registry

Daphne Moffett, Member
Glenn D. Todd, Alternate

Consumer Product Safety Commission

Dominique Williams, Member

Department of Agriculture

Clifford P. Rice, Member
Laura L. McConnell, Alternate

Department of Defense

Vacant

Department of the Interior

Barnett A. Rattner, Member

Food and Drug Administration

Kirk Arvidson, Member
Ronald F. Chanderbhan, Alternate

Technical Support Contractor

Syracuse Research Corporation

ITC Staff

John D. Walker, Director
Carol Savage, Administrative Assistant (NOWCC Employee)

TSCA Interagency Testing Committee (7401M), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; e-mail address: savage.carol@epa.gov; url: <http://www.epa.gov/opptintr/itc>.

[FR Doc. 2010–17791 Filed 7–20–10; 8:45 am]

BILLING CODE 6560–50–S

FEDERAL COMMUNICATIONS COMMISSION.

Notice of Public Information Collection(s) Being Submitted for Review and Approval to the Office of Management and Budget (OMB), Comments Requested

July 14, 2010.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act (PRA) of 1995, 44 U.S.C. 3501–3520. Comments are requested concerning: (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission’s burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology; and (e) ways to further reduce the information collection burden for small business concerns with fewer than 25 employees.

The FCC may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a currently valid OMB control number.

DATES: Written Paperwork Reduction Act (PRA) comments should be submitted on or before August 20, 2010. If you anticipate that you will be submitting PRA comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the FCC contact listed below as soon as possible.

ADDRESSES: Direct all PRA comments to Nicholas A. Fraser, Office of Management and Budget, via fax at 202–395–5167 or via email to Nicholas.A.Fraser@omb.eop.gov and to the Federal Communications Commission via email to PRA@fcc.gov and Cathy.Williams@fcc.gov. To view a copy of this information collection request (ICR) submitted to OMB: (1) Go to the web page <http://reginfo.gov/public/do/PRAMain>, (2) look for the section of the web page called “Currently Under Review”, (3) click on

the downward-pointing arrow in the "Select Agency" box below the "Currently Under Review" heading, (4) select "Federal Communications Commission" from the list of agencies presented in the "Select Agency" box, (5) click the "Submit" button to the right of the "Select Agency" box, and (6) when the list of FCC ICRs currently under review appears, look for the title of this ICR (or its OMB Control Number, if there is one) and then click on the ICR Reference Number to view detailed information about this ICR.

FOR FURTHER INFORMATION CONTACT:
Cathy Williams on (202) 418-2918.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060-0500.

Title: Section 76.1713, Resolution of Complaints.

Form Number: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit entities.

Number of Respondents and Responses: 10,750 respondents and 21,500 responses.

Estimated Hours per Response: 1-17 hours.

Frequency of Response: Recordkeeping requirement; Annual reporting requirement; Third party disclosure requirement.

Total Annual Burden: 193,500 hours.

Total Annual Cost: None.

Obligation to Respond: Required to obtain or retain benefits. The statutory authority for this information collection is contained in Sections 4(i), 303 and 308 of the Communications Act of 1934, as amended.

Nature and Extend of Confidentiality: No need for confidentiality required with this collection of information.

Privacy Impact Assessment: No impact(s).

Needs and Uses: 47 CFR 76.1713 states cable system operators shall establish a process for resolving complaints from subscribers about the quality of the television signal delivered. Aggregate data based upon these complaints shall be made available for inspection by the Commission and franchising authorities, upon request. These records shall be maintained for at least a one-year period. Prior to being referred to the Commission, complaints from subscribers about the quality of the television signal delivered must be referred to the local franchising authority and the cable system operator.

Federal Communications Commission.

Marlene H. Dortch,

Secretary,

Office of the Secretary,

Office of Managing Director.

[FR Doc. 2010-17763 Filed 7-20-10; 8:45 am]

BILLING CODE 6712-01-S

FEDERAL ELECTION COMMISSION

Sunshine Act Notices

AGENCY: Federal Election Commission.

DATE AND TIME: Thursday, July 15, 2010, at 10 a.m.

PLACE: 999 E Street, NW., Washington, DC (Ninth Floor).

STATUS: Meeting open to the public.

THE FOLLOWING ITEMS WERE WITHDRAWN FROM THE AGENDA:

Draft Advisory Opinion 2010-09: Club for Growth, by its counsel, Carol A. Laham, Esq., and D. Mark Renaud, Esq., of Wiley Rein LLP.

Draft Advisory Opinion 2010-11: Commonsense Ten, by its counsel, Marc E. Elias, Esq., and Ezra Reese, Esq., of Perkins Coie LLP.

Individuals who plan to attend and require special assistance, such as sign language interpretation or other reasonable accommodations, should contact Darlene Harris, Deputy 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.

Shawn Woodhead Werth,

Secretary and Clerk of the Commission.

[FR Doc. 2010-17654 Filed 7-20-10; 8:45 am]

BILLING CODE 6715-01-M

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisition of Shares of Bank or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the office of the Board of Governors. Interested persons may express their

views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than August 5, 2010.

A. Federal Reserve Bank of Philadelphia (Michael E. Collins, Senior Vice President) 100 North 6th Street, Philadelphia, Pennsylvania 19105-1521:

1. *WLR SBI Acquisition Company, LLC; WL Ross & Co. LLC; WLR Recovery Fund IV, L.P.; WLR IV Parallel ESC, L.P.; Invesco North America Holdings, Inc.; Invesco WLR IV Associates LLC; WLR Recovery Associates IV LLC; WL Ross Group L.P.; and EL Vedado LLC*, all of New York, New York; Wilbur L. Ross, Jr., Palm Beach, Florida; Invesco Ltd.; IVZ, Inc.; Invesco Group Services, Inc.; Invesco Advisers, Inc.; and Invesco Private Capital, Inc., all of Atlanta, Georgia; Invesco Holding Company Limited, London, United Kingdom; and Invesco AIM Management Group, Inc., Houston, Texas; to acquire voting shares of Sun Bancorp, Inc., and thereby indirectly acquire voting shares of Sun National Bank, both of Vineland, New Jersey.

Board of Governors of the Federal Reserve System, July 16, 2010.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 2010-17760 Filed 7-20-10; 8:45 am]

BILLING CODE 6210-01-S

FEDERAL RESERVE SYSTEM

Federal Open Market Committee; Domestic Policy Directive of June 22 and 23, 2010

In accordance with § 271.25 of its rules regarding availability of information (12 CFR part 271), there is set forth below the domestic policy directive issued by the Federal Open Market Committee at its meeting held on June 22 and 23, 2010.¹

The Federal Open Market Committee seeks monetary and financial conditions that will foster price stability and promote sustainable growth in output. To further its long-run objectives, the Committee seeks conditions in reserve markets consistent with federal funds trading in a range from 0 to ¼ percent. The Committee directs the Desk to engage in dollar roll and coupon

¹ Copies of the Minutes of the Federal Open Market Committee at its meeting held on June 22 and 23, 2010, which includes the domestic policy directive issued at the meeting, are available upon request to the Board of Governors of the Federal Reserve System, Washington, D.C. 20551. The minutes are published in the Federal Reserve Bulletin and in the Board's annual report.

transactions as necessary to facilitate settlement of the Federal Reserve's agency MBS transactions. The System Open Market Account Manager and the Secretary will keep the Committee informed of ongoing developments regarding the System's balance sheet that could affect the attainment over time of the Committee's objectives of maximum employment and price stability.

By order of the Federal Open Market Committee, July 14, 2010.

Brian F. Madigan,

Secretary, Federal Open Market Committee.
[FR Doc. 2010-17849 Filed 7-21-10; 8:45 am]

BILLING CODE 6210-01-S

FEDERAL MARITIME COMMISSION

Notice of Agreement Filed

The Commission hereby gives notice of the filing of the following agreement under the Shipping Act of 1984. Interested parties may submit comments on the agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within ten days of the date this notice appears in the **Federal Register**. A copy of the agreement is available through the Commission's Web site (<http://www.fmc.gov>) or by contacting the Office of Agreements at (202)-523-5793 or tradeanalysis@fmc.gov.

Agreement No.: 012105.

Title: SCM Lines Transportes/CCNI Agreement.

Parties: Compania Chilena de Navegacion Interocéanica S.A. and SCM Lines Transportes Maritimos Sociedade Unipessoal, LDA.

Filing Party: John P. Vayda, Esq.; Nourse & Bowles, LLP; One Exchange Plaza; 55 Broadway; New York, NY 10006-3030.

Synopsis: The agreement would authorize the parties to cross-charter space; to pool revenues, expenses, earnings, and/or losses; and to discuss on a voluntary, non-binding basis, rates and changes in the trade between the U.S. Gulf ports and ports of East Coast of South America.

By Order of the Federal Maritime Commission.

Dated: July 16, 2010.

Karen V. Gregory,
Secretary.

[FR Doc. 2010-17783 Filed 7-20-10; 8:45 am]

BILLING CODE P

FEDERAL MARITIME COMMISSION

[Docket No. 10-06]

Yakov Kobel and Victor Berkovich v. Hapag-Lloyd America, Inc., Limco Logistics, Inc., and International TLC, Inc.; Notice of filing of complaint and Assignment

Notice is given that a complaint has been filed with the Federal Maritime Commission ("Commission") by Yakov Kobel and Victor Berkovich, hereinafter "Complainants," against Hapag-Lloyd America, Inc. ("Hapag-Lloyd"), Limco Logistics, Inc. ("Limco"), and International TLC, Inc. ("Int'l TLC"), hereinafter "Respondents." Complainants assert that Respondent Hapag-Lloyd is a corporation registered under the laws of the State of New Jersey and is an ocean carrier "duly registered/licensed with Federal Maritime Commission." Complainants assert that Respondent Limco is a corporation registered under the laws of the state of Florida and an ocean transportation intermediary licensed by the Commission as a "non-vessel ocean carrier (NVOCC)." ¹ Complainants assert that Respondent Int'l TLC is duly registered under the law of the State of Washington and is an ocean transportation intermediary licensed since July 24, 2008 as an NVOCC.

Complainants assert that Respondents: Failed to return a damaged container in Respondents' custody to Complainants, and subsequently shipped the damaged container; failed to provide proper bills-of-lading at the time of shipment and provided the bill-of-lading to Complainants five months after shipping, unilaterally changed the bill-of-lading to name an individual other than Complainants as exporter and consignee; demanded "false, excessive and unearned shipping charges"; and liquidated three of five containers.

Through these actions, Complainants allege that Respondent Int'l INC engaged in practice as an ocean transportation intermediary without a license and accepted cargo for an unlicensed ocean transportation intermediary in violation of sections 8 and 19 of the Shipping Act and in violation of section 10(b)(2)(11). Complainants allege that Respondents Limco and Int'l TLC violated sections 8 and 10(b)(2)(A) of the Shipping Act by "providing services not in accordance with then published tariff and service contract" rates.

¹ The Shipping Act of 1984 and Commission rules refer to "non-vessel-operating common carriers" or NVOCCs. No such term "non-vessel ocean carrier" exists in the Commission's regulations or the Shipping Act of 1984.

Complainants allege that Respondents violated section 10(b)(4)(D) of the Shipping Act because they "provided a service and engaged in unfair practice in their loading or unloading of freight." Complainants allege that Respondents violated sections 10(b)(4)(E) and 10(b)(10) of the Shipping Act by "unreasonably refusing to deal or negotiate and settle Complainants' claims for damages" to one container and loss of all three containers. Complainants also allege that Respondents Limco and Hapag-Lloyd "knowingly and willingly accepted cargo from an ocean transportation intermediary (Int'l TLC) that did not have a bond, insurance, or other surety from May 9, 2008 to July 23, 2008 in violation of section 10(b)(11)(12) of the Shipping Act." Finally, Complainants allege that Respondents Limco and Int'l TLC "knowingly disclosed valuable information concerning the nature, kind, quantity and destination of property delivered to them by Complainants to a third party identifying Complainants as shipper and consignee, without Complainants' consent in violation of section 10(b)(13) of the Shipping Act."

Complainants request that the Commission order Respondents: (1) To answer the charges made by Complainants; (2) to pay to Complainants \$500,000 for reparations for actual injury and \$500,000 for additional damages; (3) to pay any other damages to Complainants that may be determined just and proper; (4) to pay Complainants' attorney fees and costs incurred; and take any such other action or provide other relief as the Commission deems just and proper.

This proceeding has been assigned to the Office of Administrative Law Judges. Hearing in this matter, if any is held, shall commence within the time limitations prescribed in 46 CFR 502.61, and only after consideration has been given by the parties and the presiding officer to the use of alternative forms of dispute resolution. The hearing shall include oral testimony and cross-examination in the discretion of the presiding officer only upon proper showing that there are genuine issues of material fact that cannot be resolved on the basis of sworn statements, affidavits, depositions, or other documents or that the nature of the matter in issue is such that an oral hearing and cross-examination are necessary for the development of an adequate record.

Pursuant to the further terms of 46 CFR 502.61, the initial decision of the presiding officer in this proceeding shall be issued by July 14, 2011 and the final

decision of the Commission shall be issued by November 14, 2011.

Karen V. Gregory,
Secretary.

[FR Doc. 2010-17786 Filed 7-20-10; 8:45 am]

BILLING CODE P

FEDERAL MARITIME COMMISSION

Ocean Transportation Intermediary License Applicants

Notice is hereby given that the following applicants have filed with the Federal Maritime Commission an application for a license as a Non-Vessel-Operating Common Carrier (NVO) and/or Ocean Freight Forwarder (OFF)—Ocean Transportation Intermediary (OTI) pursuant to section 19 of the Shipping Act of 1984 as amended (46 U.S.C. Chapter 409 and 46 CFR 515). Notice is also hereby given of the filing of applications to amend an existing OTI license or the Qualifying Individual (QI) for a license.

Interested persons may contact the Office of Transportation Intermediaries, Federal Maritime Commission, Washington, DC 20573.

American Lamprecht Transport, Inc. (NVO & OFF), 700 Rockaway Turnpike, Lawrence, NY 11559.
Officers: Alain Tiercy, CFO/Secretary/Treasurer (Qualifying Individual), Hans-Peter Widmer, President.

Application Type: QI Change.
CACC Global Logistics, Inc. (NVO & OFF), 151 E. 220th Street, Carson, CA 90754. *Officers:* Annie Sun, President/CEO (Qualifying Individual), Chuck Sun, Vice President/Secretary.

Application Type: New NVO & OFF License.

E-Freight Solutions Inc. dba E-Lines Shipping and Logistics, and Ocean Champ Shipping Limited (NVO), 1000 Corporate Center Drive, Suite 320, Monterey Park, CA 91754. *Officers:* Joey Tam, President/CEO (Qualifying Individual), Yu C. Lee, Secretary/Treasurer.

Application Type: Name Change.
Ever-Swift Worldwide Inc. (NVO & OFF), Cargo Bldg. 151, Room 377, Jamaica, NY 11430. *Officer:* Chiang Yu-Chen, President (Qualifying Individual).

Application Type: Add OFF Service.
Limitless International, Inc. (NVO & OFF), 8750 Exchange Drive, #3, Orlando, FL 32809. *Officer:* Cheryl A. Stockstad, President (Qualifying Individual).

Application Type: Add NVO Service.
Meadwestvaco Corporation (NVO & OFF), 501 South 5th Street,

Richmond, VA 23219. *Officers:* Christopher L. Osen, Vice President Supply Management (Qualifying Individual), Susan J. Kropf, Director.

Application Type: New NVO & OFF License.

Mutual Pacific Logistics, Inc. (NVO), 12801 South Figueroa Street, Los Angeles, CA 90061. *Officer:* Chee (CT) T. Tsui, President/Secretary/Treasurer (Qualifying Individual).

Application Type: New NVO License.

Unity Container Line, Inc. (NVO & OFF), 12552 SW. 143 Lane, Miami, FL 33186. *Officer:* Pedro Streb, President/Secretary/Treasurer (Qualifying Individual).

Application Type: New NVO & OFF License.

Dated: July 16, 2010.

Karen V. Gregory,
Secretary.

[FR Doc. 2010-17784 Filed 7-20-10; 8:45 am]

BILLING CODE 6730-01-P

FEDERAL TRADE COMMISSION

Sunshine Act Meeting Notice

AGENCY: Federal Trade Commission.

TIME AND DATE: 2 p.m., Wednesday, July 28, 2010.

PLACE: Federal Trade Commission Building, Room 532, 600 Pennsylvania Avenue, NW., Washington, DC 20580.

STATUS: Part of this meeting will be open to the public. The rest of the meeting will be closed to the public.

Matters To Be Considered

Portion Open to the Public

(1) Oral Argument in Polypore International, Inc., Docket 9327.

Portion Closed to the Public

(2) Executive Session to follow Oral Argument in Polypore International, Inc., Docket 9327.

CONTACT PERSON FOR MORE INFORMATION: Mitch Katz, Office of Public Affairs, (202) 326-2180. *Recorded Message:* (202) 326-2711.

Donald S. Clark,
Secretary.

[FR Doc. 2010-17651 Filed 7-20-10; 8:45 am]

BILLING CODE 6750-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA-2010-N-0373]

Agency Information Collection Activities; Proposed Collection; Comment Request; Preparing a Claim of Categorical Exclusion or an Environmental Assessment for Submission to the Center for Food Safety and Applied Nutrition

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act of 1995 (the PRA), Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, and to allow 60 days for public comment in response to the notice. This notice solicits comments on the information collection provisions in the guidance document entitled "Preparing a Claim of Categorical Exclusion or an Environmental Assessment for Submission to the Center for Food Safety and Applied Nutrition."

DATES: Submit either electronic or written comments on the collection of information by September 20, 2010.

ADDRESSES: Submit electronic comments on the collection of information to <http://www.regulations.gov>. Submit written comments on the collection of information to the Division of Dockets Management (HFA-305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. All comments should be identified with the docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Denver Presley, Jr., Office of Information Management, Food and Drug Administration, 1350 Piccard Dr., PI50-400B, Rockville, MD 20850, 301-796-3793.

SUPPLEMENTARY INFORMATION: Under the PRA (44 U.S.C. 3501-3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. "Collection of information" is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c)

and includes agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires Federal agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, FDA is publishing notice of the proposed collection of information set forth in this document.

With respect to the following collection of information, FDA invites comments on these topics: (1) Whether the proposed collection of information is necessary for the proper performance of FDA's functions, including whether the information will have practical utility; (2) the accuracy of FDA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

Preparing a Claim of Categorical Exclusion or an Environmental Assessment for Submission to the Center for Food Safety and Applied Nutrition (OMB Control Number 0910-0541)—Extension

As an integral part of its decisionmaking process, FDA is

obligated under the National Environmental Policy Act of 1969 (NEPA) to consider the environmental impact of its actions, including allowing notifications for food contact substances to become effective and approving food additive petitions, color additive petitions, GRAS affirmation petitions, requests for exemption from regulation as a food additive, and actions on certain food labeling citizen petitions, nutrient content claims petitions, and health claims petitions. In 1997, FDA amended its regulations in part 25 (21 CFR part 25) to provide for categorical exclusions for additional classes of actions that do not individually or cumulatively have a significant effect on the human environment (62 FR 40570, July 29, 1997). As a result of that rulemaking, FDA no longer routinely requires submission of information about the manufacturing and production of FDA-regulated articles. FDA also has eliminated the previously required Environmental Assessment (EA) and abbreviated EA formats from the amended regulations. Instead, FDA has provided guidance that contains sample formats to help industry submit a claim of categorical exclusion or an EA to FDA's Center for Food Safety and Applied Nutrition (CFSAN). The guidance document entitled "Preparing a Claim of Categorical Exclusion or an Environmental Assessment for Submission to the Center for Food Safety and Applied Nutrition" identifies, interprets, and clarifies existing requirements imposed by statute and regulation, consistent with the Council on Environmental Quality regulations (40 CFR 1507.3). It consists of recommendations that do not

themselves create requirements; rather, they are explanatory guidance for FDA's own procedures in order to ensure full compliance with the purposes and provisions of NEPA.

The guidance provides information to assist in the preparation of claims of categorical exclusion and EAs for submission to CFSAN. The following questions are covered in this guidance: (1) What types of industry-initiated actions are subject to a claim of categorical exclusion? (2) what must a claim of categorical exclusion include by regulation? (3) what is an EA? (4) when is an EA required by regulation and what format should be used? (5) what are extraordinary circumstances? and (6) what suggestions does CFSAN have for preparing an EA? Although CFSAN encourages industry to use the EA formats described in the guidance because standardized documentation submitted by industry increases the efficiency of the review process, alternative approaches may be used if these approaches satisfy the requirements of the applicable statutes and regulations. FDA is requesting the extension of OMB approval for the information collection provisions in the guidance.

Description of Respondents: The likely respondents include businesses engaged in the manufacture or sale of food, food ingredients, and substances used in materials that come into contact with food.

FDA estimates the burden of this collection of information as follows:

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN¹

21 CFR Section	No. of Respondents	Annual Frequency per Response	Total Annual Responses	Hours per Response	Total Hours
25.32(i)	34	1	34	1	34
25.32(o)	1	1	1	1	1
25.32(q)	2	1	2	1	2
Total					37

¹ There are no capital costs or operating and maintenance costs associated with this collection of information.

The estimates for respondents and numbers of responses are based on the annualized numbers of petitions and notifications qualifying for § 25.32(i) and (q) that the agency has received in the past 3 years. Please note that, in the past 3 years, there have been no submissions that requested an action that would have been subject to the

categorical exclusion in § 25.32(o). To avoid counting this burden as zero, FDA has estimated the burden for this categorical exclusion at one respondent making one submission a year for a total of one annual submission.

To calculate the estimate for the hours per response values, we assumed that the information requested in this

guidance for each of these three categorical exclusions is readily available to the submitter. For the information requested for the exclusion in § 25.32(i), we expect that the submitter will need to gather information from appropriate persons in the submitter's company and to prepare this information for attachment to the

claim for categorical exclusion. We believe that this effort should take no longer than 1 hour per submission. For the information requested for the exclusions in § 25.32(o) and (q), the submitters will almost always merely need to copy existing documentation and attach it to the claim for categorical exclusion. We believe that collecting this information should also take no longer than 1 hour per submission.

Dated: July 12, 2010.

Leslie Kux,

Acting Assistant Commissioner for Policy.

[FR Doc. 2010-17751 Filed 7-20-10; 8:45 am]

BILLING CODE 4160-01-S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration on Aging

Agency Information Collection Activities; Proposed Collection; Comment Request; Extension of Supplemental Form to the Financial Status Report for all AoA Title III Grantees

AGENCY: Administration on Aging, HHS.
ACTION: Notice.

SUMMARY: The Administration on Aging (AoA) is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act of 1995 (the PRA), Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, and to allow 60 days for public comment in response to the notice. This notice solicits comments on the information collection requirements relating to the Supplemental Form to the Financial Status Report for all AoA Title III Grantees.

DATES: Submit written or electronic comments on the collection of information by September 20, 2010.

ADDRESSES: Submit electronic comments on the collection of information to:

Rimas.Liogys@aoa.hhs.gov. Submit written comments on the collection of information to Administration on Aging, Washington, DC 20201.

FOR FURTHER INFORMATION CONTACT: Rimas Liogys, Director of Grants Management, Administration on Aging, Washington, DC 20201.

SUPPLEMENTARY INFORMATION: Under the PRA (44 U.S.C. 3501-3520), Federal agencies must obtain approval from the

Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. "Collection of information" is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes agency request or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires Federal agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, AoA is publishing notice of the proposed collection of information set forth in this document. With respect to the following collection of information, AoA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of AoA's functions, including whether the information will have practical utility; (2) the accuracy of AoA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques when appropriate, and other forms of information technology. The template may be found on the AoA Web site at http://www.aoa.gov/AoARoot/Grants/Reporting_Requirements/Formula_269.aspx.

The Supplemental form to the Financial Status Report for all AoA Title III Grantees provides an understanding of how projects funded by the Older Americans Act are being administered by grantees, in conformance with legislative requirements, pertinent Federal regulations and other applicable instructions and guidelines issued by Administration on Aging (AoA). This information will be used for Federal oversight of Title III Projects. AoA estimates the burden of this collection of information as follows: 56 State Agencies on Aging respond semiannually which should be an average burden of 1 hour per State agency per submission for a total of 56 hours.

Kathy Greenlee,

Assistant Secretary for Aging.

[FR Doc. 2010-17822 Filed 7-20-10; 8:45 am]

BILLING CODE 4154-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Board of Scientific Counselors, Coordinating Office for Terrorism Preparedness and Emergency Response; Notice of Charter Amendment

This gives notice under the Federal Advisory Committee Act (Pub. L. 92-463) of October 6, 1972, that the Board of Scientific Counselors, Coordinating Office for Terrorism Preparedness and Emergency Response, Department of Health and Human Services, has amended their charter to reflect the change in the name of the board to the Board of Scientific Counselors, Office of Public Health Preparedness and Response.

For information, contact Barbara Ellis, Ph.D, Executive Secretary, Board of Scientific Counselors, Office of Public Health Preparedness and Response, Department of Health and Human Services, 1600 Clifton Road, M/S D44, Atlanta, Georgia 30341, telephone (404)639-0637, or fax (404)639-7977.

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 the CDC and the Agency for Toxic Substances and Disease Registry.

Dated: July 13, 2010.

Elaine L. Baker,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 2010-17761 Filed 7-20-10; 8:45 am]

BILLING CODE 4163-18-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention (CDC)

Board of Scientific Counselors (BSC), Coordinating Center for Health Promotion (CCHP); Notice of Charter Amendment

This gives notice under the Federal Advisory Committee Act (Pub. L. 92-463) of October 6, 1972, that the BSC, CCHP, has amended their charter to reflect the change in the name of the board to the BSC, National Center on Birth Defects and Developmental Disabilities (NCBDDD) and National Center for Chronic Disease Prevention and Health Promotion (NCCDPHP).

For information, contact Ester Sumartojo, Ph.D., Designated Federal Officer, BSC, NCBDDD/NCBDDD, Department of Health and Human Services, 1600 Clifton Road, M/S E87, Atlanta, Georgia 30341, telephone (404) 498-3072, or fax (404) 498-3070.

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 the CDC and the Agency for Toxic Substances and Disease Registry.

Dated: July 13, 2010.

Elaine L. Baker,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 2010-17758 Filed 7-20-10; 8:45 am]

BILLING CODE 4163-18-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Cancer Institute Initial Review Group; Subcommittee A—Cancer Centers.

Date: August 5-6, 2010.

Time: 8 a.m. to 12 p.m.

Agenda: To review and evaluate grant applications.

Place: Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Gail J Bryant, MD, Medical Officer, Resources and Training Review Branch, Division of Extramural Activities, National Cancer Institute, 6116 Executive Blvd., Room 8107, MSC 8328, Bethesda, MD 20892-8328, (301) 402-0801, gb30t@nih.gov.

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology

Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: July 15, 2010.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2010-17815 Filed 7-20-10; 8:45 am]

BILLING CODE 4140-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Meeting

Pursuant to section 10(a) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of a meeting of the National Cancer Institute Clinical Trials and Translational Research Advisory Committee.

The meeting will be open to the public, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

Name of Committee: National Cancer Institute Clinical Trials and Translational Research Advisory Committee.

Date: September 21, 2010.

Time: 8 a.m. to 5 p.m.

Agenda: Strategic Discussion on Clinical and Translational Research Programs and Updates of the Implementation of the Clinical Trials and Translational Research Working Group Reports.

Place: Bethesda Marriott, 5151 Pooks Hill Road, Bethesda, MD 20814.

Contact Person: Sheila A. Prindiville, MD, MPH, Director, Coordinating Center for Clinical Trials, Office of the Director, National Cancer Institute, National Institutes of Health, 6120 Executive Blvd., 3rd Floor Suite, Bethesda, MD 20892, 301-451-5048, prindivs@mail.nih.gov.

Any interested person may file written comments with the committee by forwarding the statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: July 15, 2010.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2010-17819 Filed 7-20-10; 8:45 am]

BILLING CODE 4140-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the Center for Scientific Review Special Emphasis Panel, July 23, 2010, 8:30 a.m. to July 23, 2010, 5:30 p.m., The River Inn, 924 25th Street, NW., Washington, DC 20037 which was published in the **Federal Register** on July 1, 2010, 75 FR 38111.

The meeting will be held August 6, 2010. The meeting time and location remain the same. The meeting is closed to the public.

Dated: July 15, 2010.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2010-17821 Filed 7-20-10; 8:45 am]

BILLING CODE 4140-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Alcohol Abuse and Alcoholism; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable materials, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Alcohol Abuse and Alcoholism, Special Emphasis Panel, Review of RFA AA10-007 & AA10-008 Gut-Liver-Brain Interactions in Alcohol Induced Pathogenesis.

Date: August 10-12, 2010.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 5635 Fishers Lane, Bethesda, MD 20892. (Virtual Meeting)

Contact Person: Philippe Marmillot, PhD, Scientific Review Officer, National Institute on Alcohol Abuse and Alcoholism, National Institutes of Health, 5635 Fishers Lane, Room 2017, Bethesda, MD 20852, 301-443-2861, marmillotp@mail.nih.gov.

(Catalogue of Federal Domestic Assistance Program Nos. 93.271, Alcohol Research Career Development Awards for Scientists and Clinicians; 93.272, Alcohol National Research Service Awards for Research Training; 93.273, Alcohol Research Programs; 93.891, Alcohol Research Center Grants; 93.701, ARRA Related Biomedical Research and Research Support Awards, National Institutes of Health, HHS)

Dated: July 14, 2010.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2010-17850 Filed 7-20-10; 8:45 am]

BILLING CODE 4140-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Alcohol Abuse and Alcoholism; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable materials, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Alcohol Abuse and Alcoholism Initial Review Group; Epidemiology, Prevention and Behavior Research Review Subcommittee.

Date: October 27-28, 2010.

Time: 8:30 a.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Lorraine Gunzerath, PhD, MBA, Scientific Review Officer, National Institute on Alcohol Abuse and Alcoholism, Office of Extramural Activities, Extramural Project Review Branch, 5635 Fishers Lane,

Room 2121, Bethesda, MD 20892, 301-443-2369, lgunzera@mail.nih.gov.

(Catalogue of Federal Domestic Assistance Program Nos. 93.271, Alcohol Research Career Development Awards for Scientists and Clinicians; 93.272, Alcohol National Research Service Awards for Research Training; 93.273, Alcohol Research Programs; 93.891, Alcohol Research Center Grants; 93.701, ARRA Related Biomedical Research and Research Support Awards, National Institutes of Health, HHS)

Dated: July 14, 2010.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2010-17855 Filed 7-20-10; 8:45 am]

BILLING CODE 4140-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Office of the Director, National Institutes of Health; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of a meeting of the Council of Councils.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The meeting will be closed to the public in accordance with the provisions set forth in section 552b(c)(9)(B), title 5 U.S.C., as amended because the premature disclosure of other and the discussions would likely to significantly frustrate implementation of recommendations.

Name of Committee: Council of Councils.

Date: August 17, 2010.

Open: 11 a.m. to 12 p.m.

Agenda: Discussion of Roadmap Transformative R01 Program and Review Process. See <http://grants.nih.gov/grants/guide/rfa-files/RFA-RM-08-029.html>.

Toll-free dial-in number (US and Canada): 888-285-2623. *Conference code:* 86739025.

Place: National Institutes of Health, Building 1, Room 260, 1 Center Drive, Bethesda, MD 20892 (Telephone Conference Call).

Closed: 12 p.m. to 1:30 p.m.

Agenda: Second-level review of Roadmap Transformative R01 Program grant applications.

Place: National Institutes of Health, Building 1, Room 260, Center Drive, Bethesda, MD 20892.

Contact Person: Robin Kawazoe, Executive Secretary, Council of Councils and Deputy

Director, Division of Program Coordination, Planning, and Strategic Initiatives, Office of the Director, National Institutes of Health, Building 1, Room 260, 1 Center Drive, Bethesda, MD 20892, kawazoe@mail.nih.gov, (301) 402-9852.

Additional information, including the meeting agenda is available on the Council of Council's home page:

<http://dpcpsi.nih.gov/council/>.

Any interested person may file written comments with the committee by forwarding the statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

(Catalogue of Federal Domestic Assistance Program Nos. 93.14, Intramural Research Training Award; 93.22, Clinical Research Loan Repayment Program for Individuals from Disadvantaged Backgrounds; 93.232, Loan Repayment Program for Research Generally; 93.39, Academic Research Enhancement Award; 93.936, NIH Acquired Immunodeficiency Syndrome Research Loan Repayment Program; 93.187, Undergraduate Scholarship Program for Individuals from Disadvantaged Backgrounds, National Institutes of Health, HHS)

Dated: July 13, 2010.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2010-17702 Filed 7-20-10; 8:45 am]

BILLING CODE 4140-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the Center for Scientific Review Special Emphasis Panel, July 28, 2010, 8 a.m. to July 30, 2010, 2 p.m., National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 which was published in the **Federal Register** on June 15, 2010, 75 FR 33816.

The meeting will be held July 27, 2010 to July 28, 2010. The meeting time and location remain the same. The meeting is closed to the public.

Dated: July 15, 2010.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2010-17861 Filed 7-20-10; 8:45 am]

BILLING CODE 4140-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES**National Institutes of Health****Center for Scientific Review; Notice of Closed Meetings**

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Member Conflict: Developmental and Molecular Biology.

Date: July 30, 2010.

Time: 4 p.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892. (Telephone Conference Call.)

Contact Person: Cathy Wedeen, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3213, MSC 7808, Bethesda, MD 20892. 301-435-1191. wedeenc@csr.nih.gov.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Member Conflicts: OBT.

Date: August 11-12, 2010.

Time: 11 a.m. to 12 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892. (Virtual Meeting.)

Contact Person: Steven F. Nothwehr, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5183, MSC 7840, Bethesda, MD 20892. 301-408-9435. nothwehrs@mail.nih.gov.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393-93.396, 93.837-93.844, 93.846-93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: July 14, 2010.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2010-17860 Filed 7-20-10; 8:45 am]

BILLING CODE 4140-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES**National Institutes of Health****National Institute on Alcohol Abuse and Alcoholism; Notice of Closed Meeting**

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable materials, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Alcohol Abuse and Alcoholism, Initial Review Group, Neuroscience Review Subcommittee.

Date: November 2-3, 2010.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Bethesda North Marriott Hotel and Conference Center, 5701 Marinelli Road, Bethesda, MD 20852.

Contact Person: Beata Buzas, PhD, Scientific Review Officer, National Institute on Alcohol Abuse and Alcoholism, National Institutes of Health, 5635 Fishers Lane, Room 2081, Rockville, MD 20852. 301-443-0800. bbuzas@mail.nih.gov.

(Catalogue of Federal Domestic Assistance Program Nos. 93.271, Alcohol Research Career Development Awards for Scientists and Clinicians; 93.272, Alcohol National Research Service Awards for Research Training; 93.273, Alcohol Research Programs; 93.891, Alcohol Research Center Grants; 93.701, ARRA Related Biomedical Research and Research Support Awards, National Institutes of Health, HHS)

Dated: July 14, 2010.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2010-17858 Filed 7-20-10; 8:45 am]

BILLING CODE 4140-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES**National Institutes of Health****National Institute on Alcohol Abuse and Alcoholism; Notice of Closed Meeting**

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable materials, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Alcohol Abuse and Alcoholism, Special Emphasis Panel, Review of Alcohol Research Centers' Applications.

Date: August 9, 2010.

Time: 2 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 5635 Fishers Lane, Bethesda, MD 20892. (Telephone Conference Call.)

Contact Person: Richard Rippe, PhD, Scientific Review Officer, National Institute on Alcohol Abuse and Alcoholism, National Institutes of Health, 5635 Fishers Lane, Room 2109, Bethesda, MD 20852. 301-443-8599. rippera@mail.nih.gov. (Catalogue of Federal Domestic Assistance Program Nos. 93.271, Alcohol Research Career Development Awards for Scientists and Clinicians; 93.272, Alcohol National Research Service Awards for Research Training; 93.273, Alcohol Research Programs; 93.891, Alcohol Research Center Grants; 93.701, ARRA Related Biomedical Research and Research Support Awards, National Institutes of Health, HHS)

Dated: July 14, 2010.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2010-17856 Filed 7-20-10; 8:45 am]

BILLING CODE 4140-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES**National Institutes of Health****National Institute on Alcohol Abuse and Alcoholism; Notice of Closed Meeting**

Pursuant to section 10(d) of the Federal Advisory Committee Act, as

amended (5 U.S.C. App), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 USC, as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable materials, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Alcohol Abuse and Alcoholism Initial Review Group, Clinical Treatment and Health Services Research Review Subcommittee.

Date: October 12–13, 2010

Time: 8:30 a.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: Embassy Suites at the Chevy Chase Pavilion, 4300 Military Road, NW., Washington, DC 20015.

Contact Person: Katrina Foster, PhD Scientific Review Officer, National Institute on Alcohol Abuse and Alcoholism, National Institutes of Health, 5635 Fishers Lane, Room 2019, Rockville, MD 20852, 301–443–4032, katrinaf@mail.nih.gov.

(Catalogue of Federal Domestic Assistance Program Nos. 93.271, Alcohol Research Career Development Awards for Scientists and Clinicians; 93.272, Alcohol National Research Service Awards for Research Training; 93.273, Alcohol Research Programs; 93.891, Alcohol Research Center Grants; 93.701, ARRA Related Biomedical Research and Research Support Awards., National Institutes of Health, HHS)

Dated: July 14, 2010.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2010–17853 Filed 7–20–10; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material,

and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Member Conflict: Caregiving Interventions.

Date: July 26, 2010.

Time: 11 a.m. to 12 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Anna L. Riley, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3114, MSC 7759, Bethesda, MD 20892, 301–435–2889, rileyann@csr.nih.gov.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: July 15, 2010.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2010–17820 Filed 7–20–10; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the Center for Scientific Review Special Emphasis Panel, July 28, 2010, 9 a.m. to July 28, 2010, 5 p.m., National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 which was published in the **Federal Register** on July 1, 2010, 75 FR 38111.

The meeting will be held August 6, 2010. The meeting time and location remain the same. The meeting is closed to the public.

Dated: July 15, 2010.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2010–17816 Filed 7–20–10; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel. Member Conflict: Diabetes and Obesity.

Date: August 12–13, 2010.

Time: 1 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Virtual Meeting).

Contact Person: Robert Garofalo, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6156, MSC 7892, Bethesda, MD 20892, 301–435–1043, garofalors@csr.nih.gov.

Name of Committee: Center for Scientific Review Special Emphasis Panel. Member Conflict: Integrative Neuroscience.

Date: August 18–19, 2010.

Time: 8 a.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Virtual Meeting).

Contact Person: Brian Hoshaw, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5181, MSC 7844, Bethesda, MD 20892, 301–435–1033, hoshawb@csr.nih.gov.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: July 15, 2010.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2010–17812 Filed 7–20–10; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES**National Institutes of Health****National Cancer Institute; Notice of Meeting**

Pursuant to section 10(a) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of a meeting of the President's Cancer Panel.

The meeting will be open to the public, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

Name of Committee: President's Cancer Panel.

Date: September 22, 2010.

Time: 8 a.m. to 5 p.m.

Agenda: The Future of Cancer Research: Accelerating Scientific Innovation.

Place: Hyatt Regency Boston, 1 Ave De Lafayette, Boston, MA 02111.

Contact Person: Abby B. Sandler, PhD, Executive Secretary, Chief, Institute Review Office, Office of the Director, 6116 Executive Blvd., Suite 220, MSC 8349, National Cancer Institute, NIH, Bethesda, MD 20892-8349. (301) 451-9399. sandlera@mail.nih.gov.

Any interested person may file written comments with the committee by forwarding the statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

Information is also available on the Institute's/Center's home page: <http://deainfo.nci.nih.gov/advisory/pcp/pcp.htm>, where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: July 15, 2010.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2010-17813 Filed 7-20-10; 8:45 am]

BILLING CODE 4140-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES**Administration for Children and Families****Office of Child Support Enforcement; Privacy Act of 1974; System of Records**

AGENCY: Office of Child Support Enforcement, ACF, HHS.

ACTION: Notice of establishment of a new system of records.

SUMMARY: In accordance with the requirements of the Privacy Act of 1974 (5 U.S.C. 552a), as amended, the Office of Child Support Enforcement (OCSE) is publishing notice of a new system of records, entitled "Federal Parent Locator Service (FPLS) Child Support Services Portal," System No. 09-80-0387.

DATES: The Department of Health and Human Services (HHS) invites interested parties to submit written comments on the proposed system until August 20, 2010. As required by the Privacy Act (5 U.S.C. 552a(r)), HHS on June 8, 2010 sent a report of a new system of records to the Committee on Homeland Security and Governmental Affairs of the Senate, the Committee on Oversight and Government Reform of the House of Representatives, and the Office of Information and Regulatory Affairs of the Office of Management and Budget (OMB). The proposed action described in this notice is effective on August 20, 2010, unless HHS receives comments, which result in a contrary determination.

ADDRESSES: Interested parties may submit written comment on this notice by writing to Linda Deimeke, Director, Division of Federal Systems, Office of Automation and Program Operations, Office of Child Support Enforcement, Administration for Children and Families, 370 L'Enfant Promenade, SW., 4th Floor East, Washington, DC 20447. Comments received will be available for public inspection at this address from 9 a.m. to 5 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Linda Deimeke, Director, Division of Federal Systems, Office of Child Support Enforcement, 370 L'Enfant Promenade, SW., 4th Floor East, Washington, DC 20447. The telephone number is (202) 401-5439.

SUPPLEMENTARY INFORMATION: The Federal Parent Locator Service (FPLS) Child Support Services Portal is a gateway that allows authorized users to retrieve and provide information to FPLS systems as permitted by their portal role classification. Roles are

assigned based on the function the user is authorized to perform. For example, an employee of a multistate financial institution could be assigned the role that allows her to provide bank account information that would be used to identify financial holdings of a noncustodial parent. Another authorized user might have access to the role that allows registration as an employer that accepts electronic income withholding orders.

The establishment of the proposed new system of records will ensure that access to the portal and its services is secure and restricted to those individuals and organizations, including third parties conducting business on behalf of another business or organization, that apply for, and are granted, access privileges. In turn, access to the portal by authorized individuals will enhance the ability of OCSE, employers, financial institutions and other partners to assist state child support agencies in collecting support on behalf of children and families.

Dated: July 8, 2010.

Vicki Turetsky,

Commissioner, Office of Child Support Enforcement.

90-80-0387

SYSTEM NAME:

Federal Parent Locator Service Child Support Services Portal.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

Lockheed Martin, Building 101, 9500 Godwin Drive, Room F12, Manassas, Virginia 20110-4157.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

OCSE employees and contractors, and employees of states, financial institutions, insurance companies, federal agencies and other employers who have registered to access the system and its services for the purpose(s) of exchanging information to support electronic income withholding orders (also referred to as e-IWO), to identify financial holdings, to locate parents or other responsible parties, to intercept tax refunds and administrative payments or to deny or reinstate a U.S. passport for a noncustodial parent owing past-due child support.

CATEGORIES OF RECORDS IN THE SYSTEM:

Information relating to registration requests by individuals seeking access to the portal and its services, including the individual's name, Social Security number (SSN), date of birth, and the

address and Federal Employer Identification Number of the individual's employer.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

42 U.S.C. 652(a)(9) and 653(a)(1).

PURPOSE:

To validate eligibility for, and maintain an official registry file that identifies individuals and organizations, including third parties conducting business on behalf of another business or organization that apply for and are granted access privileges to the FPLS Child Support Services Portal and its services.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSE OF SUCH USES:

1. Records may be disclosed to the Department of Justice when (1) HHS, or any component thereof; or (2) any employee of HHS in his or her official capacity; or (3) any employee of HHS in his or her individual capacity where the Department of Justice or HHS has agreed to represent the employee; or (4) the United States, is a party to litigation or has an interest in such litigation, and the use of such records by the Department of Justice is deemed by HHS to be relevant and necessary to the litigation; provided, however, that in each case it has been determined that the disclosure is compatible with the purpose for which the records were collected.

2. Records may be disclosed to a court or adjudicative body when (1) HHS, or any component thereof; or (2) any employee of HHS in his or her official capacity; or (3) any employee of HHS in his or her individual capacity where the Department of Justice or HHS has agreed to represent the employee; or (4) the United States, is a party to litigation or has an interest in the proceeding, and the disclosure of such records is deemed by HHS to be relevant and necessary to the proceeding; provided, however, that in each case it has been determined that the disclosure is compatible with the purpose for which the records were collected.

3. Records may be disclosed to the appropriate federal, state, local, tribal or foreign agency responsible for investigating, prosecuting, enforcing or implementing a statute, rule, regulation or order, if the information is relevant to a violation or potential violation of civil or criminal law or regulation within the jurisdiction of the receiving entity.

4. Records may be disclosed to a contractor performing or working on a contract for HHS and who has a need to

have access to the information in the performance of its duties or activities for the HHS in accordance with law and with the contract.

5. Records may be disclosed to appropriate federal agencies and Department contractors that have a need to know the information for the purpose of assisting the Department's efforts to respond to a suspected or confirmed breach of the security or confidentiality of information maintained in this system of records and the information disclosed is relevant and necessary for that assistance.

DISCLOSURES TO CONSUMER REPORTING AGENCIES:

None.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records in the system are stored electronically.

RETRIEVABILITY:

Records are retrieved by the social security number of the individual to whom the record pertains.

SAFEGUARDS:

Specific administrative, technical, and physical controls are in place to ensure that the records collected and maintained in the FPLS Child Support Services Portal are secure from unauthorized access.

Access to the records is restricted to authorized personnel who are advised of the confidentiality of the records and the civil and criminal penalties for misuse and who sign a nondisclosure oath to that effect. Personnel are provided privacy and security training before being granted access to the records and annually thereafter.

Logistical access controls are in place to limit access to the records to authorized personnel and to prevent browsing. The records are processed and stored in a secure environment. The individual's SSN is encrypted, and access to, and viewing of, the SSN is restricted to designated employees and contractors of OCSE solely for the purpose of verifying the identity of a registrant or a user of the portal.

All records are stored in an area that is physically safe from access by unauthorized persons at all times.

Safeguards conform to the HHS Information Security Program, <http://www.hhs.gov/ocio/securityprivacy/index.html>.

RETENTION AND DISPOSAL:

Electronic records are to be deleted when/if OCSE determines that the

records are no longer needed for administrative, audit, legal, or operational purposes, and in accordance with records schedules approved by the National Archives and Records Administration. Approved disposal methods for electronic records and media include overwriting, degaussing, erasing, disintegration, pulverization, burning, melting, incineration, shredding or sanding.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Division of Federal Systems, Office of Automation and Program Operations, Office of Child Support Enforcement, Administration for Children and Families, 370 L'Enfant Promenade, SW., 4th Floor East, Washington, DC 20447.

NOTIFICATION PROCEDURES:

Individuals seeking to determine whether this system of records contains information about themselves should address written inquiries to the System Manager. The request should include the name, telephone number and/or email address, Social Security number (SSN), and address of the individual. The request must be signed. The requester's letter must provide sufficient particulars to enable the System Manager to distinguish between records of subject individuals with the same name. Verification of identity as described in the Department's Privacy Act regulations may be required. 45 CFR 5b.5.

RECORD ACCESS PROCEDURES:

Individuals seeking access to a record about themselves in this system of records should address written inquiries to the System Manager. The request should include the name, telephone number and/or email address, Social Security number (SSN), and address of the individual, and should be signed. The requester's letter must provide sufficient particulars to enable the System Manager to distinguish between records on subject individuals with the same name. Verification of identity as described in the Department's Privacy Act regulations may be required. 45 CFR 5b.5.

CONTESTING RECORD PROCEDURES:

Individuals seeking to amend a record about themselves in this system of records should address the request for amendment to the System Manager. The request should (1) include the name, telephone number and/or email address, Social Security number (SSN), and address of the individual, and should be signed; (2) identify the system of records that the individual believes includes his

or her records or otherwise provide enough information to enable the identification of the individual's record; (3) identify the information that the individual believes is not accurate, relevant, timely or complete; (4) indicate what corrective action is sought; and (5) include supporting justification or documentation for the requested amendment. Verification of identity as described in the Department's Privacy Act regulations may be required. 45 CFR 5b.5.

RECORD SOURCE CATEGORIES:

Information is obtained from individuals and organizations, including third parties conducting business on behalf of a business or organization, that apply for access privileges to the FPLS Child Support Services Portal and its services.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. 2010-17738 Filed 7-20-10; 8:45 am]

BILLING CODE 4184-42-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Safety and Occupational Health Study Section: Notice of Charter Renewal

This gives notice under the Federal Advisory Committee Act (Pub. L. 92-463) of October 6, 1972, that the Safety and Occupational Health Study Section, Centers for Disease Control and

Prevention, Department of Health and Human Services, has been renewed for a 2-year period through June 30, 2012.

FOR FURTHER INFORMATION CONTACT: Price Connor, PhD, Executive Secretary, Safety and Occupational Health Study Section, Department of Health and Human Services, 1600 Clifton Road, NE., Mailstop E74, Atlanta, Georgia 30333, telephone 404/498-2511 or fax 404/498-2571.

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 the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Dated: July 13, 2010.

Elaine L. Baker,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 2010-17759 Filed 7-20-10; 8:45 am]

BILLING CODE 4163-18-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA-2010-N-0318]

Novartis Pharmaceuticals Corp. et al.; Withdrawal of Approval of 27 New Drug Applications and 58 Abbreviated New Drug Applications

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is withdrawing approval of 27 new drug applications (NDAs) and 58 abbreviated new drug applications (ANDAs) from multiple applicants. The holders of the applications notified the agency in writing that the drug products were no longer marketed and requested that the approval of the applications be withdrawn.

DATES: *Effective Date:* August 20, 2010.

FOR FURTHER INFORMATION CONTACT: Florine P. Purdie, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, rm. 6366, Silver Spring, MD 20993-0002, 301-796-3601.

SUPPLEMENTARY INFORMATION: The holders of the applications listed in table 1 of this document have informed FDA that these drug products are no longer marketed and have requested that FDA withdraw approval of the applications pursuant to the process in § 314.150(c) (21 CFR 314.150(c)). The applicants have also, by their requests, waived their opportunity for a hearing. Withdrawal of approval of an application or abbreviated application under § 314.150(c) is without prejudice to refiling.

TABLE 1.

Application No.	Drug	Applicant
NDA 6-008	Mesantoin (mephenytoin) Tablets	Novartis Pharmaceuticals Corp., One Health Plaza, East Hanover, NJ 07936-1080
NDA 9-000	Cafergot (ergotamine tartrate and caffeine) Suppository, 1 milligram (mg)/100 mg and 2 mg/100 mg	Do.
NDA 9-561	Hypaque (diatrizoate sodium)	GE Healthcare, Inc., 101 Carnegie Center, Princeton, NJ 08540
NDA 9-658	Hydrocortisone Tablets	Smith, Miller and Patch, Inc., Division of Cooper Vision, Inc., c/o Cooper Laboratories, Inc., 455 E. Middlefield Rd., Mountain View, CA 94043
NDA 9-942	Deltra (prednisone) Tablets	Merck & Co., Inc., P.O. Box 4, BLA-20, West Point, PA 19486-0004
NDA 10-051	Hydeltra (prednisolone) Tablets	Do.
NDA 10-255	Meticortelone (prednisolone acetate) Injection and Suspension	Schering Corp., Galloping Hill Rd., Kenilworth, NJ 07033
NDA 12-885	Winstrol (stanozolol) Tablets, 2 mg	Lundbeck, Inc., Four Parkway North, Deerfield, IL 60015
NDA 13-428	Valpin (anisotropine methylbromide) Tablets	Endo Pharmaceuticals, 100 Endo Blvd., Chadds Ford, PA 19317

TABLE 1.—Continued

Application No.	Drug	Applicant
NDA 16–023	Symmetrel (amantadine hydrochloride (HCl) USP) Syrup	Do.
NDA 16–119	Teslac (testolactone) Injection, 100 mg/milliliter (mL)	Bristol-Myers Squibb Co., P.O. Box 4000, Princeton, NJ 08543–4000
NDA 16–403	Hypaque-Cysto (diatrizoate meglumine) and Hypaque (diatrizoate meglumine)	GE Healthcare, Inc.
NDA 16–636	Narcar (naloxone HCl) Injection	Endo Pharmaceuticals
NDA 16–769	Urispas (flavoxate HCl) Tablets, 100 mg	Ortho-McNeil-Janssen Pharmaceutical, Inc., 1000 U.S. Highway 202, P.O. Box 3000, Raritan, NJ 08869–0602
NDA 17–022	Methotrexate Tablets	Lederle Laboratories, A Division of American Cyanamid Co., 401 N. Middletown Rd., Pearl River, NY 10965
NDA 17–118	Symmetrel (amantadine HCl USP) Syrup	Endo Pharmaceuticals
NDA 17–255	MPI DTPA Chelate multidose (kit for the preparation of technetium Tc-99m pentetate injection)	Medi-Physics, Inc., d/b/a GE Healthcare, Inc., 101 Carnegie Center, Princeton, NJ 08540
NDA 17–264	Technetium Tc-99m pentetate kit	Do.
NDA 17–559	Proventil (albuterol USP) Inhalation Aerosol	Schering Corp.
NDA 17–984	Valcaps (diazepam) Capsules	Hoffmann-LaRoche, Inc., Roche Pharmaceuticals, 340 Kingsland St., Nutley, NJ 07110–1199
NDA 18–101	Symmetrel (amantadine HCl USP) Tablets	Endo Pharmaceuticals
NDA 18–445	Dolobid (diflunisal) Tablets, 250 mg and 500 mg	Merck & Co., Inc.
ANDA 18–551	Potassium Iodide Oral Solution USP, 1 gram (g)/mL	Roxane Laboratories, Inc., 1809 Wilson Rd., Columbus, OH 43228
NDA 18–706	Hydergine LC (ergoloid mesylates) Capsules	Novartis Pharmaceuticals Corp.
NDA 18–746	Vasocon-A (antazoline phosphate, 0.5% and naphazoline HCl, 0.05%) Ophthalmic Solution	Do.
ANDA 18–750	Furosemide Tablets, 40 mg	Sandoz, Inc., 4700 Sandoz Dr., Wilson, NC 27893
NDA 19–309	Vasotec (enalaprilat) Injection	Biovail Laboratories International SRL, c/o Biovail Technologies Ltd., 700 Route 202/206 North, Bridgewater, NJ 08807
NDA 21–007	Agenerase (amprenavir), 50 mg and 150 mg	GlaxoSmithKline, One Franklin Plaza, 200 North 16th St., Philadelphia, PA 19102
NDA 21–039	Agenerase (amprenavir) Oral Solution, 15 mg/mL	Do.
ANDA 40–149	Hydrocodone Bitartrate and Acetaminophen Tablets USP, 5 mg/500 mg and 7.5 mg/750 mg	Sandoz, Inc.
ANDA 40–312	Innofem (estradiol tablets USP), 0.5 mg, 1 mg, and 2 mg	Novo Nordisk, Inc., 100 College Rd. West, Princeton, NJ 08540
ANDA 60–568	Urobiotic (oxytetracycline HCl, sulfamethizole, phenazopyridine HCl) Capsules	Pfizer Inc., 235 East 42nd St., New York, NY 10017
ANDA 61–016	Terra-Cortril (hydrocortisone acetate and oxytetracycline HCl)	Do.
ANDA 61–410	Veetids (penicillin V potassium for Oral Solution USP), 125 mg/5 mL and 250 mg/5 mL	Apothecon, c/o Bristol-Myers Squibb, P.O. Box 4000, Princeton, NJ 08543
ANDA 61–471	Tetracycline HCl Capsules, 250 mg	Sandoz, Inc.
ANDA 61–781	Erythromycin Stearate Tablets, 250 mg	Do.
ANDA 61–965	Nystatin Vaginal Tablets, 100,000 Units	Do.
ANDA 62–014	Oxytetracycline Capsules, 250 mg	Do.
ANDA 62–065	Nystatin Tablets, 500,000 Units	Do.

TABLE 1.—Continued

Application No.	Drug	Applicant
ANDA 62–590	Kefurox (cefuroxime for injection USP), 750 mg/vial and 1.5 g/vial	Eli Lilly & Co., Lilly Corporate Center, Indianapolis, IN 46285
ANDA 62–592	Kefurox (cefuroxime for injection USP), 750 mg/vial and 1.5 g/vial	Do.
ANDA 64–033	Cefazolin Sodium ADD-Vantage Powder for Injection Solution	GlaxoSmithKline, One Franklin Plaza, P.O. Box 7929, Philadelphia, PA 19101–7929
ANDA 65–210	Clarithromycin Extended-Release Tablets, 1,000 mg	Ranbaxy, Inc., U.S. Agent for Ranbaxy Laboratories Limited, 600 College Rd. East, Princeton, NJ 08540
ANDA 73–696	Nitrofurantoin Capsules USP, 25 mg, 50 mg, and 100 mg	Watson Laboratories, Inc., P.O. Box 450 39 Mt. Ebo Rd. South, Brewster, NY 10509
ANDA 74–648	Lorazepam Oral Solution, 0.5 mg/5 mL	Roxane Laboratories, Inc.
ANDA 74–764	Ranitidine Injection USP	Bedford Laboratories, A division of Ben Venue Laboratories, Inc., 300 Northfield Rd., Bedford, OH 44146
ANDA 75–170	Butorphanol Tartrate Injection USP, 1 mg/mL and 2 mg/mL	Hospira, Inc., 275 N. Field Dr., Dept. 0389, Bldg. H2, Lake Forest, IL 60045–5046
ANDA 76–027	Tamoxifen Citrate Tablets USP, 10 mg and 20 mg	Roxane Laboratories, Inc.
ANDA 76–605	Gabapentin Tablets USP, 600 mg and 800 mg	Do.
ANDA 76–643	Carbidopa and Levodopa Tablets for Oral Suspension, 10 mg/100 mg, 25 mg/100 mg, and 25 mg/250 mg	Do.
ANDA 76–663	Carbidopa and Levodopa Extended-Release Tablets, 50 mg/200 mg	KV Pharmaceutical Co., 2503 South Hanley Rd., St. Louis, MO 63144
ANDA 77–366	Glimepiride Tablets USP, 3 mg and 6 mg	Ranbaxy Inc.
ANDA 81–096	Acetaminophen, Aspirin, and Codeine Phosphate Capsules, 150 mg/180 mg/30 mg	Mikart, Inc., 1750 Chattahoochee Ave., NW, Atlanta, GA 30318
ANDA 81–097	Acetaminophen, Aspirin, and Codeine Phosphate Capsules, 150 mg/180 mg/60 mg	Do.
ANDA 81–226	Hydrocodone Bitartrate and Acetaminophen Oral Solution, 5 mg/500 mg/15 mL	Do.
ANDA 83–902	Dexedrine (dextroamphetamine sulfate), 5 mg/mL	GlaxoSmithKline, Research Triangle Park, NC 27709–3398
ANDA 84–353	Bethanechol Chloride Tablets, 5 mg	Do.
ANDA 84–378	Bethanechol Chloride Tablets, 10 mg (Blue)	Do.
ANDA 84–379	Bethanechol Chloride Tablets, 10 mg (Pink)	Do.
ANDA 84–383	Bethanechol Chloride Tablets, 25 mg (Yellow)	Do.
ANDA 84–384	Bethanechol Chloride Tablets, 25 mg	Do.
ANDA 84–617	Hydralazine HCl and Reserpine Tablets, 25 mg/0.1 mg	Do.
ANDA 84–773	Prednisolone Tablets, 5 mg	Do.
ANDA 84–774	Prednisone Tablets, 5 mg	Do.
ANDA 84–869	Imipramine HCl Tablets, 25 mg	Do.
ANDA 84–876	Hydrochlorothiazide, Reserpine, and Hydralazine HCl Tablets, 15 mg/0.1 mg/25 mg	Do.
ANDA 84–935	Dexedrine (dextroamphetamine sulfate) Tablets	GlaxoSmithKline, Research Triangle Park, NC 27709–3398
ANDA 84–956	Hydralazine HCl Tablets, 25 mg	Sandoz, Inc.

TABLE 1.—Continued

Application No.	Drug	Applicant
ANDA 85–088	Hydralazine HCl Tablets, 50 mg	Do.
ANDA 85–146	Promethazine HCl Tablets, 25 mg and 50 mg	Do.
ANDA 85–934	Butabarbital Sodium Tablets, 30 mg	Do.
ANDA 85–938	Butabarbital Sodium Tablets, 15 mg	Do.
ANDA 86–171	Trichlormethiazide Tablets, 4 mg	Do.
ANDA 86–505	Hypaque-76 (diatrizoate meglumine and diatrizoate sodium injection USP)	GE Healthcare, Inc.
ANDA 87–118	Chlorthalidone Tablets, 50 mg	Sandoz, Inc.
ANDA 87–282	Methocarbamol Tablets, 750 mg	Do.
ANDA 87–283	Methocarbamol Tablets, 500 mg	Do.
ANDA 87–449	Theophylline Oral Solution, 80 mg/15 mL	Roxane Laboratories, Inc.
ANDA 87–462	Theophylline Extended-Release Capsules, 260 mg	Sandoz, Inc.
ANDA 88–157	Chlorpromazine HCl Intensol (chlorpromazine HCl oral concentrate USP), 30 mg/mL	Roxane Laboratories, Inc.
ANDA 88–158	Chlorpromazine HCl Intensol (chlorpromazine HCl oral concentrate USP), 100 mg/mL	Do.
ANDA 88–193	Triprolidine HCl and Pseudoephedrine HCl Tablets, 2.5 mg/60 mg	Sandoz, Inc.
ANDA 88–587	Hydrochlorothiazide Oral Solution	Roxane Laboratories, Inc.
ANDA 89–127	Mepro-Aspirin (aspirin and meprobamate) Tablets, 325 mg/200 mg	Sandoz, Inc.
ANDA 89–508	Fluorouracil Injection USP, 50 mg/mL	Bedford Laboratories

Therefore, under section 505(e) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 355(e)) and under authority delegated to the Director, Center for Drug Evaluation and Research, by the Commissioner, approval of the applications listed in table 1 in this document, and all amendments and supplements thereto, is hereby withdrawn, effective August 20, 2010. Introduction or delivery for introduction into interstate commerce of products without approved new drug applications violates section 301(a) and (d) of the act (21 U.S.C. 331(a) and (d)). Drug products that are listed in table 1 in this document that are in inventory on the date that this notice becomes effective (see the **DATES** section) may continue to be dispensed until the inventories have been depleted or the drug products have reached their expiration dates or otherwise become violative, whichever occurs first.

Dated: June 15, 2010.

Douglas C. Throckmorton,
Deputy Director, Center for Drug Evaluation
and Research.

[FR Doc. 2010–17785 Filed 7–20–10; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

**[Internal Agency Docket No. FEMA–1907–
DR; Docket ID FEMA–2010–0002]**

North Dakota; Amendment No. 4 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 North Dakota (FEMA–1907–DR), dated April 30, 2010, and related determinations.

DATES: *Effective Date:* July 15, 2010.

FOR FURTHER INFORMATION CONTACT:

Peggy Miller, Recovery Directorate,
Federal Emergency Management
Agency, 500 C Street, SW., Washington,
DC 20472, (202) 646–3886.

SUPPLEMENTARY INFORMATION: Notice is hereby given that the incident period for this disaster is closed effective July 15, 2010.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance

(Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

W. Craig Fugate,
Administrator, Federal Emergency
Management Agency.

[FR Doc. 2010-17766 Filed 7-20-10; 8:45 am]

BILLING CODE 9111-23-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: National Park Service, Department of the Interior.

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 an extension of a currently approved information collection Office of Management and Budget (OMB) #1024-0236.

DATES: Public comments on this Information Collection Request (ICR) will be accepted on or before September 20, 2010.

ADDRESSES: Send comments to: Dr. John G. Dennis, Natural Resources (Room 1160), NPS, 1201 Eye Street, NW., Washington, DC 20005; *Phone:* 202-513-7174; *fax:* 202-371-2131; *e-mail:* WASO_NRSS_researchcoll@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.

FOR FURTHER INFORMATION CONTACT: Bill Commins, Natural Resources (Room 1125), 1201 Eye St., NW., Washington, DC 20005. *Phone* 202-513-7166; *Fax:* 202-371-2131; *E-mail:* bill_commins@nps.gov. You may obtain additional information about the application and manual reporting forms and existing guidance and explanatory material from the NPS Research Permit and Reporting System Web site at: <https://science.nature.nps.gov/research>.

SUPPLEMENTARY INFORMATION:

Title: Research Permit and Reporting System Collection of Information Package: Application for a Scientific Research and Collecting Permit; Application for a Science Education Permit; Investigator's Annual Report.

Form(s): Application for a Scientific Research and Collecting Permit: 10-741a; Application for a Science

Education Permit: 10-741b, Investigator's Annual Report: 10-226. *OMB Control Number:* 1024-0236. *Expiration Date:* 11/30/2010.

Type of Request: Extension of a currently approved collection of information.

Description of Need: The currently approved information collection responds to the statutory requirement that NPS preserve park resources and regulate the use of units of the National Park System. The information currently collected identifies: (1) Names and business contact information for people who seek a permit to conduct natural or social science research and collection activities in individual units of the National Park System, (2) what activities they wish to conduct, (3) where they wish to conduct the activities, (4) whether or not they wish to collect specimens as part of the activities they propose to conduct, and (5) for applicants who have received a permit, annual summaries of the actual results of their permitted activities. NPS uses the collected information for managing the use and preservation of park resources and for reporting the status of permitted research and collecting activities. The automated information collection and status reporting system for which the renewal of three components of a single collection of information package is being proposed in this notice currently is available to applicants, permittees, and the public through the NPS Research Permit and Reporting System Web site (<https://science.nature.nps.gov/research>). In addition to considering the renewal of the three information collection forms without substantive changes, NPS is considering what development of modifications to the Internet site, if any, are needed to increase the effectiveness and efficiency of this automation system to facilitate the permit application and progress reporting processes.

Description of respondents:

Representatives of academic and other research institutions, Federal, state, or local agencies, research businesses, other scientific parties seeking an NPS research and collecting or science education permit; permittees who submit the annual report of accomplishment that is one of the permit conditions.

Comments are invited on: (1) The practical utility of the information being gathered; (2) the accuracy of the burden hour estimate; (3) ways to enhance the quality, utility, and clarity of the information being collected; and (4) ways to minimize the burden to respondents, including use of automated information collection

techniques or other forms of information technology. 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.

Dated: July 16, 2010.

Cartina Miller,

NPS, Information Collection Clearance Officer.

[FR Doc. 2010-17823 Filed 7-20-10; 8:45 am]

BILLING CODE 4312-52-P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLES956000-L14200000-BJ0000-LXSITRST0000]

Eastern States: Filing of Plat of Survey

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of filing of plat of survey; Louisiana.

SUMMARY: The Bureau of Land Management (BLM) will file the plat of survey of the lands described below in the BLM-Eastern States office in Springfield, Virginia, 30 calendar days from the date of publication in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT:

Bureau of Land Management-Eastern States, 7450 Boston Boulevard, Springfield, Virginia 22153. *Attn:* Cadastral Survey.

SUPPLEMENTARY INFORMATION: The survey was requested by the Bureau of Indian Affairs.

The lands surveyed are:

Louisiana Meridian, Louisiana

T. 13 S., R 9 E.

The plat of survey represents the dependent resurvey of the line between Sections 27 and 28, and Sections 27 and 34, and portions of the West boundary of the Chitimacha Indian Reservation, and the survey of Tracts in Sections 27, 28, and 34, in Township 13 South, Range 9 East, of the Louisiana Meridian, in the State of Louisiana, and was accepted June 30, 2010.

We will place a copy of the plat we described in the open files. It will be available to the public as a matter of information.

If BLM receives a protest against the survey, as shown on the plat, prior to

the date of the official filing, we will stay the filing pending our consideration of the protest.

We will not officially file the plat until the day after we have accepted or dismissed all protests and they have become final, including decisions on appeals.

Date: July 15, 2010.

Dominica Van Koten,

Chief Cadastral Surveyor.

[FR Doc. 2010-17752 Filed 7-20-10; 8:45 am]

BILLING CODE 4310-GJ-P

DEPARTMENT OF THE INTERIOR

National Park Service

Minor Boundary Revision at Lewis and Clark National Historical Park

AGENCY: National Park Service, Interior.

ACTION: Announcement of boundary revision.

SUMMARY: Notice is hereby given that, pursuant to 16 U.S.C. 460l-(9)(c)(1), the boundary of Lewis and Clark National Historical Park is modified to include an additional 106.74+/- acres of land identified as Tract No. 01-104, tax parcel nos: 710160000500 (account nos. 16983 and 16982), 71016AB02800 (account nos. 17134 and 17135), 71016AB02600 (account no. 17131), 71016AB03600 (account no. 17150), 71016AB02700 (account no. 17132), and 71016AB03204 (account no. 17143). The land is located in Clatsop County, Oregon, immediately adjacent to the southern boundary of the Sunset Beach portion of Lewis and Clark National Historical Park. The boundary revision is depicted on Map No. 405/80029, date drawn May 2010. This map is available for inspection at the following locations: National Park Service, Columbia Cascades Land Resources Program Center, 168 South Jackson Street, Seattle, WA 98104 and National Park Service, Department of the Interior, Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT:

National Park Service, Chief, Columbia Cascades Land Resources Program Center, 168 South Jackson Street, Seattle, Washington 98104, (206) 220-4100.

DATES: The effective date of this boundary revision is July 21, 2010.

SUPPLEMENTARY INFORMATION: 16 U.S.C. 460l-(9)(c)(1) provides that, after notifying the House Committee on Natural Resources and the Senate Committee on Energy and Natural Resources, the Secretary of the Interior is authorized to make this boundary

revision upon publication of notice in the **Federal Register**. The Committees have been notified of this boundary revision. Inclusion of these lands within the park boundary will enable the landowner to sell the subject land to the National Park Service. The inclusion and acquisition of this property will enable the Service to expand public visitor uses and provide for additional western trailhead opportunities for the park's "Fort to Sea Trail." Additionally, the boundary revision will provide greater protection of sensitive resources which would be appropriately managed as a part of the national park.

Dated: July 21, 2010.

George Turnbull,

Acting Regional Director, Pacific West Region.

[FR Doc. 2010-17827 Filed 7-20-10; 8:45 am]

BILLING CODE P

DEPARTMENT OF THE INTERIOR

National Park Service

National Register of Historic Places; Notification of Pending Nominations and Related Actions

Nominations for the following properties being considered for listing or related actions in the National Register were received by the National Park Service before June 26, 2010. Pursuant to § 60.13 of 36 CFR Part 60, written comments are being accepted concerning the significance of the nominated properties under the National Register criteria for evaluation. Comments may be forwarded by United States Postal Service, to the National Register of Historic Places, National Park Service, 1849 C St., NW., 2280, Washington, DC 20240; by all other carriers, National Register of Historic Places, National Park Service, 1201 Eye St. NW., 8th floor, Washington, DC 20005; or by fax, 202-371-6447. Written or faxed comments should be submitted by August 5, 2010.

Before including your address, phone number, e-mail address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we

cannot guarantee that we will be able to do so.

J. Paul Loether,

Chief, National Register of Historic Places, National Historic Landmarks Program.

ALABAMA

Macon County

Shiloh Missionary Baptist Church and Rosenwald School, 7 Shiloh Rd, Notasulga, 10000522

Perry County

Brand, Bryand, House, Route 1, Box 260, Marion, 10000523

ARIZONA

Maricopa County

Fraser Fields Historic District, Fraser Dr W to Fraser Dr E; Third Pl to Pepper Pl, Mesa, 10000535

West Side—Clark Addition Historic District, Date St to Country Club Dr; 2nd Pl to Clark St, Mesa, 10000534

ARKANSAS

Mississippi County

West Main Street Residential Historic District, W Main St between B and 6th St and Division, Blytheville, 10000521

COLORADO

Garfield County

Wasson—McKay Place, 259 Cardinal Way, Parachute, 10000536

KENTUCKY

Bath County

Nesbitt, J.J., House, 233 W Main St, Owingsville, 10000532

Jefferson County

Dodd, William J., Residence, 1448 St. James Court, Louisville, 10000530

St. Bartholomew Parish School, 2036 Buechel Bank Rd, Louisville, 10000531

Morgan County

Christian Church of West Liberty, 304 Prestonsburg St, West Liberty, 10000529

Nelson County

Coombs—Duncan—Brown Farmhouse, 2985 Chaplin-Taylorsville Rd, Bloomfield, 10000525

Warren County

Standard Oil Company Filling Station, 638 College St, Bowling Green, 10000526

Washington County

Kalarama Saddlebred Horse Farm, 101 Kalarama Dr, Springfield, 10000528

KENTUCKY

Washington County

Maple Grove, 3216 Perryville Rd, Springfield, 10000527

MONTANA

Fergus County

Reed and Bowles Trading Post, Joyland Rd, Lewistown, 10000520

PUERTO RICO**Catano Municipality**

Bacardi Distillery, (Rum Industry in Puerto Rico MPS) Rd 165. km 2.6 intersection SR 888, Bay View Industrial Park, Catano, 10000524

[FR Doc. 2010-17726 Filed 7-20-10; 8:45 am]

BILLING CODE 4312-15-P

DEPARTMENT OF JUSTICE**Antitrust Division**

Notice Pursuant to the National Cooperative Research and Production Act of 1993-Connected Media Experience, Inc.

Correction

In notice document 2010-16862 beginning on page 40851 in the issue of Wednesday, July 14, 2010 make the following correction:

On page 40851, in the third column, in the first paragraph, in the sixth line, “(“CNN”)” should read “(“CMX”)”.

[FR Doc. C1-2010-16862 Filed 7-20-10; 8:45 am]

BILLING CODE 1505-01-D

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Under the Comprehensive Environmental Response, Compensation, and Liability Act

Consistent with Section 122 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended (“CERCLA”), 42 U.S.C. 9622(d), and 28 CFR 50.7, notice is hereby given that on July 16, 2010, the United States lodged a Consent Decree with 163 defendants (each of which is identified in the proposed Decree) in *United States of America v. Alcoa Inc., et al*, Civil No. 2:10-cv-05051-GW (PLAx) (C.D. Cal.), with respect to the Omega Chemical Superfund Site, located in Whittier, Los Angeles County, California (the “Site”).

On July 9, 2010, Plaintiff United States of America (“United States”), on behalf of the United States Environmental Protection Agency (“EPA”) filed a complaint in this matter pursuant to CERCLA Section 107, 42 U.S.C. 9607, seeking recovery of environmental response costs incurred by EPA related to the release or threatened release or disposal of hazardous substances at or from the Site.

Under the proposed Consent Decree, the defendants in the action will implement the Operable Unit One remedy, addressing soil contamination

at the Site, and pay \$1.5 million towards EPA’s unrecovered past response costs. In exchange, the proposed Consent Decree provides a covenant not to sue and contribution protection with respect to the Work, Past Response Costs and Future Response Costs as defined in the proposed Consent Decree.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the Consent Decree. Comments should be addressed to the Acting Assistant Attorney General, Environment and Natural Resources Division, and either e-mailed to pubcomment-ees.enrd@usdoj.gov or mailed to P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044-7611, and should refer to *United States of America v. Alcoa Inc., et al*, Civil No. 2:10-cv-05051-GW (PLAx) (DOJ Ref. No. 90-11-3-10068). The Consent Decree may be examined at U.S. Environmental Protection Agency, Office of Regional Counsel, EPA Region 9, 75 Hawthorne Street, San Francisco, CA 94105 (contact Stephen Berninger, (415) 972-3909). During the public comment period, the Consent Decree may also be examined on the following Department of Justice Web site, http://www.usdoj.gov/enrd/Consent_Decrees.html. A copy of the Consent Decree may also be obtained by mail from the Consent Decree Library, U.S. Department of Justice, P.O. Box 7611, Washington, DC 20044-7611 or by faxing or e-mailing a request to Tonia Fleetwood (tonia.fleetwood@usdoj.gov), fax no. (202) 514-0097, phone confirmation number (202) 514-1547. In requesting a copy from the Consent Decree Library, please refer to *United States of America v. Alcoa Inc., et al*, Civil No. 2:10-cv-05051-GW (PLAx) (DOJ Ref. No. 90-11-3-10068), and enclose a check in the amount of \$191.50 (25 cents per page reproduction cost) payable to the U.S. Treasury or, if by e-mail or fax, forward a check in that amount to the Consent Decree Library at the stated address.

Maureen Katz,

Assistant Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 2010-17814 Filed 7-20-10; 8:45 am]

BILLING CODE 4410-15-P

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA)

Notice is hereby given that on July 14, 2010, a proposed Consent Decree in the case of *United States v. Blue Tee Corp.*, Civil Action No. 06-05128-DW, with Defendant Blue Tee Corp. was lodged with the United States District Court for the Western District of Missouri.

The United States filed a complaint in December 2006 alleging that Blue Tee Corp. is liable pursuant to Sections 106 and 107 of CERCLA in connection with the Granby Subdistrict of the Newton County Mine Tailings Superfund Site in Missouri. The Court entered a Consent Decree between the United States and Blue Tee Corp. in February 2007 that required Blue Tee Corp. to pay past response costs of \$198,645.11 to EPA and perform a drinking water removal action for the entire Granby Subdistrict. Blue Tee Corp. paid the past costs and has been performing the removal action. This proposed Consent Decree requires Blue Tee Corp. to pay \$600,000 to EPA instead of performing the removal action for the Evergreen Park Subdivision portion of the Granby Subdistrict. Blue Tee Corp. is required to continue the removal action for the rest of the Granby Subdistrict. The 2007 Consent Decree will be terminated upon entry of the proposed Consent Decree.

For thirty (30) days after the date of this publication, the Department of Justice will receive comments relating to the Consent Decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, and either e-mailed to pubcomment-ees.enrd@usdoj.gov or mailed to P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044-7611. In either case, the comments should refer to *United States v. Blue Tee Corp.*, D.J. Ref. No. 90-11-2-07088/1.

During the comment period, the Consent Decree may be examined on the following Department of Justice Web site: http://www.usdoj.gov/enrd/Consent_Decrees.html. A copy of the Consent Decree may also be obtained by mail from the Consent Decree Library, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044-7611, or by faxing or e-mailing a request to Tonia Fleetwood (tonia.fleetwood@usdoj.gov), fax no. (202) 514-0097, phone confirmation number (202) 514-1547. In requesting a copy from the Consent Decree Library, please enclose a check

in the amount of \$15.75 (25 cents per page reproduction cost) payable to the United States Treasury or, if by e-mail or fax, forward a check in that amount to the Consent Decree Library at the stated address.

Maureen Katz,

Assistant Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 2010-17750 Filed 7-20-10; 8:45 am]

BILLING CODE 4410-15-P

NATIONAL SCIENCE FOUNDATION

Notice of Permit Applications Received Under the Antarctic Conservation Act of 1978 (Pub. L. 95-541)

AGENCY: National Science Foundation.

ACTION: Notice of Permit Applications Received under the Antarctic Conservation Act of 1978, Public Law 95-541.

SUMMARY: The National Science Foundation (NSF) is required to publish notice of permit applications received to conduct activities regulated under the Antarctic Conservation Act of 1978. NSF has published regulations under the Antarctic Conservation Act at title 45 part 670 of the Code of Federal Regulations. This is the required notice of permit applications received.

DATES: Interested parties are invited to submit written data, comments, or views with respect to this permit application by August 20, 2010. This application may be inspected by interested parties at the Permit Office, address below.

ADDRESSES: Comments should be addressed to Permit Office, Room 755, Office of Polar Programs, National Science Foundation, 4201 Wilson Boulevard, Arlington, Virginia 22230.

FOR FURTHER INFORMATION CONTACT: Nadene G. Kennedy at the above address or (703) 292-7405.

SUPPLEMENTARY INFORMATION: The National Science Foundation, as directed by the Antarctic Conservation Act of 1978 (Pub. L. 95-541), as amended by the Antarctic Science, Tourism and Conservation Act of 1996, has developed regulations for the establishment of a permit system for various activities in Antarctica and designation of certain animals and certain geographic areas requiring special protection. The regulations establish such a permit system to designate Antarctic Specially Protected Areas.

The applications received are as follows:

Permit Application No. 2011-005

1. *Applicant:* George Waters, Director, U.S. AMLR Program, Southwest Fisheries Science Center, National Marine Fisheries Service, 8604 La Jolla Shores Drive, La Jolla, CA 92038.

Activity for Which Permit Is Requested

Take, Enter Antarctic Specially Protected Areas, and Import into the USA. The applicant plans to continue studies of the behavioral ecology and population biology of the Adelie, Gentoo and chinstrap penguins, and the interactions among these species and their principal avian predators (Skuas, gulls, sheathbills, and giant petrels. Adelie and Gentoo chicks and adults will be banded for demographic studies. Continue studies of penguins' foraging habits, involving the use of radio transmitters, satellite tags and time-depth recorders. Another component of the study is to "stomach pump" up to 40 adults penguins per species, collect blood samples, as well as collect data on egg sizes and adult weights. Penguin uropygial gland oil may be collected for contaminant studies and un-hatched penguin eggs may be collected for lipid studies. Samples will be returned to universities for additional studies.

Location

South Shetland Islands vicinity: Copacabana field camp (Admiralty Bay, ASPA # 129) and Lion's Rump (ASPA 151), King George Island.

Dates

October 1, 2010 to July 31, 2011.

Permit Application No. 2011-007

1. *Applicant:* Paul Morin, Department of Geology and Geophysics, University of Minnesota, 310 Pillsbury Drive, SE., Minneapolis, MN 55455.

Activity for Which Permit Is Requested

Enter Antarctic Specially Protected Areas. The applicant plans enter Cape Crozier (ASPA 124), Cape Royds (ASPA 121), Cape Hallet (ASPA 106), Cape Washington, Edisto Inlet, and Battleship Promontory to collect ground control point with highly precise GPS equipment. Activity would include hiking within each area to readily-identifiable boulders, peaks, etc., gathering precise GPS coordinates of that location, and taking notes and pictures of the surrounding area. Other activities would include delineating penguin colonies, ASPAs, and important environmental features. The data will be used to create updated and accurate maps of areas of important scientific and environmental importance within the Ross Sea region.

Location

Cape Crozier (ASPA 124), Cape Royds (ASPA 121), Cape Hallet (ASPA 106), Cape Washington, Edisto Inlet, and Battleship Promontory.

Dates

October 5, 2010 to January 31, 2011.

Nadene G. Kennedy,

Permit Officer, Office of Polar Programs.

[FR Doc. 2010-17772 Filed 7-20-10; 8:45 am]

BILLING CODE 7555-01-P

NUCLEAR REGULATORY COMMISSION

[NRC-2010-0206; Docket No. 50-443]

Notice of Acceptance for Docketing of the Application and Notice of Opportunity for Hearing Regarding Renewal of Facility Operating License No. NPF-86 for an Additional 20-Year Period; Nextera Energy Seabrook, LLC; Seabrook Station, Unit 1

The U.S. Nuclear Regulatory Commission (NRC or the Commission) is considering an application for the renewal of operating license NPF-86, which authorizes NextEra Energy Seabrook, LLC (NES) to operate the Seabrook Station, Unit 1 (Seabrook Station) at 3648 megawatts thermal. The renewed license would authorize the applicant to operate Seabrook Station for an additional 20 years beyond the period specified in the current license. Seabrook Station is located 13 miles south of Portsmouth, NH. The current operating license expires on March 15, 2030.

NES submitted the application dated May 25, 2010, pursuant to Title 10 of the *Code of Federal Regulations*, Part 54 (10 CFR Part 54) to renew operating license NPF-86. A notice of receipt and availability of the license renewal application (LRA) was published in the **Federal Register** on June 16, 2010 (75 FR 34180).

The Commission's staff has determined that NES has submitted sufficient information in accordance with 10 CFR Sections 2.101, 51.45, 51.53(c), 54.19, 54.21, 54.22, and 54.23 to enable the staff to undertake a review of the application, and the application is therefore acceptable for docketing. The Commission will retain the current Docket No. 50-443 for operating license No. NPF-86. The determination to accept the LRA for docketing does not constitute a determination that the renewed license should be issued and does not preclude the staff from requesting additional information as the review proceeds.

Before issuance of the requested renewed license, the NRC will have made the findings required by the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. In accordance with 10 CFR 54.29, the NRC may issue a renewed license on the basis of its review if it finds that actions have been identified and have been or will be taken with respect to: (1) Managing the effects of aging during the period of extended operation on the functionality of structures and components that have been identified as requiring aging management review, and (2) time-limited aging analyses that have been identified as requiring review, such that there is reasonable assurance that the activities authorized by the renewed license will continue to be conducted in accordance with the current licensing basis (CLB) and that any changes made to the plant's CLB will comply with the Act and the Commission's regulations.

Additionally, in accordance with 10 CFR 51.95(c), the NRC will prepare an environmental impact statement that is a supplement to the Commission's NUREG-1437, "Generic Environmental Impact Statement for License Renewal of Nuclear Plants," dated May 1996. In considering the LRA, the Commission must find that the applicable requirements of Subpart A of 10 CFR Part 51 have been satisfied and that matters successfully raised under 10 CFR 2.335 have been addressed. Pursuant to 10 CFR 51.26 and as part of the environmental scoping process, the staff intends to hold public scoping meetings. Detailed information regarding the environmental scoping meetings will be the subject of a separate **Federal Register** notice.

Within 60 days after the date of publication of this **Federal Register** notice, any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing or a petition for leave to intervene with respect to the renewal of the license. Requests for a hearing or petitions for leave to intervene must be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings and Issuance of Orders" in 10 CFR Part 2. Interested persons should consult a current copy of 10 CFR 2.309, which is available at the Commission's Public Document Room (PDR), located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland 20852 and is accessible from the NRC's Agencywide Documents Access and Management System (ADAMS) Public Electronic Reading Room on the Internet

at <http://www.nrc.gov/reading-rm/adams.html>. <http://www.nrc.gov/readingrm/adams.html> Persons who do not have access to the Internet or who encounter problems in accessing the documents located in ADAMS should contact the NRC's PDR reference staff by telephone at (800) 397-4209 (or (301) 415-4737) or by e-mail at PDR.Resource@nrc.gov. If a request for a hearing and/or petition for leave to intervene is filed within the 60-day period, the Commission or a presiding officer designated by the Commission or by the Chief Administrative Judge of the Atomic Safety and Licensing Board Panel will rule on the request and/or petition; the Secretary or the Chief Administrative Judge of the Atomic Safety and Licensing Board Panel will issue a notice of a hearing or an appropriate order. In the event that no request for a hearing or petition for leave to intervene is filed within the 60-day period, the NRC may, upon completion of its evaluations and upon making the findings required under 10 CFR Parts 51 and 54, renew the license without further notice.

As required by 10 CFR 2.309, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding and how that interest may be affected by the results of the proceeding, taking into consideration the limited scope of matters that may be considered pursuant to 10 CFR Parts 51 and 54. The petition must specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the requestor's/petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the requestor's/petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any decision or order which may be entered in the proceeding on the requestor's/petitioner's interest. The petition must also set forth the specific contentions which the requestor/petitioner seeks to have litigated at the proceeding.

Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the requestor/petitioner shall provide a brief explanation of the bases of each contention and a concise statement of the alleged facts or the expert opinion that supports the contention on which the requestor/petitioner intends to rely in proving the contention at the hearing. The requestor/petitioner must also provide references to those specific sources and documents of which the requestor/

petitioner is aware and on which the requestor/petitioner intends to rely to establish those facts or expert opinion. The requestor/petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the action under consideration. The contention must be one that, if proven, would entitle the requestor/petitioner to relief. A requestor/petitioner who fails to satisfy these requirements with respect to at least one contention will not be permitted to participate as a party.

The Commission requests that each contention be given a separate numeric or alpha designation within one of the following groups: (1) Technical (primarily related to safety concerns), (2) environmental, or (3) miscellaneous.

As specified in 10 CFR 2.309, if two or more requestors/petitioners seek to co-sponsor a contention or propose substantially the same contention, the requestors/petitioners must jointly designate a representative who shall have the authority to act for the requestors/petitioners with respect to that contention.

All documents filed in NRC adjudicatory proceedings, including a request for hearing, a petition for leave to intervene, any motion or other document filed in the proceeding prior to the submission of a request for hearing or petition to intervene, and documents filed by interested governmental entities participating under 10 CFR 2.315(c), must be filed in accordance with the NRC E-Filing rule (72 FR 49139, August 28, 2007). The E-Filing process requires participants to submit and serve all adjudicatory documents over the Internet, or in some cases, to mail copies on electronic storage media. Participants may not submit paper copies of their filings unless they seek an exemption in accordance with the procedures described below.

To comply with the procedural requirements of E-Filing, at least ten (10) days prior to the filing deadline, the participant should contact the Office of the Secretary by e-mail at hearing.docket@nrc.gov, or by telephone at (301) 415-1677, to request (1) a digital ID certificate, which allows the participant (or its counsel or representative) to digitally sign documents and access the E-Submittal server for any proceeding in which it is participating; and (2) advise the Secretary that the participant will be submitting a request or petition for hearing (even in instances in which the participant, or its counsel or

representative, already holds an NRC-issued digital ID certificate). Based upon this information, the Secretary will establish an electronic docket for the hearing in this proceeding if the Secretary has not already established an electronic docket.

Information about applying for a digital ID certificate is available on NRC's public Web site at <http://www.nrc.gov/site-help/e-submittals/apply-certificates.html>. System requirements for accessing the E-Submittal server are detailed in NRC's "Guidance for Electronic Submission," which is available on the agency's public Web site at <http://www.nrc.gov/site-help/e-submittals.html>. Participants may attempt to use other software not listed on the Web site but should note that the NRC's E-Filing system does not support unlisted software, and the NRC Meta System Help Desk will not be able to offer assistance in using unlisted software.

If a participant is electronically submitting a document to the NRC in accordance with the E-Filing rule, the participant must file the document using the NRC's online, Web-based submission form. In order to serve documents through electronic information exchange, users will be required to install a Web browser plug-in from the NRC Web site. Further information on the Web-based submission form, including the installation of the Web browser plug-in, is available on the NRC's public Web site at <http://www.nrc.gov/site-help/e-submittals.html>.

Once a participant has obtained a digital ID certificate and a docket has been created, the participant can then submit a request for hearing or petition for leave to intervene. Submissions should be in Portable Document Format (PDF) in accordance with NRC guidance available on the NRC public Web site at <http://www.nrc.gov/site-help/e-submittals.html>. A filing is considered complete at the time the documents are submitted through the NRC's E-Filing system. To be timely, an electronic filing must be submitted to the E-Filing system no later than 11:59 p.m. Eastern Time on the due date. Upon receipt of a transmission, the E-Filing system time-stamps the document and sends the submitter an e-mail notice confirming receipt of the document. The E-Filing system also distributes an e-mail notice that provides access to the document to the NRC Office of the General Counsel and any others who have advised the Office of the Secretary that they wish to participate in the proceeding so that the filer need not serve the documents on those

participants separately. Therefore, applicants and other participants (or their counsel or representative) must apply for and receive a digital ID certificate before a hearing request/petition to intervene is filed so that they can obtain access to the document via the E-Filing system.

A person filing electronically using the agency's adjudicatory E-Filing system may seek assistance by contacting the NRC Meta System Help Desk through the "Contact Us" link located on the NRC Web site at <http://www.nrc.gov/site-help/e-submittals.html>, by e-mail at MSHD.Resource@nrc.gov, or by a toll-free call at (866) 672-7640. The NRC Meta System Help Desk is available between 8 a.m. and 8 p.m., Eastern Time, Monday through Friday, excluding government holidays.

Participants who believe that they have a good cause for not submitting documents electronically must file an exemption request, in accordance with 10 CFR 2.302(g), with their initial paper filing requesting authorization to continue to submit documents in paper format. Such filings must be submitted by: (1) First class mail addressed to the Office of the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, Attention: Rulemaking and Adjudications Staff; or (2) courier, express mail, or expedited delivery service to the Office of the Secretary, Sixteenth Floor, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852, Attention: Rulemaking and Adjudications Staff. Participants filing a document in this manner are responsible for serving the document on all other participants. Filing is considered complete by first-class mail as of the time of deposit in the mail, or by courier, express mail, or expedited delivery service upon depositing the document with the provider of the service. A presiding officer, having granted an exemption request from using E-Filing, may require a participant or party to use E-Filing if the presiding officer subsequently determines that the reason for granting the exemption from use of E-Filing no longer exists.

Documents submitted in adjudicatory proceedings will appear in NRC's electronic hearing docket which is available to the public at http://ehd.nrc.gov/EHD_Proceeding/home.asp, unless excluded pursuant to an order of the Commission or the presiding officer. Participants are requested not to include personal privacy information, such as social security numbers, home addresses, or home phone numbers in their filings, unless an NRC regulation

or other law requires submission of such information. With respect to copyrighted works, except for limited excerpts that serve the purpose of the adjudicatory filings and would constitute a Fair Use application, participants are requested not to include copyrighted materials in their submission.

Requests for a hearing and/or petitions for leave to intervene must be filed no later than 60 days from July 21, 2010. Non-timely filings will not be entertained absent a determination by the presiding officer that the petition or request should be granted or the contentions should be admitted, based on a balancing of the factors specified in 10 CFR 2.309(c)(1)(i)-(viii).

Detailed information about the license renewal process can be found at <http://www.nrc.gov/reactors/operating/licensing/renewal.html> on the NRC's Web site. Copies of the application to renew the operating license for Seabrook Station are available for public inspection at the Commission's PDR, located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland 20852, and at <http://www.nrc.gov/reactors/operating/licensing/renewal/applications/seabrook.html>, the NRC's Web site while the application is under review. The application may be accessed in ADAMS through the NRC's Public Electronic Reading Room on the Internet at <http://www.nrc.gov/reading-rm/adams.html> under ADAMS Accession Number ML101590094. As stated above, persons who do not have access to ADAMS or who encounter problems in accessing the documents located in ADAMS may contact the NRC PDR reference staff by telephone at (800) 397-4209 (or (301) 415-4737) or by e-mail to PDR.Resource@nrc.gov.

The staff has verified that a copy of the LRA is also available to local residents near the site at the Seabrook Library, 25 Liberty Street, Seabrook, NH 03874 and at the Amesbury Public Library, 149 Main Street, Amesbury, MA 01913.

Dated at Rockville, Maryland this 13th day of July, 2010.

For the Nuclear Regulatory Commission.
Brian E. Holian,

Director, Division of License Renewal, Office of Nuclear Reactor Regulation.

[FR Doc. 2010-17655 Filed 7-20-10; 8:45 am]

BILLING CODE 7590-01-P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50-373 and 50-374; NRC-2010-0254]

**Exelon Generation Company, LLC;
Notice of Consideration of Issuance of
Amendment to Facility Operating
License and Opportunity for a Hearing**

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of amendments to Facility Operating License Nos. NPF-11 and NPF-18, issued to Exelon Generation Company, LLC (the licensee), for operation of the LaSalle County Station (LSCS), Units 1 and 2, located in LaSalle County, IL.

The proposed amendment would revise license paragraph 2.B.(5) for LSCS. The proposed change will enable LSCS to possess byproduct material from Braidwood Station (Braidwood), Units 1 and 2, Byron Station (Byron), Units 1 and 2, and Clinton Power Station (Clinton), Unit 1. Specifically, the revised license paragraph would enable the licensee to store low-level radioactive waste from Braidwood, Byron, and Clinton in the LSCS Interim Radwaste Storage Facility.

Before issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act), and the Commission's regulations.

Within 60 days after the date of publication of this notice, any person(s) whose interest may be affected by this action may file a request for a hearing and a petition to intervene with respect to issuance of the amendment to the subject facility operating license. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. Interested person(s) should consult a current copy of 10 CFR 2.309, which is available at the Commission's PDR, located at One White Flint North, Room O-1 F21, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible from the Agencywide Documents Access and Management System's (ADAMS) Public Electronic Reading Room on the Internet at the NRC Web site, <http://www.nrc.gov/reading-rm/doc-collections/cfr/>. If a request for a hearing or petition for leave to intervene is filed within 60 days, the Commission or a presiding officer designated by the Commission or by the Chief Administrative Judge of the Atomic Safety and Licensing Board Panel, will

rule on the request and/or petition; and the Secretary or the Chief Administrative Judge of the Atomic Safety and Licensing Board will issue a notice of a hearing or an appropriate order.

As required by 10 CFR 2.309, a petition for leave to intervene shall set forth with particularity the interest of the requestor/petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following general requirements: (1) The name, address and telephone number of the requestor or petitioner; (2) the nature of the requestor's/petitioner's right under the Act to be made a party to the proceeding; (3) the nature and extent of the requestor's/petitioner's property, financial, or other interest in the proceeding; and (4) the possible effect of any decision or order which may be entered in the proceeding on the requestor's/petitioner's interest. The petition must also identify the specific contentions which the requestor/petitioner seeks to have litigated at the proceeding.

Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the requestor/petitioner shall provide a brief explanation of the bases for the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. The petition must include sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the requestor/petitioner to relief. A requestor/petitioner who fails to satisfy these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing.

All documents filed in NRC adjudicatory proceedings, including a

request for hearing, a petition for leave to intervene, any motion or other document filed in the proceeding prior to the submission of a request for hearing or petition to intervene, and documents filed by interested governmental entities participating under 10 CFR 2.315(c), must be filed in accordance with the NRC E-Filing rule (72 FR 49139, August 28, 2007). The E-Filing process requires participants to submit and serve all adjudicatory documents over the Internet, or in some cases to mail copies on electronic storage media. Participants may not submit paper copies of their filings unless they seek an exemption in accordance with the procedures described below.

To comply with the procedural requirements of E-Filing, at least ten (10) days prior to the filing deadline, the participant should contact the Office of the Secretary by e-mail at hearing.docket@nrc.gov, or by telephone at (301) 415-1677, to request (1) a digital ID certificate, which allows the participant (or its counsel or representative) to digitally sign documents and access the E-Submittal server for any proceeding in which it is participating; and (2) advise the Secretary that the participant will be submitting a request or petition for hearing (even in instances in which the participant, or its counsel or representative, already holds an NRC-issued digital ID certificate). Based upon this information, the Secretary will establish an electronic docket for the hearing in this proceeding if the Secretary has not already established an electronic docket.

Information about applying for a digital ID certificate is available on NRC's public Web site at <http://www.nrc.gov/site-help/e-submittals/apply-certificates.html>. System requirements for accessing the E-Submittal server are detailed in NRC's "Guidance for Electronic Submission," which is available on the agency's public Web site at <http://www.nrc.gov/site-help/e-submittals.html>. Participants may attempt to use other software not listed on the Web site, but should note that the NRC's E-Filing system does not support unlisted software, and the NRC Meta System Help Desk will not be able to offer assistance in using unlisted software.

If a participant is electronically submitting a document to the NRC in accordance with the E-Filing rule, the participant must file the document using the NRC's online, Web-based submission form. In order to serve documents through EIE, users will be required to install a Web browser plug-

in from the NRC Web site. Further information on the Web-based submission form, including the installation of the Web browser plug-in, is available on the NRC's public Web site at <http://www.nrc.gov/site-help/e-submittals.html>.

Once a participant has obtained a digital ID certificate and a docket has been created, the participant can then submit a request for hearing or petition for leave to intervene. Submissions should be in Portable Document Format (PDF) in accordance with NRC guidance available on the NRC public Web site at <http://www.nrc.gov/site-help/e-submittals.html>. A filing is considered complete at the time the documents are submitted through the NRC's E-Filing system. To be timely, an electronic filing must be submitted to the E-Filing system no later than 11:59 p.m. Eastern Time on the due date. Upon receipt of a transmission, the E-Filing system time-stamps the document and sends the submitter an e-mail notice confirming receipt of the document. The E-Filing system also distributes an e-mail notice that provides access to the document to the NRC Office of the General Counsel and any others who have advised the Office of the Secretary that they wish to participate in the proceeding, so that the filer need not serve the documents on those participants separately. Therefore, applicants and other participants (or their counsel or representative) must apply for and receive a digital ID certificate before a hearing request/petition to intervene is filed so that they can obtain access to the document via the E-Filing system.

A person filing electronically using the agency's adjudicatory E-Filing system may seek assistance by contacting the NRC Meta System Help Desk through the "Contact Us" link located on the NRC Web site at <http://www.nrc.gov/site-help/e-submittals.html>, by e-mail at MSHD.Resource@nrc.gov, or by a toll-free call at (866) 672-7640. The NRC Meta System Help Desk is available between 8 a.m. and 8 p.m., Eastern Time, Monday through Friday, excluding government holidays.

Participants who believe that they have a good cause for not submitting documents electronically must file an exemption request, in accordance with 10 CFR 2.302(g), with their initial paper filing requesting authorization to continue to submit documents in paper format. Such filings must be submitted by: (1) First class mail addressed to the Office of the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555-

0001, Attention: Rulemaking and Adjudications Staff; or (2) courier, express mail, or expedited delivery service to the Office of the Secretary, Sixteenth Floor, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852, Attention: Rulemaking and Adjudications Staff. Participants filing a document in this manner are responsible for serving the document on all other participants. Filing is considered complete by first-class mail as of the time of deposit in the mail, or by courier, express mail, or expedited delivery service upon depositing the document with the provider of the service. A presiding officer, having granted an exemption request from using E-Filing, may require a participant or party to use E-Filing if the presiding officer subsequently determines that the reason for granting the exemption from use of E-Filing no longer exists.

Documents submitted in adjudicatory proceedings will appear in NRC's electronic hearing docket which is available to the public at http://ehd.nrc.gov/EHD_Proceeding/home.asp, unless excluded pursuant to an order of the Commission, or the presiding officer. Participants are requested not to include personal privacy information, such as social security numbers, home addresses, or home phone numbers in their filings, unless an NRC regulation or other law requires submission of such information. With respect to copyrighted works, except for limited excerpts that serve the purpose of the adjudicatory filings and would constitute a Fair Use application, participants are requested not to include copyrighted materials in their submission.

Petitions for leave to intervene must be filed no later than 60 days from the date of publication of this notice. Non-timely filings will not be entertained absent a determination by the presiding officer that the petition or request should be granted or the contentions should be admitted, based on a balancing of the factors specified in 10 CFR 2.309(c)(1)(i)-(viii).

For further details with respect to this license amendment application, see the application for amendment dated January 6, 2010, which is available for public inspection at the Commission's PDR, located at One White Flint North, Room O-1 F21, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible electronically from the ADAMS Public Electronic Reading Room on the Internet at the NRC Web site, <http://www.nrc.gov/reading-rm/adams.html>. Persons who do not have

access to ADAMS or who encounter problems in accessing the documents located in ADAMS should contact the NRC PDR Reference staff by telephone at 1-800-397-4209, or 301-415-4737, or by e-mail to pdr.resource@nrc.gov.

Attorney for licensee: Mr. Bradley J. Fewell, Associate General Counsel, Exelon Nuclear, 4300 Winfield Road, Warrenville, IL 60555.

Dated at Rockville, Maryland this 12th day of July 2010.

For the Nuclear Regulatory Commission.

Cameron S. Goodwin,

Project Manager, Plant Licensing Branch III-2, Division of Operating Reactor Licensing, Office of Nuclear Reactor Regulation.

[FR Doc. 2010-17829 Filed 7-20-10; 8:45 am]

BILLING CODE 7590-01-P

NUCLEAR REGULATORY COMMISSION

[NRC-2009-0187]

Notice of Availability of Draft Environmental Impact Statement and Public Meeting for the AREVA Enrichment Services, LLC Proposed Eagle Rock Uranium Enrichment Facility

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of Availability of Draft Environmental Impact Statement.

SUMMARY: Notice is hereby given that the U.S. Nuclear Regulatory Commission (NRC) is issuing for public comment the Draft Environmental Impact Statement (EIS) for the proposed AREVA Enrichment Services LLC (AES) Eagle Rock Enrichment Facility (EREF). On December 30, 2008, AES submitted a license application to the NRC that proposes the construction, operation, and decommissioning of a gas centrifuge-based uranium enrichment facility on a presently undeveloped site near Idaho Falls in Bonneville County, Idaho (the "proposed action"). The license application included an Environmental Report (ER) regarding the proposed action.

AES subsequently submitted revisions to the license application on April 23, 2009 (Revision 1) and April 30, 2010 (Revision 2), which included ER Revision 1 and ER Revision 2, respectively. License application Revision 1 addresses the expansion of the proposed EREF to increase its production capacity from 3.3 million Separative Work Units (SWUs) per year to 6.6 million SWUs per year; and ER Revision 1 includes information on the environmental impacts of the proposed

6.6-million-SWU EREF. Revision 2 to the license application and the ER incorporates into Revision 1 additional information that was previously provided by AES to NRC in response to NRC staff Requests for Additional Information for its safety and environmental reviews, as well as supplemental information on a proposed electrical transmission line required to power the proposed EREF. On March 17, 2010, the NRC granted an exemption authorizing AES to conduct certain preconstruction activities (e.g., site preparation) on the proposed EREF site prior to issuance of the NRC license.

This Draft EIS is being issued as part of the NRC's process to decide whether to issue a license to AES, pursuant to Title 10 of the U.S. Code of Federal Regulations (10 CFR) Parts 30, 40, and 70 to build and operate the proposed uranium enrichment facility. Specifically, AES proposes to use gas centrifuge technology to enrich the uranium-235 isotope found in natural uranium to concentrations up to 5 percent by weight. The enriched uranium would be used to manufacture nuclear fuel for commercial nuclear power reactors.

The NRC staff will hold a public meeting on August 12, 2010, to present an overview of the licensing process and the contents of the Draft EIS, and to accept oral and written public comments on the Draft EIS. The meetings will take place at The Red Lion Hotel on the Falls Convention Center in Idaho Falls, Idaho. For one hour prior to the public meeting, the NRC staff will be available to informally discuss the proposed EREF project and answer questions in an "open house" format. This "open house" format provides for one-on-one discussions with the NRC staff involved with the preparation of the Draft EIS. The Draft EIS public meeting will officially begin at 7:30 p.m. The meeting will include the following agenda items: (1) A brief presentation summarizing NRC's roles and responsibilities and the licensing process, (2) a presentation summarizing the contents of the Draft EIS, and (3) an opportunity for interested government agencies, Tribal governments, organizations, and individuals to provide comments on the Draft EIS. The public meeting will be transcribed by a court reporter, and the meeting transcript will be made publicly available at a later date.

Persons wishing to provide oral comments at the public meeting may register in advance by contacting Ms. Tarsha Moon at (800) 362-5642, ext. 6745, no later than August 6, 2010. Those who wish to present comments

may also register at the meeting. Individual oral comments may have to be limited by the time available, depending upon the number of persons who register. Written comments can also be provided at the meeting, and should be given to an NRC staff person at the registration desk at the meeting entrance. If special equipment or accommodations are needed to attend or present information at the public meeting, the need should be brought to the attention of Ms. Tarsha Moon at (800) 362-5642, ext. 6745, no later than August 6, 2010, to provide NRC staff with adequate notice to determine whether the request can be accommodated. Please note that comments do not have to be provided at the public meeting and may be submitted at any time during the comment period, as described in the **DATES** section of this notice. Any interested party may submit comments on the Draft EIS for consideration by NRC staff. Comments may be submitted by any of the methods described in the **ADDRESSES** section of this notice.

DATES: The public comment period on the Draft EIS begins on the date of publication of the U.S. Environmental Protection Agency's (EPA's) **Federal Register** (FR) Notice of Filing and ends on September 13, 2010. To ensure consideration, comments on the Draft EIS and the proposed action must be received or postmarked by September 13, 2010. The NRC staff will consider comments received or postmarked after that date to the extent practical.

The NRC will conduct a public meeting in Idaho Falls, Idaho. The meeting date, time, and location are listed below:

Meeting Date: August 12, 2010.

Meeting Location: Red Lion Hotel on the Falls Convention Center, 475 River Parkway, Idaho Falls, ID 83402.

Informal Open House Session: 6:30–7:30 p.m.

Draft EIS Comment Meeting: 7:30–10 p.m.

ADDRESSES: You may submit comments by any one of the following methods. Please include Docket ID NRC–2009–0187 in the subject line of your comments.

Electronic Mail: Comments may be e-mailed to EagleRock.EIS@nrc.gov.

Federal Rulemaking Web site: Go to <http://www.regulations.gov> and search for documents filed under Docket ID NRC–2009–0187. Comments may be submitted electronically through this Web site. Address questions about NRC dockets to Carol Gallagher at 301–492–3668, or e-mail at Carol.Gallagher@nrc.gov.

Mail comments to: Cindy Bladey, Chief, Rules, Announcements and Directives Branch (RADB), Division of Administrative Services, Office of Administration, *Mail Stop:* TWB–05–B01M, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, or by fax to RADB at (301) 492–3446.

Comments submitted in writing or in electronic form will be posted on the NRC Web site and on the Federal rulemaking Web site <http://www.regulations.gov>. Unless your comments contain sensitive information typically not released to the public by NRC policy, the NRC will make all comments publically available. Because your comments will not be edited to remove any identifying information, the NRC cautions you against including any information in your submission that you do not want to be publicly disclosed.

The NRC requests that any party soliciting or aggregating comments received from other persons for submission to the NRC inform those persons that the NRC will not edit their comments to remove any identifying or contact information, and therefore, they should not include any information in their comments that they do not want publicly disclosed.

Document Availability: Publicly available documents related to this notice can be accessed using any of the methods described in this section. One appendix of the Draft EIS contains Sensitive Unclassified Non-Safeguards Information (SUNSI) and has been withheld from public inspection in accordance with 10 CFR 2.390, Availability of Public Records. This appendix contains proprietary business information as well as security-related information. The NRC staff has considered the information in this appendix in forming the conclusions presented in the publicly-available version of the document. Procedures for obtaining access to SUNSI were published in the NRC's Notice of Hearing and Commission Order (75 FR 1819).

NRC's Public Document Room (PDR): The public may examine and have copied, for a fee, publicly available documents related to the EREF project at the NRC's PDR, located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland 20852. Members of the public can contact the NRC's PDR reference staff by calling 1–800–397–4209, by faxing a request to 301–415–3548, or by e-mail to pdr.resource@nrc.gov. Hard copies of the documents are available from the PDR for a fee.

EREF Web site: Documents related to this notice are also available on the NRC's AREVA Enrichment services, LLC Gas Centrifuge Facility Web site at <http://www.nrc.gov/materials/fuel-cycle-fac/arevanc.html>.

NRC's Agencywide Documents Access and Management System (ADAMS): Members of the public can access the NRC's ADAMS at <http://www.nrc.gov/reading-rm/adams.html>. From this Web site, enter the accession numbers included here for AES's license application and ER Revision 2 (ADAMS Accession Number: ML101610549), the exemption authorizing certain preconstruction activities (ADAMS Accession Number: ML093090152), and NRC's Draft EIS (ADAMS Accession Number: ML101890384).

Federal Rulemaking Web site: Public comments and supporting materials related to this notice can be found at <http://www.regulations.gov> by searching on Docket ID: NRC-2009-0187.

The Draft EIS for the EREF also may be accessed on the Internet at <http://www.nrc.gov/reading-rm/doc-collections/nuregs/staff/> by selecting "NUREG-1945." Additionally, a copy of the Draft EIS will be available at the Idaho Falls Public Library, 457 West Broadway, Idaho Falls, ID 83402, (208) 612-8460.

FOR FURTHER INFORMATION CONTACT: For information about the Draft EIS or the environmental review process, please contact Stephen Lemont at (301) 415-5163 or Stephen.Lemont@nrc.gov. For general or technical information associated with the licensing review of the EREF application, please contact Breeda Reilly at (301) 492-3110 or Breeda.Reilly@nrc.gov.

SUPPLEMENTARY INFORMATION: The Draft EIS was prepared in response to an application submitted by AES dated December 30, 2008, and application revisions dated April 23, 2009, and April 30, 2010. The application and revisions propose the construction, operation, and decommissioning of the proposed EREF, to be located near Idaho Falls, Idaho. The Draft EIS was prepared by the NRC and its contractor, Argonne National Laboratory (Argonne), in compliance with the *National Environmental Policy Act of 1969*, as amended (NEPA), and the NRC's regulations for implementing NEPA (10 CFR Part 51).

The application AES submitted to the NRC is for a license to possess and use byproduct material, source material, and special nuclear material at a proposed gas centrifuge uranium enrichment facility near Idaho Falls, which is located 20 miles east-southeast of the

site in Bonneville County, Idaho. The proposed EREF would be located on an approximately 460-acre section of a 4200-acre undeveloped parcel of land that it intends to purchase from a single private landowner.

The Draft EIS is being issued as part of the NRC's process to decide whether to issue a license to AES, pursuant to 10 CFR Parts 30, 40, and 70. In this Draft EIS, the NRC staff has assessed the potential environmental impacts from the preconstruction, construction, operation, and decommissioning of the proposed EREF. Specifically, AES proposes to use gas centrifuge-based technology to enrich the uranium-235 isotope found in natural uranium to concentrations up to 5 percent by weight. The enriched uranium would be used to manufacture nuclear fuel for commercial nuclear power reactors.

The NRC staff published a Notice of Intent to prepare an Environmental Impact Statement for the proposed EREF and to conduct a scoping process in the **Federal Register** on May 4, 2009 (74 FR 20508). The NRC staff accepted comments through June 19, 2009. The NRC staff issued a Scoping Summary Report in September 2009 (ADAMS Accession Number: ML092540617).

The NRC staff assessed the impacts of the proposed action on land use, historical and cultural resources, visual and scenic resources, air quality, geology and soils, water resources, ecological resources, noise, transportation, public and occupational health, waste management, socioeconomic, and environmental justice. Additionally, the Draft EIS analyzes and compares the benefits and costs of the proposed action.

Based on the preliminary evaluation in the Draft EIS, the NRC environmental review staff has concluded that the environmental impacts that would result from the proposed action and associated preconstruction activities on the physical environment and human communities would mostly be small, with the exception of: (1) Moderate impacts on an historic and cultural resource associated with ground disturbance; (2) moderate impacts on visual and scenic resources due to the contrast of facility structures with the surrounding visual environment; (3) moderate impacts on vegetation and wildlife due primarily to removal of sagebrush steppe and pasture vegetation; (4) small to moderate impacts related to increased traffic density (primarily from commuting workers) on US Highway 20; and (5) short-term, moderate to large impacts associated with fugitive dust released to

the air during ground disturbing activities.

In addition to the action proposed by AES, the NRC staff considered the no-action alternative and other alternatives considered but eliminated from further analysis. Under the no-action alternative, the NRC would deny AES's request to construct and operate a uranium enrichment facility at the EREF site. The no-action alternative serves as a baseline for comparison of the potential environmental impacts of the proposed action. The alternatives considered but eliminated from further analysis include: (1) Alternative sites other than the proposed Bonneville County site; (2) alternative sources of enriched uranium; and (3) alternative technologies available for uranium enrichment. These alternatives were eliminated from further analysis due to economic, environmental, national security, technological maturity, or other reasons. The Draft EIS also discusses alternatives for the disposition of depleted uranium hexafluoride (UF₆) resulting from enrichment operations over the lifetime of the proposed EREF.

After weighing the impacts, costs, and benefits of the proposed action and comparing alternatives, the NRC staff, in accordance with 10 CFR 51.71(e), set forth its preliminary recommendation regarding the proposed action. The NRC staff preliminarily recommends that, unless safety issues mandate otherwise, the proposed action should be approved (*i.e.*, NRC should issue a license).

The Draft EIS is a preliminary analysis of the environmental impacts of the proposed action and its alternatives. The Final EIS and any decision documentation regarding the proposed action will not be issued until public comments on the Draft EIS have been received and evaluated. Comments received on the Draft EIS will be addressed in the Final EIS. Notice of the availability of the Final EIS will be published in the **Federal Register**. The Final EIS is scheduled to be issued in February 2011.

The NRC staff in the Office of Nuclear Material Safety and Safeguards, Division of Fuel Cycle Safety and Safeguards, is currently completing the safety review of AES's license application. The safety review is currently scheduled for completion in August 2010.

This Draft EIS is being issued for public comment. The public comment period on the Draft EIS begins with publication of the EPA Notice of Filing discussed earlier and continues until September 13, 2010. Written comments should be submitted as described in the **ADDRESSES** section of this notice. The NRC will consider comments received

or postmarked after that date to the extent practical.

Dated at Rockville, Maryland this 14th day of July 2010.

For the Nuclear Regulatory Commission.

Keith I. McConnell,

Deputy Director, Decommissioning and Uranium Recovery Licensing Directorate, Division of Waste Management and Environmental Protection, Office of Federal and State Materials and Environmental Management Programs.

[FR Doc. 2010-17788 Filed 7-20-10; 8:45 am]

BILLING CODE 7509-01-P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50-346; License No. NPF-3; NRC-2010-0253]

Firstenergy Nuclear Operating Company; Request for Licensing Action

Notice is hereby given that by petition dated April 5, 2010, David Lochbaum (petitioner) has requested that the Nuclear Regulatory Commission (NRC) take action with regard to Davis-Besse Nuclear Power Station, Unit 1. The petitioner requests the NRC to issue a Show Cause Order (or comparable enforcement action), to the licensee for the Davis-Besse nuclear plant in Ohio, preventing the reactor from restarting until such time that the NRC determines applicable adequate protection standards have been met and reasonable assurance exists that these standards will continue to be met after operation is resumed.

As the basis for this request, the petitioner states that the Davis-Besse licensee has repeatedly violated Federal regulations and the explicit conditions of its operating license by operating with pressure boundary leakage longer than 6 hours.

The request is being treated pursuant to Title 10 of the *Code of Federal Regulations* Section 2.206 of the Commission's regulations. The request has been referred to the Director of the Office of Nuclear Reactor Regulation. As provided by Section 2.206, appropriate action will be taken on this petition within a reasonable time. A copy of the petition is available for inspection at the

Commission's Public Document Room (PDR), located at One White Flint North, Public File Area O1 F21, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible from the Agencywide Documents Access and Management System (ADAMS) Public Electronic Reading Room on the Internet at the NRC Web site, <http://www.nrc.gov/reading-rm/adams.html>. Persons who do not have access to ADAMS or who encounter problems in accessing the documents located in ADAMS should contact the NRC PDR Reference staff by telephone at 1-800-397-4209 or 301-415-4737, or by e-mail to PDR.Resource@nrc.gov.

Dated at Rockville, Maryland, this 13th day of July 2010.

For the Nuclear Regulatory Commission.

Bruce A. Boger,

Acting Director, Office of Nuclear Reactor Regulation.

[FR Doc. 2010-17834 Filed 7-20-10; 8:45 am]

BILLING CODE 7590-01-P

RAILROAD RETIREMENT BOARD

Agency Forms Submitted for OMB Review, Request for Comments

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Railroad Retirement Board (RRB) is forwarding an Information Collection Request (ICR) to the Office of Information and Regulatory Affairs (OIRA), Office of Management and Budget (OMB) to request a revision to a currently approved collection of information: OMB 3220-0039, RUIA Applications, consisting of RRB Form(s) SI-1a, Application for Sickness Benefits; SI-1b, Statement of Sickness; SI-3, Claim for Sickness Benefits; SI-7, Supplemental Doctor's Statement; SI-8, Verification of Medical Information; ID-7h, Non-Entitlement to Sickness Benefits; ID-11a, Requesting Reason for Late Filing of Sickness Benefit; and ID-11b, Notice of Insufficient Medical and Late Filing. Completion of the forms is required to obtain or retain benefits. A minimum of one response is required of each respondent. Our ICR describes the

information we seek to collect from the public. Review and approval by OIRA ensures that we impose appropriate paperwork burdens.

The RRB invites comments on the proposed collection of information to determine (1) The practical utility of the collection; (2) the accuracy of the estimated burden of the collection; (3) ways to enhance the quality, utility and clarity of the information that is the subject of collection; and (4) ways to minimize the burden of collections on respondents, including the use of automated collection techniques or other forms of information technology. Comments to RRB or OIRA must contain the OMB control number of the ICR. For proper consideration of your comments, it is best if RRB and OIRA receive them within 30 days of publication date.

Previous Requests for Comments: The RRB has already published the initial 60-day notice (75 FR No. 59 Pages 15464 on March 29, 2010) required by 44 U.S.C. 3506(c)(2). That request elicited no comments.

Information Collection Request (ICR)

Title: Railroad Unemployment Insurance Act Applications.

OMB Control Number: 3220-0039.

Expiration date of current OMB clearance: 2/29/2012.

Form(s) submitted: SI-1a, SI-1b, SI-3, SI-3 (Internet), SI-7, SI-8, ID-7H, ID-11A, ID-11B.

Type of request: Revision of a currently approved collection.

Affected public: Individuals or households, Business or other for-profit.

Abstract: Under Section 2 of the Railroad Unemployment Insurance Act, sickness benefits are payable to qualified railroad employees who are unable to work because of illness or injury. The collection obtains information from employees and physicians needed to determine eligibility to and the amount of such benefits.

Changes Proposed: The RRB proposes the addition of an Internet equivalent SI-3 to the information collection. No other changes are proposed.

The proposed burden estimate for this ICR is as follows:

Form Nos.	Annual responses	Time (min)	Burden (hrs)
SI-1a	17,000	10	2,833
SI-1b (Doctor)	17,000	8	2,267
SI-3 (manual)	118,150	5	9,846
SI-3 (Internet)	20,850	5	1,738
SI-7	22,600	8	3,013
SI-8	50	5	4
ID-7H	50	5	4

Form Nos.	Annual responses	Time (min)	Burden (hrs)
ID-11A	800	4	53
ID-11B	1,000	4	67
Total	197,500	.....	19,825

FOR FURTHER INFORMATION CONTACT:

Copies of the form and supporting documents can be obtained from Charles Mierzwa, the agency clearance officer at (312-751-3363) or Charles.Mierzwa@rrb.gov.

Comments regarding the information collection should be addressed to Patricia Henaghan, Railroad Retirement Board, 844 North Rush Street, Chicago, Illinois, 60611-2092 or Patricia.Henaghan@rrb.gov and to the OMB Desk Officer for the RRB, at the Office of Management and Budget, Room 10230, New Executive Office Building, Washington, DC 20503.

Charles Mierzwa,
Clearance Officer.

[FR Doc. 2010-17811 Filed 7-20-10; 8:45 am]

BILLING CODE 7905-01-P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #12236 and #12237]

Wyoming Disaster #WY-00014

AGENCY: U.S. Small Business Administration.

ACTION: Notice.

SUMMARY: This is a Notice of the Presidential declaration of a major disaster for Public Assistance Only for the State of Wyoming (FEMA-1923-DR), dated 07/14/2010.

Incident: Flooding.

Incident Period: 06/04/2010 through 06/18/2010.

DATES: *Effective Date:* 07/14/2010.

Physical Loan Application Deadline Date: 09/13/2010.

Economic Injury (EIDL) Loan Application Deadline Date: 04/14/2011.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street, SW., Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: Notice is hereby given that as a result of the President's major disaster declaration on 07/14/2010, Private Non-Profit

organizations that provide essential services of governmental nature may file disaster loan applications at the address listed above or other locally announced locations.

The following areas have been determined to be adversely affected by the disaster:

Primary Counties: Fremont, and the portions of the Wind River Indian Reservation that lie within Fremont County.

The Interest Rates are:

	Percent
For Physical Damage:	
Non-Profit Organizations With Credit Available Elsewhere	3.625
Non-Profit Organizations Without Credit Available Elsewhere	3.000
For Economic Injury:	
Non-Profit Organizations Without Credit Available Elsewhere	3.000

The number assigned to this disaster for physical damage is 122366 and for economic injury is 122376.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

James E. Rivera,

Associate Administrator for Disaster Assistance.

[FR Doc. 2010-17777 Filed 7-20-10; 8:45 am]

BILLING CODE 8025-01-P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #12238 and #12239]

Nebraska Disaster #NE-00038

AGENCY: U.S. Small Business Administration.

ACTION: Notice.

SUMMARY: This is a Notice of the Presidential declaration of a major disaster for Public Assistance Only for the State of Nebraska (FEMA-1924-DR), dated 07/15/2010.

Incident: Severe Storms, Flooding, and Tornadoes.

Incident Period: 06/01/2010 and continuing.

Effective Date: 07/15/2010.

Physical Loan Application Deadline Date: 09/13/2010.

Economic Injury (EIDL) Loan

Application Deadline Date: 04/15/2011.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street, SW., Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: Notice is hereby given that as a result of the President's major disaster declaration on 07/15/2010, Private Non-Profit organizations that provide essential services of governmental nature may file disaster loan applications at the address listed above or other locally announced locations.

The following areas have been determined to be adversely affected by the disaster:

Primary Counties: Antelope, Arthur, Blaine, Boone, Boyd, Brown, Burt, Cass, Chase, Cherry, Cheyenne, Colfax, Cuming, Custer, Dodge, Douglas, Frontier, Garden, Garfield, Greeley, Harlan, Hayes, Holt, Howard, Keya Paha, Knox, Lincoln, Logan, Loup, Madison, Mcpherson, Morrill, Nance, Nemaha, Nuckolls, Otoe, Perkins, Phelps, Pierce, Platte, Richardson, Rock, Sarpy, Saunders, Sherman, Sioux, Stanton, Thomas, Valley, Washington, Wayne, Webster, Wheeler.

The Interest Rates are:

	Percent
For Physical Damage:	
Non-Profit Organizations With Credit Available Elsewhere	3.625
Non-Profit Organizations Without Credit Available Elsewhere	3.000
For Economic Injury:	
Non-Profit Organizations Without Credit Available Elsewhere	3.000

The number assigned to this disaster for physical damage is 12238B and for economic injury is 12239B.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

James E. Rivera,

Associate Administrator for Disaster Assistance.

[FR Doc. 2010-17778 Filed 7-20-10; 8:45 am]

BILLING CODE 8025-01-P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #12151 and #12152]

North Dakota Disaster Number ND-00022

AGENCY: U.S. Small Business Administration.

ACTION: Amendment 3.

SUMMARY: This is an amendment of the Presidential declaration of a major disaster for Public Assistance Only for the State of North Dakota (FEMA-1907-DR), dated 04/30/2010.

Incident: Flooding.

Incident Period: 02/26/2010 through 07/15/2010.

Effective Date: 07/15/2010.

Physical Loan Application Deadline Date: 06/29/2010.

Economic Injury (EIDL) Loan Application Deadline Date: 01/31/2011.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing And Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street, SW., Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: The notice of the President's major disaster declaration for Private Non-Profit organizations in the State of NORTH DAKOTA, dated 04/30/2010, is hereby amended to establish the incident period for this disaster as beginning 02/26/2010 and continuing through 07/15/2010.

All other information in the original declaration remains unchanged. (Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

James E. Rivera,

Associate Administrator for Disaster Assistance.

[FR Doc. 2010-17780 Filed 7-20-10; 8:45 am]

BILLING CODE 8025-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-62502; File No. SR-NYSEArca-2010-57]

Self-Regulatory Organizations; NYSE Arca, Inc.; Order Granting Accelerated Approval of Proposed Rule Change Regarding Listing and Trading Shares of AdvisorShares WCM/BNY Mellon Focused Growth ADR ETF

July 15, 2010.

On June 16, 2010, NYSE Arca, Inc. ("NYSE Arca" or "Exchange"), through its wholly owned subsidiary, NYSE Arca Equities, Inc. ("NYSE Arca Equities"), 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 list and trade shares ("Shares") of the AdvisorShares WCM/BNY Mellon Focused Growth ADR ETF (the "Fund") under NYSE Arca Equities Rule 8.600 (Managed Fund Shares). The proposed rule change was published in the **Federal Register** on June 29, 2010.³ The Commission received no comments on the proposal. This order approves the proposed rule change on an accelerated basis.

I. Description of the Proposal

The Exchange proposes to list and trade the Shares pursuant to NYSE Arca Equities Rule 8.600, which governs the listing of Managed Fund Shares. The Shares will be offered by AdvisorShares Trust (the "Trust"), a statutory trust organized under the laws of the State of Delaware and registered with the Commission as an open-end management investment company.⁴ The investment advisor to the ADR Fund is AdvisorShares Investments, LLC (the "Advisor"). WCM Investment Management ("WCM") is the sub-advisor ("Sub-Advisor") to the ADR Fund and the portfolio manager.⁵ The Sub-Advisor selects securities for the Fund

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Securities Exchange Act Release No. 62344 (June 21, 2010), 75 FR 37498 ("Notice").

⁴ The Trust is registered under the 1940 Act. On April 23, 2010, the Trust filed with the Commission Post-Effective Amendment No. 5 to Form N-1A under the Securities Act of 1933 (15 U.S.C. 77a), and under the 1940 Act relating to the Fund (File Nos. 333-157876 and 811-22110) (the "Registration Statement"). The Trust has also filed an Amended Application for an Order under Section 6(c) of the 1940 Act for exemptions from various provisions of the 1940 Act and rules thereunder (File No. 812-13677 dated May 14, 2010) ("Exemptive Application").

⁵ The Exchange has represented that neither the Advisor nor the Sub-Advisor is affiliated with a broker-dealer.

in which to invest pursuant to an "active" management strategy for security selection and portfolio construction. The Fund's investment objective is long-term capital appreciation above international benchmarks such as the BNY Mellon Classic ADR Index, the Fund's primary benchmark, and the MSCI EAFE Index, the Fund's secondary benchmark. WCM seeks to achieve the Fund's investment objective by selecting a portfolio of U.S. traded securities of non-U.S. organizations included in the BNY Mellon Classic ADR Index. The BNY Mellon Classic ADR Index predominantly includes American Depositary Receipts ("ADRs") and in addition includes other Depositary Receipts ("DRs"), which include Global Depositary Receipts ("GDRs"), Euro Depositary Receipts ("Euro DRs") and New York Shares ("NYSS").⁶

The Exchange states that the Shares will conform to the initial and continued listing criteria under NYSE Arca Equities Rule 8.600 applicable to Managed Fund Shares⁷ and that the Shares will comply with Rule 10A-3 under the Act,⁸ as provided by NYSE Arca Equities Rule 5.3. Additionally, among other things, the composition of the Fund's portfolio, on a continual basis, will be subject to the following: component stocks that in the aggregate account for at least 90% of the weight of the Fund's portfolio each shall have a minimum global market value of at least \$100 million; component stocks that in the aggregate account for at least 70% of the weight of the Fund's portfolio each shall have a minimum global monthly trading volume of 250,000 shares, or minimum global notional volume traded per month of \$25,000,000, averaged over the last six months; a minimum of 20 component stocks of which the most heavily weighted component stock shall not

⁶ According to the Registration Statement, DRs, which include ADRs, GDRs, Euro DRs and NYSSs, are negotiable securities that generally represent a non-U.S. company's publicly traded equity or debt. Depositary Receipts may be purchased in the U.S. secondary trading market. They may trade freely, just like any other security, either on an exchange or in the over-the-counter market. Although typically denominated in U.S. dollars, Depositary Receipts can also be denominated in Euros. Depositary Receipts can trade on all U.S. stock exchanges as well as on many European stock exchanges.

⁷ The Exchange states that a minimum of 100,000 Shares will be outstanding at the commencement of trading on the Exchange, and the Exchange will obtain a representation from the issuer of the Shares that the net asset value ("NAV") per Share will be calculated daily and that the NAV and the Disclosed Portfolio will be made available to all market participants at the same time. See Notice, *supra* note 3.

⁸ 17 CFR 240.10A-3.

exceed 25% of the weight of the portfolio, and the five most heavily weighted component stocks shall not exceed 60% of the weight of the portfolio; and each non-U.S. equity security underlying ADRs held by the Fund will be listed and traded on an exchange that has last-sale reporting. Additional information regarding the Trust, the Fund, the Shares, the Fund's investment objectives, strategies, policies, and restrictions, risks, fees and expenses, creation and redemption procedures, portfolio holdings and policies, distributions and taxes, availability of information, trading rules and halts, and surveillance procedures, among other things, can be found in the Notice and Registration Statement, as applicable.⁹

II. Discussion and Commission's Findings

The Commission has carefully reviewed the proposed rule change and finds that it is consistent with the requirements of Section 6 of the Act¹⁰ and the rules and regulations thereunder applicable to a national securities exchange.¹¹ In particular, the Commission finds that the proposal is consistent with Section 6(b)(5) of the Act,¹² which requires, among other things, that the Exchange's rules be 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. The Commission notes that the Shares must comply with the requirements of NYSE Arca Equities Rule 8.600 to be listed and traded on the Exchange.

The Commission finds that the proposal to list and trade the Shares on the Exchange is consistent with Section 11A(a)(1)(C)(iii) of the Act,¹³ which sets forth Congress' finding that it is in the public interest and appropriate for the protection of investors and the maintenance of fair and orderly markets to assure the availability to brokers, dealers, and investors of information with respect to quotations for and transactions in securities. Quotation and last-sale information for the Shares will be available via the Consolidated Tape Association high-speed line, and the Portfolio Indicative Value ("PIV") will

be updated and disseminated by one or more major market data vendors at least every 15 seconds during the Core Trading Session. In addition, the Fund will make available on its Web site on each business day, before the commencement of trading in Shares in the Core Trading Session, the Disclosed Portfolio that will form the basis for the calculation of the NAV, which will be determined at the end of the business day.¹⁴ The Fund's Web site will also include additional quantitative information updated on a daily basis relating to daily trading volume, the prior business day's reported NAV, midpoint of the bid/ask spread at the time of calculation of such NAV (the "Bid/Ask Price"),¹⁵ and a calculation of the premium and discount of the Bid/Ask Price against the NAV and 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. Information regarding the market price and volume of the Shares will be continually available on a real-time basis throughout the day on brokers' computer screens and other electronic services, and the previous day's closing price and trading volume information for the Shares will be published daily in the financial sections of newspapers.

The Commission further believes that the proposal is reasonably designed to promote fair disclosure of information that may be necessary to price the Shares appropriately and to prevent trading when a reasonable degree of transparency cannot be assured. The Commission notes that the Exchange will obtain a representation from the issuer that the NAV per Share will be calculated daily and that the NAV and the Disclosed Portfolio will be made available to all market participants at the same time.¹⁶ Additionally, if it becomes aware that the NAV or the Disclosed Portfolio is not disseminated daily to all market participants at the same time, the Exchange will halt trading in the Shares until such information is available to all market

participants.¹⁷ Further, if the PIV is not being disseminated as required, the Exchange may halt trading during the day in which the disruption occurs; if the interruption persists past the day in which it occurred, the Exchange will halt trading no later than the beginning of the trading day following the interruption.¹⁸ The Exchange represents that neither the Advisor nor the Sub-Advisor is affiliated with a broker-dealer. However, the Commission notes that the Reporting Authority that provides the Disclosed Portfolio must implement and maintain, or be subject to, procedures designed to prevent the use and dissemination of material non-public information regarding the actual components of each of the portfolios.¹⁹

The Exchange has deemed the Shares to be equity securities subject to the Exchange's rules governing the trading of equity securities. In support of this proposal, the Exchange has made representations, including:

(1) The Shares will conform to the initial and continued listing criteria under NYSE Arca Equities Rule 8.600.

(2) The Exchange's surveillance procedures are adequate to properly monitor Exchange trading of the Shares in all trading sessions and to deter and detect violations of Exchange rules and applicable Federal securities laws.

(3) Prior to the commencement of trading, the Exchange will inform its ETP Holders in an Information Bulletin of the special characteristics and risks associated with trading the Shares. Specifically, the Information Bulletin will discuss the following: (a) The procedures for purchases and redemptions of Shares in Creation Unit aggregations and that Shares are not individually redeemable; (b) NYSE Arca Equities Rule 9.2(a), which imposes a duty of due diligence on its ETP Holders to learn the essential facts relating to every customer prior to trading the Shares; (c) the risks involved in trading the Shares during the Opening and Late Trading Sessions when an updated PIV will not be calculated or publicly disseminated; (d) how information regarding the PIV is disseminated; (e) the requirement that ETP Holders deliver a prospectus to investors purchasing newly issued Shares prior to

¹⁴ Under accounting procedures followed by the Fund, trades made on the prior business day ("T") will be booked and reflected in NAV on the current business day ("T+1"). Accordingly, the Fund will be able to disclose at the beginning of the business day the portfolio that will form the basis for the NAV calculation at the end of the business day.

¹⁵ The Bid/Ask Price of the Fund is determined using the midpoint of the highest bid and the lowest offer on the Exchange as of the time of calculation of the NAV. The records relating to Bid/Ask Prices will be retained by the Fund and its service providers.

¹⁶ See NYSE Arca Equities Rule 8.600(d)(1)(B).

¹⁷ See NYSE Arca Equities Rule 8.600(d)(2)(D).

¹⁸ *Id.* Trading in the Shares may also be halted because of market conditions or for reasons that, in the view of the Exchange, make trading in the Shares inadvisable. These may include: (1) The extent to which trading is not occurring in the securities comprising the Disclosed Portfolio and/or the financial instruments of the Fund; or (2) whether other unusual conditions or circumstances detrimental to the maintenance of a fair and orderly market are present.

¹⁹ See NYSE Arca Equities Rule 8.600(d)(2)(B)(ii).

⁹ See *supra* notes 3 and 4.

¹⁰ 15 U.S.C. 78f.

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 17 U.S.C. 78f(b)(5).

¹³ 15 U.S.C. 78k-1(a)(1)(C)(iii).

or concurrently with the confirmation of a transaction; and (f) trading information.

(4) The Funds will be in compliance with Rule 10A-3 under the Act.

(5) The Funds will not invest in non-U.S. equity securities outside of U.S. markets. This approval order is based on the Exchange's representations.

For the foregoing reasons, the Commission finds that the proposed rule change is consistent with the Act and the rules and regulations thereunder applicable to a national securities exchange.

III. Accelerated Approval

The Commission finds good cause, pursuant to Section 19(b)(2) of the Act,²⁰ for approving the proposal prior to the thirtieth day after the date of publication of the Notice in the **Federal Register**. The Commission notes that it has approved the listing and trading on the Exchange of shares of other actively managed exchange-traded funds based on a portfolio of securities, the characteristics of which are similar to those to be invested by the Fund.²¹ The Commission also notes that it has not received any comments regarding this proposal, nor did it receive any comments on a previously filed proposed rule change relating to the Fund.²² The Commission believes that the proposal to list and trade the Shares of the Fund do not raise any novel regulatory issues and accelerating approval of this proposal should benefit investors by creating, without undue delay, additional competition in the market for Managed Fund Shares.

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,²³ that the proposed rule change (SR-NYSEArca-2010-57), be, and it hereby is, approved on an accelerated basis.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.²⁴

Florence E. Harmon,

Deputy Secretary.

[FR Doc. 2010-17749 Filed 7-20-10; 8:45 am]

BILLING CODE 8010-01-P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

[Docket No. DOT-OST-2010-0102]

Request for Renewal of a Previously Approved Information Collection

ACTION: Notice and request for approval.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Request (ICR) abstracted below is being forwarded to the Office of Management and Budget (OMB) for review and comments. A **Federal Register** Notice with a 60-day comment period soliciting comments on the following information collection was published on April 30, 2010 (FR 75, page 22890). No comments were received.

DATES: Comments must be submitted on or before August 20, 2010.

FOR FURTHER INFORMATION CONTACT:

Gregory Frazier, Office of the Resource Directorate, Office of the Secretary, U.S. Department of Transportation, 1200 New Jersey Ave., SE., Washington, DC 20590, (202) 366-0473.

SUPPLEMENTARY INFORMATION:

Title: Air Carrier's Claim for Subsidy.

OMB Control Number: 2106-0044.

Type of Request: Renewal of a currently approved information collection.

Abstract: In accordance with 14 CFR 271 of its Aviation Economic Regulations, the Department provides subsidy to air carriers for providing essential air service in small rural communities. Funding is paid to air carriers monthly and those payments will vary according to the actual amount of service performed during the month. The report of subsidized air carriers of essential air service performed on the Department's Form 398 "Air Carrier's Claim for Subsidy," establishes the fundamental basis for paying these air carriers on a timely basis. Typically, subsidized air carriers are small businesses and operate only aircraft of limited size over a limited geographical area. The collection permits subsidized

air carriers to submit their monthly claims in a concise, orderly, easy-to-process form, without having to devise their own means of submitting support for these claims.

Affected Public: Small air carriers selected by the Department in docketed cases to provide subsidized essential air service.

Estimated Number of Respondents: 24.

Estimated Number of Responses: 1,560.

Annual Estimated Total Annual Burden Hours: 5,413.

Frequency of Collection: Monthly.

ADDRESSES: Send comments regarding the burden estimate, including suggestions for reducing the burden, to the Office of Management and Budget, *Attention:* Desk Officer for the Office of the Secretary of Transportation, 725 17th Street, NW., Washington, DC 20503.

Comments are invited on: whether the proposed collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; the accuracy of the Department's estimate of the burden of the proposed information collection; ways to enhance the quality, utility and clarity of the information to be collected; and ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

Authority: The Paperwork Reduction Act of 1995; 44 U.S.C. Chapter 35, as amended; and 49 CFR 1:48.

Issued in Washington, DC on July 14, 2010.

John DiLuccio,

Director, Resource Directorate.

[FR Doc. 2010-17764 Filed 7-20-10; 8:45 am]

BILLING CODE 4910-62-P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Notice of Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed Under Subpart B (Formerly Subpart Q) During the Week Ending July 10, 2010

The following Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits were filed under Subpart B (formerly Subpart Q) of the Department of Transportation's Procedural Regulations (See 14 CFR 301.201 *et seq.*). The due date for Answers, Conforming Applications, or Motions to Modify Scope are set forth below for

²⁰ 15 U.S.C. 78s(b)(2).

²¹ See, e.g., Securities Exchange Act Release Nos. 61365 (January 15, 2010), 75 FR 4124 (January 26, 2010) (SR-NYSEArca-2009-114) (approving the listing and trading of shares of two actively managed funds of the Grail Advisors ETF Trust) and 60975 (November 10, 2009), 74 FR 59590 (November 18, 2009) (SR-NYSEArca-2009-83) (approving the listing and trading of shares of the Grail American Beacon International Equity ETF).

²² The Exchange previously filed a proposed rule change relating to listing on the Exchange of the AdvisorShares WCM/BNY Mellon Focused Growth ADR ETF in File No. SR-NYSEArca-2010-07. See Securities Exchange Act Release No. 61642 (March 3, 2010), 75 FR 11216 (March 10, 2010). No comments were received on the proposal. The Exchange withdrew the proposed rule change on April 9, 2010. See Securities Exchange Act Release No. 61953 (April 21, 2010), 75 FR 22169 (April 27, 2010).

²³ 15 U.S.C. 78s(b)(2).

²⁴ 17 CFR 200.30-3(a)(12).

each application. Following the Answer period DOT may process the application by expedited procedures. Such procedures may consist of the adoption of a show-cause order, a tentative order, or in appropriate cases a final order without further proceedings.

Docket Number: DOT-OST-2010-0181.

Date Filed: July 9, 2010.

Due Date for Answers, Conforming Applications, or Motion to Modify Scope: July 30, 2010.

Description: Application of National Air Cargo Group, Inc. d/b/a National Airlines requesting an amended certificate of public convenience and necessity, authorizing it to conduct interstate and foreign charter air transportation of persons, property and mail with large aircraft.

Renee V. Wright,

*Program Manager, Docket Operations,
Federal Register Liaison.*

[FR Doc. 2010-17768 Filed 7-20-10; 8:45 am]

BILLING CODE 4910-9X-P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

[DOT Docket No. DOT-OST-2010-0074]

The Future of Aviation Advisory Committee (FAAC) Subcommittee on Competitiveness and Viability; Notice of Meeting

AGENCY: U.S. Department of Transportation, Office of the Secretary of Transportation.

ACTION: Notice of Meeting.

SUMMARY: The Department of Transportation (DOT), Office of the Secretary of Transportation, announces the second meeting of the FAAC Subcommittee on Competitiveness and Viability, which will be held in Chicago, Illinois. This notice provides details on the date, time, and location of the meeting, which will be open to the public. The purpose of the FAAC is to provide advice and recommendations to the Secretary of Transportation to ensure the competitiveness of the U.S. aviation industry and its capability to manage effectively the evolving transportation needs, challenges, and opportunities of the global economy. The Subcommittee on Competitiveness and Viability is charged with examining changes in the operating and competitive structures of the U.S. airline industry; considering innovative strategies to open up new international markets and expand commercial opportunities in existing markets;

investigating strategies to encourage the development of cost-effective, cutting-edge technologies and equipment that are critical for a competitive industry coping with increasing economic and environmental challenges; and examining the adequacy of current Federal programs to address the availability of intermodal transportation options and alternatives, small and rural community access to the aviation transportation system, the role of State and local governments in contributing to such access, and how the changing competitive structure of the U.S. airline industry is likely to transform travel habits of small and rural communities.

DATES: The Subcommittee on Competitiveness and Viability meeting will be held on August 4, 2010, from 12:45 p.m. to 5 p.m.

ADDRESSES: The meeting will be held at the corporate headquarters of United Airlines, 77 West Wacker Drive, Chicago, Illinois 60601.

Public Access: The meeting is open to the public. (See below for registration instructions.)

Public Comments: Persons wishing to offer written comments and suggestions concerning the activities of the advisory committee or subcommittee should file comments in the Public Docket (Docket Number DOT-OST-2010-0074 at <http://www.regulations.gov>) or alternatively through e-mail at FAAC@dot.gov. If comments and suggestions are intended specifically for the Subcommittee on Competitiveness and Viability, the term "Competitiveness" should be listed in the subject line of the message. To ensure such comments can be considered by the subcommittee before its August 4, 2010, meeting, public comments must be filed by 5 p.m. Eastern Daylight time Wednesday, July 28, 2010.

SUPPLEMENTARY INFORMATION:

Agenda

Under section 10(a)(2) of the Federal Advisory Committee Act (5 U.S.C. App. 2), we are giving notice of a meeting of the Subcommittee on Competitiveness and Viability of the Future of Aviation Advisory Committee taking place on August 4, 2010, at 12:45 p.m., at 77 West Wacker Drive, Chicago, Illinois 60601. The agenda includes—

1. Reports from subcommittee members on assigned topics,
2. Further discussion of topics offered by subcommittee members for referral to the full committee on the subject of competitiveness and viability of the aviation industry, and
3. Identification of priority issues for the third subcommittee meeting.

Registration

The meeting room can accommodate up to 25 members of the public. Persons desiring to attend must pre-register by July 28, 2010, through e-mail to FAAC@dot.gov. The term "Registration: Competitiveness" should be listed in the subject line of the message, and admission will be limited to the first 25 persons to pre-register and receive a confirmation of their pre-registration. No arrangements are being made for audio or video transmission or for oral statements or questions from the public at the meeting. Minutes of the meeting will be taken and will be made available to the public.

Request for Special Accommodation

The DOT is committed to providing equal access to this meeting for all participants. If you need alternative formats or services because of a disability, please send a request to FAAC@dot.gov with the term "Special Accommodations" listed in the subject line of the message by close of business Wednesday, July 28, 2010.

FOR FURTHER INFORMATION CONTACT:

Todd Homan, Director, Office of Aviation Analysis, U.S. Department of Transportation; Room 86W-312, 1200 New Jersey Avenue, SE., Washington, DC 20590; (202) 366-5903.

Issued in Washington, DC, on July 16, 2010.

Pamela Hamilton-Powell,

Designated Federal Official, Future of Aviation Advisory Committee.

[FR Doc. 2010-17824 Filed 7-20-10; 8:45 am]

BILLING CODE P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary of Transportation

[DOT Docket No. DOT-OST-2010-0074]

The Future of Aviation Advisory Committee (FAAC) Subcommittee on Labor and World-Class Workforce; Notice of Meeting

AGENCY: Office of the Secretary of Transportation, Department of Transportation.

ACTION: The Future of Aviation Advisory Committee (FAAC) Subcommittee on Labor and World-Class Workforce; Notice of meeting.

SUMMARY: The Department of Transportation (DOT), Office of the Secretary of Transportation, announces a meeting of the FAAC Subcommittee on Labor and World-Class Workforce, which will be held via teleconference at

(877) 336-1839, participant code 9757062. This notice announces the date, time, and location of the meeting, which will be open to the public. The purpose of the FAAC is to provide advice and recommendations to the Secretary of Transportation to ensure the competitiveness of the U.S. aviation industry and its capability to manage effectively the evolving transportation needs, challenges, and opportunities of the global economy. The Subcommittee is charged with ensuring the availability and quality of a workforce necessary to support a robust, expanding commercial aviation industry in light of the changing socioeconomic dynamics of the world's technologically advanced economies. Among other matters, the subcommittee will examine certain issues affecting the future employment requirements of the aviation industry: (1) The need for science, technology, engineering and math (STEM) skills in the industry; (2) the creation of a culture of dignity and respect in the workplace; and (3) the impact of Next Generation Air Transportation System on various aviation workforces; and (4) identifying labor and workforce subject-matter experts who could brief the subcommittee and the FAAC at its August 25, 2010 meeting in Chicago, Illinois.

DATES: The meeting will be held on August 6, 2010, from 1 p.m. to 4 p.m. Eastern Daylight time.

ADDRESSES: The Labor/World-Class Workforce Subcommittee meeting will be held via teleconference at (877) 336-1839, participant code 9757062.

Public Access: The meeting is open to the public. (See below for registration instructions.)

Public Comments: Persons wishing to offer written comments and suggestions concerning the activities of the FAAC or Labor/World-Class Workforce Subcommittee should file comments in the Public Docket (Docket Number DOT-OST-2010-0074 at <http://www.regulations.gov>) or alternatively through the FAAC@dot.gov e-mail. If comments and suggestions are intended specifically for the Subcommittee on Labor and World-Class Workforce, the term "Labor/Workforce" should be listed in the subject line of the message. To ensure such comments can be considered by the subcommittee before its August 6, 2010, meeting, public comments must be filed by 5 p.m. Eastern Daylight time on Friday, July 30, 2010.

SUPPLEMENTARY INFORMATION:

Background

Under section 10(a)(2) of the Federal Advisory Committee Act (5 U.S.C. App. 2), we are giving notice of a virtual meeting via teleconference of the FAAC Subcommittee on Labor and World-Class Workforce taking place on August 6, 2010, from 1 p.m. to 4 p.m. Eastern Daylight time, via teleconference at (877) 336-1839, participant code 9757062. Background information may be found at the FAAC Web site, located at <http://www.dot.gov/faac/>. The agenda includes—

1. Discussion of topics offered by subcommittee members on the subject of labor and improving the workforce of the aviation industry.
2. Establishment of a plan and timeline for further subcommittee work.
3. Assignment of research projects to subcommittee members.
4. Identification of priority issues for the third subcommittee meeting.
5. Identification of subject matter experts who could brief the Subcommittee and the FAAC at its next meeting.

Registration

The telephone conference can accommodate up to 100 members of the public. Persons desiring to listen to the discussion must pre-register through e-mail to FAAC@dot.gov. The term "Registration: Labor/Workforce" must be listed in the subject line of the message, and access will be limited to the first 100 persons to pre-register and receive a confirmation of their pre-registration. No arrangements are being made for audio or video transmission or for oral statements or questions from the public during the meeting. Minutes of the meeting will be taken and will be posted on the FAAC Web site at <http://www.dot.gov/faac/>.

Request for Special Accommodation

The DOT is committed to providing equal access to this meeting for all participants. If you need alternative formats or services because of a disability, please send a request to FAAC@dot.gov with the term "Special Accommodations" listed in the subject line of the message by close of business on Friday, July 30, 2010.

FOR FURTHER INFORMATION CONTACT: Terri L. Williams, Director, Center for Organizational Excellence, Assistant Administrator for Human Resources, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; (202) 267-3456, extension 7472; or Regis P. Milan, Associate Director, Office of Aviation Analysis, U.S. Department of

Transportation; Room 86W309, 1200 New Jersey Avenue, SE., Washington, DC 20590; (202) 366-2349.

Issued in Washington, DC, on July 16, 2010.

Pamela Hamilton-Powell,

Designated Federal Official, Future of Aviation Advisory Committee.

[FR Doc. 2010-17825 Filed 7-20-10; 8:45 am]

BILLING CODE P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA-2010-0193]

Agency Information Collection Activities; Revision of a Currently-Approved Information Collection Request: Transportation of Household Goods; Consumer Protection

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (PRA), FMCSA announces its plan to submit the Information Collection Request (ICR) described below to the Office of Management and Budget (OMB) for its review and approval. The FMCSA requests approval to revise and extend an information collection request (ICR) entitled, "Transportation of Household Goods; Consumer Protection." The information collected will be used to help regulate motor carriers transporting household goods for individual shippers.

DATES: Please send your comments by August 20, 2010. OMB must receive your comments by this date in order to act quickly on the ICR.

ADDRESSES: All comments should reference Federal Docket Management System (FDMS) Docket Number FMCSA-2010-0193. Interested persons are invited to submit written comments on the proposed information collection to the Office of Information and Regulatory Affairs, Office of Management and Budget. Comments should be addressed to the attention of the Desk Officer, Department of Transportation/Office of the Secretary, and sent via electronic mail to <http://www.regulations.gov> or faxed to (202) 395-7245, or mailed to the Office of Information and Regulatory Affairs, Office of Management and Budget, Docket Library, Room 10102, 725 17th Street, NW., Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Mr. James R. Dubose, Commercial Enforcement Division, Federal Motor Carrier Safety Administration, West Building 6th Floor, 1200 New Jersey Avenue, SE., Washington, DC 20590. Telephone: 215-656-7251; e-mail james.dubose@dot.gov.

SUPPLEMENTARY INFORMATION: *Title:* Transportation of Household Goods; Consumer Protection.

OMB Control Number: 2126-0025.

Type of Request: Revision of a currently-approved information collection.

Respondents: 6,000 household goods movers.

Estimated Time per Response: Varies from 5 minutes to display assigned U.S. DOT number in created advertisement to 12.5 minutes to distribute consumer publication.

Expiration Date: October 31, 2010.

Frequency of Response: On occasion.

Estimated Total Annual Burden: 5,556,000 hours [Informational documents provided to prospective shippers 75,400 hours + Written Cost estimates for prospective shippers 4,620,000 hours + Service orders, bills of lading 805,300 hours + In-transit service notifications 22,600 hours + complaint and inquiry records, including establishing records system 32,700 hours = 5,556,000].

Background: The Motor Carrier Safety Improvement Act of 1999 (Public Law 106-159, 113 Stat. 1749, December 9, 1999) (MCSIA) authorized the Secretary of Transportation to regulate household goods carriers engaged in interstate operations for individual shippers. In earlier legislation, Congress abolished the Interstate Commerce Commission and transferred the Commission's jurisdiction over household goods transportation to the U.S. Department of Transportation (DOT) (ICC Termination Act of 1995, Public Law 104-88). Prior to FMCSA's establishment, the Secretary delegated this household goods jurisdiction to the Federal Highway Administration, FMCSA's predecessor organization within DOT.

Sections 4202 through 4216 of the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (Pub. L. 109-59, 119 Stat. 1144, Aug. 10, 2005) (SAFETEA-LU) amended various provisions of existing law regarding household goods transportation. It specifically addressed: Definitions (section 4202); payment of rates (section 4203); registration requirements for household goods motor carriers (section 4204); carrier operations (section 4205); enforcement of regulations (section 4206); liability of

carriers under receipts and bills of lading (section 4207); arbitration requirements (section 4208); civil penalties for brokers and unauthorized transportation (section 4209); penalties for holding goods hostage (section 4210); consumer handbook (section 4211); release of broker information (section 4212); working group for Federal-State relations (section 4213); consumer complaint information (section 4214); review of liability of carriers (section 4215); and application of State laws (section 4216). The FMCSA regulations that set forth Federal requirements for movers that provide interstate transportation of household goods are found in 49 CFR part 375, "Transportation of Household Goods; Consumer Protection Regulation." On May 10, 2010, FMCSA published a **Federal Register** notice (75 FR 25912) allowing for a 60-day comment period on the revision of this ICR. No comments were received in response to the notice.

Public Comments Invited

You are asked to comment on any aspect of this information collection, including: (1) Whether the proposed collection is necessary for the performance of FMCSA's functions; (2) the accuracy of the estimated burden; (3) ways for FMCSA to enhance the quality, usefulness, and clarity of the collected information; and (4) ways that the burden could be minimized without reducing the quality of the collected information. The Agency will summarize or include your comments in the request for OMB's clearance of this information collection.

Issued on: July 13, 2010.

Kelly Leone,

Office Director, Office of Information Technology.

[FR Doc. 2010-17746 Filed 7-20-10; 8:45 am]

BILLING CODE 4910-EX-P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

Petition for Waiver of Compliance

In accordance with Part 211 of Title 49 Code of Federal Regulations (CFR), notice is hereby given that the Federal Railroad Administration (FRA) has received a request for a waiver of compliance from certain requirements of its safety standards. The individual petition is described below, including the party seeking relief, the regulatory provisions involved, the nature of the relief being requested, and the petitioner's arguments in favor of relief.

Great Lakes Central Railroad (Waiver Petition Docket Number FRA-2010-0094)

The Great Lakes Central Railroad (GLC) seeks a waiver of compliance from certain provisions of the Passenger Equipment Safety Standards, 49 CFR 238.103(a)(1), which requires that "Materials used in constructing a passenger car or a cab of a locomotive ordered on or after September 8, 2000, or placed in service for the first time on or after September 9, 2002, shall meet the test performance criteria for flammability and smoke emission characteristics as specified in Appendix B to this part."

GLC states that it is installing new seats in its Budd-built commuter cars. The armrest cover material is made of urethane which, when burned, emits smoke and, therefore, not complying with the aforementioned standard. GLC states that the armrest is attached to a metal riser, which is attached to the metal seat frame. The seat, frame and the flooring all meet the requirement of 49 CFR 238.103(a)(1). The armrest is separated by metal from other vehicle parts, and there are no combustible materials within four feet of the armrest. It is unlikely that this armrest could contribute to flame or smoke unless there is a major fire. GLC provided a diagram and photograph of the armrest which are included in the docket.

Interested parties are invited to participate in these proceedings by submitting written views, data, or comments. FRA does not anticipate scheduling a public hearing in connection with these proceedings since the facts do not appear to warrant a hearing. If any interested party desires an opportunity for oral comment, they should notify FRA, in writing, before the end of the comment period and specify the basis for their request.

All communications concerning these proceedings should identify the appropriate docket number (e.g., Waiver Petition Docket Number FRA-2010-0094) and may be submitted by any of the following methods:

- *Web site:* <http://www.regulations.gov>. Follow the online instructions for submitting comments.
- *Fax:* 202-493-2251.
- *Mail:* Docket Operations Facility, U.S. Department of Transportation, 1200 New Jersey Avenue, SE., W12-140, Washington, DC 20590.
- *Hand Delivery:* 1200 New Jersey Avenue, SE., Room W12-140, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Communications received within 45 days of the date of this notice will be

considered by FRA before final action is taken. Comments received after that date will be considered as far as practicable. All written communications concerning these proceedings are available for examination during regular business hours (9 a.m.–5 p.m.) at the above facility. All documents in the public docket are also available for inspection and copying on the Internet at the docket facility's Web site at <http://www.regulations.gov>.

Anyone is able to search the electronic form of any written communications and comments received into any of our dockets by the name of the individual submitting the document (or signing the document, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Page 19477) or at <http://www.dot.gov/privacy.html>.

Issued in Washington, DC, on July 14, 2010.

Robert C. Lauby,

Deputy Associate Administrator for Regulatory and Legislative Operations.

[FR Doc. 2010–17741 Filed 7–20–10; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2010–0188]

Qualification of Drivers; Exemption Applications; Diabetes Mellitus

AGENCY: Federal Motor Carrier Safety Administration (FMCSA).

ACTION: Notice of applications for exemption from the diabetes mellitus standard; request for comments.

SUMMARY: FMCSA announces receipt of applications from 21 individuals for exemption from the prohibition against persons with insulin-treated diabetes mellitus (ITDM) operating commercial motor vehicles (CMVs) in interstate commerce. If granted, the exemptions would enable these individuals with ITDM to operate CMVs in interstate commerce.

DATES: Comments must be received on or before August 20, 2010.

ADDRESSES: You may submit comments bearing the Federal Docket Management System (FDMS) Docket No. FMCSA–2010–0188 using any of the following methods:

- *Federal eRulemaking Portal:* Go to <http://www.regulations.gov>. Follow the

on-line instructions for submitting comments.

- *Mail:* Docket Management Facility; U.S. Department of Transportation, 1200 New Jersey Avenue, SE., West Building Ground Floor, Room W12–140, Washington, DC 20590–0001.

- *Hand Delivery:* West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays.

- *Fax:* 1–202–493–2251.

Instructions: Each submission must include the Agency name and the docket numbers for this Notice. Note that all comments received will be posted without change to <http://www.regulations.gov>, including any personal information provided. Please see the Privacy Act heading below for further information.

Docket: For access to the docket to read background documents or comments, go to <http://www.regulations.gov> at any time or Room W12–140 on the ground level of the West Building, 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The FDMS is available 24 hours each day, 365 days each year. If you want acknowledgment that we received your comments, please include a self-addressed, stamped envelope or postcard or print the acknowledgement page that appears after submitting comments on-line.

Privacy Act: Anyone may search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or of the person signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review the DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19476). This information is also available at <http://www.regulations.gov>.

FOR FURTHER INFORMATION CONTACT: Dr. Mary D. Gunnels, Director, Medical Programs, (202) 366–4001, fmcsamedical@dot.gov, FMCSA, Department of Transportation, 1200 New Jersey Avenue, SE., Room W64–224, Washington, DC 20590–0001. Office hours are from 8:30 a.m. to 5 p.m., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Background

Under 49 U.S.C. 31136(e) and 31315, FMCSA may grant an exemption from the Federal Motor Carrier Safety

Regulations for a 2-year period if it finds “such exemption would likely achieve a level of safety that is equivalent to, or greater than, the level that would be achieved absent such exemption.” The statute also allows the Agency to renew exemptions at the end of the 2-year period. The 21 individuals listed in this Notice have recently requested such an exemption from the diabetes prohibition in 49 CFR 391.41(b)(3), which applies to drivers of CMVs in interstate commerce. Accordingly, the Agency will evaluate the qualifications of each applicant to determine whether granting the exemption will achieve the required level of safety mandated by the statutes.

Qualifications of Applicants

Tommy S. Boden

Mr. Boden, age 54, has had ITDM since 1989. His endocrinologist examined him in 2010 and certified that he has had no hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 5 years; understands diabetes management and monitoring; has stable control of his diabetes using insulin; and is able to drive a CMV safely. Mr. Boden meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2010 and certified that he does not have diabetic retinopathy. He holds a Class A Commercial Driver's License (CDL) from Idaho.

Travis D. Bjerk

Mr. Bjerk, 21, has had ITDM since 1997. His endocrinologist examined him in 2010 and certified that he has had no hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 5 years; understands diabetes management and monitoring; has stable control of his diabetes using insulin; and is able to drive a CMV safely. Mr. Bjerk meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2010 and certified that he does not have diabetic retinopathy. He holds a Class D operator's license from North Dakota.

Scott L. Colson

Mr. Colson, 43, has had ITDM since 2009. His endocrinologist examined him in 2009 and certified that he has had no hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function

that occurred without warning in the past 5 years; understands diabetes management and monitoring; has stable control of his diabetes using insulin; and is able to drive a CMV safely. Mr. Colson meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2009 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Wisconsin.

Dustin G. Cook

Mr. Cook, 21, has had ITDM since 2001. His endocrinologist examined him in 2010 and certified that he has had no hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 5 years; understands diabetes management and monitoring; has stable control of his diabetes using insulin; and is able to drive a CMV safely. Mr. Cook meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2010 and certified that he does not have diabetic retinopathy. He holds a CDL from Ohio.

Nathan J. Enloe

Mr. Enloe, 53, has had ITDM since 1976. His endocrinologist examined him in 2010 and certified that he has had no hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 5 years; understands diabetes management and monitoring; has stable control of his diabetes using insulin; and is able to drive a CMV safely. Mr. Enloe meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2010 and certified that he does not have diabetic retinopathy. He holds a Class B CDL from Missouri.

Stephen J. Faxon

Mr. Faxon, 58, has had ITDM since 1981. His endocrinologist examined him in 2010 and certified that he has had no hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 5 years; understands diabetes management and monitoring; has stable control of his diabetes using insulin; and is able to drive a CMV safely. Mr. Faxon meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2010 and certified that he has stable

nonproliferative diabetic retinopathy. He holds a Class B CDL from New Hampshire.

Joseph B. Hall

Mr. Hall, 34, has had ITDM since 2008. His endocrinologist examined him in 2009 and certified that he has had no hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 5 years; understands diabetes management and monitoring; has stable control of his diabetes using insulin; and is able to drive a CMV safely. Mr. Hall meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2010 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Georgia.

Mark H. Horne

Mr. Horne, 56, has had ITDM since 2006. His endocrinologist examined him in 2010 and certified that he has had no hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 5 years; understands diabetes management and monitoring; has stable control of his diabetes using insulin; and is able to drive a CMV safely. Mr. Horne meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2010 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from New Hampshire.

Michael J. Hurst

Mr. Hurst, 43, has had ITDM since 1989. His endocrinologist examined him in 2010 and certified that he has had no hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 5 years; understands diabetes management and monitoring; has stable control of his diabetes using insulin; and is able to drive a CMV safely. Mr. Hurst meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2010 and certified that he has stable nonproliferative diabetic retinopathy. He holds a Class C chauffeur's license from Michigan.

Chad W. Lawyer

Mr. Lawyer, 32, has had ITDM since 2009. His endocrinologist examined him in 2010 and certified that he has had no

hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 5 years; understands diabetes management and monitoring; has stable control of his diabetes using insulin; and is able to drive a CMV safely. Mr. Lawyer meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2010 and certified that he does not have retinopathy. He holds a Class A CDL from Indiana.

John R. Little

Mr. Little, 60, has had ITDM since 2000. His endocrinologist examined him in 2010 and certified that he has had no hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 5 years; understands diabetes management and monitoring; has stable control of his diabetes using insulin; and is able to drive a CMV safely. Mr. Little meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2010 and certified that he does not have retinopathy. He holds a Class D operator's license from Oklahoma.

Roy L. McKinney

Mr. McKinney, 56, has had ITDM since 2009. His endocrinologist examined him in 2010 and certified that he has had no hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 5 years; understands diabetes management and monitoring; has stable control of his diabetes using insulin; and is able to drive a CMV safely. Mr. McKinney meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2010 and certified that he does not have retinopathy. He holds a Class A CDL from Pennsylvania.

Thomas A. Mentley

Mr. Mentley, 66, has had ITDM since 2009. His endocrinologist examined him in 2010 and certified that he has had no hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 5 years; understands diabetes management and monitoring; has stable control of his diabetes using insulin; and is able to drive a CMV safely. Mr.

Mentley meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2010 and certified that he does not have retinopathy. He holds a Class A CDL from New York.

David W. Rogers

Mr. Rogers, 57, has had ITDM since 2009. His endocrinologist examined him in 2010 and certified that he has had no hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 5 years; understands diabetes management and monitoring; has stable control of his diabetes using insulin; and is able to drive a CMV safely. Mr. Rogers meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2010 and certified that he does not have retinopathy. He holds a Class A CDL from Maryland.

Joseph J. Schwartz

Mr. Schwartz, 53, has had ITDM since 2010. His endocrinologist examined him in 2010 and certified that he has had no hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 5 years; understands diabetes management and monitoring; has stable control of his diabetes using insulin; and is able to drive a CMV safely. Mr. Schwartz meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2010 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Montana.

Justin P. Sibigroth

Mr. Sibigroth, 26, has had ITDM since 1984. His endocrinologist examined him in 2010 and certified that he has had no hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 5 years; understands diabetes management and monitoring; has stable control of his diabetes using insulin; and is able to drive a CMV safely. Mr. Sibigroth meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2010 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Illinois.

Duane A. Wages

Mr. Wages, 54, has had ITDM since 2001. His endocrinologist examined him in 2010 and certified that he has had no hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 5 years; understands diabetes management and monitoring; has stable control of his diabetes using insulin; and is able to drive a CMV safely. Mr. Wages meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2010 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from North Dakota.

Roosevelt Whitehead

Mr. Whitehead, 71, has had ITDM since 2004. His endocrinologist examined him in 2009 and certified that he has had no hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 5 years; understands diabetes management and monitoring; has stable control of his diabetes using insulin; and is able to drive a CMV safely. Mr. Whitehead meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2009 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Georgia.

Michael J. Williams

Mr. Williams, 46, has had ITDM since 2008. His endocrinologist examined him in 2010 and certified that he has had no hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 5 years; understands diabetes management and monitoring; has stable control of his diabetes using insulin; and is able to drive a CMV safely. Mr. Williams meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2010 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from New York.

Edward L. Winget, Sr.

Mr. Winget, 48, has had ITDM since 2009. His endocrinologist examined him in 2010 and certified that he has had no hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the

past 5 years; understands diabetes management and monitoring; has stable control of his diabetes using insulin; and is able to drive a CMV safely. Mr. Winget meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2010 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Mississippi.

Leonard M. Ziegler

Mr. Ziegler, 65, has had ITDM since 2008. His endocrinologist examined him in 2010 and certified that he has had no hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 5 years; understands diabetes management and monitoring; has stable control of his diabetes using insulin; and is able to drive a CMV safely. Mr. Ziegler meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2010 and certified that he does not have diabetic retinopathy. He holds a Class B CDL from New York.

Request for Comments

In accordance with 49 U.S.C. 31136(e) and 31315, FMCSA requests public comment from all interested persons on the exemption petitions described in this Notice. We will consider all comments received before the close of business on the closing date indicated in the date section of the Notice.

FMCSA notes that section 4129 of the Safe, Accountable, Flexible and Efficient Transportation Equity Act: A Legacy for Users requires the Secretary to revise its diabetes exemption program established on September 3, 2003 (68 FR 52441).¹ The revision must provide for individual assessment of drivers with diabetes mellitus, and be consistent with the criteria described in section 4018 of the Transportation Equity Act for the 21st Century (49 U.S.C. 31305).

Section 4129 requires: (1) Elimination of the requirement for 3 years of experience operating CMVs while being treated with insulin; and (2) establishment of a specified minimum period of insulin use to demonstrate stable control of diabetes before being allowed to operate a CMV.

In response to section 4129, FMCSA made immediate revisions to the diabetes exemption program established by the September 3, 2003 Notice.

¹ Section 4129(a) refers to the 2003 Notice as a "final rule." However, the 2003 Notice did not issue a "final rule" but did establish the procedures and standards for issuing exemptions for drivers with ITDM.

FMCSA discontinued use of the 3-year driving experience and fulfilled the requirements of section 4129 while continuing to ensure that operation of CMVs by drivers with ITDM will achieve the requisite level of safety required of all exemptions granted under 49 U.S.C. 31136(e).

Section 4129(d) also directed FMCSA to ensure that drivers of CMVs with ITDM are not held to a higher standard than other drivers, with the exception of limited operating, monitoring and medical requirements that are deemed medically necessary. The FMCSA concluded that all of the operating, monitoring and medical requirements set out in the September 3, 2003 Notice, except as modified, were in compliance with section 4129(d). Therefore, all of the requirements set out in the September 3, 2003 Notice, except as modified by the Notice in the **Federal Register** on November 8, 2005 (70 FR 67777), remain in effect.

Issued on: July 13, 2010.

Larry W. Minor,

Associate Administrator for Policy and Program Development.

[FR Doc. 2010-17745 Filed 7-20-10; 8:45 am]

BILLING CODE P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket No. MARAD-2010 0069]

Requested Administrative Waiver of the Coastwise Trade Laws

AGENCY: Maritime Administration, DOT.

ACTION: Invitation for public comments on a requested administrative waiver of the Coastwise Trade Laws for the vessel DIAMOND GIRL.

SUMMARY: As authorized by 46 U.S.C. 12121, the Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S.-build requirement of the coastwise laws under certain circumstances. A request for such a waiver has been received by MARAD. The vessel, and a brief description of the proposed service, is listed below. The complete application is given in DOT docket MARAD–2010–0069 at <http://www.regulations.gov>. Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in accordance with 46 U.S.C. 12121 and MARAD's regulations at 46 CFR part 388 (68 FR 23084; April 30, 2003), that the issuance of the waiver will have an unduly adverse

effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, a waiver will not be granted. Comments should refer to the docket number of this notice and the vessel name in order for MARAD to properly consider the comments. Comments should also state the commenter's interest in the waiver application, and address the waiver criteria given in § 388.4 of MARAD's regulations at 46 CFR part 388.

DATES: Submit comments on or before August 20, 2010.

ADDRESSES: Comments should refer to docket number MARAD-2010-0069. Written comments may be submitted by hand or by mail to the Docket Clerk, U.S. Department of Transportation, Docket Operations, M-30, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue, SE., Washington, DC 20590. You may also send comments electronically via the Internet at <http://www.regulations.gov> <http://smses.dot.gov/submit/>. All comments will become part of this docket and will be available for inspection and copying at the above address between 10 a.m. and 5 p.m., e.t., Monday through Friday, except Federal holidays. An electronic version of this document and all documents entered into this docket is available on the World Wide Web at <http://www.regulations.gov>.

FOR FURTHER INFORMATION CONTACT:
Joann Spittle, U.S. Department of
Transportation, Maritime
Administration, 1200 New Jersey
Avenue, SE., Room W21-203,
Washington, DC 20590. Telephone 202-
366-5979.

SUPPLEMENTARY INFORMATION: As described by the applicant the intended service of the vessel DIAMOND GIRL is:

Intended Commercial Use Of Vessel:
"Local Pleasure Charters."

Geographic Region: "Primarily California Coast, possible Oregon and Washington."

Privacy Act

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

Date: July 15, 2010.

By order of the Maritime Administrator.

Murray Bloom,

Acting Secretary, Maritime Administration.

[FR Doc. 2010-17740 Filed 7-20-10; 8:45 am]

BILLING CODE 4910-81-P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket No. MARAD-2010 0067]

Requested Administrative Waiver of the Coastwise Trade Laws

AGENCY: Maritime Administration, DOT.

ACTION: Invitation for public comments on a requested administrative waiver of the Coastwise Trade Laws for the vessel **THIRD SWAN**.

SUMMARY: As authorized by 46 U.S.C. 12121, the Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S.-build requirement of the coastwise laws under certain circumstances. A request for such a waiver has been received by MARAD. The vessel, and a brief description of the proposed service, is listed below. The complete application is given in DOT docket MARAD-2010-0067 at <http://www.regulations.gov>. Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in accordance with 46 U.S.C. 12121 and MARAD's regulations at 46 CFR part 388 (68 FR 23084; April 30, 2003), that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, a waiver will not be granted. Comments should refer to the docket number of this notice and the vessel name in order for MARAD to properly consider the comments. Comments should also state the commenter's interest in the waiver application, and address the waiver criteria given in § 388.4 of MARAD's regulations at 46 CFR part 388.

DATES: Submit comments on or before August 20, 2010.

ADDRESSES: Comments should refer to docket number MARAD-2010-0067. Written comments may be submitted by hand or by mail to the Docket Clerk, U.S. Department of Transportation, Docket Operations, M-30, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue, SE., Washington, DC 20590. You may also send comments electronically via the Internet at <http://www.regulations.gov>.

www.regulations.gov <http://smses.dot.gov/submit/>. All comments will become part of this docket and will be available for inspection and copying at the above address between 10 a.m. and 5 p.m., e.t., Monday through Friday, except Federal holidays. An electronic version of this document and all documents entered into this docket is available on the World Wide Web at <http://www.regulations.gov>.

FOR FURTHER INFORMATION CONTACT:

Joann Spittle, U.S. Department of Transportation, Maritime Administration, 1200 New Jersey Avenue, SE., Room W21-203, Washington, DC 20590. Telephone 202-366-5979.

SUPPLEMENTARY INFORMATION: As described by the applicant the intended service of the vessel THIRD SWAN is:

Intended Commercial Use of Vessel: "Pleasure day charter (no fishing)."
Geographic Region: "Michigan."

Privacy Act

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

Dated: July 13, 2010.

By the Order of the Maritime Administrator.

Murray Bloom,

Acting Secretary, Maritime Administration.

[FR Doc. 2010-17723 Filed 7-20-10; 8:45 am]

BILLING CODE 4910-81-P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket No. MARAD-2010 0065]

Requested Administrative Waiver of the Coastwise Trade Laws

AGENCY: Maritime Administration, DOT.

ACTION: Invitation for public comments on a requested administrative waiver of the Coastwise Trade Laws for the vessel SEAFLYER.

SUMMARY: As authorized by 46 U.S.C. 12121, the Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S.-build requirement of the coastwise laws under certain circumstances. A request for such a waiver has been received by

MARAD. The vessel, and a brief description of the proposed service, is listed below. The complete application is given in DOT docket MARAD-2010-0065 at <http://www.regulations.gov>. Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in accordance with 46 U.S.C. 12121 and MARAD's regulations at 46 CFR part 388 (68 FR 23084; April 30, 2003), that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, a waiver will not be granted. Comments should refer to the docket number of this notice and the vessel name in order for MARAD to properly consider the comments. Comments should also state the commenter's interest in the waiver application, and address the waiver criteria given in § 388.4 of MARAD's regulations at 46 CFR part 388.

DATES: Submit comments on or before August 20, 2010.

ADDRESSES: Comments should refer to docket number MARAD-2010-0065. Written comments may be submitted by hand or by mail to the Docket Clerk, U.S. Department of Transportation, Docket Operations, M-30, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue, SE., Washington, DC 20590. You may also send comments electronically via the Internet at <http://www.regulations.gov>, <http://smses.dot.gov/submit/>. All comments will become part of this docket and will be available for inspection and copying at the above address between 10 a.m. and 5 p.m., e.t., Monday through Friday, except Federal holidays. An electronic version of this document and all documents entered into this docket is available on the World Wide Web at <http://www.regulations.gov>.

FOR FURTHER INFORMATION CONTACT:

Joann Spittle, U.S. Department of Transportation, Maritime Administration, 1200 New Jersey Avenue, SE., Room W21-203, Washington, DC 20590. Telephone 202-366-5979.

SUPPLEMENTARY INFORMATION: As described by the applicant the intended service of the vessel SEAFLYER is: *Intended Commercial Use of Vessel:* "Parasail ride operations." *Geographic Region:* "South Carolina."

Privacy Act

Anyone is able to search the electronic form of all comments received into any of our dockets by the

name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477-78).

Date: July 12, 2010.

By Order of the Maritime Administrator.

Murray Bloom,

Acting Secretary, Maritime Administration.

[FR Doc. 2010-17725 Filed 7-20-10; 8:45 am]

BILLING CODE 4910-81-P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket No. MARAD-2010-0068]

Requested Administrative Waiver of the Coastwise Trade Laws

AGENCY: Maritime Administration, DOT.

ACTION: Invitation for public comments on a requested administrative waiver of the Coastwise Trade Laws for the vessel COMFORTABLY NUMB.

SUMMARY: As authorized by 46 U.S.C. 12121, the Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S.-build requirement of the coastwise laws under certain circumstances. A request for such a waiver has been received by MARAD. The vessel, and a brief description of the proposed service, is listed below. The complete application is given in DOT docket MARAD-2010-0068 at <http://www.regulations.gov>. Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in accordance with 46 U.S.C. 12121 and MARAD's regulations at 46 CFR part 388 (68 FR 23084; April 30, 2003), that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, a waiver will not be granted. Comments should refer to the docket number of this notice and the vessel name in order for MARAD to properly consider the comments. Comments should also state the commenter's interest in the waiver application, and address the waiver criteria given in § 388.4 of MARAD's regulations at 46 CFR part 388.

DATES: Submit comments on or before August 20, 2010.

ADDRESSES: Comments should refer to docket number MARAD-2010-0068.

Written comments may be submitted by hand or by mail to the Docket Clerk, U.S. Department of Transportation, Docket Operations, M-30, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue, SE., Washington, DC 20590. You may also send comments electronically via the Internet at <http://www.regulations.gov> <http://smes.dot.gov/submit/>. All comments will become part of this docket and will be available for inspection and copying at the above address between 10 a.m. and 5 p.m., e.t., Monday through Friday, except Federal holidays. An electronic version of this document and all documents entered into this docket is available on the World Wide Web at <http://www.regulations.gov>.

FOR FURTHER INFORMATION CONTACT:

Joann Spittle, U.S. Department of Transportation, Maritime Administration, 1200 New Jersey Avenue, SE., Room W21-203, Washington, DC 20590. Telephone 202-366-5979.

SUPPLEMENTARY INFORMATION: As described by the applicant the intended service of the vessel COMFORTABLY NUMB is:

Intended Commercial Use of Vessel: "crewed and uncrewed sailing charters."

Geographic Region: "ME, NH, MA, RI, CT, NY, NJ, DE, MD, VA, NC, SC, GA, FL, AL, MS, LA, TX, Puerto Rico."

Privacy Act

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

Date: July 13, 2010.

By Order of the Maritime Administrator.

Murray Bloom,

Acting Secretary, Maritime Administrator.

[FR Doc. 2010-17715 Filed 7-20-10; 8:45 am]

BILLING CODE 4910-81-P

DEPARTMENT OF THE TREASURY

**Submission for OMB Review;
Comment Request**

July 15, 2010.

The Department of the Treasury will submit the following public information collection requirements to OMB for review and clearance under the Paperwork Reduction Act of 1995,

Public Law 104-13 on or after the date of publication of this notice. A copy of the submissions may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding these information collections should be addressed to the OMB reviewer listed and to the Treasury PRA Clearance Officer, Department of the Treasury, 1750 Pennsylvania Avenue, NW., Suite 11010, Washington, DC 20220.

Dates: Written comments should be received on or before August 20, 2010 to be assured of consideration.

Internal Revenue Service (IRS)

OMB Number: 1545-NEW.

Type of Review: New Collection requesting OMB control number.

Title: RP-12512-09 Rules for Certain Rental Real Estate Activities.

Abstract: This Revenue Procedure grants relief under § 1.469-9(g) for certain taxpayers to make late elections to treat all interests in rental real estate as a single rental real estate activity.

Respondents: Individuals or Households.

Estimated Total Burden Hours: 300 hours.

OMB Number: 1545-0959.

Type of Review: Extension without change of a currently approved collection.

Title: LR-213-76 (T.D. 8095) Estate and Gift Taxes; Qualified Disclaimers of Property.

Abstract: 26 U.S.C. 2518 allows a person to disclaim an interest in property received by gift or inheritance. The interest is treated as if the disclaimant never received or transferred such interest for Federal gift tax purposes. A qualified disclaimer must be in writing and delivered to the transferor or trustee.

Respondents: Individuals or households.

Estimated Total Burden Hours: 1,000 hours.

OMB Number: 1545-1038.

Type of Review: Revision of a currently approved collection.

Title: Annual Certification of a Qualified Residential Rental Project.

Form: 8703.

Abstract: Operators of qualified residential projects will use this form to certify annually that their projects meet the requirements of IRC section 142(d). Operators are required to file this certification under section 142(d)(7). Operators must indicate on the form the specific "set-aside" test the bond issuer elected under 26 U.S.C. 142(d) for the project period. They must also indicate the percentage of low-income units in the residential rental project.

Respondents: Private Sector: Businesses or other for-profits.

Estimated Total Burden Hours: 76,620 hours.

OMB Number: 1545-1709.

Type of Review: Revision of a currently approved collection.

Title: Application for Extension of Time to File an Exempt Organization Return (Form-8868).

Form: 8868.

Abstract: 26 U.S.C. 6081 of the Internal Revenue Code grants a reasonable extension of time for filing any return. This form is used by fiduciaries and certain exempt organizations, to request an extension of time to file their returns. The information is used to determine whether the extension should be granted.

Respondents: Private Sector: Not-for-profit institutions.

Estimated Total Burden Hours: 1,291,497 hours.

OMB Number: 1545-1715.

Type of Review: Extension without change of a currently approved collection.

Title: Tip Rate Determination Agreement (for use by employers in the food and beverage industry).

Abstract: Information is required by the Internal Revenue Service in its tax compliance efforts to assist employers and their employees in understanding and complying with section 26 U.S.C. 6053(a), which requires employees to report all their tips monthly to their employers.

Respondents: Private Sector: Businesses or other for-profits.

Estimated Total Burden Hours: 1,737 hours.

OMB Number: 1545-1716.

Type of Review: Extension without change of a currently approved collection.

Title: Notice 2001-1, Employer-designed Tip Reporting Program for the Food and Beverage Industry (EmTRAC).

Abstract: Information is required by the Internal Revenue Service in its compliance efforts to assist employers and their employees in understanding and complying with section 6053(a), which requires employees to report all their tips monthly to their employers.

Respondents: Private Sector: Businesses or other for-profits.

Estimated Total Burden Hours: 870 hours.

OMB Number: 1545-1721.

Type of Review: Revision of a currently approved collection.

Title: Taxable REIT Subsidiary Election.

Form: 8875.

Abstract: A corporation and a REIT use Form 8875 to jointly elect to have the corporation treated as a taxable REIT subsidiary as provided in 26 U.S.C. 856(l).

Respondents: Private Sector: Businesses or other for-profits.

Estimated Total Burden Hours: 9,980 hours.

OMB Number: 1545-1875.

Type of Review: Extension without change of a currently approved collection.

Title: Revenue Procedure 2004-12, Health Insurance Costs of Eligible Individuals.

Abstract: Revenue Procedure 2004-12 informs states how to elect a health program to be qualified health insurance for purposes of the health coverage tax credit (HCTC) under section 35 of the Internal Revenue Code. The collection of information is voluntary. However, if a state does not make an election, eligible residents of the state may be impacted in their efforts to claim the HCTC.

Respondents: State, Local, and Tribal Governments.

Estimated Total Burden Hours: 26 hours.

OMB Number: 1545-2040.

Type of Review: Extension without change of a currently approved collection.

Title: Revenue Procedure Granting Automatic Consent to change certain elections relating to the apportionment of interest expense and research and experimental expenditures.

Abstract: This revenue procedure provides the administrative procedure under which a taxpayer may obtain automatic consent to change: (a) From the fair market value method under § 1.861-8T(c)(2) or from the alternative tax book value method under § 1.861-9(i)(1) to apportion interest expense or (b) from the sales method or the optional gross income methods under § 1.861-17(c) and (d) to apportion research and experimental expenditures. This revenue procedure is effective for either (a) a taxpayer's first taxable year beginning after December 31, 2004 (the taxpayer's 2005 taxable year); or (b) a taxpayer's taxable year immediately following the taxpayer's 2005 taxable year, but, in such case, a taxpayer will not be provided automatic consent to change any election that first took effect with respect to the taxpayer's 2005 taxable year. This revenue procedure is effective only if the taxpayer attaches the statement(s) to Form 1118 or Form 1116, whichever is applicable, by the later of: (a) One year after the date this revenue procedure is

published, or (b) the due date (including extensions) of the taxpayer's income tax return to which the statement(s) relates; and if the taxpayer maintains all necessary documentation to establish change and qualification. The reporting and recordkeeping requirements imposed by this revenue procedure will enable the IRS to identify eligibility to use the procedure and the years for which the new method or methods is being adopted.

Respondents: Private Sector: Businesses or other for-profits.

Estimated Total Burden Hours: 100 hours.

OMB Number: 1545-0782.

Type of Review: Extension without change of a currently approved collection.

Title: LR-7 (TD 6629) Final, Limitation on Reduction in Income Tax Liability Incurred to the Virgin Islands.

Abstract: The Tax Reform Act of 1986 repealed the mandatory reporting and recordkeeping requirements of section 934(d)(1954 Code). The prior exception to the general rule of section 934 (1954 Code) to prevent the Government of the U.S. Virgin Islands from granting tax rebates with regard to taxes attributable to income derived from sources within the U.S. was contingent upon the taxpayer's compliance with the reporting requirements of section 934(d).

Respondents: Individuals or households.

Estimated Total Burden Hours: 185 hours.

OMB Number: 1545-1068.

Type of Review: Extension without change of a currently approved collection.

Title: INTL-362-88 (T.D. 8618)(Final) Definition of a Controlled Foreign Corporation, Foreign Base Company Income, and Foreign Personal Holding Company Income of a Controlled Foreign Corporation.

Abstract: The election and recordkeeping requirements are necessary to exclude certain high-taxed or active business income from subpart F income or to include certain income in the appropriate category of subpart F income. The recordkeeping and election procedures allow the U.S. shareholders and the IRS to know the amount of the controlled foreign corporation's subpart F income.

Respondents: Private Sector: Businesses or other for-profits.

Estimated Total Burden Hours: 50,417 hours.

OMB Number: 1545-1132.

Type of Review: Extension without change of a currently approved collection.

Title: INTL-536-89 (T.D. 8300) (Final) Registration Requirements with Respect to Certain Debt Obligations; Application of Repeal of 30 Percent Withholding by the Tax Reform Act of 1984.

Abstract: The Internal Revenue Service needs the information in order to ensure that purchasers of bearer obligations are not U.S. persons (other than those permitted to hold obligations under section 165(j) and to ensure that U.S. persons holding bearer obligations properly report income and gain on such obligations.

Respondents: Private Sector: Businesses or other for-profits.

Estimated Total Burden Hours: 850 hours.

OMB Number: 1545-2043.

Type of Review: Revision of a currently approved collection.

Title: Form 8879-B, IRS e-file Signature Authorization for Form 1065-B

Form: 8879-B

Abstract: Tax year 2006 is the first year that filers of Form 1065-B (electing large partnerships) can file electronically. Form 8879-B is used when a personal identification number (PIN) will be used to electronically sign the electronic tax return, and, if applicable, consent to an electronic funds withdrawal.

Respondents: Private Sector: Businesses or other for-profits.

Estimated Total Burden Hours: 273 hours.

OMB Number: 1545-1836.

Type of Review: Revision of a currently approved collection.

Title: Support Schedule for Advance Ruling Period.

Form: 8734.

Abstract: Form 8734 is used by charitable exempt organizations to furnish financial information supporting its qualification of public charity status under 26 U.S.C. 509 and that the IRS can use to classify a charity as a public charity.

Respondents: Private Sector: Not-for-profit institutions.

Estimated Total Burden Hours: 97,411 hours.

OMB Number: 1545-1735.

Type of Review: Extension without change of a currently approved collection.

Title: Revenue Procedure 2001-20, Voluntary Compliance on Alien Withholding Program (VCAP).

Abstract: The revenue procedure will improve voluntary compliance of colleges and universities in connection with their obligations to report withhold and pay taxes due on compensation paid to foreign students and scholars

(nonresident aliens). The revenue procedure provides an optional opportunity for colleges and universities which have not fully complied with their tax obligations concerning nonresident aliens to self-audit and come into compliance with applicable reporting and payment requirements.

Respondents: Private Sector: Not-for-profit institutions.

Estimated Total Burden Hours: 346,500 hours.

OMB Number: 1545–1877.

Type of Review: Extension without change of a currently approved collection.

Title: Revenue Procedure 2004–18, Average Area Purchase Price Safe Harbors and Nationwide Purchase Prices under section 143.

Abstract: Revenue Procedure 2004–18 provides issuers of qualified mortgage bonds, as defined in section 143(a) of the Internal Revenue Code, and issuers of mortgage credit certificates, as defined in section 25(c), with: (1) Nationwide average purchase prices for residences located in the United States; and (2) average area purchase price safe harbors for residences located in statistical areas in each state, the District of Columbia, Puerto Rico, the Northern Mariana Islands, American Samoa, the Virgin Islands, and Guam.

Respondents: State, Local, and Tribal Governments.

Estimated Total Burden Hours: 15 hours.

OMB Number: 1545–2041.

Type of Review: Extension without change of a currently approved collection.

Title: Expenses Paid by Certain Whaling Captains in Support of Native Alaskan Subsistence Whaling.

Abstract: This document provides guidelines under section 170(n) for substantiating certain expenses of carrying out sanctioned whaling activities.

Respondents: Individuals or households.

Estimated Total Burden Hours: 48 hours.

OMB Number: 1545–2049.

Type of Review: Extension without change of a currently approved collection.

Title: Notice 2006–107—Diversification Requirements for Qualified Defined Contribution Plans. Holding Publicly Traded Employer Securities.

Abstract: This notice contains two model forms that may be used by employers to notify plan participants of their diversification rights under sections 901 and 507 of the Pension Protection Act of 2006.

Respondents: Private Sector:

Businesses or other for-profits.

Estimated Total Burden Hours: 7,725 hours.

OMB Number: 1545–1589.

Type of Review: Extension without change of a currently approved collection.

Title: Revenue Procedure 98–19, Exceptions to the notice and reporting requirements of section 6033(e)(1) and the tax imposed by section 6033(e)(2).

Abstract: Revenue Procedure 98–19 provides guidance to organizations exempt from taxation under section 501(a) of the Internal Revenue Code of 1986 on certain exceptions from the reporting and notice requirements of section 6033(e)(1) and the tax imposed by section 6033(e)(2).

Respondents: Private Sector: Not-for-profit institutions.

Estimated Total Burden Hours: 150,000 hours.

OMB Number: 1545–1592.

Type of Review: Extension without change of a currently approved collection.

Title: Revenue Procedure 98–20, Certification for No Information Reporting on the Sale of a Principal Residence.

Abstract: The revenue procedure applies only to the sale of a principal residence for \$250,000 or less (\$500,000 or less if the seller is married). The revenue procedure provides the written assurances that are acceptable to the Service for exempting a real estate reporting person from information reporting requirements for the sale of a principal residence.

Respondents: Individuals or Households.

Estimated Total Burden Hours: 420,500 hours.

Bureau Clearance Officer: R. Joseph Durbala, Internal Revenue Service, 1111 Constitution Avenue, NW., Room 6129, Washington, DC 20224; (202) 622–3634.

OMB Reviewer: Shagufta Ahmed, Office of Management and Budget, New Executive Office Building, Room 10235, Washington, DC 20503; (202) 395–7873.

Celina Elphage,

Treasury PRA Clearance Officer.

[FR Doc. 2010–17716 Filed 7–20–10; 8:45 am]

BILLING CODE 4810–01–P

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

July 15, 2010.

The Department of the Treasury will submit the following public information

collection requirements to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13 on or after the date of publication of this notice. A copy of the submissions may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding these information collections should be addressed to the OMB reviewer listed and to the Treasury PRA Clearance Officer, Department of the Treasury, 1750 Pennsylvania Avenue, NW., Suite 11010, Washington, DC 20220.

DATES: Written comments should be received on or before August 20, 2010 to be assured of consideration.

Internal Revenue Service (IRS)

OMB Number: 1545–0232.

Type of Review: Extension without change of a currently approved collection.

Title: Information Return of Nontaxable Energy Grants or Subsidized Energy Financing.

Form: 6497.

Abstract: Section 6050D of the Internal Revenue Code requires an information return to be made by any person who administers a Federal, state, or local program providing nontaxable grants or subsidized energy financing. Form 6497 is used for making the information return. The IRS uses the information from the form to ensure that recipients have not claimed tax credits or other benefits with respect to the grants or subsidized financing.

Respondents: Private Sector: Businesses or other for-profits.

Estimated Total Burden Hours: 810 hours.

OMB Number: 1545–1574.

Type of Review: Extension without change of a currently approved collection.

Title: Tuition Payments Statement. *Form:* 1098–T.

Abstract: Section 6050S of the Internal Revenue Code requires eligible education institutions to report certain information regarding tuition payments to the IRS and to students. Form 1098–T has been developed to meet this requirement.

Respondents: Private Sector: Businesses or other for-profits, not-for-profit institutions.

Estimated Total Burden Hours: 4,848,090 hours.

OMB Number: 1545–1859.

Type of Review: Extension without change of a currently approved collection.

Title: Notice 2004–11, Research Credit Record Retention Agreement.

Abstract: This notice announces a pilot program in which the Internal

Revenue Service and large and mid-size business taxpayers may enter into research credit recordkeeping agreements (RCRAs). If the taxpayer complies with the terms of the RCRA, the Service will deem the taxpayer to satisfy the record keeping requirements of section 6001 for purposes of the credit for increasing research activities under section 41 of the Internal Revenue Code.

Respondents: Private Sector: Businesses or other for-profits.

Estimated Total Burden Hours: 1,170 hours.

Bureau Clearance Officer: R. Joseph Durbala, Internal Revenue Service, 1111 Constitution Avenue, NW., Room 6129, Washington, DC 20224; (202) 622-3634.

OMB Reviewer: Shagufta Ahmed, Office of Management and Budget, New Executive Office Building, Room 10235, Washington, DC 20503; (202) 395-7873.

Dawn D. Wolfgang,
Treasury PRA Clearance Officer.

[FR Doc. 2010-17719 Filed 7-20-10; 8:45 am]

BILLING CODE 4830-01-P

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

Additional Designation of Entities and Individuals Pursuant to Executive Order 12978

AGENCY: Office of Foreign Assets Control, Treasury.

ACTION: Notice.

SUMMARY: The Treasury Department's Office of Foreign Assets Control ("OFAC") is publishing the names of nine individuals and 13 entities whose property and interests in property are blocked pursuant to Executive Order 12978 of October 21, 1995, "Blocking Assets and Prohibiting Transactions with Significant Narcotics Traffickers" (the "Order").

DATES: The designation by the Director of OFAC of the nine individuals and 13 entities identified in this notice pursuant to Executive Order 12978 is effective on July 15, 2010.

FOR FURTHER INFORMATION CONTACT: Assistant Director, Compliance Outreach & Implementation, Office of Foreign Assets Control, Department of the Treasury, Washington, DC 20220, tel.: 202/622-2490.

SUPPLEMENTARY INFORMATION:

Electronic and Facsimile Availability

This document and additional information concerning OFAC are available from OFAC's Web site

(<http://www.treas.gov/ofac>) or via facsimile through a 24-hour fax-on-demand service, tel.: (202) 622-0077.

Background

On October 21, 1995, the President, invoking the authority, *inter alia*, of the International Emergency Economic Powers Act (50 U.S.C. 1701-1706), issued the Order. In the Order, the President declared a national emergency to deal with the threat posed by significant foreign narcotics traffickers centered in Colombia and the harm that they cause in the United States and abroad.

Section 1 of the Order blocks, with certain exceptions, all property and interests in property that are in the United States, or that hereafter come within the United States or that are or hereafter come within the possession or control of United States persons, of: (1) The persons listed in an Annex to the Order; (2) any foreign person determined by the Secretary of Treasury, in consultation with the Attorney General and the Secretary of State, to play a significant role in international narcotics trafficking centered in Colombia, or materially to assist in, or provide financial or technological support for or goods or services in support of, the narcotics trafficking activities of persons designated in or pursuant to the Order; and (3) persons determined by the Secretary of the Treasury, in consultation with the Attorney General and the Secretary of State, to be owned or controlled by, or to act for or on behalf of, persons designated pursuant to the Order.

On July 15, 2010, the Director of OFAC, in consultation with the Departments of Justice, State, and Homeland Security, designated nine individuals and 13 entities whose property and interests in property are blocked pursuant to the Order.

The list of designees is as follows:

Individuals

1. ARISTIZABAL MEJIA, Diego, c/o BOSQUES DE AGUA SOCIEDAD POR ACCIONES SIMPLIFICADA, Medellin, Colombia; c/o BROKER CMS EL AGRARIO S.A., Envigado, Antioquia, Colombia; c/o DIEGO ARISTIZABAL M. Y ASOCIADOS LTDA., Medellin, Colombia; c/o FUMIGACIONES Y REPRESENTACIONES AGROPECUARIAS S.A., Medellin, Colombia; c/o TREMAINE CORP., Panama; Carrera 50 No. 29 Sur-016, Envigado, Antioquia, Colombia; DOB 22 Jan 1943; Cedula No.

8240938 (Colombia); (INDIVIDUAL) [SDNT].

2. CASTRO JARAMILLO, Monica Maria, c/o COMERCIALIZADORA DE GANADO Y RENTAS DE CAPITAL S.A., Medellin, Colombia; c/o FUMIGACIONES Y REPRESENTACIONES AGROPECUARIAS S.A., Medellin, Colombia; c/o LUIS B MEJIA ASOCIADOS Y CIA LTDA., Medellin, Colombia; DOB 27 Oct 1971; Cedula No. 43574795 (Colombia); Passport AK476053 (Colombia); (INDIVIDUAL) [SDNT].
3. LUQUE AGUILERA, Maria Monserrat, Calle 6A No. 22-46, Medellin, Colombia; Calle Meridiana No. 35, Malaga, Spain; DOB 22 Feb 1963; POB Medellin, Colombia; Cedula No. 43051926 (Colombia); D.N.I. 44598335R (Spain); (INDIVIDUAL) [SDNT].
4. MEJIA MOLINA, Luis Bernardo, c/o BOSQUES DE AGUA SOCIEDAD POR ACCIONES SIMPLIFICADA, Medellin, Colombia; c/o BROKER CMS EL AGRARIO S.A., Envigado, Antioquia, Colombia; c/o FUMIGACIONES Y REPRESENTACIONES AGROPECUARIAS S.A., Medellin, Colombia; c/o LUIS B MEJIA ASOCIADOS Y CIA LTDA., Medellin, Colombia; c/o ROSEVILLE INVESTMENTS S.A., Panama; Calle 20 Sur No. 26C-140, Medellin, Colombia; DOB 18 Mar 1945; POB Envigado, Antioquia, Colombia; Cedula No. 4325882 (Colombia); (INDIVIDUAL) [SDNT].
5. MEOUCHI SAADE, Pablo Agustin, c/o GRUPO IRUNA, S.A. DE C.V., Mexico, Distrito Federal, Mexico; c/o GRUPO JEZINNE, S.A. DE C.V., Mexico, Distrito Federal, Mexico; c/o INDUSTRIALIZADORA PURECORN, S.A. DE C.V., Mexico, Distrito Federal, Mexico; c/o MASA FACIL, S.A. DE C.V., Mexico, Distrito Federal, Mexico; DOB 17 Oct 1962; POB Distrito Federal, Mexico; C.U.R.P. MESP621017HDFCDB05 (Mexico); Passport 330020001 (Mexico); (INDIVIDUAL) [SDNT].
6. PELAEZ LOPEZ, John Jairo, c/o RENTA LIQUIDA S.A.S., Medellin, Antioquia, Colombia; Calle 32B Sur No. 47-51 Apto. 801, Envigado, Antioquia, Colombia; Calle 46 No. 86-24, Medellin, Colombia; DOB 05 Sep 1957; Cedula No. 3356399 (Colombia); (INDIVIDUAL) [SDNT].
7. RAMIREZ DUQUE, Carlos Manuel, c/o AGROESPINAL S.A., Medellin, Colombia; c/o AGROGANADERA LOS SANTOS S.A., Medellin, Colombia; c/o ASES DE

- COMPETENCIA Y CIA. S.A., Medellin, Colombia; c/o GRUPO FALCON S.A., Medellin, Colombia; c/o HIERROS DE JERUSALEM S.A., Medellin, Colombia; c/o TAXI AEREO ANTIOQUEÑO S.A., Medellin, Colombia; Calle 50 No. 65-42 Of. 205, Medellin, Colombia; DOB 14 Dec 1947; Cedula No. 8281944 (Colombia); (INDIVIDUAL) [SDNT].
8. RODRIGUEZ FERNANDEZ, Andre, c/o AERONAUTICA CONDOR S.A. DE C.V., Toluca, Estado de Mexico, Mexico; c/o CONSULTORIA EN CAMBIOS FALCON S.A. DE C.V., Huixquilucan, Estado de Mexico, Mexico; Camino de Acceso a Pradera 41 Fracc. Cuspide Make 1003, Lomas Verdes 53120, Mexico; Cerrada J Camarillo No. 18, Colonia Hogar y Redencion, Delegacion Alvaro Obregon, Mexico, Distrito Federal, Mexico; DOB 26 Aug 1971; POB Distrito Federal, Mexico; C.U.R.P. ROFA710826HDFDRN05 (Mexico); (INDIVIDUAL) [SDNT].
9. TOBON CALLE, Martha Elena, c/o FUMIGACIONES Y REPRESENTACIONES AGROPECUARIAS S.A., Medellin, Colombia; c/o LUIS B MEJIA ASOCIADOS Y CIA LTDA., Medellin, Colombia; Calle 20 Sur No. 26C-140, Medellin, Colombia; DOB 16 Mar 1962; Cedula No. 43035196 (Colombia); (INDIVIDUAL) [SDNT].
6. GRUPO IRUNA, S.A. DE C.V., Avenida Insurgentes Sur No. 1605, Local 41, Colonia San Jose Insurgentes, Delegacion Benito Juarez, Mexico, Distrito Federal C.P. 03900, Mexico; R.F.C. GIR-070508-MK0 (Mexico); (ENTITY) [SDNT].
7. GRUPO JEZINNE, S.A. DE C.V., Mexico, Distrito Federal, Mexico; Folio Mercantil No. 365647 (Mexico) issued: 19 Jun 2007; (ENTITY) [SDNT].
8. INDUSTRIALIZADORA PURECORN, S.A. DE C.V., Avenida Insurgentes Sur 933 202, Colonia Napoles, Delegacion Benito Juarez, Mexico, Distrito Federal C.P. 03810, Mexico; Calle Obrero Mundial No. 154, Colonia Del Valle, Delegacion Benito Juarez, Mexico, Distrito Federal C.P. 03100, Mexico; Camino Viejo a Coatepec s/n, Ixtapaluca, Estado de Mexico C.P. 56580, Mexico; R.F.C. IPU-030318-C6A (Mexico); (ENTITY) [SDNT].
9. LUIS B MEJIA ASOCIADOS Y CIA LTDA., Calle 4 Sur No. 43A-195 oficina 117, Medellin, Colombia; NIT # 811040695-1 (Colombia); (ENTITY) [SDNT].
10. MASA FACIL, S.A. DE C.V., Mexico, Distrito Federal, Mexico; Folio Mercantil No. 343997 (Mexico) issued: 14 Dec 2005; (ENTITY) [SDNT].
11. RENTA LIQUIDA S.A.S., Calle 16 Sur No. 48-17 Apto. 503, Medellin, Colombia; Calle 32B Sur No. 47-51, Envigado, Antioquia, Colombia; Calle 46 No. 86-24, Medellin, Colombia; NIT # 900316915-6 (Colombia); (ENTITY) [SDNT].
12. ROSEVILLE INVESTMENTS S.A., Panama; RUC # 753808-1-480790-33 (Panama); (ENTITY) [SDNT].
13. TREMAINE CORP., Panama; RUC # 808568-1-497226-92 (Panama); (ENTITY) [SDNT].

Entities

1. BOSQUES DE AGUA SOCIEDAD POR ACCIONES SIMPLIFICADA, Carrera 43A No. 23-14, Medellin, Colombia; NIT # 900320463-4 (Colombia); (ENTITY) [SDNT].
2. BROKER CMS EL AGRARIO S.A., Carrera 43A No. 23 Sur-15, Envigado, Antioquia, Colombia; NIT # 900185889-9 (Colombia); (ENTITY) [SDNT].
3. COMERCIALIZADORA DE GANADO Y RENTAS DE CAPITAL S.A. (a.k.a. GANARECA S.A.); Calle 7 Sur No. 42-70 of. 1105, Medellin, Colombia; NIT # 811035501-1 (Colombia); (ENTITY) [SDNT].
4. DIEGO ARISTIZABAL M. Y ASOCIADOS LTDA., Calle 1A Sur No. 43A-49 of. 201, Medellin, Colombia; NIT # 890931281-7 (Colombia); (ENTITY) [SDNT].
5. FUMIGACIONES Y REPRESENTACIONES AGROPECUARIAS S.A. (a.k.a. FUMAGRO S.A.); Calle 11 Sur No. 29D-27 Suite 702, Medellin, Colombia; NIT # 890402231-1 (Colombia); (ENTITY) [SDNT].

Dated: July 15, 2010.

Adam J. Szubin,

Director, Office of Foreign Assets Control.

[FR Doc. 2010-17720 Filed 7-20-10; 8:45 am]

BILLING CODE 4810-AL-P

DEPARTMENT OF THE TREASURY

Fiscal Service

Financial Management Service; Proposed Collection of Information: Authorization Agreement for Preauthorized Payment (SF 5510)

AGENCY: Financial Management Service, Fiscal Service, Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Financial Management Service, 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 a continuing information collection. By this notice, the Financial Management Service solicits comments concerning the Form 5510, "Authorization Agreement for Preauthorized Payment".

DATES: Written comments should be received on or before September 20, 2010.

ADDRESSES: Direct all written comments to Financial Management Service, 3700 East West Highway, Records and Information Management Branch, Room 135, Hyattsville, Maryland 20782.

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to Bill Brushwood, Director, Settlement Services Division, Room 426, 401-14th Street, SW., Washington, DC 20227 (202) 874-1251.

SUPPLEMENTARY INFORMATION: Pursuant to the Paperwork Reduction Act of 1995, (44 U.S.C. 3506(c)(2)(A)), the Financial Management Service solicits comments on the collection of information described below:

Title: Authorization Agreement for Preauthorized Payment.

OMB Number: 1510-0059.

Form Number: SF 5510.

Abstract: This form is used to collect information from remitters (individuals and corporations) to authorize electronic fund transfers from accounts maintained at financial institutions to collect monies for government agencies.

Current Actions: Extension of currently approved collection.

Type of Review: Regular.

Affected Public: Business or other for-profit, individuals or households, Federal Government.

Estimated Number of Respondents: 100,000.

Estimated Time Per Respondent: 15 minutes.

Estimated Total Annual Burden Hours: 25,000.

Comments: Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity

of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance and purchase of services to provide information.

Dated: July 9, 2010.

Kristine Conrath,

Assistant Commissioner, Federal Finance.

[FR Doc. 2010-17447 Filed 7-20-10; 8:45 am]

BILLING CODE 4810-35-M

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

Supplementary Identifying Information of Previously-Designated Individual, Foreign Narcotics Kingpin Designation Act

AGENCY: Office of Foreign Assets Control, Treasury.

ACTION: Notice.

SUMMARY: The Treasury Department's Office of Foreign Assets Control ("OFAC") is publishing supplementary identifying information for one previously-designated individual whose property and interests in property continue to be blocked pursuant to the Foreign Narcotics Kingpin Designation Act ("Kingpin Act") (21 U.S.C. 1901-1908, 8 U.S.C. 1182).

DATES: The individual whose supplementary identifying information is being published by OFAC was originally designated pursuant to section 805(b) of the Kingpin Act on May 6, 2010. The supplementary

identifying information for this individual is being published on July 15, 2010.

FOR FURTHER INFORMATION CONTACT:

Assistant Director, Compliance Outreach & Implementation, Office of Foreign Assets Control, Department of the Treasury, Washington, DC 20220, tel.: (202) 622-2490.

SUPPLEMENTARY INFORMATION:

Electronic and Facsimile Availability

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

Background

The Kingpin Act became law on December 3, 1999. The Kingpin Act establishes a program targeting the activities of significant foreign narcotics traffickers and their organizations on a worldwide basis. It provides a statutory framework for the President to impose sanctions against significant foreign narcotics traffickers and their organizations on a worldwide basis, with the objective of denying their businesses and agents access to the U.S. financial system and the benefits of trade and transactions involving U.S. companies and individuals.

The Kingpin Act blocks all property and interests in property, subject to U.S. jurisdiction, owned or controlled by significant foreign narcotics traffickers as identified by the President. In addition, the Secretary of the Treasury consults with the Attorney General, the Director of the Central Intelligence Agency, the Director of the Federal Bureau of Investigation, the Administrator of the Drug Enforcement

Administration, the Secretary of Defense, the Secretary of State, and the Secretary of Homeland Security when designating and blocking the property and interests in property, subject to U.S. jurisdiction, of persons who are found to be: (1) Materially assisting in, or providing financial or technological support for or to, or providing goods or services in support of, the international narcotics trafficking activities of a person designated pursuant to the Kingpin Act; (2) owned, controlled, or directed by, or acting for or on behalf of, a person designated pursuant to the Kingpin Act; or (3) playing a significant role in international narcotics trafficking.

On July 15, 2010 the Director of OFAC published supplementary identifying information for one previously-designated individual whose property and interests in property are blocked pursuant to section 805(b) of the Foreign Narcotics Kingpin Designation Act.

The original listing is as follows:

1. URREGO ESCUDERO, Carlos Agustin, Colombia; DOB 19 Feb 1976; Citizen Colombia; Cedula No. 79928745 (Colombia); Passport AF392658 (Colombia); (INDIVIDUAL) [SDNTK].

This original listing is being updated to appear as follows:

1. URREGO ESCUDERO, Carlos Agustin (a.k.a. BENALCAZAR FURMAN, Moshe), Colombia; DOB 19 Feb 1976; Citizen Colombia; Cedula No. 79928745 (Colombia); Passport AF392658 (Colombia); (INDIVIDUAL) [SDNTK].

Dated: July 15, 2010.

Adam J. Szubin,

Director, Office of Foreign Assets Control.

[FR Doc. 2010-17717 Filed 7-20-10; 8:45 am]

BILLING CODE 4810-AL-P



Federal Register

Wednesday,
July 21, 2010

Part II

Department of the Interior

Fish and Wildlife Service

50 CFR Part 17

**Endangered and Threatened Wildlife and
Plants; Designation of Critical Habitat for
Limnanthes floccosa ssp. *grandiflora*
(Large-Flowered Woolly Meadowfoam)
and *Lomatium cookii* (Cook's
Lomatium); Final Rule**

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

[Docket No. FWS-R1-ES-2009-0046]
[MO 92210-0-0009 B4]

RIN 1018-AW21

Endangered and Threatened Wildlife and Plants; Designation of Critical Habitat for *Limnanthes floccosa* ssp. *grandiflora* (Large-Flowered Woolly Meadowfoam) and *Lomatium cookii* (Cook's Lomatium)

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), designate critical habitat for two plants, *Limnanthes floccosa* ssp. *grandiflora* (large-flowered woolly meadowfoam) and *Lomatium cookii* (Cook's lomatium, Cook's desert parsley) under the Endangered Species Act of 1973, as amended (Act). We are designating 2,363 hectares (ha) (5,840 acres (ac)) in Jackson County, Oregon, as critical habitat for *Limnanthes floccosa* ssp. *grandiflora* and 2,545 ha (6,289 ac) in Jackson and Josephine Counties, Oregon, as critical habitat for *Lomatium cookii*. Excluding overlapping critical habitat units for the two species, a total of approximately 4,018 ha (9,930 ac) located in Jackson and Josephine Counties, Oregon, fall within the boundaries of the critical habitat designation.

DATES: This final rule becomes effective on August 20, 2010.

ADDRESSES: This final rule and final economic analysis are available on the Internet at <http://www.regulations.gov>; maps of critical habitat are available at <http://criticalhabitat.fws.gov>. Supporting documentation we used in preparing this final rule is available for public inspection, by appointment, during normal business hours, at the U.S. Fish and Wildlife Service, Oregon Fish and Wildlife Office, 2600 SE 98th Ave., Portland, OR 97266; telephone 503-231-6179; facsimile 503-231-6195.

FOR FURTHER INFORMATION CONTACT: Paul Henson, State Supervisor, U.S. Fish and Wildlife Service, Oregon Fish and Wildlife Office, 2600 SE 98th Avenue, Suite 100, Portland, OR 97266 (telephone 503-231-6179; facsimile 503-231-6195). If you use a telecommunications device for the deaf (TDD), call the Federal Information Relay Service (FIRS) at 800-877-8339.

SUPPLEMENTARY INFORMATION:

Background

It is our intent to discuss only those topics directly relevant to the development and designation of critical habitat for *Limnanthes floccosa* ssp. *grandiflora* and *Lomatium cookii* in this final rule. For additional detailed information on the taxonomy, biology, and ecology of these species, please refer to the final listing rule published in the **Federal Register** on November 7, 2002 (67 FR 68004), and the Draft Recovery Plan for Listed Species of the Rogue Valley Vernal Pool and Illinois River Valley Wet Meadow Ecosystems (USFWS 2006, pp. II-1 to II-17). Information on the associated draft economic analysis for the proposed rule to designate critical habitat was published in the **Federal Register** on January 12, 2010 (75 FR 1568).

Species Description, Life History, Distribution, Ecology, and Habitat

Limnanthes floccosa ssp. *grandiflora*, commonly known as large-flowered woolly meadowfoam, and *Lomatium cookii*, commonly known as Cook's lomatium or Cook's desert parsley, are endemic to seasonal wetland habitats of southwestern Oregon. *Limnanthes floccosa* ssp. *grandiflora* is restricted to Jackson County in the Rogue River Valley, where it co-occurs with *Lomatium cookii* in several areas near White City in an area known as the Agate Desert (ONHP 1997, p. 3; Huddleston 2001, p. 11). *Lomatium cookii* occurs in two disjunct locations: (1) In the Rogue River Valley, near the towns of Medford, White City, and Eagle Point; and (2) in the Illinois River Valley of Josephine County near the towns of Selma, Cave Junction, and O'Brien (ONHDB 1994, p. 5). The two locations are separated by approximately 48 kilometers (km) (30 miles (mi)).

Limnanthes floccosa ssp. *grandiflora* and *Lomatium cookii* are both associated with the remaining relatively undisturbed vernal pool-mounded prairie habitat in the Middle Rogue River Basin's Agate Desert (Environmental Science Associates (ESA) 2007, p. 2-1; ONHP 1997, p. 3). Relative to the pools, the plants often occur in pool margins, or less often on both mound tops and depression bottoms of drier vernal pools.

The substrate underlying the vernal pool topography in the Middle Rogue River Valley is primarily a Pleistocene outwashed alluvium (mud, silt, and sand deposited by flowing water) deposited in what has become a deep bench or terrace above the current floodplain (Elliot and Sammons 1996). The

alluvium is composed of a matrix of gravels and clay, which creates a hardpan or duripan layer (mineral soil horizons relatively impervious to water). During fall and winter rains, water collects in shallow depressions of the vernal pool-mounded prairie habitat. Downward percolation of water is prevented by the presence of the duripan layer located from 0.18 to 0.75 meters (m) (0.6 to 2.5 feet (ft)) below the soil surface (Keeley and Zedler 1998, p. 2; Huddleston 2001, pp. 14-15). In areas north and northwest of Medford, the vicinity of White City, and north along low-elevation plains, *Limnanthes floccosa* ssp. *grandiflora* and *Lomatium cookii* occur on alluvial soils, primarily mapped as Agate-Winlo complex soils, but may also be found on mapped Coker clay and Provig-Agate complex soils with 0 to 3 percent slopes. *Limnanthes floccosa* ssp. *grandiflora* also occasionally occurs on soils mapped as Carney clay and Winlo, very gravelly loam in vernal pool habitat north of White City (USDA 2006b).

In the Rogue River Valley, the two plants are associated with microhabitats occupied by mostly annual native forbs and graminoids (grass-like plants), including *Alopecurus saccatus* (Pacific foxtail), *Deschampsia danthonioides* (slender hairgrass), *Eryngium petiolatum* (Oregon coyote thistle), *Trifolium depauperatum* (poverty clover), *Myosurus minimus* (tiny mouse-tail), *Navaretia leucocephala* ssp. *leucocephala* (white-head navaretia), *Lasthenia californica* (California goldfields), *Phlox gracilis* (slender phlox), *Plagiobothrys bracteatus* (bracted popcornflower), and *Triteleia hyacinthina* (white brodiaea) (OSU 2007; USFWS 2006, p. II-6).

Native bunchgrass communities that historically occurred in the Rogue River Valley and supported *Lomatium cookii* habitat included *Achnatherum lemmonii* (Lemmon's needlegrass), *Festuca roemerii* var. *klamathensis* (Klamath Roemer's fescue), and *Poa secunda* (rough bluegrass). The vernal pool habitat occupied by *Limnanthes floccosa* ssp. *grandiflora* in the Rogue River Valley ranges from 372 to 469 m (1,220 to 1,540 ft) in elevation (Huddleston 2001, p. 11; USGS 2002). The vernal pool habitat occupied by *Lomatium cookii* in the same basin area ranges from 372 to 411 m (1,220 to 1,350 ft) in elevation (Huddleston 2001, p. 11; USGS 2009).

The habitats occupied by *Lomatium cookii* in the Illinois River Valley are more complex than those in the Rogue River Valley in both soil composition and soil depth. *Lomatium cookii* occurs on 17 mapped soil types in the Illinois

River Valley. The majority of *Lomatium cookii* occurrences in the Illinois River Valley are found on Brockman clay loam, Josephine gravelly loam, and Pollard loam (USDA 2008). Unlike the Middle Rogue River Basin soils, many of the *Lomatium cookii*-occupied soil types originate from stream-fed alluvium covering sedimentary or ultramafic rocks (ONHDB 1994, pp. 9–10). Ultramafic rock is the parent material for serpentine rock formations, once the rock has undergone excessive heat and pressure through geologic processes. The soils derived from serpentine rock give rise to unusual and rare associations of endemic plants that are tolerant of extremely toxic soil conditions. Serpentine rock is low in calcium and silica, low in many plant nutrients, and high in iron and magnesium (Brady *et al.* 2005, p. 246). Pollard loam and Speaker-Josephine gravelly loam soils originate from non-ultramafic sources, while Brockman soil and most others types originate from ultramafic parent material (Silvernail and Meinke 2008, pp. 9–10).

Habitat occupied by *Lomatium cookii* in the Illinois River Valley includes seasonally wet grassland meadows, flats and slopes in mixed oak-conifer and oak-madrone forested meadows, streambanks, roadside edges, or forest openings. Such habitats are dominated by native grasses, including: *Danthonia californica* (California oatgrass), *Poa secunda*, *Deschampsia cespitosa* (tufted hairgrass), *Festuca roemerii* var. *klamathensis*, *Achnatherum lemmonii*, and *Deschampsia danthonioides*. Native forbs include *Camassia* spp. (camas), *Ranunculus occidentalis* (western buttercup), and *Limnanthes gracilis* var. *gracilis* (slender meadowfoam) (ONHDB 1994, p. 9). The seasonally wet meadows occupied by *Lomatium cookii* in the Illinois River Valley usually occur as part of bottomland *Quercus garryana*–*Quercus kelloggii*–*Pinus ponderosa* (Oregon white oak–California black oak–ponderosa pine) savannas. *Lomatium cookii* also occurs in shrubby habitat composed of *Ceanothus cuneatus* (wedge-leaf buckbrush) and *Arctostaphylos viscida* (whiteleaf manzanita). Widely spaced, large pine trees are characteristic of the open meadow habitat with mixed pine and oak woodlands occurring along seasonal creeks.

Lomatium cookii populations are generally found in areas that still have relatively intact habitat components, although remnant populations are often found in areas with or adjacent to mining, agricultural development, residential or commercial development, and grazing activities (Oregon Natural

Heritage Information Center (ONHIC) database 2008).

Land uses associated with the largest, more contiguous populations of *Limnanthes floccosa* ssp. *grandiflora* and *Lomatium cookii* are vernal pool habitats managed specifically for conservation or managed using compatible agricultural practices. Actions conducive to large population sizes of either of the two species may include prescribed burns, controlled grazing practices, or regular mowing. The Rogue Valley International–Medford Airport is an example of an area that is mowed regularly to meet Federal Aviation Authority (FAA) safety requirements and that supports a large and prolific *Lomatium cookii* population that extends over 2.3 ha (7 ac) (R. Russell, pers. comm. 2004; S. Friedman, pers. obs. 2009). Within grazed properties, small, isolated patches of *Limnanthes floccosa* ssp. *grandiflora* often continue to persist, perhaps due to suppression of the thatch layer from invasive, nonnative grasses (Meyers 2008, pp. 1–48; Wildlands, Inc. 2008, p. 1; Borgias 2004, p. 42).

Sites occupied by *Lomatium cookii* that receive no management continue to support plant populations, but monitoring suggests that some of those populations are declining (Kaye and Thorpe 2008, pp. 16–25). For example, Borgias (2004, p. 34) observed that, after several years without grazing or fire at The Nature Conservancy's Agate Desert Preserve, thatch accumulated and recruitment of young *Lomatium cookii* declined due to the increases of nonnative annual grasses. In the Illinois River Valley, other reports indicate that vegetative succession, herbivory by voles (*Microtus* spp.), or both, may be the cause of declining populations (Kaye and Thorpe 2008, pp. 16–25).

Threats

Threats to *Limnanthes floccosa* ssp. *grandiflora* and *Lomatium cookii* in the Rogue River Valley include habitat impacts resulting from: residential, urban, and commercial development; aggregate and mineral mining; agricultural development (including leveling, ditching, tilling, and stock pond construction or water impoundments); road construction and maintenance; off-road vehicle (ORV) use that affects surface hydrology; vandalism (related to ORV use); incompatible grazing practices; and encroachment by nonnative plants (67 FR 68004, November 7, 2002).

The habitat impacts resulting from residential, urban, agricultural, mining, and commercial development resulted

in an approximately 60 percent loss of the vernal pool landscape in the Rogue River Valley due to building construction, removal of habitat, altered hydrology, or altered topography (ONHP 1997, pp. 14–15; Wille and Petersen 2006, p. 1993).

Ground-disturbing activities, such as development, mining, road construction and maintenance, or ORV use, can damage the clay pan layer and allow soil moisture to drain from the vernal pools or wet meadow habitats that the plants depend on for reproduction and survival. Incompatible agricultural practices, including some timber management and crop management, can alter hydrology, directly affect plants with equipment, allow nonnative thatch to accumulate due to excessive grazing rest, and stifle plant growth, or indirectly affect plants as a result of road construction. Road construction can fragment populations, alter hydrology, or cover plants with fill material, resulting in degradation of habitat and direct loss of plants.

The effects of gold mining operations threaten approximately 10 percent of the federally owned portion of *Lomatium cookii* habitat in the Illinois River Valley, and if existing mining claims on Bureau of Land Management (BLM) lands are pursued, habitat damage would increase beyond 20 percent. The effects of mining activities can result in direct habitat loss for the species and limit recovery. Indirect effects from mining operations could also occur due to off-site activities such as road construction, which are likely to alter hydrologic cycles at *Lomatium cookii* habitat sites. These changes could cause seasonally saturated soils to drain and could impede seed germination or lead to death of seedlings and mature plants (67 FR 68004, November 7, 2002). However, remnant patches of *Lomatium cookii* do occasionally persist near mining sites.

Under the Federal Land Policy and Management Act (43 U.S.C. 1701 *et seq.*) and the National Environmental Policy Act (NEPA; 42 U.S.C. 4321 *et seq.*), the BLM requires permits and public review for “Plan Level” mining activities (greater than 5 ac (2 ha)) on Federal lands. The Code of Federal Regulations (43 CFR 3590) allows Federal agencies to deny a permit which could result in irreparable damages to significant resources (including endangered and threatened species) that cannot be mitigated. Several *Lomatium cookii* occurrences and suitable habitat occur on BLM Areas of Critical Environmental Concern (ACECs). There are several ACECs where we are designating critical habitat for *Lomatium cookii*, including:

Rough and Ready, French Flat, and portions of the new proposed Waldo Takilma ACEC. Any proposed mining actions in an ACEC requires a "Plan Level" operation plan, which receives public input through the NEPA process.

Vandalism in the form of intentional disregard or dismantling of signage or fencing intended to protect certain wetland areas from unauthorized ORV use, and subsequent damage resulting from that use, can result in negative effects on the hydrology of the habitat for the two plant species (for example, by penetrating the duripan layer, resulting in drainage).

The effect of grazing on suitable habitat depends on how the grazing is managed. There is conflicting information showing that certain grazing practices can affect native plant species' richness (Marty 2004, p. 1629). Marty's (2004, pp. 1629-1630) study indicates that wet season grazing resulted in a decrease of native forb species at vernal pool edge habitat, the habitat typically occupied by *Limnanthes floccosa* ssp. *grandiflora*. However, the study goes on to mention that continuous grazing was reported to increase species' richness and native plant cover in this edge habitat. In a grazing report prepared for the Service, Borgias (2004, p. 34) mentions that at one site in Jackson County, year-round cattle and horse grazing is practiced, and it appears to allow survival and even proliferation of *Lomatium cookii*. In their study of 17 to 25 sites, Hayes and Holl (2003 p. 1697) indicate the number of native forb species was greater in ungrazed sites than grazed sites. Brock (1987, p. 30) contends that historical grazing practices fragmented and extirpated *Lomatium cookii* throughout much of the Rogue River Valley, based on his observations of the dominance of nonnative annual grasses in the area and the disparate occurrences of *Lomatium cookii* patches. There appear to be instances where some grazing practices can have both beneficial and negative impacts on suitable habitat for *Limnanthes floccosa* ssp. *grandiflora* and *Lomatium cookii*.

Examples of incompatible grazing practices could include wet season grazing (Marty 2004, p. 1629), particularly during the plants' flowering and fruiting season, or grazing at such high density of livestock (ONHDB 1994, p. 11) that all grass and forbs are grazed to a height that prevents reproduction. Water diversion and water impoundment, when used in conjunction with livestock management (making water available for livestock), can also eliminate habitat for the two plant species.

In the Illinois River Valley, herbivory by voles has resulted in mortality of individual plants, as well as an indirect decrease in reproduction for several *Lomatium cookii* occurrences (Kaye and Thorpe 2009, p. 31).

Limnanthes floccosa ssp. *grandiflora* and *Lomatium cookii* are also threatened by encroachment of nonnative annual herbs, including *Centaurea solstitialis* (yellow starthistle) and *Cardaria draba* (hoary cress), which may competitively exclude the two native species. Nonnative annual grasses, namely *Hordeum marinum* ssp. *gussoneanum* (Mediterranean barley) and *Taeniantherum caput-medusae* (medusahead), are also contributing to the degradation of the native plant community. *Hordeum marinum* ssp. *gussoneanum* encroaches on microhabitats occupied by both species, but *T. caput-medusae* occurs on adjacent upland mound habitats, occasionally interfering with *Lomatium cookii* germination and growth with its thatch output. Reproduction of both *Lomatium cookii* and *Limnanthes floccosa* spp. *grandiflora* is impaired by the presence of introduced annual grasses, as seeds of both native species are not able to germinate under the dense thatch produced by nonnative annual grasses. Recently introduced nonnative, invasive plants that have the potential to threaten *Lomatium cookii* in the Illinois River Valley are *Alyssum murale* (yellowtuft) and *A. corsicum* (alisso di Corsica). These two plants were recently introduced to meadow habitat with serpentine-derived soils as part of an experiment to test their ability to accumulate nickel (ODA and USFS 2008, pp. 1-3). The plants tend to outcompete some native plants and persist over time (ODA and USFS 2008, pp. 1-3). The plants were declared noxious weeds by the Oregon Department of Agriculture (ODA) and are illegal to plant in Oregon.

Threats to *Lomatium cookii* in the Illinois River Valley include the habitat impacts resulting from aggregate and mineral mining, residential and urban development, timber harvesting practices, road construction and maintenance, ground disturbance by ORV use that affects surface hydrology, garbage dumping, succession of native woody vegetation due to fire suppression, incompatible grazing practices, and herbivory by voles. The dumping of garbage, especially such large items as old appliances, can directly affect populations by crushing or smothering them. Succession of native woody vegetation, although a natural process, is normally discouraged by fire. In the Illinois River Valley, the

longer fire return intervals due to fire suppression have led to the encroachment of native woody vegetation (trees and shrubs) into the wet meadow habitats occupied by *Lomatium cookii*. Such native woody plants include *Ceanothus cuneatus* (buckbrush), *Pinus ponderosa* (Ponderosa pine), *Pinus jeffreyi* (Jeffrey pine), *Pseudotsuga menziesii* (Douglas-fir), and *Toxicodendron diversiloba* (poison oak). The succession of these species in *Lomatium cookii* habitat can isolate the species into small refuge pockets or cause widespread reduction of habitat suitability by reducing light availability (over-shading), limiting water and nutrient availability, fragmenting populations, and limiting space to grow.

Individuals of *Lomatium cookii* growing in more shaded conditions, such as when surrounded by shrubs, tend to be smaller and less robust than plants growing in more open areas in association with lower growing grasses and forbs (ONHIC 2008). At four protected locations in the Rogue and Illinois River Valleys, long-term monitoring indicates that *Lomatium cookii* populations experienced declines (D. Borgias, pers. comm. 2006; Kaye and Thorpe 2008, pp. 16-25). The causes are not specifically known but appear to be due to encroachment and over-shading from the natural succession of vegetation or increases in vole activity. At two of the declining *Lomatium cookii* populations, located at the French Flat ACEC, the Medford District of the BLM is planning to arrest this decline by reducing shrub and tree encroachment (S. Fritts, pers. comm. 2009). At two *Lomatium cookii* populations located on The Nature Conservancy's Agate Desert Preserve and Whetstone Savanna Preserve, planting of native bunchgrass, mowing, and grazing are being considered to address declining plant numbers (D. Borgias, pers. comm. 2009).

Previous Federal Actions

We listed *Limnanthes floccosa* ssp. *grandiflora* and *Lomatium cookii* as endangered on November 7, 2002 (67 FR 68004). For a discussion of additional information on previous Federal actions concerning *Limnanthes floccosa* ssp. *grandiflora* and *Lomatium cookii*, please refer to the final listing rule for the two species (67 FR 68004; November 7, 2002). The recovery needs of these two species are addressed in the Draft Recovery Plan for Listed Species of the Rogue Valley Vernal Pool and Illinois River Valley Wet Meadow Ecosystems, published in 2006 (USFWS 2006).

On December 19, 2007, the Center for Biological Diversity filed a complaint

against the Service (*Center for Biological Diversity v. Kempthorne, et al.*, 07-CV-2378 IEG, (S.D. CA)) for failure to designate critical habitat for four plant species, including *Limnanthes floccosa* ssp. *grandiflora* and *Lomatium cookii* (the other two species occur in different parts of the country). On April 11, 2008, the U.S. District Court for the Southern District of California entered an order approving a stipulated settlement of the parties requiring the Service to determine whether designation of critical habitat for *Limnanthes floccosa* ssp. *grandiflora* and *Lomatium cookii* is prudent, and if so, to submit a proposed rule for the designation of critical habitat to the **Federal Register** on or before July 15, 2009. The settlement also required the Service to submit a final rule designating critical habitat for *Limnanthes floccosa* ssp. *grandiflora* and *Lomatium cookii* to the **Federal Register** on or before July 15, 2010.

We affirmed that designation of critical habitat for *Limnanthes floccosa* ssp. *grandiflora* and *Lomatium cookii* is prudent, and we published a proposal to designate critical habitat for the two plant species in the **Federal Register** on July 28, 2009 (74 FR 37314). We accepted public comments on this proposal for 60 days, ending September 28, 2009. On January 12, 2010 (75 FR 1568), we announced the reopening of the public comment period for an additional 30 days (ending February 11, 2010); the availability of a draft economic analysis and amended required determinations section of the proposal; and a public hearing on February 2, 2010, in Medford, Oregon. We invited the public to review and comment on any of the above actions associated with the proposed critical habitat designation at the scheduled public hearing or in writing (75 FR 1568).

In 2003, we designated critical habitat for the endangered vernal pool fairy shrimp (*Branchinecta lynchi*) in California and the Rogue River Valley of Oregon (68 FR 46683; August 6, 2003). The designated vernal pool fairy shrimp critical habitat in Oregon overlaps with approximately 1,964 ha (4,853 ac) of suitable habitat for *Limnanthes floccosa* ssp. *grandiflora* and 734 ha (1,815 ac) of suitable habitat for *Lomatium cookii* (68 FR 46683). The vernal pool fairy shrimp critical habitat designation resulted in additional regulatory review for habitats occupied by both *Limnanthes floccosa* ssp. *grandiflora* and *Lomatium cookii* in most of Jackson County due to the similarity and location of the vernal pool-mounded prairie habitat shared by these three species. In this final rule, we will note where designated critical

habitat for the vernal pool fairy shrimp overlaps with that designated for *Limnanthes floccosa* ssp. *grandiflora* and *Lomatium cookii*.

This final rule completes our obligations under the April 11, 2008, settlement agreement regarding *Limnanthes floccosa* ssp. *grandiflora* and *Lomatium cookii*.

Summary of Comments and Recommendations

We requested written comments from the public on the proposed designation of critical habitat for *Limnanthes floccosa* ssp. *grandiflora* and *Lomatium cookii* during two comment periods. The first comment period, associated with the publication of the proposed rule, opened July 28, 2009 (74 FR 37314), and closed September 28, 2009. The second comment period, associated with the availability of the draft economic analysis, opened January 12, 2010 (75 FR 1568), and closed February 11, 2010. During the comment periods, we received two requests for a public hearing. Section 4(b)(5)(E) of the Act requires that we hold one public hearing on a proposed regulation if any person files a request for such a hearing within 45 days after the date of publication of a proposed rule. In response to these requests, we held a public hearing in Medford, Oregon, on February 2, 2010. We also contacted appropriate Federal, State, County, and local agencies; scientific organizations; and other interested parties and invited them to comment on the proposed rule to designate critical habitat for these species and the associated draft economic analysis.

During the first comment period (July 28 – September 28, 2009), we received five comment letters directly addressing the proposed critical habitat designation. During the second comment period (January 12 – February 11, 2010), we received six comment letters addressing the proposed critical habitat designation or the draft economic analysis. During the February 2, 2010, public hearing, one individual provided comment on the designation of critical habitat for *Lomatium cookii*. All substantive information provided during both comment periods has either been incorporated directly into this final determination or is addressed below. Comments we received are addressed in the following summary and incorporated into the final rule as appropriate.

Peer Review

In accordance with our policy published on July 1, 1994 (59 FR 34270), we solicited expert opinions

from three knowledgeable individuals with scientific expertise including familiarity with the species, the geographic region in which the species occur, and conservation biology principles pertinent to the species. We received responses from all three peer reviewers.

We reviewed all comments we received from peer reviewers for substantive issues and new information regarding critical habitat for *Limnanthes floccosa* ssp. *grandiflora* and *Lomatium cookii*. The peer reviewers generally concurred with our methods and conclusions, indicating the Service had used the most current scientific information available; had accurately described the species, their habitat requirements, the primary constituent elements (PCEs) for the species, the reasons for their decline, and threats to their habitat; and had done a thorough job of delineating critical habitat using the best available scientific information. Peer reviewer comments are addressed in the following summary and incorporated into the final rule as appropriate.

Peer Reviewer Comments

(1) *Comment:* All three peer reviewers and several other commenters pointed out that *Lomatium cookii* populations are, in fact, found in habitat subject to mining, agricultural development, residential or commercial development, or grazing activities.

Our Response: We agree that remnant *Lomatium cookii* populations can and do occur in areas subject to mining, agricultural development, residential or commercial development, or grazing activities. We revised the language in this rule to clarify this point.

(2) *Comment:* One peer reviewer suggested that critical habitat for *Limnanthes floccosa* ssp. *grandiflora* and *Lomatium cookii* should include all population areas discovered after the 2002 final listing because all populations that are currently known, not just those found within 3 years of listing, were almost certainly present at the time of listing. The peer reviewer commented that dispersal (for both species) is very limited and successful establishment after dispersal is likely to be infrequent. Therefore, designation of all known populations as critical habitat is warranted.

Our Response: We concur that dispersal and establishment of the two species are infrequent and limited, such that, at this time, a recently documented population most likely existed at the time of the November 2002 final listing.

We include in critical habitat units only *Limnanthes floccosa* ssp.

grandiflora and *Lomatium cookii* populations and habitat areas that provide the physical or biological features essential for their conservation and that require special management considerations or protection. We do not include several populations within critical habitat units because those populations do not meet our selection criteria. For example, populations that have fewer than 10 individuals or that occur in areas that we determined lack the PCEs are not included in the critical habitat designation. We also revised some critical habitat units to incorporate new detailed information provided in the comments we received; these comments provided information on areas not considered in the proposed rule that may support the PCEs, as well as areas included in the proposed designation that may not support the PCEs for the species. All such information was ground-truthed, verified, and incorporated into this final rule, as appropriate.

(3) *Comment:* Two peer reviewers pointed out that the proposed rule suggests that mining is not considered a significant threat for *Lomatium cookii* when in fact it should be considered the greatest threat in Josephine County.

Our Response: We agree that mining should be considered one of the prominent threats to *Lomatium cookii*, especially in Josephine County. We clarified the information in the **Background** section and the Special Management Considerations section of this rule to reflect this.

(4) *Comment:* One peer reviewer pointed out that incompatible grazing was not clearly defined and disagreed with an example provided in the proposed rule of an incompatible grazing practice whereby: "Heavy grazing, especially from October through April, would be an example of incompatible grazing."

Our Response: In the **Background** section of this rule we further defined "incompatible grazing practices" to address this concern, citing ONHDB (1994, p. 11). We revised examples of incompatible grazing to include flooding or grading of vernal pools to make water available for livestock, and further elaborated on grazing practices that may have both positive and negative effects on critical habitat for the two plant species. We also recognize that lack of grazing can have both negative and positive effects on habitats supporting *Limnanthes floccosa* ssp. *grandiflora* and *Lomatium cookii*.

(5) *Comment:* One peer reviewer provided additional information about proposed Unit RV4 and commented that some of the inferences describing the

habitat conditions were not well substantiated. For example, the reviewer indicated that the south part of the unit has been leveled, not grazed, and this more likely was the reason why *Limnanthes floccosa* ssp. *grandiflora* was not present in this area.

Our Response: We revised the description of Unit RV4 to suggest the leveled habitat within the unit could have been one of the reasons why *Limnanthes floccosa* ssp. *grandiflora* was not present in the area. The unit is still occupied by the species both north and south of the leveled area and still functions as critical habitat due to the underlying hardpan (see *Criteria Used To Identify Critical Habitat*, below).

(6) *Comment:* One peer reviewer provided information about an area near Unit RV9, currently unoccupied by *Limnanthes floccosa* ssp. *grandiflora* or *Lomatium cookii*, and suggested it be included in the critical habitat designation because the habitat appears to provide the habitat conditions necessary to support the species.

Our Response: We appreciate the suggestion; however, the Act allows for areas that were not occupied by the species at the time of listing to be designated as critical habitat only if they are considered essential to the conservation of the species. We have no information indicating that this area has ever been occupied by the species. Furthermore, based on ground truthing and aerial photo interpretation, the site does not appear to have the habitat conditions necessary to support the two species, and therefore does not meet the critical habitat selection criteria.

(7) *Comment:* One peer reviewer and a commenter suggested that we should expand critical habitat units to include the adjoining up-gradient slopes that deliver water seasonally. They suggest the wet hydrology habitat occupied by *Lomatium cookii* in the Illinois River Valley is dependent on overland flow and through-flow from the adjacent up-gradient slopes, although the degree to which this hydrology is needed is not quantified.

Our Response: Not all the upland slopes adjacent to the Illinois River Valley critical habitat units do not meet our selection criteria (see *Criteria Used to Identify Critical Habitat*, below); therefore, we did not include all of these features in this rule. Some of the critical habitat units in the Illinois River Valley do include some sloped, unoccupied habitat adjacent to occurrences, but this is intended to include habitat that we consider essential for species conservation. Any Federal actions that would occur on the adjacent slopes of designated critical habitat may have

direct or indirect effects on critical habitat, and therefore could trigger consultation under section 7 of the Act.

(8) *Comment:* A peer reviewer pointed out that in the proposed rule the habitat description in the **Background** section incorrectly implies that annual grasslands are the natural habitat for *Limnanthes floccosa* ssp. *grandiflora* and *Lomatium cookii*. The reviewer stated that native perennial bunchgrass communities, including such species as *Achnatherum lemmonii*, *Festuca roemerii* var. *klamathensis*, and *Poa secunda*, are the natural habitat for these two species in Jackson County's Agate Desert (Rogue River Valley). The reviewer's opinion is that livestock grazing has largely eradicated these grasses and has facilitated the invasion of nonnative annual grasses and forbs, so if habitat was restored to native grasses, grazing would not be helpful.

Our Response: We revised some of the background information to reflect that the current typical grassland habitat occupying almost all of the upland areas in Jackson County's Agate Desert is composed of nonnative annual grasses. We point out that grazing can be an excellent tool for management of these grasses, but would not be an appropriate tool for management in native bunchgrass habitat.

Public Comments

(9) *Comment:* One commenter stated that the Service didn't propose designation of large portions of the two plants' occupied ranges and many areas where one or both of these plant species are known to occur. The commenter points out that the proposed critical habitat units are too small and disjointed to offer meaningful protection of these wetland habitats.

Our Response: We identified critical habitat units that met our selection criteria for critical habitat (USFWS 2009). To the best of our knowledge, we included only areas that provide the physical or biological features essential to the conservation of the species and that require special management considerations or protection. We did not include many areas of developed, previously modified, or unsuitable habitat that do not support, or would not contribute to, the species' continued existence or recovery (see *Criteria Used To Identify Critical Habitat*, below).

(10) *Comment:* One commenter stated that there is a discrepancy between the recovery core areas that the Draft Recovery Plan for Listed Species of the Rogue Valley Vernal Pool and Illinois River Valley Wet Meadow Ecosystems deemed appropriate for recovery of the

two species and the critical habitat units delineated in the proposed rule.

Our Response: Since the publication of the draft recovery plan in 2006 (USFWS 2006), we received additional information about the critical habitat areas from recent ground surveys, updated aerial photographic imagery, and recent development activities on the landscape. The critical habitat units designated in this rule are very similar to the proposed recovery core areas. However, in the Illinois River Valley, five areas that were suggested as priority 3 core areas in the recovery plan are not included in the designated critical habitat because they do not support any occurrences of the listed plants and because, on closer inspection, we determined that these areas do not meet our selection criteria for critical habitat.

(11) *Comment:* A commenter claimed that the statement in the proposed rule (74 FR 37334; July 28, 2009) that the Service “will consider for exclusion under section 4(b)(2) of the Act any existing management plans located within proposed critical habitat units” is inconsistent with the letter and intent of the Act and that the Service’s implementing regulations consider special management considerations important to the preservation of critical habitat.

Our Response: The Secretary’s authority to consider exclusions under section 4(b)(2) of the Act is separate from the statutory requirement under section 3(5)(A) of the Act that we designate critical habitat by identifying those specific areas on which are found those physical or biological features essential to the conservation of the species and which may require special management considerations or protection. As described in the *Criteria Used to Identify Critical Habitat* section of this final rule, we are designating critical habitat in areas occupied by the species at the time it was listed, that provide the physical or biological features essential to their conservation, and which may require special management considerations or protection. We did not receive any management plans from any public or private entities for consideration of exclusion based on section 4(b)(2) of the Act, and did not exclude any habitat from the designation based on section 4(b)(2) of the Act.

(12) *Comment:* A commenter asserted that the proposed rule constitutes a major Federal action with serious impacts on the human environment in the Rogue and Illinois River Valleys. As such, the commenter felt that the Service is required under NEPA to prepare a complete Environmental

Impact Statement to analyze the possible effects and outcomes of designating critical habitat for the two species.

Our Response: Outside the jurisdiction of the Tenth Circuit Court of Appeals, it is the Service’s position that we do not need to prepare environmental analyses as defined by NEPA in connection with the designation of 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), and our position was upheld in the Ninth Circuit Court of Appeals (*Douglas County v. Babbitt*, 48 F.3d 1495 (9th Cir. 1995), cert. denied, 516 U.S. 1042 (1996)).

(13) *Comment:* A commenter indicated that a portion of the commenter’s property is already developed, some of which is recent, and the commenter is planning to expand development of a water treatment facility on their property. The commenter requested that the Service exclude portions of the property planned for development from critical habitat designation.

Our Response: We carefully inspected updated aerial imagery and identified the recently developed area. We also conducted a site visit to the property to determine if the area in question provides the PCEs for either *Limnanthus floccosa* ssp. *grandiflora* or *Lomatium cookii*. We determined that suitable habitat was present on the property; however, upon closer inspection, we deemed it appropriate to modify the boundaries of Subunit RV6A to remove developed areas and a small area on the property that did not provide the PCEs. We are not able to eliminate areas that currently provide the PCEs for the species from critical habitat on the basis of anticipated future development, nor do such plans form the basis for an exclusion from critical habitat under the provisions of the Act. The total amount of designated critical habitat in the subunit decreased from 507 ha (759 ac) to 263 ha (650 ac).

(14) *Comment:* One commenter indicated that *Lomatium cookii* was improperly listed as endangered because it occurs on over 4,452 ha (11,000 ac) in the Illinois River Valley. The commenter suggested this indicates that the plant is flourishing and not in danger of extinction.

Our Response: Technically, the listing status of the species is outside the scope of this rulemaking. However, *Lomatium cookii* was determined to have endangered status in the 2002 final listing rule (67 FR 68004) because it occurs in a limited geographic range

with few known occurrences, occupying a total of 108 ha (266 ac) overall or 61 ha (150 ac) in the Illinois River Valley, and because it is threatened by destruction of its specialized habitat due to the effects of industrial and residential development, road and powerline construction and maintenance, agricultural conversion, certain grazing practices, off-road vehicle use, and competition with nonnative plants. The units included in the critical habitat designation include occupied sites that provide the PCEs and that met our selection criteria for size, connectivity, and other biological considerations. The critical habitat units represent habitat complexes, or functional ecosystem units, occupied by the species and that provide the PCEs essential for its conservation. In such habitat complexes, such as vernal pool-mounded prairie complex or a wet meadow or mixed conifer forest complex, *Lomatium cookii* may use different parts of its habitat over time depending on vegetation succession states, including areas that might be intermittently occupied or unoccupied when the abundance of the species oscillates such that parts of its habitat are not used during low population phases. We are designating 1,621 ha (4,007 ac) of critical habitat for *Lomatium cookii* in the Illinois Valley in this rule. This habitat includes areas presently occupied by the species as well as surrounding areas that contribute to the ecosystem function essential to the conservation of the species. The species does not fully occupy an area of 4,452 ha (11,000 ac) in the Illinois River Valley, as indicated by the commenter.

(15) *Comment:* *Lomatium cookii* is not closely associated with serpentine soils and in fact grows well in non-serpentine-derived soils.

Our Response: We only documented *Lomatium cookii* on a few locations with serpentine-derived soils in the Illinois River Valley. We agree that *Lomatium cookii* is not restricted to serpentine soils. In Jackson County, none of the *Lomatium cookii* occurrences are on serpentine soils. We clarify in the **Background** section of this rule that *Lomatium cookii* can occur in soil types other than serpentine-derived soils in the Illinois River Valley.

(16) *Comment:* One commenter mentioned that surface disturbances do not pose a threat to *Lomatium cookii* because plant populations are healthier in disturbed ground such as wheel ruts, road cuts, recently graded areas, and mine tailings.

Our Response: We are aware that *Lomatium cookii* has an ability to

persist in disturbed sites, such as graveled roadsides and wheel ruts, likely owing to its long tap root. However large-scale mining and development activities can completely remove or alter *Lomatium cookii* suitable habitat by removing large amounts of soil. We are not aware of *Lomatium cookii* occurring in mine tailings, but it would not be surprising provided the tailings were relatively shallow. We have no documentation of *Lomatium cookii* colonizing newly disturbed areas and surmise that *Lomatium cookii* occurred at the recently graded areas prior to the work.

(17) *Comment:* One commenter said that the *Lomatium cookii* occurrences in Unit IV12 are nonnative and suggested that because they are found in both historical and recent placed mine tailings, it can be inferred that the plants did not originate at this site.

Our Response: We have no evidence to suggest that the *Lomatium cookii* occurrences in Unit IV12 are not naturally occurring. Regardless, under section 3(5)(A) of the Act, the designation of critical habitat is not limited to sites that historically supported the species, but applies to geographic areas occupied at the time of listing or those that may have been unoccupied but are considered essential to the conservation of the species. Our information suggests that the geographic areas designated as critical habitat in Unit IV12 were occupied at the time of listing. We reviewed long-term *Lomatium cookii* monitoring reports from BLM land in Unit IV12 (Thorpe and Kaye 2009), which suggest these are well-established populations. *Lomatium cookii* only occurs in limited areas in Jackson and Josephine Counties, and populations appear to be dwindling in many of these locations.

(18) *Comment:* One commenter objected to the assertion that *Alyssum murale* (yellowtuft) and *Alyssum corsicum* (alisso di Corsica) pose a threat to *Limnanthes floccosa* ssp. *grandiflora* and *Lomatium cookii*. The commenter stated that there has never been proof that the two *Alyssum* species can impact the two plant species.

Our Response: Our proposed rule identified these two nonnative *Alyssum* species as potential threats to *Lomatium cookii*. According to the joint Forest Service (FS) and Oregon Department of Agriculture (ODA) 2008 assessment, the two *Alyssum* species appear to have escaped from various planted locations and are vigorously colonizing new areas within the Illinois River Valley on serpentine-derived soils. The authors of the report conclude that the dense concentrations of these invasive plants

threaten to encroach upon and displace *Lomatium cookii* in the Illinois River Valley (ODA and USFS 2008, pp. 1–3). The ODA has determined that the *Alyssum* species are noxious weeds; therefore they can no longer be legally planted in Oregon. We consider the two *Alyssum* species to pose a general threat to *Lomatium cookii* in the Illinois River Valley.

Comments by Federal Agencies

(19) *Comment:* The BLM commented that the **Background** section of our rule should clearly state that vernal pool fairy shrimp critical habitat units only overlies critical habitat units designated for *Limnanthes floccosa* ssp. *grandiflora* or *Lomatium cookii* in Jackson County.

Our Response: We clarified in the **Background** section of this rule that vernal pool fairy shrimp critical habitat only overlies the *Limnanthes floccosa* ssp. *grandiflora* or *Lomatium cookii* critical habitat units in Jackson County.

(20) *Comment:* The BLM pointed out that the PCE section describing the habitat characteristics for *Lomatium cookii* in the Illinois River Valley leaves out some suitable habitat types, in addition to wet meadows that occur in that area. The BLM suggests the description should also include mixed evergreen oak-madrone (*Quercus-Arbutus*), higher shrub cover, and sites in very small openings, road edges, and old road beds.

Our Response: We revised the PCEs and included additional habitat descriptions for the Illinois River Valley based on the BLM suggestions, ground-truthing, and inspection of updated aerial photography. We do not include old road beds or graveled roadsides as one of the PCEs for the species because we do not consider these features to be essential to the conservation of the species.

(21) *Comment:* BLM mentioned that the proposed rule appeared to describe the minimum size of critical habitat units as at least 12 ha (30 ac). However, they point out that a few populations of the two plant species that occur in patches less than 1 ac (0.4 ha) in size were included in the proposed critical habitat, seemingly in violation of our minimum size criterion. BLM suggested we clarify our description of the critical habitat units to explain that they represent a functional habitat complex, with some areas that are occupied and others that are presently unoccupied but still provide the essential physical or biological features required for the conservation of the species.

Our Response: We agree with BLM's comment, and attempted to clarify in this rule that critical habitat boundaries

are not drawn narrowly around present occurrences of the species, but are intended to encompass functional habitat complexes that support the species (that is, provide the PCEs). In our selection criteria, we determined that an isolated 8-ha (20-ac) area of habitat (where "isolated" is defined as meaning the next area of appropriate habitat is greater than 1 km (0.6 mi) away) that is occupied by one of the plant species is the minimum area we will designate as a critical habitat unit for both the Rogue River Valley and the Illinois River Valley. This criterion is based on historical evidence (ONHIC 2008) that isolated habitats do not provide a hydrologically and ecologically functional system of vernal pool-mounded prairie, streams, or slopes and wooded systems that surround and maintain seasonally wet alluvial meadows. Many small patches of plants less than 0.4 ha (1 ac) in size may occur within a single critical habitat unit, but in our selection process, we included areas of habitat between these patches that provide the PCEs for the species, considering them collectively as a complex. We expect plant occurrences could occur anywhere within the hydrologically and ecologically functional system of habitat provided within such a complex within a critical habitat unit.

(22) *Comment:* BLM suggests that in the Special Management Considerations or Protections section of our rule we include a description of mining regulations on Federal lands in the Illinois River Valley.

Our Response: We revised the **Background** and Special Management Considerations or Protections sections of this rule to include more information about mining rules, operational plan requirements, and the extra regulatory requirements at BLM ACECs.

(23) *Comment:* BLM recommends that in the *Criteria Used to Identify Critical Habitat* section of our rule we provide a citation or rationale for why *Lomatium cookii* populations with fewer than 10 individuals should not be included in the critical habitat designation.

Our Response: Our selection criteria specified that areas with fewer than 10 individual plants that are isolated (1 km (0.6 mi) distance from the next area of appropriate habitat) would not meet the definition of critical habitat because such areas do not provide the physical or biological features essential to the conservation of the species. We based this selection criterion on plant record evidence that *Limnanthes floccosa* ssp. *grandiflora* or *Lomatium cookii* plant occurrences below the 10-individual threshold appear to become extirpated

over time due to lack of habitat quality, available habitat space, or proximity to developmental activity (ONHC 2008).

(24) *Comment:* The BLM pointed out that the majority of occurrences of *Lomatium cookii* occur on Federal lands in the Illinois River Valley (Josephine County). They indicated that 33 sites, or 70 percent of the total number of known sites, occur on BLM lands. However, only 20 percent of the proposed critical habitat occurs on Federal lands. BLM provided maps suggesting areas in the Illinois River Valley where critical habitat boundaries could be revised to include additional suitable habitat for *Lomatium cookii* on BLM lands and to remove areas with unsuitable habitat on private lands in the following critical habitat units: IV3, IV4, IV5, IV11, IV13, and IV14.

Our Response: We reviewed new aerial photos and performed ground truthing in the BLM-managed areas proposed by BLM for inclusion in final *Lomatium cookii* critical habitat units in Josephine County, Oregon. We agree that some of these areas contain the physical or biological features essential for the conservation of *Lomatium cookii*. Out of the recommended areas, we determined 265 ha (654 ac) of these additional BLM lands contain the essential physical or biological features for *Lomatium cookii* and require special management or protection, and thus meet the definition of critical habitat. As these lands meet the selection criteria for critical habitat as described in our original proposal, and all fall within currently described critical habitat units, we consider the addition of these Federal lands to be within the scope of the original proposed critical habitat designation. In addition, we determined that including a portion of these areas within the critical habitat designation will not impact any timber sales, grazing leases, active mining claims, or other activities on these Federal lands, and will not alter the economic analysis of the proposed designation. The new areas recommended for inclusion in the designation by the BLM are all either designated as ACECs or proposed as ACECs. The information provided by the BLM further allowed us to refine the proposed critical habitat units and remove areas of private lands that do not provide the physical or biological features essential to the conservation of *Lomatium cookii* from the final designation. Therefore, upon the recommendation of the BLM, we increased the area of critical habitat in units IV3, IV4, IV5, IV11, and IV13 to include additional BLM lands in the *Lomatium cookii* critical habitat designation.

(25) *Comment:* BLM suggests that Table 1 in the proposed rule and the critical habitat unit descriptions include occurrences of the two listed species. Also, the agency suggests our critical habitat discussion should describe which occurrences are on private, city, county, State, or Federal lands.

Our Response: We provided more information in this rule regarding each of the occurrences and whether they occur on private, city, county, State, or Federal lands, but did not revise Tables 3–6 in an effort to maintain clarity.

Comments Related to the Economic Analysis

(26) *Comment:* One commenter stated that the impacts to Jackson County associated with the Medford Airport runway expansion project in 2015 should be quantified as incremental impacts due to the designation of critical habitat. This commenter suggested the runway expansion would not affect the known *Lomatium cookii* population located within the Airport and therefore mitigation would only be undertaken to offset impacts to critical habitat.

Our Response: As described on pages 3-1 and 3-2 of the final economic analysis, all proposed critical habitat in Jackson County is vernal pool habitat over which the U.S. Army Corps of Engineers (USACE) maintains jurisdiction. As such, any development project within vernal pool habitat in Jackson County must meet the USACE requirements for a section 404 permit under the Clean Water Act (33 U.S.C. 1251 *et seq.*); this requirement is in effect regardless of critical habitat designation.

The final economic analysis concludes that conservation efforts taken to avoid adverse impacts to vernal pool habitat, as required by the USACE, will also benefit *Limnanthes floccosa* ssp. *grandiflora* and *Lomatium cookii*. Furthermore, the incremental impacts identified in the final economic analysis arose solely from administrative costs associated with the additional effort to address adverse modification during future section 7 consultations.

Minimization and mitigation conservation efforts undertaken under section 404 of the Clean Water Act are not expected to change following the designation of critical habitat. The economic analysis quantifies the impacts of conservation and mitigation efforts for a section 404 permit associated with the planned expansion of the Medford airport, and appropriately assigns these impacts to the baseline, as they would be required for the 404 permit even absent the

designation of critical habitat. As described in section 3.4 of the final economic analysis, the Service considers the baseline conservation afforded the plants due to the USACE 404 permit mitigation requirements sufficient to avoid destruction or adverse modifications of critical habitat. Thus, the Service does not anticipate recommending additional conservation actions following the designation of critical habitat, and incremental impacts are limited to administrative costs of consultation to address adverse modification.

(27) *Comment:* One commenter asserted that the potential effects of critical habitat designation on phytomining operations, or extraction of minerals from propagated plant material, should be considered in the economic analysis. The commenter mentioned that phytomining is beneficial to *Lomatium cookii* because it reduces competing grasses.

Our Response: We did not include a discussion of the phytomining practice in the proposed rule because this practice is not known to be in operation within any of the proposed Illinois River Valley critical habitat units. The two native grasses that are associated with *Lomatium cookii* habitat in the Illinois River Valley (*Deschampsia cespitosa* and *Danthonia californica*) do not cause competition problems for the species. In addition, *Lomatium cookii* often occurs in non-serpentine derived soils that would not be desirable for phytomining operations.

Section 6.6.3 of the final economic analysis describes phytomining operations in the vicinity of the proposed critical habitat. The two species used in phytomining operations (*Alyssum murale* and *Alyssum corsicum*) were listed as State noxious weeds by the Oregon Department of Agriculture in 2009, resulting in a Statewide prohibition against their import into Oregon and their transport, sale, and propagation. Under current State regulation, phytomining activities are prohibited Statewide, including within the designated critical habitat area. The designation of critical habitat is therefore not expected to affect phytomining operations.

Summary of Changes from Proposed Rule

In preparing this critical habitat designation for *Limnanthes floccosa* ssp. *grandiflora* and *Lomatium cookii*, we reviewed and considered all comments received on the proposed designation of critical habitat published on July 28, 2009 (74 FR 37314), and comments on the draft economic analysis we made

available on January 12, 2010 (75 FR 1568). As a result of all comments we received on the proposed rule and the draft economic analysis, we made changes to our proposed designation. These changes are summarized as follows:

- In Jackson County, we adjusted the boundaries of some of the proposed critical habitat units to remove those areas that we determined do not provide the PCEs for either *Limnanthes floccosa* ssp. *grandiflora* or *Lomatium cookii*, resulting in reduced area in seven of the units (RV2, RV3, RV4, RV6, RV7, RV8, and RV9). The final critical habitat designation in Jackson County represents a reduction of 198 ha (487 ac) for *Limnanthes floccosa* ssp. *grandiflora* and a reduction of 122 ha (307 ac) for *Lomatium cookii* from what we proposed.
- In Josephine County, we removed those areas from the proposed critical habitat units that we determined do not provide the PCEs

to *Lomatium cookii*, resulting in a reduction in size in five of the units (IV1, IV2, IV6, IV8, and IV12). We included additional areas that we determined provide the PCEs for *Lomatium cookii*, resulting in the expansion of five of the units (IV3, IV4, IV5, IV11, and IV13); all area increases are entirely on Federal (BLM) lands. As mentioned in our response to Comment 24, the additional specific areas on BLM lands meets the selection criteria for critical habitat as described in our proposed rule, and the additional area falls within currently described critical habitat units; therefore, we consider the addition of these Federal lands to be within the scope of the proposed critical habitat designation. Through discussions with BLM and information provided by BLM, we determined that including a portion of these areas within the critical habitat designation will not impact any timber sales, grazing leases, active mining claims, or other activities on BLM lands, and will not alter the

economic analysis of the proposed designation. The new areas recommended for inclusion in the designation by the BLM are all either designated as ACECs or proposed as ACECs.

We eliminated Unit IV14, proposed critical habitat for *Lomatium cookii*, from the designation for two reasons: First, because we determined from BLM documentation that the habitat was not occupied by *Lomatium cookii*; second, after review of updated aerial photography and a recent site visit to the proposed unit, we found the habitat features do not meet our selection criteria. We incorporated one small portion of proposed Unit IV14 that does provide the PCEs for *Lomatium cookii* into Unit IV13. The final critical habitat designation for *Lomatium cookii* in Josephine County thus represents a reduction of 208 ha (514 ac) from what we proposed.

We are finalizing the following final critical habitat designation in accordance with section 4(b)(2) of the Act.

TABLE 1—FINAL RULE CRITICAL HABITAT UNIT CHANGES IN HECTARES (ACRES) FOR *Limnanthes floccosa* SSP. *grandiflora* IN JACKSON COUNTY (TOTALS ARE ROUNDED).

Units	Proposed rule ha (ac)	Final rule ha (ac)	Change ha (ac)
RV1	8 (20)	8 (20)	.....
RV2	84 (207)	69 (169)	- 15 (38)
RV3	539 (1,331)	490 (1,210)	- 49 (121)
RV4	245 (605)	243 (600)	- 2 (5)
RV5	49 (122)	49 (122)	.....
RV6	848 (2,095)	740 (1,829)	- 108 (266)
RV7	426 (1,053)	421 (1,039)	- 5 (14)
RV8	362 (896)	344 (850)	- 18 (46)
Total	2,561 (6,327)	2,363 (5,840)	- 198 (487)

TABLE 2—FINAL RULE CRITICAL HABITAT UNIT CHANGES IN HECTARES (ACRES) FOR *Lomatium cookii* IN JACKSON COUNTY (TOTALS ARE ROUNDED).

Units	Proposed rule ha (ac)	Final rule ha (ac)	Change ha (ac)
RV6	608 (1,503)	546 (1,349)	- 62 (154)
RV8	362 (895.5)	344 (850)	- 18 (45.5)
RV9	76 (190)	34 (83)	- 42 (107)
Total	1,046 (2,589)	924 (2,282)	- 122 (307)

TABLE 3—FINAL RULE CRITICAL HABITAT UNIT CHANGES IN HECTARES (ACRES) FOR *Lomatium cookii* IN JOSEPHINE COUNTY (TOTALS ARE ROUNDED).

Units	Proposed listing ha (ac)	Final listing ha (ac)	Change ha (ac)
IV1	53 (132)	35 (85)	- 18 (47)
IV2	39 (97)	28 (70)	- 11 (27)
IV3	105 (260)	152 (374)	+ 47 (114)
IV4	69 (170)	83 (204)	+ 14 (37)
IV5	158 (391)	165 (407)	+ 7 (16)
IV6	209 (516)	182 (449)	- 27 (67)
IV7	55 (136)	55 (136)	.....
IV8	348 (859)	234 (579)	- 114 (280)
IV9	12 (30)	12 (30)	.....
IV10	45 (110)	45 (110)	.....
IV11	61 (152)	118 (292)	+ 57 (140)
IV12	617 (1,524)	492 (1,216)	- 125 (308)
IV13	18 (45)	22 (54)	+ 4 (9)
IV14	40 (100)	0 (0)	- 40 (100)
Total	1,829 (4,521)	1,621 (4,007)	- 208 (514)

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 to use and the use of all methods and procedures that are necessary to bring an endangered or threatened species to the point at which the measures provided under the Act are no longer necessary. Such methods and procedures include, but are not limited to, all activities associated with scientific resources management such as research, census, law enforcement, habitat acquisition and maintenance, propagation, live trapping, and transplantation, and, in the extraordinary case where population pressures within a given ecosystem

cannot be otherwise relieved, may include regulated taking.

Critical habitat receives protection under section 7 of the Act through the prohibition 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 non-Federal landowners. Where a landowner seeks or requests Federal agency funding or authorization for an action that may affect a listed species or critical habitat, the consultation requirements of section 7(a)(2) of the Act would apply, but even in the event of a destruction or adverse modification finding, Federal action agency's and the applicant's obligation is not to restore or recover the species, but to implement reasonable and prudent alternatives to avoid destruction or adverse modification of critical habitat.

For inclusion in a critical habitat designation, the habitat within the geographical area occupied by the

species at the time it was listed must contain the physical or biological features essential to the conservation of the species, and be included only if those features may require special management considerations or protection. Critical habitat designations identify, to the extent known using the best scientific and commercial data available, habitat areas that provide essential life cycle needs of the species (areas on which are found the physical or biological features laid out in the appropriate quantity and spatial arrangement for the conservation of the species). Under the Act and regulations at 50 CFR 424.12, we can designate critical habitat in areas outside the geographical area occupied by the species at the time it is listed only when we determine that those areas are essential for the conservation of the species and that designation limited to those areas occupied at the time of listing would be inadequate to ensure the conservation of the species.

Section 4 of the Act requires that we designate critical habitat on the basis of the best scientific and commercial data available. Further, our Policy on Information Standards Under the Endangered Species Act (published in the **Federal Register** on July 1, 1994 (59 FR 34271)), the Information Quality Act (section 515 of the Treasury and General Government Appropriations Act for

Fiscal Year 2001 (Pub. L. 106-554; H.R. 5658)), and our associated Information Quality Guidelines, provide criteria, establish procedures, and provide guidance to ensure that our decisions are based on the best scientific data available. They require our biologists, to the extent consistent with the Act and with the use of the best scientific data available, to use primary and original sources of information as the basis for recommendations to designate critical habitat.

When we are determining which areas should be designated as critical habitat, our primary source of information is generally the information developed during the listing process for the species. Additional information sources may include the recovery plan for the species, articles in peer-reviewed journals, conservation plans developed by States and counties, scientific status surveys and studies, biological assessments, or other unpublished materials and expert opinion or personal knowledge.

Habitat is often dynamic, and species may move from one area to another over time. Furthermore, we recognize that critical habitat designated at a particular point in time may not include all of the habitat areas that we may later determine are necessary for the recovery of the species. For these reasons, a critical habitat designation does not signal that habitat outside the designated area is unimportant or may not be required for recovery of the species.

Areas that are important to the conservation of the species, but are outside the critical habitat designation, will continue to be subject to conservation actions we implement under section 7(a)(1) of the Act. Areas that support populations are also subject to the regulatory protections afforded by the section 7(a)(2) jeopardy standard, as determined on the basis of the best available scientific information at the time of the agency action. Federally funded or permitted projects affecting listed species outside their designated critical habitat areas may still result in jeopardy findings in some cases. Similarly, critical habitat designations made on the basis of the best available information at the time of designation will not control the direction and substance of future recovery plans, habitat conservation plans (HCPs), or other species conservation planning efforts if new information available at the time these planning efforts calls for a different outcome.

Physical and Biological Features

In accordance with section 3(5)(A)(i) of the Act and regulations at 50 CFR 424.12, in determining which areas within the geographical area occupied at the time of listing to designate as critical habitat, we consider the physical or biological features essential to the conservation of the species that may require special management considerations or protection. These include, but are not limited to:

- (1) Space for individual and population growth, and for normal behavior;
- (2) Food, water, air, light, minerals, or other nutritional or physiological requirements;
- (3) Cover or shelter;
- (4) Sites for breeding, reproduction, rearing (or development) of offspring, germination, or seed dispersal; and
- (5) Habitats that are protected from disturbance or are representative of the historical, geographical, and ecological distributions of a species.

The appropriate quantity and spatial arrangement of the principal biological or physical features within the defined area essential to the conservation of the species comprise the "primary constituent elements" (PCEs) of critical habitat. As defined by our implementing regulations at 50 CFR 424.12(b)), these primary constituent elements may include, but are not limited to, features such as roost sites, nesting grounds, spawning sites, feeding sites, seasonal wetlands or drylands, water quality and quantity, host species or plant pollinators, geological formations, vegetation types, tides, and specific soil types.

We derived the specific PCEs required for *Limnanthes floccosa* ssp. *grandiflora* and *Lomatium cookii* from the biological needs of the species as described in the proposed rule to designate critical habitat published in the **Federal Register** on July 28, 2009 (74 FR 37314), the **Background** section of this final rule, and the information presented below. Additional information can also be found in the final listing rule published in the **Federal Register** on November 7, 2002 (67 FR 68004) and the Draft Recovery Plan for Listed Species of the Rogue Valley Vernal Pool and Illinois River Valley Wet Meadow Ecosystems (USFWS 2006, pp. II-1 to II-17).

Limnanthes floccosa ssp. *grandiflora* and *Lomatium cookii* are both found in the vernal pool-mounded prairie and other ephemeral wetland habitats of the Rogue River Valley. However, *Lomatium cookii* is also found in an area characterized by very different

physical or biological features in the Illinois River Valley, where it is found in seasonally wet meadows and openings in mixed-conifer forest. Because of this difference in the physical or biological features used by *Lomatium cookii* in these two different areas, we organized the PCEs by geographic area and present them separately for each of the plant species in the Rogue River Valley and the Illinois River Valley.

Rogue River Valley

Space for Individual and Population Growth, Germination, and Seed Dispersal

In the Rogue River Valley, *Limnanthes floccosa* ssp. *grandiflora* and *Lomatium cookii* both occur on vernal pool-mounded prairie and other ephemeral wetland habitats underlain by relatively undisturbed subsoils subject to periodic inundation (Borgias 2004, pp. 17–20; ONHDB 1994, pp. 9–10). In the Rogue River Valley, both species occur primarily in an area known as the Agate Desert, in low-gradient mounded habitat that supports a mosaic of low-growing native grasses and forbs and an absence of dense canopy vegetation. The pools typically fill during the winter rains and retain a wetted perimeter until late April. In years with higher than average winter rainfall, more depressions fill, and individual pools that are separate in dry years may merge together (Borgias 2004, p. 32). The dominant native grasses and forbs associated with vernal pool-mounded prairie habitat occupied by *Limnanthes floccosa* ssp. *grandiflora* and *Lomatium cookii* include: *Alopecurus saccatus*, *Deschampsia danthonioides*, *Eryngium petiolatum*, *Lasthenia californica*, *Myosurus minimus*, *Navarretia leucocephala* ssp. *leucocephala*, *Phlox gracilis*, *Plagiobothrys bracteatus*, *Trifolium depauperatum*, and *Triteleia hyacinthina*. In the Rogue River Valley, vernal pool-mounded prairie habitats occupied by *Lomatium cookii*, range from 372 to 411 m (1,220 to 1,350 ft) in elevation. In the same habitat, *Limnanthes floccosa* ssp. *grandiflora* occurrences range from 372 to 469 m (1,220 to 1,540 ft) in elevation (USGS 2002).

These specific habitats and hydrological regimes provide the conditions essential for the growth and survival of *Limnanthes floccosa* ssp. *grandiflora* and *Lomatium cookii* and for the successful production, germination, and dispersal of seeds.

Slope

In the Rogue River Valley, *Limnanthes floccosa* ssp. *grandiflora* and *Lomatium cookii* occur almost exclusively on low-gradient and flat terrains, not typically exceeding 3 percent slope (USDA 2006b). In the Rogue River Valley, they occur predominately in Agate-Winlo complex soils mapped at 0 to 3 percent slope.

Water and Nutritional or Physiological Requirements

Vernal pools typically become inundated or saturated during winter rains and hold water for sufficient lengths of time for *Limnanthes floccosa* ssp. *grandiflora* and *Lomatium cookii* to germinate, grow, and reproduce. Periodically, this geographic area may experience drought, and rainfall may be insufficient to fill pools. The composition of the plant community can vary from year to year depending on the timing and amount of annual rainfall and the type of land management on the site (Borgias 2004, p. 16). The vernal pools and wet meadow soils where the two plants occur are dry during the summer but become saturated with water in the winter and spring nearly every year. The water regime is important for the sustenance of the two plants and for their ability to germinate, persist, and grow in wet conditions during the winter months.

Vernal pool habitats, ephemeral swales, seasonally wet meadows, and streamside habitats occupied by *Limnanthes floccosa* ssp. *grandiflora* and *Lomatium cookii* in the Rogue River Valley can be characterized as seasonal wetlands. The habitats are dominated by mostly obligate or facultative wetland vegetation. The *Lomatium cookii* occurrences at Rough and Ready Creek, the Rogue Valley International-Medford Airport, and a potentially introduced population at Woodcock Creek are clearly not wetlands but appear to have high clay content in the soil (Kagan 1994, p. 10; Silvernail and Meinke 2008, p. 31). The meadows at these sites may have enough of a clay component so that they would be seasonally wet (ONHDB 1994, p. 10).

The moisture and other nutritional or physiological requirements afforded by these sites provide the essential requirements for the growth, germination, reproduction, and successful seed dispersal of *Limnanthes floccosa* ssp. *grandiflora* and *Lomatium cookii*.

Soil

The soil types in the Agate Desert of the Rogue River Valley typically

occupied by both *Limnanthes floccosa* ssp. *grandiflora* and *Lomatium cookii* are Agate-Winlo or Provig-Agate soils. Soils from *Lomatium cookii* habitat in the Rogue River Valley had higher concentrations of calcium, nitrogen, phosphorus, potassium, manganese, iron, and boron relative to soils utilized by the species in the Illinois River Valley. Soils from the two population centers had similar pH, cation exchange capacity, and percent sand, silt, or clay content (Silvernail and Meinke 2008, p. 30).

Habitats Protected from Disturbance

Protection from Development

In the Rogue River Valley, disturbance in the form of development is a major factor in the loss or degradation of habitat for *Limnanthes floccosa* ssp. *grandiflora* and *Lomatium cookii*. Residential or commercial development can directly eliminate or fragment essential habitat for both species, causing declines in distribution and numbers. Agricultural development, such as ripping (a form of deep tilling that potentially undermines the hardpan layer of the soil), water diversion, and water impoundment can also eliminate habitat for the two plant species. Development can indirectly cause increases in nonnative plants in the habitat, in turn decreasing pollinators, habitat for pollinator species, and seed production of many native vernal pool plants (Thorp and Leong 1998, pp. 169–179). *Limnanthes floccosa* ssp. *grandiflora* and *Lomatium cookii* face immediate threats from urban and commercial development in the expanding Medford and White City metropolitan areas in the Rogue River Valley. Protected habitat is therefore of crucial importance for the growth and dispersal of these two species.

Based on aerial imagery and ONHC information, isolated habitat areas (at least 0.6 mi (1 km) from the next nearest area of appropriate habitat) that appear to provide sufficient area for plant populations to expand, in conjunction with continuous non-fragmented *Limnanthes floccosa* ssp. *grandiflora* and *Lomatium cookii* occupied habitat, were typically greater than 8 ha (20 ac). Habitat areas of this minimum size provide protection from adjacent development and weed sources and contained intact hydrology (USDA 2009). This is also the size of the smallest isolated vernal pool-mounded prairie area that is known to support *Limnanthes floccosa* ssp. *grandiflora* (ONHC 2008). Furthermore, based on aerial imagery, habitat areas that appeared to provide sufficient

protection and continuous, non-fragmented habitat covered at least 8 ha (20 ac).

Protection from Invasive, Nonnative Plants

Invasive, nonnative species and their subsequent thatch may overtake *Limnanthes floccosa* ssp. *grandiflora* and *Lomatium cookii* and reduce space available for both listed plants' growth (Borgias 2004, p. 45); therefore, the listed plants require microhabitats free of exotic or native invasive competitors. In the Rogue River Valley, invasive, nonnative plants or their thatch layers that compromise survival of the two listed species include: *Centaurea solstitialis*, *Cardaria draba*, *Hordeum marinum* ssp. *gussoneanum*, and *Taeniantherum caput-medusae* (medusahead).

Illinois River Valley

Space for Individual and Population Growth, Germination, and Seed Dispersal

In the Illinois River Valley, *Lomatium cookii* occurs partially in alluvial meadows underlain by relatively undisturbed, ultramafic soils subject to winter inundation from rainfall, seasonal flooding, and overland drainage (ONHDB 1994, pp. 9–10). *Lomatium cookii* has also been found in mixed-conifer forest openings on slopes and along roadside edges in shrubby habitat where the soil is not subject to prolonged inundation. The seasonally wet meadows, occurring within *Quercus garryana*-*Quercus kelloggii*-*Pinus ponderosa* forest openings, are dominated by native grasses and forbs including: *Achnatherum lemmonii*, *Camassia* spp., *Danthonia californica*, *Deschampsia cespitosa*, *Festuca roemerii*, *Poa secunda*, *Ranunculus occidentalis*, and *Limnanthes gracilis* var. *gracilis* (ONHDB 1994, p. 9). Widely spaced, large pine trees are characteristic of the open meadow habitat with some mixed pine and oak woodlands occurring along seasonal creeks. In addition, *Arbutus menziesii*, *Arctostaphylos viscida*, and *Ceanothus cuneatus* are components of the shrubby plant community. In the Illinois River Valley area, *Lomatium cookii* can be found from 383 to 488 m (1,256 to 1,600 ft) in elevation (USGS 2009).

Slope

Most Illinois River Valley *Lomatium cookii* occurrences are found on a variety of soils that range from 0 to 8 percent slope (ONHC 2008; USDA 2008). However, a few of the *Lomatium cookii* sites in the Illinois River Valley

are on terrains with soils mapped up to 40 percent slope (ONHIC 2008).

Water and Nutritional or Physiological Requirements

A portion of *Lomatium cookii* habitat in the Illinois River Valley typically becomes inundated or saturated during winter rains enabling the plant to germinate, grow, and reproduce; other habitat areas in sloped, mixed conifer habitats do not become inundated, but receive sufficient moisture from rainfall to maintain conditions that support the species. Rainfall in the Illinois River Valley averages 152 centimeters (60 inches) per year. Periodically, this geographic area may experience extreme droughts. The composition of the plant community can vary from year to year depending on the timing and amount of annual rainfall and the type of land management on the site (ONHDB 1994, p. 9).

Soil

Soils in the Illinois River Valley occupied by *Lomatium cookii* may include Abegg gravelly loam, Brockman clay loam, Copsey clay, Cornutt–Dubakel complex, Dumps, Eightlar extremely stony clay, Evans loam, Foehlin gravelly loam, Josephine gravelly loam, Kerby loam, Newberg fine sandy loam, Pearsoll–Rock outcrop complex, Pollard loam, Riverwash, Speaker–Josephine gravelly loam, Takilma cobbly loam, or Takilma Variant extremely cobbly loam. The majority of *Lomatium cookii* occurrences in the Illinois River Valley are found on Brockman clay loam, Josephine gravelly loam, and Pollard loam (USDA 2008). In a soil analysis conducted by Silvernail and Meinke (2008, p. 30), samples from ultramafic *Lomatium cookii* habitat in the Illinois River Valley had high concentrations of magnesium, nickel, chromium, cobalt, zinc, and copper and a high percent magnesium saturation.

Habitats Protected from Disturbance

Protection from Development

Mining (and its associated habitat impacts) is the major threat in the Illinois River Valley for *Lomatium cookii*. Mining activities can result in the loss or degradation of habitat for this plant. Residential or commercial development is not as widespread or prevalent in the Illinois River Valley as in the Rogue River Valley, but they can directly eliminate or fragment essential habitat for the plant, causing declines in distribution and numbers. Development can indirectly cause increases in nonnative plants in the habitat, in turn

decreasing pollinators, habitat for pollinator species, and seed production of many native vernal pool plants (Thorpe and Leong 1998, pp. 169–179). Protected habitat is therefore of crucial importance for the growth and dispersal of *Lomatium cookii*.

Based on aerial imagery and ONHIC information, isolated habitat areas that appear to provide sufficient protection and continuous, non-fragmented *Lomatium cookii* habitat covered at least 8 ha (20 ac). Isolated habitat areas of this minimum size provide protection from adjacent development and weed sources and contained intact hydrology. We did not identify any isolated areas for critical habitat units smaller than this size in the Illinois River Valley.

Protection from Invasive, Nonnative Plants

The encroachment of nonnative plants contributes to the degradation of habitat and can affect *Lomatium cookii* through competitive exclusion; grasses in particular may hinder germination or growth of the plant by the production of a dense thatch layer. *Lomatium cookii* requires habitats free of exotic or invasive plant competitors. In the Illinois River Valley, common introduced grasses in the grazed pastures in and around *Lomatium cookii* habitat include: *Bromus* sp. (brome), *Festuca arundinacea* (tall fescue), *Dactylis glomerata* (orchard grass), *Taeniantherum caput-medusae*, and *Poa pratensis* (Kentucky bluegrass). In addition, the recently introduced nonnative, invasive species *Alyssum murale* and *A. corsicum* threaten *Lomatium cookii* in this area (ODA and FS 2008, pp. 1–3).

Primary Constituent Elements for Limnanthes floccosa ssp. grandiflora and Lomatium cookii

Under the Act and its implementing regulations, we are required to identify the known physical or biological features, or PCEs, essential to the conservation of *Limnanthes floccosa ssp. grandiflora* and *Lomatium cookii*, which may require special management considerations or protection. All areas designated as critical habitat for *Limnanthes floccosa ssp. grandiflora* and *Lomatium cookii* were occupied at the time of listing, are within the species' historical geographic range, and provide sufficient PCEs to support at least one life-history function.

Limnanthes floccosa ssp. grandiflora

Based on our current knowledge of the life history, biology, and ecology of the species and the characteristics of the habitat necessary to sustain the essential

life history functions of the species, we determined that the PCEs for *Limnanthes floccosa ssp. grandiflora* critical habitat are:

(1) Vernal pools or ephemeral wetlands and the adjacent upland margins of these depressions that hold water for a sufficient length of time to sustain *Limnanthes floccosa ssp. grandiflora* germination, growth, and reproduction, occurring in the Rogue River Valley vernal pool landscape (ONHP 1997, p. 3). These vernal pools or ephemeral wetlands are seasonally inundated during wet years but do not necessarily fill with water every year due to natural variability in rainfall, and support native plant populations. Areas of sufficient size and quality are likely to have the following characteristics:

- Elevations from 372 to 469 m (1,220 to 1,540 ft);
- Associated dominant native plants including, but not limited to: *Alopecurus saccatus*, *Deschampsia danthonioides*, *Eryngium petiolatum*, *Lasthenia californica*, *Myosurus minimus*, *Navarretia leucocephala ssp. leucocephala*, *Phlox gracilis*, *Plagiobothrys bracteatus*, *Trifolium depauperatum*, and *Triteleia hyacinthina*.
- A minimum area of 8 ha (20 ac) to provide intact hydrology and protection from development and weed sources.

(2) The hydrologically and ecologically functional system of interconnected pools, ephemeral wetlands, or depressions within a matrix of surrounding uplands that together form vernal pool complexes within the greater watershed. The associated features may include the pool basin or depressions; an intact hardpan subsoil underlying the surface soils up to 0.75 m (2.5 ft) in depth; and surrounding uplands, including mound topography and other geographic and edaphic features, that support these systems of hydrologically interconnected pools and other ephemeral wetlands (which may vary in extent depending on site-specific characteristics of pool size and depth, soil type, and hardpan depth).

(3) Silt, loam, and clay soils that are of alluvial origin, with a 0 to 3 percent slope, primarily classified as Agate–Winlo complex soils, but also including Coker clay, Carney clay, Provig–Agate complex soils, and Winlo very gravelly loam soils.

(4) No or negligible presence of competitive, nonnative, invasive plant species. Negligible is defined for the purpose of this rulemaking as a minimal level of nonnative plant species that

will still allow *Limnanthes floccosa* ssp. *grandiflora* to continue to survive and recover.

The need for space for individual and population growth, germination, seed dispersal, and reproduction is provided by PCEs 1 and 4; the need for soil moisture for growth, germination, reproduction, and seed dispersal is provided by PCE 2 (but not necessarily every year); the need for other nutritional or physiological requirements for the species is met by PCE 3; habitat free from disturbance that allows for sufficient reproduction and survival opportunities is provided by PCEs 1 and 4. All of the above described PCEs do not have to occur simultaneously within a unit for the unit to constitute critical habitat for *Limnanthes floccosa* ssp. *grandiflora*.

Lomatium cookii

Based on our current knowledge of the life history, biology, and ecology of *Lomatium cookii* and the characteristics of the habitat necessary to sustain the essential life history functions of the species, we determined that the PCEs for the species' critical habitat are:

(1) In the Rogue River Valley:

(A) Vernal pools and ephemeral wetlands and depths and the adjacent upland margins of these depressions that hold water for a sufficient length of time to sustain *Lomatium cookii* germination, growth, and reproduction. These vernal pools or ephemeral wetlands support native plant populations and are seasonally inundated during wet years but do not necessarily fill with water every year due to natural variability in rainfall. Areas of sufficient size and quality are likely to have the following characteristics:

- Elevations from 372 to 411 m (1,220 to 1,350 ft);
- Associated dominant native plants including, but not limited to: *Alopecurus saccatus*, *Achnatherum lemmonii*, *Deschampsia danthonioides*, *Eryngium petiolatum*, *Lasthenia californica*, *Myosurus minimus*, *Navarretia leucocephala* ssp. *leucocephala*, *Phlox gracilis*, *Plagiobothrys bracteatus*, *Trifolium depauperatum*, and *Triteleia hyacinthina*; and
- A minimum area of 8 ha (20 ac) to provide intact hydrology and protection from development and weed sources.

(B) The hydrologically and ecologically functional system of interconnected pools or ephemeral wetlands or depressions within a matrix of surrounding uplands that together

form vernal pool complexes within the greater watershed. The associated features may include the pool basin and ephemeral wetlands; an intact hardpan subsoil underlying the surface soils up to 0.75 m (2.5 ft) in depth; and surrounding uplands, including mound topography and other geographic and edaphic features that support systems of hydrologically interconnected pools and other ephemeral wetlands (which may vary in extent depending on site-specific characteristics of pool size and depth, soil type, and hardpan depth).

(C) Silt, loam, and clay soils that are of ultramafic and nonultramafic alluvial origin, with a 0 to 3 percent slope, classified as Agate-Winlo or Provig-Agate soils.

(D) No or negligible presence of competitive, nonnative invasive plant species. Negligible is defined for the purpose of this rulemaking as a minimal level of nonnative plant species that will still allow *Lomatium cookii* to continue to survive and recover.

(2) In the Illinois River Valley:

(A) Wet meadows in oak and pine forests, sloped mixed-conifer openings, and shrubby plant communities that are seasonally inundated and support native plant populations. Areas of sufficient size and quality are likely to have the following characteristics:

- Elevations from 383 to 488 m (1,256 to 1,600 ft);
- Associated dominant native plants including, but not limited to: *Achnatherum lemmonii*, *Arbutus menziesii*, *Arctostaphylos viscida*, *Camassia* spp., *Ceanothus cuneatus*, *Danthonia californica*, *Deschampsia cespitosa*, *Festuca roemerii* var. *klamathensis*, *Poa secunda*, *Ranunculus occidentalis*, and *Limnanthes gracilis* var. *gracilis*;
- Occurrence primarily in bottomland *Quercus garryana*–*Quercus kelloggii*–*Pinus ponderosa* (Oregon white oak–California black oak–ponderosa pine) forest openings along seasonal creeks; and
- A minimum area of 8 ha (20 ac) to provide intact hydrology and protection from development and weed sources.

(B) The hydrologically and ecologically functional system of streams, slopes, and wooded systems that surround and maintain seasonally wet alluvial meadows underlain by relatively undisturbed ultramafic soils within the greater watershed.

(C) Silt, loam, and clay soils that are of ultramafic and nonultramafic alluvial origin, with a 0 to 40 percent slope, classified as Abegg gravelly loam, Brockman clay loam, Copsey clay,

Cornutt–Dubakel complex, Dumps, Eightlar extremely stony clay, Evans loam, Foehlin gravelly loam, Josephine gravelly loam, Kerby loam, Newberg fine sandy loam, Pearsoll–Rock outcrop complex, Pollard loam, Riverwash, Speaker–Josephine gravelly loam, Takilma cobbly loam, or Takilma Variant extremely cobbly loam.

(D) No or negligible presence of competitive, nonnative invasive plant species. Negligible is defined for the purpose of this rulemaking as a minimal level of nonnative plant species that will still allow *Lomatium cookii* to continue to survive and recover.

The need for space for individual and population growth, germination, seed dispersal, and reproduction is provided by PCEs 1(A), 2(A), 1(D), and 2(D); the need for soil moisture for growth, germination, reproduction, and seed dispersal is provided by PCEs 1(B) and 2(B) (but not necessarily every year); the need for other nutritional or physiological requirements for the species is provided by PCE 1(C) and 2(C); the need for habitat free from disturbance that allows for sufficient reproduction and survival opportunities is provided by PCEs 1(A), 2(A), 1(D), and 2(D). All of the above described PCEs do not have to occur simultaneously within a unit for the unit to constitute critical habitat for *Lomatium cookii*.

With this designation of critical habitat, we intend to conserve the physical or biological features that are essential to the conservation of these species, through the identification of the appropriate quantity and spatial arrangement of the PCEs sufficient to support the life history functions of *Limnanthes floccosa* ssp. *grandiflora* and *Lomatium cookii*. Each of the areas designated as critical habitat contain the PCEs in the appropriate quantity and spatial arrangement essential to the conservation of the species and provide for one or more of the life history functions of *Limnanthes floccosa* ssp. *grandiflora* and *Lomatium cookii*. As stated above, all of the PCEs described above do not have to occur simultaneously within a unit for the unit to constitute critical habitat.

Special Management Considerations or Protections

When designating critical habitat, we assess whether the specific areas within the geographical area occupied by the species at the time of listing contain the features that are essential to the conservation of the species and that may require special management considerations or protection. All areas we are designating as critical habitat

require some level of management to address current and future threats to *Limnanthes floccosa* ssp. *grandiflora* and *Lomatium cookii*, to maintain or enhance the physical or biological features essential to their conservation, and to ensure the recovery and survival of these species.

The major threats to the PCEs in the areas identified as critical habitat for *Limnanthes floccosa* ssp. *grandiflora* and *Lomatium cookii* include: development on private lands; mining activities; ground disturbance that affects surface hydrology, including ORV use and road construction or maintenance activities; incompatible agricultural and grazing practices; garbage dumping; the succession of meadow habitat to forested habitat due to fire suppression; and encroachment and displacement by nonnative plants. Herbivory by voles may also affect *Lomatium cookii* in the Illinois River Valley. In all of the units in Jackson County, special management is needed to reduce or eradicate the threats posed by development, habitat fragmentation, ground disturbance that affects surface hydrology, and incompatible grazing practices. In all of the units in Josephine County, special management is needed to reduce or eradicate the threats posed by development, ORV use, mining activities, garbage dumping, and woody vegetative succession. Please refer to the unit descriptions in the *Critical Habitat Designation* section for further discussion of special management considerations or protection of the PCEs related to geographically specific threats to *Limnanthes floccosa* ssp. *grandiflora* and *Lomatium cookii*.

In addition, for all units, special management is needed to control and monitor the encroachment of nonnative, invasive plant species to maintain intact vernal pool-mounded prairies and wet meadow ecosystems such that they can continue to support populations of *Limnanthes floccosa* ssp. *grandiflora* and *Lomatium cookii*.

Special management considerations or protection of the vernal pool-mounded prairies and wet meadow habitats that may be needed to support reproduction and growth of *Limnanthes floccosa* ssp. *grandiflora* and *Lomatium cookii* include: controlled burning and vegetation clearing to maintain early seral stages (early stages of plant succession in the progression toward a climax community); control of nonnative, invasive plant species; grazing management; the re-establishment of hydrology; re-seeding with native plants; monitoring; and protection from development (Borgias

2004, pp. 47–53; ONHDB 1994, pp. 13–20).

Criteria Used To Identify Critical Habitat

As required by section 4(b) of the Act, we used the best scientific data available to designate critical habitat for *Limnanthes floccosa* ssp. *grandiflora* and *Lomatium cookii*. We reviewed available information that pertains to the habitat requirements of these species to determine those areas that contain the physical or biological features essential to the conservation of the species. Important sources of information included, but were not limited to, the proposed rule to designate critical habitat for these species (74 FR 37314); the proposed (65 FR 30941; May 15, 2000) and final (67 FR 68004; November 7, 2002) rules to list these species; the draft recovery plan (USFWS 2006); data contained in reports prepared for or by the U.S. Bureau of Land Management (BLM) (1999 through 2008), the Oregon Department of Agriculture's (ODA) Native Plant Conservation Program (2007-2008), and The Nature Conservancy (TNC) (1998 through 2008); discussions with species experts including ODA, BLM, ONHIC, and TNC staff; data and information presented in academic research theses; data provided by ONHIC; Oregon State University herbarium records; and data submitted during section 7 consultations. Additionally, we used regional Geographic Information System (GIS) shape files for area calculations and mapping, such as United States Department of Agriculture (USDA) National Agriculture Imagery Program aerial imagery (USDA 2009), USDA soil maps, and United States Geological Survey (USGS) contour maps (USDA 2006a, 2006b, 2008; USGS 2002, 2009). We are not currently designating as critical habitat any areas outside the geographical range presently occupied by either *Limnanthes floccosa* ssp. *grandiflora* or *Lomatium cookii*, because the draft recovery plan indicates that recovery can be attained within the present range of each species (USFWS 2006). Our regulations stipulate that critical habitat shall be designated outside the areas (range) presently occupied by a species only when a designation limited to its present range would be inadequate to ensure the conservation of the species (50 CFR 424.12(e)).

The steps we used in identifying critical habitat are as follows:

(1) Our initial step was to determine, in accordance with section 3(5)(A)(i) of the Act and regulations in 50 CFR 424.12, the physical or biological habitat

features essential to the conservation of the species and which may require special management considerations or protection, as explained in the previous section.

(2) We identified areas occupied by *Limnanthes floccosa* ssp. *grandiflora* and *Lomatium cookii* at the time of listing. Occupancy status was determined using occurrence data from the ONHIC database (ONHIC 2008), Medford BLM records (BLM 2005), a recent *Limnanthes floccosa* ssp. *grandiflora* status report (Meyers 2008, pp. 1–65), Service staff reports, data in reports submitted during section 7 consultations and by biologists holding section 10(a)(1)(A) recovery permits, research published in peer-reviewed articles, research presented in academic theses and agency reports, regional GIS coverages, and the OSU herbarium record database (OSU 2007). We determined occupancy at the time of listing by comparing survey and collection information and descriptions of occupied areas in the final listing rule published in the **Federal Register** on November 7, 2002 (67 FR 68004). At the time of the 2002 listing, 15 occurrences (sites) were known for *Limnanthes floccosa* ssp. *grandiflora* and 36 occurrences (sites) were known for *Lomatium cookii* (67 FR 68004).

Since the final listing rule was published, we learned of additional areas that we determined were occupied at the time of listing. Two such areas were known at the time of listing, but at that time the species were thought to have been extirpated from those sites. First identified in 1937, the two areas had no exact location information (OSU 2007). Attempts were made to relocate the occurrences, but these attempts were unsuccessful. However, in 2005, the two areas were again found and each was occupied by a large number of *Lomatium cookii* plants (C. Shohet, pers. comm. 2005). In addition, two other sites occupied by *Lomatium cookii* were identified after the listing. Although we were not aware of these occupied areas at the time of listing, we determined that they were extant at the time due to limited infrequent dispersal and establishment abilities by the plants (T. Kaye, pers. comm. 2010).

Although various new occurrences have been identified since the time of listing in 2002, only four occurrences of *Lomatium cookii* correspond to new areas identified between the time of listing in 2002 and the year 2009 that we consider to have been occupied at the time of listing. Currently, we know of 22 documented occurrences of *Limnanthes floccosa* ssp. *grandiflora* and 37 documented occurrences of

Lomatium cookii that correspond to a total of 24 areas we consider to have been occupied at the time of listing. Note that multiple occurrences may comprise a single occupied area; hence, there will be a greater number of occurrences than of occupied areas.

(3) We then considered areas identified as priority 1 and 2 recovery core areas in the draft recovery plan for the two species (USFWS 2006) to determine which areas contain the PCEs in the amount and spatial configuration essential to the conservation of the species. We incorporated most areas identified as priority 1 and 2 recovery areas in the draft recovery plan into this final designation. The one exception is a site at the Medford Airport that was identified as a recovery area for *Limnanthes floccosa* ssp. *grandiflora* in the draft recovery plan, but that did not meet the size and quality criteria for critical habitat, as described below, and thus is not included in this final designation. In addition, the occurrence has not been relocated for many years and is most likely extirpated.

(4) We removed any nonfunctional vernal pool-mounded prairie or meadow habitat that was developed or degraded (not likely to contain PCEs) to ensure critical habitat contains features essential to the conservation of each of the species (USDA 2006; ESA 2007, pp. 3-2 to 3-11). We also did not consider some isolated areas (at least 0.6 mi (1 km) distant from the next nearest area of appropriate habitat) of vernal pool-mounded prairie or meadow, or mixed conifer areas containing 10 or fewer reported individuals, as we observed that occurrences of this size have a tendency to become extirpated due to: (i) Lack of suitable habitat features (PCEs), (ii) lack of habitat area, or (iii) proximity to development activities. We reviewed occurrence information from ONHIC (2008) to substantiate this observation.

We considered occurrences of such small size as not likely to occur in habitats that provide the physical or biological features necessary to support populations capable of persisting for the long term; thus, such areas would not be essential to the conservation of either of the two species.

(5) As a final step, we considered whether each of the areas identified may need special management considerations or protections. Our consideration of this factor is presented below.

Based on these criteria, we are designating 24 units as critical habitat for the two species: 8 for *Limnanthes floccosa* ssp. *grandiflora* and 16 for *Lomatium cookii*. Two of the 24 units

are shared by both species. After applying the above criteria, we mapped the critical habitat unit boundaries at each of these 24 areas. We created maps using aerial imagery, 7.5 minute topographic maps, and GIS contour data. We used publicly available satellite imagery, for example, from the National Agriculture Imagery Program (USDA 2009) to assist in identifying areas that would provide the essential physical or biological features for the species, using digital habitat signatures.

In addition, based on aerial imagery, when determining critical habitat boundaries in this final rule we made every effort to avoid including developed areas such as buildings, paved areas, and other structures that lack the features essential to the conservation of *Limnanthes floccosa* ssp. *grandiflora* or *Lomatium cookii*. We combined the polygons generated by our mapping based on the criteria described above with information from aerial photos to determine the final critical habitat unit boundaries of each site. The scale of the maps we prepared under the parameters for publication within the Code of Federal Regulations may not reflect the exclusion of such developed areas. Any such structures and the land under them inadvertently left inside critical habitat boundaries shown on the maps of this final rule have been excluded by text in the rule and are not included for designation as critical habitat. Therefore, Federal actions limited to these areas would not trigger section 7 consultation with respect to critical habitat and the requirement of no destruction or adverse modification, unless they may affect the species, or features essential to the conservation of the species, or both, in adjacent critical habitat.

We are designating as critical habitat lands that we determined were occupied at the time of listing and contain sufficient PCEs to support life history functions essential for the conservation of *Limnanthes floccosa* ssp. *grandiflora* and *Lomatium cookii*. We are designating 24 units of critical habitat based on sufficient PCEs being present to support the life processes of the species. Some units may contain all of the PCEs and support multiple life processes, and some units may contain only a subset of the PCEs necessary to support the species' use of the habitat.

Critical Habitat Designation

We determined that 24 units totaling approximately 4,018 ha (9,930 ac) meet our definition of critical habitat for *Limnanthes floccosa* ssp. *grandiflora* and *Lomatium cookii*, including land under Federal, State, county, municipal,

and private ownership. We are designating 8 units of critical habitat for *Limnanthes floccosa* ssp. *grandiflora* and 16 units for *Lomatium cookii*; two of these units, White City and Whetstone Creek in Jackson County, contain habitat for both species (see Tables 4, 5, 6, and 7, and unit descriptions below). The critical habitat areas described below constitute our best assessment at this time of areas that meet the definition of critical habitat for *Limnanthes floccosa* ssp. *grandiflora* and *Lomatium cookii*. We determined that all areas designated as critical habitat for *Limnanthes floccosa* ssp. *grandiflora* and *Lomatium cookii* were occupied at the time of listing and most are, we believe, currently occupied as well (recent survey information was not available for all sites).

The areas designated as critical habitat for *Limnanthes floccosa* ssp. *grandiflora* are: (1) Unit RV1—Shady Cove; (2) Unit RV2—Hammel Road; (3) Unit RV3A, B, C, and D—North Eagle Point; (4) Unit RV4—Rogue Plains; (5) Unit RV5—Table Rock Terrace; (6) Unit RV6A, B, C, D, E, F, G, and H—White City; (7) Unit RV7—Agate Lake; and (8) Unit RV8—Whetstone Creek. Units coded with "RV" are in the Rogue River Valley, Jackson County.

The areas designated as critical habitat for *Lomatium cookii* are: (1) Unit RV6A, F, G, and H—White City; (2) Unit RV8—Whetstone Creek; (3) Unit RV9A and B—Medford Airport; (4) Unit IV1A and B—Anderson Creek; (5) Unit IV2—Draper Creek; (6) Unit IV3—Reeves Creek North; (7) Unit IV4—Reeves Creek East; (8) Unit IV5—Reeves Creek South; (9) Unit IV6A and B—Laurel Road; (10) Unit IV7—Illinois River Forks State Park; (11) Unit IV8—Woodcock Mountain; (12) Unit IV9—Riverwash; (13) Unit IV10—French Flat North; (14) Unit IV11—Rough and Ready Creek; (15) Unit IV12—French Flat Middle; and (16) Unit IV13—Indian Hill. Units coded with "IV" are in the Illinois River Valley, Josephine County.

The approximate area, land ownership, and occupancy status of each designated critical habitat unit are shown in Tables 4, 5, and 6. Portions of units or entire units roughly correspond to the recovery core areas for each species as identified in the 2006 draft recovery plan (USFWS 2006). The recovery core areas were selected based on occurrence records and habitat identified through ground surveys, aerial imagery, topography features, and soil layers. The information in the draft recovery plan is now somewhat dated; therefore more current information resulting from this evaluation may have led to some adjustments of recovery

areas that were recommended in the 2006 draft recovery plan. As described above, we assessed all areas we are designating as critical habitat to ensure that they provide the requisite PCEs essential to the conservation of the species as defined in this final rule.

We present brief descriptions of all critical habitat units for *Limnanthes floccosa* ssp. *grandiflora* or *Lomatium cookii*, below.

Area 1: Jackson County, Oregon

In Jackson County, we are designating eight critical habitat units for *Limnanthes floccosa* ssp. *grandiflora* and three critical habitat units for *Lomatium cookii*. The Jackson County units occur approximately 58 km (30 mi) east of the nearest unit for *Lomatium cookii* species in Josephine County. All critical habitat units in Jackson County are located within the Middle Rogue River Basin or "Agate Desert." Two units, White City and Whetstone Creek, are occupied by both species. Please see the Index Maps in the **Regulation Promulgation** section of this rule for the location of all critical habitat units.

Unit RV1: Shady Cove

Unit RV1 consists of approximately 8 ha (20 ac) of intact vernal pool-mounded prairie and was occupied by *Limnanthes floccosa* ssp. *grandiflora* at the time of listing (ONHIC 2008). We have no current information regarding the status of this population, but consider the plant to be extant within the unit, as we have no information indicating that any activities occurred that likely would result in extirpation. Unit RV1 contains all of the PCEs for *Limnanthes floccosa* ssp. *grandiflora* and was identified in the draft recovery plan as the Shady Cove recovery core area (USFWS 2006, pp. IV-12–IV-13). This unit is not designated as vernal pool fairy shrimp critical habitat. It parallels a 430-m (1,411-ft) stretch of Highway 62 and is located 460 m (1,500 ft) west of Highway 62. The unit is 0.8 km (0.5 mi) south of Shady Cove, 1.3 km (0.8 mi) northeast of Takelma Park, and is 122 m (400 ft) east of the Rogue River. The unit occurs on privately owned land. Aerial imagery indicates that the unit is composed of intact vernal pool-mounded prairie habitat (USDA 2006).

ONHIC database records do not mention any ongoing threats to the *Limnanthes floccosa* ssp. *grandiflora* population within the unit; however, the occurrence information mentions that the adjacent habitat to the south has been leveled, indicating that agricultural development occurs nearby (ONHIC 2008). The unit occurs in an area of

predominantly agricultural and grazing use (Borgias 2004, p. 8). We are not aware of any conservation agreements or management plans to conserve *Limnanthes floccosa* ssp. *grandiflora* habitat within this unit. Special management considerations or protection may be required to restore, protect, and maintain the PCEs supported by Unit RV1 due to threats from agricultural development, potential incompatible grazing practices, and the encroachment of invasive, nonnative plant species.

Unit RV2A, B, C, and D: Hammel Road

Unit RV2 consists of approximately 69 ha (169 ac) of intact vernal pool-mounded prairie. The unit is currently occupied by *Limnanthes floccosa* ssp. *grandiflora* and was occupied at the time of listing (ONHIC 2008). This critical habitat unit contains all of the PCEs for *Limnanthes floccosa* ssp. *grandiflora* and was identified as the Staley Road recovery core area in the draft recovery plan (USFWS 2006, pp. IV-12–IV-13). This unit is also designated as vernal pool fairy shrimp critical habitat and overlaps vernal pool fairy shrimp critical habitat subunit 1A (North Agate Desert Unit) (71 FR 7117; February 10, 2006). It is located on privately owned land, 1.2 km (0.75 mi) northeast of the confluence of Reese Creek and the Rogue River, 1.3 km (0.8 mi) west of Highway 62, and 430 m (1,400 ft) east of the Rogue River.

A recent observation indicates that approximately 1,500 *Limnanthes floccosa* ssp. *grandiflora* are present on the unit (Meyers 2008, p. 6). Aerial imagery and field observations indicate that the unit is comprised of intact vernal pool-mounded prairie habitat (USDA 2006a; Meyers 2008, p. 6).

ONHIC database (2008) records indicate that light grazing occurs within this unit, and the grazing practices appear to have been compatible with the survival of *Limnanthes floccosa* ssp. *grandiflora* over the past 13 years. We are not aware of any conservation agreements or plans to protect *Limnanthes floccosa* ssp. *grandiflora* habitat within this unit. Special management considerations or protection may be required to restore, protect, and maintain the PCEs supported by Unit RV2 due to threats from agricultural development, potential incompatible grazing practices, and the encroachment of invasive, nonnative, annual plant species.

Unit RV3A, B, C, and D: North Eagle Point

Unit RV3 consists of four subunits totaling 490 ha (1,210 ac) of intact vernal pool habitat that is currently occupied by *Limnanthes floccosa* ssp. *grandiflora* and was occupied at the time of listing (ONHIC 2008). This critical habitat unit contains all of the PCEs for *Limnanthes floccosa* ssp. *grandiflora* and was identified as the North Eagle Point recovery core area in the draft recovery plan (USFWS 2006, pp. IV-12–IV-13). Unit RV3 is also designated as vernal pool fairy shrimp critical habitat and overlaps vernal pool fairy shrimp critical habitat subunits 1B, D, and G (North Agate Desert Unit) (71 FR 7117; February 10, 2006). The unit is located on privately owned land southwest of Mosser Mountain and northeast of Long Mountain. The four subunits loosely follow a 6.9 km (4.3 mi) stretch of Hog Creek beginning at its origin. Originating 3.8 km (2.4 mi) east of Highway 62 in subunit RV3D, Hog Creek runs through RV3C, crosses Highway 62, flows between RV3B (located 100 m (328 ft) west of Highway 62) and RV3A (located 600 m (1,970 ft) west of Highway 62), before emptying into the Rogue River after 2.4 km (1.5 mi). Subunit RV3A is located 560 m (1,837 ft) southeast of the confluence of Reese Creek and the Rogue River. Subunit RV3B is located 100 m (328 ft) west of Highway 62 at the intersection of Ball Road and extends along an 835 m (2,740 ft) stretch of Hog Creek. Subunit RV3C is located 2 km (1.2 mi) north of Eagle Point and extends 2.6 km (1.6 mi) south of the junction of Ball Road and Reese Creek Road. Subunit RV3D is located 3.2 km (2 mi) east of Long Mountain and is 2.4 km (1.5 mi) southeast of the junction of Highway 62 and Ball Road. It extends along a 1.8 km (1.1 mi) stretch of Hog Creek.

ONHIC Element Occurrence data accounts for two 1,000-plant *Limnanthes floccosa* ssp. *grandiflora* populations within this unit, one growing in an area of intact vernal pool-mounded prairie habitat and one in an atypical swale habitat alongside a fence. An additional 500 *Limnanthes floccosa* ssp. *grandiflora* plants growing in intact vernal pool-mounded prairie habitat on a separate property within the unit were reported by Wildlands, Inc. (Wildlands, Inc. 2008, p. 3). Aerial imagery indicates that the unit contains a significant amount of intact vernal pool-mounded prairie habitat (USDA 2006a).

Some habitat in this unit has been degraded by cattle grazing practices and agricultural development (Wildlands, Inc. 2008, p. 1). The entire unit occurs

in an area of predominant agricultural and grazing use (Borgias 2004, p. 8). Livestock caused significant damage to large vernal pools within the unit by soil compaction and mound and pool topography alteration (Oregon Natural Heritage Program (ONHP) 1997, p. 16). In addition, vernal pool hydrology has been compromised in some portions of the unit by water impoundment, causing water to permanently fill some vernal pools in several areas (Southern Oregon Land Conservancy 2008, p. 3). In addition, nonnative, invasive, annual grasses colonized large portions of the unit and threaten to encroach on *Limnanthes floccosa* ssp. *grandiflora* populations (Southern Oregon Land Conservancy 2008, p. 4).

There are established protective measures to conserve *Limnanthes floccosa* ssp. *grandiflora* and the habitat of the threatened vernal pool fairy shrimp on two private properties within this unit. Long-term management plans are in development for both of the properties to protect and restore vernal pool-mounded prairie function; these plans will cover approximately 20 percent of the land in the unit.

Monitoring and improved grazing management are currently taking place on the two properties to further conserve *Limnanthes floccosa* ssp. *grandiflora* habitat (M. Young, pers. comm. 2009; Southern Oregon Land Conservancy 2008, p. 6). Other special management considerations or protection on other properties within the unit may be required to restore, protect, and maintain the PCEs supported by Unit RV3 due to threats from agricultural development, potential incompatible grazing practices, and the encroachment of invasive, nonnative, annual grasses.

Unit RV4: Rogue Plains

Unit RV4 consists of 243 ha (600 ac) of vernal pool-mounded prairie habitat, 36 ha (88 ac) of which are leveled. The critical habitat unit is currently occupied by *Limnanthes floccosa* ssp. *grandiflora* and was occupied at the time of listing (ONHIC 2008; Meyers 2008, p. 10). This critical habitat unit contains all of the PCEs for *Limnanthes floccosa* ssp. *grandiflora* and was identified as the Rogue Plains recovery core area in the draft recovery plan (USFWS 2006, pp. IV-12–IV-13). Unit RV4 is also designated as critical habitat for vernal pool fairy shrimp and overlaps vernal pool fairy shrimp critical habitat subunits 1C, E, and F (North Agate Desert Unit) (71 FR 7117; February 10, 2006). The vast majority of this unit occurs on privately owned land located 122 m (400 ft) southeast of

the junction of Highway 234 and Modoc Road. It extends 2 km (1.2 mi) south along Modoc Road from the intersection, is located 1.4 km (0.87 mi) southwest of Dodge Bridge, and is 1.0 km (0.6 mi) northwest of Rattlesnake Rapids on the Rogue River.

A recent *Limnanthes floccosa* ssp. *grandiflora* survey report within Unit RV4 describes a robust 5,000-plant population occurring at the privately owned “Rogue River Plains Preserve” (Meyers 2008, p. 10). The report also describes a *Limnanthes floccosa* ssp. *grandiflora* occurrence from which the species appears to have been extirpated (Meyers 2008, pp. 10, 55). For the most part, aerial imagery and field observations indicate that the unit is composed of about 84 percent intact vernal pool-mounded prairie habitat (USDA 2006a; Meyers 2008, p. 6).

Some habitat within this unit appears to be degraded or destroyed (Meyers 2008, p. 55); however, the winter and spring grazing presently occurring at the Rogue River Plains Preserve property appears to be compatible with the survival of *Limnanthes floccosa* ssp. *grandiflora* (Borgias 2004, p. 42).

Threats facing vernal-pool mounded prairie habitat in this unit are agricultural development and the encroachment of invasive, nonnative, annual grasses. A conservation easement, held by TNC and placed on the privately owned Rogue River Plains Preserve property, permits TNC to manage grazing on the property, and withdraws development and agricultural development rights. Other special management considerations or protection on other properties within the unit may be needed to restore, protect, and maintain the PCEs supported by Unit RV4 due to threats from agricultural development and the encroachment of invasive, nonnative, annual grasses.

Unit RV5: Table Rock Terrace

Unit RV5 includes 49 ha (122 ac) of intact vernal pool-mounded prairie habitat that has been occupied by the species since the time of listing (ONHIC 2008, USDA 2006a). Although a survey conducted on a portion of the unit in 2008 did not confirm presence of *Limnanthes floccosa* ssp. *grandiflora* plants (Meyers 2008, p. 59), a more recent survey verified the continued occupation of the unit by *Limnanthes floccosa* ssp. *grandiflora* (S. Friedman 2009, pers. obs.). This critical habitat unit contains all of the PCEs for *Limnanthes floccosa* ssp. *grandiflora* and was identified as the Table Rock Terrace recovery core area in the draft recovery plan (USFWS 2006, pp. IV-12–

IV-13). This unit is not designated as vernal pool fairy shrimp critical habitat. Unit RV5 is located on privately owned land 670 m (2,200 ft) north of the junction of Modoc and Antioch Roads, is 1.4 km (0.9 mi) east of Upper Table Rock, and is 650 m (2,300 ft) west of the Rogue River. This unit follows along an 800-m (2,600-ft) stretch of Modoc Road to the east of the unit and a 700-m (2,300-ft) stretch of Antioch Road west of the unit.

Threats facing vernal-pool mounded prairie habitat in this unit may include agricultural development, incompatible grazing practices, and the encroachment of invasive, nonnative, annual grasses. Other special management considerations or protection within the unit may be needed to restore, protect, and maintain the PCEs supported by Unit RV5 due to these threats.

Unit RV6A, B, C, D, E, F, G, and H: White City

Unit RV6 consists of eight subunits that generally encompass the perimeter of White City. Subunits A through H are designated as critical habitat for *Limnanthes floccosa* ssp. *grandiflora* and include 740 ha (1,829 ac). Subunits A, F, G, and H are designated as critical habitat for *Lomatium cookii* and include 546 ha (1,349 ac). This 740-ha (1,829-ac) unit includes intact vernal pool-mounded prairie and swale habitats that were occupied by the two species at the time of listing; both species presently occur within some or all of the subunits. This critical habitat unit contains all of the PCEs for *Limnanthes floccosa* ssp. *grandiflora* and *Lomatium cookii* and was identified as the Agate Desert recovery core area in the draft recovery plan (USFWS 2006, pp. IV-12–IV-13). Unit RV6 is also designated as vernal pool fairy shrimp critical habitat and overlaps vernal pool fairy shrimp critical habitat subunits 2A, B, C, D, and E and 3A and B (White City East and West Units) (71 FR 7117; February 10, 2006). The unit occurs on State, county, municipal, and privately owned lands. It is located around White City, is 1.6 km (1.0 mi) southwest of Eagle Point, and is 440 m (1,444 ft) southeast of the confluence of the Rogue River and Little Butte Creek. Subunit RV6A is located north of Whetstone Creek and is 500 m (1,200 ft) west of the junction of Highway 62 and Antelope Road. Subunits RV6B, RV6C, RV6D, and RV6E are located north of Avenue G in White City, south of Little Butte Creek, and 670 m (2,200 ft) southwest of Antelope Creek. Subunits RV6F and RV6G are located approximately 500 feet west of Dry Creek and are east of Highway 62 in White City. Subunit RV6H is located

north of Whetstone Creek and south of Antelope Road. Subunit RV6H roughly encircles the Hoover Ponds, east of Highway 62, and is 850 m (2,790 ft) east of subunit RV6A. The land in this unit is 29 percent State-owned, 6 percent county-owned, 10 percent municipally owned, and 55 percent privately owned.

This unit includes approximately 90 percent intact vernal pool-mounded prairie habitat. The Nature Conservancy manages a 22-ha (54-ac) parcel within this unit to conserve vernal pool-mounded prairie habitat and has recently developed an assessment and prioritization guide for the restoration and enhancement of vernal pool function across 86 ha (213 ac) of habitat owned by the ODFW Denman Wildlife Area. A mitigation site owned by Jackson County School District Number 9 protects 9.5 ha (24 ac) of intact vernal pool-mounded prairie habitat with one of the largest known populations of *Limnanthes floccosa* ssp. *grandiflora*. The City of Medford also leases 88 ha (217 ac) of vernal pool-mounded prairie for cattle grazing on some less intact vernal-pool mounded prairie habitat. In addition, the Oregon Department of Transportation (ODOT) manages two locations as roadside special management areas for the protection of *Limnanthes floccosa* ssp. *grandiflora* and *Lomatium cookii*.

Threats facing vernal pool-mounded prairie habitat in this unit include urban and commercial development, agricultural development, incompatible grazing practices, and the encroachment of invasive, nonnative, annual grasses. The Nature Conservancy and Jackson County School District Number 9 conduct prescribed burns, seeded with native plants, and erected signs and fences to control encroachment of nonnative, invasive plants, discourage recreational ORV use, and restore native plant communities (Borgias 2004, p. 22; USFWS 2006, pp. I-18–I-21). The ODFW assessment and prioritization guide includes such actions as removing nonnative bunch grasses and restoring hydrologic flow by eliminating old road beds (Borgias *et al.* 2009, pp. 16-22). These actions will be implemented or scheduled as funding becomes available. Other special management considerations or protection within the unit may be needed to restore, protect, and maintain the PCEs supported by Unit RV6 due to the described threats within the units.

Unit RV7: Agate Lake

Unit RV7 consists of 421 ha (1,039 ac) of intact vernal pool-mounded prairie and swale habitat; the unit is currently occupied by *Limnanthes floccosa* ssp.

grandiflora and was occupied at the time of listing (Meyers 2008, p. 45). This critical habitat unit contains all of the PCEs for *Limnanthes floccosa* ssp. *grandiflora* and was identified as the Agate Lake recovery core area in the draft recovery plan (USFWS 2006, pp. IV-12–IV-13). Unit RV7 is designated as critical habitat for vernal pool fairy shrimp and overlaps vernal pool fairy shrimp critical habitat subunit 2B (White City East Unit) (71 FR 7117; February 10, 2006). The unit occurs on federally and privately owned land located 500 m (1,640 ft) east of the Agate Reservoir, along a 5.4-km (3.4-mi) stretch roughly parallel and between Dry Creek and Antelope Creek, is 330 m (1,080 ft) north of Tater Hill, and is 1.4 km (0.9 mi) southeast of the confluence of Dry Creek and Antelope Creek. The land in this unit is approximately 10 percent federally owned and 90 percent privately owned.

The U.S. Bureau of Reclamation (BOR) completed a management plan for 38 ha (94 ac) of slightly degraded vernal pool-mounded prairie habitat within this unit. The BOR established protective measures to conserve vernal pool-mounded prairie habitat, and finalized a long-term management plan to protect and restore vernal pool-mounded prairie function (BOR 2006, p. 1-1). Previous to 2008, *Limnanthes floccosa* ssp. *grandiflora* had not been reported in the unit since 1965. In 2008, a 300-plant population of *Limnanthes floccosa* ssp. *grandiflora* was observed in recently restored vernal pool-mounded prairie habitat on Federal land within the unit (Meyers 2008, p. 45).

The PCEs in this unit are threatened by invasion of nonnative, herbaceous annuals; trash dumping; activities associated with fire management (fire-line construction); vandalism; unauthorized ORV use; and incompatible grazing practices (ONHDB 1994, p. 11; Borgias 2004, p. 42). Therefore, special management considerations or protection may be required to restore, protect, and maintain the PCEs supported by Unit RV7 due to these threats.

Unit RV8: Whetstone Creek

Unit RV8 consists of 344 ha (850 ac) of intact vernal pool-mounded prairie and swale habitat that was occupied by *Limnanthes floccosa* ssp. *grandiflora* and *Lomatium cookii* at the time of listing; both species continue to occur within the unit (ONHIC 2008; Meyers 2008, p. 20). This critical habitat unit contains all of the PCEs for *Limnanthes floccosa* ssp. *grandiflora* and *Lomatium cookii* and was identified as the Whetstone Creek recovery core area in

the draft recovery plan (USFWS 2006, pp. IV-12–IV-13). Unit RV8 is designated as critical habitat for vernal pool fairy shrimp and overlaps vernal pool fairy shrimp critical habitat subunit 3C (White City West Unit) (71 FR 7117; February 10, 2006). The unit occurs on State, County, municipal, and privately owned land located just west of White City. The unit is located approximately 1.4 km (0.9 mi) southeast of the confluence of the Rogue River and Whetstone Creek, 2.2 km (1.4 mi) southwest of Tou Velle State Park, and 2.9 km southeast of the confluence of Bear Creek and the Rogue River. The unit roughly parallels a 2.6-km (1.6-mi) stretch of Whetstone Creek to the south. The land in this unit is 9 percent State owned, 10 percent municipally owned, and 81 percent privately owned.

This unit includes highly intact vernal-pool mounded prairie habitat with partial protection by city regulation and private conservation easements. This is the only unit that includes a shrub and tree component within vernal pool-mounded prairie habitat. The Nature Conservancy manages a 58-ha (144-ac) parcel within this unit occupied by both *Limnanthes floccosa* ssp. *grandiflora* and *Lomatium cookii*. One of the primary purposes of the preserve is to conserve vernal pool-mounded prairie habitat. The Nature Conservancy recently developed a management plan to restore and enhance vernal pool function across a 32-ha (80-ac), neighboring property owned by ODOT that also occurs within the unit. The City of Medford leases 36 ha (96 ac) of vernal pool-mounded prairie habitat within the unit for grazing.

The PCEs in this unit are threatened by invasion of nonnative, herbaceous annuals; incompatible agricultural development; aggregate mining; unauthorized ORV use; and incompatible grazing practices (ONHDB 1994, p. 11; Borgias 2004, p. 42). Therefore, special management considerations or protection on other properties within the unit may be required to restore, protect, and maintain the PCEs supported by Unit RV8 due to the threats mentioned above.

Unit RV9A, B, C, D, and E: Medford Airport

Unit RV9 consists of the five subunits: RV9A through E. *Lomatium cookii* was known from this unit since before the time it was listed (ONHIC 2008). Unit RV9 includes 34 ha (83 ac) of slightly degraded vernal pool-mounded prairie habitat. No areas within this unit are designated as vernal pool fairy shrimp critical habitat, nor does the occurrence

meet the minimum population size criteria to be designated as critical habitat for *Limnanthes floccosa* ssp. *grandiflora* (Meyers 2008, p. 48). However, this critical habitat unit does contain all of the PCEs for *Lomatium cookii* and meets all other critical habitat criteria for the species. This unit is identified as the Rogue Airfield recovery core area in the draft recovery plan (USFWS 2006, pp. IV-12–IV-13). The five subunits of RV9 are located mostly within the Rogue Valley International–Medford Airport, approximately 2 km (1.2 mi) west of Coker Butte and 1.5 km (0.9 mi) northeast of Bear Creek. Subunit RV9A is located 1.4 km (0.9 mi) north of the Rogue Valley International–Medford Airport and is 300 m (980 ft) east of the junction of Vilas Road and Table Rock Road. Subunits RV9B through E are located between Upton Slough and Bear Creek, 2 mi southeast of the junction of Vilas Road and Table Rock Road, and 1.7 km northeast of the junction of Interstate 5 and Highway 62. The land in this unit is 93 percent county-owned and 7 percent privately owned.

This unit includes one of the most extensive and densest populations of *Lomatium cookii* within its range. The Rogue Valley International–Medford Airport is managed to meet FAA safety requirements. The property is completely fenced-in to exclude people and large animals and is periodically mowed to keep vegetation low and reduce use by large birds and other wildlife. The security fencing and regular mowing is compatible with *Lomatium cookii* growth, reproduction, and germination and has enabled a robust population to become established. Other properties not included in the airport security zone are within the City of Medford urban growth boundary and are likely to become commercially developed.

Threats facing the vernal pool-mounded prairie habitat in this unit are potential airport and commercial development. Construction of a new runway that could be placed across the densest population of *Lomatium cookii* is suggested in the long-term plan for the airport (Rogue Valley International–Medford Airport 2001, pp. 5-2–5-4; 6-4–6-6). Special management considerations or protection within the unit may be needed to conserve and maintain the PCEs supported by Unit RV9 due to this threat.

Area 2: Josephine County, Oregon

In Josephine County, we are designating 13 critical habitat units for *Lomatium cookii*. The Josephine County units occur approximately 58 km (30

mi) west of the nearest unit for this species in Jackson County. None of the Josephine County units are designated as critical habitat for the vernal pool fairy shrimp in Oregon. Please see the Index Maps in the **Regulation Promulgation** section of this rule for the location of all critical habitat units.

Unit IV1A and B: Anderson Creek

Unit IV1 consists of two subunits (A and B) totaling 35 ha (85 ac) of intact wet meadow and mixed conifer habitat that is currently occupied and was occupied by the species at the time of listing (ONHDB 1994, pp. 9–10; OSU 2008). Unit IV1 contains all the PCEs for *Lomatium cookii* and is identified in the draft recovery plan as the Anderson Creek recovery core area (USFWS 2006, pp. IV-11, IV-14). The unit is located on 66 percent privately owned and 44 percent federally owned land, 3.5 km (2.2 mi) north of Selma, 14 km (8.8 mi) north of Cave Junction, along a 1.0-km (0.6-mi) stretch of Anderson Creek and Highway 199, 2.0 km (1.2 mi) southwest of Hays Hill Summit, and 1.7 km (1.0 mi) northwest of the junction of Draper Valley Road and Indian Creek Road.

The two occurrences of *Lomatium cookii* in this unit are the most northern known occurrences of the species in the Illinois River Valley. Recent surveys located two populations in this unit, one with 135 plants and one with 1,000 plants. The two populations were reported as growing in open, grassy meadows (C. Shohet, pers. comm. 2005). Aerial imagery suggests the habitat in this unit is relatively intact wet meadow (USDA 2006a).

Potential threats to the *Lomatium cookii* habitat in this unit include incompatible grazing practices, agricultural development, alterations in hydrology due to timber production, native and noxious weed encroachment, and woody vegetation succession as the result of fire suppression (J. Kagan, pers. comm. 2009; C. Shohet, pers. comm. 2005). Grazing is a common agricultural practice in the area (J. Kagan, pers. comm. 2009), but depending on management within this unit, it may be incompatible with growth, reproduction, and germination of the species. We are not aware of any conservation agreements or management plans to conserve critical habitat within this unit. Special management considerations or protection may be required to restore, protect, and maintain the PCEs supported by Unit IV1 due to threats from agricultural development, potential incompatible grazing practices, and woody vegetative succession due to decreased fire return intervals.

Unit IV2: Draper Creek

Unit IV2 consists of 28 ha (70 ac) of intact wet meadow habitat, was occupied by *Lomatium cookii* at the time of listing (ONHDB 1994, p. 5; OSU 2008), and continues to be occupied by the species. Unit IV2 contains all of the PCEs for *Lomatium cookii* and is identified in the draft recovery plan as the Draper Creek recovery core area (USFWS 2006, pp. IV-11, IV-14). It is located on privately owned land 2.7 km (1.7 mi) northeast of Selma, 13.5 km (8.4 mi) north of Cave Junction, along a 900-m (2,900-ft) stretch of Draper Creek, located 800 m (2,600 ft) east of Anderson Creek. The unit is 800 m (2,600 ft) north-northwest of the confluence of Draper Creek and Davis Creek and is 200 m (650 ft) southeast of the junction of Draper Valley Road and Indian Creek Road.

According to a recent survey report, this unit includes relatively intact wet meadow habitat associated with Draper Creek. A recent survey located a 400-plant *Lomatium cookii* population here, reported as growing in an open, grassy meadow (C. Shohet, pers. comm. 2005). The *Lomatium cookii* occurrence in this unit is among the most northern known occurrences for this species in the Illinois River Valley. Aerial imagery suggests the habitat in this unit may be reverting to oak and conifer succession in some areas (USDA 2006a).

Potential threats to the *Lomatium cookii* habitat in this unit include incompatible grazing practices, agricultural development, alterations in hydrology due to timber production, native and noxious weed encroachment, and woody vegetation succession (C. Shohet, pers. comm. 2005). Grazing is a common agricultural practice in the area (J. Kagan, pers. comm. 2009), but depending on management within the unit, it may be incompatible with growth, reproduction, and germination of the species. No conservation agreements or protections are established within this unit, and we are not aware of any conservation plans to conserve critical habitat within this unit. Special management considerations or protection may be required to restore, protect, and maintain the PCEs supported by Unit IV2 due to threats from agricultural development, incompatible grazing practices, and woody vegetative succession due to increased fire return intervals.

Unit IV3: Reeves Creek North

Unit IV3 consists of 152 ha (374 ac) of oak and pine forests, mixed-conifer, and understory shrub habitat. *Lomatium*

cookii occupied this unit at the time of listing and continues to be found here (ONHIC 2008). Based on comments we received from BLM, we added 47 ha (114 ac) of Federal (BLM) land to this unit that were not included in the July 28, 2009, proposed rule (74 FR 37314). Unit IV3 contains all of the PCEs for *Lomatium cookii* and is identified in the draft recovery plan as the Reeves Creek West recovery core area (USFWS 2006, pp. IV-11, IV-14). This unit is located on Federal and privately owned land, 4.5 km (2.8 mi) south of Selma, 6.0 km (3.75 mi) north of Cave Junction, and 1.1 km (0.7 mi) northeast of Sauers Flat. The unit is located 1.4 km (0.9 mi) east of the confluence between Reeves Creek and the Illinois River and extends along a 2.0 km (1.2 mi) stretch of Reeves Creek, beginning 800 m (2,600 ft) northeast of the junction of Highway 199 and Reeves Creek Road. The land in this unit is 74 percent federally owned and 26 percent privately owned.

The habitat in this unit is primarily threatened by road maintenance, woody vegetation succession, and garbage dumping. Road maintenance often fragments populations and can directly affect plants. Woody vegetative succession can impact *Lomatium cookii* populations in this unit by over-shading. Due to this threat, the plants observed in this unit occur in smaller numbers, grow in more limited areas, and appear to be more fragmented compared to other Illinois River Valley populations (ONHIC 2008). Garbage dumping also directly impacts plants and can fragment habitats. Timber harvesting and its associated impacts (road construction, alteration of hydrology) occur in this unit periodically and could affect *Lomatium cookii* populations in the next few years. Special management considerations or protection may be required to restore, protect, and maintain the PCEs supported by Unit IV3 due to threats from woody vegetation succession, impacts associated with timber harvesting activities, garbage dumping, and road maintenance.

Unit IV4: Reeves Creek East

Unit IV4 consists of 83 ha (204 ac) of intact mixed conifer and understory shrub habitat and has been occupied by *Lomatium cookii* since the time of listing (ONHIC 2008). Based on comments we received from BLM, we added 14 ha (37 ac) of Federal (BLM) land to this unit that were not included in the July 28, 2009, proposed rule (74 FR 37314). Unit IV4 contains all of the PCEs for *Lomatium cookii* and is identified in the draft recovery plan as the Reeves Creek East recovery core area

(USFWS 2006, pp. IV-11, IV-14). This unit is located on Federal and privately owned land, 6.2 km (3.9 mi) south of Selma, and 5.3 km (3.3 mi) northwest of Cave Junction. It occurs along a 500-m (1,640-ft) stretch of Reeves Creek located 700 m (2,300 ft) southeast of Unit IV3. The land in this unit is 70 percent federally owned and 30 percent privately owned.

The understory shrub and mixed conifer habitat in this unit is primarily threatened by activities associated with timber harvesting practices, road maintenance, garbage dumping, and ORV use. The single *Lomatium cookii* population known from this unit is described as fragmented by a road cut. Portions of the habitat in this unit are also threatened by early seral forest succession (ONHIC 2008). As with the previous unit, plants observed in this unit occur in smaller numbers and grow in more limited areas compared to other Illinois River Valley populations, and the populations appear to be more fragmented. Special management considerations or protection may be required to restore, protect, and maintain the PCEs supported by Unit IV4 due to threats from road construction, impacts associated with timber harvesting, woody vegetative succession, and ORV use.

Unit IV5: Reeves Creek South

Unit IV5 consists of 165 ha (407 ac) of intact sloped mixed conifer and understory shrub habitat. This unit was occupied by *Lomatium cookii* at the time of listing, and the species continues to be found there (ONHIC 2008). Based on comments we received from BLM, we added 7 ha (16 ac) of Federal (BLM) land to this unit that were not included in the July 28, 2009, proposed rule (74 FR 37314). Unit IV5 contains all of the PCEs for *Lomatium cookii* and is identified in the draft recovery plan as the Reeves Creek West recovery core area (USFWS 2006, pp. IV-11, IV-14). The unit is located on both Federal and private land roughly parallel to Highway 199 for 2.5 km (1.6 mi), which is 500 m (1,640 ft) west of the unit. The unit is located 1.6 km (1.0 mi) north of Cave Junction, 1 km (0.6 mi) southeast of Sauers Flat, 0.8 km (0.5 mi) east of Kerby, and 1.2 km (0.7 mi) east of the confluence between Holton Creek and the Illinois River. The land in this unit is 95 percent federally owned and 5 percent privately owned.

The habitat in this unit is primarily threatened by vegetative succession. Impacts associated with timber harvesting, road maintenance, garbage dumping, and ORV use are threats that could affect the habitat within this unit

within the next few years. The *Lomatium cookii* population in this unit is described as a fairly modest-sized population, with numbers up to 300 plants. The population in this unit is threatened by fragmentation due to woody vegetation succession. The population is somewhat scattered around open mixed conifer patches dispersed within a young forest (ONHIC 2008). Special management considerations or protection may be required to restore, protect, and maintain the PCEs supported by Unit IV5 due to threats from road construction, impacts associated with timber harvesting, woody vegetative succession, and ORV use.

Unit IV6A and B: Laurel Road

Unit IV6 consists of two subunits (A and B) totaling 182 ha (449 ac) of intact wet meadow habitat that was occupied by *Lomatium cookii* at the time of listing (ONHIC 2008); the species continues to be found there. Unit IV6 contains all of the PCEs for *Lomatium cookii* and is identified in the draft recovery plan as the Laurel Road recovery core area (USFWS 2006, pp. IV-11, IV-14). The unit is located west and alongside of the base of Lime Rock, 1.2 km (0.7 mi) east of the city of Cave Junction, and follows along Highway 46 for 1.5 km (0.9 mi). Subunit IV6A is located 1.3 km (0.8 mi) west of Lime Rock summit and 1.0 km (0.6 mi) east of the junction of Laurel Road and Highway 199, and is roughly parallel to Highway 199 for 1.3 km (0.8 mi), which lies approximately 1.0 km (0.6 mi) west of the subunit. Subunit IV6B is 2.7 km (1.7 mi) east of the confluence of the east and west forks of the Illinois River and from the intersection of Holland Loop Road and Highway 46; it extends approximately 1.8 km (1.1 mi) to the northeast and 2.7 km (1.7 mi) to the north. The land in this unit is over 99 percent privately owned, with less than 1 percent owned by the State.

Unit IV6 is open meadow and roadside habitat at the base of Lime Rock. Highway 46 crosses one of the populations and gravel was spread on the population at a pull-out. This population continues to thrive and even grows up through the gravel. J. Kagan described the population as occurring at the bottom of a small hill derived of ultramafic alluvium (ONHDB 1994, p. 9). The two populations in the unit are some of the most robust populations in the Illinois River Valley. However, the *Lomatium cookii* population has been monitored since April 2003, and after several years of population size increases, the population has recently

declined. The specific cause of the decline is not known.

The primary threats to the habitat in this unit are periodic roadside disturbance and rural development. Roadside disturbance caused by some illegal heavy equipment entry, vehicle traffic, and ODOT maintenance has occurred periodically along the roadside portion of this site. These impacts have affected the population in the last few years. ODOT manages the population closely and has been able to minimize impacts caused by road repairs. The impacts caused by a commercial development could compromise the PCEs in this area. Nonnative invasive plants are present along the roadside, but are sparse, perhaps due to the serpentine soil influences that are present at this site.

Special management considerations or protection may be required to restore, protect, and maintain the PCEs supported by Unit IV6 due to threats from rural development, roadside maintenance, and roadside disturbance.

Unit IV7: Illinois River Forks State Park

Unit IV7 consists of 55 ha (136 ac) of intact wet meadow habitat. *Lomatium cookii* has been known from this unit since the time of listing (ONHIC 2008). Unit IV7 contains all of the PCEs for *Lomatium cookii* and is identified in the draft recovery plan as the River Forks State Park recovery core area (USFWS 2006, pp. IV-11, IV-14). The unit is located 500 m (1640 ft) west of the city of Cave Junction, is 600 m (1,970 ft) southeast of Pomeroy Dam, and is 230 m (750 ft) east of the confluence of the east and west forks of the Illinois River. The unit occurs along a 2.8-km (1.7-mi) reach of the West Fork Illinois River. The unit occurs on 25 percent Federal, 44 percent State, and 31 percent privately owned land.

This unit is partially managed by the Oregon Parks and Recreation Department (OPRD). The OPRD manages both the Federal and State property and a management plan is currently in development to protect and conserve the habitat that supports *Lomatium cookii*. Recent monitoring by Service staff (2008) observed a relatively robust population spread out alongside streamside meadow habitat (Service database 2008).

The primary threats to the habitat in this unit are natural woody vegetative succession and rural development. Agricultural development, incompatible grazing practices, garbage dumping, and invasive, nonnative, annual plant species are also potential threats. Special management considerations or protection may be required to restore,

protect, and maintain the PCEs supported by Unit IV7 due to the threats described above.

Unit IV8: Woodcock Mountain

Unit IV8 consists of 234 ha (579 ac) of intact wet meadow habitat. *Lomatium cookii* was known from this unit at the time of listing and continues to occur there (ONHIC 2008). Unit IV8 contains all of the PCEs for *Lomatium cookii* and is identified in the draft recovery plan as part of the Rough and Ready Creek recovery core area (USFWS 2006, pp. IV-11, IV-14). The unit is located on Federal and privately owned land, 2.4 km (1.5 mi) southwest of the city of Cave Junction and 5.3 km (3.3 mi) north of O'Brien. It is also 0.14 km (0.09 mi) west of the confluence of Woodcock Creek and the West Fork Illinois River. It also occurs along a 3.3-km (2.0-mi) stretch of West Side Road. Unit IV7 is 0.4 km (0.25 mi) west of Highway 199 and roughly parallels the highway for 5.0 km (3.1 mi). This unit occurs on 1 percent Federal and 99 percent privately owned land.

This unit contains abundant intact wet meadow habitat and includes several populations of *Lomatium cookii*, one of which may include more than 5,000 plants. The habitat occupied by the species is typical moist grassland dominated by the native bunch grasses *Danthonia californica* and *Deschampsia cespitosa*. A 39-ha (97-ac) private property that occurs within the unit is under a conservation easement. Threats that face the PCEs in this unit include woody vegetative succession; rural development; garbage dumping; competition from nonnative, invasive plant species; and incompatible agricultural development. Special management considerations or protection may be required to restore, protect, and maintain the PCEs supported by Unit IV8 due to these threats and potentially from incompatible grazing practices.

Unit IV9: Riverwash

Unit IV9 consists of 12 ha (30 ac) of intact wet meadow and streambank habitat. *Lomatium cookii* has been known from this unit since the time of listing (ONHIC 2008). Unit IV9 contains all of the PCEs for *Lomatium cookii* and is identified in the draft recovery plan as part of the Rough and Ready Creek recovery core area (USFWS 2006, pp. IV-11, IV-14). The unit is located 4.2 km (2.6 mi) south of Cave Junction and 6.1 km (3.8 mi) north-northeast of O'Brien. It is located along the east bend of the West Fork Illinois River, 0.7 km (0.43 mi) south (upstream) of the confluence between Woodcock Creek and the West

Fork Illinois River. The land in the unit is 34 percent federally owned, 5 percent State owned, and 61 percent privately owned.

This unit includes the Danna Lytjen Special Management Area, a property of ODOT. It has been monitored by ODOT periodically since the time it was discovered (D. Sharp, pers. comm. 2009). The population within this unit is small (fewer than 50 plants) and occurs in wet meadow habitat alongside a ditch. The primary threats to habitat in this unit are periodic roadside maintenance, garbage dumping, vegetative succession, occasional roadside disturbance, and rural development. Special management considerations or protection may be required to restore, protect, and maintain the PCEs supported by Unit IV9 due to threats from agricultural development, incompatible grazing practices, occasional roadside activities, vegetative succession, and rural development.

Unit IV10: French Flat North

Unit IV10 consists of 45 ha (110 ac) of intact wet meadow habitat. *Lomatium cookii* has been known from this unit since the time of listing (ONHIC 2008). Unit IV10 contains all of the PCEs for *Lomatium cookii* and is identified in the draft recovery plan as part of the Rough and Ready Creek recovery core area (USFWS 2006, pp. IV-11, IV-14). The unit is located 3.7 km (2.3 mi) south of Cave Junction, 0.9 km (0.6 mi) north of the intersection of Sherrier Drive and Raintree Drive, and 1.7 km (1.1 mi) southwest of the confluence of Althouse Creek and the East Fork Illinois River. It also parallels a 0.3-km (0.19-mi) stretch of Rockydale Road. The land in this unit is under 22 percent Federal ownership and 78 percent private ownership. A portion of this unit occurs on BLM-managed land (Kaye and Thorpe 2008, p. 1).

The two *Lomatium cookii* populations in this unit occur in open mixed oak-conifer habitat. Aerial imagery suggests that the wet meadow habitat is fragmented, may be slowly degrading, and may require some management to maintain early seral stage vegetation (USDA 2006a). The primary threats to the PCEs in this unit are rural development and vegetative succession.

Special management considerations or protection may be required to restore, protect, and maintain the PCEs supported by Unit IV10 due to threats from rural development, garbage dumping, competition from nonnative plant species, and woody vegetative succession.

Unit IV11: Rough and Ready Creek

Unit IV11 consists of 118 ha (292 ac) of intact wet meadow habitat. *Lomatium cookii* has been known from this unit since the time of listing (ONHIC 2008). Based on comments we received from BLM, we added 57 ha (140 ac) of Federal (BLM) land to this unit that were not included in the July 28, 2009, proposed rule (74 FR 37314). Unit IV11 contains all of the PCEs for *Lomatium cookii* and is identified in the draft recovery plan as part of the Rough and Ready Creek recovery core area (USFWS 2006, pp. IV-11, IV-14). The unit roughly follows along and is adjacent to a 1.9-km (1.2-mi) stretch of Airport Drive, and is located 3 km (1.9 mi) north of O'Brien, 0.9 km (0.6 mi) west of the Rough and Ready Forest Wayside State Park, and 122 m (400 ft) east of the confluence of the Illinois River and Rough and Ready Creek. The land in this unit is 74 percent federally owned and 26 percent privately owned.

A grouping of *Lomatium cookii* patches has been monitored within this unit for over 10 years (Kaye and Thorpe 2008, p. 26). Although the population is not considered to be large, it is stable and appears to be resilient to various ORV threats and alterations in hydrology.

Threats present at this unit include disturbance or destruction from ORVs; nonnative, invasive forbs; alteration in hydrology caused by roadside maintenance; garbage dumping; competition from invasive, nonnative plant species; and natural succession. Special management considerations or protection may be required to restore, protect, and maintain the PCEs supported by Unit IV11 due to these threats.

Unit IV12: French Flat Middle

Unit IV12 consists of 492 ha (1,216 ac) of intact wet meadow habitat. The unit has been occupied by *Lomatium cookii* since the time of listing. Unit IV12 contains all of the PCEs for *Lomatium cookii* and is identified in the draft recovery plan as the French Flat recovery core area (USFWS 2006, pp. IV-11, IV-14). The unit is located 4.5 km

(2.8 mi) east of Cave Junction, 3.7 km (2.3 mi) northeast of O'Brien, 140 m (460 ft) north of Esterly Lakes, 1.4 km (0.9 mi) northeast of Indian Hill, and 0.3 km (0.2 mi) east of the confluence of Rough and Ready Creek and the West Fork Illinois River. It also follows along a 1.6-km (1.0-mi) stretch of Rockydale Road. Land within the unit is under 48 percent Federal ownership and 52 percent private ownership.

This unit contains some of the largest areas of intact wet meadow habitat within the Illinois River Valley. Several *Lomatium cookii* populations occur within this unit. Two of the *Lomatium cookii* populations in the unit on BLM land, each in excess of 40,000 individuals, have been closely monitored for over 10 years (Kaye and Thorpe 2008, pp. 16–25). Although the populations are robust and dense compared to other locations, the rate of growth is declining and plants may be slowly succumbing to various naturally caused threats, including woody vegetative succession and vole herbivory (Kaye and Thorpe 2008, pp. 16–25).

Threats commonly observed within this unit are: Illegal ORV use; vandalism (related to ORV use); garbage dumping; mining; woody vegetative succession; substantial rodent (vole) herbivory on *Lomatium cookii* plants; and competition with invasive, nonnative, annual plant species. Therefore, special management considerations or protection may be required to restore, protect, and maintain the PCEs supported by Unit IV12 due to the threats described above.

Unit IV13: Indian Hill

We are designating Unit IV13 as critical habitat for *Lomatium cookii*. This unit consists of 22 ha (54 ac) of intact wet meadow habitat. It has been occupied by *Lomatium cookii* since the time of listing. Based on comments we received from BLM, we added 4 ha (9 ac) of Federal (BLM) land to this unit that was not included in the July 28, 2009, proposed rule (74 FR 37314). Unit IV13 contains all of the PCEs for *Lomatium cookii*, and is identified in

the draft recovery plan as the Indian Hill recovery core area (USFWS 2006, pp. IV-11, IV-14). The unit is adjacent to and lies east of a 0.9-km (0.6-mi) reach of the West Fork Illinois River, located approximately 0.3 km (0.2) south (upstream) of the confluence of Rough and Ready Creek and the West Fork Illinois River. The unit is 1.8 km (1.1 mi) northeast of O'Brien and is 0.35 km (0.2 mi) northwest of Indian Hill. The land within this unit is 86 percent federally owned and 14 percent privately owned.

This unit contains a comma-shaped wet meadow supporting one *Lomatium cookii* population in excess of 9,000 plants. *Lomatium cookii* has been closely monitored in this unit for over 10 years (Kaye and Thorpe 2008, p. 28). Although succession of woody vegetation, garbage dumping, nonnative invasive plant species, and herbivory by voles occur on the unit, population monitoring indicates the population is currently stable.

Special management considerations or protection may be required to restore, protect, and maintain the PCEs supported by Unit IV13 due to threats from natural woody vegetative succession and vole herbivory.

Tables 4 and 5 provide a summary of the approximate area (ha and ac) of units in Jackson County by Federal, State, county, municipal, and private ownership that we determined meet the definition of critical habitat for *Limnanthes floccosa* ssp. *grandiflora* and *Lomatium cookii*. Table 6 provides a summary of the approximate area (ha and ac) of units for *Lomatium cookii* in Josephine County by Federal, State, and private ownership that we determined meet the definition of critical habitat. Table 7 provides a summary of the total critical habitat area designated for both *Limnanthes floccosa* ssp. *grandiflora* and *Lomatium cookii* in Jackson and Josephine Counties; this total therefore does not include those areas of critical habitat designated for *Lomatium cookii* that overlap areas designated for *Limnanthes floccosa* ssp. *grandiflora* (that is, Units RV6A, F, G, H, and RV8).

TABLE 4—CRITICAL HABITAT UNITS AND OWNERSHIP IN HECTARES (ACRES) FOR *Limnanthes floccosa* SSP. *grandiflora* IN JACKSON COUNTY, OREGON (TOTALS MAY NOT SUM EXACTLY DUE TO ROUNDING).

Critical Habitat Unit	Private ha (ac)	Municipal ha (ac)	County ha (ac)	State ha (ac)	Federal ha (ac)	Total Area ha (ac)	Population Status
Shady Cove (RV1)	8 (20)	.....	.....	.....	.....	8 (20)	Occupied at time of listing and believed to be currently occupied (no recent surveys)

TABLE 4—CRITICAL HABITAT UNITS AND OWNERSHIP IN HECTARES (ACRES) FOR *Limnanthes floccosa* SSP. *grandiflora* IN JACKSON COUNTY, OREGON (TOTALS MAY NOT SUM EXACTLY DUE TO ROUNDING).—Continued

Critical Habitat Unit	Private ha (ac)	Municipal ha (ac)	County ha (ac)	State ha (ac)	Federal ha (ac)	Total Area ha (ac)	Population Status
Hammel Road (RV2A–D)	69 (169)	.....	.....	.....	.....	69(169)	Occupied at time of listing and currently occupied
North Eagle Point (RV3A–D)	490 (1,210)	.....	.....	.....	.....	490(1,210)	Occupied at time of listing and currently occupied
Rogue Plains (RV4)	242.5 (599)	.....	0.5 (1)	.....	.....	243(600)	Occupied at time of listing and currently occupied
Table Rock Terrace (RV5)	49 (122)	.....	.....	.....	.....	49 (122)	Occupied at time of listing and currently occupied
White City (RV6A–H)	390 (964)	74 (183)	61(151)	215 (531)	.....	740 (1,829)	Occupied at time of listing and currently occupied
Agate Lake (RV7)	392 (969)	.....	.....	.....	29 (70)	421(1,039)	Occupied at time of listing and currently occupied
Whetstone Creek (RV8)	276 (682)	35 (85)	0.5(1)	33 (81)	.....	344 (850)	Occupied at time of listing and currently occupied
Total Area	1,916 (4,736)	109 (268)	62 (153)	248 (612)	29 (71)	2,363 (5,840)	

TABLE 5—CRITICAL HABITAT UNITS AND OWNERSHIP IN HECTARES (ACRES) FOR *Lomatium cookii* IN JACKSON COUNTY, OREGON (TOTALS MAY NOT SUM EXACTLY DUE TO ROUNDING).

Critical Habitat Unit	Private ha (ac)	Municipal ha (ac)	County ha (ac)	State ha (ac)	Federal ha (ac)	Total Area ha (ac)	Population Status
White City (RV6A, F, G, H)*	292 (720)	77 (190)	50(125)	127 (314)	.....	546(1,349)	Occupied at time of listing and currently occupied
Whetstone Creek (RV8)*	277 (685)	35(86.5)	0.2 (0.5)	32 (78)	.....	344(850)	Occupied at time of listing and currently occupied
Medford Airport (RV9A–E)	3 (8)	.....	31 (75)	.....	.....	34 (83)	Occupied at time of listing and currently occupied
Total Area Including Overlapping Units Shared with <i>Limnanthes floccosa</i> ssp. <i>grandiflora</i>	572 (1,413)	112(277)	81(200)	159 (392)	.....	924(2,282)	
Total Area of Units Occupied Solely by <i>Lomatium cookii</i>	3 (8)	.....	31 (75)	.....	.....	34 (83)	

*These units overlap with critical habitat designated for *Limnanthes floccosa* ssp. *grandiflora*, and therefore are not counted toward the total area of critical habitat designated.

TABLE 6—CRITICAL HABITAT UNITS AND OWNERSHIP IN HECTARES (ACRES) FOR *Lomatium cookii* IN JOSEPHINE COUNTY, OREGON (TOTALS MAY NOT SUM EXACTLY DUE TO ROUNDING).

Critical Habitat Unit	Private ha (ac)	Municipal ha (ac)	County ha (ac)	State ha (ac)	Federal ha (ac)	Total Area ha (ac)	Population Status
Anderson Creek (IV1A–B)	23 (56)	.....	.....	.....	12(29)	35 (85)	Occupied at time of listing and currently occupied
Draper Creek (IV2)	28(70)	.....	.....	.....	.....	28(70)	Occupied at time of listing and currently occupied
Reeves Creek North (IV3)	40(100)	.....	.....	.....	112(274)	152 (374)	Occupied at time of listing and currently occupied
Reeves Creek East (IV4)	25(61)	.....	.....	.....	58(143)	83 (204)	Occupied at time of listing and currently occupied
Reeves Creek South (IV5)	8(20)	.....	.....	.....	157(387)	165 (407)	Occupied at time of listing and currently occupied
Laurel Road (IV6A–B)	178 (439)	.....	.....	3.5 (10)	.....	182 (449)	Occupied at time of listing and currently occupied
Illinois River Forks State Park (IV7)	17 (42)	.....	.....	25 (60)	14 (34)	55 (136)	Occupied at time of listing and currently occupied
Woodcock Mountain (IV8)	223(552)	.....	.....	.....	11 (27)	234 (579)	Occupied at time of listing and currently occupied
Riverwash (IV9)	7 (18.3)	.....	.....	0.5 (1.5)	4.5 (12)	12 (30)	Occupied at time of listing and currently occupied
French Flat North (IV10)	35 (86)			.....	10 (25)	45 (110)	Occupied at time of listing and currently occupied
Rough and Ready Creek (IV11)	31 (77)			.....	87(215)	118 (292)	Occupied at time of listing and currently occupied
French Flat Middle (IV12)	254(627)			.....	238(589)	492 (1,216)	Occupied at time of listing and currently occupied
Indian Hill (IV13)	3 (8)			.....	19 (46)	22 (54)	Occupied at time of listing and currently occupied
Total Area	872 (2,153)			29 (72)	723 (1,781)	1,621 (4,006)	

TABLE 7—TOTAL AREA OF CRITICAL HABITAT UNITS AND OWNERSHIP IN HECTARES (ACRES) FOR BOTH *Limnanthes floccosa* SPP. *grandiflora* AND *Lomatium cookii* IN JACKSON AND JOSEPHINE COUNTIES, OREGON (FROM TABLES 4–6; TOTALS MAY NOT SUM EXACTLY DUE TO ROUNDING).

Critical Habitat Units	Private ha (ac)	Municipal ha (ac)	County ha (ac)	State ha (ac)	Federal ha (ac)	Total Area ha (ac)
<i>Limnanthes floccosa</i> spp. <i>grandiflora</i> – Jackson County	1,916 (4,736)	109 (268)	62 (153)	248 (612)	29 (71)	2,363 (5,840)
<i>Lomatium cookii</i> – Jackson County (not including areas of overlap with <i>Limnanthes floccosa</i> ssp. <i>grandiflora</i>)	3 (8)	.....	31 (75)	.....	.....	34 (83)
<i>Lomatium cookii</i> – Josephine County	872 (2,153)	.....	.....	29 (72)	723 (1,781)	1,621(4,006)
Total Area	2,791(6,897)	109(268)	93(228)	277(683)	752(1,852)	4,018(9,930)

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 a listed species or destroy or adversely modify critical habitat. Decisions by the court of appeals for the Fifth and Ninth Circuits invalidated our definition of “destruction or adverse modification” (50 CFR 402.02) (see *Gifford Pinchot Task Force v. U.S. Fish and Wildlife Service*, 378 F. 3d 1059 (9th Cir 2004) and *Sierra Club v. U.S. Fish and Wildlife Service et al.*, 245 F.3d 434, 442F (5th Cir 2001)), and we do not rely on this regulatory definition when analyzing whether an action is likely to destroy or adversely modify critical habitat. Under the statutory provisions of the Act, we determine destruction or adverse modification on the basis of whether, with implementation of the proposed Federal action, the affected critical habitat would remain functional (or retain those PCEs that relate to the ability of the area to periodically support the species) to serve its intended conservation role for the species.

If a species is listed or critical habitat is designated, section 7(a)(2) of the Act requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of such a species or to destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency (action agency) must enter into consultation with us. At the conclusion of this consultation, the Service will issue either:

(1) A concurrence letter for Federal actions that may affect, but are not likely to adversely affect, listed species or critical habitat; or

(2) A biological opinion for Federal actions that may affect, but are likely to adversely affect, listed species or critical habitat.

If we issue a biological opinion concluding that a project is likely to result in jeopardy to a listed species or the destruction or adverse modification of critical habitat, we also provide reasonable and prudent alternatives to the project, if any are identifiable, to avoid these outcomes. We define “reasonable and prudent alternatives” at 50 CFR 402.02 as alternative actions identified during consultation that:

- Can be implemented in a manner consistent with the intended purpose of the action,
- Can be implemented consistent with the scope of the Federal agency’s legal authority and jurisdiction,
- Are economically and technologically feasible, and
- Would, in the Director’s opinion, avoid jeopardizing the continued existence of the listed species or destroying or adversely modifying critical habitat.

Reasonable and prudent alternatives can vary from slight project modifications to extensive redesign or relocation of the project. Costs associated with implementing a reasonable and prudent alternative are similarly variable.

Regulations at 50 CFR 402.16 require Federal agencies to reinitiate consultation on previously reviewed actions in instances where a new species is listed or critical habitat is subsequently designated that may be affected and the Federal agency has retained discretionary involvement or

control over the action (such as discretionary involvement or control over the action is authorized by law). Consequently, some Federal agencies may 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 *Limnanthes floccosa* ssp. *grandiflora* or *Lomatium cookii* or its designated critical habitat require section 7 consultation under the Act. Activities on State, Tribal, local, or private lands requiring a Federal permit (such as a permit from the U.S. Army Corps of Engineers under section 404 of the Clean Water Act (33 U.S.C. 1251 *et seq.*) or a permit from us under section 10 of the Act) or involving some other Federal action (such as funding from the Federal Highway Administration, Federal Aviation Administration, or the Federal Emergency Management Agency) are subject to the section 7(a)(2) consultation process. Federal actions not affecting listed species or critical habitat, and actions on State, Tribal, local, or private lands that are not federally funded, authorized, or permitted, do not require section 7(a)(2) consultations.

Application of the Jeopardy and Adverse Modification Standards

Jeopardy Standard

Currently, the Service applies an analytical framework for *Limnanthes floccosa* ssp. *grandiflora* and *Lomatium cookii* jeopardy analyses that relies heavily on the importance of known populations to the species’ survival and recovery. The analysis required by

section 7(a)(2) of the Act is focused not only on these populations but also on the habitat conditions necessary to support them.

The jeopardy analysis usually expresses the survival and recovery needs of *Limnanthes floccosa* ssp. *grandiflora* or *Lomatium cookii* in a qualitative fashion without making distinctions between what is necessary for survival and what is necessary for recovery. Generally, the jeopardy analysis focuses on the rangewide status of the species, the factors responsible for that condition, and what is necessary for each species to survive and recover. An emphasis is also placed on characterizing the conditions of the species in the area affected by the proposed Federal action and the role of affected populations in the survival and recovery of the species. That context is then used to determine the significance of adverse and beneficial effects of the proposed Federal action and any cumulative effects for purposes of making the jeopardy determination.

Adverse Modification Standard

The key factor related to the adverse modification determination is whether, with implementation of the Federal action, the affected critical habitat would continue to serve its intended conservation role for the species, or retain those PCEs that relate to the ability of the area to periodically support 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 *Limnanthes floccosa* ssp. *grandiflora* or *Lomatium cookii*. Generally, the conservation role of *Limnanthes floccosa* ssp. *grandiflora* and *Lomatium cookii* critical habitat units is to support the various life-history needs of the species and provide for the conservation of 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 *Limnanthes floccosa* ssp. *grandiflora* or *Lomatium cookii*.

Section 4(b)(8) of the Act requires us to briefly evaluate and describe, in any proposed or final regulation that designates critical habitat, activities involving a Federal action that may destroy or adversely modify such habitat, or that may be affected by such designation.

Activities that, when carried out, funded, or authorized by a Federal agency, may affect critical habitat and therefore result in consultation for *Limnanthes floccosa* ssp. *grandiflora*

and *Lomatium cookii* include, but are not limited to:

(1) Actions that would result in ground disturbance to vernal pool-mounded prairie and seasonally wet meadow habitat. Such activities could include, but are not limited to: Residential or recreational development, ORV activity, dispersed recreation, new road construction or widening, existing road maintenance, mining, timber harvest, and incompatible grazing practices (such as grazing during the winter, when pools are wet and most likely to be subjected to disruption of the underlying clay layer). These activities could cause direct loss of *Limnanthes floccosa* ssp. *grandiflora* and *Lomatium cookii*-occupied areas, and affect vernal pools and wet meadows by damaging or eliminating habitat, altering soil composition due to increased erosion, and increasing densities of nonnative plant species.

In addition, changes in soil composition may lead to changes in the vegetation composition, such as growth of shrub cover resulting in decreased density or vigor of individual *Limnanthes floccosa* ssp. *grandiflora* and *Lomatium cookii* plants. These activities may also lead to changes in water flows and inundation periods that would degrade, reduce, or eliminate the habitat necessary for the growth and reproduction of *Limnanthes floccosa* ssp. *grandiflora* and *Lomatium cookii*.

(2) Actions that would significantly alter the hydrological regime of the vernal pool-mounded prairie and wet meadow habitat. Such activities could include residential or recreational development adjacent to meadows, ORV activity, dispersed recreation, new road construction or widening, existing road maintenance, mining, and timber harvest. These activities could alter surface soil layers and hydrological regime in a manner that promotes loss of soil matrix components and moisture necessary to support the growth and reproduction of *Limnanthes floccosa* ssp. *grandiflora* and *Lomatium cookii*.

(3) Actions that would significantly reduce pollination or seed set (reproduction). Such activities could include, but are not limited to, residential or recreational development, and grazing or mowing prior to seed set. These activities could prevent reproduction by reducing the numbers of pollinators, or by removal or destruction of reproductive plant parts.

Exemptions and Exclusions

Application of Section 4(a)(3) of the Act

The Sikes Act Improvement Act of 1997 (Sikes Act) (16 U.S.C. 670a)

required each military installation that includes land and water suitable for the conservation and management of natural resources to complete an integrated natural resources management plan (INRMP) by November 17, 2001. An INRMP integrates implementation of the military mission of the installation with stewardship of the natural resources found on the base. Each INRMP includes:

- An assessment of the ecological needs on the installation, including the need to provide for the conservation of listed species;
- A statement of goals and priorities;
- A detailed description of management actions to be implemented to provide for these ecological needs; and
- A monitoring and adaptive management plan.

Among other things, each INRMP must, to the extent appropriate and applicable, provide for fish and wildlife management; fish and wildlife habitat enhancement or modification; wetland protection, enhancement, and restoration where necessary to support fish and wildlife; and enforcement of applicable natural resource laws.

The National Defense Authorization Act for Fiscal Year 2004 (Public Law No. 108-136) amended the Endangered Species Act to limit areas eligible for designation as critical habitat. Specifically, section 4(a)(3)(B)(i) of the Act (16 U.S.C. 1533(a)(3)(B)(i)) now provides: "The Secretary shall not designate as critical habitat any lands or other geographical areas owned or controlled by the Department of Defense, or designated for its use, that are subject to an integrated natural resources management plan prepared under section 101 of the Sikes Act (16 U.S.C. 670a), if the Secretary determines in writing that such plan provides a benefit to the species for which critical habitat is proposed for designation."

There are no Department of Defense lands with a completed INRMP within the critical habitat units we are designating. Therefore, we are not exempting lands from this final designation of critical habitat for *Limnanthes floccosa* ssp. *grandiflora* and *Lomatium cookii* under section 4(a)(3)(B)(i) of the Act.

Application of Section 4(b)(2) of the Act

Section 4(b)(2) of the Act states that the Secretary must designate or make revisions to critical habitat on the basis of the best available scientific data after taking into consideration the economic impact, national security impact, and any other relevant impacts of specifying

any particular area as critical habitat. The Secretary may exclude an area from critical habitat if it is determined the benefits of such exclusion outweigh the benefits of specifying such area as part of the critical habitat, unless it can be determined, 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 the exclusions made in this final rule. In addition, we conducted an economic analysis of the impacts of the proposed critical habitat designation and related factors, which we made available for public review and comment (75 FR 1568; January 12, 2010). Based on public comments we received on that document, the proposed designation itself, and the information in the final economic analysis, the Secretary may exclude from critical habitat additional areas beyond those identified in this assessment under the provisions of section 4(b)(2) of the Act. This is also addressed in our implementing regulations at 50 CFR 424.19.

Exclusions Based on Economic Impacts

Under section 4(b)(2) of the Act, we consider the economic impacts of specifying any particular area as critical habitat. In order to consider economic impacts, we prepared a draft economic analysis, which we made available for public review on January 12, 2010 (75 FR 1568), based on the July 28, 2009, proposed rule (74 FR 37314). We opened a comment period on the draft economic analysis for 30 days, until February 11, 2010, and we received six comments during that comment period. Following the close of the comment period, we developed a final analysis of the potential economic effects of the designation, taking into consideration any new information.

The intent of the final economic analysis is to quantify the economic impacts of all potential conservation efforts for *Limnanthes floccosa* ssp. *grandiflora* and *Lomatium cookii*. Some of these costs will likely be incurred regardless of whether we designate critical habitat (baseline). The economic impact of the final critical habitat designation is analyzed by comparing scenarios both “with critical habitat” and “without critical habitat.” The “without critical habitat” scenario represents the baseline for the analysis,

considering protections already in place for the species (e.g., under the Federal listing and other Federal, State, and local regulations). The baseline, therefore, represents the costs incurred regardless of whether critical habitat is designated. The “with critical habitat” scenario describes the incremental impacts associated specifically with the designation of critical habitat for the species. The incremental conservation efforts and associated impacts are those not expected to occur absent the designation of critical habitat for the species. In other words, the incremental costs are those attributable solely to the designation of critical habitat above and beyond the baseline costs; these are the costs we consider in the final designation of critical habitat. The analysis looks retrospectively at baseline impacts incurred since the species was listed, and forecasts both baseline and incremental impacts likely to occur with the designation of critical habitat.

The final economic analysis also addresses how potential economic impacts are likely to be distributed, including an assessment of any local or regional impacts of habitat conservation and the potential effects of conservation activities on government agencies, private businesses, and individuals. The final 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. Decision-makers can use this information to assess whether the effects of the designation might unduly burden a particular group or economic sector. Finally, the final economic analysis looks retrospectively at costs that were incurred since November 7, 2002, when we listed *Limnanthes floccosa* ssp. *grandiflora* and *Lomatium cookii* under the Act (67 FR 68004), and considers those costs that may occur in the 20 years following the designation of critical habitat, which was determined to be the appropriate period for analysis because limited planning information was available for most activities to forecast activity levels for projects beyond a 20-year timeframe. The final economic analysis quantifies economic impacts of *Limnanthes floccosa* ssp. *grandiflora* and *Lomatium cookii* conservation efforts associated with development activities.

Total baseline impacts are estimated to be \$7.83 million to \$157 million, and incremental impacts are estimated to range from \$95,200 to \$403,000 between

2010 and 2029, applying a 7 percent discount rate. The majority of estimated baseline costs arise from anticipated mitigation for future development activities, which account for 99 percent of the high-end costs estimated in the analysis. Incremental impacts are forecast to be entirely administrative costs of section 7 consultations. We determined that including the additional BLM land portions within the critical habitat designation will not impact any timber sales, grazing leases, active mining claims, or other activities on these Federal lands, and will not alter the economic analysis of the designation.

Our economic analysis did not identify any disproportionate costs that are likely to result from the designation. Consequently, the Secretary has determined not to exercise his discretion to exclude any areas from this designation of critical habitat for *Limnanthes floccosa* ssp. *grandiflora* and *Lomatium cookii* based on economic impacts. A copy of the final economic analysis with supporting documents may be obtained by contacting the Oregon Fish and Wildlife Office (see ADDRESSES) or for downloading from the Internet at <http://www.regulations.gov>.

Exclusions Based on National Security Impacts

Under section 4(b)(2) of the Act, we consider whether there are lands owned or managed by the Department of Defense (DOD) where the designation of critical habitat might present an impact to national security. In preparing this final rule, we determined that no lands within the designation of critical habitat for *Limnanthes floccosa* ssp. *grandiflora* and *Lomatium cookii* are owned or managed by the DOD, and, therefore, we anticipate no impact to national security. The Secretary has determined not to exercise his discretion to exclude any areas from this final designation based on impacts on national security.

Exclusions Based on Other Relevant Impacts

Under section 4(b)(2) of the Act, we consider other relevant impacts, in addition to economic impacts and impacts on national security. We consider a number of factors, including whether landowners developed any habitat conservation plans (HCPs), Safe Harbor Agreements (SHAs), or other resource management plans for the areas proposed for designation, or whether there are conservation partnerships that would be encouraged by designation of, or exclusion from, critical habitat. In addition, we look at any Tribal issues,

and consider the government-to-government relationship of the United States with Tribal entities. We also consider any social impacts that might occur because of the designation.

In preparing this final rule, we determined that there are currently no HCPs or SHAs for *Limnanthus floccosa* ssp. *grandiflora* and *Lomatium cookii*. The final designation does not include any Tribal lands or trust resources. Accordingly, the Secretary has determined not to exercise his discretion to exclude any areas under section 4(b)(2) of the Act based on other relevant impacts.

Required Determinations

Regulatory Planning and Review—Executive Order 12866

The Office of Management and Budget (OMB) has determined that this rule is not significant under Executive Order 12866 (E.O. 12866). OMB bases its determination upon the following four criteria:

(1) Whether the rule will have an annual effect of \$100 million or more on the economy or adversely affect an economic sector, productivity, jobs, the environment, or other units of the government.

(2) Whether the rule will create inconsistencies with other Federal agencies' actions.

(3) Whether the rule will materially affect entitlements, grants, user fees, loan programs, or the rights and obligations of their recipients.

(4) Whether the rule raises novel legal or policy issues.

Regulatory Flexibility Act (5 U.S.C. 601 et seq.)

Under the Regulatory Flexibility Act (RFA; 5 U.S.C. 601 *et seq.*), as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996 (5 U.S.C. 801 *et seq.*), whenever an agency must publish a notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis that describes the effects of the rule on small entities (such as small businesses, small organizations, and small government jurisdictions). However, no regulatory flexibility analysis is required if the head of the agency certifies the rule will not have a significant economic impact on a substantial number of small entities. The SBREFA amended the RFA to require Federal agencies to provide a statement of the factual basis for certifying that the rule will not have a significant economic impact on a substantial number of small entities. In

this final rule, we are certifying that the critical habitat designation for *Limnanthus floccosa* ssp. *grandiflora* and *Lomatium cookii* will not have a significant economic impact on a substantial number of small entities. The following discussion explains our rationale.

According to the Small Business Administration, small entities include small organizations, such as independent nonprofit organizations; small governmental jurisdictions, including school boards and city and town governments that serve fewer than 50,000 residents; as well as 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 consider the types of activities that might trigger regulatory impacts under this rule, as well as the types of project modifications that may result. In general, the term significant economic impact is meant to apply to a typical small business firm's business operations.

To determine if the critical habitat designation for *Limnanthus floccosa* ssp. *grandiflora* and *Lomatium cookii* could significantly affect a substantial number of small entities, we consider the number of small entities affected within particular types of economic activities (e.g., mining, grazing, agriculture, and other activities). We apply the "substantial number" test individually to each industry to determine if certification is appropriate. However, the SBREFA does not explicitly define "substantial number" or "significant economic impact." Consequently, to assess whether a "substantial number" of small entities is affected by this designation, this analysis considers the relative number of small entities likely to be impacted in an area. In some circumstances, especially with critical habitat designations of limited extent, we may aggregate across all industries and consider whether the total number of small entities affected is substantial. In estimating the number of small entities potentially affected, we also consider whether their activities have any Federal involvement.

Designation of critical habitat only affects activities authorized, funded, or carried out by Federal agencies. Some kinds of activities are unlikely to have any Federal involvement and so will not be affected by critical habitat designation. In areas where the species is present, Federal agencies already are required to consult with us under section 7 of the Act on activities they authorize, fund, or carry out that may affect *Limnanthus floccosa* ssp. *grandiflora* or *Lomatium cookii*. Federal agencies also must consult with us if their activities may affect critical habitat. Designation of critical habitat, therefore, could result in an additional economic impact on small entities due to the requirement to reinitiate consultation for ongoing Federal activities (see *Application of the Jeopardy and Adverse Modification Standards* section).

In our final economic analysis of the critical habitat designation, we evaluated the potential economic effects on small entities resulting from conservation actions related to the listing of *Limnanthus floccosa* ssp. *grandiflora* and *Lomatium cookii* and the designation of critical habitat. The analysis is based on the estimated impacts associated with the rulemaking as described in sections 3 through 7 of the final economic analysis, and evaluated the potential for economic impacts related to development, transportation, and species conservation and management activities. The economic analysis additionally considered the potential economic impacts of the designation on agriculture, grazing, timber harvest, fire management, recreation, and mining, but concluded that these activities were not likely to incur measurable economic impacts; thus they were not considered further.

As discussed in Appendix A, the final economic analysis did not forecast any incremental impacts of the critical habitat designation beyond additional administrative costs associated with considering adverse modification during future section 7 consultations. Small entities may participate in section 7 consultation regarding *Limnanthus floccosa* ssp. *grandiflora* or *Lomatium cookii* as a third party (the primary consulting parties being the Service and the Federal action agency), and may spend additional time and effort considering potential critical habitat issues. These incremental administrative costs of consultation potentially borne by third parties formed the subject of the analysis of potential impacts to small entities.

Of the activities addressed in the analysis, only development activities are expected to potentially experience any incremental, administrative consultation costs that may be borne by small entities. These costs may arise when the U.S. Army Corps of Engineers consults with the Service on section 404 permits under the Clean Water Act, with small businesses as third parties. Third parties involved in past development consultations included Jackson County and private developers. The population of Jackson County was approximately 201,000 in 2008; thus, Jackson County exceeds the small governmental jurisdiction population threshold of 50,000 people, and is not considered a small governmental entity. Private developers included local development companies, such as Galpin and Associates, and commercial entities, such as Amy's Kitchen, Inc. Forecast consultations on development projects are expected to include Jackson County agencies, local private developers, and relatively large commercial entities as contained in the consultation history.

To the extent that forecast consultations include Jackson County agencies or large commercial entities, incremental administrative costs will not be borne by small entities. However, a large portion of forecast consultations for development activities are expected to include local private developers, which may be small entities depending on their annual revenues. In the past, development projects within the study area included site preparation such as leveling of land, filling of wetlands, and excavation in addition to building construction. Therefore, land subdivision, which includes excavating land and preparing it for future residential, commercial, and industrial construction, is identified as the most-applicable industry to capture local private developers that may bear incremental administrative costs due to the designation of critical habitat. According to the final economic analysis (pp. A-4 to A-7), expected annual impacts to the land subdivision industry (\$1,040 under the low impact scenario and \$6,140 under the high impact scenario) are significantly less than the maximum annual revenues that could be generated by a single small land subdivision entity (\$7.0 million). Even if all impacts were borne by a single small development company, the estimated annualized impact would represent less than one percent of total annual revenues under both the low and high impact scenarios. Therefore, based on the foregoing analysis, we do not expect this regulation to have a

significant impact on any small businesses.

In summary, we considered whether the designation would result in a significant economic impact on a substantial number of small entities. Based on the above reasoning and currently available information, we concluded that this rule will not have a significant economic impact on a substantial number of small businesses, small government jurisdictions, or small organizations. Therefore, we are certifying that the designation of critical habitat for *Limnanthes floccosa* ssp. *grandiflora* and *Lomatium cookii* will not have a significant economic impact on a substantial number of small entities, and a regulatory flexibility analysis is not required.

Energy Supply, Distribution, or Use—Executive Order 13211

On May 18, 2001, the President issued Executive Order 13211 (E.O. 13211; "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use") on regulations that significantly affect energy supply, distribution, and use. E.O. 13211 requires Federal agencies to prepare Statements of Energy Effects when undertaking certain actions. OMB has provided guidance for implementing this Executive Order that outlines nine outcomes that may constitute a significant adverse effect when compared to not taking the regulatory action under consideration. The economic analysis finds that none of these criteria are relevant to this analysis. Thus, based on information in the economic analysis, energy-related impacts associated with *Limnanthes floccosa* ssp. *grandiflora* or *Lomatium cookii* conservation activities within critical habitat are not expected. We considered the inclusion of the additional BLM land portions in this analysis as well. We determined that because no energy resources are known in this area and no additional mining leases are present in the additional BLM land portions within the critical habitat designation, energy-related projects will not be impacted on these Federal lands. As such, the designation of critical habitat is not expected to significantly affect energy supplies, distribution, or use. Therefore, this action is not a significant energy action, and no Statement of Energy Effects is required.

Unfunded Mandates Reform Act (2 U.S.C. 1501 et seq.)

In accordance with the Unfunded Mandates Reform Act (2 U.S.C. 1501 et seq.), we make the following findings:

(1) This rule will not produce a Federal mandate. In general, a Federal mandate is a provision in legislation, statute, or regulation that would impose an enforceable duty upon State, local, tribal governments, or the private sector and includes both "Federal intergovernmental mandates" and "Federal private sector mandates." These terms are defined in 2 U.S.C. 658(5)–(7). "Federal intergovernmental mandate" includes a regulation that "would impose an enforceable duty upon State, local, or Tribal governments" with two exceptions. It excludes "a condition of Federal assistance." It also excludes "a duty arising from participation in a voluntary Federal program," unless the regulation "relates to a then-existing Federal program under which \$500,000,000 or more is provided annually to State, local, and tribal governments under entitlement authority," if the provision would "increase the stringency of conditions of assistance" or "place caps upon, or otherwise decrease, the Federal Government's responsibility to provide funding," and the State, local, or tribal governments "lack authority" to adjust accordingly. At the time of enactment, these entitlement programs were: Medicaid; AFDC work programs; Child Nutrition; Food Stamps; Social Services Block Grants; Vocational Rehabilitation State Grants; Foster Care, Adoption Assistance, and Independent Living; Family Support Welfare Services; and Child Support Enforcement. "Federal private sector mandate" includes a regulation that "would impose an enforceable duty upon the private sector, except (i) a condition of Federal assistance or (ii) a duty arising from participation in a voluntary Federal program."

The designation of critical habitat does not impose a legally binding duty on non-Federal government entities or private parties. Under the Act, the only regulatory effect is that Federal agencies must ensure that their actions do not destroy or adversely modify critical habitat under section 7. While non-Federal entities that receive Federal funding, assistance, or permits, or that otherwise require approval or authorization from a Federal agency for an action, may be indirectly affected by the designation of critical habitat, the legally binding duty to avoid destruction or adverse modification of critical habitat rests squarely on the Federal agency. Furthermore, to the extent that non-Federal entities are indirectly 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 will significantly or uniquely affect small governments because the final economic analysis indicates that the only incremental impacts that may be borne by small entities are development activities. The only third parties identified in the past as having costs associated with formal section 7 consultations related to development are Jackson County and private developers. As the population of Jackson County, at 201,000 in 2008, exceeds the small governmental jurisdiction population threshold of 50,000, it is not considered a small government. Since we determined that no small governments will be affected by this regulation, 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 analyzed the potential takings implications of designating critical habitat for *Limnanthes floccosa* ssp. *grandiflora* and *Lomatium cookii* in a takings implications assessment. Critical habitat designation does not affect landowner actions that do not require Federal funding or permits, nor does it preclude development of habitat conservation programs or issuance of incidental take permits to permit actions that do require Federal funding or permits to go forward. The takings implications assessment concludes that this designation of critical habitat for *Limnanthes floccosa* ssp. *grandiflora* and *Lomatium cookii* does not pose significant takings implications for lands within or affected by the designation.

Federalism—Executive Order 13132

In accordance with E.O. 13132 (Federalism), this rule does not have significant Federalism effects. A Federalism assessment is not required. In keeping with Department of the Interior policy, we requested information from, and coordinated development of, this critical habitat designation with appropriate State resource agencies in Oregon. The designation of critical habitat for *Limnanthes floccosa* ssp. *grandiflora* and *Lomatium cookii* would impose no additional restrictions to those currently in place and, therefore, would have little incremental impact on State and

local governments and their activities. The designation may have some benefit to these governments because the areas that contain the features essential for the conservation of the species would be more clearly defined, and the primary constituent elements of the habitat necessary to the conservation of the species would be specifically identified. This information would not alter where and what federally sponsored activities may occur. However, it may assist local governments in long-range planning (rather than having them wait for case-by-case section 7 consultations to occur).

Civil Justice Reform—Executive Order 12988

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 have issued this final critical habitat designation in accordance with the provisions of the Act. This final rule uses standard property descriptions and identifies the physical or biological features essential to the conservation of the two species within the designated areas to assist the public in understanding the habitat needs of *Limnanthes floccosa* ssp. *grandiflora* and *Lomatium cookii*.

Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.)

This rule does not contain any new collections of information that require approval by OMB under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.). This rule will not impose recordkeeping or reporting requirements on State or local governments, individuals, businesses, or organizations. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

National Environmental Policy Act (42 U.S.C. 4321 et seq.)

It is our position that, outside the jurisdiction of the United States Court of Appeals for the Tenth Circuit, we do not need to prepare environmental analyses as defined by NEPA (42 U.S.C. 4321 et seq.) in connection with designating critical habitat under the Act. We published a notice outlining our reasons for this determination in the **Federal Register** on October 25, 1983 (48 FR 49244). This position was upheld by the United States Court of Appeals for the Ninth Circuit (*Douglas County v.*

Babbitt, 48 F.3d 1495 (9th Cir. 1995), cert. denied 516 U.S. 1042 (1996)).

Government-to-Government Relationship With Tribes

In accordance with the President's memorandum of April 29, 1994, “Government-to-Government Relations with Native American Tribal Governments” (59 FR 22951), E.O. 13175, and the Department of the Interior's manual at 512 DM 2, we readily acknowledge our responsibility to communicate meaningfully with recognized Federal Tribes on a government-to-government basis. In accordance with Secretarial Order 3206 of June 5, 1997, “American Indian Tribal Rights, Federal-Tribal Trust Responsibilities, and the Endangered Species Act,” we readily acknowledge our responsibilities to work directly with Tribes in developing programs for healthy ecosystems, to acknowledge that Tribal lands are not subject to the same controls as Federal public lands, to remain sensitive to Indian culture, and to make information available to Tribes. We determined that there are no Tribal lands that were occupied by the species at the time of listing that contain the features essential for the conservation of *Limnanthes floccosa* ssp. *grandiflora* and *Lomatium cookii*, and no unoccupied Tribal lands that are essential for the conservation of *Limnanthes floccosa* ssp. *grandiflora* and *Lomatium cookii*. Therefore, we are not designating critical habitat for *Limnanthes floccosa* ssp. *grandiflora* and *Lomatium cookii* on Tribal lands.

References Cited

A complete list of all references cited in this rulemaking is available upon request from the State Supervisor, Oregon Fish and Wildlife Office (see **ADDRESSES**) or from <http://www.regulations.gov>.

Authors

The primary authors of this document are staff members of the Roseburg Field Office of the Oregon Fish and Wildlife Office, Roseburg, Oregon.

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, Transportation.

Regulation Promulgation

■ Accordingly, we amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, as set forth below:

PART 17—[AMENDED]

■ 1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500; unless otherwise noted.

■ 2. Amend § 17.12(h) by revising the entries for “*Limnanthes floccosa* ssp. *grandiflora*” and “*Lomatium cookii*” under “FLOWERING PLANTS” in the List of Endangered and Threatened Plants to read as follows:

§ 17.12 Endangered and threatened plants.

* * * * *

(h) * * *

Species		Historic range	Family	Status	When listed	Critical habitat	Special rules
Scientific name	Common name						
FLOWERING PLANTS							
*	*	*	*	*	*	*	*
<i>Limnanthes floccosa</i> ssp. <i>grandiflora</i>	large-flowered woolly meadowfoam	U.S.A. (OR)	Limnanthaceae	E	733	17.96(a)	NA
*	*	*	*	*	*	*	*
<i>Lomatium cookii</i>	Cook's lomatium (Cook's desert parsley)	U.S.A. (OR)	Apiaceae	E	733	17.96(a)	NA
*	*	*	*	*	*	*	*

* * * * *

■ 3. In § 17.96, amend paragraph (a) by adding an entry for “*Lomatium cookii*” in alphabetical order under Family Apiaceae and by adding an entry for “*Limnanthes floccosa* ssp. *grandiflora*” in alphabetical order under Family Limnanthaceae, to read as follows:

§ 17.96 Critical habitat—plants.

* * * * *

(a) *Flowering plants.*

* * * * *

Family Apiaceae: *Lomatium cookii* (Cook's lomatium, Cook's desert parsley)

(1) Critical habitat units are depicted for Jackson and Josephine Counties, Oregon, on the maps below.

(2) The primary constituent elements of critical habitat for *Lomatium cookii* are the habitat components that provide:

(i) *In the Rogue River Valley:*

(A) Vernal pools and ephemeral wetlands and depths and the adjacent upland margins of these depressions that hold water for a sufficient length of time to sustain *Lomatium cookii* germination, growth, and reproduction. These vernal pools or ephemeral wetlands support native plant populations and are seasonally inundated during wet years but do not necessarily fill with water every year due to natural variability in rainfall. Areas of sufficient size and quality are likely to have the following characteristics:

(1) Elevations from 372 to 411 m (1,220 to 1,350 ft);

(2) Associated dominant native plants including, but not limited to:

Alopecurus saccatus, *Achnatherum lemmonii*, *Deschampsia danthonioides*, *Eryngium petiolatum*, *Lasthenia californica*, *Myosurus minimus*, *Navarretia leucocephala* ssp. *leucocephala*, *Phlox gracilis*, *Plagiobothrys bracteatus*, *Trifolium depauperatum*, and *Triteleia hyacinthina*; and

(3) A minimum area of 8 ha (20 ac) to provide intact hydrology and protection from development and weed sources.

(B) The hydrologically and ecologically functional system of interconnected pools or ephemeral wetlands or depressions within a matrix of surrounding uplands that together form vernal pool complexes within the greater watershed. The associated features may include the pool basin and ephemeral wetlands; an intact hardpan subsoil underlying the surface soils up to 0.75 m (2.5 ft) in depth; and surrounding uplands, including mound topography and other geographic and edaphic features that support systems of hydrologically interconnected pools and other ephemeral wetlands (which may vary in extent depending on site-specific characteristics of pool size and depth, soil type, and hardpan depth).

(C) Silt, loam, and clay soils that are of ultramafic and nonultramafic alluvial origin, with a 0 to 3 percent slope,

classified as Agate–Winlo or Provig–Agate soils.

(D) No or negligible presence of competitive, nonnative invasive plant species. Negligible is defined for the purpose of this rule as a minimal level of nonnative plant species that will still allow *Lomatium cookii* to continue to survive and recover.

(ii) *In the Illinois River Valley:*

(A) Wet meadows in oak and pine forests, sloped mixed-conifer openings, and shrubby plant communities that are seasonally inundated and support native plant populations. Areas of sufficient size and quality are likely to have the following characteristics:

(1) Elevations from 383 to 488 m (1,256 to 1,600 ft);

(2) Associated dominant native plants including, but not limited to:

Achnatherum lemmonii, *Arbutus menziesii*, *Arctostaphylos viscida*, *Camassia* spp., *Ceanothus cuneatus*, *Danthonia californica*, *Deschampsia cespitosa*, *Festuca roemerii* var. *klamathensis*, *Poa secunda*, *Ranunculus occidentalis*, and *Limnanthes gracilis* var. *gracilis*;

(3) Occurrence primarily in bottomland *Quercus garryana*–*Quercus kelloggii*–*Pinus ponderosa* (Oregon white oak–California black oak–ponderosa pine) forest openings along seasonal creeks; and

(4) A minimum area of 8 ha (20 ac) to provide intact hydrology and protection from development and weed sources.

(B) The hydrologically and ecologically functional system of streams, slopes, and wooded systems that surround and maintain seasonally wet alluvial meadows underlain by relatively undisturbed ultramafic soils within the greater watershed.

(C) Silt, loam, and clay soils that are of ultramafic and nonultramafic alluvial origin, with a 0 to 40 percent slope, classified as Abegg gravelly loam, Brockman clay loam, Copsey clay, Cornutt–Dubakel complex, Dumps, Eightlar extremely stony clay, Evans loam, Foehlin gravelly loam, Josephine gravelly loam, Kerby loam, Newberg

fine sandy loam, Pearsoll–Rock outcrop complex, Pollard loam, Riverwash, Speaker–Josephine gravelly loam, Takilma cobbly loam, or Takilma Variant extremely cobbly loam.

(D) No or negligible presence of competitive, nonnative invasive plant species. Negligible is defined for the purpose of this rule as a minimal level of nonnative plant species that will still allow *Lomatium cookii* to continue to survive and recover.

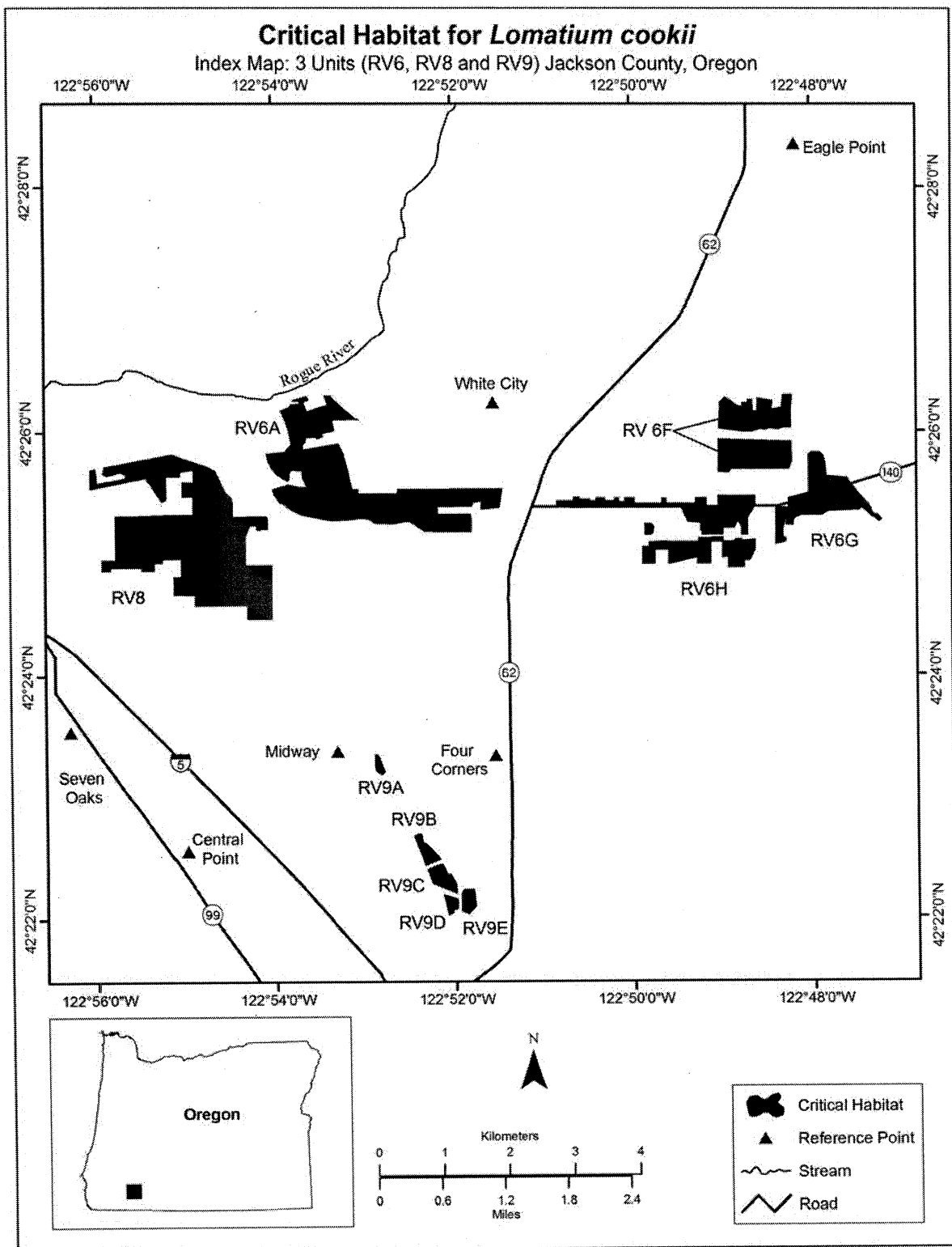
(3) Critical habitat does not include manmade structures (including, but not limited to, buildings, aqueducts, runways, roads, and other paved areas)

and the land on which they are located existing within the legal boundaries on the effective date of this rule and not containing one or more of the primary constituent elements.

(4) *Critical habitat map units.* These critical habitat units were mapped using Universal Transverse Mercator, Zone 10, North American Datum 1983 (UTM NAD 83) coordinates. These coordinates establish the vertices and endpoints of the boundaries of the units.

(5) *Note:* Index map for critical habitat for *Lomatium cookii* in Jackson County, Oregon, follows:

BILLING CODE 4310–55–S



(6) Unit RV6, subunits A, F, G, and H, for *Lomatium cookii*: White City, Jackson County, Oregon.

(i) Unit RV6, subunits A, F, G, and H for *Lomatium cookii* comprises 546 ha (1,349 ac) of vernal pool-mounded prairie and swale habitats. RV6 is located around White City, is 1.6 km (1.0 mi) southwest of Eagle Point, and is 440 m (1,444 ft) southeast of the confluence of the Rogue River and Little Butte Creek. Subunit RV6A is located north of Whetstone Creek and is 500 m (1,200 ft) west of the junction of Highway 62 and Antelope Road. Subunits RV6F and RV6G are located approximately 500 feet west of Dry Creek and are east of Highway 62 in White City. Subunit RV6H is located north of Whetstone Creek and south of Antelope Road. Subunit RV6H roughly encircles the Hoover Ponds, east of Highway 62, and is 850 m (2790 ft) east of subunit RV6A.

(ii) Subunit RV6A. Land bounded by the following UTM Zone 10, NAD83 coordinates (E,N): 508682, 4697061; 508738, 4697064; 508676, 4697188; 508661, 4697304; 508507, 4697315; 508489, 4697306; 508481, 4697273; 508481, 4697211; 508462, 4697147; 508428, 4697153; 508293, 4697240; 508208, 4697334; 508148, 4697450; 508117, 4697568; 508400, 4697602; 508500, 4697715; 508448, 4697967; 508341, 4698225; 508480, 4698284; 508497, 4698326; 508633, 4698334; 508626, 4698363; 508538, 4698365; 508524, 4698385; 508746, 4698450; 508773, 4698387; 508694, 4698359; 508743, 4698216; 509056, 4698316; 509010, 4698453; 509110, 4698452; 509311, 4698259; 509493, 4698102; 509545, 4698084; 509355, 4698084; 509135, 4698080; 509168, 4697920; 508972, 4697870; 509001, 4697835; 508914, 4697794; 508862, 4697823; 508722, 4697808; 508730, 4697736; 508689, 4697721; 508681, 4697635; 508712, 4697641; 509230, 4697727; 509310, 4697563; 509400, 4697202; 509440, 4697029; 509533, 4697025; 509526, 4696971; 510121, 4696967; 510129, 4697025; 511739, 4697040; 511693, 4696746; 511409, 4696723; 511413, 4696842; 511294, 4696824; 511270, 4696771; 510747, 4696759; 510740, 4696651; 511246, 4696655; 511267, 4696562; 511267, 4696383;

511092, 4696381; 510807, 4696379; 510537, 4696388; 510366, 4696504; 510324, 4696533; 510247, 4696540; 510058, 4696498; 509873, 4696508; 509813, 4696504; 509771, 4696523; 509697, 4696568; 509600, 4696585; 509529, 4696583; 509381, 4696564; 509129, 4696552; 508984, 4696573; 508671, 4696641; 508573, 4696683; 508455, 4696744; 508400, 4696802; 508320, 4696828; 508235, 4696956; 508214, 4697027; 508463, 4697104; 508601, 4697067; 508682, 4697061.

(iii) Subunit RV6F. Land bounded by the following UTM Zone 10, NAD83 coordinates (E,N): 516157, 4697446; 516113, 4697319; 515222, 4697324; 515202, 4697271; 515033, 4697285; 515035, 4697791; 516149, 4697751; 516157, 4697446. Land bounded by the following UTM Zone 10, NAD83 coordinates (E,N): 516162, 4698466; 516140, 4698214; 516149, 4697960; 516028, 4697955; 515942, 4697933; 515819, 4697947; 515752, 4697925; 515666, 4697936; 515540, 4697896; 515376, 4697904; 515041, 4697952; 515055, 4698348; 515122, 4698420; 515165, 4698417; 515315, 4698305; 515395, 4698283; 515403, 4698340; 515478, 4698342; 515481, 4698391; 515548, 4698393; 515559, 4698222; 515620, 4698219; 515631, 4698409; 515864, 4698377; 515854, 4698240; 515996, 4698278; 516023, 4698463; 516162, 4698466.

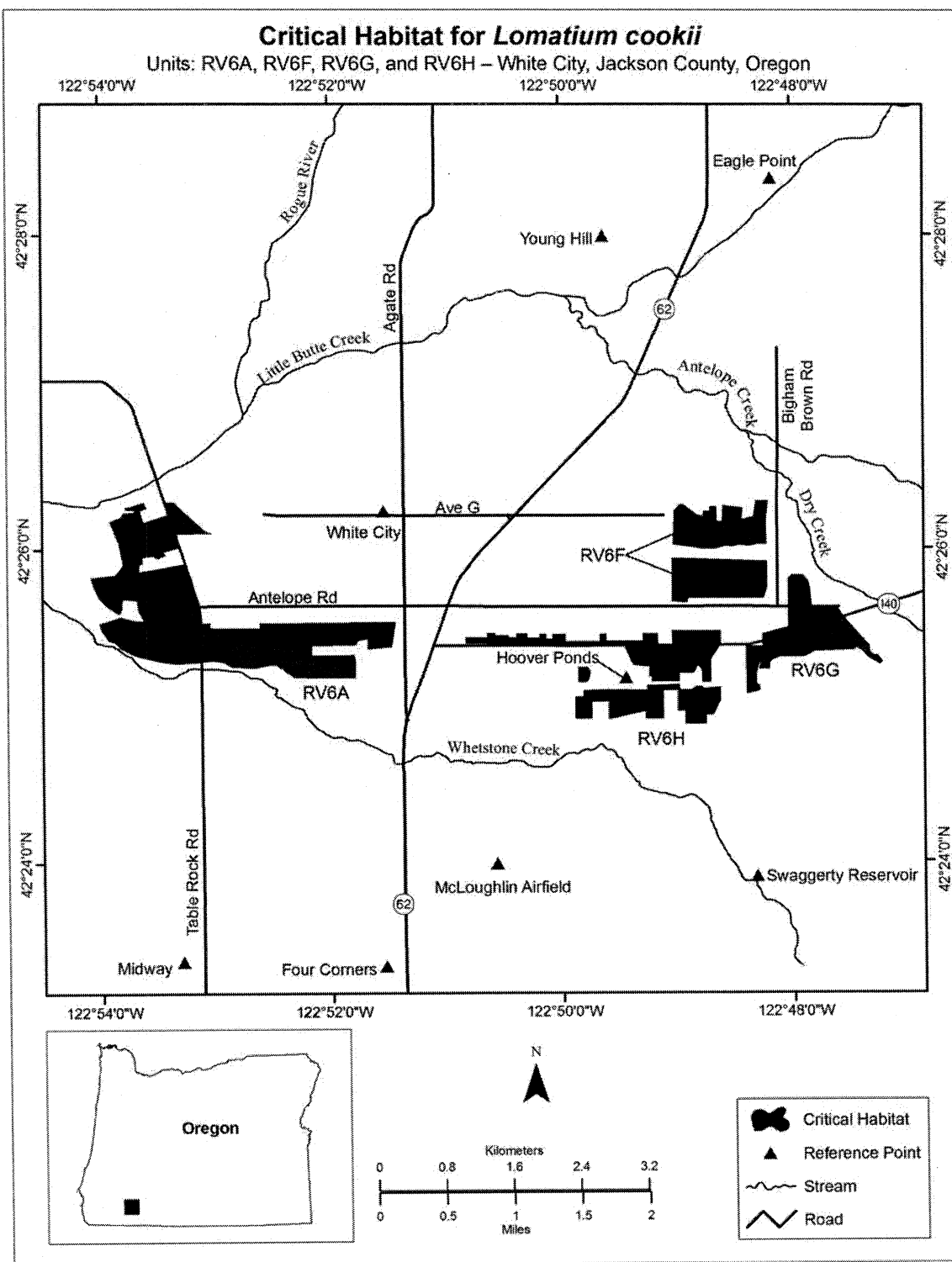
(iv) Subunit RV6G. Land bounded by the following UTM Zone 10, NAD83 coordinates (E,N): 517363, 4696759; 517380, 4696683; 517424, 4696639; 517460, 4696648; 517526, 4696572; 517491, 4696542; 517351, 4696625; 517287, 4696695; 517217, 4696740; 517193, 4696711; 516712, 4696690; 516601, 4696630; 516302, 4696628; 516213, 4696595; 516180, 4696557; 516180, 4696505; 516183, 4696483; 516100, 4696483; 516062, 4696483; 516060, 4696499; 516076, 4696561; 516057, 4696567; 516025, 4696439; 516024, 4696360; 516020, 4696326; 516027, 4696295; 516057, 4696293; 516065, 4696236; 516030, 4696218; 515906, 4696192; 515899, 4696751; 516095, 4696752; 516098, 4696895; 516245, 4696937; 516405, 4696975; 516400, 4697547; 516449, 4697593; 516578, 4697590; 516640, 4697528; 516664, 4697441; 516684, 4697224;

516998, 4697195; 517053, 4697116; 517155, 4696992; 517363, 4696759.

(v) Subunit RV6H. Land bounded by the following UTM Zone 10, NAD83 coordinates (E,N): 514039, 4696369; 514010, 4696329; 513917, 4696330; 513916, 4696504; 514016, 4696501; 514032, 4696482; 514055, 4696458; 514039, 4696369. Land bounded by the following UTM Zone 10, NAD83 coordinates: 515596, 4696769; 515482, 4696601; 515485, 4696329; 515383, 4696329; 515379, 4696456; 515331, 4696534; 515282, 4696436; 515109, 4696430; 515109, 4696331; 514782, 4696332; 514786, 4696393; 514755, 4696396; 514759, 4696508; 514563, 4696535; 514455, 4696768; 513944, 4696774; 513856, 4696770; 513517, 4696773; 512576, 4696788; 512574, 4696856; 512830, 4696853; 512830, 4696908; 512922, 4696905; 512920, 4696879; 513081, 4696880; 513080, 4696856; 513180, 4696855; 513180, 4696898; 513307, 4696897; 513306, 4696851; 513454, 4696851; 513453, 4696893; 513530, 4696893; 513530, 4696838; 513609, 4696837; 513609, 4696894; 513759, 4696895; 513759, 4696810; 514173, 4696809; 514173, 4696891; 514244, 4696895; 514244, 4696811; 514555, 4696812; 514683, 4696816; 514681, 4696895; 514857, 4696895; 514855, 4696758; 515028, 4696760; 515027, 4696933; 515599, 4696932; 515599, 4696888; 515599, 4696769; 515596, 4696769. Land bounded by the following UTM Zone 10, NAD83 coordinates (E,N): 515111, 4696236; 515252, 4696236; 515301, 4696272; 515387, 4696272; 515386, 4696252; 515594, 4696267; 515596, 4696108; 515512, 4695943; 515429, 4695944; 515427, 4695837; 515180, 4695837; 515180, 4695990; 515092, 4695990; 515090, 4696228; 514916, 4696225; 514922, 4695895; 514706, 4695899; 514713, 4695991; 514298, 4695895; 514273, 4695897; 514269, 4696102; 514075, 4696098; 514071, 4695895; 513880, 4695899; 513880, 4696153; 513977, 4696151; 513977, 4696227; 514156, 4696236; 514261, 4696239; 514731, 4696231; 514731, 4696288; 515110, 4696301; 515111, 4696236.

(vi) Note: Map of Unit RV6 for *Lomatium cookii* follows:

BILLING CODE 4310-55-S



(7) Unit RV8 for *Lomatium cookii*:
Whetstone Creek, Jackson County,
Oregon.

(i) Unit RV8 for *Lomatium cookii*
consists of 344 ha (850 ac) of vernal
pool-mounded prairie and swale
habitat. Unit RV8 is located
approximately 1.4 km (0.9 mi) southeast
of the confluence of the Rogue River and
Whetstone Creek, 2.2 km (1.4 mi)
southwest of Tou Velle State Park, and
2.9 km southeast of the confluence of
Bear Creek and the Rogue River. The
unit roughly parallels a 2.6-km (1.6-mi)
stretch of Whetstone Creek to the south.

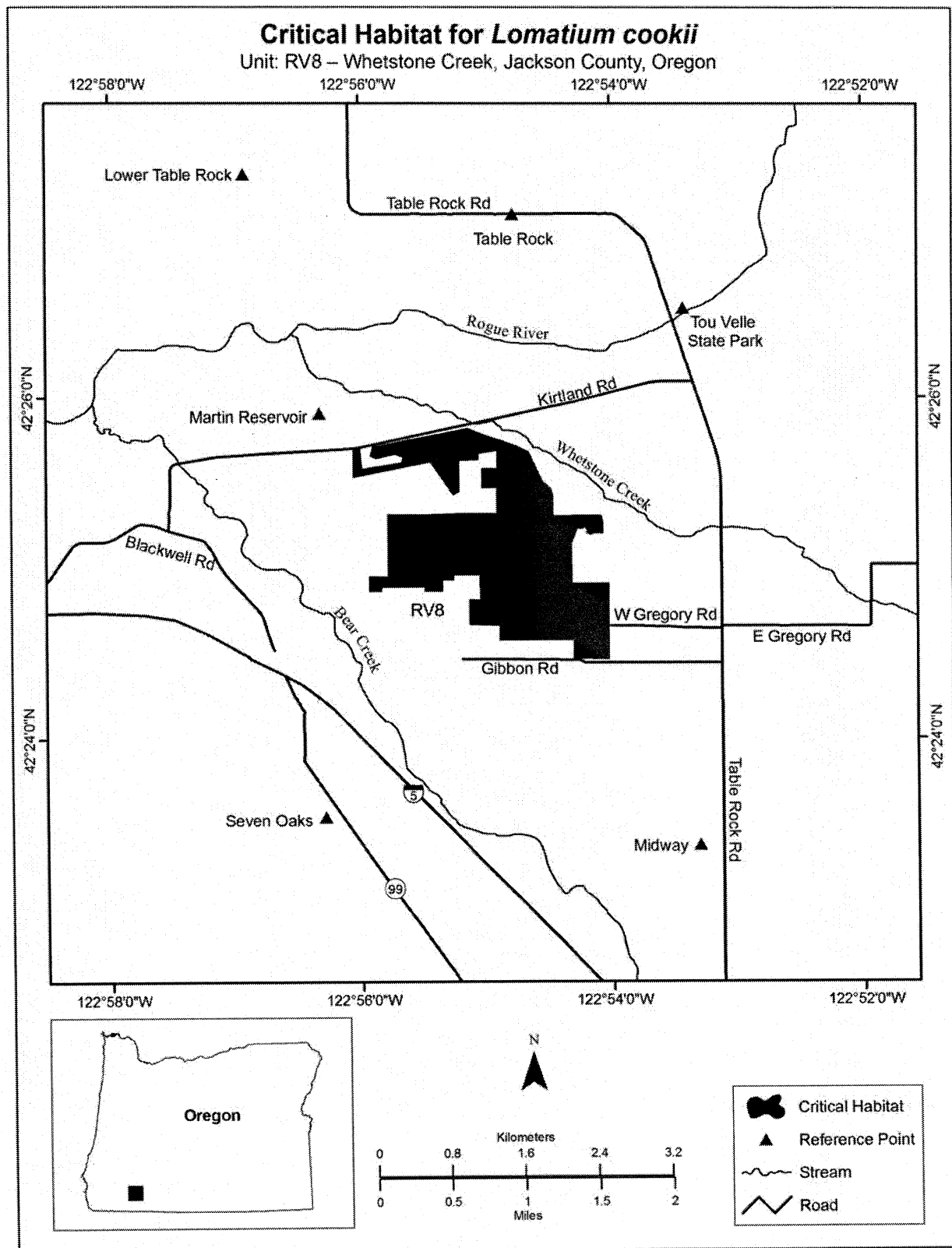
(ii) Land bounded by the following
UTM Zone 10, NAD83 coordinates

(E,N): 507195, 4697380; 507335,
4697312; 507411, 4697148; 507489,

4696991; 507579, 4696913; 507601,
4696830; 507604, 4696619; 507801,
4696622; 507961, 4696620; 508057,
4696621; 508104, 4696621; 508124,
4696618; 508138, 4696555; 508140,
4696483; 508140, 4696428; 508089,
4696423; 508033, 4696423; 508008,
4696409; 507958, 4696429; 507973,
4696461; 507944, 4696487; 507916,
4696475; 507860, 4696472; 507797,
4696307; 507804, 4695886; 508202,
4695883; 508202, 4695051; 507814,
4695057; 507820, 4695259; 507012,
4695259; 507015, 4695418; 506686,
4695430; 506686, 4695706; 506801,
4695704; 506794, 4695971; 506517,
4695974; 506517, 4695919; 506390,
4695914; 506389, 4695791; 506199,
4695790; 506198, 4695840; 505725,

4695839; 505725, 4695794; 505589,
4695791; 505586, 4695960; 505787,
4695957; 505792, 4696631; 506152,
4696631; 506531, 4696643; 506981,
4696645; 506986, 4696916; 506820,
4696916; 506824, 4697131; 506986,
4697131; 506988, 4697318; 506789,
4697291; 506787, 4697223; 506578,
4697214; 506578, 4696879; 506509,
4696842; 506262, 4697197; 505415,
4697033; 505412, 4697323; 505491,
4697339; 505512, 4697123; 505945,
4697194; 505959, 4697246; 505876,
4697283; 505669, 4697233; 505601,
4697265; 505627, 4697366; 506667,
4697565; 506868, 4697490; 507015,
4697441; 507195, 4697380.

(iii) Note: Map of Unit RV8 for
Lomatium cookii follows:



(8) Unit RV9, subunits A, B, C, D and E, for *Lomatium cookii*: Medford Airport, Jackson County, Oregon.

(i) Unit RV9, subunits A through E, consists of 34 ha (83 ac) of slightly degraded vernal pool-mounded prairie habitat. The five subunits of RV9 are located mostly within the Rogue Valley International-Medford Airport, approximately 2 km (1.2 mi) west of Coker Butte and 1.5 km (0.9 mi) northeast of Bear Creek. Subunit RV9A is located 1.4 km (0.9 mi) north of the Rogue Valley International-Medford Airport and is 300 m (980 ft) east of the junction of Vilas Road and Table Rock Road. Subunits RV9B through E are located between Upton Slough and Bear Creek, 2 mi (1.2 km) southeast of the junction of Vilas Road and Table Rock

Road, and 1.7 km northeast of the junction of Interstate 5 and Highway 62.

(ii) Subunit RV9A. Land bounded by the following UTM Zone 10, NAD83 coordinates (E,N): 509758, 4692789; 509752, 4692988; 509793, 4692988; 509805, 4692970; 509823, 4692950; 509906, 4692730; 509892, 4692718; 509856, 4692677; 509772, 4692739; 509758, 4692789.

(iii) Subunit RV9B. Land bounded by the following UTM Zone 10, NAD83 coordinates (E,N): 510350, 4691725; 510347, 4691751; 510396, 4691782; 510425, 4691783; 510450, 4691777; 510460, 4691769; 510464, 4691744; 510476, 4691665; 510596, 4691576; 510754, 4691398; 510518, 4691300; 510350, 4691725.

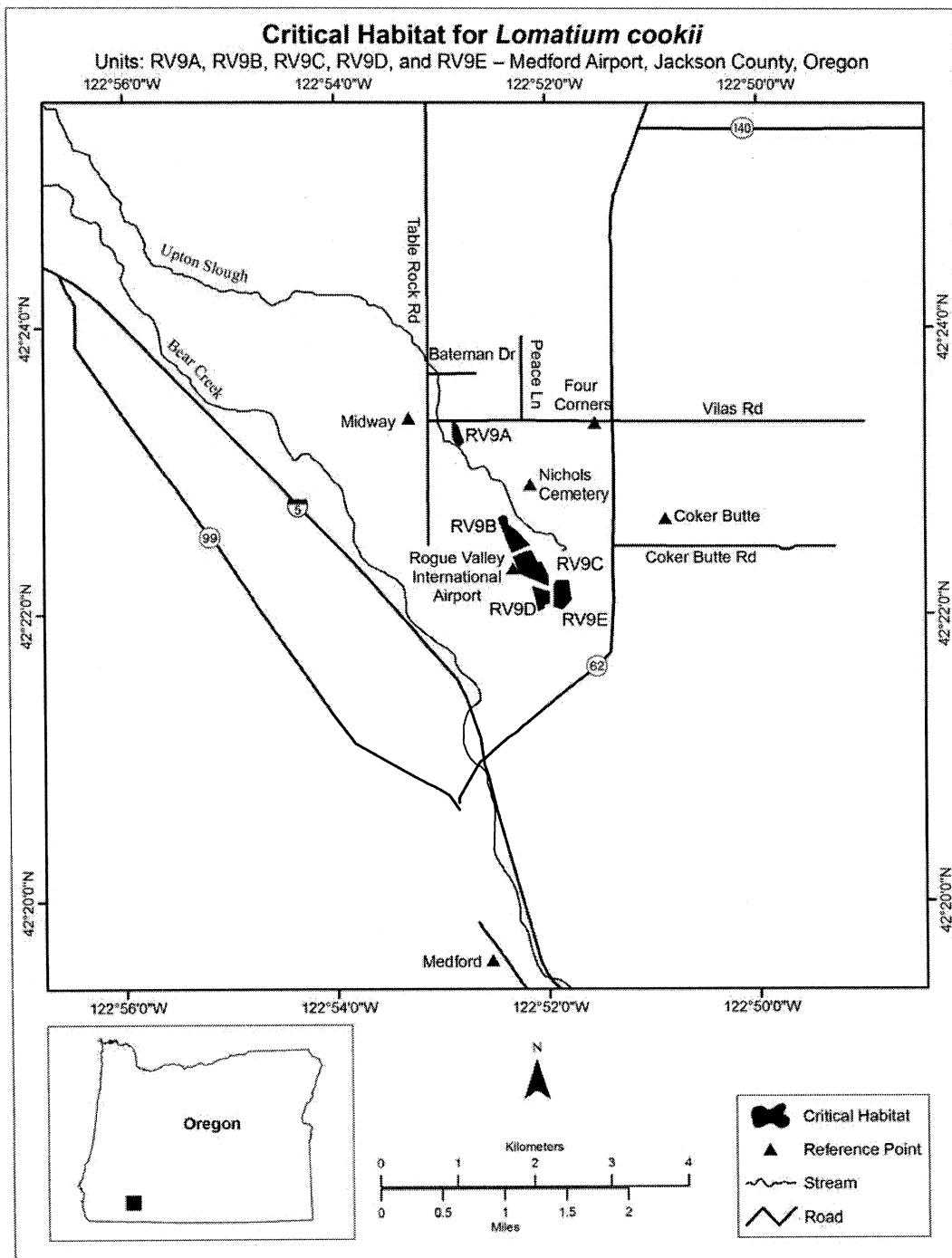
(iv) Subunit RV9C. Land bounded by the following UTM Zone 10, NAD83 coordinates (E,N): 510986, 4691013;

510999, 4690872; 510623, 4691028; 510540, 4691245; 510684, 4691307; 510779, 4691332; 510841, 4691196; 510856, 4691169; 510904, 4691180; 510940, 4691117; 510972, 4691050; 510986, 4691013.

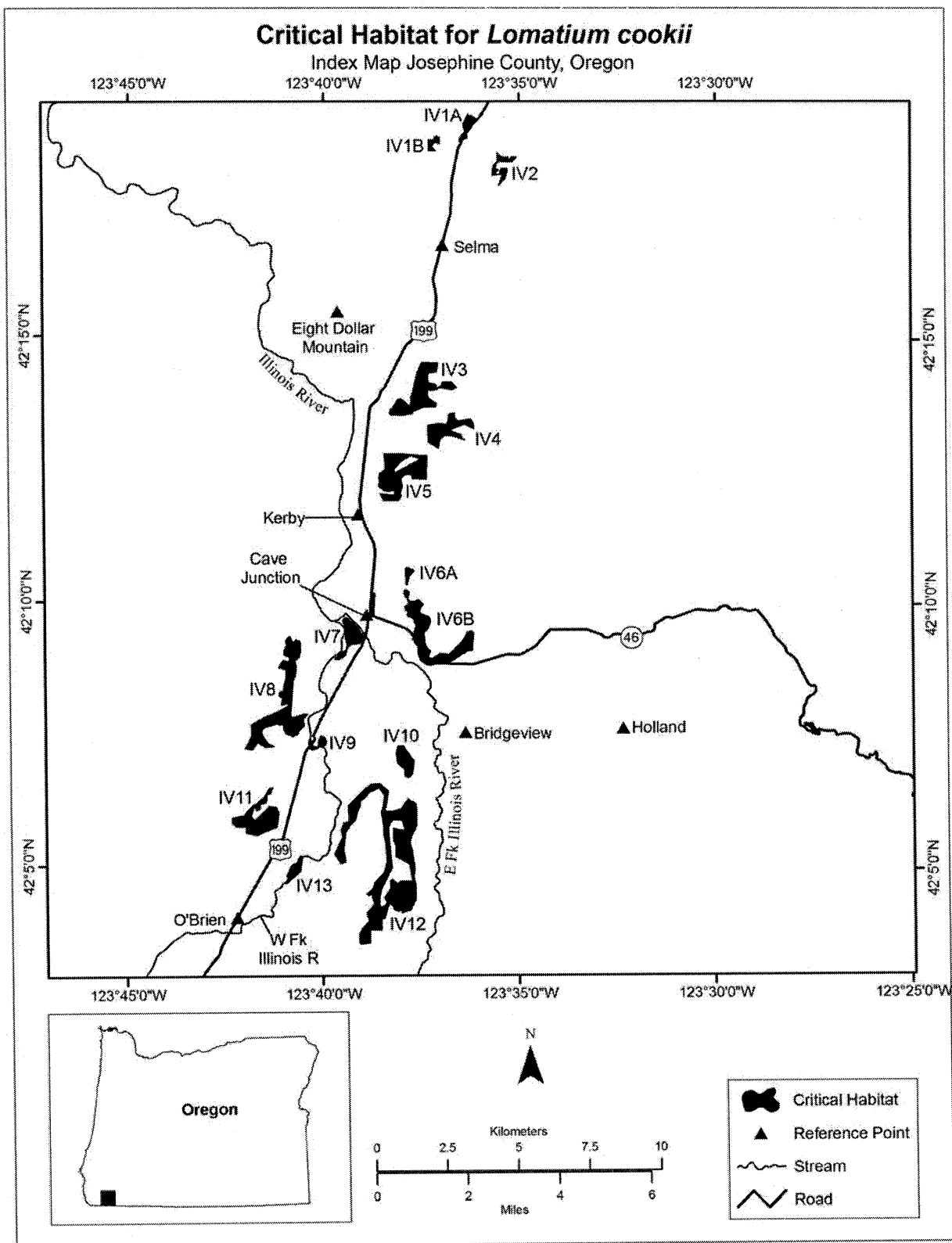
(v) Subunit RV9D. Land bounded by the following UTM Zone 10, NAD83 coordinates (E,N): 510787, 4690863; 511011, 4690792; 511014, 4690640; 510938, 4690621; 510948, 4690581; 510866, 4690542; 510787, 4690863.

(vi) Subunit RV9E. Land bounded by the following UTM Zone 10, NAD83 coordinates (E,N): 511100, 4690937; 511261, 4690939; 511278, 4690807; 511295, 4690692; 511182, 4690560; 511065, 4690602; 511069, 4690886; 511100, 4690937.

(vii) *Note:* Map of Unit RV9 for *Lomatium cookii* follows:



(9) Note: Index map for critical habitat for *Lomatium cookii* in Josephine County, Oregon, follows:



(10) Unit IV1 for *Lomatium cookii*: Anderson Creek, Josephine County, Oregon.

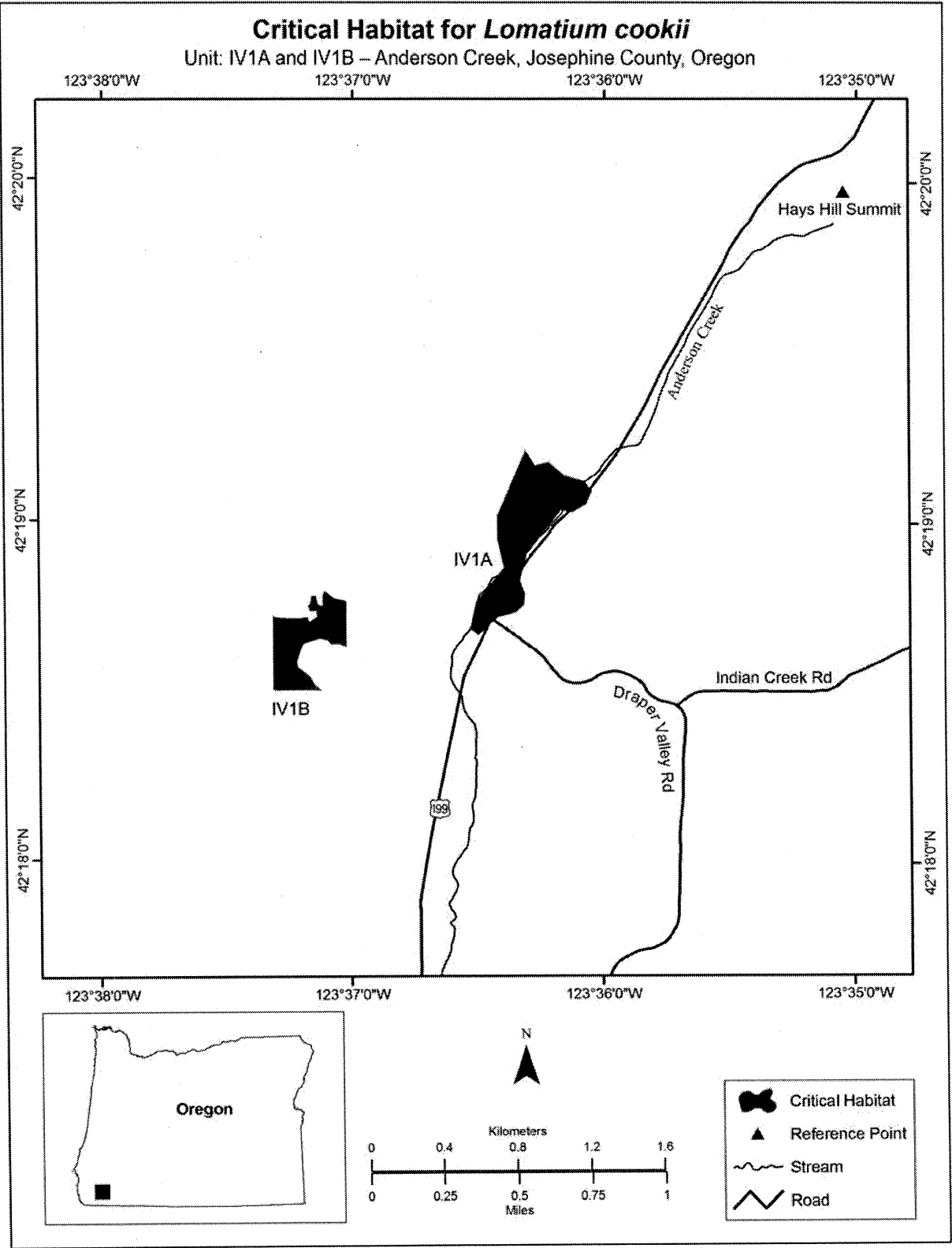
(i) Units IV1A and B comprise 35 ha (85 ac) of wet meadow and sloped mixed conifer habitat. Unit IV1A is located 3.5 km (2.2 mi) north of Selma, and 14 km (8.8 mi) north of Cave Junction; it is along a 1.0-km (0.6-mi) stretch of Anderson Creek and Highway 199, 2.0 km (1.2 mi) southwest of Hays Hill Summit. It is also 1.7 km (1.0 mi) northwest of the junction of Draper Valley Road and Indian Creek Road. Unit IV1B is located 3.5 km (2.2 mi) north of Selma, 3.4 km (2.1 mi) southwest of Hays Hill Summit, and 0.8 km (0.5 mi) west of the junction of Draper Valley Road and Highway 199.

(ii) Subunit IV1A. Land bounded by the following UTM Zone 10, NAD83 coordinates (E,N): 450132, 4685506; 450182, 4685423; 450258, 4685440; 450341, 4685369; 450451, 4685337; 450492, 4685286; 450463, 4685214; 450384, 4685168; 450324, 4685180; 450136, 4684939; 450097, 4684797; 450125, 4684724; 450118, 4684663; 450077, 4684623; 449974, 4684595; 449871, 4684503; 449827, 4684535; 449857, 4684682; 450010, 4684867; 449977, 4685017; 449977, 4685154; 450132, 4685506.

(iii) Subunit IV1B. Land bounded by the following UTM Zone 10, NAD83 coordinates (E,N): 449150, 4684684; 449149, 4684605; 449148, 4684439; 449114, 4684455; 449059, 4684456; 449045, 4684474; 449000, 4684486;

448952, 4684470; 448914, 4684459; 448897, 4684429; 448877, 4684363; 448879, 4684332; 448899, 4684317; 448945, 4684277; 448977, 4684227; 449006, 4684202; 448742, 4684203; 448745, 4684608; 448751, 4684601; 448779, 4684597; 448849, 4684594; 448885, 4684594; 448934, 4684599; 448943, 4684575; 448985, 4684603; 448983, 4684633; 448948, 4684633; 448938, 4684658; 448951, 4684678; 448956, 4684717; 448981, 4684714; 448981, 4684699; 448990, 4684669; 449018, 4684661; 449018, 4684685; 449018, 4684717; 449026, 4684742; 449050, 4684727; 449080, 4684701; 449136, 4684690; 449150, 4684684.

(iv) *Note:* Map of Unit IV1 for *Lomatium cookii* follows:



(11) Unit IV2 for *Lomatium cookii*: Draper Creek, Josephine County, Oregon.

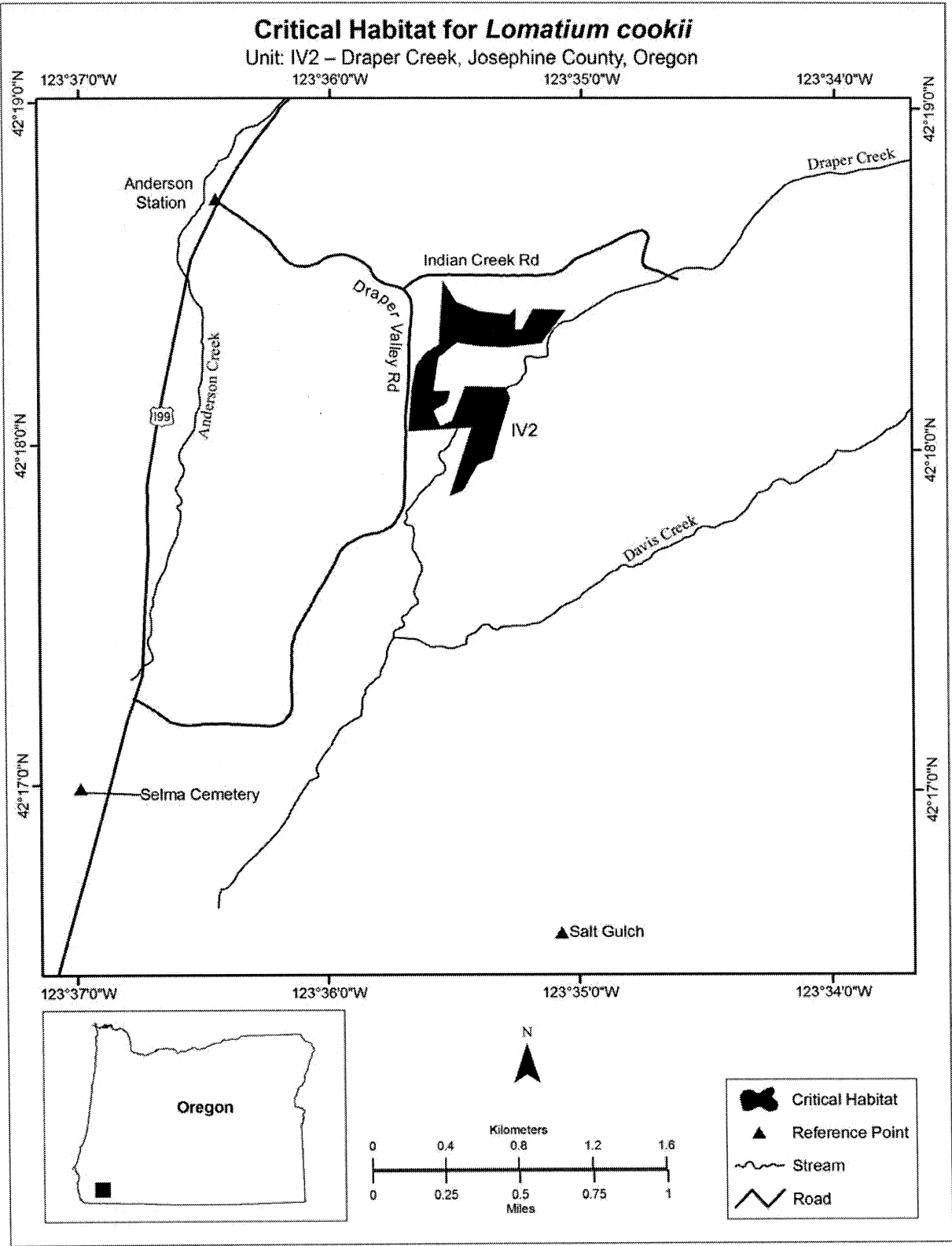
(i) Unit IV2 is composed of 28 ha (70 ac) of intact wet meadow habitat. It is located 2.7 km (1.7 mi) northeast of Selma and 13.5 km (8.4 mi) north of Cave Junction; it is along a 900-m (2,900-ft) stretch of Draper Creek, and is located 800 m (2,600 ft) east of Anderson Creek. The unit is 800 m (2,600 ft) north-northwest of the confluence of Draper Creek and Davis

Creek and is 200 m (650 ft) southeast of the junction of Draper Valley Road and Indian Creek Road.

(ii) Land bounded by the following UTM Zone 10, NAD83 coordinates (E,N): 451242, 4684043; 451367, 4683993; 451532, 4683974; 451567, 4684008; 451563, 4683891; 451602, 4683895; 451664, 4684005; 451837, 4683999; 451708, 4683823; 451520, 4683799; 451367, 4683807; 451246, 4683828; 451140, 4683742; 451113, 4683558; 451204, 4683559; 451187,

4683497; 451114, 4683457; 451153, 4683370; 451217, 4683399; 451290, 4683586; 451509, 4683580; 451525, 4683544; 451534, 4683523; 451476, 4683336; 451436, 4683194; 451357, 4683165; 451274, 4683025; 451205, 4682997; 451325, 4683367; 450977, 4683347; 450991, 4683498; 450994, 4683565; 451023, 4683703; 451077, 4683769; 451148, 4683813; 451171, 4684155; 451242, 4684043.

(iii) *Note:* Map of Unit IV2 for *Lomatium cookii* follows:



(12) Unit IV3 for *Lomatium cookii*:
Reeves Creek North, Josephine County,
Oregon.

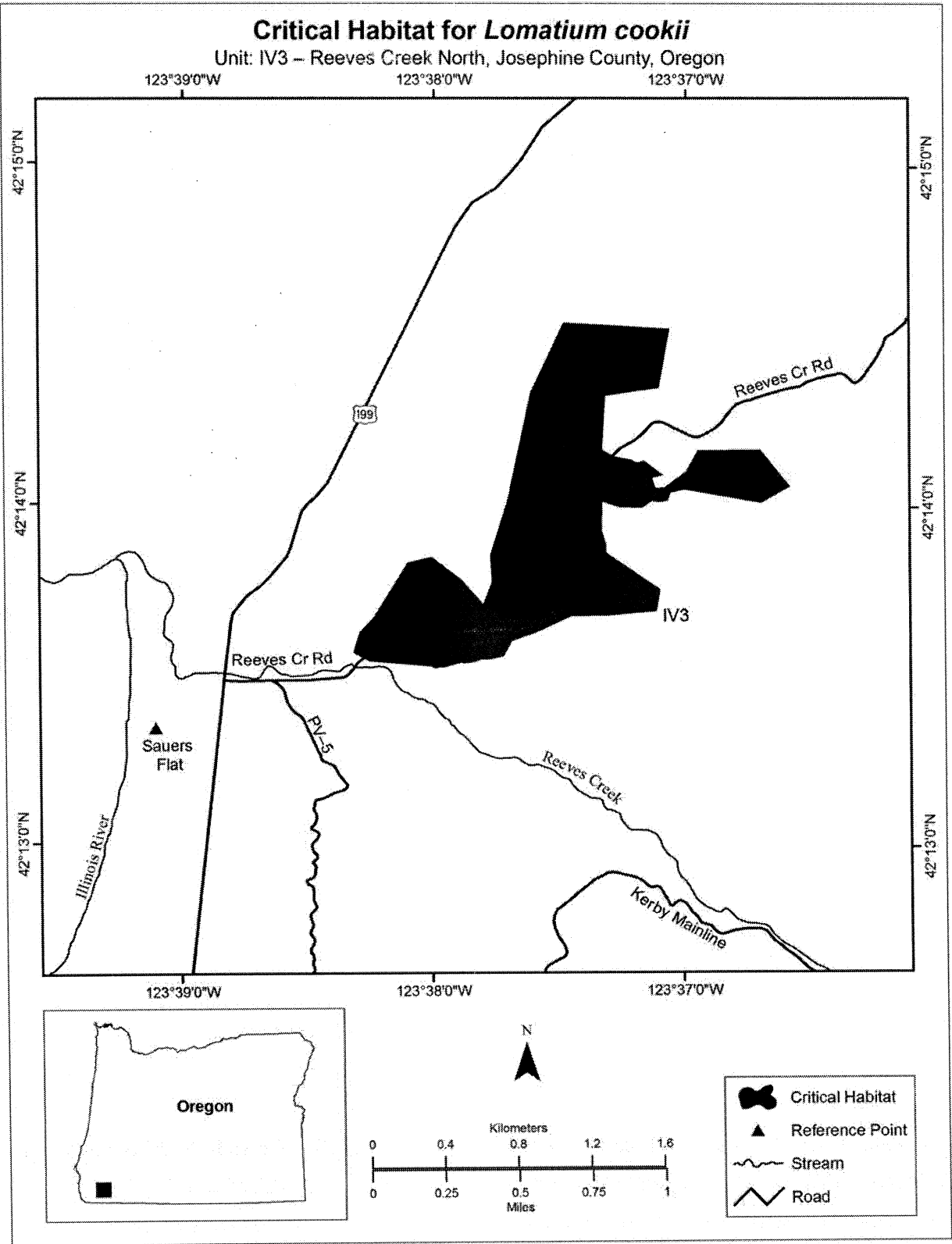
(i) Unit IV3 consists of 152 ha (374 ac) of sloped, mixed-conifer and shrubby habitat. The unit is located 1.4 km (0.9 mi) east of the confluence between Reeves Creek and the Illinois River and extends along a 2.0-km (1.2-mi) stretch of Reeves Creek, beginning 800 m (2,600 ft) northeast of the junction of Highway 199 and Reeves Creek Road.

(ii) Land bounded by the following
UTM Zone 10, NAD83 coordinates

(E,N): 448276, 4676491; 448458,
4676873; 449039, 4676838; 448978,
4676517; 448683, 4676474; 448666,
4676179; 448728, 4676143; 448827,
4676123; 448859, 4676108; 448896,
4676118; 448997, 4676041; 448939,
4676025; 448960, 4675969; 449010,
4675973; 449127, 4676059; 449191,
4676174; 449529, 4676177; 449689,
4675977; 449532, 4675889; 449117,
4675963; 449040, 4675946; 449024,
4675903; 448977, 4675892; 448941,
4675901; 448885, 4675863; 448760,
4675868; 448666, 4675896; 448660,
4675740; 448683, 4675670; 448686,

4675616; 448981, 4675417; 448959,
4675299; 448712, 4675277; 448492,
4675271; 448302, 4675185; 448169,
4675138; 448122, 4675056; 448047,
4675038; 447955, 4675039; 447793,
4674995; 447385, 4675030; 447297,
4675078; 447332, 4675186; 447413,
4675274; 447460, 4675349; 447598,
4675567; 447729, 4675595; 447891,
4675474; 448011, 4675337; 448060,
4675460; 448051, 4675607; 448146,
4675902; 448276, 4676491.

(iii) Note: Map of Unit IV3 for
Lomatium cookii follows:



(13) Unit IV4 for *Lomatium cookii*: Reeves Creek East, Josephine County, Oregon.

(i) Unit IV4 consists of 83 ha (204 ac) of sloped, partially open, mixed-conifer and shrubby habitat. It is located 6.2 km (3.9 mi) south of Selma and 5.3 km (3.3 mi) northwest of Cave Junction. It occurs along a 500-m (1,640-ft) stretch

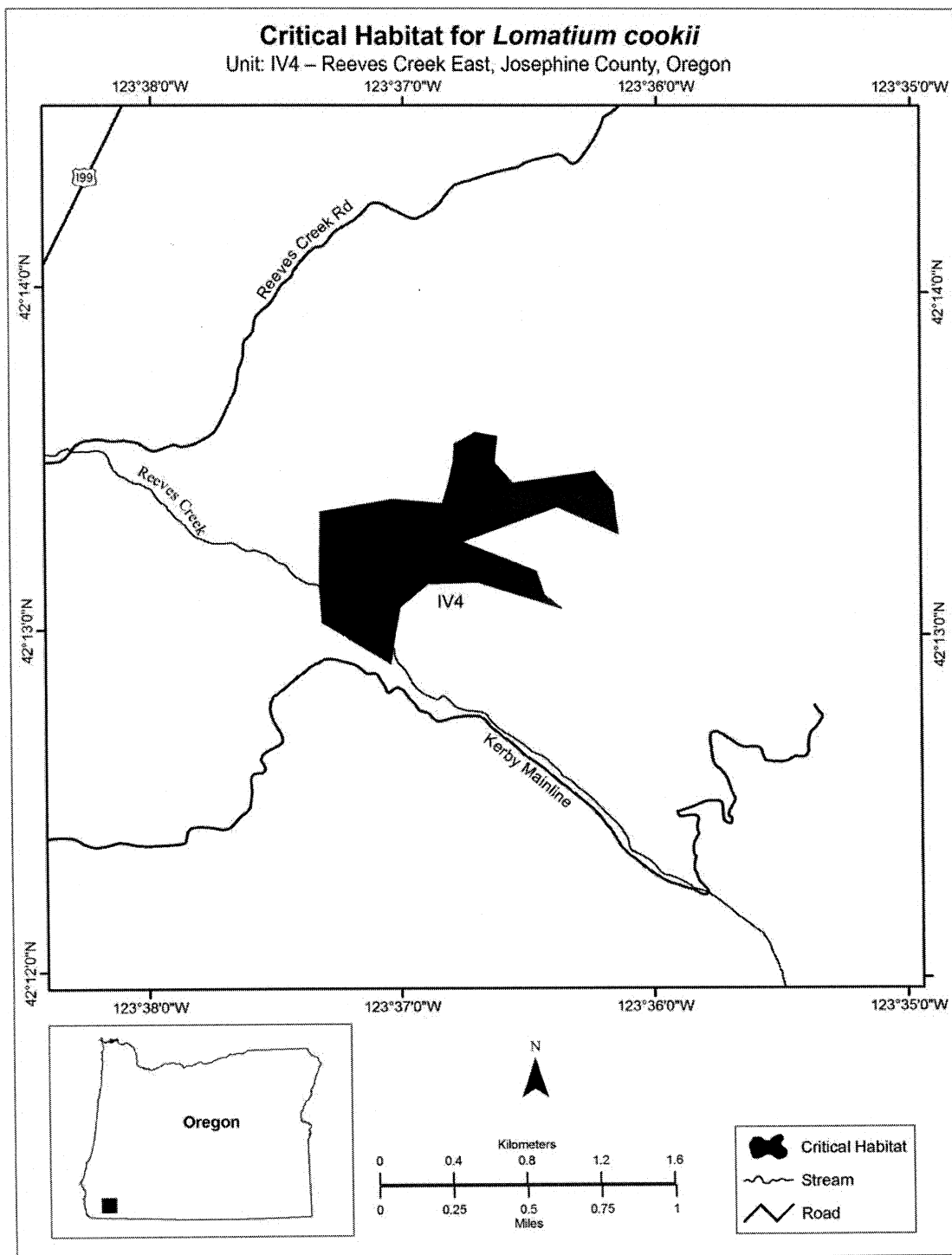
of Reeves Creek located 700 m (2,300 ft) southeast of Unit IV3.

(ii) Land bounded by the following UTM Zone 10, NAD83 coordinates

(E,N): 449612, 4674933; 449711, 4674820; 450157, 4674883; 450256, 4674770; 450285, 4674544; 449952, 4674692; 449433, 4674503; 449839, 4674347; 449880, 4674218; 449973, 4674142; 449517, 4674284; 449245,

4674277; 449095, 4674152; 449070, 4674020; 449043, 4673847; 448669, 4674070; 448655, 4674292; 448663, 4674667; 449056, 4674737; 449325, 4674713; 449352, 4674792; 449385, 4674933; 449392, 4675032; 449506, 4675096; 449626, 4675075; 449612, 4674933.

(iii) Note: Map of Unit IV4 for *Lomatium cookii* follows:



(14) Unit IV5 for *Lomatium cookii*: Reeves Creek South, Josephine County, Oregon.

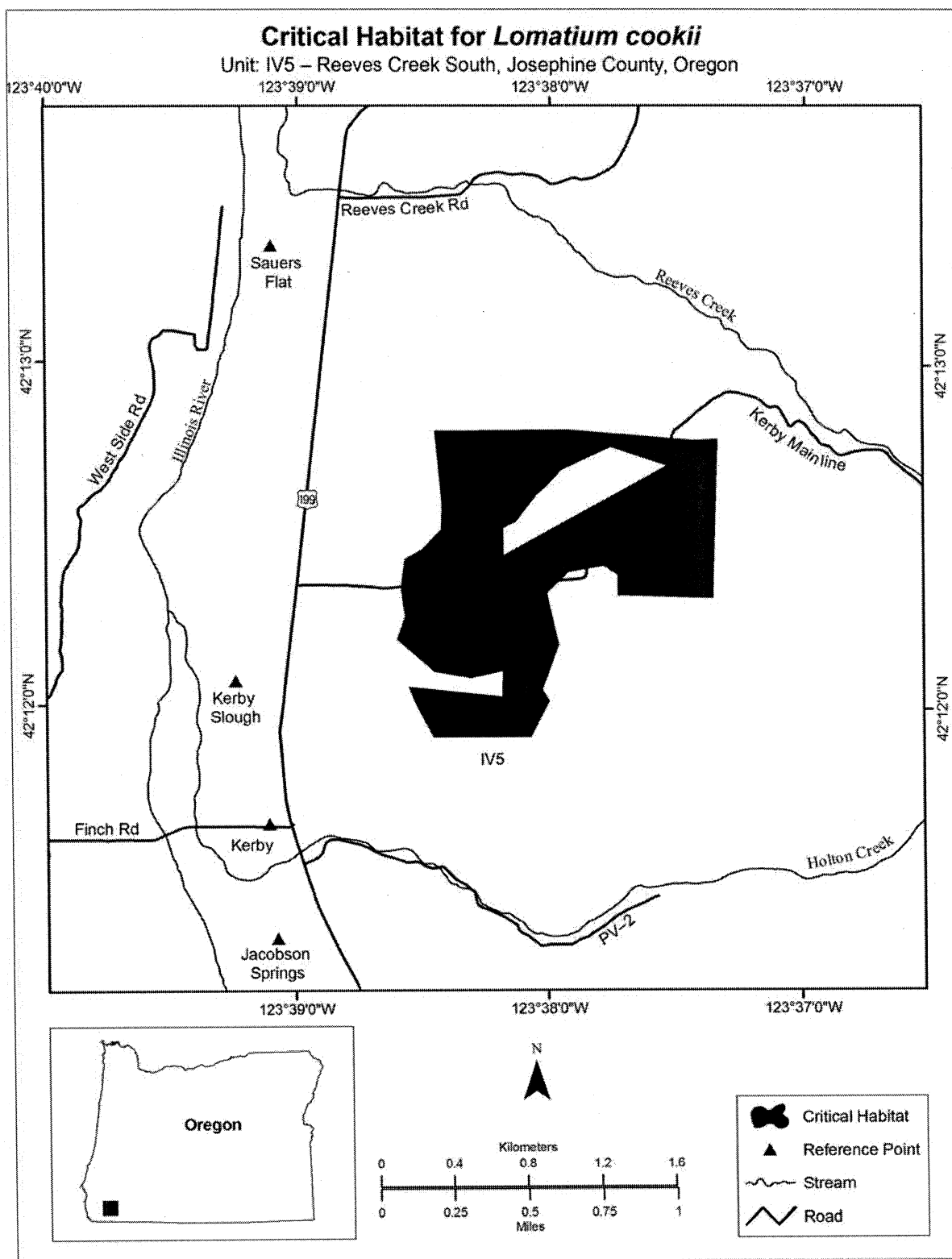
(i) Unit IV5 consists of 165 ha (407 ac) of sloped, partially open, mixed-conifer and understory shrub habitat. The unit is roughly parallel to Highway 199 for 2.5 km (1.6 mi), which is 500 m (1,640 ft) west of the unit. The unit is located 1.6 km (1.0 mi) north of Cave Junction, 1 km (0.6 mi) southeast of Sauers Flat, 800 m (2,600 ft) east of Kerby, and 1.2 km (0.7 mi) east of the confluence

between Holton Creek and the Illinois River.

(ii) Land bounded by the following UTM Zone 10, NAD83 coordinates (E,N): 447813, 4673676; 448511, 4673617; 448634, 4673624; 448605, 4672768; 448091, 4672785; 448091, 4672895; 448015, 4672943; 447825, 4672913; 447706, 4672798; 447736, 4672665; 447769, 4672517; 447680, 4672274; 447717, 4672211; 447617, 4672018; 447088, 4672018; 446995, 4672190; 446954, 4672289; 447462, 4672237; 447465, 4672320; 447467,

4672377; 447295, 4672338; 447098, 4672373; 446891, 4672547; 446936, 4672673; 446913, 4672828; 446936, 4672982; 447024, 4673030; 447135, 4673141; 447141, 4673266; 447102, 4673670; 447813, 4673676; and excluding land bound by 447470, 4673148; 447474, 4673000; 448289, 4673443; 448361, 4673480; 448056, 4673583; 447789, 4673459; 447703, 4673370; 447653, 4673327; 447540, 4673183; 447470, 4673148.

(iii) *Note:* Map of Unit IV5 for *Lomatium cookii* follows:



(15) Unit IV6 for *Lomatium cookii*: Laurel Road, Josephine County, Oregon.

(i) Unit IV6 totals 182 ha (449 ac) of intact wet meadow habitat. It is located west and alongside of the base of Lime Rock, 1.2 km (0.7 mi) east of the city of Cave Junction; it follows along Highway 46 for 1.5 km (0.9 mi). Subunit IV6A is located 1.2 km (0.7 mi) west of Lime Rock summit, 1.0 km east of the junction of Laurel Road and Highway 199; it is also roughly parallel to Highway 199 for 1.3 km (0.8 mi). Highway 199 lies approximately 1.0 km (0.6 mi) west of the subunit. Subunit IV6B is 2.7 km (1.7 mi) east of the confluence of the east and west forks of the Illinois River and from the intersection of Holland Loop Road and Highway 46; it extends approximately 1.8 km (1.1 mi) to the northeast and 2.7 km (1.7 mi) to the north.

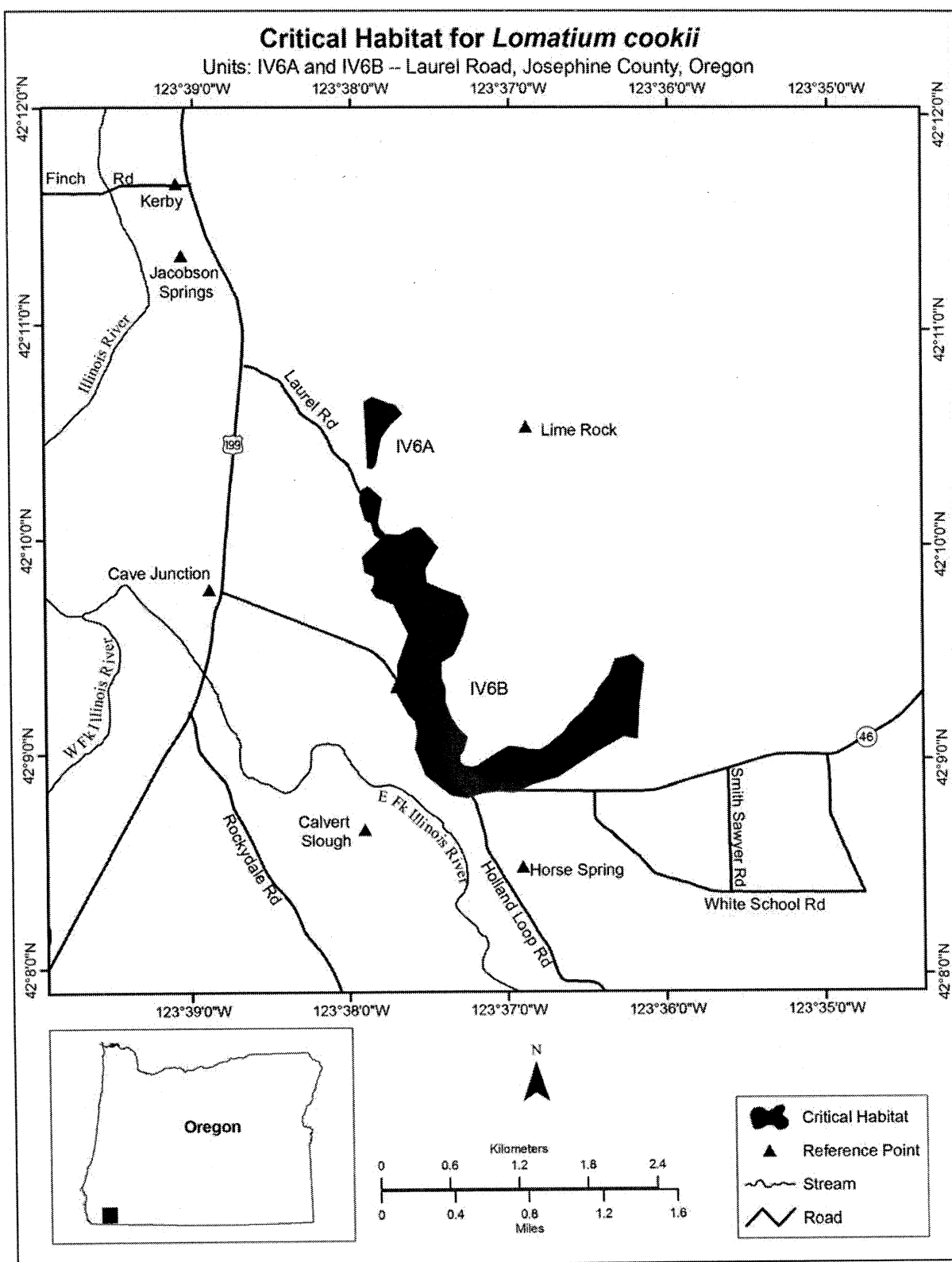
(ii) Subunit IV6A. Land bounded by the following UTM Zone 10, NAD83 coordinates (E,N): 447915, 4669143; 447884, 4669102; 447844, 4669113;

447817, 4669680; 447889, 4669722; 448020, 4669672; 448088, 4669651; 448148, 4669577; 448043, 4669483; 447961, 4669371; 447915, 4669143.

(iii) Subunit IV6B. Land bounded by the following UTM Zone 10, NAD83 coordinates (E,N): 447995, 4668541; 448124, 4668534; 448243, 4668595; 448295, 4668599; 448401, 4668490; 448454, 4668424; 448336, 4668236; 448350, 4668124; 448483, 4668066; 448642, 4668007; 448717, 4667844; 448664, 4667660; 448577, 4667497; 448475, 4667436; 448477, 4667288; 448509, 4667198; 448502, 4667095; 448553, 4666970; 448620, 4666860; 448695, 4666785; 448659, 4666660; 448631, 4666630; 448629, 4666574; 448668, 4666536; 448732, 4666526; 448785, 4666539; 448837, 4666577; 448933, 4666638; 449056, 4666710; 449161, 4666695; 449189, 4666691; 449210, 4666682; 449276, 4666678; 449322, 4666673; 449392, 4666713; 449531, 4666825; 449600, 4666919; 449693, 4666995; 449785, 4667095;

449844, 4667213; 449928, 4667313; 449987, 4667456; 450145, 4667497; 450235, 4667417; 450195, 4667078; 450175, 4666769; 450055, 4666789; 449816, 4666659; 449487, 4666440; 449238, 4666370; 449098, 4666310; 448968, 4666320; 448827, 4666306; 448695, 4666262; 448553, 4666285; 448332, 4666456; 448239, 4666688; 448258, 4666822; 448240, 4666931; 448183, 4666990; 448123, 4667096; 448085, 4667169; 448033, 4667174; 448089, 4667314; 448094, 4667421; 448189, 4667676; 448059, 4667939; 447914, 4667994; 447866, 4668059; 447896, 4668110; 447895, 4668175; 447813, 4668216; 447791, 4668343; 447953, 4668499; 447903, 4668531; 447872, 4668639; 447821, 4668667; 447771, 4668817; 447780, 4668907; 447843, 4668953; 447966, 4668848; 447928, 4668645; 447946, 4668592; 447995, 4668541.

(iv) *Note:* Map of Unit IV6 for *Lomatium cookii* follows:



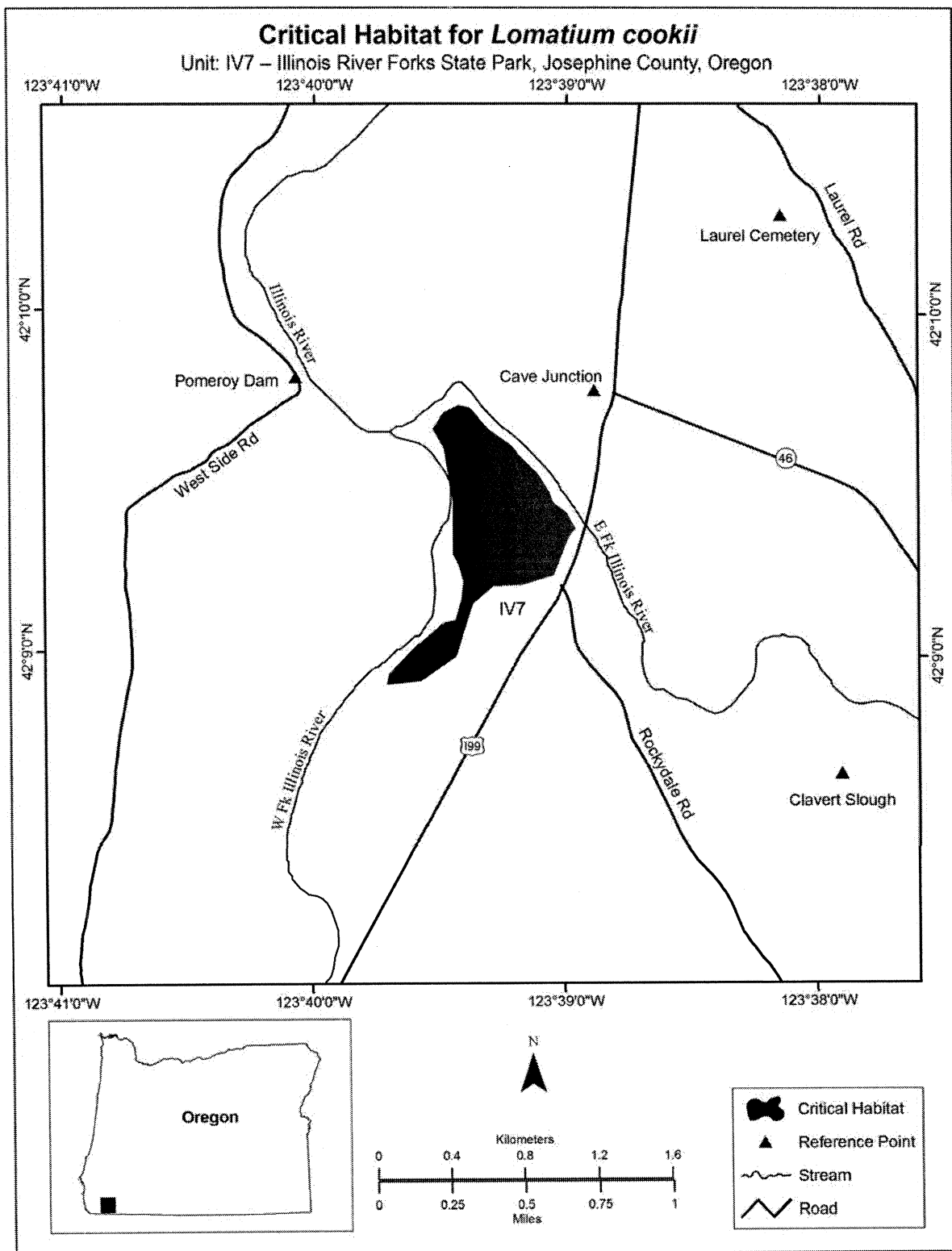
(16) Unit IV7 for *Lomatium cookii*: Illinois River Forks State Park, Josephine County, Oregon.

(i) Unit IV7 consists of 55 ha (136 ac) of intact wet meadow habitat. The unit is located 500 m (1,640 ft) west of the city of Cave Junction and 600 m (1,970 ft) southeast of Pomeroy Dam; it is also 230 m (750 ft) east of the confluence of the east and west forks of the Illinois River. The unit occurs along a 2.8-km (1.7-mi) stretch of the West Fork Illinois River.

(ii) Land bounded by the following UTM Zone 10, NAD83 coordinates (E,N): 445508, 4666492; 445320, 4666474; 445333, 4666529; 445472, 4666674; 445638, 4666805; 445696, 4666819; 445706, 4666849; 445731, 4666940; 445743, 4667030; 445726, 4667090; 445715, 4667125; 445689, 4667176; 445687, 4667211; 445688, 4667332; 445687, 4667475; 445653, 4667666; 445641, 4667749; 445580, 4667858; 445635, 4667943; 445719,

4667985; 445774, 4667973; 445790, 4667964; 445876, 4667862; 446014, 4667763; 446050, 4667715; 446148, 4667618; 446215, 4667513; 446232, 4667463; 446308, 4667402; 446352, 4667318; 446316, 4667270; 446235, 4667064; 446058, 4667012; 445907, 4667006; 445792, 4666909; 445701, 4666625; 445508, 4666492.

(iii) *Note:* Map of Unit IV7 for *Lomatium cookii* follows:



(17) Unit IV8 for *Lomatium cookii*: Woodcock Mountain, Josephine County, Oregon.

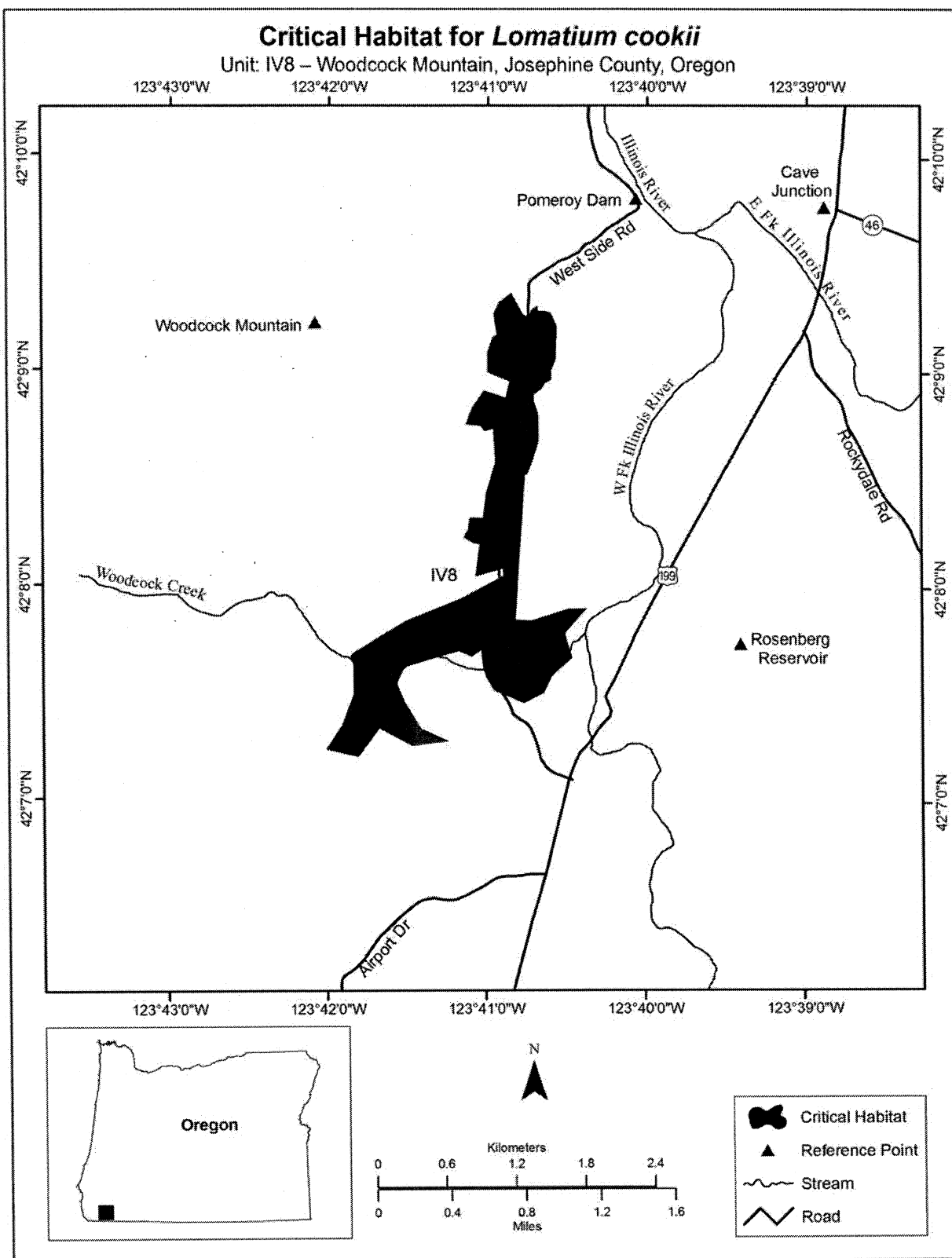
(i) Unit IV8 consists of 234 ha (579 ac) of wet meadow and shrubby habitat. The unit is located 2.4 km (1.5 mi) southwest of the city of Cave Junction, 5.3 km (3.3 mi) north of O'Brien, and 140 m (ft) west of the confluence of Woodcock Creek and the West Fork Illinois River. It occurs along a 3.3-km (2.0-mi) stretch of West Side Road. Unit IV7 is 400 m (ft) west of Highway 199 and roughly parallels the highway for 5.0 km (3.1 mi).

(ii) Land bounded by the following UTM Zone 10, NAD83 coordinates (E,N): 443846, 4667157; 443898, 4667120; 443924, 4667187; 443973, 4667221; 443980, 4667180; 444040, 4667176; 444088, 4667165; 444141, 4667053; 444137, 4666930; 444130,

4666762; 444088, 4666665; 444092, 4666591; 444036, 4666561; 444006, 4666509; 443939, 4666464; 443939, 4666400; 443980, 4666270; 443980, 4666244; 443977, 4666054; 443924, 4665878; 443880, 4665770; 443857, 4665769; 443771, 4664523; 443771, 4664523; 443771, 4664523; 443771, 4664523; 443770, 4664521; 443769, 4664516; 443770, 4664521; 443906, 4664511; 444239, 4664616; 444385, 4664613; 444251, 4664468; 444198, 4664401; 444257, 4664194; 444161, 4664104; 444083, 4664031; 444015, 4663890; 443841, 4663800; 443585, 4663911; 443585, 4663913; 443515, 4664031; 443493, 4664113; 443475, 4664263; 443394, 4664207; 443284, 4664253; 443063, 4664194; 442808, 4664117; 442740, 4663972; 442808, 4663811; 442952, 4663582; 443181, 4663471; 442872, 4663436; 442588, 4663587; 442401,

4663342; 442126, 4663405; 442265, 4663615; 442369, 4663881; 442367, 4664125; 442343, 4664212; 442360, 4664236; 442829, 4664515; 443311, 4664707; 443674, 4664901; 443667, 4664967; 443430, 4664902; 443467, 4665175; 443418, 4665182; 443331, 4665232; 443366, 4665300; 443386, 4665399; 443497, 4665400; 443525, 4665616; 443604, 4665877; 443586, 4666169; 443514, 4666146; 443480, 4666191; 443354, 4666208; 443409, 4666348; 443510, 4666494; 443697, 4666430; 443734, 4666576; 443540, 4666654; 443545, 4666707; 443545, 4666830; 443587, 4666949; 443626, 4666975; 443596, 4667154; 443643, 4667252; 443749, 4667333; 443846, 4667157.

(iii) Note: Map of Unit IV8 for *Lomatium cookii* follows:



(18) Unit IV9 for *Lomatium cookii*: Riverwash, Josephine County, Oregon.

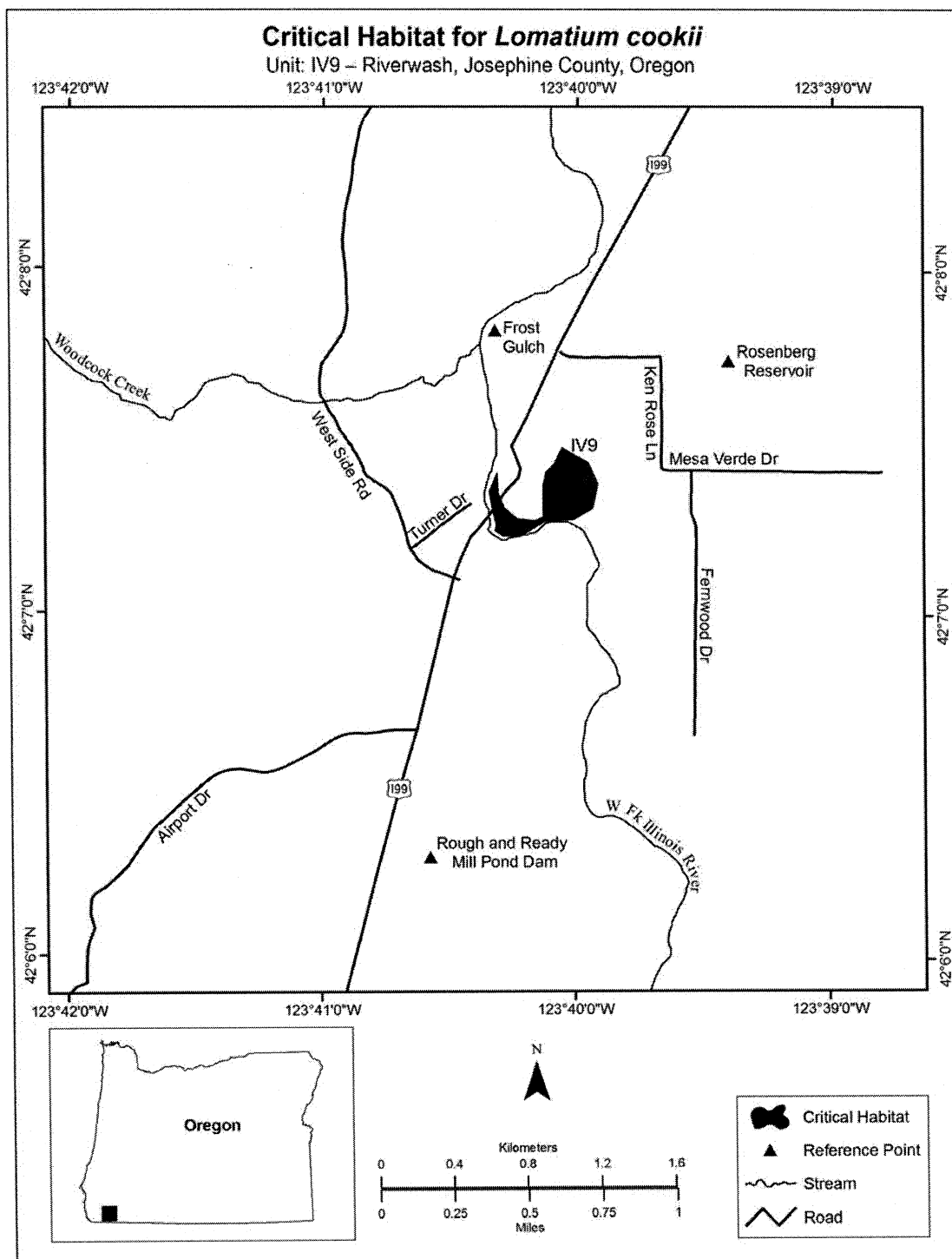
(i) Unit IV9 consists of 12 ha (30 ac) of intact wet meadow and streambank habitat. It is located 4.2 km (2.6 mi) south of Cave Junction and 6.1 km (3.8 mi) north-northeast of O'Brien. It is located along the east bend of the West Fork Illinois River, 700 m (2,300 ft) south (upstream) of the confluence

between Woodcock Creek and the West Fork Illinois River.

(ii) Land bounded by the following UTM Zone 10, NAD83 coordinates (E,N): 444883, 4663457; 444724, 4663445; 444595, 4663365; 444497, 4663369; 444452, 4663397; 444459, 4663432; 444435, 4663525; 444421, 4663612; 444466, 4663710; 444473, 4663599; 444484, 4663571; 444508,

4663525; 444542, 4663493; 444575, 4663465; 444670, 4663455; 444715, 4663474; 444715, 4663547; 444715, 4663648; 444729, 4663713; 444771, 4663752; 444819, 4663847; 444962, 4663766; 445015, 4663648; 444987, 4663516; 444883, 4663457.

(iii) Note: Map of Unit IV9 for *Lomatium cookii* follows:



(19) Unit IV10 for *Lomatium cookii*: French Flat North, Josephine County, Oregon.

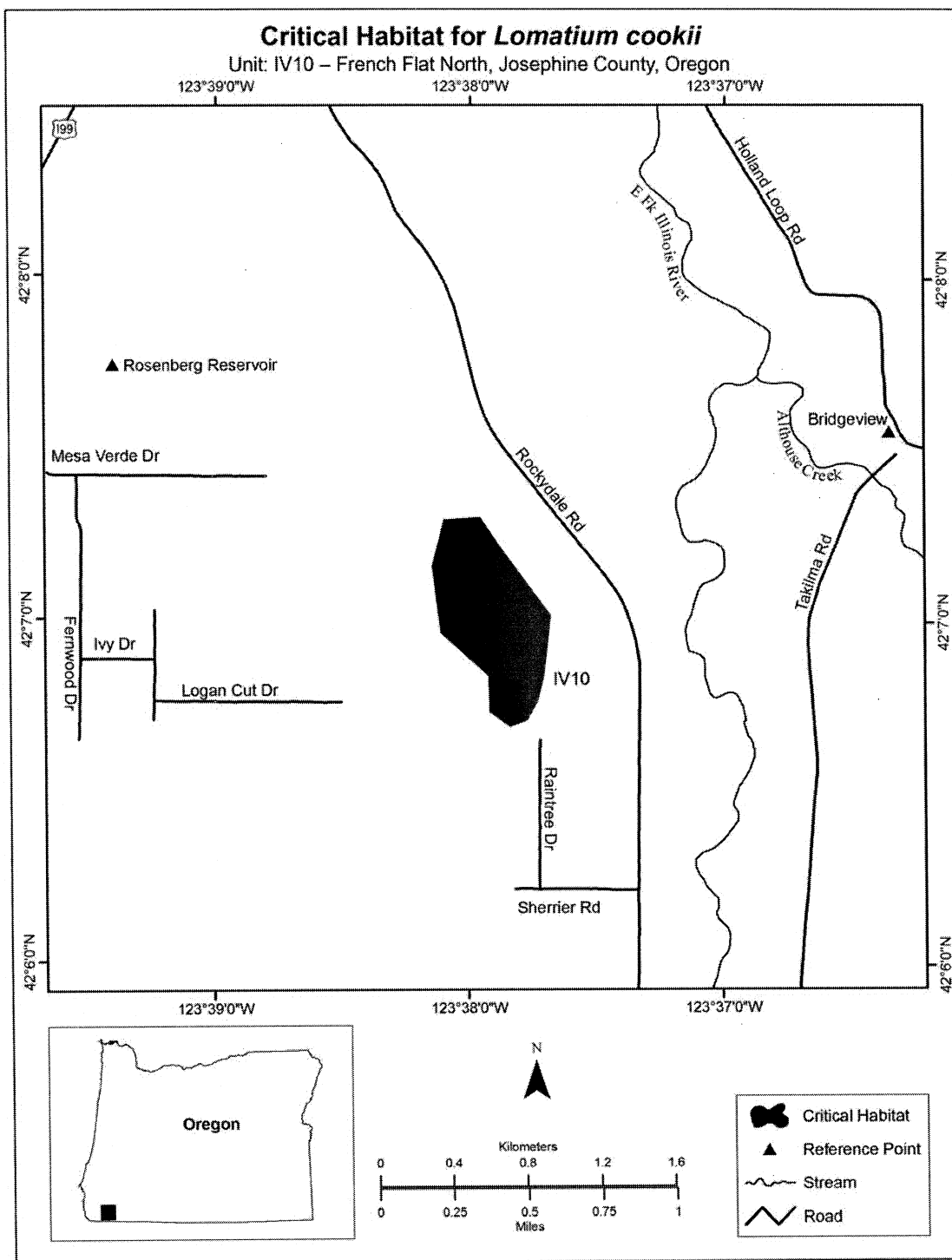
(i) Unit IV10 consists of 45 ha (110 ac) of intact wet meadow habitat. The unit is located 3.7 km (2.3 mi) south of Cave Junction, 900 m (2,950 ft) north of the intersection of Sherrier Drive and Raintree Drive, and 1.7 km (1.1 mi)

southwest of the confluence of Althouse Creek and the East Fork Illinois River. It parallels a 300-m (980-ft) stretch of Rockydale Road.

(ii) Land bounded by the following UTM Zone 10, NAD83 coordinates (E,N): 447956, 4662384; 447864, 4662351; 447753, 4662432; 447747, 4662626; 447490, 4662860; 447444,

4663221; 447510, 4663470; 447707, 4663483; 447812, 4663325; 448085, 4662952; 448070, 4662820; 448048, 4662620; 448015, 4662488; 447956, 4662384.

(iii) Note: Map of Unit IV10 for *Lomatium cookii* follows:



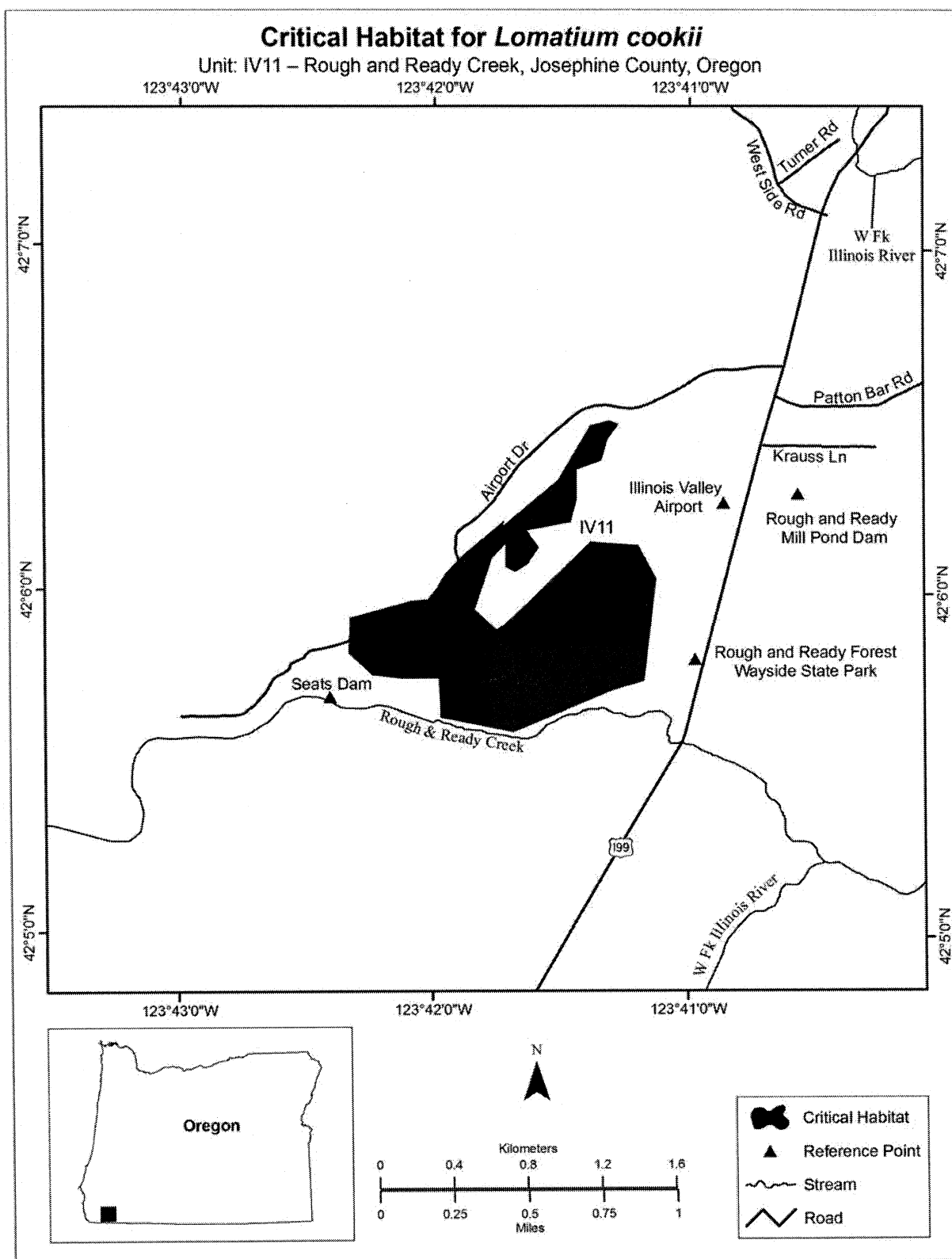
(20) Unit IV11 for *Lomatium cookii*: Rough and Ready Creek, Josephine County, Oregon.

(i) Unit IV11 consists of 118 ha (292 ac) of intact wet meadow habitat. The unit roughly follows along and is adjacent to a 1.9-km (1.2-mi) stretch of Airport Drive. It is located 3 km (1.9 mi) north of O'Brien, 900 m (2,950 ft) west of the Rough and Ready Forest Wayside State Park, and 122 m (400 ft) east of the confluence with the Illinois River and Rough and Ready Creek.

(ii) Land bounded by the following UTM Zone 10, NAD83 coordinates (E,N): 442862, 4661486; 442625, 4661442; 442689, 4661348; 442630, 4661262; 442562, 4661221; 442512, 4661248; 442512, 4661371; 442436, 4661297; 442433, 4661288; 442341, 4661017; 442458, 4660908; 442511, 4660943; 442971, 4661379; 443227, 4661360; 443325, 4661183; 443256, 4660632; 443089, 4660583; 442548, 4660357; 442155, 4660436; 442145, 4660646; 441956, 4660645; 441789,

4660666; 441658, 4660784; 441668, 4660973; 441996, 4661062; 442086, 4661071; 442133, 4661127; 442182, 4661207; 442263, 4661293; 442503, 4661493; 442493, 4661461; 442794, 4661712; 442973, 4662010; 443075, 4662031; 443124, 4662015; 443065, 4661934; 443031, 4661819; 442897, 4661772; 442897, 4661615; 442862, 4661486.

(iii) *Note:* Map of Unit IV11 for *Lomatium cookii* follows:



(21) Unit IV12 for *Lomatium cookii*: French Flat Middle, Josephine County, Oregon.

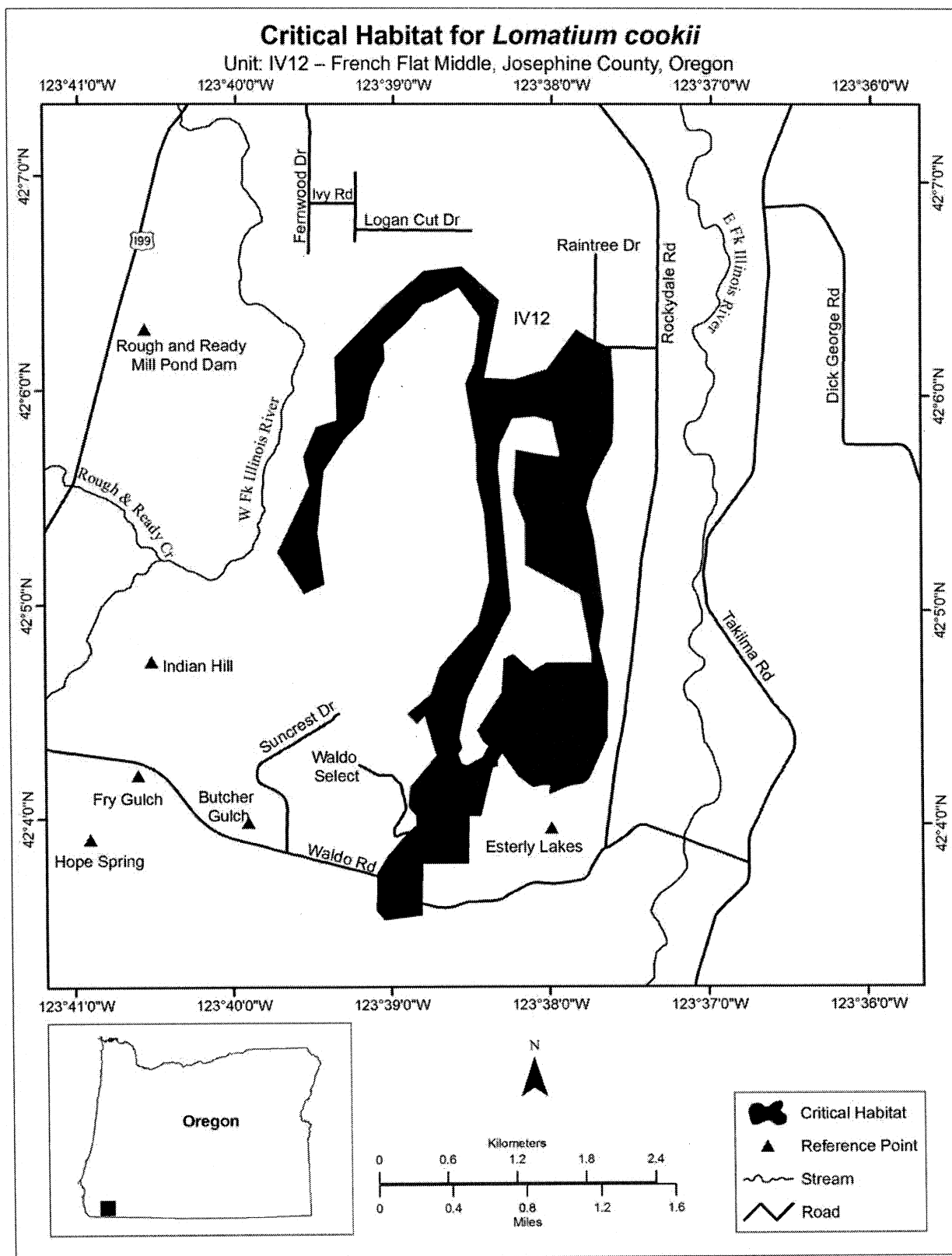
(i) Unit IV12 consists of 492 ha (1,216 ac) of intact wet meadow habitat. The unit is located 4.5 km (2.8 mi) east of Cave Junction, 3.7 km (2.3 mi) northeast of O'Brien, 140 m (460 ft) north and 560 m (1,830 ft) west of Esterly Lakes, 1.4 km (0.9 mi) northeast of Indian Hill, and 300 m (960 ft) east of the confluence of Rough and Ready Creek and the West Fork Illinois River. It also follows along a 1.6-km (1.0-mi) stretch of Rockydale Road until the junction with Waldo Road.

(ii) Land bounded by the following UTM Zone 10, NAD83 coordinates (E,N): 446860, 4662173; 447187, 4661885; 447051, 4661211; 447318, 4661198; 447598, 4661287; 447854, 4661630; 447956, 4661565; 448150, 4661463; 448171, 4661156; 448171, 4660872; 448158, 4660646; 447992, 4660335; 447933, 4660103; 447996, 4659837; 448078, 4659190; 448032, 4658899; 448111, 4658574; 448105,

4658100; 447946, 4657750; 447889, 4657708; 447783, 4657691; 447694, 4657657; 447599, 4657617; 447606, 4657696; 447530, 4657694; 447460, 4657675; 447331, 4657771; 447192, 4657971; 447148, 4657913; 447153, 4657860; 447108, 4657850; 447002, 4657429; 446901, 4657426; 446891, 4657015; 446491, 4657016; 446486, 4656704; 446483, 4656571; 446158, 4656530; 446086, 4656613; 446096, 4656823; 446093, 4656927; 446184, 4657078; 446369, 4657289; 446437, 4657345; 446442, 4657429; 446371, 4657514; 446388, 4657680; 446620, 4657952; 446539, 4658228; 446523, 4658301; 446450, 4658228; 446368, 4658309; 446571, 4658480; 446653, 4658714; 446987, 4659084; 446986, 4659084; 447091, 4659468; 447051, 4660049; 446986, 4660333; 446978, 4660650; 446934, 4660899; 446892, 4661165; 446971, 4661345; 447019, 4661742; 446833, 4661998; 446612, 4661880; 446518, 4661854; 446373, 4661691; 446172, 4661506; 446185, 4661367; 446068, 4661157; 445999,

4660871; 445820, 4660681; 445645, 4660416; 445588, 4659882; 445649, 4659438; 445473, 4659358; 445241, 4659711; 445523, 4660294; 445473, 4660538; 445584, 4660791; 445767, 4660848; 445749, 4661392; 446200, 4661854; 446534, 4662135; 446860, 4662173; and excluding land bound by 447273, 4659208; 447203, 4659076; 446889, 4658443; 446818, 4658110; 446840, 4658012; 446808, 4657965; 446838, 4657883; 446882, 4657863; 447019, 4657935; 447073, 4658033; 447029, 4658069; 446977, 4658167; 447192, 4658493; 447212, 4658784; 447290, 4658824; 447455, 4658678; 447581, 4658749; 447723, 4658749; 447975, 4658749; 447971, 4658840; 447876, 4659346; 447403, 4659604; 447407, 4659962; 447305, 4660216; 447329, 4660591; 447452, 4660569; 447689, 4660530; 447706, 4660555; 447643, 4660838; 447497, 4660883; 447296, 4660866; 447186, 4660643; 447167, 4660448; 447273, 4659208.

(iii) *Note:* Map of Unit IV12 for *Lomatium cookii* follows:



(22) Unit IV13 for *Lomatium cookii*: Indian Hill, Josephine County, Oregon.

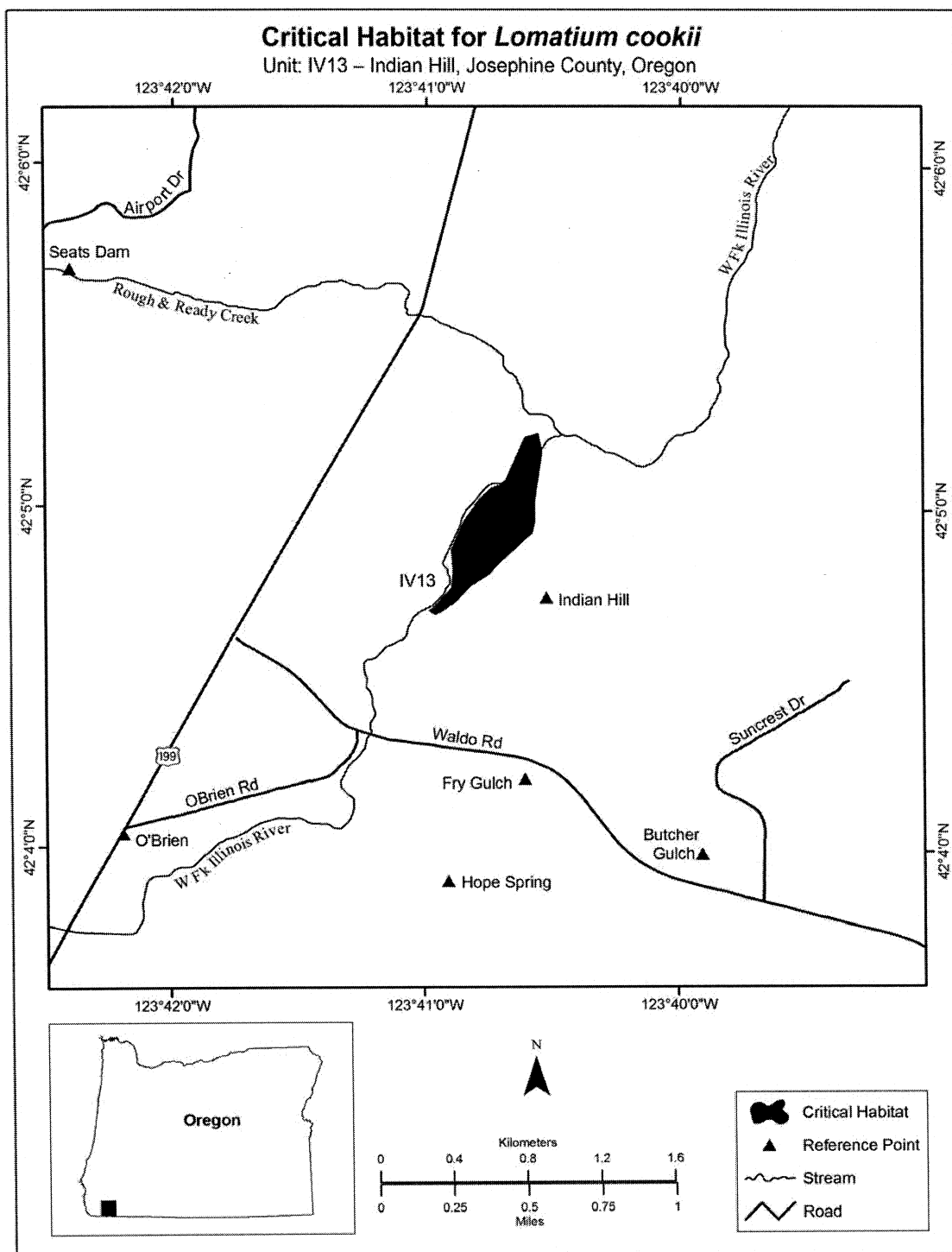
(i) Unit IV13 consists of 22 ha (54 ac) of intact wet meadow habitat. The unit is located adjacent to and lies east of a 900-m (2,950-ft) stretch of the West Fork Illinois River. It is located approximately 300 m south (upstream) of the confluence of Rough and Ready Creek and the West Fork Illinois River.

The unit is 1.8 km (1.1 mi) northeast of O'Brien and 350 m (1,150 ft) northwest of Indian Hill.

(ii) Land bounded by the following UTM Zone 10, NAD83 coordinates (E,N): 443565, 4658691; 443534, 4658677; 443500, 4658696; 443621, 4658819; 443630, 4658917; 443620, 4659030; 443690, 4659187; 443771, 4659300; 443840, 4659363; 443908,

4659385; 444024, 4659638; 444098, 4659659; 444117, 4659555; 444078, 4659294; 444078, 4659182; 444062, 4659116; 444017, 4659076; 443966, 4659029; 443874, 4658947; 443829, 4658895; 443726, 4658830; 443642, 4658741; 443565, 4658691.

(iii) Note: Map of Unit IV13 for *Lomatium cookii* follows:



* * * * *

Family Limnanthaceae: *Limnanthes floccosa* ssp. *grandiflora* (large-flowered woolly meadowfoam)

(1) Critical habitat units for Jackson County, Oregon, are depicted on the maps below.

(2) The primary constituent elements of critical habitat for *Limnanthes floccosa* ssp. *grandiflora* are the following habitat components:

(i) Vernal pools or ephemeral wetlands and the adjacent upland margins of these depressions that hold water for a sufficient length of time to sustain *Limnanthes floccosa* ssp. *grandiflora* germination, growth, and reproduction, occurring in the Rogue River Valley vernal pool landscape. These vernal pools or ephemeral wetlands are seasonally inundated during wet years but do not necessarily fill with water every year due to natural variability in rainfall, and support native plant populations. Areas of sufficient size and quality are likely to have the following characteristics:

(A) Elevations from 372 to 469 m (1,220 to 1,540 ft);

(B) Associated dominant native plants including, but not limited to: *Alopecurus saccatus*, *Deschampsia*

danthonioides, *Eryngium petiolatum*, *Lasthenia californica*, *Myosurus minimus*, *Navarretia leucocephala* ssp. *leucocephala*, *Phlox gracilis*, *Plagiobothrys bracteatus*, *Trifolium depauperatum*, and *Triteleia hyacinthina*.

(C) A minimum area of 8 ha (20 ac) to provide intact hydrology and protection from development and weed sources.

(ii) The hydrologically and ecologically functional system of interconnected pools, ephemeral wetlands, or depressions within a matrix of surrounding uplands that together form vernal pool complexes within the greater watershed. The associated features may include the pool basin or depressions; an intact hardpan subsoil underlying the surface soils up to 0.75 m (2.5 ft) in depth; and surrounding uplands, including mound topography and other geographic and edaphic features, that support these systems of hydrologically interconnected pools and other ephemeral wetlands (which may vary in extent depending on site-specific characteristics of pool size and depth, soil type, and hardpan depth).

(iii) Silt, loam, and clay soils that are of alluvial origin, with a 0 to 3 percent

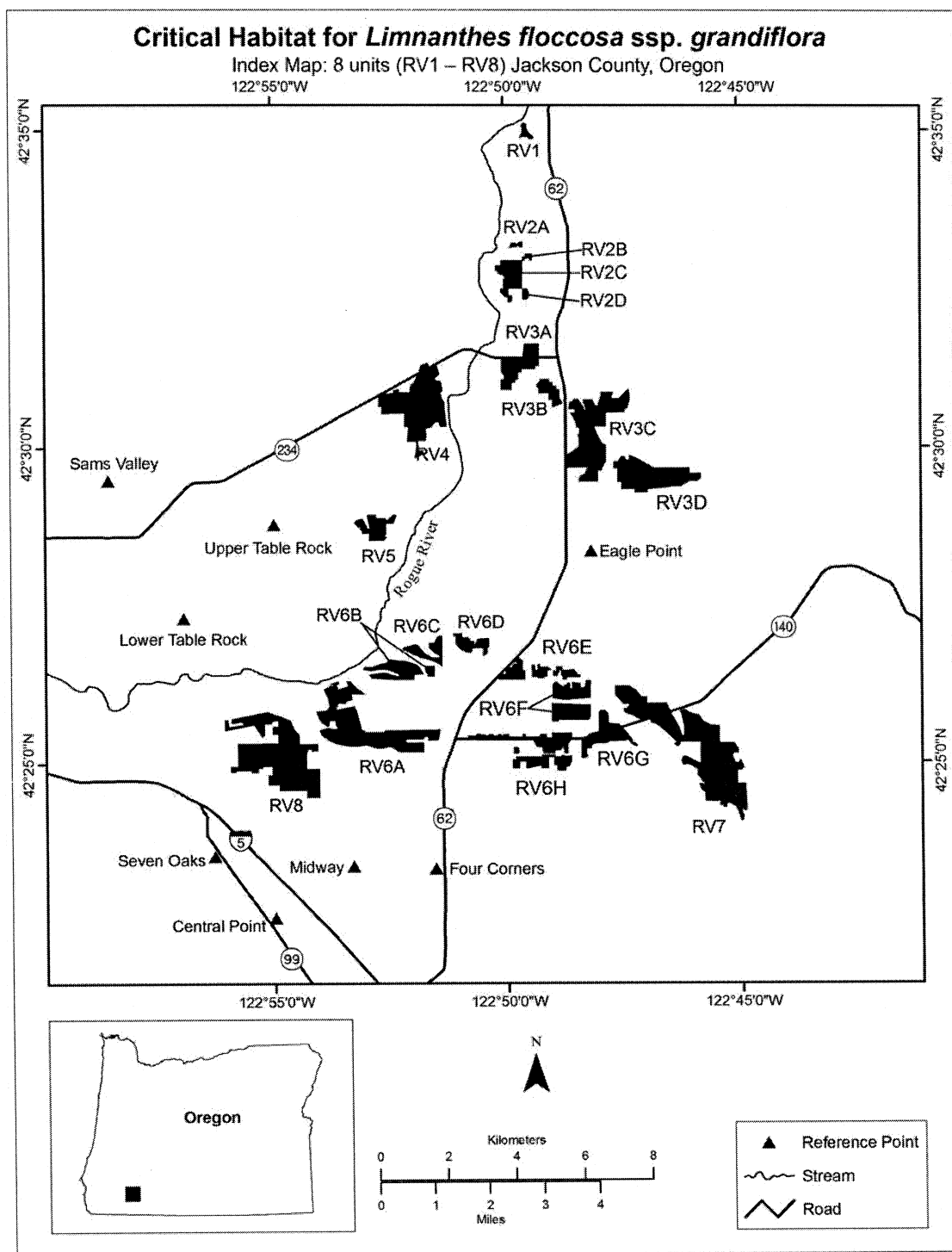
slope, primarily classified as Agate–Winlo complex soils, but also including Coker clay, Carney clay, Provig–Agate complex soils, and Winlo very gravelly loam soils.

(iv) No or negligible presence of competitive, nonnative, invasive plant species. Negligible is defined for the purpose of this rule as a minimal level of nonnative plant species that will still allow *Limnanthes floccosa* ssp. *grandiflora* to continue to survive and recover.

(3) Critical habitat does not include manmade structures (including, but not limited to, buildings, aqueducts, runways, roads, and other paved areas) and the land on which they are located existing within the legal boundaries on the effective date of this rule and not containing one or more of the primary constituent elements.

(4) *Critical habitat unit maps.* These critical habitat units were mapped using Universal Transverse Mercator, Zone 10, North American Datum 1983 (UTM NAD 83) coordinates. These coordinates establish the vertices and endpoints of the boundaries of the units.

(5) *Note:* Index map for critical habitat for *Limnanthes floccosa* ssp. *grandiflora* in Jackson County, Oregon, follows:



(6) Unit RV1 for *Limnanthes floccosa* ssp. *grandiflora*: Shady Cove, Jackson County, Oregon.

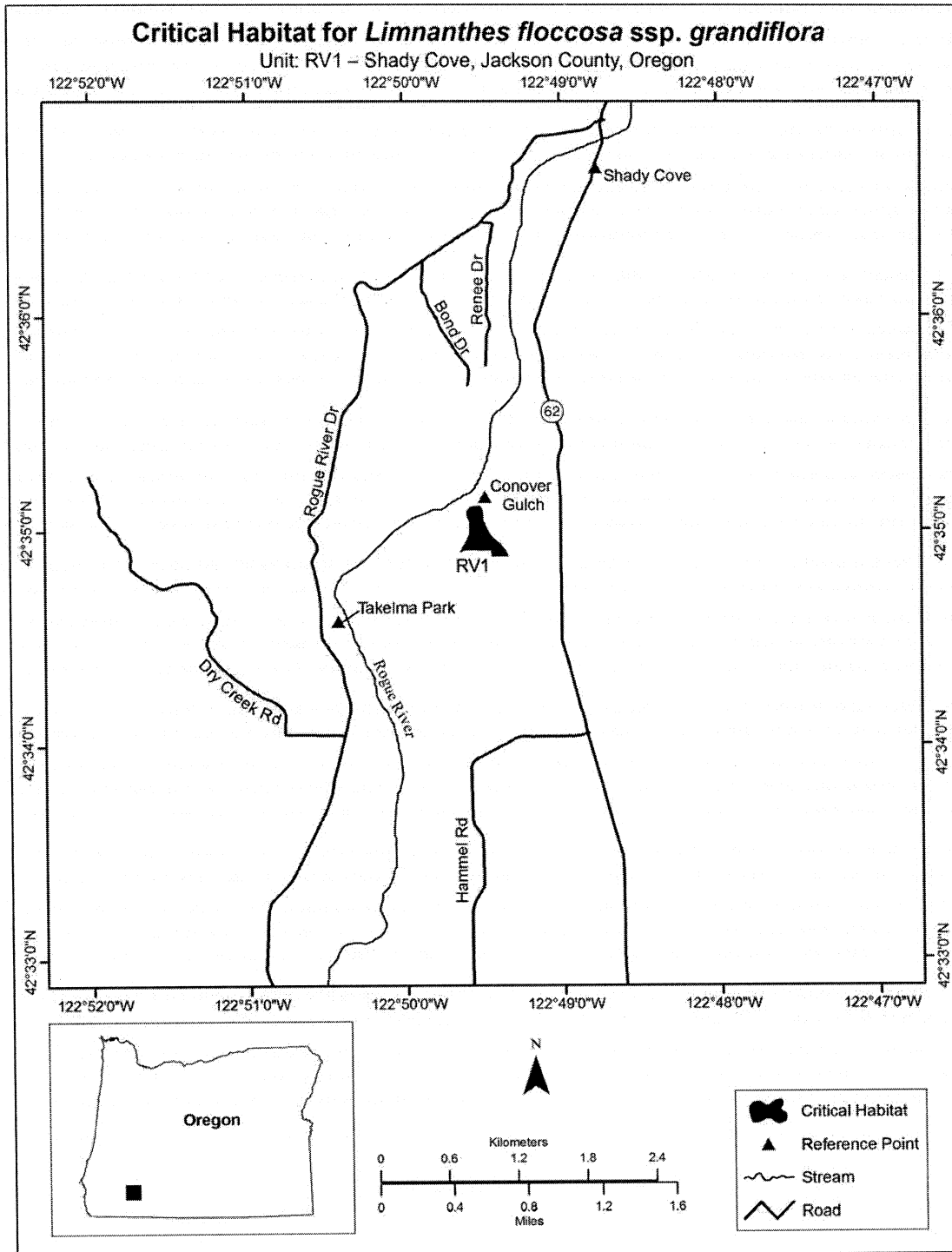
(i) Unit RV1 consists of approximately 8 ha (20 ha) of intact vernal pool-mounded prairie habitat. The unit is located 460 m (1,500 ft) west of Highway 62 and parallels a 430-m (1,411-ft) stretch of the highway. The unit is 0.8 km (0.5 mi) south of Shady

Cove, 1.3 km (0.8 mi) northeast of Takelma Park, and 122 m (400 ft) east of the Rogue River.

(ii) Land bounded by the following UTM Zone 10, NAD83 coordinates (E,N): 514512, 4714448; 514563, 4714380; 514580, 4714338; 514442, 4714339; 514429, 4714389; 514204, 4714397; 514161, 4714376; 514207, 4714456; 514224, 4714494; 514242,

4714529; 514246, 4714597; 514242, 4714640; 514220, 4714682; 514217, 4714728; 514247, 4714766; 514288, 4714774; 514335, 4714771; 514354, 4714747; 514360, 4714707; 514363, 4714651; 514414, 4714543; 514450, 4714495; 514512, 4714448.

(iii) Note: Map of Unit RV1 for *Limnanthes floccosa* ssp. *grandiflora* follows:



(7) Unit RV2 for *Limnanthes floccosa* ssp. *grandiflora*: Hammel Road, Jackson County, Oregon.

(i) Unit RV2 is composed of four subunits and comprises approximately 69 ha (169 ac) of vernal pool-mounded prairie. The unit is located 1.2 km (0.75 mi) northeast of the confluence of Reese Creek and the Rogue River, 1.3 km (0.8 mi) west of Highway 62, and 430 m (1,400 ft) east of the Rogue River.

(ii) Subunit RV2A. Land bounded by the following UTM Zone 10, NAD83 coordinates (E,N): 514233, 4711302; 514239, 4711159; 514167, 4711162; 514141, 4711197; 514084, 4711197; 514078, 4711162; 513945, 4711163; 513895, 4711138; 513860, 4711142; 513879, 4711174; 513909, 4711271;

514034, 4711267; 514077, 4711239; 514191, 4711309; 514233, 4711302.

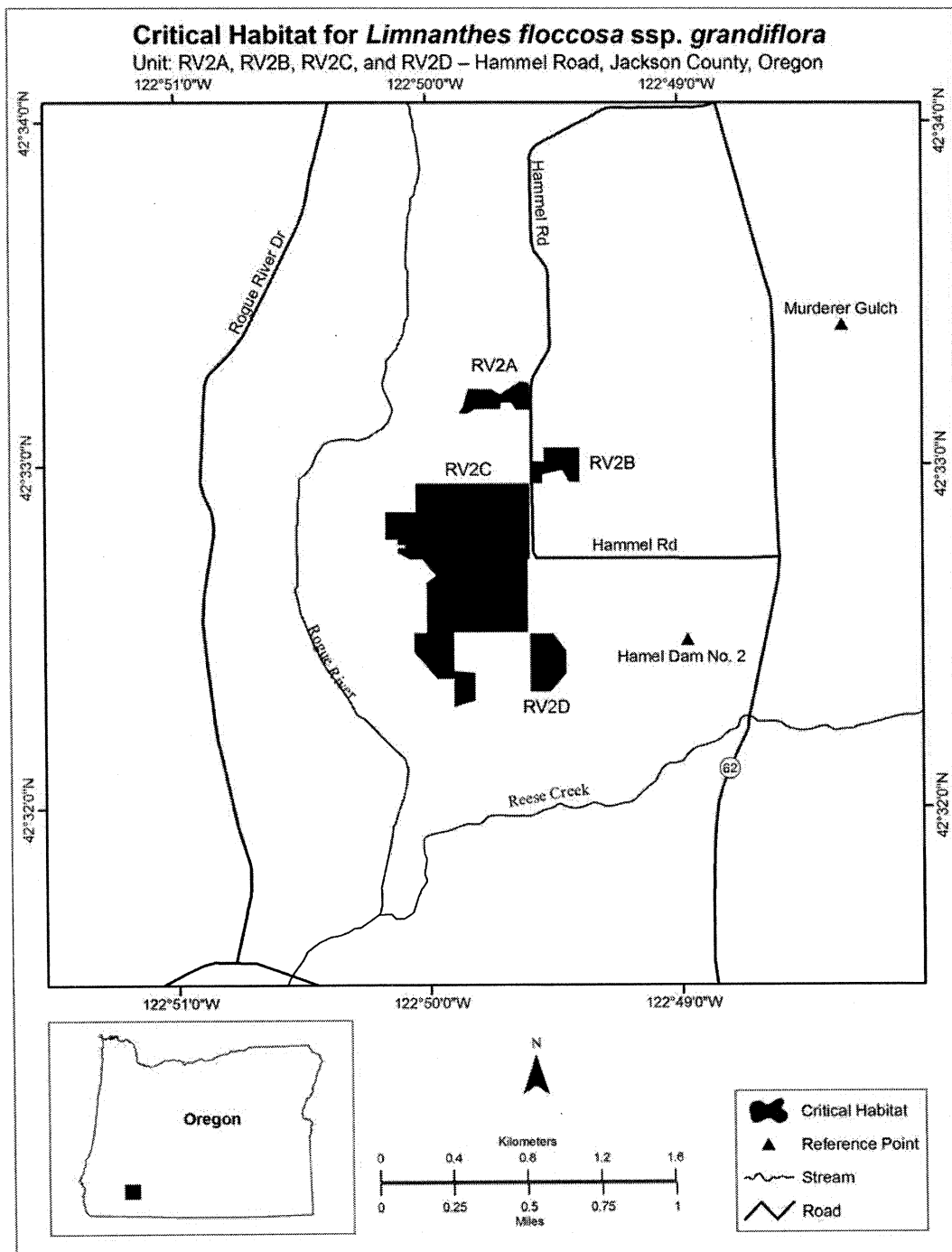
(iii) Subunit RV2B. Land bounded by the following UTM Zone 10, NAD83 coordinates (E,N): 514249, 4710764; 514248, 4710878; 514316, 4710877; 514319, 4710955; 514507, 4710953; 514510, 4710771; 514456, 4710770; 514416, 4710835; 514305, 4710813; 514305, 4710764; 514249, 4710764.

(iv) Subunit RV2C. Land bounded by the following UTM Zone 10, NAD83 coordinates (E,N): 514237, 4710760; 514236, 4710354; 514223, 4710354; 514223, 4709956; 513823, 4709956; 513823, 4709747; 513937, 4709737; 513937, 4709590; 513827, 4709557; 513824, 4709706; 513736, 4709706; 513609, 4709851; 513609, 4709950;

513679, 4709953; 513678, 4710224; 513731, 4710264; 513657, 4710353; 513586, 4710356; 513522, 4710388; 513522, 4710412; 513563, 4710412; 513563, 4710431; 513522, 4710431; 513522, 4710460; 513455, 4710460; 513455, 4710606; 513620, 4710606; 513620, 4710760; 514237, 4710760.

(v) Subunit RV2D. Land bounded by the following UTM Zone 10, NAD83 coordinates (E,N): 514240, 4709947; 514364, 4709947; 514432, 4709857; 514432, 4709737; 514404, 4709703; 514343, 4709635; 514240, 4709635; 514240, 4709947.

(vi) *Note:* Map of Unit RV2 for *Limnanthes floccosa* ssp. *grandiflora* follows:



(8) Unit RV3 for *Limnanthes floccosa* ssp. *grandiflora*: North Eagle Point, Jackson County, Oregon.

(i) Unit RV3 is composed of four subunits and totals 490 ha (1,210 ac) of intact vernal pool habitat. The unit is located southwest of Mosser Mountain and northeast of Long Mountain. The four subunits loosely follow a 6.9-km (4.3-mi) stretch of Hog Creek beginning at its origin. Originating 3.8 km (2.4 mi) east of Highway 62 in subunit RV3D, Hog Creek runs through RV3C, crosses Highway 62, flows between RV3B (located 100 m (328 ft) west of Highway 62) and RV3A (located 600 m (1,970 ft) west of Highway 62), before emptying into the Rogue River after 2.4 km (1.5 mi). Subunit RV3A is located 560 m (1,837 ft) southeast of the confluence of Reese Creek and the Rogue River. Subunit RV3B is located 100 m (328 ft) west of Highway 62 at the intersection of Ball Road and extends along an 835-m (2,740-ft) stretch of Hog Creek. Subunit RV3C is located 2 km (1.2 mi) north of Eagle Point (see Index map) and extends 2.6 km (1.6 mi) south of the junction of Ball Road and Reese Creek Road. Subunit RV3D is located 3.2 km (2 mi) east of Long Mountain and is 2.4 km (1.5 mi) southeast of the junction of Highway 62 and Ball Road. It extends along a 1.8-km (1.1-mi) stretch of Hog Creek.

(ii) Subunit RV3A. Land bounded by the following UTM Zone 10, NAD83 coordinates (E,N): 513900, 4707000; 513600, 4707000; 513600, 4707300; 513700, 4707300; 513700, 4707400;

513619, 4707507; 513615, 4707926; 514239, 4707958; 514239, 4708060; 514295, 4708341; 514698, 4708343; 514700, 4707700; 514600, 4707700; 514600, 4707600; 514200, 4707600; 514200, 4707500; 514100, 4707500; 514100, 4707300; 514000, 4707300; 514000, 4707200; 513900, 4707200; 513900, 4707000.

(iii) Subunit RV3B. Land bounded by the following UTM Zone 10, NAD83 coordinates (E,N): 515000, 4707300; 515000, 4707200; 515100, 4707200; 515100, 4707100; 515200, 4707100; 515200, 4707000; 515300, 4707000; 515300, 4706800; 515297, 4706736; 515314, 4706735; 515392, 4706602; 515100, 4706500; 515100, 4706700; 515000, 4706700; 515000, 4706900; 514700, 4706900; 514700, 4707000; 514632, 4707121; 514700, 4707200; 514739, 4707278; 514751, 4707302; 515000, 4707300.

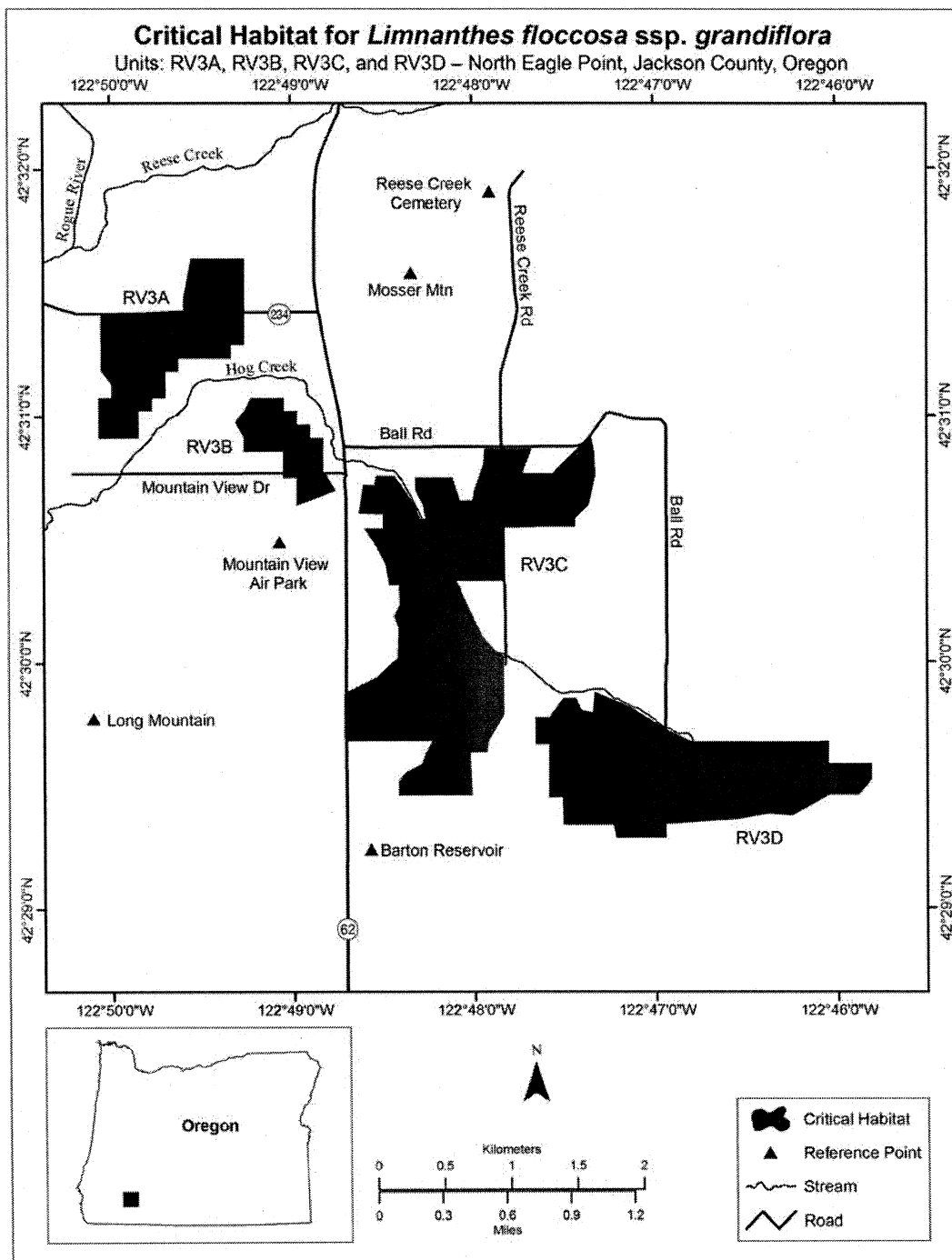
(iv) Subunit RV3C. Land bounded by the following UTM Zone 10, NAD83 coordinates (E,N): 517028, 4706768; 517092, 4706752; 517204, 4706908; 517373, 4707044; 517420, 4706930; 517422, 4706783; 517371, 4706703; 517352, 4706678; 517300, 4706500; 517200, 4706400; 517100, 4706400; 517100, 4706300; 516700, 4706300; 516700, 4705600; 516404, 4705740; 516500, 4705500; 516600, 4705400; 516656, 4705359; 516657, 4704920; 516544, 4704721; 516561, 4704303; 515800, 4704300; 515752, 4704604; 515743, 4704710; 515478, 4704720; 515478, 4705092; 515700, 4705200; 515857, 4705347; 515868, 4705565;

515834, 4705663; 515879, 4705750; 515870, 4705898; 515800, 4705900; 515773, 4706047; 515695, 4706196; 515612, 4706318; 515751, 4706317; 515754, 4706429; 515570, 4706438; 515604, 4706639; 515689, 4706642; 515703, 4706714; 515839, 4706711; 515987, 4706499; 516030, 4706396; 516076, 4706391; 516054, 4706503; 516000, 4706600; 516000, 4706700; 516272, 4706702; 516331, 4706528; 516426, 4706534; 516438, 4706595; 516511, 4706803; 516519, 4706917; 516903, 4706921; 516900, 4707000; 517000, 4707000; 517005, 4707167; 517099, 4707277; 517182, 4707293; 517091, 4706902; 517028, 4706768.

(v) Subunit RV3D. Land bounded by the following UTM Zone 10, NAD83 coordinates (E,N): 517605, 4704981; 517900, 4704800; 518077, 4704715; 518195, 4704709; 518298, 4704783; 518897, 4704882; 519012, 4704866; 519136, 4704706; 519215, 4704637; 519300, 4704600; 519432, 4704433; 519400, 4704300; 519100, 4704300; 518877, 4704218; 518630, 4704167; 518425, 4704138; 517884, 4704099; 517881, 4703997; 517506, 4703997; 517487, 4704093; 517111, 4704096; 517100, 4704300; 517000, 4704300; 517000, 4704700; 516900, 4704700; 516900, 4704900; 517000, 4704900; 517108, 4705041; 517204, 4705042; 517240, 4704956; 517329, 4704940; 517349, 4705090; 517605, 4704981.

(vi) Note: Map of Unit RV3 for *Limnanthes floccosa* ssp. *grandiflora* follows:

BILLING CODE 4310-55-S



(9) Unit RV4 for *Limnanthes floccosa* ssp. *grandiflora*: Rogue Plains, Jackson County, Oregon.

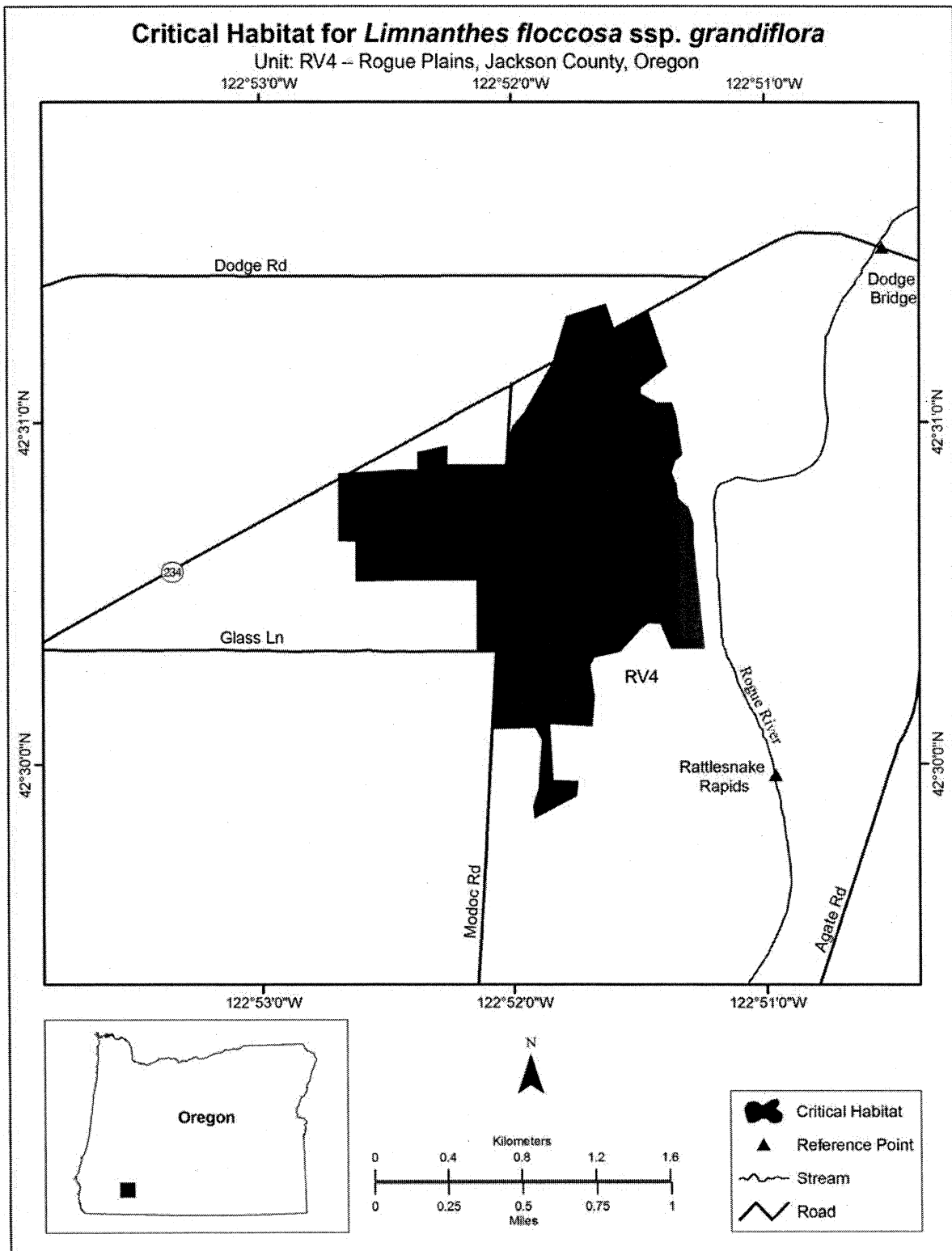
(i) Unit RV4 consists of 243 ha (600 ac) of partially intact vernal pool-mounded prairie habitat. The unit is located 122 m (400 ft) southeast of the junction of Highway 234 and Modoc Road. It extends 2 km (1.2 mi) south along Modoc Road from the intersection, is located 1.4 km (0.87 mi) southwest of Dodge Bridge, and is 1.0 km (0.6 mi) northwest of Rattlesnake Rapids on the Rogue River.

(ii) Land bounded by the following UTM Zone 10, NAD83 coordinates

(E,N): 511521, 4707772; 511579, 4707753; 511731, 4707754; 511792, 4707458; 511650, 4707350; 511646, 4707314; 511732, 4707264; 511817, 4707263; 511841, 4707191; 511873, 4706982; 511834, 4706950; 511815, 4706886; 511842, 4706827; 511850, 4706749; 511906, 4706699; 511933, 4706612; 511935, 4706500; 511992, 4705935; 511810, 4705936; 511752, 4706068; 511690, 4706074; 511653, 4706048; 511532, 4705917; 511393, 4705886; 511372, 4705842; 511393, 4705672; 511381, 4705514; 511152, 4705526; 510995, 4705500; 510900, 4705309; 510854, 4705468; 510780,

4705556; 510734, 4705958; 510730, 4706314; 510307, 4706304; 510100, 4706299; 510099, 4706515; 510007, 4706519; 510007, 4706880; 510158, 4706889; 510321, 4706900; 510437, 4706901; 510439, 4706995; 510600, 4707032; 510600, 4706929; 510797, 4706927; 510917, 4706930; 510930, 4707070; 510957, 4707142; 511015, 4707202; 511221, 4707543; 511245, 4707601; 511281, 4707732; 511366, 4707759; 511465, 4707774; 511521, 4707772.

(iii) Note: Map of Unit RV4 for *Limnanthes floccosa* ssp. *grandiflora* follows:



(10) Unit RV5 for *Limnanthes floccosa* ssp. *grandiflora*: Table Rock Terrace, Jackson County, Oregon.

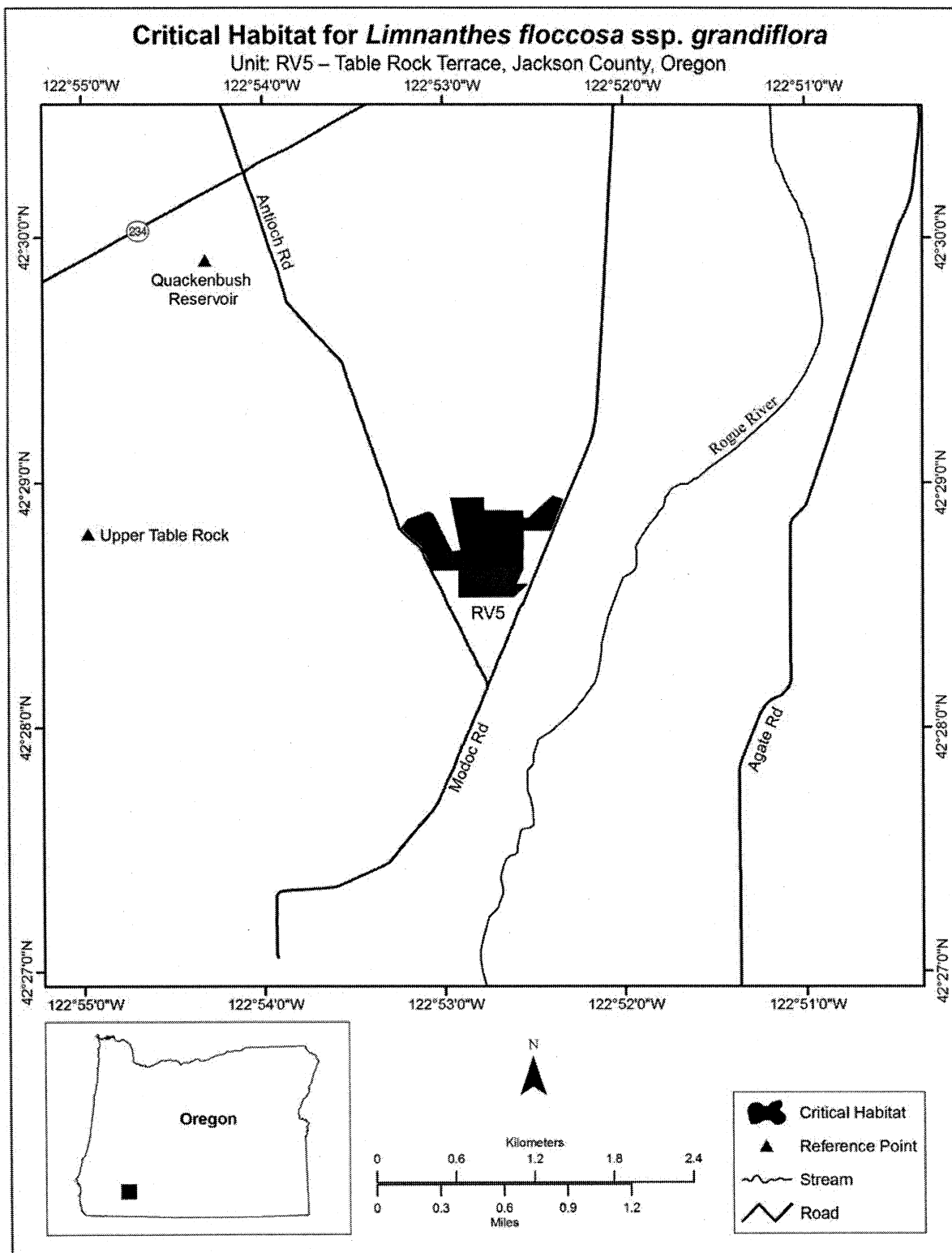
(i) Unit RV5 includes 49 ha (122 ac) of intact vernal pool-mounded prairie habitat. The unit is located on privately owned land 670 m (2,200 ft) north of the junction of Modoc and Antioc Roads, is 1.4 km (0.9 mi) east of Upper Table Rock, and is 650 m (2,300 ft) west of the Rogue River. This unit follows along an 800-m (2,600-ft) stretch of Modoc Road

to the east of the unit and along a 700-m (2,300-ft) stretch of Antioc Road to the west of the unit.

(ii) Land bounded by the following UTM Zone 10, NAD83 coordinates (E,N): 510498, 4703327; 510408, 4703091; 510198, 4703087; 510196, 4702941; 510195, 4702798; 510142, 4702687; 510225, 4702685; 510122, 4702583; 509704, 4702586; 509705, 4702789; 509509, 4702788; 509419, 4702971; 509368, 4703012; 509265,

4703108; 509318, 4703176; 509475, 4703231; 509515, 4703210; 509654, 4702930; 509719, 4702939; 509642, 4703337; 509897, 4703342; 509895, 4703244; 510190, 4703238; 510196, 4703181; 510232, 4703182; 510418, 4703353; 510498, 4703327.

(iii) *Note*: Map of Unit RV5 for *Limnanthes floccosa* ssp. *grandiflora* follows:



(11) Unit RV6 for *Limnanthes floccosa* ssp. *grandiflora*: White City, Jackson County, Oregon.

(i) Unit RV6 for *Limnanthes floccosa* ssp. *grandiflora* consists of eight subunits totaling 740 ha (1,829 ac) in size and includes intact vernal pool-mounded prairie and swale habitats. The unit is located around White City, is 1.6 km (1.0 mi) southwest of Eagle Point, and is 440 m (1,444 ft) southeast of the confluence of the Rogue River and Little Butte Creek. Subunit RV6A is located north of Whetstone Creek and is 500 m (1,200 ft) west of the junction of Highway 62 and Antelope Road. Subunits RV6B, RV6C, RV6D, and RV6E are located north of Avenue G in White City, south of Little Butte Creek, and 670 m (2,200 ft) southwest of Antelope Creek. Subunits RV6F and RV6G are located approximately 500 feet west of Dry Creek and are east of Highway 62 in White City. Subunit RV6H is located north of Whetstone Creek and south of Antelope Road. Subunit RV6H roughly encircles the Hoover Ponds, east of Highway 62, and is 850 m (2,790 ft) east of subunit RV6A.

(ii) Subunit RV6A. Land bounded by the following UTM Zone 10, NAD83 coordinates (E,N): 509590, 4698553; 509628, 4698521; 509577, 4698528; 509573, 4698455; 509577, 4698351; 509566, 4698006; 509442, 4698029; 509398, 4698000; 509198, 4698000; 509198, 4697800; 509298, 4697600; 509398, 4697600; 509398, 4697200; 509498, 4697200; 509498, 4697000; 510108, 4697038; 511737, 4697038; 511691, 4696744; 511407, 4696721; 511411, 4696840; 511292, 4696822; 511237, 4696703; 511278, 4696561; 511485, 4696363; 511242, 4696382; 510805, 4696377; 510535, 4696386; 510364, 4696502; 510322, 4696531; 510245, 4696538; 510056, 4696496; 509872, 4696506; 509811, 4696502; 509769, 4696521; 509695, 4696566; 509598, 4696583; 509527, 4696581; 509379, 4696562; 509128, 4696551; 508982, 4696571; 508669, 4696639; 508571, 4696681; 508453, 4696742; 508398, 4696800; 508318, 4696826; 508206, 4696995; 508126, 4697151; 508031, 4697328; 508098, 4697600; 508398, 4697600; 508398, 4697700; 508591, 4697655; 508692, 4697705; 508610, 4697875; 508522, 4698014; 508478, 4698093; 508478, 4698282; 508523, 4698383; 508785, 4698470; 508805, 4698389; 508850, 4698248; 509054, 4698315; 509009, 4698451; 509105, 4698414; 509319, 4698187; 509491, 4698100; 509542, 4698118; 509542, 4698162; 509392, 4698318; 509227, 4698493; 509198, 4698600; 509241, 4698655; 509409, 4698681; 509590, 4698553;

excluding land bound by 508798, 4697800; 508798, 4697700; 509098, 4697700; 509098, 4697800; 508798, 4697800; and excluding land bound by 508498, 4697300; 508498, 4697100; 508598, 4697100; 508598, 4697300; 508498, 4697300.

(iii) Subunit RV6B. Land bounded by the following UTM Zone 10, NAD83 coordinates (E,N): 511598, 4698900; 511598, 4698600; 511397, 4698599; 511400, 4698706; 511342, 4698706; 511317, 4698897; 511598, 4698900. Land bounded by the following UTM Zone 10, NAD83 coordinates (E,N): 510939, 4698995; 511085, 4698924; 511147, 4698879; 511265, 4698671; 511192, 4698665; 510996, 4698638; 510998, 4698600; 510998, 4698500; 510698, 4698500; 510333, 4698509; 510331, 4698311; 509878, 4698348; 509875, 4698535; 509761, 4698539; 509680, 4698627; 509690, 4698655; 509837, 4698676; 510131, 4698713; 510528, 4698586; 510558, 4698649; 510302, 4698763; 510057, 4698814; 509882, 4698788; 509692, 4698753; 509664, 4698788; 509601, 4698784; 509526, 4698802; 509528, 4698848; 509570, 4698886; 509725, 4698869; 509785, 4698879; 510041, 4698975; 510129, 4698970; 510185, 4699005; 510230, 4699065; 510296, 4699104; 510491, 4699069; 510716, 4699049; 510939, 4698995.

(iv) Subunit RV6C. Land bounded by the following UTM Zone 10, NAD83 coordinates (E,N): 511820, 4699600; 511823, 4698894; 511714, 4698973; 511610, 4699028; 511474, 4699074; 511344, 4699123; 511180, 4699162; 511099, 4699200; 510982, 4699239; 510823, 4699334; 510663, 4699389; 510696, 4699456; 510899, 4699500; 510991, 4699540; 511066, 4699536; 511142, 4699487; 511189, 4699408; 511280, 4699298; 511502, 4699161; 511726, 4699150; 511757, 4699203; 511616, 4699285; 511445, 4699428; 511448, 4699581; 511585, 4699579; 511664, 4699701; 511671, 4699749; 511736, 4699785; 511820, 4699786; 511820, 4699600.

(v) Subunit RV6D. Land bounded by the following UTM Zone 10, NAD83 coordinates (E,N): 512404, 4699868; 512401, 4699742; 512583, 4699754; 512583, 4699708; 512636, 4699704; 512779, 4699700; 512766, 4699621; 512788, 4699505; 512821, 4699514; 512861, 4699694; 512928, 4699706; 513046, 4699707; 513295, 4699707; 513301, 4699470; 513131, 4699451; 513141, 4699288; 513037, 4699198; 512998, 4699209; 512681, 4699291; 512540, 4699322; 512382, 4699389; 512238, 4699551; 512237, 4699788; 512161, 4699788; 512161, 4699860; 512234, 4699860; 512241, 4699959;

512321, 4699936; 512328, 4699871; 512404, 4699868.

(vi) Subunit RV6E. Land bounded by the following UTM Zone 10, NAD83 coordinates (E,N): 515171, 4698870; 515331, 4698870; 515330, 4698766; 515568, 4698765; 515568, 4698791; 515687, 4698792; 515687, 4698766; 515758, 4698686; 515759, 4698632; 515856, 4698631; 515856, 4698563; 515472, 4698568; 515472, 4698496; 515356, 4698495; 515356, 4698608; 515304, 4698606; 515304, 4698763; 515236, 4698763; 515236, 4698689; 515188, 4698689; 515188, 4698608; 515076, 4698605; 515071, 4698752; 515173, 4698751; 515171, 4698870. Land bounded by the following UTM Zone 10, NAD83 coordinates (E,N): 514894, 4698763; 514895, 4698584; 514804, 4698584; 514804, 4698545; 514627, 4698545; 514627, 4698576; 514464, 4698576; 514465, 4698761; 514445, 4698761; 514445, 4698915; 514529, 4698915; 514529, 4698767; 514624, 4698767; 514624, 4698940; 514678, 4698942; 514675, 4698858; 514893, 4698858; 514894, 4698874; 514984, 4698809; 514984, 4698763; 514894, 4698763. Land bounded by the following UTM Zone 10, NAD83 coordinates (E,N): 514171, 4699050; 514171, 4698837; 514181, 4698837; 514181, 4698763; 514248, 4698762; 514249, 4698496; 513488, 4698496; 513456, 4698594; 513510, 4698652; 513695, 4698649; 513695, 4698767; 513773, 4698843; 513881, 4698843; 513880, 4698920; 513928, 4698967; 514019, 4698968; 514021, 4699022; 513877, 4699022; 514021, 4699174; 514171, 4699050.

(vii) Subunit RV6F. Land bounded by the following UTM Zone 10, NAD83 coordinates (E,N): 516157, 4697446; 516113, 4697319; 515222, 4697324; 515202, 4697271; 515033, 4697285; 515035, 4697791; 516149, 4697751; 516157, 4697446. Land bounded by the following UTM Zone 10, NAD83 coordinates (E,N): 516162, 4698466; 516140, 4698214; 516149, 4697960; 516028, 4697955; 515942, 4697933; 515819, 4697947; 515752, 4697925; 515666, 4697936; 515540, 4697896; 515376, 4697904; 515041, 4697952; 515055, 4698348; 515122, 4698420; 515165, 4698417; 515315, 4698305; 515395, 4698283; 515403, 4698340; 515478, 4698342; 515481, 4698391; 515548, 4698393; 515559, 4698222; 515620, 4698219; 515631, 4698409; 515864, 4698377; 515854, 4698240; 515996, 4698278; 516023, 4698463; 516162, 4698466.

(viii) Subunit RV6G. Land bounded by the following UTM Zone 10, NAD83 coordinates (E,N): 517376, 4696746; 517526, 4696572; 517491, 4696542;

517351, 4696625; 517287, 4696695;
517217, 4696740; 517193, 4696711;
516712, 4696690; 516601, 4696630;
516302, 4696629; 516198, 4696495;
516181, 4696347; 516117, 4696263;
516030, 4696218; 515906, 4696192;
515899, 4696751; 516095, 4696752;
516098, 4696895; 516245, 4696937;
516405, 4696975; 516400, 4697547;
516449, 4697593; 516578, 4697590;
516640, 4697528; 516664, 4697441;
516684, 4697224; 516998, 4697195;
517053, 4697116; 517199, 4697019;
517376, 4696746.

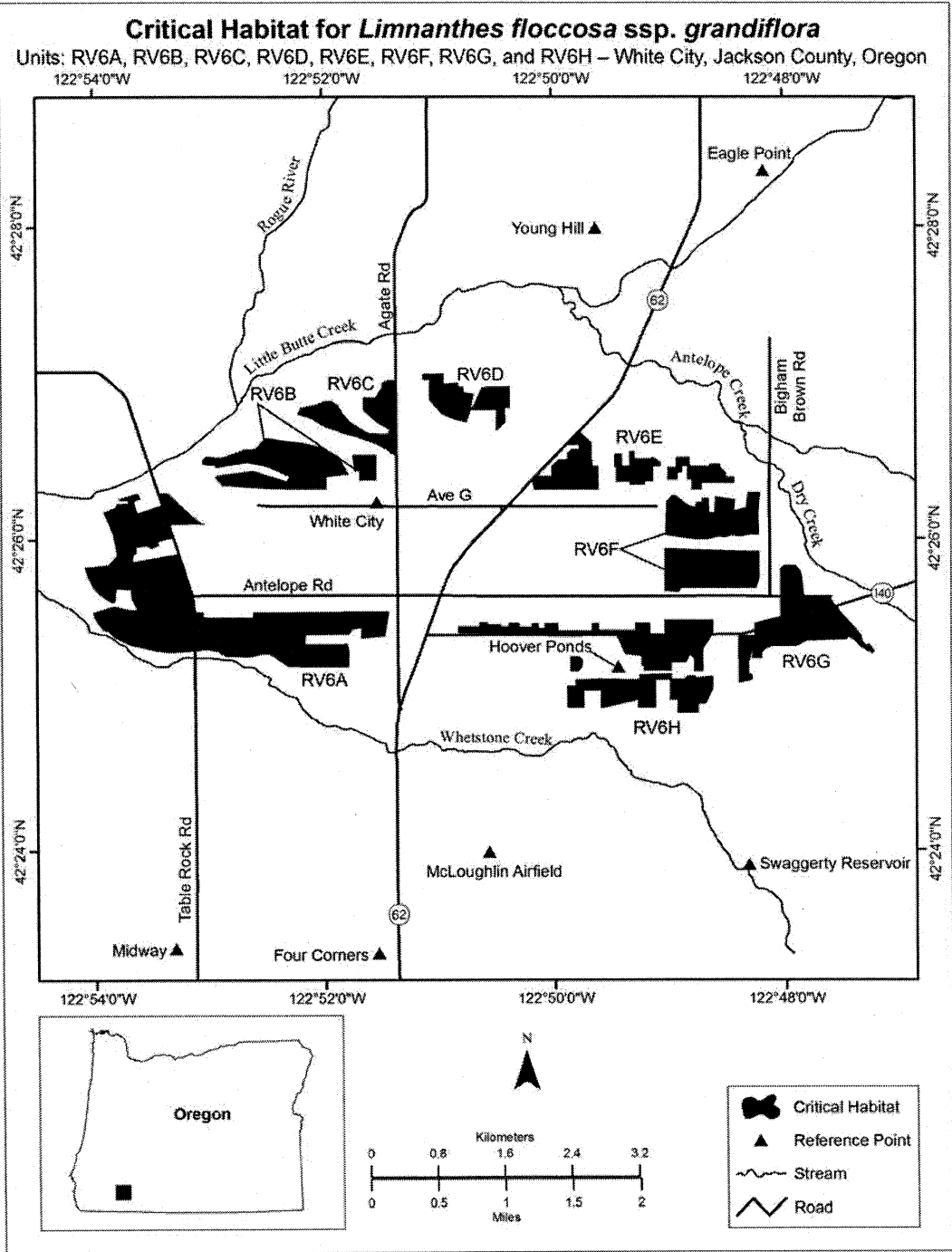
(ix) Subunit RV6H. Land bounded by the following UTM Zone 10, NAD83 coordinates (E,N): 514058, 4696358; 514010, 4696329; 513917, 4696330;

513916, 4696504; 514058, 4696505; 514058, 4696358. Land bounded by the following UTM Zone 10, NAD83 coordinates (E,N): 515597, 4696769; 515483, 4696601; 515485, 4696329; 515384, 4696329; 515380, 4696456; 515110, 4696452; 515111, 4696236; 515252, 4696236; 515301, 4696272; 515387, 4696272; 515386, 4696252; 515671, 4696257; 515512, 4695943; 515429, 4695944; 515427, 4695837; 515094, 4695837; 515090, 4696228; 514931, 4696225; 514931, 4695895; 514706, 4695899; 514713, 4695991; 514298, 4695895; 514273, 4695897; 514269, 4696102; 514075, 4696098; 514071, 4695895; 513880, 4695899; 513880, 4696227; 514731, 4696231;

514731, 4696288; 514947, 4696291; 514948, 4696321; 514783, 4696332; 514786, 4696393; 514756, 4696396; 514760, 4696508; 514564, 4696535; 514469, 4696735; 513882, 4696737; 513857, 4696770; 513518, 4696773; 512577, 4696788; 512576, 4696912; 513519, 4696896; 514245, 4696895; 514245, 4696811; 514556, 4696812; 514684, 4696816; 514681, 4696895; 514858, 4696895; 514856, 4696758; 515029, 4696760; 515027, 4696933; 515600, 4696932; 515600, 4696888; 515600, 4696769; 515597, 4696769.

(x) Note: Map of Unit RV6 for *Limnanthes floccosa* ssp. *grandiflora* follows:

BILLING CODE 4310-55-S



(12) Unit RV7 for *Limnanthes floccosa* spp. *grandiflora*: Agate Lake, Jackson County, Oregon.

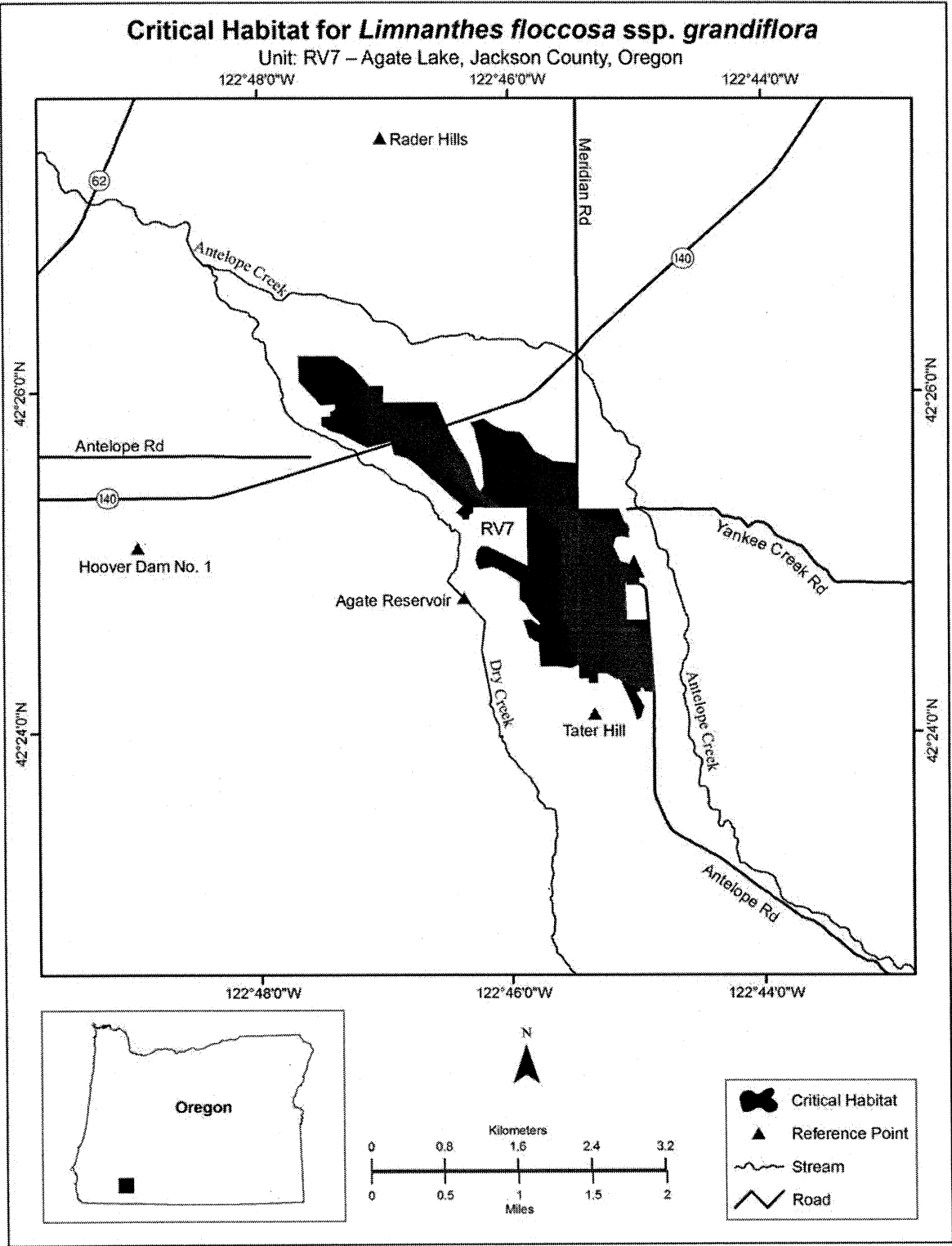
(i) Unit RV7 consists of 421 ha (1,039 ac) of intact vernal pool-mounded prairie and swale habitat. The unit is located 500 m (1,640 ft) east of the Agate Reservoir, lies along a 5.4-km (3.4-mi) stretch roughly parallel and between Dry Creek and Antelope Creek, is 330 m (1,080 ft) north of Tater Hill, and is 1.4 km (0.9 mi) southeast of the confluence of Dry Creek and Antelope Creek.

(ii) Land bounded by the following UTM Zone 10, NAD83 coordinates (E,N): 517808, 4697980; 517808, 4697801; 518395, 4697802; 518543, 4697468; 518739, 4697149; 518832, 4696888; 518873, 4696839; 518911, 4696901; 518897, 4697166; 518801, 4697530; 518768, 4697585; 518909, 4697626; 519009, 4697554; 519143, 4697496; 519287, 4697482; 519338,

4697455; 519469, 4697266; 519593, 4697211; 519772, 4697176; 519935, 4697144; 519939, 4696803; 519935, 4696659; 520376, 4696668; 520486, 4696341; 520412, 4696340; 520344, 4696340; 520317, 4696245; 520373, 4696149; 520401, 4696088; 520507, 4696070; 520542, 4696146; 520655, 4695903; 520597, 4695903; 520597, 4695847; 520446, 4695850; 520444, 4695454; 520682, 4695457; 520736, 4694656; 520651, 4694661; 520642, 4694693; 520604, 4694699; 520604, 4694664; 520548, 4694650; 520644, 4694497; 520606, 4694381; 520568, 4694352; 520522, 4694510; 520459, 4694646; 520405, 4694748; 520416, 4694768; 520360, 4694804; 520349, 4694793; 520249, 4694857; 520140, 4694864; 520144, 4694753; 520051, 4694751; 520049, 4694804; 519944, 4694807; 519939, 4694941; 519916, 4694941; 519862, 4694917; 519715,

4694934; 519528, 4694934; 519504, 4695191; 519366, 4695135; 519329, 4695463; 519426, 4695452; 519416, 4695520; 519222, 4695672; 519272, 4695886; 519149, 4695959; 519019, 4696019; 518976, 4696068; 518990, 4696208; 519390, 4696026; 519395, 4696649; 518704, 4696657; 518564, 4696765; 518497, 4696803; 518453, 4696888; 518297, 4697003; 518197, 4697103; 518075, 4697204; 517697, 4697272; 517636, 4697317; 517405, 4697441; 517371, 4697462; 517250, 4697496; 517144, 4697558; 517137, 4697733; 517129, 4697774; 517061, 4697853; 516893, 4698029; 516884, 4698305; 517085, 4698310; 517297, 4698303; 517379, 4698251; 517487, 4698181; 517538, 4698118; 517658, 4697982; 517808, 4697980.

(iii) Note: Map of Unit RV7 for *Limnanthes floccosa* ssp. *grandiflora* follows:



(13) Unit RV8 for *Limnanthes floccosa* ssp. *grandiflora*: Whetstone Creek, Jackson County, Oregon.

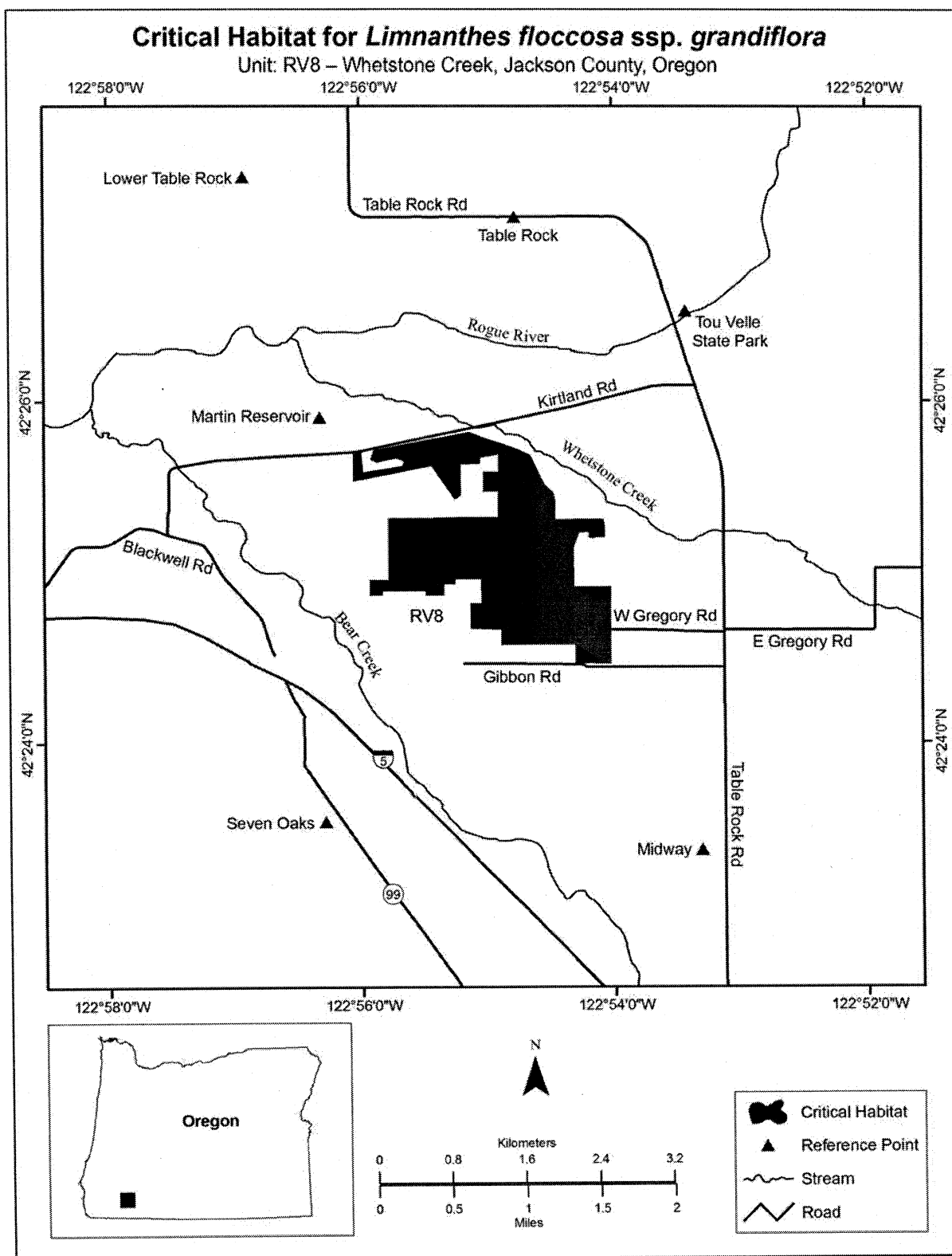
(i) Unit RV8 consists of 344 ha (850 ac) of intact vernal pool-mounded prairie and swale habitat. The unit is located approximately 1.4 km (0.9 mi) southeast of the confluence of the Rogue River and Whetstone Creek, 2.2 km (1.4 mi) southwest of Tou Velle State Park, and 2.9 km southeast of the confluence of Bear Creek and the Rogue River. The unit roughly parallels a 2.6-km (1.6-mi) stretch of Whetstone Creek to the south.

(ii) Land bounded by the following UTM Zone 10, NAD83 coordinates (E,N): 507195, 4697380; 507335, 4697312; 507411, 4697148; 507489,

4696991; 507579, 4696913; 507601, 4696830; 507604, 4696619; 507803, 4696617; 507946, 4696761; 508050, 4696760; 508086, 4696744; 508102, 4696700; 508115, 4696614; 508125, 4696557; 508199, 4696494; 508191, 4696311; 507797, 4696307; 507804, 4695886; 508202, 4695883; 508202, 4695051; 507814, 4695057; 507820, 4695259; 507012, 4695259; 507015, 4695418; 506686, 4695430; 506686, 4695706; 506801, 4695704; 506794, 4695971; 506392, 4695967; 506389, 4695791; 505589, 4695791; 505589, 4695991; 505789, 4695991; 505792, 4696631; 506152, 4696631; 506152, 4697078; 506378, 4696820; 506531,

4696643; 506981, 4696645; 506986, 4696916; 506820, 4696916; 506824, 4697131; 506986, 4697131; 506988, 4697318; 506789, 4697291; 506787, 4697223; 506578, 4697214; 506578, 4696879; 506509, 4696842; 506262, 4697197; 505415, 4697033; 505412, 4697323; 505491, 4697339; 505512, 4697123; 506022, 4697198; 506011, 4697265; 505876, 4697283; 505669, 4697233; 505601, 4697265; 505627, 4697366; 506667, 4697565; 506868, 4697490; 507015, 4697441; 507195, 4697380.

(iii) Note: Map of Unit RV8 for *Limnanthes floccosa* ssp. *grandiflora* follows:



Dated: July 2, 2010

Eileen Sobeck,

Acting Assistant Secretary for Fish and
Wildlife and Parks.

[FR Doc. 2010-17324 Filed 7-20-10; 8:45 am]

BILLING CODE 4310-55-C

Reader Aids

Federal Register

Vol. 75, No. 139

Wednesday, July 21, 2010

CUSTOMER SERVICE AND INFORMATION

Federal Register/Code of Federal Regulations

General Information, indexes and other finding aids **202-741-6000****Laws** **741-6000**

Presidential Documents

Executive orders and proclamations **741-6000****The United States Government Manual** **741-6000**

Other Services

Electronic and on-line services (voice) **741-6020**Privacy Act Compilation **741-6064**Public Laws Update Service (numbers, dates, etc.) **741-6043**TTY for the deaf-and-hard-of-hearing **741-6086**

ELECTRONIC RESEARCH

World Wide Web

Full text of the daily Federal Register, CFR and other publications is located at: <http://www.gpoaccess.gov/nara/index.html>Federal Register information and research tools, including Public Inspection List, indexes, and links to GPO Access are located at: http://www.archives.gov/federal_register

E-mail

FEDREGTOC-L (Federal Register Table of Contents LISTSERV) is an open e-mail service that provides subscribers with a digital form of the Federal Register Table of Contents. The digital form of the Federal Register Table of Contents includes HTML and PDF links to the full text of each document.To join or leave, go to <http://listserv.access.gpo.gov> and select *Online mailing list archives, FEDREGTOC-L, Join or leave the list (or change settings)*; then follow the instructions.**PENS** (Public Law Electronic Notification Service) is an e-mail service that notifies subscribers of recently enacted laws.To subscribe, go to <http://listserv.gsa.gov/archives/publaws-l.html> and select *Join or leave the list (or change settings)*; then follow the instructions.**FEDREGTOC-L** and **PENS** are mailing lists only. We cannot respond to specific inquiries.**Reference questions.** Send questions and comments about the Federal Register system to: fedreg.info@nara.gov

The Federal Register staff cannot interpret specific documents or regulations.

Reminders. Effective January 1, 2009, the Reminders, including Rules Going Into Effect and Comments Due Next Week, no longer appear in the Reader Aids section of the Federal Register. This information can be found online at <http://www.regulations.gov>.**CFR Checklist.** Effective January 1, 2009, the CFR Checklist no longer appears in the Federal Register. This information can be found online at <http://bookstore.gpo.gov/>.

FEDERAL REGISTER PAGES AND DATE, JULY

37975-38390.....	1
38391-38692.....	2
38693-38914.....	6
38915-39132.....	7
39133-39442.....	8
39443-39628.....	9
39629-39786.....	12
39787-40718.....	13
40719-41072.....	14
41073-41364.....	15
41365-41690.....	16
41691-41962.....	19
41963-42278.....	20
42279-42570.....	21

CFR PARTS AFFECTED DURING JULY

At the end of each month, the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

2 CFR

Ch. 58.....	41691
902.....	39443
3186.....	39133

3 CFR

Proclamations:	
8539.....	38905
8540.....	38911
8541.....	42279

Executive Orders:

13546.....	39439
------------	-------

Administrative Orders:

Memorandum of June 28, 2010.....	38387
Memorandum of June 30, 2010.....	38913
Memorandum of July 13, 2010.....	41687
Notices:	
Notice of June 19, 2010.....	42281

5 CFR

2425.....	42283
2429.....	42283
4401.....	42270
Proposed Rules:	
532.....	39460

6 CFR

Proposed Rules:	
5.....	39144

7 CFR

205.....	38693
301.....	41073
760.....	41365
800.....	41693
916.....	38696
917.....	38696
948.....	38698
1413.....	41963
1430.....	41365
1455.....	39135
4280.....	41695
Proposed Rules:	
701.....	41389
1755.....	38042
1221.....	41392
1429.....	41397

9 CFR

102.....	40719
103.....	40719
104.....	40719
108.....	40719
112.....	40719
113.....	40719
114.....	40719
116.....	40719
124.....	40719

10 CFR

9.....	41368
72.....	41369, 42292
431.....	37975
607.....	39443
1703.....	39629
Proposed Rules:	
37.....	40756
72.....	41404, 42339
73.....	42000
217.....	41405
430.....	41102
431.....	41102, 41103
1023.....	38042

12 CFR

Proposed Rules:	
615.....	39392
1237.....	39462
1777.....	39462

14 CFR

13.....	41968
25.....	38391
39.....	37990, 37991, 37994, 37997, 38001, 38007, 38009, 38011, 38014, 38017, 38019, 38394, 38397, 38404, 39143, 39787, 39790, 39795, 39798, 39801, 39803, 39804, 39811, 39814, 39818
47.....	41968
71.....	38406, 39145, 39146, 39147, 39148, 39149, 40719, 41074, 41075, 41076, 41077, 41983, 41984, 41985
77.....	42296
91.....	41968, 41986
97.....	39150, 39152, 42308, 42310
121.....	39629
217.....	41580
234.....	41580
241.....	41580
248.....	41580
250.....	41580
291.....	41580
298.....	41580
385.....	41580
Proposed Rules:	
39.....	38052, 38056, 38058, 38061, 38064, 38066, 38941, 38943, 38945, 38947, 38950, 38953, 38956, 39185, 39189, 39192, 39472, 39863, 39869, 40757, 41104, 42340
71.....	38753, 41772, 41773, 41774, 42012, 42014
91.....	39196, 42015

15 CFR

742.....	41078
----------	-------

774.....41078	39445, 39448, 41373, 41987	501.....38068	26.....38683
Proposed Rules:	117.....38411, 38412, 38712	503.....38068	31.....38675
922.....40759	165.....38019, 38021, 38412, 38415, 38714, 38716, 38718, 38721, 38723, 38923, 38926, 39163, 39166, 39632, 39839, 40726, 41376, 41762, 41764, 41987	745.....38959	32.....38675
16 CFR		41 CFR	42.....38675, 39414
305.....41696		102-5.....41994	45.....38675
1611.....42311		Proposed Rules:	52.....38675, 38683, 38684, 38689, 39414
1630.....42315		102-38.....40763	205.....40714
1631.....42315		42 CFR	210.....40714
Proposed Rules:	Proposed Rules:	423.....38026	212.....40712
1218.....42017	100.....41119, 41789	447.....38748	216.....40716
17 CFR	165.....38754, 39197	457.....38748	232.....40712
200.....42270	34 CFR	Proposed Rules:	252.....40712, 40717
275.....41018	Proposed Rules:	50.....42362	516.....41093
Proposed Rules:	600.....42190	73.....42363	552.....41093
16.....41775	668.....42190	405.....40040	3002.....41097
242.....39626	682.....42190	409.....40040	3007.....41097
18 CFR	36 CFR	410.....40040	3009.....41097
Proposed Rules:	7.....39168	411.....40040	3016.....41097
410.....41106	37 CFR	413.....40040	3034.....41097
20 CFR	Proposed Rules:	414.....40040	3035.....41097
404.....39154	386.....39891	415.....40040	3052.....41097
416.....39154	38 CFR	424.....40040	Proposed Rules:
418.....41084	3.....39843, 41092	488.....39641	901.....38042
21 CFR	39 CFR	44 CFR	902.....38042
522.....38699	111.....41989	64.....38749	903.....38042
573.....41725	3050.....38725	45 CFR	904.....38042
814.....41986	3055.....38725	147.....41726	906.....38042
1310.....38915	Proposed Rules:	301.....38612	907.....38042
23 CFR	20.....39475	302.....38612	908.....38042
772.....39820	111.....39477, 41790	303.....38612	909.....38042
24 CFR	3050.....39200	305.....38612	911.....38042
5.....41087	3055.....38757	308.....38612	914.....38042
84.....41087	40 CFR	614.....40754	915.....38042
85.....41087	52.....38023, 38745, 39366, 39633, 39635, 40726, 41312	1186.....39133	916.....38042
Proposed Rules:	63.....41991	Proposed Rules:	917.....38042
3280.....39871	81.....39635, 41379	94.....42362	952.....38042
26 CFR	98.....39736	160.....40868	49 CFR
1.....38700	180.....38417, 39450, 39455, 40729, 40736, 40741, 40745, 40751, 42318, 42324	164.....40868	39.....38878
53.....38700	355.....39852	47 CFR	40.....38422
54.....38700, 41726	370.....39852	1.....41932	213.....41282
301.....38700	721.....42330	64.....39859	237.....41282
602.....38700	Proposed Rules:	73.....41092, 41093, 41932	387.....38423
Proposed Rules:	2.....39094	90.....41381	Proposed Rules:
54.....41787	52.....38757, 40760, 40762, 42018, 42342, 42346	101.....41932	171.....42364
29 CFR	63.....42030	Proposed Rules:	173.....42364
2201.....41370	80.....42238	1.....38959, 41338	231.....38432
2550.....41600	81.....41421, 42018	22.....38959	395.....40765
2590.....41726	122.....38068	24.....38959	611.....39492
4022.....41091	123.....38068	27.....38959	50 CFR
Proposed Rules:	141.....40926	73.....41123	17.....42490
1910.....38646	142.....40926	90.....38959	622.....39638
1915.....38646	152.....38958	101.....38959	635.....41995
1917.....38646	191.....41421	48 CFR	648.....38935, 39170, 41996
1918.....38646	194.....41421	Ch. I.....38674, 38691, 39414, 39420	660.....38030, 39178, 41383
1926.....38646	257.....41121	2.....38675, 38683	679.....38430, 38936, 38937, 38938, 38939, 38940, 39183, 39638, 39639, 39861, 41999, 42336, 42337, 42338
1928.....38646	261.....41121	4.....38675, 38683, 38684, 39414	Proposed Rules:
31 CFR	264.....41121	7.....38683	16.....38069
Ch. V.....38212	265.....41121	10.....38683	17.....38441, 42033, 42040, 42054, 42059
Proposed Rules:	268.....41121	12.....39414	216.....38070
103.....41788	271.....41121	13.....38683	300.....38758
33 CFR	300.....42361	15.....38675	679.....38452, 38454, 39892, 41123, 41424
100.....38408, 38710, 39161,	302.....41121	18.....38683	680.....39892
	403.....38068	19.....38687	
		22.....38689	
		25.....38689	

LIST OF PUBLIC LAWS

This is a continuing list of public bills from the current session of Congress which have become Federal laws. It may be used in conjunction with "PLUS" (Public Laws Update Service) on 202-741-6043. This list is also available online at <http://www.archives.gov/federal-register/laws.html>.

The text of laws is not published in the **Federal Register** but may be ordered in "slip law" (individual pamphlet) form from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (phone, 202-512-1808). The text will also be made available on the Internet from GPO Access at <http://www.gpoaccess.gov/plaws/index.html>. Some laws may not yet be available.

S. 3104/P.L. 111-202

To permanently authorize Radio Free Asia, and for other purposes. (July 13, 2010; 124 Stat. 1373)

Last List July 12, 2010

Public Laws Electronic Notification Service (PENS)

PENS is a free electronic mail notification service of newly

enacted public laws. To subscribe, go to <http://listserv.gsa.gov/archives/publaws-l.html>

Note: This service is strictly for E-mail notification of new laws. The text of laws is not available through this service. **PENS** cannot respond to specific inquiries sent to this address.