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## DEPARTMENT OF AGRICULTURE

### Office of Energy Policy and New Uses

### 7 CFR Part 2902

**RIN 0503–AA34**

## Designation of Biobased Items for Federal Procurement

**AGENCY:** Departmental Management, USDA.

**ACTION:** Final rule.

**SUMMARY:** The United States Department of Agriculture (USDA) is amending the Guidelines for Designating Biobased Products for Federal Procurement, to add eight sections to designate items within which biobased products will be afforded Federal procurement preference, as provided for under section 9002 of the Farm Security and Rural Investment Act of 2002, as amended by the Food, Conservation, and Energy Act of 2008 (referred to in this document as "section 9002"). USDA is also establishing minimum biobased contents for each of these items.

**DATES:** This rule is effective November 17, 2010.

**FOR FURTHER INFORMATION CONTACT:** Ron Buckhalt, USDA, Office of Procurement and Property Management, Room 361, Reporters Building, 300 7th St., SW., Washington, DC 20024; e-mail: *biopreferred@usda.gov;* phone (202) 205–4008. Information regarding the preferred procurement program (one part of the BioPreferred Program) is available on the Internet at *http://www.biopreferred.gov.*

**SUPPLEMENTARY INFORMATION:** The information presented in this preamble is organized as follows:

I. Authority
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III. Summary of Changes
IV. Discussion of Public Comments
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B. Regulatory Flexibility Act (RFA)
C. Executive Order 12630: Governmental Actions and Interference With Constitutionally Protected Property Rights
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## I. Authority

These items are designated under the authority of section 9002 of the Farm Security and Rural Investment Act of 2002 (FSRIA), as amended by the Food, Conservation, and Energy Act of 2008 (FCEA), 7 U.S.C. 8102 (referred to in this document as "section 9002").

## II. Background

As part of the BioPreferred Program, USDA published, on February 10, 2010, a proposed rule in the **Federal Register** (FR) for the purpose of designating a total of nine items for the preferred procurement of biobased products by Federal agencies (referred to hereafter in this FR notice as the "preferred procurement program"). This proposed rule can be found at 75 FR 6795. This rulemaking is referred to in this preamble as Round 6 (RIN 0503–AA34).

In the proposed rule, USDA proposed designating the following nine items for the preferred procurement program: Disposable tableware; expanded polystyrene foam recycling products; heat transfer fluids; ink removers and cleaners; mulch and compost materials; multipurpose lubricants; office paper; topical pain relief products; and turbine drip oils.

Today's final rule designates the proposed items (with the exception of office paper) within which biobased products will be afforded Federal procurement preference. USDA has determined that each of the items being designated under today's rulemaking meets the necessary statutory requirements; that they are being produced with biobased products; and that their procurement will carry out the following objectives of section 9002: To improve demand for biobased products; to spur development of the industrial base through value-added agricultural processing and manufacturing in rural communities; and to enhance the Nation's energy security by substituting biobased products for products derived from imported oil and natural gas.

When USDA designates by rulemaking an item (a generic grouping of products) for preferred procurement under the BioPreferred Program, manufacturers of all products under the umbrella of that item, that meet the requirements to qualify for preferred procurement, can claim that status for their products. To qualify for preferred procurement, a product must be within a designated item and must contain at least the minimum biobased content established for the designated item. When the designation of specific items is finalized, USDA will invite the manufacturers and vendors of these qualifying products to post information on the product, contacts, and performance testing on its BioPreferred Web site, *http://www.biopreferred.gov.* Procuring agencies will be able to utilize this Web site as one tool to determine the availability of qualifying biobased products under a designated item. Once USDA designates an item, procuring agencies are required generally to purchase biobased products within these designated items where the purchase price of the procurement item exceeds $10,000 or where the quantity of such items or of functionally equivalent items purchased over the preceding fiscal year equaled $10,000 or more.

*Subcategorization.* Most of the items USDA is considering for designation for preferred procurement cover a wide range of products. For some items, there are subgroups of products within the item that meet different market requirements, uses and/or different performance specifications. Where such subgroups exist, USDA intends to create subcategories within the designated items.

During the development of the proposal, USDA considered the appropriateness of creating subcategories with the disposable tableware and the ink removers and cleaners items. At that time, however, USDA did not have sufficient information to justify creating subcategories within these items. In the

proposed rule, USDA requested additional information on the possibility of subcategorizing these two items. USDA did not receive any additional information on these items during the public comment period that could be used to support the creation of subcategories at this time. Thus, none of the items being designated today have subcategories. USDA will continue to consider additional information that may become available to support subcategorization of these items in the future.

*Overlap with the Environmental Protection Agency (EPA) Comprehensive Procurement Guideline (CPG) program for recovered content products under the Resource Conservation and Recovery Act (RCRA) section 6002.* Some of the products that are biobased items, designated for preferred procurement under the preferred procurement program, may also be products EPA has designated under the CPG for products containing recovered materials. Where that occurs, an EPA-designated recovered content product (also known as a "recycled content product" or "EPA-designated product") has priority in Federal procurement over the qualifying biobased product as identified in 7 CFR 2902.2. In situations where it believes there may be an overlap, USDA is asking manufacturers of qualifying biobased products to provide additional product and performance information to Federal agencies to assist them in determining whether the biobased products in question are, or are not, the same products for the same uses as the recovered content products. As this information becomes available, USDA will place it on the BioPreferred Web site with its catalog of qualifying biobased products.

In cases where USDA believes an overlap with EPA-designated recovered content products may occur, manufacturers are being asked to indicate the various suggested uses of their product and the performance standards against which a particular product has been tested. In addition, depending on the type of biobased product, manufacturers are being asked to provide other types of information, such as whether the product contains petroleum-based components and whether the product contains recovered materials. Federal agencies may also ask manufacturers for information on a product's biobased content and its profile against environmental and health measures and life-cycle costs (such as the Building for Environmental and Economic Sustainability (BEES) analysis or ASTM Standard D7075 for evaluating and reporting on environmental performance of biobased products). Such information will permit agencies to determine whether or not an overlap occurs.

Section 6002 of the RCRA requires a procuring agency purchasing an item designated by EPA generally to purchase such an item composed of the highest percentage of recovered materials content practicable. However, a procuring agency may decide not to purchase such an item based on a determination that the item fails to meet the reasonable performance standards or specifications of the procuring agency. An item with recovered materials content may not meet reasonable performance standards or specifications, for example, if the use of the item with recovered materials content would jeopardize the intended end use of the item.

Where a biobased item is used for the same purposes and to meet the same Federal agency performance requirements as an EPA-designated recovered content product, the Federal agency must purchase the recovered content product. For example, if a biobased hydraulic fluid is to be used as a fluid in hydraulic systems and because "lubricating oils containing re-refined oil" has already been designated by EPA for that purpose, then the Federal agency must purchase the EPA-designated recovered content product, "lubricating oils containing re-refined oil." If, on the other hand, that biobased hydraulic fluid is to be used to address a Federal agency's certain environmental or health performance requirements that the EPA-designated recovered content product would not meet, then the biobased product should be given preference, subject to price, availability, and performance considerations.

This final rule designates two items for preferred procurement for which there may also be an EPA-designated recovered content product. The first item is mulch and compost materials, which are also EPA-designated recovered content products "hydraulic mulch products" and "compost materials" under the "landscaping products" category of products. The second item is multipurpose lubricants, which, depending on how they are used, may be an EPA-designated recovered content product "re-refined lubricating oils." EPA provides recovered materials content recommendations for these recovered content products in Recovered Materials Advisory Notice (RMAN) I. The RMAN recommendations for these CPG products can be found by accessing EPA's Web site *http://www.epagov/epaoswer/non-hw/procure/products.htm* and then clicking on the appropriate product name.

*Minimum Biobased Contents.* The minimum biobased contents being established with today's rulemaking are based on products for which USDA has biobased content test data. In addition to considering the biobased content test data for each item, USDA also considers other factors when establishing the minimum biobased content. These other factors include: Public comments received on the proposed minimum biobased contents; product performance information to justify the inclusion of products at lower levels of biobased content; and the range, groupings, and breaks in the biobased content test data array. Consideration of this information allows USDA to establish minimum biobased contents on a broad set of factors to assist the Federal procurement community in its decision to purchase biobased products.

USDA makes every effort to obtain biobased content test data on multiple products within each item. For most designated items, USDA has biobased content test data on more than one product within a designated item. However, USDA must rely on biobased product manufacturers to voluntarily submit product information and, in some cases, USDA has been able to obtain biobased content data for only a single product within a designated item. As USDA obtains additional data on the biobased contents for products within these eight designated items, USDA will evaluate whether the minimum biobased content for a designated item will be revised.

USDA anticipates that the minimum biobased content of an item that is based on a single product is more likely to change as additional products in those items are identified and tested. In today's final rule, the minimum biobased contents for one of the designated items ("expanded polystyrene foam recycling products") is based on a single tested product. Given that only two biobased products have been identified in this item, and only one manufacturer supplied a sample for testing, USDA believes it is reasonable to set a minimum biobased content for this item based on the single data point.

For all items where additional information indicates that it is appropriate to revise a minimum biobased content established under today's rulemaking, USDA will propose the change in a notice in the **Federal Register** to allow public comment on the proposed revised minimum biobased content. USDA will then

consider the public comments and issue a final rulemaking on the minimum biobased content.

*Future Designations.* In making future designations, USDA will continue to conduct market searches to identify manufacturers of biobased products within items. USDA will then contact the identified manufacturers to solicit samples of their products for voluntary submission for biobased content testing or for the BEES analytical tool. Based on these results, USDA will then propose new items for designation for preferred procurement.

USDA plans to identify approximately 10–15 items in each future rulemaking. USDA has developed a preliminary list of items for future designation. This list is available on the BioPreferred Web site. While this list presents an initial prioritization of items for designation, USDA cannot identify with certainty which items will be presented in each of the future rulemakings. In response to comments from other Federal agencies, USDA intends to give increased priority to those items that contain the highest biobased content. In addition, as the program matures, manufacturers of biobased products within some industry segments have become more responsive to USDA's requests for technical information than those in other segments. Thus, items with high biobased content and for which sufficient technical information can be obtained quickly may be added or moved up on the prioritization list. USDA intends to update the list of items for future designation on the BioPreferred Web site every six months, or more often if significant changes are made to the list.

*Exemptions.* In earlier item designation rules, USDA created exemptions from the preferred procurement program's requirements for procurements involving combat or combat-related missions and for spacecraft systems and launch support equipment. Since publication of those final rules in the **Federal Register,** and in response to comments from the Department of Defense (DoD), USDA has decided to create "blanket" exemptions for all items used in products or systems designed or procured for combat or combat-related missions, which will apply to all items designated for the procurement preference. These "blanket" exemptions can be found in subpart A of part 2902. Because these blanket exemptions are included in subpart A of part 2902, it is unnecessary to repeat them in the individual item designations in this final rule.

## III. Summary of Changes

As a result of the comments received on the proposed rule (*see* section IV), USDA has made two substantive changes to the rule. The proposed "office paper" item has been withdrawn from the group of items being designated for preferred procurement in today's final rulemaking. USDA has decided that the issues raised by the commenters regarding the designation of this item justify the withdrawal of the item from this rulemaking. In addition, USDA has revised the definition of the disposable tableware item to clarify that the item refers to tableware that is made of, or coated with, plastic resin.

## IV. Discussion of Public Comments

USDA solicited comments on the proposed rule for 60 days ending on April 12, 2010. USDA received comments from five commenters by that date. The comments were from an industry trade organization, three manufacturers, and one individual.

The five commenters submitted comments regarding the designation process in general and comments specific to the designation of disposable tableware and office paper. The three individual manufacturers also endorsed the comments submitted by the industry association.

In the remainder of this section, USDA first addresses two general comments that relate to the overall designation process. All of the specific comments related to the proposed designation of office paper and disposable tableware are presented next, followed by USDA's response to those comments.

### *General Comments*

*Comment:* One commenter stated that the process to determine what products are eligible is not transparent. Product category consideration appears to be at the request of the manufacturer, as is consideration of specific products. There is no announcement when a manufacturer has submitted a request for consideration of their product as BioPreferred to enable other manufacturers the opportunity to submit data. How USDA makes a determination that a product warrants evaluation as a BioPreferred product is also not clear.

*Response:* USDA disagrees with the commenter's statement that consideration of items for designation in the BioPreferred Program is based on requests from the manufacturers of certain items. As discussed in the preamble to the proposed rule (75 FR 6801 and 6802), USDA uses a model to identify and prioritize items for designation. Through this model, USDA has identified over 100 items for potential designation under the preferred procurement program. A list of these items and information on the model can be accessed on the BioPreferred Web site at *http://www.biopreferred.gov*. USDA has conducted extensive market research to identify manufacturers of biobased products and has requested product information from manufacturers as they have been identified. While the willingness of manufacturers to provide product information and samples for testing has been, and will continue to be, a factor in setting the priority for designating items, it is not the only consideration. The cost, performance, availability, and size of the market all play a role in selecting items for designation.

*Comment:* One commenter stated that USDA has apparently used the BEES analysis tool to meet at least part of its environmental information responsibilities. The BEES tool is designed to evaluate environmental and economic performance data for building products and does not represent best practices for evaluating paper products. Life cycle analysis (LCA) practitioners familiar with paper manufacturing have identified the BEES methodology as imprecise when applied to paper products. The commenter stated that results from the recent peer reviewed LCA study, performed at their request, indicate, for instance, that the carbon footprint of printing and writing papers is less than that indicated for the carton of "office paper" evaluated through the BEES analysis. Furthermore, the size of the database on which the BEES analysis was conducted renders the results meaningless in view of the size of the entire paper products marketplace. The commenter stated that care must be taken if USDA plans to use the BEES results in any meaningful manner.

*Response:* The commenter is correct that USDA has used the BEES analytical tool to analyze a sample of individual products within each designated item. The BEES tool has been used to measure environmental and economic performance of designated items since the inception of the BioPreferred Program. USDA acknowledges that there is a wide range of opinion regarding the value of the BEES analysis and is currently considering the role of the analysis in the BioPreferred Program.

In the preamble to the proposed rule (75 FR 6801), USDA stated that, in addition to the BEES analytical tool, manufacturers wishing to make similar

life-cycle information available may choose to use the ASTM Standard D7075 analysis. The ASTM Standard D7075 product analysis includes information on environmental performance, human health impacts, and economic performance. USDA is working with manufacturers and vendors to make this information available on the BioPreferred Web site in order to make the preferred procurement program more efficient.

*Office Paper and Disposable Tableware*

*Comments:* One commenter stated that when USDA chooses to evaluate a product category such as office paper or disposable tableware that has always been biobased, it is highly misleading and arbitrary to provide the USDA BioPreferred imprimatur to only those "new" products in the category that use different biobased raw materials. The commenter feels this implies that there is an inherent "good" in the alternatives not found in wood-based papers, which the USDA has not demonstrated and LCA does not support. The commenter stated that there is no suggestion in the legislative history of either the 2002 or 2008 Farm Bills that Congress intended any dislocation of existing biobased products. The commenter believes it is reasonable to conclude that by including the BioPreferred Program in the Energy Title in both statutes, Congress intended to encourage "new" biobased products as a replacement for fossil fuel-based products, not to displace or substitute for existing biobased products.

One commenter believes that USDA has ignored the evolution of the forest products industry since 1972 when applying the "mature market" definition to these products. The commenter states that USDA must consider how the significant changes made in fiber procurement and manufacturing technologies have resulted in different products than those produced in 1972. Increased environmental regulation has caused significant changes to paper to incorporate more recycled content, radically alter bleaching methods and chemicals, and facilitate high-speed printing, new inks (ink jet, toner, etc.) and other innovations. The way the wood-fiber is grown and harvested has also experienced substantial improvement over the past 40 years. The commenter believes USDA must take these developments into consideration in evaluating whether today's wood-based office papers and tableware are the same as those that had "mature markets" in 1972.

One commenter stressed the need to collect and analyze further information about the differentiation of these existing products as they were in the 1970s and in 2010. This is necessary to better understand USDA's interpretation of the term "mature" apparently attached to these existing products. The commenter believes that products in a constant process of improvement via innovation should not be considered mature. For example, the average rotation age and composition of the wood fiber in these products have changed towards a more sustainable configuration in the last four decades.

One commenter stated that today's wood-based office papers and disposable tableware meet and further the minimum biobased content requirements. In addition, they meet all of the goals of the BioPreferred Program: Improving demand for biobased products (wood-based paper utilizes vast amounts of biobased ingredients), stimulating economic growth in rural areas (paper manufacturing facilities are typically located in rural areas close to the raw material and are the economic foundation of their communities), and enhancing the Nation's energy security (over 60 percent of the energy used to manufacture wood-based office papers in the United States comes from renewable, carbon neutral biomass).

One commenter stated that Section 9002(a)(3)(B)(v), 7 U.S.C. 8102(a)(3)(B)(v), directs the Secretary to "provide information as to * * * the environmental and public health benefits of such [biobased] materials and items." USDA has not considered whether the alternative fibers used to manufacture the alternative office papers and tableware are sustainably grown and managed. Credible sustainable forest management programs have assured the continuous improvement of forest management to provide for healthy forests in the years to come. In accepting alternative fiber papers into the BioPreferred Program, the commenter states USDA must make sure that it does not skew the market to such a degree that it would alter sustainable land use decisions.

The commenter stated that a classic example has been in the renewable energy field when the subsidies for corn-based ethanol led to additional rain forest destruction. The commenter further stated that because more corn was being grown in the U.S. for renewable fuel, it opened the market for non-U.S. grown soybeans which led farmers in South America to clear rain forests for agricultural lands.

The commenter states that if USDA considered sustainable management of paper fibers (whether wood or alternative) through a credible sustainable fiber management program, some degree of confidence could be drawn that there will not be the unintended consequence of forest lands being cleared to grow kenaf, for instance.

One commenter stated that office papers designated as BioPreferred are intended for the same uses, meet the same performance requirements, and overlap with the EPA's CPG program for recovered content products under the RCRA Section 6002. The CPG requirements apparently take precedence over the BioPreferred program; therefore, Federal agencies must purchase the recovered content product, making the BioPreferred designation superfluous for Federal procurement of these products.

One commenter stated that the definition of office paper—"paper products used in office printer and copier applications, writing, and coated papers for publications"—misapplies the term "coated publication papers." Coated publication papers are those typically used in magazines and catalogs, not office machines. USDA needs to clarify what it intends by this definition. The commenter's preferred definition is: "Office papers: Uncoated and coated paper products used in office printer and copier applications, and writing papers."

One commenter stated that the performance standard identified for office papers—JCP A230–High Yield Coated Opaque Offset—may be appropriate for the sample paper evaluated for the proposal; however, it represents only a small minority of the type of papers used in office machines. The U.S. Government's Joint Committee on Printing Paper Specifications includes a wide variety of standards for the specific type of paper needed. For instance, O–65(A) is the appropriate standard for Plain Copier Xerographic paper. Therefore, USDA should refer to the accurate paper performance specification depending on the specific paper required.

One commenter stated that wood-based products have very strong positive environmental attributes. The commenter stated that by proposing to endorse agricultural-based fiber over wood fiber, USDA will send an economic signal to forest landowners to grow more agriculture-based crops instead of trees. USDA has always favored more forest lands, not less, and this would be counter to that position. The commenter has completed an LCA of the Equal Offset grade, which fits the A230 designation, and found that when considering environmental impact, this paper is the best option as it uses less

water, wood fiber and GHG than A60 (uncoated freesheet).

One commenter stated that it is not beneficial to Americans to apply our country's finite technical, natural, and financial resources to replace an already existing biobased product like wood-based paper with paper made from hemp, kenaf, sugar cane, flax, cotton, and/or bamboo.

Three commenters suggested USDA delay its decision regarding inclusion of office papers and disposable tableware as designated items within the BioPreferred Program to allow in-depth consideration of the issues between USDA and representatives of the affected products. These issues also include other technical, specification and statutory issues that could be advanced prior to and during the review process.

*Response:* USDA considered the comments related to the proposed designation of office paper and disposable tableware and agrees with many of the points made by the commenters. USDA agrees with the commenters that several technical and policy issues need to be considered and resolved before the designation of the office paper item is finalized. USDA is, therefore, withdrawing the office paper item from the designations being finalized in today's rulemaking. USDA responses to specific issues raised by the commenters are presented in the following paragraphs.

USDA agrees that it is not the intent of the BioPreferred Program to replace a traditional biobased product with another "emerging" biobased product that performs the same function. USDA's intent in proposing to designate office paper was to encourage the development and use of office paper produced from fast-growing, sustainable fibers. USDA agrees with the commenters, however, that implementing the designation as proposed could result in the unintended replacement of paper produced exclusively from sustainably-grown forest products. Because of the comments that were received, USDA believes that more precise definitions and additional clarification are needed for the product category.

With regard to the commenter's concerns about the "mature market" issue, USDA acknowledges that the question of whether a product should be considered a mature market product is not always simply a matter of whether the product had a significant market share in 1972. In some cases the market share held by a biobased product in 1972 may have been taken over by petroleum-based synthetic products during the 1980s or 1990s and the biobased alternative may truly be "emerging" again now. In other cases, significant feedstock and process changes have resulted in products that are very different from the products marketed in 1972. USDA agrees that, in the case of the proposed "office paper" item, more investigation is needed to adequately address the issue of whether today's products should be considered mature market products.

Commenters pointed out that the office paper category overlaps with an EPA recovered content product and stated that there would be no benefit in designating it under the BioPreferred program. USDA acknowledges that for some products (including this one) the priority given to recovered content products reduces the benefits that would otherwise be attributed to the BioPreferred program. USDA does not believe, however, that the CPG program eliminates the need to designate items for the BioPreferred program. As discussed at proposal, there is a wide range of performance requirements, such as biodegradability or compostability, that factor into purchasing decisions. USDA believes there are potential benefits to designating product categories in which qualified biobased products are found even though the product categories are covered by the CPG program.

Commenters also stated that USDA did not adequately analyze sustainability of the current methods of producing office paper from forestry products. USDA acknowledges that information on sustainability within the forestry and paper production industry was not investigated prior to proposing the item for designation. USDA agrees that consideration of such information would be beneficial and will work with industry stakeholders to obtain and evaluate such information.

Commenters also stated that there are numerous test methods and performance specifications that apply to office paper other than the one listed in the proposal preamble. USDA will communicate with stakeholders to gather a more complete list of applicable performance standards and test methods.

Based on the comments received, USDA has decided that designating the office paper item as proposed has the potential to create much confusion among Federal purchasing agents. A single designated item for office paper would be very broad and would include paper designed to serve a wide variety of common and specialty functions. There is also a wide range of performance requirements that would have to be addressed in such a broad item. USDA will continue to consider the issues raised by the commenters, will work with the commenters and other industry stakeholders to resolve the issues, and plans to designate the item at a later date.

With regard to the designation of the disposable tableware item, USDA has clarified its intent that products within the item are those that are made of plastic or that have a plastic coating. The intent of designating this item is to encourage the use of disposable tableware made from, or coated with, resins derived from renewable biomass rather than petroleum-based resins. Thus, USDA believes that the designation of this item is appropriate and has clarified in the final rule that the item is defined as "Products made from, or coated with, plastic resins and used in dining, such as drink ware and dishware, including but not limited to cups, plates, bowls, and serving platters, and that are designed for one-time use. This item does not include disposable cutlery, which is a separate item."

Today's action finalizes the designation of eight items within which biobased products will be afforded Federal procurement preference. USDA encourages manufacturers, vendors, and purchasers of biobased products within these eight designated items to continue to submit information relative to products available within these items. If sufficient supporting information becomes available, USDA will consider amending today's rulemaking by creating subcategories within the items, raising (or lowering) the minimum biobased content, or other appropriate actions.

## V. Regulatory Information

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

This action has been determined significant for purposes of Executive Order 12866 and, therefore, has been reviewed by the Office of Management and Budget. We are not able to quantify the annual economic effect associated with this final rule. As discussed in the proposed rule, USDA made extensive efforts to obtain information on the Federal agencies' usage within the eight designated items. These efforts were largely unsuccessful. Therefore attempts to quantify the economic impact of this rule would require estimation of the anticipated market penetration of biobased products based upon many assumptions. In addition, because agencies have the option of not purchasing designated items if costs are "unreasonable," the product is not

readily available, or the product does not demonstrate necessary performance characteristics, certain assumptions may not be valid. While facing these quantitative challenges, USDA relied upon a qualitative assessment to determine the impacts of this rulemaking. This assessment was based primarily on the offsetting nature of the program (an increase in biobased products purchased with a corresponding decrease in petroleum products purchased). Consideration was also given to the fact that agencies may choose not procure designated items due to unreasonable costs.

1. Summary of Impacts

This rulemaking is expected to have both positive and negative impacts to individual businesses, including small businesses. USDA anticipates that the biobased preferred procurement program will provide additional opportunities for businesses and manufacturers to begin supplying products under the designated biobased items to Federal agencies and their contractors. However, other businesses and manufacturers that supply only non-qualifying products and do not offer biobased alternatives may experience a decrease in demand from Federal agencies and their contractors. USDA is unable to determine the number of businesses, including small businesses that may be adversely affected by this rule. The rule, however, will not affect existing purchase orders, nor will it preclude businesses from modifying their product lines to meet new requirements for designated biobased products. Because the extent to which procuring agencies will find the performance and costs of biobased products acceptable is unknown, it is impossible to quantify the actual economic effect of the rule.

2. Benefits of the Rule

The designation of these eight items provides the benefits outlined in the objectives of section 9002: To increase domestic demand for many agricultural commodities that can serve as feedstocks for production of biobased products; to spur development of the industrial base through value-added agricultural processing and manufacturing in rural communities; and to enhance the Nation's energy security by substituting biobased products for products derived from imported oil and natural gas. On a national and regional level, this rule can result in expanding and strengthening markets for biobased materials used in these items.

3. Costs of the Rule

Like the benefits, the costs of this rule have not been quantified. Two types of costs are involved: Costs to producers of products that will compete with the preferred products, and costs to Federal agencies to provide procurement preference for the preferred products. Producers of competing products may face a decrease in demand for their products to the extent Federal agencies refrain from purchasing their products. However, it is not known to what extent this may occur. Procurement costs for Federal agencies may rise as they evaluate the availability and relative cost of preferred products before making a purchase.

*B. Regulatory Flexibility Act (RFA)*

When an agency issues a final rule following a proposed rule, the Regulatory Flexibility Act (RFA, 5 U.S.C. 601–612) requires the agency to prepare a final regulatory flexibility analysis (5 U.S.C. 604). However, the requirement for a final regulatory flexibility analysis does not apply if the head of the agency certifies that the rule will not, if promulgated, have a significant economic impact on a substantial number of small entities (5 U.S.C. 605(b)).

USDA evaluated the potential impacts of its designation of these items to determine whether its actions would have a significant impact on a substantial number of small entities. Because the preferred procurement program established under section 9002 applies only to Federal agencies and their contractors, small governmental (city, county, etc.) agencies are not affected. Thus, this rule will not have a significant economic impact on small governmental jurisdictions.

USDA anticipates that this program will benefit entities, both large and small, that manufacture or sell biobased products. For example, the designation of items for preferred procurement will provide additional opportunities for businesses to manufacture and sell biobased products to Federal agencies and their contractors. Similar opportunities will be provided for entities that supply biobased materials to manufacturers. The intent of section 9002 is largely to stimulate the production of new biobased products and to energize emerging markets for those products. Because the program is still in its infancy, however, it is unknown how many businesses will ultimately be affected. While USDA has no data on the number of small businesses that may choose to develop and market biobased products within the items designated by this rulemaking, the number is expected to be small. Because biobased products represent a small emerging market, only a small percentage of all manufacturers, large or small, are expected to develop and market biobased products. Thus, the number of small businesses manufacturing biobased products affected by this rulemaking is not expected to be substantial.

The preferred procurement program may decrease opportunities for businesses that manufacture or sell non-biobased products or provide components for the manufacturing of such products. Most manufacturers of non-biobased products within the items being designated for preferred procurement in this rule are expected to be included under the following NAICS codes: 324191 (petroleum lubricating oil and grease manufacturing), 325211 (plastics materials and resin manufacturing), 325411 (medicinal and botanical manufacturing), 325612 (polish and other sanitation goods manufacturing), 325998 (other miscellaneous chemical products and preparation manufacturing), and 326150 (urethane and other foam product manufacturing). USDA obtained information on these six NAICS categories from the U.S. Census Bureau's Economic Census database. USDA found that the Economic Census reports about 3,513 companies within these six NAICS categories and that these companies own a total of about 4,271 establishments. Thus, the average number of establishments per company is about 1.2. The Census data also reported that of the 4,271 individual establishments, about 4,260 (99.7 percent) have less than 500 employees.

USDA also found that the overall average number of employees per company among these industries is about 55, with the plastics materials and resins segment reporting the highest average (about 90 employees per company). Thus, nearly all of the businesses fall within the Small Business Administration's definition of a small business (less than 500 employees, in most NAICS categories).

USDA does not have data on the potential adverse impacts on manufacturers of non-biobased products within the items being designated, but believes that the impact will not be significant. Most of the items being designated in this rulemaking are typical consumer products widely used by the general public and by industrial/commercial establishments that are not subject to this rulemaking. Thus, USDA believes that the number of small businesses manufacturing non-biobased

products within the items being designated and selling significant quantities of those products to government agencies affected by this rulemaking to be relatively low. Also, this rule will not affect existing purchase orders and it will not preclude procuring agencies from continuing to purchase non-biobased items when biobased items do not meet the availability, performance, or reasonable price criteria. This rule will also not preclude businesses from modifying their product lines to meet new specifications or solicitation requirements for these products containing biobased materials.

After considering the economic impacts of this rule on small entities, USDA certifies that this action will not have a significant economic impact on a substantial number of small entities.

While not a factor relevant to determining whether the rule will have a significant impact for RFA purposes, USDA has concluded that the effect of the rule will be to provide positive opportunities to businesses engaged in the manufacture of these biobased products. Purchase and use of these biobased products by procuring agencies increase demand for these products and result in private sector development of new technologies, creating business and employment opportunities that enhance local, regional, and national economies.

*C. Executive Order 12630: Governmental Actions and Interference With Constitutionally Protected Property Rights*

This rule has been reviewed in accordance with Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights, and does not contain policies that would have implications for these rights.

*D. Executive Order 12988: Civil Justice Reform*

This rule has been reviewed in accordance with Executive Order 12988, Civil Justice Reform. This rule does not preempt State or local laws, is not intended to have retroactive effect, and does not involve administrative appeals.

*E. Executive Order 13132: Federalism*

This rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment. Provisions of this rule will not have a substantial direct effect on states or their political subdivisions or on the distribution of power and responsibilities among the various government levels.

*F. Unfunded Mandates Reform Act of 1995*

This rule contains no Federal mandates under the regulatory provisions of Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), 2 U.S.C. 1531–1538, for state, local, and tribal governments, or the private sector. Therefore, a statement under section 202 of UMRA is not required.

*G. Executive Order 12372: Intergovernmental Review of Federal Programs*

For the reasons set forth in the Final Rule Related Notice for 7 CFR part 3015, subpart V (48 FR 29115, June 24, 1983), this program is excluded from the scope of the Executive Order 12372, which requires intergovernmental consultation with state and local officials. This program does not directly affect state and local governments. Although there is no statutory requirement to do so, we believe that, in the long term, many state and local governments will implement similar purchase programs based on the BioPreferred Program. USDA has been charged by Congress to share information on the BioPreferred Program with State and local governments.

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

Today's rule does not significantly or uniquely affect one or more Indian tribes, * * * the relationship between the Federal Government and Indian tribes, or * * * the distribution of power and responsibilities between the Federal Government and Indian tribes." Thus, no further action is required under Executive Order 13175.

*I. Paperwork Reduction Act*

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 through 3520), the information collection under this rule is currently approved under OMB control number 0503–0011.

*J. E-Government Act Compliance*

The Office of Procurement and Property Management is committed to compliance with the E-Government Act, which requires Government agencies in general to provide the public the option of submitting information or transacting business electronically to the maximum extent possible. USDA is implementing an electronic information system for posting information voluntarily submitted by manufacturers or vendors on the products they intend to offer for preferred procurement under each designated item. For information pertinent to E-Government Act compliance related to this rule, please contact Ron Buckhalt at (202) 205–4008.

*K. Congressional Review Act*

The Congressional Review Act, 5 U.S.C. 801 *et seq.,* as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, that includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. USDA has submitted 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**.

**List of Subjects in 7 CFR Part 2902**

Biobased products, Procurement.

■ For the reasons stated in the preamble, the Department of Agriculture is amending 7 CFR chapter XXIX as follows:

**CHAPTER XXIX—OFFICE OF ENERGY**

## PART 2902—GUIDELINES FOR DESIGNATING BIOBASED PRODUCTS FOR FEDERAL PROCUREMENT

■ 1. The authority citation for part 2902 continues to read as follows:

**Authority:** 7 U.S.C. 8102.

■ 2. Add §§ 2902.52 through 2902.60 to subpart B to read as follows:

Sec.

2902.52 Disposable tableware.
2902.53 Expanded polystyrene foam recycling products.
2902.54 Heat transfer fluids.
2902.55 Ink removers and cleaners.
2902.56 Mulch and compost materials.
2902.57 Multipurpose lubricants.
2902.58 [Reserved]
2902.59 Topical pain relief products.
2902.60 Turbine drip oils.

### § 2902.52 Disposable tableware.

(a) *Definition.* Products made from, or coated with, plastic resins and used in dining, such as drink ware and dishware, including but not limited to cups, plates, bowls, and serving platters, and that are designed for one-time use. This item does not include disposable cutlery, which is a separate item.

(b) *Minimum biobased content.* The preferred procurement product must have a minimum biobased content of at least 72 percent, which shall be based on the amount of qualifying biobased carbon in the product as a percent of the weight (mass) of the total organic carbon in the finished product.

(c) *Preference compliance date.* No later than October 18, 2011, procuring agencies, in accordance with this part, will give a procurement preference for qualifying biobased disposable tableware. By that date, Federal agencies that have the responsibility for drafting or reviewing specifications for items to be procured shall ensure that the relevant specifications require the use of biobased disposable tableware.

**§ 2902.53 Expanded polystyrene (EPS) foam recycling products.**

(a) *Definition.* Products formulated to dissolve EPS foam to reduce the volume of recycled or discarded EPS items.

(b) *Minimum biobased content.* The preferred procurement product must have a minimum biobased content of at least 90 percent, which shall be based on the amount of qualifying biobased carbon in the product as a percent of the weight (mass) of the total organic carbon in the finished product.

(c) *Preference compliance date.* No later than October 18, 2011, procuring agencies, in accordance with this part, will give a procurement preference for qualifying biobased EPS foam recycling products. By that date, Federal agencies that have the responsibility for drafting or reviewing specifications for items to be procured shall ensure that the relevant specifications require the use of biobased EPS foam recycling products.

**§ 2902.54 Heat transfer fluids.**

(a) *Definition.* Products with high thermal capacities used to facilitate the transfer of heat from one location to another, including coolants or refrigerants for use in HVAC applications, internal combustion engines, personal cooling devices, thermal energy storage, or other heating or cooling closed-loops.

(b) *Minimum biobased content.* The preferred procurement product must have a minimum biobased content of at least 89 percent, which shall be based on the amount of qualifying biobased carbon in the product as a percent of the weight (mass) of the total organic carbon in the finished product.

(c) *Preference compliance date.* No later than October 18, 2011, procuring agencies, in accordance with this part, will give a procurement preference for qualifying biobased heat transfer fluids. By that date, Federal agencies that have the responsibility for drafting or reviewing specifications for items to be procured shall ensure that the relevant specifications require the use of biobased heat transfer fluids.

**§ 2902.55 Ink removers and cleaners.**

(a) *Definition.* Chemical products designed to remove ink, haze, glaze, and other residual ink contaminants from the surfaces of equipment, such as rollers, used in the textile and printing industries.

(b) *Minimum biobased content.* The preferred procurement product must have a minimum biobased content of at least 79 percent, which shall be based on the amount of qualifying biobased carbon in the product as a percent of the weight (mass) of the total organic carbon in the finished product.

(c) *Preference compliance date.* No later than October 18, 2011, procuring agencies, in accordance with this part, will give a procurement preference for qualifying biobased ink removers and cleaners. By that date, Federal agencies that have the responsibility for drafting or reviewing specifications for items to be procured shall ensure that the relevant specifications require the use of biobased ink removers and cleaners.

**§ 2902.56 Mulch and compost materials.**

(a) *Definition.* Products designed to provide a protective covering placed over the soil, primarily to keep down weeds and to improve the appearance of landscaping. Compost is the aerobically decomposed remnants of organic materials used in gardening and agriculture as a soil amendment, and commercially by the landscaping and container nursery industries.

(b) *Minimum biobased content.* The preferred procurement product must have a minimum biobased content of at least 95 percent, which shall be based on the amount of qualifying biobased carbon in the product as a percent of the weight (mass) of the total organic carbon in the finished product.

(c) *Preference compliance date.* No later than October 18, 2011, procuring agencies, in accordance with this part, will give a procurement preference for qualifying biobased mulch and compost materials. By that date, Federal agencies that have the responsibility for drafting or reviewing specifications for items to be procured shall ensure that the relevant specifications require the use of biobased mulch and compost materials.

(d) *Determining overlap with an EPA-designated recovered content product.* Qualifying products within this item may overlap with the EPA-designated recovered content product: Landscaping products—"compost" and "hydraulic mulch". USDA is requesting that manufacturers of these qualifying biobased products provide information on the USDA Web site of qualifying biobased products about the intended uses of the product, information on whether or not the product contains any recovered material, in addition to biobased ingredients, and performance standards against which the product has been tested. This information will assist Federal agencies in determining whether or not a qualifying biobased product overlaps with EPA-designated landscaping products and which product should be afforded the preference in purchasing.

**Note to paragraph (d):** Biobased mulch and compost materials within this designated item can compete with similar landscaping products with recycled content. Under the Resource Conservation and Recovery Act of 1976, section 6002, the U.S. Environmental Protection Agency designated landscaping products containing recovered materials as items for which Federal agencies must give preference in their purchasing programs. The designation can be found in the Comprehensive Procurement Guideline, 40 CFR 247.15.

**§ 2902.57 Multipurpose lubricants.**

(a) *Definition.* Products designed to provide lubrication under a variety of conditions and in a variety of industrial settings to prevent friction or rust. Greases, which are lubricants composed of oils thickened to a semisolid or solid consistency using soaps, polymers or other solids, or other thickeners, are not included in this item. In addition, task-specific lubricants, such as chain and cable lubricants and gear lubricants, are not included in this item.

(b) *Minimum biobased content.* The preferred procurement product must have a minimum biobased content of at least 88 percent, which shall be based on the amount of qualifying biobased carbon in the product as a percent of the weight (mass) of the total organic carbon in the finished product.

(c) *Preference compliance date.* No later than October 18, 2011, procuring agencies, in accordance with this part, will give a procurement preference for qualifying biobased multipurpose lubricants. By that date, Federal agencies that have the responsibility for drafting or reviewing specifications for items to be procured shall ensure that the relevant specifications require the use of biobased multipurpose lubricants.

(d) *Determining overlap with an EPA-designated recovered content product.* Qualifying products within this item may overlap with the EPA-designated recovered content product: Re-refined lubricating oils. USDA is requesting that manufacturers of these qualifying biobased products provide information on the BioPreferred Web site about the intended uses of the product, information on whether or not the product contains any recovered material, in addition to biobased ingredients, and performance standards

against which the product has been tested. This information will assist Federal agencies in determining whether or not a qualifying biobased product overlaps with EPA-designated re-refined lubricating oils and which product should be afforded the preference in purchasing.

**Note to paragraph (d):** Biobased multipurpose lubricant products within this designated item can compete with similar multipurpose lubricant products with recycled content. Under the Resource Conservation and Recovery Act of 1976, section 6002, the U.S. Environmental Protection Agency designated re-refined lubricating oils containing recovered materials as items for which Federal agencies must give preference in their purchasing programs. The designation can be found in the Comprehensive Procurement Guideline, 40 CFR 247.11.

**§ 2902.58 [Reserved]**

**§ 2902.59 Topical pain relief products.**

(a) *Definition.* Products that can be balms, creams and other topical treatments used for the relief of muscle, joint, headache, and nerve pain, as well as sprains, bruises, swelling, and other aches.

(b) *Minimum biobased content.* The preferred procurement product must have a minimum biobased content of at least 91 percent, which shall be based on the amount of qualifying biobased carbon in the product as a percent of the weight (mass) of the total organic carbon in the finished product.

(c) *Preference compliance date.* No later than October 18, 2011, procuring agencies, in accordance with this part, will give a procurement preference for qualifying biobased topical pain relief products. By that date, Federal agencies that have the responsibility for drafting or reviewing specifications for items to be procured shall ensure that the relevant specifications require the use of biobased topical pain relief products.

**§ 2902.60 Turbine drip oils.**

(a) *Definition.* Products that are lubricants for use in drip lubrication systems for water well line shaft bearings, water turbine bearings for irrigation pumps, and other turbine bearing applications.

(b) *Minimum biobased content.* The preferred procurement product must have a minimum biobased content of at least 87 percent, which shall be based on the amount of qualifying biobased carbon in the product as a percent of the weight (mass) of the total organic carbon in the finished product.

(c) *Preference compliance date.* No later than October 18, 2011, procuring agencies, in accordance with this part, will give a procurement preference for qualifying biobased turbine drip oils. By that date, Federal agencies that have the responsibility for drafting or reviewing specifications for items to be procured shall ensure that the relevant specifications require the use of biobased turbine drip oils.

Dated: October 12, 2010.

**Pearlie S. Reed,**

*Assistant Secretary for Administration, U.S. Department of Agriculture.*

[FR Doc. 2010–26122 Filed 10–15–10; 8:45 am]

**BILLING CODE 3410–93–P**

## FEDERAL RESERVE SYSTEM

### 12 CFR Part 261a

**[Docket No. R–1313]**

### Privacy Act of 1974; Privacy Act Regulation

**AGENCY:** Board of Governors of the Federal Reserve System.

**ACTION:** Final rule.

**SUMMARY:** The Board of Governors of the Federal Reserve System (Board) is issuing a final rule to amend its regulation implementing the Privacy Act of 1974 (Privacy Act). The primary changes concern the waiver of copying fees charged to current and former Board employees, and applicants for Board employment, for access to their records under the Privacy Act; the amendment of special procedures for the release of medical records to permit the Board's Chief Privacy Officer to consult with the Board's Employee Assistance Program counselor to determine whether the disclosure of medical records directly to the requester could have an adverse effect on the requester; changes to the time limits for responding to requests for access to information and amendment of records; and updates to the exemptions claimed for certain systems of records. In addition, the Board is proposing to make minor editorial and technical changes to ensure that the Board's regulation is consistent with the Board's published systems of records and is clearer.

**DATES:** This rule is effective October 18, 2010.

**FOR FURTHER INFORMATION CONTACT:** Brad Fleetwood, Senior Counsel, (202) 452–3721, Legal Division. For users of Telecommunications Device for the Deaf (TDD) only, contact (202) 263–4869.

**SUPPLEMENTARY INFORMATION:** The Board published a notice of proposed rulemaking to amend its regulation implementing the Privacy Act in the **Federal Register**, 73 FR 25594, May 7, 2008. The proposed amendments: (1) Waived all copying fees in connection with any Privacy Act request by current or former Board employees and applicants for Board employment; (2) permitted the Chief Privacy Officer to consult with the Board's Employee Assistance Program counselor as well as the Board's physician to determine whether the disclosure of medical records directly to the requester could have an adverse effect on the requester; (3) required all requests for access (including requests made by current Board employees for access to their personnel records) to be submitted in writing to the Secretary of the Board; (4) lengthened the time limits for acknowledging (and where practicable, substantially responding to) an individual's request for access to information and making a determination on a request to amend an individual's record; (5) replaced the statutory exemptions listed in the Privacy Act with references to the relevant provisions in the Privacy Act; (6) updated the exemptions listed under 12 CFR 261a.12 to conform to the exemptions approved for each of the Board's Privacy Act systems of records; and (7) made minor editorial and technical changes for clarity and consistency with the Board's published systems of records.

In response to these proposed amendments, the Board received three public comments relating to the privacy of information held by banks and other financial institutions. Because the Board's Privacy Act regulation does not regulate the privacy of this information, the Board did not consider these comments relevant.

The Board's final rule adopts all of the amendments as proposed except that the Board has determined to revise the requirement that all requests for access be submitted in writing to the Secretary of the Board. This amendment was proposed to facilitate appropriate tracking and processing of all Privacy Act requests. However, after an internal review of this matter, the Board determined that because current and former employees frequently request access to records about themselves directly from Human Resources (HR) in person to require such employees to instead seek this information from the Secretary's Office in writing would be extremely burdensome. Any benefit from an increased ability to track these requests would be more than outweighed by the increased difficulty that employees would face in seeking information about themselves.

Therefore, the Board has determined that it is unnecessary at this time to require current or former employees to make Privacy Act requests through the Secretary's Office. The final rule permits current and former Board employees to make Privacy Act requests in person or in writing to the Board office that maintains the record. The Board believes that this will facilitate employees' access to their records consistent with the requirements of the Privacy Act. If the Secretary determines that this option impedes or frustrates in any way the appropriate tracking of requests, the Secretary may notify requesters that they must submit their requests through the Secretary's office. In any case, a denial of an employee's request (in whole or in part) must be reported to the Secretary of the Board so that the Secretary can ensure that the request was appropriately processed.

The Board's final rule also updates section 261a.5(c) regarding verification of identity to make it clear that a Board identification card is considered valid proof of identity for current and former Board employees. In addition, during the time between the date the proposed rulemaking was published and this final rulemaking, the Board published two new systems of records, BGFRS–37 (Electronic Applications) and BGFRS–38 (Transportation Subsidy Records). As noted in the related **Federal Register** Notice, 73 FR 54595, September 22, 2008, certain portions of BGFRS–37 (Electronic Applications) may be exempt from 5 U.S.C. 552a(c)(3), (d), (e)(1), (e)(4)(G), (H), and (I), and (f) of the Privacy Act pursuant to 5 U.S.C. 552a(k)(2). Thus, the Board has amended section 261a.12 to reflect this exemption.

**Regulatory Flexibility Analysis**

The Privacy Act Regulation sets forth the procedures by which individuals may request access and amendment to records maintained in systems of records at the Board. The Board certifies that this rule will not have a significant economic impact on a substantial number of small entities, because it does not apply to business entities.

**List of Subjects in 12 CFR Part 261a**

Privacy.

**Authority and Issuance**

■ For the reasons set forth in the preamble, the Board revises 12 CFR Part 261a as follows:

## PART 261a—RULES REGARDING ACCESS TO PERSONAL INFORMATION UNDER THE PRIVACY ACT 1974

**Subpart A—General Provisions**

Sec.
261a.1 Authority, purpose and scope.
261a.2 Definitions.
261a.3 Custodian of records; delegations of authority.
261a.4 Fees.

**Subpart B—Procedures for Requests by Individual to Whom Record Pertains**

261a.5 Request for access to record.
261a.6 Board procedures for responding to request for access.
261a.7 Special procedures for medical records.
261a.8 Request for amendment of record.
261a.9 Board review of request for amendment of record.
261a.10 Appeal of adverse determination of request for access or amendment.

**Subpart C—Disclosure of Records**

261a.11 Restrictions on disclosure.
261a.12 Exempt records.

**Authority:** 5 U.S.C. 552a.

### Subpart A—General Provisions

#### § 261a.1 Authority, purpose and scope.

(a) *Authority.* This part is issued by the Board of Governors of the Federal Reserve System (the Board) pursuant to the Privacy Act of 1974 (5 U.S.C. 552a).

(b) *Purpose and scope.* This part implements the provisions of the Privacy Act of 1974 with regard to the maintenance, protection, disclosure, and amendment of records contained within systems of records maintained by the Board. It sets forth the procedures for requests for access to, or amendment of, records concerning individuals that are contained in systems of records maintained by the Board.

#### § 261a.2 Definitions.

For purposes of this part, the following definitions apply:

(a) *Business day* means any day except Saturday, Sunday or a legal Federal holiday.

(b) *Guardian* means the parent of a minor, or the legal guardian of any individual who has been declared to be incompetent due to physical or mental incapacity or age by a court of competent jurisdiction.

(c) *Individual* means a natural person who is either a citizen of the United States or an alien lawfully admitted for permanent residence.

(d) *Maintain* includes maintain, collect, use, or disseminate.

(e) *Record* means any item, collection, or grouping of information about an individual maintained by the Board that contains the individual's name or the identifying number, symbol, or other identifying particular assigned to the individual, such as a fingerprint, voice print, or photograph.

(f) *Routine use* means, with respect to disclosure of a record, the use of such record for a purpose that is compatible with the purpose for which it was collected or created.

(g) *System of records* means a group of any records under the control of the Board from which information is retrieved by the name of the individual or by some identifying number, symbol, or other identifying particular assigned to the individual.

(h) *You* means an individual making a request under the Privacy Act.

(i) *We* means the Board.

#### § 261a.3 Custodian of records; delegations of authority.

(a) *Custodian of records.* The Secretary of the Board is the official custodian of all Board records.

(b) *Delegated authority of the Secretary.* The Secretary of the Board is authorized to—

(1) Respond to requests for access to, accounting of, or amendment of records contained in a system of records, except for requests regarding systems of records maintained by the Board's Office of Inspector General (OIG);

(2) Approve the publication of new systems of records and amend existing systems of records, except those systems of records exempted pursuant to § 261a.12(b), (c) and (d); and

(3) File any necessary reports related to the Privacy Act.

(c) *Delegated authority of designee.* Any action or determination required or permitted by this part to be done by the Secretary of the Board may be done by a Deputy or Associate Secretary or other responsible employee of the Board who has been duly designated for this purpose by the Secretary.

(d) *Delegated authority of Inspector General.* The Inspector General is authorized to respond to requests for access to, accounting of, or amendment of records contained in a system of records maintained by the OIG.

#### § 261a.4 Fees.

(a) *Copies of records.* We will provide you with copies of the records you request under § 261a.5 of this part at the same cost we charge for duplication of records and/or production of computer output under the Board's Rules Regarding Availability of Information, 12 CFR Part 261.

(b) *No fee.* We will not charge you a fee if:

(1) Your total charges are less than $5, or

(2) You are a Board employee or former employee, or an applicant for employment with the Board, and you request records pertaining to you.

## Subpart B—Procedures for Requests by Individuals to Whom Record Pertains

### § 261a.5 Request for access to records.

(a) *Procedures for making request.* (1) Except as provided in paragraph (a)(2) or (f) of this section, if you (or your guardian) want to learn of the existence of, or to gain access to, your record in a system of records, you may submit a request in writing to the Secretary of the Board, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, NW., Washington, DC 20551.

(2) If you request information contained in a system of records maintained by the Board's OIG, you may submit the request in writing to the Inspector General, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, NW., Washington, DC 20551.

(b) *Contents of request.* Except for requests made under paragraph (f) of this section, your written request must include –

(1) A statement that the request is made pursuant to the Privacy Act of 1974;

(2) Tthe name of the system of records you believe contains the record you request, or a concise description of that system of records;

(3) Information necessary to verify your identity pursuant to paragraph (c) of this section; and

(4) Any other information that might assist us in identifying the record you seek (*e.g.,* maiden name, dates of employment, *etc.*).

(c) *Verification of identity.* We will require proof of your identity, and we reserve the right to determine whether the proof you submit is adequate. In general, we will consider the following to be adequate proof of identity:

(1) If you are a current or former Board employee, your Board identification card; or

(2) If you are not a current or former Board employee, either

(i) Two forms of identification, including one photo identification, or

(ii) A notarized statement attesting to your identity.

(d) *Verification of identity not required.* We will not require verification of identity when the records you seek are available to any person under the Freedom of Information Act (5 U.S.C. 552).

(e) *Request for accounting of previous disclosures.* You may request an accounting of previous disclosures of records pertaining to you in a system of records as provided in 5 U.S.C. 552a(c).

(f) *Requests Made by Board Employees.* Unless the Secretary provides and you are notified otherwise, if you are a current or former Board employee, you also may request access to your record in a system of records by appearing in person before or writing directly to the Board office that maintains the record.

### § 261a.6 Board procedures for responding to request for access.

(a) *Compliance with Freedom of Information Act.* We will handle every request made pursuant to § 261a.5 of this part (other than requests submitted under § 261a.5(f) that were granted) as a request for information pursuant to the Freedom of Information Act. The time limits set forth in paragraph (b) of this section and the fees specified in § 261a.4 of this part will apply to such requests.

(b) *Time for response.* We will acknowledge every request made pursuant to § 261a.5 of this part within 20 business days from receipt of the request and will, where practicable, respond to each request within that 20-day period. When a full response is not practicable within the 20-day period, we will respond as promptly as possible.

(c) *Disclosure.* (1) When we disclose information in response to your request, except for information maintained by the Board's OIG, we will make the information available for inspection and copying during regular business hours at the Board's Freedom of Information Office, or we will we mail it to you on your request. For requests made under paragraph § 261a.5(f), you may request that the information be provided orally or in person.

(2) When the information to be disclosed is maintained by the Board's OIG, the OIG will make the information available for inspection and copying or will mail it to you on request.

(3) You may bring with you anyone you choose to see the requested material. All visitors to the Board's buildings must comply with the Board's security procedures.

(d) *Denial of request.* If we deny a request made pursuant to § 261a.5 of this part, we will tell you the reason(s) for denial and the procedures for appealing the denial. If a request made under paragraph § 261a.5(f) is denied, in whole or in part, the Board office that denied your request will simultaneously notify the Secretary of the Board of its action.

### § 261a.7 Special procedures for medical records.

If you request medical or psychological records pursuant to § 261a.5, we will disclose them directly to you unless the Chief Privacy Officer, in consultation with the Board's physician or Employee Assistance Program counselor, determines that such disclosure could have an adverse effect on you. If the Chief Privacy Officer makes that determination, we will provide the information to a licensed physician or other appropriate representative that you designate, who may disclose those records to you in a manner he or she deems appropriate.

### § 261a.8 Request for amendment of record.

(a) *Procedures for making request.*

(1) If you wish to amend a record that pertains to you in a system of records, you may submit the request in writing to the Secretary of the Board (or to the Inspector General for records in a system of records maintained by the OIG) in an envelope clearly marked "Privacy Act Amendment Request."

(2) Your request for amendment of a record must—

(i) Identify the system of records containing the record for which amendment is requested;

(ii) Specify the portion of that record requested to be amended; and

(iii) Describe the nature of and reasons for each requested amendment.

(3) We will require you to verify your identity under the procedures set forth in § 261a.5(c) of this part, unless you have already done so in a related request for access or amendment.

(b) *Burden of proof.* Your request for amendment of a record must tell us why you believe the record is not accurate, relevant, timely, or complete. You have the burden of proof for demonstrating the appropriateness of the requested amendment, and you must provide relevant and convincing evidence in support of your request.

### § 261a.9 Board review of request for amendment of record.

(a) *Time limits.* We will acknowledge your request for amendment of your record within 10 business days after we receive your request. In the acknowledgment, we may request additional information necessary for a determination on the request for amendment. We will make a determination on a request to amend a record promptly.

(b) *Contents of response to request for amendment.* When we respond to a request for amendment, we will tell you whether your request is granted or

denied. If we grant your request, we will take the necessary steps to amend your record and, when appropriate and possible, notify prior recipients of the record of our action. If we deny the request, in whole or in part, we will tell you—

(1) Why we denied the request (or portion of the request);

(2) That you have a right to appeal; and

(3) How to file an appeal.

**§ 261a.10 Appeal of adverse determination of request for access or amendment.**

(a) *Appeal.* You may appeal a denial of a request made pursuant to § 261a.5 or § 261a.8 of this part within 10 business days after we notify you that we denied your request. Your appeal must—

(1) Be made in writing with the words "PRIVACY ACT APPEAL" written prominently on the first page and addressed to the Secretary of the Board, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, NW., Washington, DC 20551;

(2) Specify the background of the request; and

(3) Provide reasons why you believe the initial denial is in error.

(b) *Determination.* We will make a determination on your appeal within 30 business days from the date we receive it, unless we extend the time for good cause.

(1) If we grant your appeal regarding a request for amendment, we will take the necessary steps to amend your record and, when appropriate and possible, notify prior recipients of the record of our action.

(2) If we deny your appeal, we will inform you of such determination, tell you our reasons for the denial, and tell you about your rights to file a statement of disagreement and to have a court review our decision.

(c) *Statement of disagreement.* (1) If we deny your appeal regarding a request for amendment, you may file a concise statement of disagreement with the denial. We will maintain your statement with the record you sought to amend and any disclosure of the record will include a copy of your statement of disagreement.

(2) When practicable and appropriate, we will provide a copy of the statement of disagreement to any prior recipients of the record.

## Subpart C—Disclosure of Records

**§ 261a.11 Restrictions on disclosure.**

We will not disclose any record about you contained in a system of records to any person or agency without your prior written consent unless the disclosure is authorized by 5 U.S.C. 552a(b).

**§ 261a.12 Exempt records.**

(a) *Information compiled for civil action.* This regulation does not permit you to have access to any information compiled in reasonable anticipation of a civil action or proceeding.

(b) *Law enforcement information.* Pursuant to 5 U.S.C. 552a(k)(2), we have determined that it is necessary to exempt the systems of records listed below from the requirements of the Privacy Act concerning access to records, accounting of disclosures of records, maintenance of only relevant and necessary information in files, and certain publication provisions, respectively, 5 U.S.C. 552a(c)(3), (d), (e)(1), (e)(4)(G), (H) and (I), and (f), and §§ 261a.5, 261a.7, and 261a.8 of this part. The exemption applies only to the extent that a system of records contains investigatory materials compiled for law enforcement purposes.

(1) BGFRS–1 Recruiting and Placement Records
(2) BGFRS–2 Personnel Security Systems
(3) BGFRS–4 General Personnel Records
(4) BGFRS–5 EEO Discrimination Complaint File
(5) BGFRS–18 Consumer Complaint Information
(6) BGFRS–21 Supervisory Enforcement Actions and Special Examinations Tracking System
(7) BGFRS–31 Protective Information System
(8) BGFRS–32 Visitor Registration System
(9) BGFRS–36 Federal Reserve Application Name Check System
(10) BGFRS–37 Electronic Applications
(11) BGFRS/OIG–1 OIG Investigative Records

(c) *Confidential references.* Pursuant to 5 U.S.C. 552a(k)(5), we have determined that it is necessary to exempt the systems of records listed below from the requirements of the Privacy Act concerning access to records, accounting of disclosures of records, maintenance of only relevant and necessary information in files, and certain publication provisions, respectively, 5 U.S.C. 552a(c)(3), (d), (e)(1), (e)(4)(G), (H) and (I), and (f), and §§ 261a.5, 261a.7, and 261a.8 of this part. The exemption applies only to the extent that a system of records contains investigatory material compiled to determine an individual's suitability, eligibility, and qualifications for Board employment or access to classified information, and the disclosure of such material would reveal the identity of a source who furnished information to the Board under a promise of confidentiality.

(1) BGFRS–1 Recruiting and Placement Records
(2) BGFRS–2 Personnel Security Systems
(3) BGFRS–4 General Personnel Records
(4) BGFRS–10 General Files on Board Members
(5) BGFRS–11 Official General Files
(6) BGFRS–13 Federal Reserve System Bank Supervision Staff Qualifications
(7) BGFRS–14 General File on Federal Reserve Bank and Branch Directors
(8) BGFRS–25 Multi-Rater Feedback Records
(9) BGFRS/OIG–1 OIG Investigative Records
(10) BGFRS/OIG–2 OIG Personnel Records

(d) *Criminal law enforcement information.* Pursuant to 5 U.S.C. 552a(j)(2), we have determined that the OIG Investigative Records (BGFRS/OIG–1) are exempt from the Privacy Act, except the provisions regarding disclosure, the requirement to keep an accounting, certain publication requirements, certain requirements regarding the proper maintenance of systems of records, and the criminal penalties for violation of the Privacy Act, respectively, 5 U.S.C. 552a(b), (c)(1), and (2), (e)(4)(A) through (F), (e)(6), (e)(7), (e)(9), (e)(10), (e)(11) and (i).

By order of the Board of Governors of the Federal Reserve System, October 4, 2010.

**Robert deV. Frierson,**

*Deputy Secretary of the Board.*

[FR Doc. 2010–25367 Filed 10–15–10; 8:45 am]

**BILLING CODE 6210–01–P**

## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 71

**[Docket No. FAA–2010–0651; Airspace Docket No. 10–ANM–7]**

## Amendment of Class D and Class E Airspace; Klamath Falls, OR

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Final rule.

**SUMMARY:** This action will amend Class D and Class E airspace at Klamath Falls, OR. Decommissioning of the Merrill

Non-Directional Radio Beacon (NDB) at Klamath Falls Airport has made this action necessary for the safety and management of Instrument Flight Rules (IFR) operations at the airport. This action also will adjust the geographic coordinates of the airport and a navigation aid, and will change the name of the airport.

**DATES:** *Effective Date:* 0901 UTC, January 13, 2011. The Director of the Federal Register approves this incorporation by reference action under 1 CFR Part 51, subject to the annual revision of FAA Order 7400.9 and publication of conforming amendments.

**FOR FURTHER INFORMATION CONTACT:** Eldon Taylor, Federal Aviation Administration, Operations Support Group, Western Service Center, 1601 Lind Avenue, SW., Renton, WA 98057; telephone (425) 203–4537.

**SUPPLEMENTARY INFORMATION:**

**History**

On August 16, 2010, the FAA published in the **Federal Register** a notice of proposed rulemaking to amend controlled airspace at Klamath Falls, OR (75 FR 49866). Interested parties were invited to participate in this rulemaking effort by submitting written comments on the proposal to the FAA. No comments were received.

Class D and Class E airspace designations are published in paragraph 5000, 6002, 6004 and 6005, respectively, of FAA Order 7400.9U dated August 18, 2010, and effective September 15, 2010, which is incorporated by reference in 14 CFR 71.1. The Class D and Class E airspace designations listed in this document will be published subsequently in that Order.

**The Rule**

This action amends Title 14 Code of Federal Regulations (14 CFR) Part 71 by amending Class E airspace extending upward from 700 feet above the surface at Klamath Falls Airport, Klamath Falls, OR. Decommissioning of the Merrill NDB and cancellation of the NDB approach has made this action necessary for the safety and management of IFR operations at the airport. The geographic coordinates of the Klamath Falls Airport, and the Klamath Falls VHF Omni-Directional Radio Range Tactical Air Navigation Aid (VORTAC), listed in the descriptions of the Class D and Class E airspace areas, will be adjusted in accordance with the FAA's National Aeronautical Navigation Services (NANS). The airport name will be corrected from Klamath Falls International Airport to Klamath Falls Airport.

The FAA has determined this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this regulation: (1) Is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the U.S. Code. Subtitle 1, Section 106 discusses the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it modifies controlled airspace at Klamath Falls Airport, Klamath Falls, OR.

**List of Subjects in 14 CFR Part 71**

Airspace, Incorporation by reference, Navigation (air).

**Adoption of the Amendment**

■ In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR Part 71 as follows:

## PART 71—DESIGNATION OF CLASS A, B, C, D AND E AIRSPACE AREAS; AIR TRAFFIC SERVICE ROUTES; AND REPORTING POINTS

■ 1. The authority citation for 14 CFR Part 71 continues to read as follows:

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

**§ 71.1 [Amended]**

■ 2. The incorporation by reference in 14 CFR Part 71.1 of the Federal Aviation Administration Order 7400.9U, Airspace Designations and Reporting Points, dated August 18, 2010, and effective September 15, 2010 is amended as follows:

*Paragraph 5000 Class D Airspace.*

* * * * *

**ANM OR D Klamath Falls, OR [Amended]**

Klamath Falls Airport, OR
(Lat. 42°09′22″ N., long. 121°44′00″ W.)

That airspace extending upward from the surface to and including 6,600 feet MSL within a 5.4-mile radius of Klamath Falls Airport. This Class D airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory.

*Paragraph 6002 Class E Airspace Designated as Surface Areas.*

* * * * *

**ANM OR E2 Klamath Falls, OR [Amended]**

Klamath Falls Airport, OR
(Lat. 42°09′22″ N., long. 121°44′00″ W.)

Within a 5.4-mile radius of Klamath Falls Airport. This Class E airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory.

*Paragraph 6004 Class E Airspace Designated as an Extension to a Class D Surface Area.*

* * * * *

**ANM OR E4 Klamath Falls, OR [Amended]**

Klamath Falls Airport, OR
(Lat. 42°09′22″ N., long. 121°44′00″ W.)

Klamath Falls VORTAC
(Lat. 42°09′11″ N., long. 121°43′39″ W.)

That airspace extending upward from the surface within 3.5 miles east and 1.8 miles west of the Klamath Falls VORTAC 171° radial extending from the 5.4-mile radius of Klamath Falls Airport to 7.4 miles south of the VORTAC, and within 1.8 miles each side of the Klamath Falls VORTAC 332° radial extending from the 5.4-mile radius of the airport to 9.6 miles northwest of the VORTAC.

*Paragraph 6005 Class E Airspace Areas Extending Upward From 700 Feet or More Above the Surface of the Earth.*

* * * * *

**ANM OR E5 Klamath Falls, OR [Modified]**

Klamath Falls Airport, OR
(Lat. 42°09′22″ N., long. 121°44′00″ W.)

That airspace extending upward from 700 feet above the surface within a 13.1-mile radius of Klamath Falls Airport, and within 4.3 miles east and 8.3 miles west of the 158° bearing from the airport extending from the 13.1-mile radius to 27.2 miles south of the airport; that airspace extending upward from 1,200 feet above the surface between the 13.1-mile radius and the 21.8-mile radius of the Klamath Falls Airport; that airspace extending upward from 7,500 feet MSL within the area bounded by the 21.8-mile radius and the 34.8-mile radius of the

Klamath Falls Airport extending clockwise from the airport 095° bearing to a line 4.3 miles east of and parallel to the airport 165° bearing, and within the area bounded by the 21.8-mile radius and the 34.8-mile radius of the Klamath Falls Airport extending clockwise from the airport 245° bearing to the airport 295° bearing; that airspace extending upward from 7,700 feet MSL within the area bounded by the 21.8-mile radius and the 27.9-mile radius of the Klamath Falls Airport extending clockwise from the airport 332° bearing to a line 7.9 miles northeast of and parallel to the airport 332° bearing; that airspace extending upward from 8,600 feet MSL within the area bounded by the 21.8-mile radius and the 41.8-mile radius of the Klamath Falls Airport extending clockwise from a line 4.3 miles east of and parallel to the airport 165° bearing to a line 10.1 miles west of and parallel to the airport 181° bearing; that airspace extending upward from 9,000 feet MSL within the area bounded by the 21.8-mile radius and the 34.8-mile radius of the Klamath Falls Airport extending clockwise from the airport 320° bearing to the airport 095° bearing; that airspace extending upward from 9,500 feet MSL within the area bounded by the 21.8-mile radius and the 34.8-mile radius of the Klamath Falls Airport extending clockwise from a line 10.1 miles west of and parallel to the airport 181° bearing to the airport 245° bearing, and within the area bounded by the 21.8-mile radius and the 24.4-mile radius of the Klamath Falls Airport extending clockwise from the airport 295° bearing to the airport 320° bearing; and that airspace extending from 11,000 feet MSL within the area bounded by the 24.4-mile radius and the 34.8-mile radius of the Klamath Falls Airport extending clockwise from the airport 295° bearing to the airport 320° bearing.

Issued in Seattle, Washington, on October 6, 2010.

**John Warner,**

*Manager, Operations Support Group, Western Service Center.*

[FR Doc. 2010–26091 Filed 10–15–10; 8:45 am]

**BILLING CODE 4910–13–P**

## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 71

**[Docket No. FAA–2010–0650; Airspace Docket No. 10–AWP–9]**

## Establishment of Class E Airspace; Kalaupapa, HI

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Final rule.

**SUMMARY:** This action will establish Class E airspace at Kalaupapa, HI, to accommodate aircraft using a new Area Navigation (RNAV) Global Positioning System (GPS) Standard Instrument Approach Procedures (SIAPs) at Kalaupapa Airport. This will improve the safety and management of Instrument Flight Rules (IFR) operations at the airport.

**DATES:** *Effective Date:* 0901 UTC, January 13, 2011. The Director of the Federal Register approves this incorporation by reference action under 1 CFR Part 51, subject to the annual revision of FAA Order 7400.9 and publication of conforming amendments.

**FOR FURTHER INFORMATION CONTACT:** Eldon Taylor, Federal Aviation Administration, Operations Support Group, Western Service Center, 1601 Lind Avenue, SW., Renton, WA 98057; telephone (425) 203–4537.

**SUPPLEMENTARY INFORMATION:**

### History

On August 16, 2010, the FAA published in the **Federal Register** a notice of proposed rulemaking to establish controlled airspace at Kalaupapa, HI (75 FR 49868). Interested parties were invited to participate in this rulemaking effort by submitting written comments on the proposal to the FAA. No comments were received.

Class E airspace designations are published in paragraph 6005 of FAA Order 7400.9U dated August 18, 2010, and effective September 15, 2010, which is incorporated by reference in 14 CFR Part 71.1. The Class E airspace designations listed in this document will be published subsequently in that Order.

### The Rule

This action amends Title 14 Code of Federal Regulations (14 CFR) Part 71 by establishing Class E surface airspace extending upward from 700 feet above the surface, at Kalaupapa Airport, to accommodate IFR aircraft executing new RNAV (GPS) SIAPs at the airport. This action is necessary for the safety and management of IFR operations.

The FAA has determined this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this regulation: (1) Is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the U.S. Code. Subtitle 1, Section 106 discusses the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it establishes controlled airspace at Kalaupapa Airport, Kalaupapa, HI.

### List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

### Adoption of the Amendment

■ In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR Part 71 as follows:

## PART 71—DESIGNATION OF CLASS A, B, C, D AND E AIRSPACE AREAS; AIR TRAFFIC SERVICE ROUTES; AND REPORTING POINTS

■ 1. The authority citation for 14 CFR Part 71 continues to read as follows:

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

**§ 71.1 [Amended]**

■ 2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9U, Airspace Designations and Reporting Points, dated August 18, 2010, and effective September 15, 2010 is amended as follows:

*Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.*

* * * * *

**AWP HI E5 Kalaupapa, HI [New]**

Kalaupapa Airport, HI
(Lat. 21°12′40″ N., long. 156°58′25″ W.)

That airspace extending from 700 feet above the surface within a 6.3-mile radius of the Kalaupapa Airport.

Issued in Seattle, Washington, on October 6, 2010.

**John Warner,**

*Manager, Operations Support Group, Western Service Center.*

[FR Doc. 2010–26095 Filed 10–15–10; 8:45 am]

**BILLING CODE 4910–13–P**

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

### 14 CFR Part 71

**[Docket No. FAA–2010–0386; Airspace Docket No. 10–AWA–1]**

## Revocation of Class C Airspace, Establishment of Class D Airspace, and Modification of Class E Airspace; Columbus, GA

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Final rule.

**SUMMARY:** This action removes the Columbus, GA, Class C airspace area; establishes Class D airspace to replace the Class C airspace; and amends the existing Class E surface area and 700 foot Class E airspace at Columbus, GA. The FAA is taking this action because Columbus Metropolitan Airport no longer meets the criteria required to qualify for a Class C airspace designation. Reconfiguring the airspace facilitates more efficient use of airspace in the Columbus, GA area. A minor correction to the geographic coordinates for Lawson Army Airfield (AAF) also will be made.

**DATES:** *Effective Date:* 0901 UTC, January 13, 2011. The Director of the Federal Register approves this incorporation by reference action under 1 CFR part 51, subject to the annual revision of FAA Order 7400.9 and publication of conforming amendments.

**FOR FURTHER INFORMATION CONTACT:** Paul Gallant, Airspace Regulations and ATC Procedures Group, Office of Airspace Services, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267–8783.

**SUPPLEMENTARY INFORMATION:**

### History

On May 18, 2010, the FAA published in the **Federal Register** a notice of proposed rulemaking to remove the Columbus, GA, Class C airspace area, establish the Columbus, GA, Class D airspace area and modify the existing Class E surface area and the 700 foot Class E airspace area at Columbus, GA (75 FR 27670). Interested parties were invited to participate in this rulemaking effort by submitting written comments on the proposal. No comments were received.

This rule includes a minor correction to the description geographic coordinates of the AAF, Fort Benning, GA, listed in the description of paragraph 6005. With the exception of this correction and editorial changes, this amendment is the same as that proposed in the NPRM.

### The Rule

This action amends Title 14 Code of Federal Regulations (14 CFR) part 71 by removing the Columbus Metropolitan Airport Class C airspace area; establishing a new part-time Class D airspace area to replace the former Class C airspace; and modifying the existing Class E surface area and Class E airspace extending upward from 700 feet above the surface at Columbus, Ga. The radius of the Class E surface area at the airport will be reduced from 5 nautical miles (NM) to 4.4 NM to match the radius of the dimensions of the Class D airspace area, while the radius of the Class E airspace extending upward from 700 feet above the surface at Columbus Metropolitan Airport will be reduced from 10 NM to 6.8 NM. Columbus Metropolitan Airport no longer meets the air traffic volume and passenger enplanements required for a Class C airspace designation.

Class C airspace areas, Class D airspace areas, Class E surface areas and Class E airspace extending upward from 700 feet above the surface, are published in paragraphs 4000, 5000, 6002, and 6005, respectively, of FAA Order 7400.9U dated August 18, 2010, and effective September, 15, 2010, which is incorporated by reference in 14 CFR 71.1. The Class C, D and E airspace area amendments proposed in this document will be published subsequently in the Order.

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. Therefore, this regulation: (1) Is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under Department of Transportation (DOT) Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. 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.

This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of the airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it amends a portion of the terminal airspace structure to enhance the safe and efficient use of the NAS in the vicinity of Columbus, GA.

### Environmental Review

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

### List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

### Adoption of the Amendment

■ In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

## PART 71—DESIGNATION OF CLASS A, B, C, D, AND E AIRSPACE AREAS; AIR TRAFFIC SERVICE ROUTES; AND REPORTING POINTS

■ 1. The authority citation for part 71 continues to read as follows:

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

**§ 71.1 [Amended]**

■ 2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9U, Airspace Designations and Reporting Points, dated August 18, 2010, and effective September 15, 2010, is amended as follows:

*Paragraph 4000 Class C Airspace.*

* * * * *

**ASO GA C Columbus Metropolitan Airport, GA [Removed]**

* * * * *

*Paragraph 5000 Class D Airspace.*

* * * * *

**ASO GA D Columbus, GA [New]**

Columbus Metropolitan Airport, GA

(Lat. 32°30′59″ N., long. 84°56′20″ W.)

That airspace extending upward from the surface to and including 2,900 feet MSL within a 4.4-mile radius of the Columbus Metropolitan Airport; and that airspace within 1 mile each side of the 234° bearing from the airport extending from the 4.4-mile radius to 5 miles south of the airport. This Class D airspace is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory.

* * * * *

*Paragraph 6002 Class E Airspace Designated as Surface Areas.*

* * * * *

**ASO GA E2 Columbus Metropolitan Airport, GA [Amended]**

Columbus Metropolitan Airport
(Lat. 32°30′59″ N., long. 84°56′20″ W.)

Within a 4.4-mile radius of Columbus Metropolitan Airport; and that airspace within 1 mile each side of the 234° bearing from the airport, extending from the 4.4-mile radius to 5 miles south of the airport. This Class E airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory.

* * * * *

*Paragraph 6005 Class E Airspace Areas Extending Upward from 700 feet or More Above the Surface of the Earth.*

* * * * *

**ASO GA E5 Columbus, GA [Amended]**

Columbus Metropolitan Airport, GA
(Lat. 32°30′59″ N., long. 84°56′20″ W.)
Lawson AAF, GA
(Lat. 32°19′54″ N., long. 84°59′14″ W.)
Lawson VOR/DME
(Lat. 32°19′57″ N., long. 84°59′36″ W.)
Lawson LOC
(Lat. 32°20′43″ N., long. 84°59′55″ W.)

That airspace extending upward from 700 feet above the surface within a 6.8-mile radius of Columbus Metropolitan Airport; and within 1 mile each side of the 234° bearing from the airport extending from the 6.8-mile radius to 7.3-miles south of the airport; and within a 7.6-mile radius of Lawson AAF; and within 2.5 miles each side of Lawson VOR/DME 340° radial extending from the 7.6-mile radius to 15 miles north of the VOR/DME; and within 4 miles each side of the Lawson LOC 145° course extending from the 7.6-mile radius to 10.6 miles southeast of Lawson AAF.

Issued in Washington, DC, on October 6, 2010.

**Edith V. Parish,**

*Manager, Airspace and Rules Group.*

[FR Doc. 2010–26094 Filed 10–15–10; 8:45 am]

**BILLING CODE 4910–13–P**

## DEPARTMENT OF TRANSPORTATION

## 14 CFR Part 97

**[Docket No. 30748; Amdt. No. 3395]**

## 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 October 18, 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 October 18, 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 *http://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 October 1, 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 RA DAR 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 |
|---|---|---|---|---|---|---|
| 18–Nov–10 | CQ | SAIPAN ISLAND | FRANCISCO C. ADA/ SAIPAN INTL. | 0/1358 | 9/29/10 | ILS OR LOC/DME RWY 7, AMDT 5B. |
| 18–Nov–10 | CQ | SAIPAN ISLAND | FRANCISCO C. ADA/ SAIPAN INTL. | 0/1359 | 9/29/10 | NDB/DME RWY 25, AMDT 2A |
| 18–Nov–10 | CQ | SAIPAN ISLAND | FRANCISCO C. ADA/ SAIPAN INTL. | 0/1360 | 9/29/10 | NDB/DME RWY 7, AMDT 3A. |
| 18–Nov–10 | OK | POTEAU | ROBERT S KERR | 0/3020 | 9/29/10 | RNAV (GPS) RWY 18, ORIG. |
| 18–Nov–10 | OK | POTEAU | ROBERT S KERR | 0/3021 | 9/29/10 | RNAV (GPS) RWY 36, ORIG. |
| 18–Nov–10 | AR | RUSSELLVILLE | RUSSELLVILLE RGNL | 0/3037 | 9/29/10 | NDB A, AMDT 4B. |
| 18–Nov–10 | OH | JACKSON | JAMES A RHODES | 0/3038 | 9/29/10 | RNAV (GPS) RWY 19, AMDT 1A. |
| 18–Nov–10 | OH | JACKSON | JAMES A RHODES | 0/3039 | 9/29/10 | RNAV (GPS) RWY 1, AMDT 1A. |
| 18–Nov–10 | WI | EAU CLAIRE | CHIPPEWA VALLEY RGNL. | 0/3353 | 9/29/10 | RNAV (GPS) RWY 22, ORIG. |
| 18–Nov–10 | TX | COLEMAN | COLEMAN MUNI | 0/3457 | 9/29/10 | GPS RWY 15, ORIG. |
| 18–Nov–10 | TX | CALDWELL | CALDWELL MUNI | 0/3577 | 9/29/10 | VOR/DME OR GPS A, AMDT 2B. |
| 18–Nov–10 | AR | MC GEHEE | MC GEHEE MUNI | 0/3578 | 9/29/10 | VOR/DME OR GPS A, AMDT 2A. |
| 18–Nov–10 | IA | MASON CITY | MASON CITY MUNI | 0/3700 | 9/29/10 | VOR/DME RWY 18, AMDT 4B. |
| 18–Nov–10 | VA | WAKEFIELD | WAKEFIELD MUNI | 0/4187 | 9/29/10 | NDB RWY 20, AMDT 4C. |
| 18–Nov–10 | NJ | ATLANTIC CITY | ATLANTIC CITY INTL | 0/4595 | 9/29/10 | RADAR–1, AMDT 15. |
| 18–Nov–10 | MN | LITCHFIELD | LITCHFIELD MUNI | 0/6889 | 9/29/10 | VOR/DME RWY 13, ORIG–A. |
| 18–Nov–10 | VA | NORFOLK | NORFOLK INTL | 0/8197 | 9/29/10 | RNAV (GPS) RWY 32, ORIG–A. |
| 18–Nov–10 | VA | NORFOLK | NORFOLK INTL | 0/8198 | 9/29/10 | VOR/DME RWY 5, AMDT 4C. |
| 18–Nov–10 | VA | NORFOLK | NORFOLK INTL | 0/8199 | 9/29/10 | ILS RWY 23, AMDT 6E. |
| 18–Nov–10 | VA | NORFOLK | NORFOLK INTL | 0/8204 | 9/29/10 | ILS OR LOC RWY 5, AMDT 24F. |
| 18–Nov–10 | VA | NORFOLK | NORFOLK INTL | 0/8205 | 9/29/10 | VOR RWY 23, AMDT 8C. |
| 18–Nov–10 | VA | NORFOLK | NORFOLK INTL | 0/8206 | 9/29/10 | RNAV (GPS) RWY 23, ORIG–B. |
| 18–Nov–10 | VA | NORFOLK | NORFOLK INTL | 0/8207 | 9/29/10 | RNAV (GPS) RWY 14, ORIG–A. |
| 18–Nov–10 | VA | NORFOLK | NORFOLK INTL | 0/8208 | 9/29/10 | VOR/DME RWY 32, AMDT 4D. |
| 18–Nov–10 | VA | NORFOLK | NORFOLK INTL | 0/8212 | 9/29/10 | VOR/DME RWY 14, AMDT 2D. |
| 18–Nov–10 | AL | TALLADEGA | TALLADEGA MUNICIPAL. | 0/8343 | 9/29/10 | RNAV (GPS) RWY 3, ORIG. |
| 18–Nov–10 | CA | NAPA | NAPA COUNTY | 0/8360 | 9/29/10 | VOR RWY 6, AMDT 12A. |

[FR Doc. 2010–25834 Filed 10–15–10; 8:45 am]

BILLING CODE 4910–13–P

**DEPARTMENT OF TRANSPORTATION**

**Federal Aviation Administration**

**14 CFR Part 97**

**[Docket No. 30747; Amdt. No. 3394]**

## 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 October 18, 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 October 18, 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 October 1, 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 18 NOV 2010**

Decatur, AL, Pryor Field Rgnl, ILS OR LOC RWY 18, Orig
Decatur, AL, Pryor Field Rgnl, RNAV (GPS) RWY 18, Amdt 1
Meeker, CO, Meeker, RNAV (GPS) RWY 3, Amdt 2
Middletown, DE, Summit, RNAV (GPS) RWY 17, Amdt 2
Middletown, DE, Summit, RNAV (GPS) RWY 35, Amdt 1
Cross City, FL, Cross City, RNAV (GPS) RWY 31, Amdt 1
Cross City, FL, Cross City, RNAV (GPS)–A, Orig
Cross City, FL, Cross City, RNAV (GPS)–B, Orig
Cross City, FL, Cross City, VOR RWY 31, Amdt 19
Cedar Rapids, IA, The Eastern Iowa, ILS OR LOC RWY 9, Amdt 18
Fort Wayne, IN, Smith Field, Takeoff Minimums and Obstacle DP, Amdt 5
Wichita, KS, Wichita Mid Continent, VOR RWY 14, Amdt 1D
Boston, MA, General Edward Lawrence Logan Intl, Takeoff Minimums and Obstacle DP, Amdt 13
Salisbury, MD, Salisbury-Ocean City Wicomico Rgnl, ILS OR LOC RWY 32, Amdt 8
Salisbury, MD, Salisbury-Ocean City Wicomico Rgnl, RNAV (GPS) RWY 5, Amdt 1
Salisbury, MD, Salisbury-Ocean City Wicomico Rgnl, RNAV (GPS) RWY 14, Amdt 1
Salisbury, MD, Salisbury-Ocean City Wicomico Rgnl, RNAV (GPS) RWY 23, Amdt 1
Salisbury, MD, Salisbury-Ocean City Wicomico Rgnl, Takeoff Minimums and Obstacle DP, Amdt 1
Salisbury, MD, Salisbury-Ocean City Wicomico Rgnl, VOR RWY 23, Amdt 10A
Salisbury, MD, Salisbury-Ocean City Wicomico Rgnl, VOR RWY 32, Amdt 10
Monroe City, MO, Capt. Ben Smith Airfield-Monroe City Airport, Takeoff Minimums and Obstacle DP, Orig
Cleveland, MS, Cleveland Muni, NDB OR GPS RWY 17, Amdt 5, CANCELLED
Choteau, MT, Choteau, Takeoff Minimums and Obstacle DP, Amdt 1
Teterboro, NJ, Teterboro, RNAV (GPS)–C, Orig
Massena, NY, Massena Intl-Richards Field, RNAV (GPS) RWY 5, Amdt 2
Massena, NY, Massena Intl-Richards Field, RNAV (GPS) RWY 9, Amdt 1A
Massena, NY, Massena Intl-Richards Field, RNAV (GPS) RWY 23, Amdt 1A
Massena, NY, Massena Intl-Richards Field, RNAV (GPS) RWY 27, Amdt 1A
Millbrook, NY, Sky Acres, RNAV (GPS) RWY 17, Amdt 1A
New York, NY, LaGuardia, COPTER ILS OR LOC RWY 13, Orig
New York, NY, LaGuardia, COPTER ILS OR LOC/DME RWY 22, Amdt 2
New York, NY, LaGuardia, ILS OR LOC RWY 13, Amdt 1
New York, NY, LaGuardia, LOC RWY 31, Amdt 3
New York, NY, LaGuardia, VOR RWY 4, Amdt 3
New York, NY, LaGuardia, VOR/DME–H, Amdt 3
New York, NY, LaGuardia, VOR–F, Amdt 3
Findlay, OH, Findlay, RNAV (GPS) RWY 36, Amdt 1A
Findlay, OH, Findlay, VOR RWY 7, Amdt 12A
Findlay, OH, Findlay, VOR RWY 25, Amdt 5A
Findlay, OH, Findlay, VOR RWY 36, Amdt 6B
Fostoria, OH, Fostoria Metropolitan, NDB RWY 27, Amdt 5A
Fostoria, OH, Fostoria Metropolitan, RNAV (GPS) RWY 27, Amdt 1A
Fostoria, OH, Fostoria Metropolitan, VOR–A, Amdt 4A
Ravenna, OH, Portage County, RNAV (GPS) RWY 27, Orig
Ravenna, OH, Portage County, Takeoff Minimums and Obstacle DP, Orig
Ravenna, OH, Portage County, VOR–A, Amdt 6
Ravenna, OH, Portage County, VOR/DME RNAV OR GPS RWY 27, Amdt 2B, CANCELLED
Roseburg, OR, Roseburg Rgnl, Takeoff Minimums and Obstacle DP, Amdt 6
Mount Pocono, PA, Pocono Mountains Muni, RNAV (GPS) RWY 13, Amdt 2
Mount Pocono, PA, Pocono Mountains Muni, RNAV (GPS) RWY 31, Amdt 1
Mount Pocono, PA, Pocono Mountains Muni, Takeoff Minimums and Obstacle DP, Amdt 2
Mount Pocono, PA, Pocono Mountains Muni, VOR RWY 13, Amdt 7
North Myrtle Beach, SC, Grand Strand, ILS OR LOC/DME RWY 23, Amdt 11A
Brady, TX, Curtis Field, RNAV (GPS) RWY 17, Amdt 1A
Commerce, TX, Commerce Muni, Takeoff Minimums and Obstacle DP, Amdt 2
Commerce, TX, Commerce Muni, VOR/DME–A, Amdt 3
Lancaster, TX, Lancaster Rgnl, Takeoff Minimums and Obstacle DP, Amdt 2
Friday Harbor, WA, Friday Harbor, Takeoff Minimums and Obstacle DP, Amdt 3
Siren, WI, Burnett County, VOR OR GPS RWY 5, Amdt 2B
Solon Springs, WI, Solon Springs Muni, NDB RWY 19, Amdt 2A, CANCELLED

On September 15, 2010 (75 FR 178) the FAA published an Amendment in Docket No. 30743, Amdt 3390 to Part 97 of the Federal Aviation Regulations under section 97.23 and 97.33. The following entries, effective November 18, 2010, is hereby rescinded:

Fort Lauderdale, FL, Fort Lauderdale/Hollywood Intl, VOR RWY 27R, Amdt 12, CANCELLED

[FR Doc. 2010–25842 Filed 10–15–10; 8:45 am]

**BILLING CODE 4910–13–P**

## DEPARTMENT OF HOMELAND SECURITY

### Coast Guard

### 33 CFR Part 117

**[Docket No. USCG–2010–0892]**

### Drawbridge Operation Regulation; Back Bay of Biloxi, Harrison County, MS

**AGENCY:** Coast Guard, DHS.

**ACTION:** Notice of temporary deviation from regulations.

**SUMMARY:** The Commander, Eighth Coast Guard District, has issued a temporary deviation from the regulation governing the operation of the I–110 (HWY 15) bridge across the Back Bay of Biloxi, mile 3.0, between Biloxi and D'Iberville, Harrison County, Mississippi. This deviation is necessary to allow timely bridge rehabilitation to extend the bridge life, optimize traffic and boat operations, and improve overall traffic, boat and pedestrian safety. This deviation allows the bridge to remain closed with limited exception.

**DATES:** This deviation is effective from 12:01 a.m. on January 4, 2011, through 11:59 p.m. on May 30, 2011.

**ADDRESSES:** Documents mentioned in this preamble as being available in the docket are part of docket USCG–2010–0892 and are available online by going to *http://www.regulations.gov,* inserting USCG–2010–0892 in the "Keyword" box and then clicking "Search". They are also available for inspection or copying at the Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** If you have questions on this rule, call or e-mail Mr. Jim Wetherington, Bridge Management Specialist, District 8 Bridge Branch, U.S. Coast Guard; telephone 504–671–2132 e-mail *james.r.wetherington@uscg.mil.* If you have questions on viewing the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202–366–9826.

**SUPPLEMENTARY INFORMATION:** The I–110 (HWY 15) bridge across the Back Bay of Biloxi, mile 3.0, between Biloxi and D'Iberville, Harrison County, Mississippi, has a vertical clearance of 60 feet above mean high water in the closed position. Presently, the draw opens on signal if at least six hours notice is given as required by 33 CFR 117.675(a).

The Mississippi Department of Transportation requests a deviation to allow the bridge to remain closed to marine traffic except for Mondays and Thursdays at 6 a.m. but only with a 72 hour advanced request to open. The request should be made by telephone to 877–486–8044. This deviation will allow the rehabilitation of the bridge to be completed in a timely fashion. This rehab is necessary to extend the bridge life, optimize traffic and boat operations, and improve overall traffic, boat and pedestrian safety. Any vessel that does not require an opening of the drawspan may pass at any time.

In accordance with 33 CFR 117.261(a), Public vessels of the United States and tugs with tow must be passed through the drawspan at any time.

In accordance with 33 CFR 117.31(b)(2), the drawspan shall be opened for vessels in distress where a delay would endanger life or property.

In accordance with 33 CFR 117.35(e), the drawbridge must return to its regular operating schedule immediately at the end of the designated time period.

This deviation from the operating regulations is authorized under 33 CFR 117.35. This deviation may be terminated/cancelled at anytime via Broadcast Notice to Mariners.

Dated: October 5, 2010.

**David M. Frank,**

*Bridge Administrator.*

[FR Doc. 2010–26098 Filed 10–15–10; 8:45 am]

**BILLING CODE 9110–04–P**

## DEPARTMENT OF HOMELAND SECURITY

### Coast Guard

### 33 CFR Part 117

**[Docket No. USCG–2010–0866]**

## Drawbridge Operation Regulation; Des Allemands Bayou, LA

**AGENCY:** Coast Guard, DHS.

**ACTION:** Notice of temporary deviation from regulations.

**SUMMARY:** The Commander, Eighth Coast Guard District, has issued a temporary deviation from the regulation governing the operation of the Burlington Northern Santa Fe Railway swing bridge across Des Allemands Bayou, mile 14.0, in St. Charles and Lafourche Parishes, Louisiana. The deviation is necessary to perform extensive rehabilitation to the bridge. This deviation allows the bridge to remain closed to navigation completely from January 18, 2011 through February 22, 2011.

**DATES:** This deviation is effective from 7 a.m. on Tuesday, January 18, 2011 through 5 p.m. on Tuesday, February 22, 2011.

**ADDRESSES:** Documents mentioned in this preamble as being available in the docket are part of docket USCG–2010–866 and are available online by going to *http://www.regulations.gov,* inserting USCG–2010–0866 in the "Keyword" box and then clicking "Search". They are also available for inspection or copying at the Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** If you have questions on this rule, call or e-mail David Frank, Bridge Administration Branch, Coast Guard; telephone 504–671–2128, e-mail *David.M.Frank@uscg.mil.* If you have questions on viewing the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202–366–9826.

**SUPPLEMENTARY INFORMATION:** The Burlington Northern Santa Fe Railway swing span drawbridge across Bayou Des Allemands, mile 14.0 has a vertical clearance of three feet above mean high water in the closed-to-navigation position and unlimited in the open-to-navigation position. Navigation on the waterway consists of tugs with tows, fishing vessels and recreational craft.

The Burlington Northern Santa Fe Railway requested a temporary deviation for the operation of the drawbridge to accommodate maintenance work, involving replacement of the steel truss members, stringers, floor beams and railroad ties and rails, an extensive but necessary maintenance operation. Presently, the draw opens on signal Monday through Friday from 7 a.m. until 3 p.m. At all other times the draw opens on signal if at least 4 hours notice is given. This work is essential for continued safe operation of the bridge.

The District Commander has, therefore, issued a deviation from the regulations in 33 CFR 117.439(b) authorizing the draw of the Burlington Northern Santa Fe Railroad swing span drawbridge to remain closed to navigation from 7 a.m. on Tuesday, January 18, 2011 through 5 p.m. on Tuesday, February 22, 2011.

In accordance with 33 CFR 117.35(e), the drawbridge must return to its regular operating schedule immediately at the end of the designated time period. This deviation from the operating regulations is authorized under 33 CFR 117.35.

Dated: October 6, 2010.

**David M. Frank,**

*Bridge Administrator.*

[FR Doc. 2010–26100 Filed 10–15–10; 8:45 am]

**BILLING CODE 9110–04–P**

## DEPARTMENT OF HOMELAND SECURITY

### Coast Guard

### 33 CFR Part 165

**[USCG–2010–0864]**

**RIN 1625–AA87**

## Security Zone: Passenger Vessels, Sector Southeastern New England Captain of the Port Zone

**AGENCY:** Coast Guard, DHS.

**ACTION:** Temporary final rule.

**SUMMARY:** The Coast Guard is establishing temporary fixed and moving security zones around passenger vessels in the Sector Southeastern New England Captain of the Port Zone. A fixed security zone will be in effect within a maximum 100-yard radius of any passenger vessel anchored, moored, or in the process of mooring and a moving security zone up to 200 yards for any passenger vessel underway being escorted by Coast Guard or forces under Coast Guard control (such as assisting law enforcement agencies). These zones are needed to protect

passengers, vessels and the public from destruction, loss, or injury from sabotage, subversive acts, or other malicious acts of a similar nature. This temporary final rule is an interim measure while a permanent rulemaking process is pursued separately under docket USCG–2010–0803.

**DATES:** This rule is effective in the CFR from October 18, 2010 until April 1, 2011. This rule is effective with actual notice for purposes of enforcement from September 22, 2010, until 8 a.m. on April 1, 2011.

**ADDRESSES:** Documents indicated in this preamble as being available in the docket are part of docket USCG–2010–0864 and are available online by going to *http://www.regulations.gov,* inserting USCG–2010–0864 in the "Keyword" box, and then clicking "Search". They are also available for inspection or copying at the Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** If you have questions on this temporary rule, call or e-mail Mr. Edward G. LeBlanc at Sector Southeastern New England; telephone (401) 435–2351, e-mail *Edward.G.LeBlanc@uscg.mil.* If you have questions on viewing the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202–366–9826.

**SUPPLEMENTARY INFORMATION:**

## Regulatory Information

The Coast Guard is issuing this temporary final rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are "impracticable, unnecessary, or contrary to the public interest." Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because these temporary security zones are a necessary and key component of the Coast Guard's maritime security mission in Southeastern New England, and a separate notice of proposed rulemaking will be pursued, where the public will be afforded ample opportunity to comment. Delaying the effective date of this rule to provide a public notice and comment period for this temporary final rule is contrary to national security concerns and the public interest.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. Any delay encountered in this temporary rule's effective date would be contrary to the public interest given the need to protect passenger vessels from destruction, loss, or injury from sabotage, subversive acts, or other malicious acts of a similar nature.

## Basis and Purpose

The Coast Guard's maritime security mission includes the requirement to protect passenger vessels from destruction, loss, or injury from sabotage, subversive acts, or other malicious acts of a similar nature. Protecting these vessels from potential threats or harm while transiting, or while moored, at any berth, or at anchor in the waters of Sector Southeastern New England Captain of The Port Zone is necessary to safeguard passengers, vessels, and the general public.

## Discussion of Rule

This regulation establishes temporary fixed security zones that will be in effect in the navigable waters within a maximum 100-yard radius around passenger vessels that are moored, or in the process of mooring, at any berth or at anchor within the Sector Southeastern New England Captain of the Port Zone. This regulation also establishes fixed moving security zones that will be in effect in the navigable waters up to 200 yards around escorted passenger vessels while underway in the navigable waters within the Sector Southeastern New England Captain of the Port Zone. The definition of passenger vessels to which these zones apply are passenger vessels over 100 gross tons authorized to carry more than 500 passengers for hire making voyages, any part of which is on the high seas, and for which passengers are embarked, disembarked or pay a port call, in the Sector Southeastern New England Captain of the Port Zone. These high-capacity passenger vessels typically are greater than 200 feet in length and have multiple decks. These security zones are necessary to safeguard passenger vessels, persons aboard passenger vessels, the public, waterways, ports, and adjacent facilities in the Sector Southeastern New England Captain of the Port Zone.

## Regulatory Analyses

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

### Regulatory Planning and Review

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

The Coast Guard expects the economic impact of this rule to be so minimal that a full regulatory evaluation under the regulatory policies and procedures of DHS is unnecessary. The effect of this rule will not be significant. Temporary moving security zones will only be in effect while escorted passenger vessels are underway, and the zone will not restrict any waterway for a long period of time. The vast majority of passenger vessel transits in the waters of Sector Southeastern New England Captain of the Port Zone are less than two hours. Temporary fixed security zones around passenger vessels that are moored, or in the process of mooring, at any berth or at anchor are anticipated to have minimal impact on vessel traffic because such vessels anchored or moored in designated anchorages or at waterfront facilities are away from navigation channels used by mariners. Additionally, vessels may be permitted to enter these security zones with expressed permission of the Captain of the Port, minimizing any adverse impact. It has been determined that the necessary security enhancements provided by this rule greatly outweigh any potential negative impacts.

### Small Entities

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

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

This rule may affect the following entities, some of which may be small entities: The owners and operators of vessels intending to transit the waters of Sector Southeastern New England Captain of the Port Zone while the

security zones are enforced. These security zones will not have a significant impact on a substantial number of small entities for the following reasons: The moving security zones will only be enforced when an escorted passenger vessel is underway, and such transits in the Sector Southeastern New England Captain of the Port Zone are typically less than two hours in duration; the fixed security zones around passenger vessels moored, or in the process of mooring, at a berth or at anchorage, allow for vessel traffic to transit the navigable waters outside the zone. Additionally, vessels may be permitted to enter these security zones with the express prior permission of the Captain of the Port, minimizing any adverse impact.

**Assistance for Small Entities**

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we offer to assist small entities in understanding the rule so that they could better evaluate its effects on them and participate in the rulemaking process. If you think your small business or organization would be affected by this rule and you have any questions concerning its provisions or options for compliance, please call Mr. Edward G. Leblanc at (401) 435–2351.

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

**Collection of Information**

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

**Federalism**

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

**Unfunded Mandates Reform Act**

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

**Taking of Private Property**

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

**Civil Justice Reform**

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

**Protection of Children**

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

**Indian Tribal Governments**

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

**Energy Effects**

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

**Technical Standards**

The National Technology Transfer and Advancement Act (NTTAA) (15 U.S.C. 272 note) directs agencies to use voluntary consensus standards in their regulatory activities unless the agency provides Congress, through the Office of Management and Budget, with an explanation of why using these standards would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.,* specifications of materials, performance, design, or operation; test methods; sampling procedures; and related management systems practices) that are developed or adopted by voluntary consensus standards bodies. This rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

**Environment**

We have analyzed this rule under Department of Homeland Security Management Directive 023–01 and Commandant Instruction M16475.lD, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have concluded this action is one of a category of actions which do not individually or cumulatively have a significant effect on the human environment. This rule is categorically excluded, under figure 2–1, paragraph (34)(g) of the Instruction. This rule fits the category selected from paragraph (34)(g), as it establishes a temporary security zone for a limited period of time. A final "Environmental Analysis Check List" and a final "Categorical Exclusion Determination" will be available in the docket where indicated under **ADDRESSES**.

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

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

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

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

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

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

■ 2. Add § 165.T01–0864 to read as follows:

**§ 165.T01–0864 Security Zone: Escorted Passenger Vessels, Sector Southeastern New England Captain of the Port Zone.**

(a) *Location.* The following areas are security zones: All navigable waters within the Sector Southeastern New England Captain of the Port Zone, extending from the surface to the sea floor, that are:

(1) Within a maximum 200-yard radius of any passenger vessel that is underway and is under escort of U.S. Coast Guard law enforcement personnel, or

(2) Within a maximum 100-yard radius of any passenger vessel that is anchored, at any berth, moored, or in the process of mooring.

(b) *Definitions.* As used in this section—

*Designated representative* means any Coast Guard commissioned, warrant, or petty officer who has been designated by the Captain of the Port to act on his behalf. The on-scene representative may be on a Coast Guard vessel, or onboard a Federal, State, or local agency vessel that is authorized to act in support of the Coast Guard.

*Passenger vessel* means any passenger vessel over 100 gross tons authorized to carry more than 500 passengers for hire making voyages, any part of which is on the high seas, and for which passengers are embarked, disembarked or pay a port call, in the Sector Southeastern New England Captain of the Port Zone.

*Sector Southeastern New England Captain of the Port Zone* means the area defined in 33 CFR 3.05–20.

(c) *Notification.* Sector Southeastern New England Captain of the Port will give actual notice to mariners for the purpose of enforcement of this temporary security zone. In addition, the Coast Guard will broadcast the area designated as a security zone for the duration of the enforcement period via Broadcast Notice to Mariners.

(d) *Effective and enforcement period.* This rule is effective with actual notice for purposes of enforcement from September 22, 2010, through 8 a.m. on April 1, 2011.

(c) *Regulations.* (1) In accordance with the general regulations in § 165.33 of this part, entry into or movement within these zones is prohibited unless authorized by the Captain of the Port Southeastern New England or his designated representative.

(2) All persons and vessels must comply with the instructions of the Captain of the Port or his designated representative. Emergency response vessels are authorized to move within the zone, but must abide by the restrictions imposed by the Captain of the Port or his designated representative.

(3) No person may swim upon or below the surface of the water within the boundaries of these security zones unless previously authorized by the Captain of the Port or his designated representative.

(4) Upon being hailed by a U.S. Coast Guard vessel or his designated representative, by siren, radio, flashing light or other means, the operator of the vessel shall proceed as directed.

(5) Vessel operators desiring to enter or operate within the security zone shall contact the Captain of the Port or his designated representative via VHF channel 16 to obtain permission to do so.

Dated: September 22, 2010.

**V.B. Gifford, Jr.,**

*Captain, U.S. Coast Guard, Captain of the Port, Southeastern New England.*

[FR Doc. 2010–26099 Filed 10–15–10; 8:45 am]

**BILLING CODE 9110–04–P**

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

**[EPA–R03–OAR–2010–0319; FRL–9211–6]**

### Approval and Promulgation of Air Quality Implementation Plans; Pennsylvania; Amendment to Consumer Products and Architectural and Industrial Maintenance Coatings Regulations

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

**ACTION:** Final rule.

**SUMMARY:** EPA is approving a State Implementation Plan (SIP) revision submitted by the Commonwealth of Pennsylvania concerning amendments to the Pennsylvania Consumer Products and Architectural and Industrial Maintenance Coatings Regulations. The SIP revision amends 25 *Pa. Code* Chapter 130, Subchapters B and C (relating to consumer products and architectural and industrial maintenance (AIM) coatings) in order to reduce volatile organic compounds (VOCs). This action is being taken under the Clean Air Act (CAA).

**DATES:** *Effective Date:* This final rule is effective on November 17, 2010.

**ADDRESSES:** EPA has established a docket for this action under Docket ID Number EPA–R03–OAR–2010–0319. All documents in the docket are listed in the *http://www.regulations.gov* Web site. Although listed in the electronic docket, some information is not publicly available, i.e., confidential business information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through *http://www.regulations.gov* or in hard copy for public inspection during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Copies of the State submittal are available at the Pennsylvania Department of Environmental Protection, Bureau of Air Quality Control, P.O. Box 8468, 400 Market Street, Harrisburg, Pennsylvania 17105.

**FOR FURTHER INFORMATION CONTACT:** Gregory Becoat, (215) 814–2036, or by e-mail at *becoat.gregory@epa.gov.*

**SUPPLEMENTARY INFORMATION:**

#### I. Background

On June 21, 2010 (75 FR 34964), EPA published a notice of proposed rulemaking (NPR) for the Commonwealth of Pennsylvania. The NPR proposed approval of a revision of the Pennsylvania SIP that amends 25 *Pa. Code* Chapter 130, Subchapters B by adding VOC content limits for an additional 11 categories of consumer products and revising the VOC content limits for one category of consumer products currently regulated. The NPR also proposed approval of amendments to the SIP that add definitions for approximately 30 new terms and amends definitions for approximately 75 existing terms in order to provide clarity. Additionally, the term "VOC-volatile organic compound" is added to Subchapter B. The NPR proposed approval of a revision to the SIP that changes the definition of the term "VOC—volatile organic compound" in Subchapter C (relating to AIM coatings) to mirror the definition of the term in 25 *Pa. Code* Chapter 121 (relating to definitions). EPA received no comments on the NPR that proposed approval of Pennsylvania's SIP revision. The formal SIP revision was submitted by the Commonwealth of Pennsylvania on March 11, 2009.

**II. Summary of SIP Revision**

This SIP revision makes of the following amendments:

1. Adds and/or amends definitions, terms, and sections in 25 *Pa. Code* Chapter 130, Subchapters B and C for clarity, style, format, and consistency with the Ozone Transport Commission Model Rule and Federal definitions.

2. Adds and/or amends sections in 25 *Pa. Code* Chapter 130, Subchapter B in order to incorporate future changes in test procedures; deletes an unnecessary reference to a California regulatory provision; deletes and moves definitions and terms; allows for the sell-through of product manufactured prior to applicable effective dates; updates the product dating; establishes the lowest applicable VOC limit requirements; requires additional information on product containers; and establishes requirements for a variance or alternative control plan (ACP).

3. Establishes under 25 *Pa. Code* Chapter 130, Subchapter B, applicability to any person who sells, supplies, offers for sale, or manufactures consumer products on and after applicable compliance dates.

4. Establishes under 25 *Pa. Code* Chapter 130, Subchapter B, the percentage of VOC by weight that cannot be exceeded for consumer products that are sold, supplied, offered for sale or manufactured for sale in the Commonwealth of Pennsylvania, and lists exemptions from the VOC limits. The rule also contains requirements for the following: (1) Products registered under Federal Insecticide, Fungicide and Rodenticide Act, (2) products requiring dilution, (3) sell-through of products, (4) aerosols adhesives, (5) charcoal lighter materials, and (6) floor wax strippers.

5. Establishes under 25 *Pa. Code* Chapter 130, Subchapter B, exemptions for the following: (1) Products for shipment and use outside the Commonwealth, (2) antiperspirants and deodorants, (3) products registered under FIFRA, (4) air fresheners, (5) adhesives, (6) bait station insecticides, and (7) fragrances.

6. Establishes under 25 *Pa. Code* Chapter 130, Subchapter B, applicability for ACPs for consumer products, criteria for innovative products exemption and requirements for waiver requests. The rule also contains grounds for requesting a variance, as well as applicability for ACPs for consumer products. ACPs for consumer products are provided by allowing responsible parties the option to voluntarily enter into separate ACP agreements for the consumer products mentioned above. In addition, the rule contains the following administrative requirements: (1) Product dating, (2) most restrictive limit, (3) labeling, and (4) recordkeeping and reporting, as well as test methods for demonstrating compliance.

7. Establishes under 25 *Pa. Code* Chapter 130, Subchapter C, the meaning of "VOC—volatile organic compound," unless the context clearly indicates otherwise.

Further details of the Commonwealth of Pennsylvania's regulation revisions can be found in a Technical Support Document prepared for the June 21, 2010 proposed rulemaking action.

**III. Final Action**

EPA is approving the Pennsylvania SIP revision that amends 25 *Pa. Code* Chapter 130, Subchapters B and C (relating to consumer products and AIM coatings) in order to reduce VOCs.

**IV. Statutory and Executive Order Reviews**

*A. General Requirements*

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the CAA 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 action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- Is not a "significant regulatory action" subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the 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.

*B. Submission to Congress and the Comptroller General*

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

*C. Petitions for Judicial Review*

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by December 17, 2010. Filing a petition for reconsideration by the Administrator of this final rule pertaining to Pennsylvania's amendment to 25 *Pa. Code* Chapter 130, Subchapters B and C (relating to Pennsylvania's Consumer Products and AIM Coatings Regulations), does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action.

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

Environmental protection, Air pollution control, Incorporation by reference, Volatile organic compounds, Ozone, Reporting and recordkeeping requirements.

Dated: September 17, 2010.

**W.C. Early,**

*Acting, Regional Administrator, Region III.*

■ 40 CFR part 52 is amended as follows:

## PART 52—[AMENDED]

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

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

## Subpart NN—Pennsylvania

■ 2. In § 52.2020, the table in paragraph (c)(1) is amended by:

■ a. Adding entries for Section 130.217 and 130.338.

■ b. Revising entries for Sections 130.201, 130.202, 130.211, 130.213, 130.214, 130.215, 130.331, 130.332, 130.334, 130.335, 130.371, 130.372, 130.373, 130.411, 130.412, 130.414, 130.452, 130.453, 130.454, 130.455, 130.457, 130.458, 130.460, 130.462, 130.465, 130.471, 130.602.

The amendments read as follows:

**§ 52.2020 Identification of plan.**

* * * * *

(c) * * *

(1) * * *

| State citation | Title/subject | State effective date | EPA approval date | Additional explanation/§ 52.2063 citation |
|---|---|---|---|---|
| **TITLE 25. ENVIRONMENTAL PROTECTION ARTICLE III. AIR RESOURCES** | | | | |
| * | * | * | * | * |
| **Chapter 130—Standards for Products** | | | | |
| * | * | * | * | * |
| **Subchapter B—Consumer Products General Provisions** | | | | |
| Section 130.201 | Applicability | 10/11/08 | October 18, 2010 [Insert page number where the document begins]. | |
| Section 130.202 | Definitions | 10/11/08 | October 18, 2010 [Insert page number where the document begins]. | |
| **Standard** | | | | |
| Section 130.211 | Table of standards | 10/11/08 | October 18, 2010 [Insert page number where the document begins]. | |
| * | * | * | * | * |
| Section 130.213 | Products registered under FIFRA. | 10/11/08 | October 18, 2010 [Insert page number where the document begins]. | |
| Section 130.214 | Requirements for charcoal lighter materials. | 10/11/08 | October 18, 2010 [Insert page number where the document begins]. | |
| Section 130.215 | Requirements for aerosol adhesives. | 10/11/08 | October 18, 2010 [Insert page number where the document begins]. | |
| * | * | * | * | * |
| Section 130.217 | Sell-through of products | 10/11/08 | October 18, 2010 [Insert page number where the document begins]. | Adds section to allow for the sell-through of product manufactured prior to applicable effective dates. |
| **Exemptions** | | | | |
| Section 130.331 | Products for shipment and use outside this Commonwealth. | 10/11/08 | October 18, 2010 [Insert page number where the document begins]. | |
| Section 130.332 | Antiperspirants and deodorants | 10/11/08 | October 18, 2010 [Insert page number where the document begins]. | |
| * | * | * | * | * |
| Section 130.334 | Products registered under FIFRA. | 10/11/08 | October 18, 2010 [Insert page number where the document begins]. | |

| State citation | Title/subject | State effective date | EPA approval date | Additional explanation/§ 52.2063 citation |
|---|---|---|---|---|
| Section 130.335 ..... | Air fresheners ..... | 10/11/08 | October 18, 2010 [Insert page number where the document begins]. | |
| * | * * | * | * | * * |
| Section 130.338 ..... | Fragrances ..... | 10/11/08 | October 18, 2010 [Insert page number where the document begins]. | Added section. |
| * | * * | * | * | * * |
| | **Administrative Requirements** | | | |
| Section 130.371 ..... | Code-dating ..... | 10/11/08 | October 18, 2010 [Insert page number where the document begins]. | |
| Section 130.372 ..... | Most restrictive limit ..... | 10/11/08 | October 18, 2010 [Insert page number where the document begins]. | |
| Section 130.373 ..... | Additional labeling requirements for aerosol adhesives. | 10/11/08 | October 18, 2010 [Insert page number where the document begins]. | |
| * | * * | * | * | * * |
| | **Variances** | | | |
| Section 130.411 ..... | Application for variance ..... | 10/11/08 | October 18, 2010 [Insert page number where the document begins]. | |
| Section 130.412 ..... | Variance orders ..... | 10/11/08 | October 18, 2010 [Insert page number where the document begins]. | |
| * | * * | * | * | * * |
| Section 130.414 ..... | Modification of variance ..... | 10/11/08 | October 18, 2010 [Insert page number where the document begins]. | |
| * | * * | * | * | * * |
| | **ACP for Consumer Products** | | | |
| * | * * | * | * | * * |
| Section 130.452 ..... | Exemption ..... | 10/11/08 | October 18, 2010 [Insert page number where the document begins]. | |
| Section 130.453 ..... | Request for exemption ..... | 10/11/08 | October 18, 2010 [Insert page number where the document begins]. | |
| Section 130.454 ..... | Application for an ACP ..... | 10/11/08 | October 18, 2010 [Insert page number where the document begins]. | |
| Section 130.455 ..... | Recordkeeping and availability of requested information. | 10/11/08 | October 18, 2010 [Insert page number where the document begins]. | |
| * | * * | * | * | * * |
| Section 130.457 ..... | Limited-use surplus reduction credits for early reformulations of ACP products. | 10/11/08 | October 18, 2010 [Insert page number where the document begins]. | |
| Section 130.458 ..... | Reconciliation of shortfalls ..... | 10/11/08 | October 18, 2010 [Insert page number where the document begins]. | |
| * | * * | * | * | * * |
| Section 130.460 ..... | Modifications that require Department preapproval. | 10/11/08 | October 18, 2010 [Insert page number where the document begins]. | |

| State citation | Title/subject | State effective date | EPA approval date | Additional explanation/§ 52.2063 citation |
|---|---|---|---|---|
| * | * * | * | * | * * |
| Section 130.462 ..... | Modification of an ACP by the Department. | 10/11/08 | October 18, 2010 [Insert page number where the document begins]. | |
| * | * * | * | * | * * |
| Section 130.465 ..... | Other applicable requirements ... | 10/11/08 | October 18, 2010 [Insert page number where the document begins]. | |
| **Public Hearing Requirements** | | | | |
| Section 130.471 ..... | Public hearings ..... | 10/11/08 | October 18, 2010 [Insert page number where the document begins]. | |
| **Subchapter C—Architectural and Industrial Maintenance Coatings** | | | | |
| * | * * | * | * | * * |
| Section 130.602 ..... | Definitions ..... | 10/11/08 | October 18, 2010 [Insert page number where the document begins]. | |
| * | * * | * | * | * * |

* * * * *

[FR Doc. 2010–25317 Filed 10–15–10; 8:45 am]

**BILLING CODE 6560–50–P**

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

### 50 CFR Part 648

**[Docket No. 100803321–0477–01]**

**RIN 0648–BA08**

## Fisheries of the Northeastern United States; Atlantic Sea Scallop Fishery; Framework Adjustment 21; Correction

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

**ACTION:** Correcting amendments.

**SUMMARY:** On June 28, 2010, NMFS published in the **Federal Register** the final rule to implement Framework Adjustment 21 (Framework 21) to the Atlantic Sea Scallop Fishery Management Plan (Scallop FMP), which established management measures for the 2010 scallop fishing year (FY). Following publication, NMFS identified errors, omissions, and possible need for clarification of some provisions. In addition to certain technical and wording clarifications, the Framework 21 final rule inadvertently did not incorporate a proposed regulatory provision pertaining to how scallop access area trip overages incurred during the interim period between the March 1, 2010, start of the fishing year (FY) and the implementation of Framework 21 FY 2010 management measures would be applied to FY 2011. This provision was described in the proposed rule and NMFS subsequently responded to specific comments on this provision and provided greater detail of this measure in the preamble of the final rule. However, the regulatory text was inadvertently excluded. In addition, the Framework 21 final rule inadvertently deleted regulations pertaining to limited access general category (LAGC) possession and landing limits promulgated in the final rule implementing Amendment 11 to the Scallop FMP that published in the **Federal Register** on April 24, 2008. This correcting amendment corrects these errors.

**DATES:** Effective October 18, 2010.

**FOR FURTHER INFORMATION CONTACT:** Emily Bryant, Fishery Policy Analyst, (978) 281–9244.

**SUPPLEMENTARY INFORMATION:** On June 28, 2010, the final rule for Framework 21 published in the **Federal Register** (75 FR 36559). The purpose of Framework 21, developed by the New England Fishery Management Council, was to set scallop management measures for FY 2010. The final rule to Framework 21 also included revisions to regulatory text at 50 CFR part 648 in order to remove or clarify text that was duplicative and unnecessary, outdated, or unclear.

This action corrects errors and omissions, and provides clarification in the final rule for Framework 21. Because Framework 21 was not implemented by the start of the FY on March 1, 2010, and the regulations in effect at the start of FY 2010 were inconsistent with Framework 21 specifications, the preamble to the proposed and final rules discussed how FY 2010 overages in scallop days-at-sea (DAS), access area trips, and possession limits incurred prior to Framework 21's effectiveness would be applied to FY 2011 allocations. NMFS received one comment specifically addressing the provision for Elephant Trunk Access Area (ETAA) trip overages for limited access full-time scallop vessels during the comment period on the proposed rule and, based on this comment, NMFS intended to clarify this provision in the final rule. However, the specific reference to the ETAA trip overage provision was inadvertently omitted from the regulatory text. This action corrects this error by including the regulatory text to this specific provision in § 648.60.

This action also makes minor editorial revisions to the regulatory text at §§ 648.14(i)(2)(i)(G) and 648.53(h)(5)(iv)(A) to ensure that the regulatory language incorporated through the Framework 21 final rule is consistent with the language in other sections of the regulations. This action also corrects the title of a required vessel monitoring system (VMS) form for LAGC Northern Gulf of Maine (NGOM) and Individual Fishing Quota

(IFQ) vessels at § 648.10(f)(4)(ii), to be consistent with other references to this form in the regulations, as well as with the current designation used in on-board VMS units.

Finally, this action reinstates regulatory language pertaining to LAGC possession and landing limits at § 648.14(i)(4)(i)(B)–(H), originally incorporated into the regulations through the final rule to Amendment 11 to the Scallop FMP (April 14, 2008; 73 FR 20090). These prohibitions were inadvertently deleted due to inaccurate regulatory instructions provided in both the proposed (April 27, 2010; 75 FR 22073) and final rules to implement Framework 21.

**Classification**

Pursuant to 5 U.S.C. 553(b)(B), the Assistant Administrator for Fisheries, NOAA, finds good cause to waive prior notice and opportunity for additional public comment for this action because any delay of this action would be unnecessary, impracticable, or contrary to the public interest. This correcting amendment includes editorial revisions that make only minor, non-substantive changes in order to clarify the regulations and alleviate unnecessary confusion. The remaining revisions reflect the measures detailed in the preamble of the proposed rule for Framework 21, for which the opportunity for public comment was already given. The provision regarding FY 2010 ETAA access area trip overages was specifically addressed in the response to comments in the Framework 21 final rule and further described in detail in that rule's preamble. This provision was intended to be included in the final rule and was only unintentionally excluded. In addition, the inaccurate regulatory instructions which inadvertently deleted the prohibitions at § 648.14(i)(4)(i)(B)–(H) were available in the proposed rule and the public had the opportunity to provide comments on this error at that time. This deletion was also unintentional. One comment was received during the comment period for Framework 21 in general support of NMFS initiating general revisions to clarify unclear text, implying support for reinstating inadvertently-deleted text that may result in further unintended confusion. For these reasons, there is good cause to waive prior notice and opportunity for additional public comment so that these errors may be corrected, and public confusion avoided, without delay.

Moreover, pursuant to 5 U.S.C. 553(d), the Assistant Administrator finds good cause to waive the 30-day delay in effective date for the reasons given above. Most of these revisions make only minor, non-substantive changes and do not change operating practices in the fishery. The immediate publication of the correct information regarding the ETAA overage provision for full-time scallop vessels and the prohibitions for possession and landing limits for LAGC NGOM and IFQ vessels would alleviate confusion among industry members regarding the final FY 2010 management measures to the Scallop FMP.

Because prior notice and opportunity for public comment are not required for this rule by 5 U.S.C. 553, or any other law, the analytical requirements of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.,* are inapplicable.

This final rule is exempt from review under Executive Order 12866.

**List of Subjects in 50 CFR Part 648**

Fisheries, Fishing, Recordkeeping and reporting requirements.

Dated: October 13, 2010.

**John Oliver,**

*Deputy Assistant Administrator for Operations, National Marine Fisheries Service.*

■ For the reasons explained in the preamble, 50 CFR part 648 is corrected by making the following correcting amendments:

## PART 648—FISHERIES OF THE NORTHEASTERN UNITED STATES

■ 1. The authority citation for part 648 continues to read as follows:

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

■ 2. In § 648.10, paragraph (f)(4)(ii) is revised to read as follows:

**§ 648.10 VMS and DAS requirements for vessel owners/operators.**

* * * * *

(f) * * *

(4) * * *

(ii) *Scallop Pre-Landing Notification Form for IFQ and NGOM vessels.* Using the Scallop Pre-Landing Notification Form, a vessel issued an IFQ or NGOM scallop permit must report through VMS the amount of any scallops kept on each trip declared as a scallop trip, including declared scallop trips where no scallops were landed. In addition, vessels with an IFQ or NGOM permit must submit a Scallop Pre-Landing Notification Form on trips that are not declared as scallop trips, but on which scallops are kept incidentally. A limited access vessel that also holds an IFQ or NGOM permit must submit the Scallop Pre-Landing Notification Form only when fishing under the provisions of the vessel's IFQ or NGOM permit. VMS Scallop Pre-Landing Notification forms must be submitted no less than 6 hr prior to crossing the VMS Demarcation Line on the way back to port, and must include the amount of scallop meats or bushels to be landed, the estimated time of arrival in port, the port at which the scallops will be landed, and the VTR serial number recorded from that trip's VTR. If the scallop harvest ends less than 6 hr prior to landing, then the Scallop Pre-Landing Notification form must be submitted immediately upon leaving the fishing grounds.

* * * * *

■ 3. In § 648.14, paragraphs (i)(2)(vi)(G) and (i)(4)(i) are revised to read as follows:

**§ 648.14 Prohibitions.**

* * * * *

(i) * * *

(2) * * *

(vi) * * *

(G) Fish for, possess, or retain more than a combined total of 36,000 lb (16,329 kg) of scallops from the Delmarva and Elephant Trunk Access Areas specified in § 648.59(a) and (e) during the period June 15 through August 31. This restriction does not include the additional possession allowance to defray the cost of carrying an observer, as specified in § 648.60(d), that occurs during observed trips between June 15 through August 31.

* * * * *

(4) * * *

(i) *Possession and landing.* (A) Fish for or land per trip, or possess at any time, in excess of 400 lb (181.4 kg) of shucked, or 50 bu (17.6 hL) of in-shell scallops shoreward of the VMS Demarcation Line, unless the vessel is carrying an observer as specified in § 648.11 while participating in the Area Access Program specified in § 648.60 and an increase in the possession limit is authorized by the Regional Administrator and not exceeded by the vessel, as specified in §§ 648.52(g) and 648.60(d)(2).

(B) Fish for or land per trip, or possess at any time, in excess of 200 lb (90.7 kg) of shucked or 25 bu (8.8 hL) of in-shell scallops in the NGOM scallop management area, unless the vessel is seaward of the VMS Demarcation Line and in possession of no more than 50 bu (17.6 hL) of in-shell scallops, or when the vessel is not declared into the NGOM scallop management area and is transiting the NGOM scallop management area with gear properly stowed and unavailable for immediate use in accordance with § 648.23.

(C) Possess more than 100 bu (35.2 hL) of in-shell scallops seaward of the

VMS Demarcation Line and not participating in the Access Area Program, or possess or land per trip more than 50 bu (17.6 hL) of in-shell scallops shoreward of the VMS Demarcation Line, unless exempted from DAS allocations as provided in § 648.54.

(D) Possess more than 50 bu (17.6 hL) of in-shell scallops, as specified in § 648.52(d), outside the boundaries of a Sea Scallop Access Area by a vessel that is declared into the Access Area Program as specified in § 648.60.

(E) Fish for, possess, or land scallops after the effective date of a notification in the **Federal Register** that the quarterly TAC specified in § 648.53(a)(8) has been harvested.

(F) Fish for, possess, or land scallops in excess of a vessel's IFQ.

(G) Fish for, possess, or land more than 40 lb (18.1 kg) of shucked scallops, or 5 bu (1.76 hL) of in-shell scallops shoreweard of the VMS Demarcation Line, or 10 bu (3.52 hL) of in-shell scallops seaward of the VMS Demarcation Line, when the vessel is not declared into the IFQ scallop fishery, unless the vessel is fishing in compliance with all of the requirements of the State waters exemption program, specified at § 648.54.

(H) Land scallops more than once per calendar day.

* * * * *

■ 4. In § 648.53, paragraph (h)(5)(iv)(A) is revised to read as follows:

**§ 648.53 Target total allowable catch, DAS allocations, and individual fishing quotas.**

* * * * *

(h) * * *

(5) * * *

(iv) * * *

(A) *Application information requirements.* An application to transfer IFQ must contain at least the following information: Transferor's name, vessel name, permit number, and official number or State registration number; transferee's name, vessel name, permit number, and official number or State registration number; total price paid for purchased IFQ; signatures of transferor and transferee; and date the form was completed. In addition, applications to temporarily transfer IFQ must indicate the amount, in pounds, of the IFQ allocation transfer, which may not be less than 100 lb (45 kg) unless that value reflects the total IFQ amount remaining on the transferor's vessel, or the entire IFQ allocation. Information obtained from the transfer application will be held confidential, and will be used only in summarized form for management of the fishery. If applicable, an application for a permanent IFQ transfer must be accompanied by verification, in writing, that the transferor either has requested cancellation of all other limited access Federal fishing permits, or has applied for a transfer of all of its limited access permits in accordance with the vessel replacement restrictions under § 648.4.

* * * * *

■ 5. In § 648.60, paragraph (a)(3)(i)(A) is revised to read as follows:

**§ 648.60 Sea scallop area access program requirements.**

(a) * * *

(3) * * *

(i) * * *

(A) Except as provided in paragraph (c) of this section, paragraphs (a)(3)(i)(B) through (E) of this section specify the total number of trips that a limited access scallop vessel may take into Sea Scallop Access Areas during applicable seasons specified in § 648.59. The number of trips per vessel in any one Sea Scallop Access Area may not exceed the maximum number of trips allocated for such Sea Scallop Access Area as specified in § 648.59, unless the vessel owner has exchanged a trip with another vessel owner for an additional Sea Scallop Access Area trip, as specified in paragraph (a)(3)(ii) of this section, or has been allocated a compensation trip pursuant to paragraph (c) of this section. If, during the interim period between March 1, 2010, and the implementation of trip allocations specified in this section, a full-time limited access vessel takes more than the number of Elephant Trunk Access Area trips specified in this section, the trip overage will be deducted from the vessel's 2011 access area trip allocation. The deduction would be taken from the vessel's Elephant Trunk Access Area trip allocation if that area is open in 2011. If the Elephant Trunk Access Area is not open in 2011, vessel owners will be given the opportunity to select the access area from which the trip overage would be deducted, with NMFS determining the access area if the vessel owner fails to respond.

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[FR Doc. 2010–26196 Filed 10–15–10; 8:45 am]

BILLING CODE 3510–22–P

# Proposed Rules

Federal Register
Vol. 75, No. 200
Monday, October 18, 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.

## DEPARTMENT OF AGRICULTURE

### Agricultural Marketing Service

### 7 CFR Part 989

**[Doc. No. AMS–FV–10–0044; FV10–989–2 PR]**

## Raisins Produced From Grapes Grown in California; Use of Estimated Trade Demand To Compute Volume Regulation Percentages

**AGENCY:** Agricultural Marketing Service, USDA.

**ACTION:** Withdrawal of proposed rule.

**SUMMARY:** This action withdraws a proposed rule published in the **Federal Register** on August 6, 2010 (75 FR 47490), on the use of an estimated trade demand figure to compute volume regulation percentages for 2010–11 crop Natural (sun-dried) Seedless (NS) raisins covered under the Federal marketing order for California raisins (order). The order regulates the handling of raisins produced from grapes grown in California and is administered locally by the Raisin Administrative Committee (committee). The proposal provided parameters for implementing volume regulations for 2010–11 NS raisins for the purpose of maintaining the industry's export program and stabilizing the domestic market. Based upon comments in response to the proposed rule, conditions in the industry, the change in the worldwide raisin outlook, and the lack of industry support for an estimated trade demand, the proposed rule is being withdrawn.

**FOR FURTHER INFORMATION CONTACT:** Terry Vawter, Senior Marketing Specialist or Kurt J. Kimmel, Regional Manager, California Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA; Telephone: (559) 487–5901, Fax: (559) 487–5906, or E-mail: *Terry.Vawter@ams.usda.gov* or *Kurt.Kimmel@ams.usda.gov*.

Small businesses may request information on complying with this regulation by contacting Antoinette Carter, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue, SW., STOP 0237, Washington, DC 20250–0237; Telephone: (202) 720–2491, Fax: (202) 720–8938, or E-mail: *Antoinette.Carter@ams.usda.gov*.

**SUPPLEMENTARY INFORMATION:** Marketing Agreement and Order No. 989, both as amended (7 CFR part 989), regulate the handling of raisins produced from grapes grown in California, hereinafter referred to as the "order." The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the "Act."

This action withdraws a proposed rule, published in the **Federal Register** on August 6, 2010 (75 FR 47490), on the establishment of an estimated trade demand figure to compute volume regulation percentages for 2010–11 crop Natural (sun-dried) Seedless (NS) raisins covered under the order.

Specifically, the proposed rule would have provided authority for the committee to use an estimated trade demand for the 2010–11 crop NS raisins to compute volume regulation percentages, creating a reserve if the crop estimate is equal to, less than, or no more than 10 percent greater than the computed trade demand prescribed under the order; provided that the final reserve percentage computed using such estimated trade demand shall be no more than 10 percent, and no reserve would be established if the final 2010–11 NS raisin crop estimate is less than 110 percent of the previous crop year's domestic shipments.

Reserve raisins have historically been used by the committee to support market development programs that have strengthened export sales and reduced surpluses, thus providing stability to the domestic market.

During the comment period, August 6 through 23, 2010, the Department of Agriculture (USDA) received eight timely comments. These comments may be reviewed at: *http://www.regulations.gov*. Readers may access the docket and comments submitted by typing the docket number, AMS–FV–10–0044, into the Keyword field on the home page and clicking on Search. The docket details, including the list of comments, appear on the lower third of the search results page.

Of the eight comments received, two favored implementation of the proposed rule. These commenters expressed their view that the establishment of an estimated trade demand is necessary to ensure that volume regulation in established for the 2010–2011 crop year. Establishment of volume regulation would in turn allow development and funding of an export program to support handler sales in export markets. According to these comments, such an export program is necessary for the California raisin industry to maintain an international market presence, sustain current sales momentum, and to be competitive in the global raisin market.

Six of the eight comments did not favor implementation of the proposed rule. These commenters generally stated that conditions in the industry and the worldwide raisin outlook had changed since the proposed rule was recommended. More specifically, the California raisin industry has contracted, and the supply and demand for raisins in domestic and export markets is relatively balanced. The commenters also noted that the recommendation for this action was made prior to the availability of data indicating that the 2010–2011 raisin crops in Chile and Turkey are estimated to be smaller than in previous years. The expected shorter global supply of raisins provides export marketing opportunities for handlers of California raisins and lessens the need for an export program to support handler's sales, according to the commenters. Further, one commenter stated that if volume regulation and an export program are implemented this year, it could result in inadequate raisin supplies for the domestic market. Other commenters expressed the opinion that with worldwide supply and demand in balance, the California raisin industry should not utilize volume regulation to support handler's export sales.

Since the committee made its unanimous recommendation to utilize estimated trade demand for the 2010–2011 crop year on May 13, 2010, additional and more current information has become available indicating the industry and worldwide raisin situation has changed, thus reducing the need to implement this rule. In addition, comments received from handlers and growers indicate a lack of support for

this action. USDA has therefore determined to withdraw this rule.

Accordingly, the proposed rule regarding the establishment of an estimated trade demand figure to compute volume regulation percentages for 2010–11 crop NS raisins published in the **Federal Register** on August 6, 2010 (75 FR 47490), is hereby withdrawn.

**List of Subjects in 7 CFR Part 989**

Grapes, Marketing agreements, Raisins, Reporting and recordkeeping requirements.

**Authority:** 7 U.S.C. 601–674.

Dated: October 8, 2010.

**Rayne Pegg,**

*Administrator, Agricultural Marketing Service.*

[FR Doc. 2010–26163 Filed 10–15–10; 8:45 am]

**BILLING CODE 3410–02–P**

## NUCLEAR REGULATORY COMMISSION

### 10 CFR Part 70

**[Docket No. PRM–70–8; NRC–2009–0184]**

### Nuclear Energy Institute; Consideration of Petition in the Rulemaking Process

**AGENCY:** Nuclear Regulatory Commission.

**ACTION:** Petition for rulemaking: Resolution and closure of petition docket.

**SUMMARY:** The U.S. Nuclear Regulatory Commission (NRC) will consider five of the issues raised in a petition submitted by the Nuclear Energy Institute (NEI), and is denying the remaining four issues of the petition. The petition requests the NRC amend its regulations to clarify existing event reporting requirements based on experience gained since the requirements were revised.

**DATES:** The docket for the petition for rulemaking PRM–70–8 is closed on October 18, 2010.

**ADDRESSES:** Further NRC action on the issues raised by this petition will be accessible at the Federal rulemaking portal, *http://www.Regulations.gov,* by searching on rulemaking docket ID NRC–2010–0271. The NRC also tracks all rulemaking actions in the "NRC Regulatory Agenda: Semiannual Report NUREG–0936."

You can access publically available documents related to this petition for rulemaking using the following methods:

*Federal Rulemaking Web Site:* Go to *http://www.Regulations.gov* and search for documents filed under the following rulemaking docket ID: NRC–2009–0184.

*NRC's Public Document Room (PDR):* The public may examine and have copied for a fee publicly available documents at the NRC's Public Document Room, Room O–1F21, 11555 Rockville Pike, Rockville, MD.

*NRC's Agencywide Document 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/NRC/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 Public Document Room (PDR) Reference staff at 1–800–397–4209, 301–415–4737, or by e-mail to *pdr.resource@nrc.gov.*

**FOR FURTHER INFORMATION CONTACT:** Thomas Young, Office of Federal and State Materials and Environmental Management Programs, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, telephone (301) 415–5795, e-mail: *thomas.young@nrc.gov.*

**SUPPLEMENTARY INFORMATION:**

#### The Petition

The NRC received and docketed a petition for rulemaking (ADAMS Accession No. ML091110449) dated April 16, 2009, filed by the NEI (petitioner). On June 4, 2009 (74 FR 26814), the NRC published a notice of receipt requesting comment on the petition. The petitioner requested that the NRC amend its regulations to clarify safety event reporting requirements listed in Appendix A to 10 CFR part 70. The petitioner stated that in a June 2007 white paper, NEI documented challenges posed by implementation of the 2000 version of 10 CFR part 70, Appendix A. The petitioner stated that the NRC had also observed inconsistent reporting of events under Appendix A and had developed a matrix of reporting issues based on actual events. A working group, consisting of NRC and industry representatives, was formed to achieve a common understanding of reports required under Appendix A. The petitioner stated that industry endorses and is ready to support the suggested modifications to Appendix A that were indicated in the petition.

The NRC identified nine issues in the petition, as follows:

(1) In the introductory text of Appendix A to 10 CFR part 70, remove "except for (a)(1), (a)(2), and (b)(4), after they have submitted an ISA [Integrated Safety Analysis] Summary in accordance with § 70.62(c)(3)(ii). Licensees must comply with (a)(1), (a)(2), and (b)(4) after October 18, 2000."

(2) In paragraph (a) of Appendix A to 10 CFR part 70, change the time requirement to submit a written report on events reported to the NRC Operations Center within 1 hour of discovery from 30 days to 60 days.

(3) Revise paragraph (a)(2) of Appendix A to 10 CFR part 70 to clarify that the intake is associated with a person located outside the controlled area, in order to make the reporting requirements commensurate with the performance requirements described in 10 CFR 70.61(b)(3).

(4) Revise paragraph (a)(3) of Appendix A to 10 CFR part 70 to read:

An acute chemical exposure to an individual inside the controlled area from licensed material or hazardous chemicals produced from licensed material that could endanger the life of a worker; or, a chemical release involving licensed material or hazardous chemicals produced from licensed materials that results in a concentration outside of the controlled area that exceeds the quantitative standards established as required by 10 CFR 70.61(b)(4)(ii).

(5) Remove paragraph (a)(5) of Appendix A to 10 CFR part 70 which states: "Loss of controls such that only one item relied on for safety, as documented in the Integrated Safety Analysis summary, remains available and reliable to prevent a nuclear criticality accident, and has been in this state for greater than eight hours."

(6) In paragraph (b) of Appendix A to 10 CFR part 70, change the time requirement to submit written reports on events reported to the NRC Operations Center within 24 hours of discovery, supplemented with the information in 10 CFR 70.50(c)(1) as it becomes available, from 30 days to 60 days.

(7) Revise paragraph (b)(3) of Appendix A to 10 CFR part 70 to read, "An acute chemical exposure to an individual inside the controlled area from licensed material or hazardous chemicals produced from licensed materials that requires medical treatment at an off-site medical facility."

(8) In paragraph (b)(4) of Appendix A to 10 CFR part 70, remove "or may have affected" to clarify the NRC's expectation on reporting any natural phenomenon or other external event, including fires internal and external to the facility.

(9) Remove paragraph (b)(5) of Appendix A to 10 CFR part 70 which states:
An occurrence of an event or process deviation that was considered in the Integrated Safety Analysis and (i) was dismissed due to its likelihood; or (ii) was categorized as unlikely and whose associated unmitigated consequences would have exceeded those in § 70.61(b) had the item(s) relied on for safety not performed their safety function(s).

**Public Comments on the Petition**

The notice of receipt of the petition for rulemaking invited interested persons to submit comments. The comment period closed on August 18, 2009, and the NRC received four comment letters from individuals associated with the industry. The letters approve of the petitioner's request and state that adoption of the proposed amendments would allow a greater level of clarity and consistency without compromising the ability to assess (and respond, if necessary) to a radiological emergency.

**Reasons for Consideration**

The petition raised nine issues. Two issues requested an additional 30 days to submit a written report of a reportable safety event, and the remaining seven issues addressed specific types of reportable safety events. The NRC will consider five of the issues in the rulemaking process and is denying consideration of the remaining four issues in rulemaking.

The first issue requested removal of text in the introductory paragraph of Appendix A to 10 CFR part 70. This issue will be considered in the rulemaking process, because the exemption expired on October 18, 2004, and the text is no longer necessary.

The second and sixth issues requested an additional 30 days to submit written reports for reportable events. The requirement to notify the NRC Operations Center within 1 hour or 24 hours of discovery of an event would remain the same; however, the petitioner requested to extend the time limit to submit a written report from 30 days to 60 days. Both of these issues will be considered in the rulemaking process because allowing additional time would not impact the regulatory performance requirements, and would provide an opportunity for a licensee to complete a more thorough investigation without compromising the timely implementation of corrective actions. Although there have been no late reports, allowing an additional 30 days may reduce the number of amended reports.

The fifth issue requested removal of paragraph (a)(5) of Appendix A to 10 CFR part 70 because reporting this type of event within 1 hour (*e.g.,* the loss of controls) is also required to be reported within 24 hours by paragraph (b)(2) of Appendix A to 10 CFR part 70. In addition, a 1-hour reporting requirement for nuclear criticality safety is not consistent with the allowed risk for other high consequence events for which a single item relied on for safety is allowed. This issue will be considered in the rulemaking process because the licensee would still be required to report these events within 24 hours of discovery in accordance with paragraph (b)(2) of Appendix A to 10 CFR part 70. In addition, each facility is required to submit a safety plan (ISA, or Integrated Safety Analysis), and all components (known as controls) of this plan are thoroughly evaluated to ensure safety of the workers, the public, and the environment.

The ninth issue requested removal of paragraph (b)(5) of Appendix A to 10 CFR part 70 because it is redundant with paragraph (b)(1) of Appendix A to 10 CFR part 70. This issue will be considered in the rulemaking process because removing the paragraph would not negatively impact the regulatory performance requirements.

**Reasons for Denial**

The NRC is denying four of the nine issues raised in the petition because each issue raised is inconsistent with the purpose of the reporting requirement to keep NRC informed about conditions that could result in an imminent danger to a worker, a member of the public, or the environment. As previously stated in the **Federal Register** Notice for the proposed rule (64 FR 41349, July 30, 1999) the regulation requires a licensee to inform NRC about licensee efforts to address potential emergencies. Once safe conditions have been restored after an event NRC will disseminate information on the event to the nuclear industry to reduce the likelihood of recurrence of the event in the future. Also, in the event of an emergency, NRC will accurately respond to requests for information from the public and the media. Finally, NRC must have information that enables it to evaluate licensee and industry performance to fulfill its statutory mandate to protect the health and safety of the worker and the public, and to protect the environment. The reporting requirement is based on consideration of the risk and consequences established in 10 CFR 70.61(b) and is intended to replace and expand the way in which licensees were reporting events prior to the effective date of the rule on October 18, 2000. The regulation requires a licensee to report events based on two criteria: (1) Whether actual consequences have occurred or a potential for such consequences exists, and (2) the seriousness of the actual or potential consequences.

The third issue raised by the petitioner requested that the NRC revise paragraph (a)(2) of Appendix A to 10 CFR part 70 to clarify that the acute intake of 30 milligrams or greater of uranium in soluble form is by an individual located outside the controlled area to conform this reporting requirement to the performance requirement in 10 CFR 70.61(b)(3). This request is denied because such a change would only include an individual outside the controlled area and would not include a worker or an individual located inside the controlled area. The NRC intends the reporting requirement in paragraph (a)(2) to be broader than the performance requirement in 10 CFR 70.61(b). The reporting requirement applies to workers and all individuals regardless of location whether outside or inside the controlled area. The NRC continues to expect a licensee to notify the NRC within 1 hour of discovery whenever the uranium intake limit is exceeded by any individual regardless of location.

The fourth issue raised by the petitioner requested revision of paragraph (a)(3) of Appendix A to 10 CFR part 70 to eliminate potential confusion about quantitative values for acute chemical exposure of individuals located inside the controlled area. In addition, the petitioner stated that the proposed revision would require a licensee to report a chemical release concentration exceeding a quantitative standard for an individual outside the controlled area, rather than requiring a licensee to determine whether an acute chemical exposure to an individual outside the controlled area actually occurred before reporting the event.

This request is denied because the proposed change would include reporting an acute chemical exposure only for an individual located inside the controlled area. The petitioner's proposed change is inconsistent with the intent of the reporting requirement in paragraph (a)(3) that applies to workers and all individuals regardless of location whether outside or inside the controlled area. The NRC intends the reporting requirement in paragraph (a)(3) to be broader than the performance requirement in 10 CFR 70.61(b)(4)(ii). The NRC should be informed when such events occur,

regardless of the licensee's determination with respect to the performance requirements. This enables the NRC to independently evaluate the licensee's assessment of whether the performance requirement was met, on the basis of supplemental information as it becomes available under 10 CFR 70.50(c)(1), followed by the written report.

The seventh issue raised by the petitioner requested revision of paragraph (b)(3) of Appendix A to 10 CFR part 70 to limit the 24-hour reporting requirement for an acute chemical exposure to an individual inside the controlled area and only if the individual required treatment at an offsite medical facility. The petitioner proposed that this change would ensure event reporting at a threshold that the NRC would generally want to know about. This issue is denied for the same reasons as stated in the preceding paragraphs and because the current regulation requires a report within 24 hours of discovery of an acute chemical exposure described in 10 CFR 70.61(c)(4) regardless of the location of the exposed individual. Section 70.61(c)(4) specifically refers to both workers and individuals outside the controlled area. However, the proposed change would include reporting an acute chemical exposure only for an individual located inside the controlled area. Additionally, the location where the injured person is treated (*e.g.,* an offsite medical facility) should not be a factor whether to notify the NRC. It is the intent of the NRC to ensure the safety of individuals inside and outside the controlled area and has focused the reporting requirements on potential impacts on both workers and members of the public. To achieve this goal, a licensee must notify the NRC of an acute chemical exposure that requires medical treatment, regardless of where the treatment is administered.

The eighth issue raised by the petitioner requested the removal of the text "or may have affected" from paragraph (b)(4) of Appendix A to 10 CFR part 70 because the phrase is subjective when considering the safety function or availability of an item relied on for safety. This issue is denied because the full impact of natural phenomena or other external events such as a tornado, earthquake, flood, or fire external or internal to the facility could prove difficult for a licensee to fully assess and determine the status of all items relied on for safety. Since these events could affect a licensee's facility, the NRC needs to be informed about such events to assess a licensee's conclusion of whether any detrimental effects did in fact occur, or could have occurred in the absence of controls that were present but not part of the safety basis. To achieve our safety goal to ensure adequate protection of health and safety of individuals and the environment and to implement the strategy to effectively respond to certain conditions and a licensee's actions, it would be in the best interest of the licensee and the surrounding community to report to the NRC the occurrence of any natural phenomenon or external event that is severe enough to potentially impact the intended safety function or availability or reliability of one or more items relied on for safety.

For the reasons cited in this document, the NRC will consider five of the nine issues raised in this petition in the rulemaking process, and is denying the remaining four issues. The NRC will consider the five issues in the rulemaking process; however, the petitioner's concerns may not be addressed exactly as the petitioner has requested. During the rulemaking process the NRC will solicit comments from the public and will consider all comments before finalizing the rule. Future actions for PRM–70–8 will be reported in NUREG–0936, "NRC Regulatory Agenda" which is publicly available on the NRC Web site at *http://www.nrc.gov/about-nrc/regulatory/rulemaking.html.* The regulatory agenda is a semiannual compilation of all rules on which the NRC has recently completed action, or has proposed action, or is considering action, and of all petitions for rulemaking that the NRC is working to resolve. Further information on the five issues raised in this petition may be tracked through *http://www.Regulations.gov* under rulemaking docket ID NRC–2010–0271. Existing NRC regulations provide the basis for reasonable assurance that the common defense and security and public health and safety are adequately protected. For the reasons cited in this document, the NRC closes the docket on PRM–70–8.

Dated at Rockville, Maryland, September 30, 2010.

For the Nuclear Regulatory Commission.

**R.W. Borchardt,**

*Executive Director for Operations.*

[FR Doc. 2010–26154 Filed 10–15–10; 8:45 am]

**BILLING CODE 7590–01–P**

## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 39

**[Docket No. FAA–2009–0162; Directorate Identifier 2004–NE–19–AD]**

**RIN 2120–AA64**

## Airworthiness Directives; Rolls-Royce plc (RR) RB211–524 Series Turbofan Engines

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Supplemental notice of proposed rulemaking (NPRM); reopening of comment period.

**SUMMARY:** This action revises an earlier proposed airworthiness directive (AD), applicable to certain RR RB211–524 series turbofan engines. That proposal would have required initial and repetitive borescope inspections of the head section and meterpanel assembly of the combustion liner, and replacement if necessary with serviceable parts. That proposal was prompted by an inquiry submitted by an operator, which resulted in RR performing a complete review of the affected front combustion liner part numbers (P/Ns). This action revises the proposed rule by clarifying the applicability paragraph (c) of the proposed AD. We are proposing this AD to prevent deterioration of the engine combustion liner, which can result in combustion liner breakup, case burn-through, engine fire, and damage to the airplane.

**DATES:** We must receive comments on this proposed AD by December 17, 2010.

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

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov* and follow the instructions for sending your comments electronically.
- *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:* Deliver to Mail address above between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.
- *Fax:* (202) 493–2251.

Contact Rolls-Royce plc, P.O. Box 31, Derby, DE24 8BJ, United Kingdom; telephone: 011–44–1332–242424; fax: 011–44–1332–249936 for the service information identified in this proposed AD.

The Docket Operations office is located at Docket Management Facility,

U.S. Department of Transportation, 1200 New Jersey Avenue, SE., West Building Ground Floor, Room W12–140, Washington, DC 20590–0001.

**FOR FURTHER INFORMATION CONTACT:** Ian Dargin, Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803; e-mail: *ian.dargin@faa.gov;* telephone (781) 238–7178; fax (781) 238–7199.

**SUPPLEMENTARY INFORMATION:**

### Comments Invited

We invite you to send us any written relevant data, views, or arguments regarding this proposal. Send your comments to an address listed under **ADDRESSES**. Include "Docket No. FAA–2009–0162; Directorate Identifier 2004–NE–19–AD" in the subject line of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of the proposed AD. We will consider all comments received by the closing date and may amend the proposed AD in light of those comments.

We will post all comments we receive, without change, to *http://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 AD. Using the search function of the Web site, anyone can find and read the comments in any of our dockets, including, if provided, the name of the individual who sent the comment (or signed the comment on behalf of an association, business, labor union, etc.). You may review the DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477–78).

### Examining the AD Docket

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

### Discussion

The FAA proposed to amend 14 CFR part 39 with a proposed AD. The proposed AD applies to certain RB211–524 series turbofan engines. We published the proposed AD in the **Federal Register** on March 2, 2009 (74 FR 9050). That action proposed to require:

- Initial and repetitive borescope inspections of the combustion liner head section and meterpanel assembly of the combustion liner and, if necessary, replacement.
- Reduction of the inspection intervals of certain RB211–524 engine models that have not been repaired to RR Field Repair Scheme FRS5367/B, and
- A mandatory terminating action to the repetitive inspections.

Since we issued that NPRM, we determined that we need to remove the P/Ns of the combustion chamber cases from paragraph (c) of the proposed AD. Because this proposed AD expands the population of engines affected by the proposed AD, this supplemental NPRM reopens the comment period.

### Costs of Compliance

We estimate that this AD would affect 18 engines installed on airplanes of U.S. registry. We also estimate that it would take about 2 work-hours per engine to perform the proposed actions, and that the average labor rate is $85 per work-hour. No parts are required, so parts would cost $0. Based on these figures, we estimate the total cost of the AD to U.S. operators would be $3,060.

### Authority for This Rulemaking

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

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

### Regulatory Findings

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

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

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

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

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

We prepared a summary of the costs to comply with this AD and placed it in the AD Docket. You may get a copy of this summary at the address listed under **ADDRESSES**.

### List of Subjects in 14 CFR Part 39

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

### Adoption of the Amendment

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

## PART 39—AIRWORTHINESS DIRECTIVES

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

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

### § 39.13 [Amended]

2. The FAA amends § 39.13 by removing Amendment 39–13917 (70 FR 680, January 5, 2005), and by adding a new airworthiness directive to read as follows:

**Rolls-Royce plc**: Docket No. FAA–2009–0162; Directorate Identifier 2004–NE–19–AD.

#### Comments Due Date

(a) The Federal Aviation Administration (FAA) must receive comments on this airworthiness directive (AD) action by December 17, 2010.

#### Affected ADs

(b) This AD supersedes AD 2004–26–05, Amendment 39–13917.

#### Applicability

(c) This AD applies to Rolls-Royce plc (RR) engine models RB211–524B–02, –524B3–02 engines and RB211–524B2, –524B4, –524C2, and –524D4 series engines with a front combustion liner assembly that incorporates RR Service Bulletin (SB) No. RB.211–72–7221 or RR SB No. RB.211–72–7998, but doesn't incorporate RR SB No. RB.211–72–9670 or RR SB No. RB.211–72–9764, and engine models RB211–524G and –524H

series engines with a front combustion liner assembly that doesn't incorporate RR SB No. RB.211–72–9764. These engines are installed on, but not limited to, Boeing 747 and Lockheed L1011 series airplanes.

**Unsafe Condition**

(d) This AD results from an inquiry submitted by an operator which resulted in RR performing a complete review of the affected front combustion liner part numbers. We are issuing this AD to prevent deterioration of the engine combustion liner, which can result in combustion liner breakup, case burn-through, engine fire, and damage to the airplane.

**Compliance**

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

**Credit for Previous Inspections**

(f) Engine inspections previously made to RR Service Bulletin No. RB.211–72–B482, Revision 8, dated November 15, 2001, meet the requirements of this AD for the initial or repetitive inspections specified in paragraphs (g) through (g)(2) and (h) through (h)(4) of this AD.

**Inspections of Combustion Liner Head Sections—Not Previously Repaired**

(g) Borescope-inspect combustion liner head sections that have not been previously repaired. Use paragraphs 3.A.(1) through 3.A.(5) of the Accomplishment Instructions of RR Alert Service Bulletin (ASB) No. RB.211–72–AB482, Revision 9, dated July 28, 2003, and the cycles-since-new (CSN), cycles-since-last inspection (CSLI), and cycles-in-service (CIS) compliance thresholds in Table 1 of this AD.

TABLE 1—COMBUSTION LINER HEAD SECTION—NOT PREVIOUSLY REPAIRED

| Engine series | Initial inspection | Repetitive inspection | Parts exceeding initial inspection cycles |
|---|---|---|---|
| (1) RB211–524C2, –524D4, –524G, and –524H. | Within 1,400 to 1,600 CSN | Within 200 CSLI | Within 100 CIS after the effective date of this AD. |
| (2) RB211–524B–02, –524B2, –524B3–02, and –524B4. | Within 3,000 to 3,200 CSN | Within 200 CSLI | Within 200 CIS after the effective date of this AD. |

**Inspections of Combustion Liner Head Sections—Previously Repaired Using RR Field Repair Scheme FRS5367/B**

(h) If the combustion liner head section was previously repaired using RR Field Repair Scheme FRS5367/B, do the following:

(1) Borescope-inspect combustion liner head sections. Use paragraphs 3.A.(1) through 3.A.(5) of the Accomplishment Instructions of RR ASB No. RB.211–72–AB482, Revision 9, dated July 28, 2003, and the cycles-since-last repair (CSLR), CSLI, and CIS compliance thresholds in Table 2 of this AD.

(2) If all 18 struts on a combustion liner that is subject to RR ASB No. RB.211–72–AB482, Revision 9, dated July 28, 2003, were repaired using the nicrobraze repair specified in RR Field Repair Scheme FRS5367, that repair is equivalent to compliance with RR Field Repair Scheme FRS5367/B. Borescope-inspect the combustion liner as specified in paragraph (h)(1) of this AD.

TABLE 2—COMBUSTION LINER HEAD SECTION—PREVIOUSLY REPAIRED USING RR FIELD REPAIR SCHEME FRS5367/B

| Engine series | Initial inspection | Repetitive inspection | Parts exceeding initial inspection cycles |
|---|---|---|---|
| (3) RB211–524C2, –524D4, –524G, and –524H. | Within 1,800 to 2,200 CSLR | Within 400 CSLI | Within 200 CIS after the effective date of this AD. |
| (4) RB211–524B–02, –524B2, –524B3–02, and –524B4. | Within 3,000 to 3,200 CSLR | Within 400 CSLI | Within 200 CIS after the effective date of this AD. |

**Inspections of Combustion Liner Head Sections That Have Been Repaired But Did Not Use RR Field Repair Scheme FRS5367/B**

(i) For engines that have a combustion liner head section repaired using a method other than RR Field Repair Scheme FRS5367/B, do the following:

(1) Borescope-inspect combustion liner head section. Use paragraphs 3.A.(1) through 3.A.(5) of the Accomplishment Instructions of RR ASB No. RB.211–72–AB482, Revision 9, dated July 28, 2003, and the CSLR, CSLI, and CIS compliance thresholds in Table 3 of this AD.

TABLE 3—COMBUSTION LINER HEAD SECTION—REPAIRED, BUT DID NOT USE RR FIELD REPAIR SCHEME FRS5367/B

| Engine series | Initial inspection | Repetitive inspection | Parts exceeding initial inspection cycles |
|---|---|---|---|
| (2) RB211–524C2, –524D4, –524G, and –524H. | Within 500 to 700 CSLR | Within 200 CSLI | Within 100 CIS after the effective date of this AD. |
| (3) RB211–524B–02, –524B2, –524B3–02, and –524B4. | Within 2,000 to 2,200 CSLR | Within 200 CSLI | Within 200 CIS after the effective date of this AD. |

(4) Head sections repaired by replacement of all 18 struts using RR Field Repair Scheme FRS6548 are considered as equivalent to fitting a new head section for inspection purposes. Borescope-inspect the combustion liner as specified in paragraph (h)(1) of this AD.

**Inspections of Meterpanel Assemblies—Not Repaired**

(j) Borescope-inspect meterpanel assemblies that incorporate SB No. RB.211–72–7998, that have not been previously repaired. Use paragraphs 3.B.(1) through 3.B.(7) of the Accomplishment Instructions of RR ASB No. RB.211–72–AB482, Revision 9, dated July 28, 2003, and the CSN, CSLI, and CIS compliance thresholds in Table 4 of this AD.

TABLE 4—METERPANEL ASSEMBLY—NOT REPAIRED

| Engine series | Initial inspection | Repetitive inspection | Parts exceeding initial inspection cycles |
|---|---|---|---|
| (1) RB211–524D4, –524G, and –524H. | Within 1,000 to 1,200 CSN ..... | Within 400 CSLI ..... | Within 50 CIS after the effective date of this AD. |
| (2) RB211–524D4, –524G, and –524H that have not used RB211–524H ratings at any time. | Within 1,800 to 2,000 CSN ..... | Within 400 CSLI ..... | Within 50 CIS after the effective date of this AD. |

**Inspections of Meterpanel Assemblies—Repaired**

(k) For meterpanel assemblies that incorporate SB No. RB.211–72–7998, and have been repaired previously, do the following:

(1) Borescope-inspect meterpanel assemblies that have been previously repaired. Use paragraphs 3.B.(1) through 3.B.(7) of the Accomplishment Instructions of RR ASB No. RB.211–72–AB482, Revision 9, dated July 28, 2003, and the CSLR, CSLI, and CIS compliance thresholds in Table 5 of this AD.

TABLE 5—METERPANEL ASSEMBLY—REPAIRED

| Engine series | Initial inspection | Repetitive inspection | Parts exceeding initial inspection cycles |
|---|---|---|---|
| (2) RB211–524D4, –524G, and –524H. | Within 500 to 700 CSLR ..... | Within 400 CSLI ..... | Within 50 CIS after the effective date of this AD. |

**Reject Parts**

(l) Replace parts that exceed the acceptance criteria. Information about the acceptance criteria can be found in the Aircraft Maintenance Manual, 72–00–00, Inspection/Check.

**Mandatory Terminating Action**

(m) Replace the front combustion liner assembly with a front combustion liner not affected by this AD at the next shop visit.

(n) For RB211–524B02, –524B2, –524B3–02, –524B4–02, –524C2 and –524D4 engines, replacing the front combustion liner assembly with a front combustion liner assembly that incorporates the modifications in RR SB No. RB.211–72–9670, Original Issue, dated August 27, 1993; or RR SB No. RB.211–72–9764, Revision 3, dated January 16, 1998, constitutes terminating action to the repetitive inspections in paragraphs (g), (h), (i), (j), and (k), of this AD.

(o) For RB211–524G and –524H engines, replacing the front combustion liner assembly with a front combustion liner assembly that incorporates the modifications in RR SB No. RB.211–72–9764, Revision 3, dated January 16, 1998, constitutes terminating action to the repetitive inspections in paragraphs (g), (h), (i), (j), and (k) of this AD.

**Definition of Shop Visit**

(p) For the purpose of this AD, a shop visit is any time that the 04 module is removed for repair or overhaul.

**Related Information**

(q) Contact Ian Dargin, Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803; e-mail: *ian.dargin@faa.gov;* telephone (781) 238–7178; fax (781) 238–7199, for more information about this AD.

(r) Rolls-Royce ASB No. RB.211–72–AB482, Revision 9, dated July 28, 2003; SB No. RB.211–72–9764, Revision 3, dated January 16, 1998; and SB No. RB.211–72–9670, Original Issue, dated August 27, 1993, pertain to the subject of this AD. Contact Rolls-Royce plc, P.O. Box 31, Derby, DE24 8BJ, United Kingdom; telephone: 011–44–1332–242424; fax: 011–44–1332–249936, for a copy of this service information.

Issued in Burlington, Massachusetts, on October 6, 2010.

**Diane S. Romanosky,**

*Acting Manager, Engine and Propeller Directorate, Aircraft Certification Service.*

[FR Doc. 2010–26115 Filed 10–15–10; 8:45 am]

**BILLING CODE 4910–13–P**

## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 71

**[Docket No. FAA–2010–0529; Airspace Docket No. 10–ANM–3]**

## Proposed Establishment of Class E Airspace; Panguitch, UT

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Supplemental notice of proposed rulemaking (SNPRM).

**SUMMARY:** This supplemental notice of proposed rulemaking would expand controlled Class E airspace to include a portion extending upward from 1,200 feet above the surface at Panguitch Municipal Airport, Panguitch, UT. In an NPRM published in the **Federal Register** June 28, 2010, the FAA proposed to establish controlled airspace from 700 feet above the surface. The FAA has reassessed the proposal to include Class E airspace 700 feet and 1,200 feet above the surface to further the safety and management of Instrument Flight Rules (IFR) operations at the airport.

**DATES:** Comments must be received on or before December 2, 2010.

**ADDRESSES:** Send comments on this proposal to the U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590; telephone (202) 366–9826. You must identify FAA Docket No. FAA–2010–0529; Airspace Docket No. 10–ANM–3, at the beginning of your comments. You may also submit comments through the Internet at *http://www.regulations.gov*.

**FOR FURTHER INFORMATION CONTACT:** Eldon Taylor, Federal Aviation Administration, Operations Support Group, Western Service Center, 1601 Lind Avenue, SW., Renton, WA 98057; telephone (425) 203–4537.

**SUPPLEMENTARY INFORMATION:**

**History**

On June 28, 2010, the FAA published a NPRM to establish Class E airspace extending upward from 700 feet or more above the surface, at Panguitch Municipal Airport, Panguitch, UT (75 FR 36585). The comment period closed August 12, 2010. Two comments were received.

One commenter recommended establishing Class E surface airspace at Panguitch Municipal Airport. The FAA does not agree. There is no ATC communications down to the surface at the airport; therefore, the airport does not meet the requirements of Class E

surface area airspace. One commenter recommended expanding the proposed Class E 700 feet airspace area to include 1,200 feet above the surface for aircraft safety. The FAA agrees and has proposed to include a portion of Class E airspace upward from 1,200 feet above the surface, with Class E airspace extending upward from 700 feet above the surface, for Standard Instrument Approach Procedures (SIAPs) at Panguitch Municipal Airport. The FAA seeks comments on this SNPRM.

**Comments Invited**

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments, as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal.

Communications should identify both docket numbers (FAA Docket No. FAA 2010–0529 and Airspace Docket No. 10–ANM–3) and be submitted in triplicate to the Docket Management System (*see* **ADDRESSES** section for address and phone number). You may also submit comments through the Internet at *http://www.regulations.gov.*

Commenters wishing the FAA to acknowledge receipt of their comments on this action must submit with those comments a self-addressed stamped postcard on which the following statement is made: "Comments to FAA Docket No. FAA–2010–0529 and Airspace Docket No. 10–ANM–3". The postcard will be date/time stamped and returned to the commenter.

All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this action may be changed in light of comments received. All comments submitted will be available for examination in the public docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

**Availability of NPRMs**

An electronic copy of this document may be downloaded through the Internet at *http://www.regulations.gov.* Recently published rulemaking documents can also be accessed through the FAA's web page at *http://www.faa.gov/airports_airtraffic/air_traffic/publications/airspace_amendments/.*

You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office (see the **ADDRESSES** section for the address and phone number) between 9 a.m. and 5 p.m., Monday through Friday, except federal holidays. An informal docket may also be examined during normal business hours at the Northwest Mountain Regional Office of the Federal Aviation Administration, Air Traffic Organization, Western Service Center, Operations Support Group, 1601 Lind Avenue, SW., Renton, WA 98057.

Persons interested in being placed on a mailing list for future NPRM's should contact the FAA's Office of Rulemaking, (202) 267–9677, for a copy of Advisory Circular No. 11–2A, Notice of Proposed Rulemaking Distribution System, which describes the application procedure.

**The Supplemental Proposal**

The FAA is proposing an amendment to Title 14 Code of Federal Regulations (14 CFR) part 71 by establishing Class E airspace extending upward from 1,200 feet above the surface at Panguitch Municipal Airport, Panguitch UT. Controlled airspace extending upward from 700 feet and 1,200 feet above the surface is necessary to accommodate aircraft using the new RNAV (GPS) SIAPs at Panguitch Municipal Airport and would enhance the safety and management of IFR operations.

Class E airspace designations are published in paragraph 6005, of FAA Order 7400.9U, dated August 18, 2010 and effective September 15, 2010, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in this Order.

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

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the U.S. Code. Subtitle 1, section 106, describes the authority for the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is promulgated under the authority described in subtitle VII, part A, subpart I, section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of the airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it would establish controlled airspace at Panguitch Municipal Airport, Panguitch, UT.

**List of Subjects in 14 CFR Part 71**

Airspace, Incorporation by reference, Navigation (air).

**The Proposed Amendment**

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend 14 CFR Part 71 as follows:

## PART 71—DESIGNATION OF CLASS A, B, C, D AND E AIRSPACE AREAS; AIR TRAFFIC SERVICE ROUTES; AND REPORTING POINTS

1. The authority citation for 14 CFR part 71 continues to read as follows:

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

**§ 71.1 [Amended]**

2. The incorporation by reference in 14 CFR 71.1 of the FAA Order 7400.9U, Airspace Designations and Reporting Points, dated August 18, 2010, and effective September 15, 2010 is amended as follows:

*Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.*

* * * * *

**ANM UT E5 Panguitch, UT [New]**

Panguitch Municipal Airport, UT
(Lat. 37°50′43″ N., Long. 112°23′31″ W.)

That airspace extending from 700 feet above the surface within an 11.7-mile radius of the Panguitch Municipal Airport, and that airspace extending upward from 1,200 feet above the surface within an area bounded by lat. 38°25′00″ N., long. 112°32′00″ W., to lat. 38°24′00″ N., long. 112°02′00″ W., to lat. 37°52′00″ N., long. 111°47′00″ W., to lat. 37°14′00″ N., long. 112°20′00″ W., to lat. 37°14′00″ N., long. 112°56′00″ W., to lat.

37°42′30″ N., long. 112°55′00″ W., to lat. 37°43′00″ N., long. 112°43′00″ W., thence to the point of beginning.

Issued in Seattle, Washington, on October 6, 2010.

**John Warner,**

*Manager, Operations Support Group, Western Service Center.*

[FR Doc. 2010–26096 Filed 10–15–10; 8:45 am]

**BILLING CODE 4910–13–P**

## COMMODITY FUTURES TRADING COMMISSION

### 17 CFR Parts 1, 37, 38, 39, and 40

**RIN 3038–AD01**

## Requirements for Derivatives Clearing Organizations, Designated Contract Markets, and Swap Execution Facilities Regarding the Mitigation of Conflicts of Interest

**AGENCY:** Commodity Futures Trading Commission.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The Commodity Futures Trading Commission (the "Commission") hereby proposes rules to implement new statutory provisions enacted by Title VII of the Dodd-Frank Wall Street Reform and Consumer Protection Act (the "Dodd-Frank Act"). Specifically, the proposed rules contained herein impose new requirements on derivatives clearing organizations ("DCOs"), designated contract markets ("DCMs"), and swap execution facilities ("SEFs") with respect to mitigation of conflicts of interest.

**DATES:** Submit comments on or before November 17, 2010.

**ADDRESSES:** You may submit comments, identified by RIN number, by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Agency Web Site: http://www.cftc.gov.* Follow the instructions for submitting comments on the Web site.
- *E-mail: dcodcmsefGovernance@cftc.gov.*
- *Fax:* 202–418–5521.
- *Mail:* David A. Stawick, Secretary of the Commission, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW., Washington, DC 20581.
- *Hand Delivery/Courier:* Same as mail above.

**FOR FURTHER INFORMATION CONTACT:** Nancy Liao Schnabel, Special Counsel, Division of Clearing and Intermediary Oversight (DCIO), at 202–418–5344 or *nschnabel@cftc.gov;* Lois Gregory, Assistant Deputy Director for Market Review, the Division of Market Oversight (DMO), at 202–418–5569 or *lgregory@cftc.gov;* Andrea Musalem, Special Counsel, DCIO, at 202–418–5167 or *amusalem@cftc.gov;* Jordan O'Regan, Attorney-Advisor, DCIO, at 202–418–5984 or *joregan@cftc.gov;* Cody Alvarez, Attorney-Advisor, DMO, at 202–418–5404 or *calvarez@cftc.gov;* Dana Brown, Law Clerk, DMO, at 202–418–5093 or *dbrown@cftc.gov;* Jolanta Sterbenz, Counsel, Office of the General Counsel, at 202–418–6639 or *jsterbenz@cftc.gov;* David Reiffen, Senior Economist, Office of the Chief Economist, at 202–418–5602 or *dreiffen@cftc.gov;* or Alicia Lewis, Attorney-Advisor, DCIO, at 202–418–5862 or *alewis@cftc.gov;* in each case, also at the Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW., Washington, DC 20581.

**SUPPLEMENTARY INFORMATION:**

### I. Background

On July 21, 2010, President Obama signed the Dodd-Frank Act.[1] Title VII of the Dodd-Frank Act [2] amended the Commodity Exchange Act ("CEA") [3] to establish a comprehensive new regulatory framework for swaps and certain security-based swaps. The legislation was enacted to reduce risk, increase transparency, and promote market integrity within the financial system by, among other things: (i) Providing for the registration and comprehensive regulation of swap dealers and major swap participants; [4] (ii) imposing mandatory clearing and trade execution requirements on clearable swap contracts; (iii) creating robust recordkeeping and real-time reporting regimes; and (iv) enhancing the rulemaking and enforcement authorities of the Commission with respect to, among others, all registered entities and intermediaries subject to the oversight of the Commission.

In order to ensure the proper implementation of the comprehensive new regulatory framework, especially with respect to (ii) above, the Dodd-Frank Act requires [5] the Commission to promulgate rules to mitigate conflicts of interest in the operation of certain DCOs, DCMs, and SEFs. First, Section 726(a) of the Dodd-Frank Act specifically empowers the Commission to adopt "numerical limits * * * on control" or "voting rights" that enumerated entities [6] may hold with respect to such DCOs, DCMs, and SEFs. Second, Section 726(b) of the Dodd-Frank Act directs the Commission to determine the manner in which its rules may be deemed necessary or

[1] *See* Dodd-Frank Act, Pub. L. 111–203, 124 Stat. 1376 (2010). The text of the Dodd-Frank Act may be accessed at *http://www.cftc.gov./LawRegulation/OTCDERIVATIVES/index.htm.*

[2] Pursuant to Section 701 of the Dodd-Frank Act, Title VII may be cited as the "Wall Street Transparency and Accountability Act of 2010."

[3] 7 U.S.C. 1 *et seq.*

[4] In this release, the terms "swap dealer" and "major swap participant" shall have the meanings set forth in Section 721(a) of the Dodd-Frank Act, which added Sections 1a(49) and (33) of the CEA. However, Section 721(c) of the Dodd-Frank Act directs the Commission to promulgate rules to further define, among other terms, "swap dealer" and "major swap participant." The Commission is in the process of this rulemaking. *See, e.g., http://www.cftc.gov/LawRegulation/OTCDerivatives/OTC_2_Definitions.html.* The Commission anticipates that such rulemaking will be completed by the statutory deadline of July 15, 2011.

[5] *See* the following colloquy between Representative Stephen Lynch and Representative Barney Frank on the language that became Section 726 of the Dodd-Frank Act:

Madam Speaker, for the purpose of a colloquy, I would like to engage with the chairman of the committee and the drafter of this legislation. I congratulate him on the great work he has done on this reform bill.

Mr. Chairman, I want to call your attention to sections 726 and 765 of the bill. These two provisions require the CFTC and the SEC to conduct rulemakings to eliminate the conflicts of interest arising from the control of clearing and trading facilities by entities such as swap dealers and major swap participants.

This problem arises because, right now, 95 percent of all of the clearinghouses in this country are owned by just five banks. So, while we are relying on the clearinghouses to reduce systemic risk, we have the banks now owning the clearinghouses.

The question I have is regarding the intent of the conferees in retaining subsection B of these provisions. It could be loosely construed to leave it up to the agencies whether or not to adopt rules.

Mr. Chairman, do you agree that my reading of sections 726 and 765 affirmatively require these agencies to adopt strong conflict of interest rules on control and governance of clearing and trading facilities?

Mr. FRANK of Massachusetts. If the gentleman would yield to me, he has been a leader in this important area, and he is a careful lawyer and understands that just saving a principle isn't enough. You've got to make sure it is carried out. Dealing with a conflict of interest that he has been a leader in identifying is essential if this is going to work. So I completely agree with him. Yes, we mean both of those subsections, and it is a mandatory rulemaking.

I will say to my neighbor from Massachusetts that we will be monitoring this carefully. They can expect oversight hearings because, yes, this is definitely a mandate to them to adopt rules to deal with what would be a blatant conflict of interest in the efficacy rules, and we intend to follow that closely.

156 Cong. Rec. H5217 (2010).

[6] The "enumerated entities" include: (i) Bank holding companies with over $50,000,000,000 in total consolidated assets; (ii) a nonbank financial company supervised by the Board of Governors of the Federal Reserve System; (iii) an affiliate of (i) or (ii); (iv) a swap dealer; (v) a major swap participant; or (vi) an associated person of (iv) or (v).

appropriate to improve the governance of certain DCOs, DCMs, or SEFs or to mitigate systemic risk, promote competition, or mitigate conflicts of interest in connection with the interaction between swap dealers and major swap participants, on the one hand, and such DCOs, DCMs, and SEFs. Finally, Section 726(c) of the Dodd-Frank Act directs the Commission to consider the manner in which its rules address conflicts of interest in the abovementioned interaction arising from equity ownership, voting structure, or other governance arrangements of the relevant DCOs, DCMs, and SEFs. The Commission must complete a rulemaking under Section 726 of the Dodd-Frank Act within 180 days after enactment—*i.e.*, by January 14, 2011.[7]

In carrying out Section 726 of the Dodd-Frank Act,[8] the Commission identifies in Section II below the following potential conflicts of interest:

- Conflicts of interest that a DCO may confront when determining (i) whether a swap contract is capable of being cleared, (ii) the minimum criteria that an entity must meet in order to become a swap clearing member, and (iii) whether a particular entity satisfies such criteria; [9] and
- Conflicts of interest that a DCM or SEF may confront in balancing advancement of commercial interests and fulfillment of self-regulatory responsibilities.

The Commission proposes in Section III below (i) structural governance requirements and (ii) limits on the ownership of voting equity and the exercise of voting power, and describes, in each case, the manner in which such proposals may mitigate conflicts of interest in the operation of a DCO, DCM, or SEF.[10]

In general, the proposed rules include strengthened versions of the acceptable practices that the Commission previously adopted for the DCM core principle on conflicts of interest.[11] The proposed rules impose structural governance requirements and limits on the ownership of voting equity and the exercise of voting power. They impose specific composition requirements on DCO, DCM, or SEF Boards of Directors and require each DCO, DCM, or SEF to have a nominating committee and one or more disciplinary panels. Each DCO must have a risk management committee and each DCM or SEF must have a regulatory oversight committee and a membership or participation committee, subject to specific composition requirements.

The proposed rules limit DCM or SEF members (and related persons) from beneficially owning more than twenty (20) percent of any class of voting equity in the registered entity or from directly or indirectly voting an interest exceeding twenty (20) percent of the voting power of any class of equity interest in the registered entity. With respect to a DCO only, the proposed rules require a DCO to choose one of two alternative limits on the ownership of voting equity or the exercise of voting power. Under the first alternative, no individual member may beneficially own more than twenty (20) percent of any class of voting equity in the DCO or directly or indirectly vote an interest exceeding twenty (20) percent of the voting power of any class of equity interest in the DCO. In addition, the enumerated entities, whether or not they are DCO members, may not collectively own on a beneficial basis more than forty (40) percent of any class of voting equity in a DCO, or directly or indirectly vote an interest exceeding forty (40) percent of the voting power of any class of equity interest in the DCO.

Under the second alternative, no DCO member or enumerated entity, regardless of whether it is a DCO member, may own more than five (5) percent of any class of voting equity in the DCO or directly or indirectly vote an interest exceeding five (5) percent of the voting power of any class of equity interest in the DCO.

Notwithstanding the foregoing, the proposed rules recognize that circumstances may exist where neither alternative would be appropriate for a DCO. Consequently, the proposed rules provide a procedure for the DCO to apply for, and the Commission to grant, a waiver of the limits specified in the first and second alternative.

The proposed rules reflect consultation with staff of the following agencies: (i) The Securities and Exchange Commission (the "SEC"); [12] (ii) the Board of Governors of the Federal Reserve, (iii) the Office of the Comptroller of the Currency; (iv) the Federal Deposit Insurance Corporation; and (v) the Treasury Department. Staff from each of these agencies has provided verbal and/or written comments, and the proposed rules incorporate elements of the comments provided. The proposed rules have been further informed by (i) the joint roundtable that Commission and SEC staff conducted on August 20, 2010 (the "Roundtable") [13] and (ii) public comments posted to the Web site of the Commission.[14] Finally, mindful of the importance of international harmonization,[15] the proposed rules incorporate certain elements of: (i) The *Proposal for a Regulation of the European Parliament and of the Council on OTC Derivatives, Central Counterparties, and Trade Depositories* (the "European Commission Proposal"); [16] and (ii) the latest draft of the *Principles for Financial Market Infrastructures,* which would ultimately be reviewed by the Committee on Payment and Settlement Systems of the Bank for International Settlements and the Technical Committee of the

[7] In adopting rules to implement Section 726 of the Dodd-Frank Act, the Commission is also implementing Section 725(d) of the Dodd-Frank Act. The latter states: "[t]he Commodity Futures Trading Commission shall adopt rules mitigating conflicts of interest in connection with the conduct of business by a swap dealer or a major swap participant with a derivatives clearing organization, board of trade, or a swap execution facility that clears or trades swaps in which the swap dealer or major swap participant has a material debt or material equity investment."

[8] Although the Commission is proposing the rules contained herein to specifically carry out Section 726 of the Dodd-Frank Act (as well as Section 725(d) of the Dodd-Frank Act), the Commission notes that it has additional authority to propose such rules under Sections 735(b), 735(c), and 733 of the Dodd-Frank Act. *See infra* note 17 for a more extensive description of Sections 735(b), 735(c), and 733 of the Dodd-Frank Act.

[9] The Commission requests comment as to whether DCOs, like DCMs and SEFs, have (or potentially may have) other conflicts of interest that implicate the balance between advancement of commercial interests and fulfillment of self-regulatory responsibilities.

[10] Commission regulations (the "Regulations") referred to herein are found at 17 CFR Ch. 1.

[11] *See, generally,* "Conflicts of Interest in Self-Regulation and Self-Regulatory Organizations," 74 FR 18982 (April 27, 2009) (which defined "public director"); 72 FR 6936 (Feb. 14, 2007) (which adopted final acceptable practices for the DCM core principle) (the "DCM Conflicts of Interest Release"); 71 FR 38740 (July 7, 2006) (which proposed acceptable practices for the DCM core principle).

Currently, DCM core principle 15 addresses conflicts of interest. *See* 7 U.S.C. 7(d)(15). The Dodd-Frank Act has redesignated DCM core principle 15 as DCM core principle 16, but has left the actual language of the principle substantively unchanged.

[12] Section 765 of the Dodd-Frank Act requires the SEC to promulgate rules to mitigate conflicts of interest in the operation of (i) a clearing agency that clears security-based swaps, (ii) a security-based swap execution facility, or (iii) a national securities exchange that posts or makes available for trading security-based swaps.

[13] The transcript from the roundtable (the "Roundtable Tr.") is available at: *http://www.cftc.gov/ucm/groups/public/@newsroom/documents/file/derivative9sub082010.pdf.*

[14] Such comments are available at: *http://www.cftc.gov/LawRegulation/DoddFrankAct/OTC_9_DCOGovernance.html.*

[15] Currently, the Commission regulates certain entities based outside of the United States (*e.g.*, LCH.Clearnet Limited and ICE Clear Europe Limited ("ICE Clear Europe"), each of which is based in the United Kingdom).

[16] COM(2010) 484/5.

International Organization of Securities Commissions.

The Commission anticipates conducting at least one other rulemaking that may impose requirements on DCOs, DCMs, and SEFs with respect to governance and mitigation of conflicts of interest.[17] The Commission expects to finish such rulemaking by the statutory deadline of July 15, 2011.

The Commission requests comment on all aspects of this release.

## II. Conflicts of Interest

As mentioned above, Title VII of the Dodd-Frank Act amended the CEA to establish a comprehensive new framework for swaps and security-based swaps. This framework imposes mandatory clearing and trade execution requirements with respect to clearable swap contracts. Some market participants, investor advocates, and academics have expressed a concern that the enumerated entities have economic incentives to minimize the number of swap contracts subject to mandatory clearing and trading. They contend that control of a DCO by the enumerated entities, whether through ownership or otherwise, constitutes the primary means for keeping swap contracts out of the mandatory clearing requirement, and therefore also out of the trading requirement. The Commission addresses these arguments below. The Commission also examines the contention that sustained competition between DCMs or SEFs with respect to the same swap contracts may exacerbate certain structural conflicts of interest, as the DCM Conflicts of Interest Release defines such term.[18]

### *a. DCOs*

In general, in the commodity futures and options markets, the DCM decides which contracts to list, whereas the DCO manages the risk of guaranteeing such contracts. Clearing members exercise significant control over the manner in which a DCO manages risk, whether the members own the DCO or not.[19] Based on Commission experience, such control has generally permitted the DCO to serve the purposes of the CEA, especially with respect to "ensur[ing] the financial integrity of all transactions subject to [the CEA] and the avoidance of systemic risk."[20] Clearing members contribute substantial financial resources to the DCO default or guarantee fund. If a clearing member defaults, and the DCO holds insufficient performance bond from such member to cover its losses, then the DCO would access the default or guarantee fund. Thus, the DCO spreads its losses across all clearing members. This mechanism creates an incentive for each clearing member to ensure that (i) other clearing members meet certain financial requirements and (ii) the DCO adopt a conservative approach towards risk management, especially in determining whether a particular contract would be acceptable for clearing.

This same mechanism also creates a disincentive for clearing members to act collectively (i) to exclude other entities from becoming clearing members or (ii) to bar a DCO from accepting new commodity futures or options contracts. After all, each new clearing member must contribute to the default or guarantee fund. Such contribution would result in a *pro rata* decrease in the potential exposure of each other clearing member to a default. Moreover, clearing members generally had little incentive to prevent the DCO from accepting a particular contract, absent a risk-based objection. In fact, the more different types of contracts that a DCO accepts, the more the intermediation services that such clearing member offers would likely be in demand.

The regulated market structure that the Dodd-Frank Act contemplates for swap contracts is, in many ways, the mirror image of the market structure for commodity futures and option contracts. Currently, most swap contracts are privately negotiated between two parties, and are generally not cleared.[21] Section 723 of the Dodd-Frank Act requires: (i) Swap contracts meeting certain criteria to be cleared with a DCO; and (ii) such contracts to be executed on a DCM or SEF (unless no DCM or SEF lists such contracts). Therefore, a DCO has unprecedented influence over the manner in which a swap contract can be executed.

Certain market participants and academics believe that Section 723 of the Dodd-Frank Act does not introduce any new incentives for clearing members to act collectively (i) to exclude other entities from becoming clearing members or (ii) to bar a DCO from accepting new contracts. First, they argue that clearing does not make a bilateral swap contract less profitable.[22] Second, they contend that, because clearing does not impact the profitability of a bilateral swap contract, swap clearing members that are

[17] Such rulemaking would implement Sections 735(b) and 725(c) of the Dodd-Frank Act, which amends Sections 5(d) and 5b(c) of the CEA to add new core principles, or to supplement existing core principles, regarding the governance of DCMs and DCOs, and the mitigation of conflicts of interest in the operation of such entities. Such core principles would apply to all DCMs and DCOs, regardless of whether they clear or list swap contracts or only commodity futures or options. Such rulemaking would also implement Section 733 of the Dodd-Frank Act, which inserts new Section 5h of the CEA to create a registration category for SEFs, and to impose core principles that include the mitigation of conflicts of interest. The Commission is considering the proposals set forth below, among others, with respect to the second rulemaking: (1) Requiring each DCO, DCM, or SEF to have a regulatory program to (i) identify, on an ongoing basis, existing and potential conflicts of interest, and (ii) to make decisions in the event of such conflict; (2) mandating that each DCO, DCM, or SEF (i) prescribe limits on use of non-public information, and (ii) afford transparency with respect to governance arrangements; (3) requiring each DCO, DCM, or SEF to report to the Commission whenever (i) the Board of Directors rejects a recommendation or supersedes an action of the DCM or SEF Regulatory Oversight Committee, DCM or SEF Membership or Participation Committee, or DCO Risk Management Committee, as applicable, or (ii) the DCO Risk Management Committee rejects or supersedes an action of the DCO Risk Management Subcommittee, if applicable; (4) mandating minimum governance fitness standards for DCO and DCM members and participants; and (5) prescribing minimum standards regarding (i) DCM consideration of market participant views and (ii) the diversity of DCM Board of Directors, if the DCM is publicly-listed.

[18] According to the DCM Conflicts of Interest Release, "[t]he presence of potentially conflicting demands within a single entity—regulatory authority coupled with commercial incentives to misuse such authority—constitutes the new structural conflict of interest addressed by the acceptable practices adopted herein." 72 FR at 6937.

[19] The CME Group, Inc. (the "CME Group"), a publicly-listed corporation, wholly owns the Chicago Mercantile Exchange, Inc. ("CME"). However, CME Clearing House, a division of CME, has a Risk Committee that is composed of: (i) Two members of the CME Board of Directors; (ii) five clearing member representatives; and (iii) two additional individuals, one of whom cannot be a clearing member representative. *See* CME Rule 403.A, available at: *http://www.cmegroup.com/rulebook/CME/I/4/03.html.*

[20] *See* Section 3(b) of the CEA, 7 U.S.C. 5(b).

[21] *See, e.g.,* Darrel Duffie, Ada Li, Theo Lubke, "Policy Perspectives on OTC Derivatives Market Infrastructure," Federal Reserve Bank of New York Staff Report No. 424, dated January 2010, as revised March 2010 (the "*FRBNY Staff Report*"). According to Section II of the FRBNY Staff Report, "[a]n over-the-counter trade is privately negotiated between the buyer and seller." According to Section VII(A)(i) of the FRBNY Staff Report, "[o]nly some types of OTC derivatives are now cleared. These include, for example, certain actively traded credit derivatives, some common forms of interest-rate swaps, and some energy derivatives. Of these 'eligible' types of OTC derivatives, those for which clearing has been set up, not all positions are actually cleared; the decision of which positions to clear has to this point been left to the discretion of market participants."

[22] *See, e.g.,* Comments from James Hill, Managing Director and Global Credit Derivatives Officer, Morgan Stanley, representing the Securities Industry and Financial Markets Association ("Hill") ("I think there's a bit of a misconception that somehow clearing makes trades less profitable. That's clearly not the case. In fact, I think most of the large systemically important participants in this market prefer clearing. And I think that's not just a statement; there is significant anecdotal evidence to support that perhaps the most important of which is LCH"), Roundtable Tr. at 21–22.

enumerated entities have specific, risk-based justifications for (i) setting membership criteria that exclude certain entities [23] and (ii) determining that certain swap contracts cannot be cleared.[24] Third, they assert that such swap clearing members must have the right to cause the DCO to act on such justifications, since ultimately, the capital of such clearing members (*i.e.,* their contributions to the default or guarantee fund) may be accessed if a fellow clearing member defaults.[25]

Others do not agree. They maintain that certain enumerated entities are active in the over-the-counter swap markets [26] and that they earn significant revenues from this line of business.[27] Such entities may experience substantial decreases in revenues if swap contracts were required to be (i) cleared with a DCO and (ii) executed on a DCM or SEF.[28] Therefore, some contend that such entities may have an incentive to represent that certain swap contracts do not meet the mandatory clearing criteria under Section 723 of the Dodd-Frank Act.[29] Such swap contracts would also not be subject to the trading requirement under Section 723 of the Dodd-Frank Act.

Although Section 723 of the Dodd-Frank Act grants the Commission ultimate authority to determine whether a swap contract must be cleared with a DCO, it also anticipates that the Commission would consider the risk assessment of DCOs. Currently, DCOs that clear large volumes of swap contracts tend to have swap clearing members that consist exclusively of enumerated entities.[30] Therefore, some argue that the risk assessment of such DCOs may be compromised.[31]

[23] *See, e.g.,* Comments from Hill ("as a general rule, the clearing member needs to be able to absorb losses, a default by another clearing member, number one; and, number two, they need to be able to absorb the economic transaction risk in the portfolio of a defaulting member * * * And so the way these clearinghouses set up their risk, you know, their admission or their membership criteria, is both of those things. So, A, they have to have a capital base sufficient to absorb losses and add in more capital to the clearinghouse if a member defaults. And B, they have to be able to in a situation where a clearing member has defaulted, which is probably the time of most economic stress, you know, in the economy, be able to take down the economic transaction risk of the swaps that were otherwise, the defaulting member was otherwise a party to, those trades need to be allocated among the surviving clearing members * * * And so the way these clearinghouses developed their criteria is they look at both of those prongs and they set thresholds to make sure that the members who are admitted can do those things. Because, remember, if you admit a member who can't do both of those things, then what happens is the clearinghouse will have insufficient capital in a situation where a member has defaulted, which is the time of the highest economic stress"), Roundtable Tr. at 28 to 29.

[24] *See, e.g.,* Comments from Hill ("In evaluating what trades should be cleared, there's a balance that needs to be struck between the goal of increasing clearing, obviously, but, B, you don't want to put trades in the clearinghouse that can't be appropriately risk-managed. So if you put trades in the clearinghouse that are illiquid and can't be valued properly, what will happen is when a clearing member defaults, there will be insufficient collateral with respect to that trade because it wasn't properly valued in the clearinghouse, and the surviving clearing members will be stressed from an economic perspective in taking positions the value of which cannot be readily ascertained. So it's critical that only trades that can be appropriately risk-managed be put into the clearinghouse. And I think what you'll see is that most of the clearinghouses look to their clearing members to help them valuate which trades are appropriate from a clearing perspective, and that is completely consistent with the economic incentives because the clearing members are the ones who have the overwhelming preponderance of the capital in the clearinghouse. So it's their capital that's at risk. They should certainly have a say in helping the clearinghouse evaluate which trades are acceptable for clearing and which trades are too risky or can't be valued, or are too illiquid or not standardized and, therefore, shouldn't be cleared"), Roundtable Tr. at 43 to 45.

[25] *Id. See, also, e.g.,* Comments from Lee Olesky, Chief Executive Officer and Co-Founder, TradeWeb ("*Olesky*") ("And I second Mr. Hill's comments. I think that it's very important that the people who bear the risk and supply the capital should have a substantial voice in how that risk gets managed, and that includes what contracts are accepted for clearing"), Roundtable Tr. at 46.

[26] For example, according to the Office of the Comptroller of the Currency ("OCC"), as of the second quarter of 2009, U.S. commercial banks held derivatives with $203.5 trillion in notional value. Of that $203.5 trillion, the top five commercial banks held approximately $197 trillion. The top five commercial banks were: (i) JPMorgan Chase Bank N.A.; (ii) Goldman Sachs Bank USA; (iii) Bank of America N.A.; (iv) Citibank N.A.; and (v) Wells Fargo Bank N.A. The sixth commercial bank, holding approximately $3 trillion, was HSBC Bank USA N.A. *See* OCC's Quarterly Report on Bank Trading and Derivatives Activities, Second Quarter 2009.

[27] *Id.* (stating that "U.S. commercial banks reported revenues of $5.2 billion trading cash and derivative instruments in the second quarter of 2009, compared to a record $9.8 billion in the first quarter").

[28] According to Section VI of the FRBNY Staff Report, "[e]ven after an OTC derivatives product has achieved relatively active trading, and would be suitable for exchange trading, dealers have an incentive to maintain the wider bid-ask spreads that they can obtain in the OTC market relative to the spreads that might apply to the same product on an exchange, where buyers and sellers can more directly compete for the same trade. Further, exchanges are more likely to match ultimate buyers to sellers, reducing the fraction of trades intermediated by dealers. Thus, from the viewpoint of their profits, dealers may prefer to reduce the migration of derivatives trading from the OTC market to central exchanges."

[29] *See, e.g.,* Comments of Heather Slavkin, Senior Legal and Policy Advisor, Office of Investment, AFL–CIO ("Slavkin") ("If there's an interest among the people who own the clearinghouse, or a conflict of interest that would create incentives for them to also favor, you know, [not] allowing certain types of swaps to clear because they may be more profitable for the institution generally if they remain over the counter, then that can create perverse incentives to maintain the OTC, nontransparent, systemically risky markets when the goal needs to be to prevent those conflicts of interest to ensure that anything that can be cleared does, in fact, clear"), Roundtable Tr. at 21; Comments of Darrell Duffie, Dean Witter Distinguished Professor of Finance at the Graduate School of Business, Stanford University ("Duffie") ("We talked earlier about how the members of the clearinghouse should determine what gets traded, and we also have conflicts of interest arising from the incentives of the dealers to profit from bid versus ask on products that are not traded on swap execution facilities. So the interaction effect here is effectively if one gets cleared as one gets traded on a swap execution facility, then we want to be very careful that the members of a central clearing counterparty that determine what gets cleared and, therefore, have control over what gets traded on swap execution facilities are the members that have, you know, the right social incentives to create competition"); Comments of Michael Greenberger, Professor, University of Maryland School of Law ("Greenberger") ("If you have one clearinghouse dominated by the major swaps dealers, they have several conflicting incentives. One is, I reject the idea that somehow they do not want to keep a large and vibrant over-the-counter market. We're told that clearing is very profitable. If it was that profitable, where were these people when we were aggressively arguing for mandatory clearing and exchange trading? They were on the opposite side of that. The transaction fees and the spreads still make an unregulated market very, very profitable, probably more profitable than the profits that would derive from clearing. So, if you have the swaps dealers in control of a clearing facility, they have that incentive"), Roundtable Tr. at 111.

[30] For example, as of July 2, 2010, ICE Clear Europe cleared approximately $3.3 trillion in European credit default swap ("*CDS*") indices and an additional $501 billion in European CDS single-name instruments. *See* "ICE Surpasses $10 Trillion Milestone in Global CDS Clearing," available at: *http://ir.theice.com/releasedetail.cfm?ReleaseID=485527.*

As of September 20, 2010, all CDS clearing members of ICE Clear Europe are banks, bank holding companies, or affiliates thereof. Such members are: (i) Banc of America N.A.; (ii) Barclays Bank PLC; (iii) BNP Paribas; (iv) Citigroup Global Markets Limited; (v) Credit Suisse International; (vi) Deutsche Bank AG; (vii) Goldman Sachs International; (viii) HSBC Bank PLC; (ix) JPMorgan Chase Bank, N.A.; (x) Morgan Stanley Capital Services, Inc.; (xi) Nomura International PLC; (xii) Société Générale; (xiii) The Royal Bank of Scotland PLC; (xiv) UBS AG, London Branch; and (xv) UniCredit Bank AG. *See* ICE Clear Europe, Clearing Members, available at: *https://www.theice.com/publicdocs/clear_europe/ICE_Clear_Europe_Clearing_Member_List.pdf,* and the release updating such list, available at *https://www.theice.com/publicdocs/clear_europe/circulars/C10080.pdf.*

ICE Trust U.S. LLC ("ICE Trust"), an affiliate of ICE Clear Europe, cleared approximately $6 billion in North American CDS indices and $272 billion in North American single-name indices. The CDS clearing members of ICE Clear Europe and ICE Trust generally overlap (counting affiliated entities), except that Merrill Lynch International is a clearing member of ICE Trust and Société Générale and UniCredit Bank AG are not. *See* ICE Trust, Participant List, available at: *https://www.theice.com/publicdocs/ice_trust/ICE_Trust_Participant_List.pdf.* ICE Trust is currently not a DCO.

[31] *See* note 29 above. *See, also,* Comments from Slavkin ("I think that there's the risk that anything that could be made to appear to be something that is a bilateral * * * contract, you could have the spurious customization issues, if there's the opportunity to get additional profits within the big dealer banks, and those same dealer banks are

Continued

Moreover, some contend that the swap clearing members of such DCOs may exclude non-enumerated entities from becoming clearing members, because non-enumerated entities may influence risk assessments of DCOs in favor of clearing more swap contracts.[32] Some market participants maintain that such practices may have systemic implications.[33]

The framers of the Dodd-Frank Act observe that the clearing of swap contracts constitutes a key means for managing systemic risk, because clearing removes the type of interconnectedness between financial institutions that contributed to the financial crisis resulting from the failure and bankruptcy of firms such as Bear Stearns, Lehman Brothers, and AIG.[34] Therefore, it is important to mitigate potential conflicts of interest that may prevent clearable swap contracts from becoming subject to mandatory clearing. At the same time, the Commission recognizes that the safety and soundness of a DCO should not be compromised. A DCO must not only have the ability to appropriately manage the risk associated with each and every contract that it guarantees, it must be able to decline accepting contracts for clearing if they pose unacceptable risks. In addition, DCO members must have input in setting membership criteria, because they bear the risk of loss in the event of member default. Nevertheless, the Commission does not believe that (i) subjecting more swap contracts to mandatory clearing is incompatible with (ii) DCO safety and soundness.[35] Rather, the Commission intends to ensure, through the proposed rules below, that a DCO takes action to achieve both (i) and (ii), and that the private, competitive interests of certain DCO members do not capture DCO risk assessments.

*b. DCMs and SEFs*

The main function of a DCM, as well as a SEF, is to provide a facility for: (i) The discovery of prices; and (ii) the execution of transactions. However, in order to obtain and maintain a license to perform such a function, each DCM and SEF must fulfill self-regulatory obligations under the CEA and the Dodd-Frank Act.[36] Therefore, although each DCM or SEF[37] is a commercial enterprise, the fact that each entity has self-regulatory obligations means that each entity "is not simply a corporation, but a corporation charged with the public trust."[38] Section 3(b) of the CEA confers on the Commission the responsibility for ensuring that each DCM or SEF appropriately prioritizes its self-regulatory obligations. Such obligations include appropriately implementing the comprehensive new framework that the Dodd-Frank Act sets forth, as well as meeting existing requirements under the CEA.

As the DCM Conflicts of Interest Release notes, increased competition may exacerbate conflicts of interest, causing a DCM to (i) prioritize commercial interests over self-regulatory responsibilities;[39] and (ii) restrict access or impose burdens on access in a discriminatory manner.[40]

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running and controlling the clearinghouses, then, you know, the potential for spurious customization becomes a real issue and becomes a possibility"), Roundtable Tr. at 40.

In addition to noting that the enumerated entities may have incentives to influence DCO risk assessments in favor of considering fewer contracts to be suitable for mandatory clearing, certain academics have observed that, for those contracts that nonetheless are cleared, the enumerated entities may have incentives to lower risk management standards. *See, e.g.,* Comments from Greenberger ("* * * yes, certain products will be cleared because they are profitable and [the enumerated entities] may over calculate and be over enthused about clearing things that are too risky"), Roundtable Tr. at 112. For example, the enumerated entities may not accurately calculate the amount of performance bond and/or guarantee or default fund contributions necessary to clear a particular swap contract.

[32] *See, e.g.,* Comments from Jason Kastner, Vice Chairman, Swaps and Derivatives Markets ("Kastner") ("Let me give you a specific example. One of the members of this SDMA currently clears 13 percent of the business at a large exchange in Chicago. That large, independent FCM is clearly qualified to become a swap clearing member. But because of various conflicts of interest, the risk committee of said exchange is precluding that firm, which is clearly qualified and has the capital, from becoming a swap clearing member * * * this goes back to the governance point and transparency about who's making that decision and why, because a lot of times what happens is people will swallow themselves in the cloak of risk management or financial stability or whatever really to make an anti-competitive stand. In other words, you can never say that you don't want to let somebody in. But you could probably find an excuse or a reason in the interest of systematic—you know, systemic stability and the rest of it to put an asterisk on the application or just delay it for awhile"), Roundtable Tr. at 90–91.

*See, also, infra* note 67 on the potential non-availability of arrangements whereby a non-clearing futures commission merchant may present a customer trade to a swap clearing member for clearing with a DCO.

[33] In *Lessening Systemic Risk: Removing Final Hurdles to Clearing OTC Derivatives,* the Swaps and Derivatives Market Association states: "[r]estricted access leads to reduced clearing which leads to systemic risk."

[34] *See, e.g.,* the letter from Senators Christopher Dodd and Blanche Lincoln, respective chairs of the Senate Banking and Agriculture Committee, to Representatives Barney Frank and Collin Peterson, respective chairs of the House Financial Services and Agriculture Committees, dated June 30, 2010 (stating that "Congress determined that clearing is at the heart of reform—bringing transactions and counterparties into a robust, conservative and transparent risk management framework").

[35] Certain Roundtable participants agree. *See* Comments from Duffie ("I don't think there's a conflict between the incentives for competition, increasing competition in this market on the one hand and the incentives for improving financial stability on the other, or I don't think there's a problem between those two. You can * * * have both. The incentives to watch for on competition are that we've got enough access by multiple market * * * participants, and that the oligopolistic nature of the market is, to some extent, watched carefully by regulators"), Roundtable Tr. at 104.

[36] Section 3(a) of the CEA defines the "national public interest" that transactions in commodity futures and options and swaps serve. It states, "[t]he transactions subject to this Act are entered into regularly in interstate and international commerce and are affected with a national public interest by providing a means for managing and assuming price risks, discovering prices, or disseminating pricing information through trading in liquid, fair and financially secure trading facilities." 7 U.S.C. 5(a). The importance of transactions in commodity futures and options, as well as swaps, forms the basis for Commission regulation of DCMs and SEFs.

Section 3(b) of the CEA describes the system of regulation that Congress has directed the Commission to implement to achieve the abovementioned purposes. It states: "[i]t is the purpose of this chapter to serve the public interests * * * through a system of effective self-regulation of trading facilities, clearing systems, market participants and market professionals under the oversight of the Commission." 7 U.S.C. 5(a). The Commission has interpreted the "self-regulation" referenced in Section 3(b) of the CEA as encompassing both (i) the registered entity ensuring that members meet applicable statutory requirements, and (ii) the registered entity having systems to ensure that it continues to meet applicable statutory requirements. For example, as the Commission previously stated in the DCM Conflicts of Interest Release, "Core Principle 15 requires DCMs to maintain systems to minimize structural conflicts of interest inherent in self-regulation, as well as individual conflicts of interest faced by particular persons. The acceptable practices are rationally related to the purposes of Core Principle 15." 72 FR at 6937, 6940.

[37] As mentioned above, the SEF is a new registration category that the Dodd-Frank Act created. Therefore, the Commission has never opined as to whether a SEF is a "self-regulatory organization" within the meaning of Regulation 1.3(ee). However, a SEF has self-regulatory obligations under the Dodd-Frank Act, as the Commission has interpreted such obligations in the DCM Conflicts of Interest Release. For example, to the extent that a SEF determines that it must impose requirements on members in order to comport with a core principle (*e.g.,* with respect to position limits), a SEF must monitor member compliance with such requirement, and must have the authority and ability to enforce such requirement. *See* Section 5h(f)(2)(A) of the CEA, as added by Section 733 of the Dodd-Frank Act.

[38] Preamble to proposed acceptable practices on "Conflicts of Interest in Self-Regulation and Self-Regulatory Organizations," 71 FR 38740, 38741 (July 7, 2006).

[39] *See, generally,* the DCM Conflicts of Interest Release.

[40] *See, infra* note 67 for a specific example of DCM or SEF restrictions or burdens on access. Also, clauses (i) and (ii) are not mutually exclusive. As the DCM Conflicts of Interest Release notes, "[s]elf-regulation's traditional conflict—that members will fail to police their peers with sufficient zeal—has been joined by the possibility that competing DCMs could abuse their regulatory authority to gain competitive advantage or to satisfy commercial imperatives." 72 FR at 6938. In its *Concept Release Concerning Self-Regulation,* the SEC identified one method that national securities exchanges have used to gain a competitive advantage: "abus[ing]

The Dodd-Frank Act attempts to create conditions favorable to sustained competition between DCMs and SEFs with respect to the same swap contract. For example, the Dodd-Frank Act contemplates that either a DCM or a SEF may list swap contracts.[41] It also contemplates that multiple DCMs or SEFs may list the same swap contract, and that such swap contracts may be offset at the same DCO.[42] Also, in requiring certain swap contracts to be listed on a DCM or SEF,[43] the Dodd-Frank Act may encourage competition between standardized swap contracts and commodity futures and options.[44]

Such sustained competition, if it occurs,[45] would constitute an increase to the competition that most DCMs currently face with respect to commodity futures and options. As described below, the Commission intends to ensure through the proposed rules that each DCM or SEF implements appropriate systems to manage such conflicts.

*c. Questions on Conflicts of Interest*

The Commission seeks comment on the questions set forth below on potential conflicts of interest.

- Has the release correctly identified the conflicts of interest that a DCO, DCM, or SEF may confront?
- Has the release accurately specified the possible effects of such conflicts of interest on DCO, DCM, or SEF operations? What are other possible effects?
- What other conflicts of interest may exist? What are the effects of such conflicts?

**III. Mitigation of Conflicts of Interest**

To mitigate, on a prophylactic basis, the conflicts of interest identified above, the Commission sets forth below proposed (i) structural governance requirements and (ii) limits on the ownership of voting equity and the exercise of voting power. As explained in greater detail below, the Commission views (ii) as a method of enhancing (i), in that (ii) limits the influence that certain shareholders may exert over the DCO, DCM, or SEF Board of Directors. The Commission believes that such influence may affect, among other things, the independent perspective of public directors. The Commission does not believe that stricter structural governance requirements (*e.g.,* a higher percentage of public directors) justify more lenient limits on the ownership of voting equity and the exercise of voting power, or *vice versa.* However, the Commission requests comment on the proper relationship between such requirements and limits. The Commission also requests comment on whether both (i) structural governance requirements and (ii) limits on the ownership of voting equity and the exercise of voting power are necessary or appropriate to mitigate the conflicts of interest described in Section II, or whether one or the other (or neither) would be effective.

In applying such requirements and limits, the Commission does not propose to distinguish between DCMs and SEFs listing swap contracts. As mentioned above, such DCMs and SEFs may experience sustained competition with respect to the same swap contract, and therefore would face the same pressures on self-regulation. Additionally, the Commission does not propose to distinguish between (i) DCMs listing swap contracts and (ii) DCMs listing only commodity futures and options. As mentioned above, clearable swap contracts may share sufficiently similar characteristics with certain commodity futures and options as to compete with respect to execution. Therefore, a DCM listing only commodity futures and options may face competition from a SEF with fewer self-regulatory requirements, in the same manner as a DCM listing swap contracts. Given that the same conflicts of interest[46] may concern both types of DCM, it would appear that the same (i) structural governance requirements and (ii) limits on the ownership of voting equity and the exercise of voting power should apply.

In addition, the Commission does not propose to distinguish between (i) DCOs clearing swap contracts and (ii) DCOs clearing only commodity futures and options. Certain standardized swap contracts have sufficiently similar risk profiles to commodity futures and options that the Commission has, on occasion, permitted such products to be commingled and margined within the segregated customer account under Section 4d of the CEA.[47] If the Commission applied differential (i) structural governance requirements and (ii) limits on the ownership of voting equity and the exercise of voting power, the Commission risks creating an incentive for regulatory arbitrage between the two types of DCO.

The Commission requests comment on holding the two types of (i) DCMs and (ii) DCOs to the same requirements regarding the mitigation of conflicts of interest. The Commission also requests comment on holding DCMs and SEFs listing swap contracts to the same requirements. The Commission is specifically interested in the costs and benefits of its approach.

*a. Structural Governance Requirements*

i. Independence

In general, the structural governance requirements mitigate conflicts of interest at a DCO, DCM, or SEF by introducing a perspective independent of competitive, commercial, or industry considerations to the deliberations of governing bodies (*i.e.,* the Board of Directors and committees). Such independent perspective would more likely encompass regulatory considerations, and to accord such considerations proper weight. Such independent perspective also would more likely contemplate the manner in which a decision might affect all constituencies, as opposed to concentrating on the manner in which a decision affects the interests of one constituency.[48]

SRO status by overregulating members that operate markets that compete with the SROs." Release No. 34–50700 (Nov. 18, 2004), 69 FR 71256 (Dec. 8, 2004).

Also, similar to the incentives that the enumerated entities may have with respect to the mandatory clearing requirement, if the enumerated entities control a DCM or SEF, they may cause such DCM or SEF to not list a swap contract for trading, if it would be more profitable to keep such contract bilaterally negotiated. However, the Commission notes that nothing would prevent another DCM or SEF from listing such contract, and that Section 723 of the Dodd-Frank Act would require that a DCO clearing such contract provide non-discriminatory access to such DCM or SEF.

[41] *See* Section 2(h)(8) of the CEA, as added by Section 723 of the Dodd-Frank Act.

[42] *See* Section 2(h)(1)(B) of the CEA, as added by Section 733 of the Dodd-Frank Act. Whereas DCMs have competed in the past, and are currently competing, to list commodity futures and options contracts with the same economic terms and conditions, such contracts have not been, and currently are not, fungible. In other words, such contracts cannot be offset in the same DCO.

[43] *See* Section 2(h)(8) of the CEA, as added by Section 723 of the Dodd-Frank Act.

[44] For example, two DCMs (*i.e.,* the NASDAQ OMX Futures Exchange and CME), as well as one exempt board of trade (*i.e.,* Eris Exchange), offer interest rate futures products. Currently, interest rate swap contracts constitute a large percentage of the bilateral swaps market. *See, e.g.,* OCC's Quarterly Report on Bank Trading and Derivatives Activities, First Quarter 2010, Executive Summary, available at: *http://www.occ.treas.gov/ftp/release/2010-71a.pdf.* (stating that "[d]erivative contracts remain concentrated in interest rate products, which comprise 84% of total derivative notional values").

[45] As discussed above, whether such competition occurs depends in part on the manner in which Section 723 of the Dodd-Frank Act is implemented.

[46] Namely, (i) prioritizing commercial interests over self-regulatory responsibilities and (ii) restricting access or imposing burdens on access in a discriminatory manner, in each case, because of increased competition.

[47] 7 U.S.C. 6d.

[48] *See, e.g.,* the DCM Conflicts of Interest Release (stating that "the public interest will be furthered if the boards and executive committees of all DCMs

Continued

In the DCM Conflicts of Interest Release, the Commission emphasized the importance of independent decision-makers in protecting DCM self-regulatory functions from DCM commercial interests and that of its constituencies. However, the Commission notes that participants in the Roundtable raised the possibility that conflicts of interest may also be mitigated by providing for fair representation of all constituencies in the governance of a DCO, DCM, or SEF.[49] Theoretically, all constituencies would act in their own commercial, competitive, or industry interests, but no one interest would dominate. The Commission specifically requests comment regarding whether fair representation would be preferable to, or would complement, director independence in mitigating the DCO, DCM, and SEF conflicts of interest described in Section II. The Commission would particularly welcome factual examples. The Commission also requests comment on how the proposed structural governance requirements should change if the Commission adopts a fair representation standard as either an alternative to, or a complement of, rules emphasizing an independent perspective.

ii. Board Requirements

1. Composition

As the DCM Conflicts of Interest Release states, "the governing board * * * is [the] ultimate decision maker and therefore the logical place to begin to address conflicts." [50] The Commission proposes (i) maintaining the requirement that DCM Boards of Directors be composed of at least 35 percent "public directors" [51] and (ii) extending this requirement to SEF and DCO Boards of Directors. In the DCM Conflicts of Interest Release, the Commission stated that the 35 percent requirement struck an appropriate balance between (i) the need to minimize conflicts of interest in DCM decision-making processes with (ii) the need for expertise and efficiency in such processes. Such rationale would appear to apply to SEF and DCO Boards of Directors as well.[52]

In addition to the 35 percent composition requirement, the Commission proposes specifying that DCO, DCM, and SEF Boards of Directors may not have less than two public directors. Such a requirement is also contained in the European Commission Proposal.[53] As the Commission has observed that most DCO and DCM Boards of Directors contain more than three members, the Commission does not believe that such a requirement imposes additional burden. However, the Commission welcomes comment on this proposal.

In order to prevent evasion of the abovementioned composition requirements through corporate structuring or internal reorganization, the Commission proposes extending the composition requirements to any committee of the Board of Directors that may exercise delegated authority with respect to the management of a DCO, DCM, or SEF. Further, the Commission proposes prohibiting a DCO, DCM, or SEF from permitting itself to be operated [54] by another entity, unless such entity agrees to comport with such requirements in the same manner as the DCO, DCM, or SEF.

The Commission would like to clarify that it does not intend to extend the abovementioned composition requirements to an entity that does not exert active and recurrent control over the operations of a DCO, DCM, or SEF. Consequently, the Commission proposes to deem an entity to "operate" a DCO, DCM, or SEF only if it engages in "the direct exercise of control (including through the exercise of veto power) over the day-to-day business operations" of the registered entity.

In addition to the abovementioned composition requirements, the Commission proposes prohibiting a DCO, DCM, or SEF from permitting itself to be operated by an entity unless such entity agrees to subject (i) its officers, directors, employees, and agents to Commission authority, and (ii) its books and records to Commission inspection and copying. The Commission believes that such proposals are necessary to ensure effective audits of DCO, DCM, or SEF operations, given the corporate structure of the DCO, DCM, or SEF.

2. Questions on Composition

The Commission seeks comment on the questions set forth below on DCO, DCM, and SEF Boards of Directors composition requirements:

- Would such composition requirements be equally valid in mitigating conflicts of interest concerning a privately-held DCO, DCM, and SEF, as opposed to a publicly-held DCO, DCM, and SEF?
- As mentioned above, would providing for fair representation on DCO, DCM, or SEF Boards of Directors be preferable to, or complementary to, mandating specific percentages of

are at least 35% public. Such boards and committees will gain an independent perspective that is best provided by directors with no current industry ties or other relationships which may pose a conflict of interest. These public directors, representing over one-third of their boards, will approach their responsibilities without the conflicting demands faced by industry insiders. They will be free to consider both the needs of the DCM and of its regulatory mission, and may best appreciate the manner in which vigorous, impartial, and effective self-regulation will serve the interests of the DCM and the public at large. Furthermore, boards of directors that are at least 35% public will help to promote widespread confidence in the integrity of U.S. futures markets and self-regulation"). 72 FR 6946.

[49] *See, e.g.,* Comment from Hal Scott, Nomura Professor of International Financial Systems and Director of Program on International Financial Systems, Harvard Law School ("Scott") ("When I spoke, I was saying I opposed ownership restrictions, I was not talking about voting restrictions which I think is a different issue, and the way I would put it is not a voting restriction. I would turn it around to a duty of fair representation, which the SEC is quite familiar with, and is applied to their regulated entities which ensures that the users, more broadly defined of the exchange. And maybe if you translated this into the clearinghouse, the users, but not necessarily the members of the clearinghouse, would have representation in terms of governance * * * Independent directors, to me, are most needed with public companies as under SOX when there was a broad duty to shareholders. But I think what's needed in this context is more the expert, and we heard before that it's very important that people that know what they're doing have input into those, and clearly major users of these clearinghouses, that is customers who clear through a member. Major hedge funds, for instance, have a lot of expertise, okay, in these areas, they're big traders * * *"), Roundtable Tr. at 130–131; Richard Prager, Managing Director, Global Head of Fixed Income Trading, Blackrock ("as the [sole] fiduciary on this panel * * * we would be in support of a very inclusive participation and governance with teeth"), Roundtable Tr. at 131–132; Lynn Martin, Chief Operating Officer, NYSE Liffe U.S. ("You may be aware that NYSE Euronext's U.S. Future Exchange—NYSE Life U.S., is a semi-neutralized structure whereby we balance the views of both the independence criteria as required by core principle 15 in the CFTC–DCM requirements, as well as the views of NYSE Euronext and our external investor firms' views, such that no one board action may be enacted based on the views of any one of those constituents * * * So, it's our belief that a more balanced board structure, a more balanced governance structure, is the proper way to handle or potentially mitigate conflicts of interest"), Roundtable Tr. at 121.

[50] 72 FR at 6940.

[51] *See* Section III(a)(iv) of this release for more detail regarding the definition of "public director."

The Commission notes that such percentage harmonizes with Article 25(2) of the European Commission Proposal, which requires a central counterparty ("CCP") to have "a board of which at least one third, but no less than two, of its members are independent."

[52] 72 FR at 6946.

[53] *See* Article 25(2) of the European Commission Proposal.

[54] The proposed rule defines "operate" as "the direct exercise of control (including through the exercise of veto power) over the day-to-day business operations of" a DCO, DCM, or SEF "by the sole or majority shareholder of such registered entity, either through the ownership of voting equity, by contract, or otherwise. The term 'operate' shall not prohibit an entity, acting as the sole or majority shareholder of such registered entity, from exercising its rights as a shareholder under any contract, agreement, or other legal obligation."

public directors? Also, if the main purpose of the 35 percent composition requirement is to introduce an independent perspective into DCO, DCM, and SEF governance, would requiring one or two public directors be sufficient, regardless of the size of the DCO, DCM, or SEF Board of Directors?

• As mentioned above, the Commission is seeking to mitigate potential conflicts of interest that may influence a DCO regarding (i) whether a swap contract is capable of being cleared, (ii) the minimum criteria that an entity must meet in order to become a swap clearing member, and (iii) whether a particular entity satisfies such criteria. Because the DCO Board of Directors would make ultimate decisions implicating (i), (ii), and (iii), is the 35 percent composition requirement sufficient to ensure that the private, competitive interests of certain DCO members do not capture DCO risk assessments with respect to both products and membership? Or should the Commission increase the required percentage of public directors to 51 percent? Or is there a number less than 51 percent but greater than 35 percent that would be more appropriate?

• As described above, the Dodd-Frank Act envisions (i) a DCM competing with a SEF to list the same swap contract, and (ii) a DCM listing a commodity futures or options contract that competes with a swap contract listed on a SEF. In both cases, a DCM would be competing against an entity with lesser self-regulatory obligations. Such competition may place increased stress on the manner in which the DCM aims to satisfy its self-regulatory responsibilities. In light of such stress, is the 35 percent composition requirement still sufficient to protect the DCM self-regulatory function?

• As referenced above, the Dodd-Frank Act anticipates that a SEF would face a more competitive environment at inception than a DCM currently listing commodity futures and options. As the DCM Conflicts of Interest Release notes, increased competition may be detrimental to self-regulation. Therefore, is the 35 percent composition requirement appropriate to ensure that a SEF discharges its self-regulatory functions in the first instance?

3. Substantive Requirements

In addition to the abovementioned composition requirements, the Commission proposes the substantive requirements set forth below, which aim to enhance the accountability of the DCO, DCM, or SEF Board of Directors to the Commission regarding the manner in which such Board of Directors causes the DCO, DCM, or SEF to discharge all statutory, regulatory, or self-regulatory responsibilities under the Dodd-Frank Act and the existing CEA.

• The roles and responsibilities of a DCO, DCM, or SEF Board of Directors must be clearly articulated, especially in respect of the manner in which such Board of Directors ensures that the DCO, DCM, or SEF complies with all statutory, regulatory, and self-regulatory responsibilities under the Dodd-Frank Act and the existing CEA.

• A DCO, DCM, or SEF Board of Directors shall review its performance and that of its individual members annually. It should consider periodically using external faciliators for such reviews.

• A DCO, DCM, or SEF must have procedures to remove a member from the Board of Directors, where the conduct of such member is likely to be prejudicial to the sound and prudent management of the DCO, DCM, or SEF.

Because of the highly specialized nature of DCO, DCM, or SEF operation, the Commission proposes requiring that each member of a DCO, DCM, or SEF Board of Directors have sufficient expertise, where applicable, in financial services, risk management, and clearing services. Roundtable participants generally agreed that a DCO, DCM, or SEF Board of Directors must have sufficient expertise.[55]

To ensure that members of a DCO, DCM, or SEF Board of Directors are not incented to accord undue consideration to the commercial interests of a DCO, DCM, or SEF in relation to regulatory interests, the Commission proposes to prohibit linking the compensation of public directors and other non-executive members of the Board of Directors to the business performance of the DCO, DCM, or SEF.

The abovementioned substantive requirements are in accord with certain provisions in the European Commission Proposal.[56]

4. Questions on Substantive Requirements

The Commission seeks comment on the questions set forth below on the substantive requirements applicable to a DCO, DCM, or SEF Board of Directors:

• What substantive requirements, other than those identified above, should the Commission consider imposing on a DCO, DCM, or SEF Board of Directors to mitigate the potential conflicts of interest described in Section II, as well as any potential conflicts of interest not specified herein? For example, should the Commission consider any additional requirements related to (i) the fiduciary duties that a DCO, DCM, or SEF Board of Directors may owe or (ii) policies or charters that the DCO, DCM, or SEF Board of Directors may adopt?

iii. Committees

1. Requirements for Each DCO, DCM, and SEF

a. Nominating Committee

As stated above, the structural governance requirements contained herein focus on mitigating conflicts of interest through introducing a perspective independent of competitive, commercial, or industry considerations to the deliberations of DCO, DCM, and SEF governing bodies. Public director composition requirements are not, in and of themselves, sufficient to ensure the representation of such independent perspective. The Commission also must protect the integrity of the process by which the DCO, DCM, or SEF selects public directors.[57]

[55] *See, e.g.,* Comments from Slavkin ("I think having real experts on the boards of directors is a very important issue. We all saw situations in the last several years where there were boards that were two-thirds independent and made really stupid decisions about risk management. So, we need to make sure that there are people on those boards of directors that really understand the risks that exist within a clearinghouse and are prepared to perceive potential risks that may arise in the system down the road and address them. So they also need to have the personalities to stand up to a board of directors that may be entrenched and have their own interests that may differ from those that are in the best interests of the systemic stability"), Roundtable Tr. at 77; Comments from Johnathan Short, Senior Vice President, General Counsel and Corporate Secretary, the IntercontinentalExchange, Inc. ("I mean, she's right, but I just want to point out that there really is a tension there, because some of the people who are best qualified to assess risk in a given market are the people that some parts of the—you know, of the market are complaining about is controlling clearinghouses and controlling key infrastructure"), Roundtable Tr. at 78; Comments from William H. Navin, Executive Vice President and General Counsel, Options Clearing Corporation ("I would second those remarks. Our experience has been that we've benefited greatly from the expertise of industry directors, and I think it would be throwing the baby out with the bathwater if substantial restrictions on industry governance were to be enacted"), Roundtable Tr. at 78; Comments from Greenberger ("I do agree with what has been said, that you need experts on the board. What I disagree with is that all expertise comes from five swaps dealers or it all comes from people who work for banks. There are academics, former regulators, and, you know, other participants in the market who have talked today about their need for open and fair access. I think that kind of diversity on the board is important"), Roundtable Tr. at 164.

[56] *See* Article 25 of the European Commission Proposal.

[57] *See, e.g.,* Comments from Rick McVey, Chief Executive Officer, MarketAxess ("McVey") ("I personally think that one of the most important areas to focus on is the governance and nominating committee. How do people get on these boards?

Continued

To this end, the Commission proposes requiring each DCO, DCM, or SEF to have a Nominating Committee. The role of the Nominating Committee would be to: (i) Identify individuals qualified to serve on the Board of Directors, consistent with the criteria that the Board of Directors require and any composition requirement that the Commission promulgates; and (ii) administer a process for the nomination of individuals to the Board of Directors. The Commission proposes that (i) public directors comprise at least 51 percent of the Nominating Committee, and (ii) a public director chair the Nominating Committee.

b. Disciplinary Panels

As stated above, each DCM and SEF must fulfill self-regulatory obligations under the CEA and the Dodd-Frank Act. Also, each DCO has certain self-regulatory obligations.[58] The Commission proposes requiring each DCO, DCM, or SEF to have one or more disciplinary panels.[59] The role of such disciplinary panels would be to conduct hearings, render decisions, and impose sanctions with respect to disciplinary matters.

The Commission believes that it is imperative for each DCO, DCM, or SEF to exercise its disciplinary authority in an impartial manner. In the DCM Conflicts of Interest Release, the Commission acknowledged the value of fair representation in maintaining such impartiality.[60] To ensure that fair representation results in impartiality, the Commission proposes (i) maintaining the requirement that each DCM adopt rules that would preclude any group or class of participants from dominating or exercising disproportionate influence on the disciplinary panel, and (ii) extending such requirement to each DCO or SEF. The Commission also proposes mandating that each DCO, DCM, or SEF adopt rules that would prohibit any member of a disciplinary panel from participating in deliberations or voting on any matter in which the member knowingly has a financial interest.

In the DCM Conflicts of Interest Release, the Commission also acknowledged the importance of an independent perspective.[61] The Commission proposes retaining and strengthening the role that such perspective plays in DCO, DCM, or SEF disciplinary processes. First, the Commission proposes (i) maintaining the requirement that each DCM disciplinary panel include at least one "public participant," [62] and (ii) extending such requirement to each DCO or SEF disciplinary panel. Second, the Commission proposes requiring that the chair of each disciplinary panel be a public participant.

2. Requirements for Each DCO Only

a. Risk Management Committee (and Subcommittee)

The central purpose of a DCO is to guarantee the performance of each derivatives contract that it clears. In order to fulfill such guarantee, each DCO must appropriately manage the risks associated with such contract. In general, a DCO convokes a committee to oversee risk management. The Commission proposes to require each DCO to have a Risk Management Committee.

Swap contracts, as well as commodity futures and options, are complex instruments. Managing the risks of such instruments requires expertise. In general, clearing members constitute the main source of such expertise, as they (i) routinely execute trades in such instruments and (ii) have experience in managing risks posed by customer trades. Because of the lack of a centralized market for swap contracts, swap clearing members also perform the function of (i) pricing a swap contract and (ii) participating in an auction to liquidate the swap contract in the event of member default.

However, as discussed above, swap clearing members at DCOs that currently clear large volumes of swap contracts are exclusively enumerated entities. Some have argued that the enumerated entities have an incentive to influence DCO risk assessments regarding (i) whether a swap contract is capable of being cleared, (ii) the appropriate membership criteria for a swap clearing member, and (iii) whether a particular entity meets such criteria. Therefore, the Commission must carefully consider the composition of the Risk Management Committee, in order to achieve (i) the increased clearing of swap contracts that the Dodd-Frank Act contemplates without compromising (ii) DCO safety and soundness.

The Commission proposes a three-pronged approach to mitigating the potential conflict of interest identified above, while still ensuring that the Risk Management Committee retains sufficient expertise. First, the Commission proposes requiring that 35 percent of the Risk Management Committee be composed of public directors, with sufficient expertise in, among other things, clearing services.[63] Second, the Commission proposes requiring that 10 percent of the Risk Management Committee be composed of customers of clearing members, who also routinely execute swap contracts (as well as commodity futures and options) and who have experience in using pricing models for such contracts (if only to ensure that they receive a fair price from the enumerated entities).[64] Because customers benefit from a wider pool of swap clearing members and greater competition between such members, customers have an incentive to ensure that the membership criteria of a DCO are risk-based, and do not reflect the private, competitive interests of the enumerated entities. Third, the Commission proposes to permit a DCO Risk Management Committee to delegate to a subcommittee (the "Risk

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And if there is a requirement that that process be independent I think you would get both qualified people that are going to look after the best interest of the company, and you would get better independence on these boards"), Roundtable Tr. at 150.

[58] For example, to the extent that a DCO determines that it must impose requirements on members in order to comport with a core principle or other regulatory requirement (*e.g.,* limits on ownership and voting power), a DCO must monitor member compliance with such requirement, and must have the authority and ability to enforce such requirement. *See* Section 5b(c)(2)(H) of the CEA, as added by Section 725(c) of the Dodd-Frank Act.

[59] The Commission understands that DCOs currently may not have disciplinary panels, but that the Risk Management Committee of a DCO may perform the functions of such panel. Therefore, consistent with current practice, the Commission proposes to permit the DCO Board of Directors to delegate to the Risk Management Committee the performance of such functions. If the Board of Directors so delegates, (i) the DCO would no longer need to maintain a disciplinary panel, but (ii) the composition requirements applicable to a disciplinary panel would be extended to any committee (or similar body) to which a decision of the Risk Management Committee may be appealed.

[60] *See* 72 FR at 6952 (stating that "fair disciplinary procedures, with minimal conflicts of interest, require disciplinary bodies that represent a diversity of perspectives and experiences").

[61] *Id.* (stating that "[t]he presence of at least one public person on disciplinary bodies * * * provides an outside voice and helps to ensure that the public's interests are represented and protected. This approach is consistent with the Commission's overall objective of ensuring an appropriate level of public representation at every level of DCM decision making, while simultaneously calibrating the required number of public persons to the nature and responsibility of the decision-making body in question").

[62] *Id.* at 6957. In the proposed rules, a "Public Participant" is defined as an entity that meets the bright-line materiality tests in the definition of "Public Director."

[63] *See* Comments from Greenberger, *supra* note 55, regarding the availability of such public directors.

[64] *See, generally, supra* note 55.

Because customers do not contribute to the DCO default fund, customers may have less capital at stake than clearing members if a DCO improperly measures risk. Therefore, the Commission believes that 10 percent representation would ensure that customers have adequate voice on the DCO Risk Management Committee, without adversely impacting the risk assessments of such committee.

Management Subcommittee") the responsibility to: (i) Determine the standards and requirements for initial and continuing clearing membership eligibility; (ii) approve or deny (or review approvals or denials of) clearing membership applications; and (iii) determine products eligible for clearing. If the Risk Management Committee effects such a delegation, then it would free itself of the composition requirements. The decisions of the Risk Management Subcommittee would be subject to review by the Risk Management Committee. Therefore, if the Risk Management Committee determines that a particular decision by the Risk Management Subcommittee is overly risky, then the Risk Management Committee may overrule that decision.[65]

In order to prevent evasion of the above-mentioned composition requirements through internal reorganization, the Commission proposes to prohibit:

- A decision of the Risk Management Subcommittee from being subject to the approval of, or otherwise restricted or limited by, a body other than the DCO Board of Directors or the DCO Risk Management Committee, including, without limitation, any advisory committee; and
- Certain decisions of the Risk Management Committee[66] from being subject to the approval of, or otherwise restricted or limited by, a body other than the DCO Board of Directors, including, without limitation, any advisory committee.

The Commission requests comment on its three-pronged approach, including any alternatives to such approach. The Commission also requests comment on (i) the specific percentages set forth above, and (ii) the prohibitions on certain bodies approving of, or otherwise restricting or limiting, the decisions of the Risk Management Committee (or Risk Management Subcommittee, as applicable).

[65] The Commission is contemplating requiring the DCO to report to the Commission whenever the Risk Management Committee overrules the Risk Management Subcommittee, or whenever the Board of Directors overrules the Risk Management Committee. If the Commission decides to propose such requirement, it would be included in the second rulemaking that the Commission contemplates finishing on governance and mitigation of conflicts of interest. *See supra* note 17.

[66] *I.e.,* any decision pertaining to (i) whether a swap contract is capable of being cleared, (ii) the appropriate membership criteria for a swap clearing member, and (iii) whether a particular entity meets such criteria.

3. Requirements for Each DCM or SEF Only

a. Membership or Participation Committee

As mentioned above, increased competition may exacerbate conflicts of interest, causing a DCM or SEF to (i) prioritize commercial interests over self-regulatory responsibilities; and (ii) restrict access or impose burdens on access in a discriminatory manner. Roundtable participants identified a specific example of (ii), where swap clearing members may seek to limit access to SEF execution and pricing to customers executing through such members.[67] The rationale of such example would apply to a DCM as well. To protect decisions regarding access from DCM or SEF commercial interests, or the interests of the enumerated entities, the Commission proposes requiring a DCM or SEF to have a Membership or Participation Committee, composed of thirty-five percent public directors.[68] Such committee would have the responsibility to: (i) Determine the standards and requirements for initial and continuing membership or participation eligibility; (ii) review appeals of staff denials of membership or participation applications; and (iii) approve rules that would result in different categories or classes of members or participants receiving disparate access. The Commission proposes prohibiting the Membership or Participation Committee from upholding any staff denial if the relevant application meets the standards and requirements that such committee sets forth. Further, the Commission proposes prohibiting the Membership or Participation Committee from restricting access or imposing burdens on access in a discriminatory manner, within each category or class of members or participants or between similarly situated categories or classes of members or participants. Nothing in this preamble is meant to prohibit the Commission from issuing substantive proposals regarding access to a DCM or SEF in any subsequent proposed rulemaking.

[67] *See, e.g.,* Comments from Kastner ("I'll take the ball for a second with the SEFs. The same principles that apply to DCOs in terms of open access—also if you carefully apply to SEFs, anybody who is able to get a clearing account at a qualified swap clearing member or FCM to use the, you know, futures analog, anybody that wants to trade on a SEF, the SEF should not have any barriers to entry."), Roundtable Tr. at 52, ("The point is if you have a firm who is doing customer business and wants to engage in an interest rate swap with an end user who is not a clearing member, that they should be able to execute that trade with the end user and then give up to a clearing member."), Roundtable Tr. at 84; Comments from William DeLeon, Executive Vice President, Global Head of Portfolio Risk Management, PIMCO ("You know, that concept of using a SEF, I think it should be free and open access * * *. The issue is that there needs to be a guarantee that when you access a SEF, that when you do a trade, that there is someone who is guarantee that that is a good trade. So whether that means that there's a market maker * * * or if that means that there's a DCM or an FCM or someone who's going to guarantee that they're going to stand behind * * * unknown clients * * * "), Roundtable Tr. at 56.

[68] The Commission acknowledges that a DCM may have already assigned the functions of a Membership or Participation Committee to other governing bodies. Therefore, the proposed rules permit the DCM Board of Directors to delegate the performance of the functions of the Membership or Participation Committee to one or more other committees, provided that each such committee meets the applicable composition requirements. If the Board of Directors chooses to so delegate, the registered swap execution facility would no longer need to maintain a Membership or Participation Committee.

b. Regulatory Oversight Committee

In the DCM Conflicts of Interest Release, the Commission emphasized the importance of a DCM Regulatory Oversight Committee ("ROC"):

> Properly functioning ROCs should be robust oversight bodies capable of firmly representing the interests of vigorous, impartial, and effective self-regulation. ROCs should also represent the interests and needs of regulatory officers and staff; the resource needs of regulatory functions; and the independence of regulatory decisions. In this manner, ROCs will insulate DCM self-regulatory functions, decisions, and personnel from improper influence, both internal and external.[69]

The Commission also underscored the importance of the DCM ROC being composed of 100 percent public directors:

> The Commission strongly believes that new structural conflicts of interest within self-regulation require an appropriate response within DCMs. The Commission further believes that ROCs, consisting exclusively of public directors, are a vital element of any such response * * *. ROCs make no direct commercial decisions, and therefore, have no need for industry directors as members. The public directors serving on ROCs are a buffer between self-regulation and those who could bring improper influence to bear upon it.[70]

The Commission proposes (i) maintaining the requirement that DCMs have a ROC composed of only public directors, and (ii) extending such requirement to SEFs, which also have self-regulatory obligations. However, the Commission recognizes that SEFs—but not DCMs—must have a chief compliance officer (i) to monitor SEF adherence to statutory, regulatory, and

[69] *See* 72 FR 6950, 6951.

[70] *Id.* at 6951.

self-regulatory requirements and (ii) to resolve conflicts of interest that may impede such adherence. The chief compliance officer must report to the SEF Board of Directors (or similar governing body) or the senior SEF officer.[71] Since the Dodd-Frank Act charges the SEF Board of Directors (or similar governing body) or the senior SEF officer with the responsibility for overseeing the chief compliance officer (including with respect to the resolution of conflicts of interest), the Commission requests comment on whether requiring a SEF to also have a ROC is necessary.

iv. Definition of Public Director

The proposed rules include a definition of "public director" that makes several modifications to the definition of "public director" that the Commission adopted in 2009.[72] Such modifications bring several aspects of the definition in line with the definition of "independent director" that the SEC proposed in 2004.[73] Since the Commission is currently, or will in the future, be regulating some of the same entities as the SEC,[74] the modifications to the definition of "public director" are intended to allow for greater harmonization with the SEC and currently accepted practices.[75]

First, the proposed rules include a new bright-line test that prohibits any director that is an officer of another entity, which entity has a compensation committee, on which any officer of the registered entity serves, from being a public director. This test is a part of the independence tests of most listing standards and prevents a public director from having a financial relationship that would likely impair his independence. In light of the obvious conflicts that could arise as a result of such a financial relationship, the Commission proposes that this additional bright-line test be included in the definition of "public director."

Second, the proposed rules would preclude directors that are employees of members of DCOs, DCMs, and SEFs from being public directors. The proposed rules would also preclude a director, or an entity with which the director is an employee, from being a public director if certain payments are made to such director. In 2009, the Commission moved the evaluation of employment relationships from the bright-line test to an analysis under the overarching materiality standard. The Commission is re-evaluating such move in light of current concerns regarding further protecting regulatory functions from directors that are conflicted due to industry ties. The Commission notes that CBOE Futures Exchange, LLC ("CFE") submitted a comment letter to this effect in 2009. In particular, CFE expressed concern that, as a result of the removal of employment relationships from the bright-line tests, all required public directors could be member employees.[76] At the time, the Commission felt that such a situation would be incompatible with the overarching materiality test, even if such prohibition against employment was not included in the bright-line test. The Commission seeks comments regarding the re-insertion of employment relationships in the bright-line tests.

Third, the proposed "public director" definition includes an expanded definition of "immediate family" that includes certain family members, whether by blood, marriage or adoption, and also includes any person residing in the home of the director or his immediate family. Such change attempts to harmonize the "public director" definition with the SEC 2004 Release and currently accepted practices.

Finally, the Commission notes that the proposed rules retain the one-year look-back period. The Commission seeks comment as to whether such period should be increased, given (i) current concerns regarding further protecting regulatory functions from directors that are conflicted due to industry ties, and (ii) the goal of achieving harmony with the SEC and currently accepted practices.

v. Questions on Committees and the Definition of Public Director

In addition to any questions that the Commission may have posed above, the Commission seeks comment on the following questions regarding DCO, DCM, or SEF committees, and the attendant composition requirements, as well as the definition of public director:

- Is each of the committees or panels specified above necessary or appropriate for the mitigation of the conflicts of interest described in Section II, or of any conflict of interest not identified herein? If so, are the composition requirements applicable to such committees necessary or appropriate to effect such mitigation?
- What other ways should the Commission consider defining "public director"? Are there other circumstances that the Commission should include in the bright-line materiality tests? Are there circumstances that the Commission should remove from such tests?

*b. Ownership and Voting Limits*

As mentioned above, the structural governance requirements mitigate DCO, DCM, or SEF conflicts of interest by introducing a perspective independent of competitive, commercial, or industry considerations to the deliberations of governing bodies. The Commission believes that limits on ownership of voting equity and the exercise of voting rights would enhance the structural governance requirements.[77] In general, individuals are compensated for service on the Board of Directors (and the committees thereof). Voting shareholders elect, directly or indirectly, members of the Board of Directors. Such members serve as fiduciaries to all shareholders under state law. Therefore, to ensure that DCO, DCM, or SEF public directors maintain their independent perspective (rather than solely representing the competitive, commercial, or industry considerations of shareholders), the Commission believes that limits on ownership of voting equity and the exercise of voting rights are necessary.[78]

[71] *See* Section 5h(f)(15) of the CEA, as added by Section 733 of the Dodd-Frank Act.

[72] *See, generally,* 74 FR 18982 (April 27, 2009).

[73] *See* 69 FR 71127 (December 8, 2004) (the "SEC 2004 Release").

[74] *E.g.,* the Options Clearing Corporation, or a SEF that lists both CDS indices and single-name CDS contracts.

[75] *See, e.g.,* the listing standards of NYSE Euronext or NASDAQ OMX.

[76] CFE Comment Letter at 2.

[77] The Commission proposes not to limit non-voting equity. In general, a shareholder would have direct influence over a DCO, DCM, or SEF Board of Directors only if the shareholder has the ability to exercise voting rights with respect to, *e.g.,* election, compensation, or removal of directors. However, the Commission notes that certain Roundtable participants disagree. *See, e.g.,* Comments from Slavkin ("I actually disagree with what the gentleman from JP Morgan said when he said that he doesn't think that having an economic stake without having a voting interest is a concern. I think most of us can imagine a situation where someone owns 5 percent of our company and asks us to do something. I don't think it matters if that person gets to vote for the board of directors, that person has real influence regardless of whether it's formal influence, there is going to be influence over the decision making, there's going to be influence over the strategy and innovation and the trajectory of the institution in general, so I do think we need to look at ownership restrictions related to voting interests as well as related to economic interests even when they're not tied to actual voting shares"), Roundtable Tr. at 153. The Commission requests comment on whether limits on non-voting equity would be appropriate to the mitigation of conflicts of interest.

[78] Certain Roundtable Participants agree. *See, e.g.,* Comments from Slavkin ("What I'm hearing from the people who support governance as opposed to real caps on ownership is an argument in favor of the status quo, and I think that when Congressman Brown—I'm sorry, when Congressman Lynch proposed this amendment that was passed in the House legislation, and when Senator Brown proposed, you know, the Lynch Light version that was passed by the entire Congress, their intention

i. DCOs

According to the DCM Conflicts of Interest Release, "[t]oday's DCMs * * * are vibrant commercial enterprises competing globally in an industry whose ownership structures, business models, trading practices, and products are evolving rapidly."[79] The same evolution, and the diversity in ownership structures that it engenders, may be observed in DCOs. Therefore, in acknowledgement of the different DCO ownership structures that currently or may in the future exist, the Commission proposes that a DCO choose between one of two alternative limitations on ownership of voting equity and the exercise of voting rights. However, the Commission recognizes that circumstances may exist where neither alternative may be appropriate. Consequently, the Commission also proposes a waiver procedure.

1. First Alternative

For the first alternative, the Commission proposes a combination of a single-member limitation and an aggregate limitation (the "First Alternative").

a. Single-Member Limitation

First, the Commission proposes requiring a 20 percent limitation on the voting equity that any single member (and related persons)[80] may own.[81] Economic research suggests that holding 20 percent voting equity of an entity may be sufficient for exerting control over an entity,[82] especially if that entity has otherwise diffuse ownership.[83]

As described above, based on Commission experience, control of a DCO by members collectively has generally permitted the DCO to serve the purposes of the CEA. However, such description does not necessarily hold true if, for example, the DCO has demutualized but one member retains sufficient voting ownership to dominate the DCO.[84] Such domination may result in the DCO relaxing risk management standards with respect to that member, but imposing more stringent standards on others.

Given the increased importance of the DCO in managing systemic risk, the Commission believes that limiting the amount of voting equity that any one member may own is appropriate to ensure impartiality in risk assessment, especially in a DCO with otherwise diffuse ownership. To prevent evasion of the 20 percent limitation, the Commission proposes requiring an identical limit on voting rights; and if the DCO is a subsidiary, extending the limitation to the shareholders of its direct or indirect parent. If any parent is publicly-listed, then that parent would have to comply with shareholder voting requirements promulgated by the SEC or the exchange on which the parent is listed.

b. Aggregate Limitation

Further, the Commission proposes a 40 percent limitation on the voting equity that the enumerated entities (and their related persons) may own in the aggregate, regardless of whether such entities are DCO members.[85] As mentioned above, some market participants, investor advocates, and academics have argued that the enumerated entities may have commercial incentives to influence DCO risk assessments regarding (i) whether a swap contract is capable of being cleared, (ii) the appropriate membership criteria for a swap clearing member, and (iii) whether a particular entity meets such criteria. The enumerated entities may directly influence such assessments through participation on the Risk Management Committee as clearing members, or indirectly influence such assessments as voting shareholders. In general, the Commission believes that the enumerated entities would attempt to influence such assessments as voting shareholders only if the DCO has a mutualized structure with concentrated ownership.[86] In such a structure, the percentage necessary for control would be higher than the abovementioned 20 percent, which is sufficient for a diffuse ownership structure.

In counterweight to the commercial incentives that the enumerated entities may have to influence DCO risk assessments regarding (i), (ii), and (iii)

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was to create real change in recognition of the fact that the current system is broken. It doesn't work. That's why we're all sitting around this table today. Governance is a valuable tool, it's not the only tool, and I think it's our responsibility to try to examine other options and I think that the ownership cap is a real valuable tool that can be used to mitigate the problems that exist in the current system"), Roundtable Tr. at 124 to 125.

The European Commission Proposal explicitly rejects ownership limitations. *See* Section 4.3.4 of the European Commission Proposal (stating that structural governance requirements "are considered more effective in addressing any potential conflicts of interest that may limit the capacity of CCPs to clear, than any other form of regulation which may have undesirable consequence on market structures (*e.g.,* limitation of ownership, which would need to extend also to so-called vertical structures in which exchanges own a CCP)").

However, the European Commission Proposal explicitly preserves the power of the regulator to refuse authorization of a CCP "where, it is not satisfied as to the suitability of the shareholders or members that have qualifying holdings in the CCP, taking into account the need to ensure the sound and prudent management of a CCP." *See* Article 28(2) of the European Commission Proposal. Further, the European Commission Proposal permits the regulator to terminate authorization of a CCP where "shareholders or members, whether direct or indirect, * * * exercise an influence which is likely to be prejudicial to the sound and prudent management of the CCP." *See* Article 28(1) and (4) of the European Commission Proposal.

The Commission requests comment as to whether a reservation of power similar to that contained in the European Commission Proposal would complement the limits on ownership of voting equity and the exercise of voting power described above.

[79] 72 FR at 6938.

[80] The Commission requests comment on whether the definitions of "related person" in the proposed rules are under or over-inclusive.

[81] Ruben Lee, *The Governance of Financial Infrastructure,* Oxford Finance Group, at 256 (January 2010) (stating that "[m]andatory ownership constraints may prevent a single firm from exercising undue influence over a market institution that is also an SRO").

[82] *See, generally,* e.*g.,* Bae, K–H., J–K and J–M Kang (2002). "Tunneling or value added? Evidence from mergers by Korean business groups", *Journal of Finance* 57, pp. 2695–2740; Barclay, M. and C. Holderness (1989) "Private benefits from control of public corporations", *Journal of Financial Economics* 25, pp. 371–395; Barclay, M. and C. Holderness (1991) "Negotiated block trades and corporate control", *Journal of Finance* 46, pp. 861–878; Barclay, M. and C. Holderness and D. Sheehan (2001) "The block pricing puzzle", Working Paper; Cheung,Y–L, P.R. Rao and A. Stouraitis (2006) "Tunneling, propping, and expropriation: evidence from connected party transactions in Hong Kong", *Journal of Financial Economics* 82, pp. 343–386; Claessens, S., S. Djankov, L.H.P. Lang (2000) "The separation of ownership and control in East Asian corporations", *Journal of Financial Economics* 58, pp. 81–112; Dyck, A and L. Zingales (2004) "Private benefits of control: An international comparison", *Journal of Finance* 59, pp. 537–600; Faccio, M., L.H.P Lang, and L. Young (2001) "Dividends and expropriation", *American Economic Review* 91, 54–78; and Morck, R., D. Wolfenzon, and B. Yeung (2005) "Corporate governance, economic entrenchment, and growth", *Journal of Economic Literature,* 43, pp. 655–72.

The 20 percent limitation also accords with the proposals in the SEC 2004 Release. *See* 69 FR at 71143–44.

[83] As mentioned above, CME, for example, is wholly-owned by CME Group. However, CME Group is a publicly-listed company with diffuse ownership.

[84] Comments from Greenberger ("if we want governance with teeth, governance with teeth will have ownership limitations. You can talk about fair representation, board governance, the fact of the matter is, and I think this will bear its way out in the comments to you, that does not protect fair and open access * * *"), Roundtable Tr. 135.

[85] *Cf.* The Lynch Amendment, which prohibited certain "restricted owners" from collectively acquiring more than 20 percent of the voting equity in a DCO.

[86] *See, generally,* Barclay, M. and C. Holderness (1989) "Private benefits from control of public corporations", *Journal of Financial Economics* 25, pp. 371–395. The premise of this paper is that (i) buyers of equity blocks in a publicly-traded corporation appear, on average, to pay a premium above market price, and (ii) such premium reflects the value to the buyer of being able to influence the decisions of the corporation in a way that is privately profitable, but not profitable to other shareholders. In general, the Commission believes that, if a DCO has diffuse ownership, the outlay that an enumerated entity would need to make to influence DCO risk assessments as a voting shareholder would likely exceed the outlay necessary to obtain the same amount of influence through other means.

above, the Commission acknowledges that the enumerated entities have the capital and expertise necessary to manage the risks of clearing swap contracts.[87] Therefore, the Commission believes that a 40 percent aggregate limitation is appropriate, assuming that the DCO has a mutualized structure with concentrated ownership, because it permits the enumerated entities to influence, directly or indirectly, but not control, DCO risk assessments.

In conjunction with the 40 percent aggregate limitation, the Commission proposes requiring a majority vote for the passage of any shareholder resolution; and if the DCO is a subsidiary, extending the aggregate limitation and the requirement for a majority vote to the shareholders of its direct or indirect parent. If any parent is publicly-listed, then that parent would have to comply with shareholder voting requirements promulgated by the SEC or the exchange on which the parent is listed.

2. Second Alternative

For the second alternative, the Commission proposes a 5 percent limitation on the voting equity that any DCO member or enumerated entity (whether or not such entity is a DCO member), and the related persons thereof in each case, may own (the "Second Alternative"). Such a limitation effectively ensures that neither a DCO member nor an enumerated entity would have sufficient power, in a concentrated or diffuse ownership structure, to exert undue influence, as a voting shareholder, over DCO operations (including with respect to risk assessments regarding (i), (ii), and (iii) above). Certain Roundtable participants favor a similar approach.[88]

To prevent evasion of the 5 percent limitation, the Commission proposes requiring an identical limit on voting rights; and if the DCO is a subsidiary, extending the limitation to the shareholders of its direct or indirect parent. If any parent is publicly-listed, then that parent would have to comply with shareholder voting requirements promulgated by the SEC or the exchange on which the parent is listed.

3. Waiver

As mentioned above, the Commission believes that there may be circumstances where the imposition of rigid limitations on ownership or voting rights may not be appropriate for certain DCO ownership structures. To provide flexibility, a DCO may request that the Commission waive individual and/or aggregate ownership or voting rights limitations by any entity for a reasonable period of time.

The Commission may grant the requested waiver if it determines that ownership or voting rights limitations are not necessary or appropriate to:

- Improve the governance of the DCO;
- Mitigate systemic risk;
- Promote competition;
- Mitigate conflicts of interest in connection with a swap dealer's or major swap participant's conduct of business with the DCO with respect to fair and open access and participation and product eligibility; and
- Otherwise accomplish the purposes of the Act.

The Commission may, at any time, revoke the waiver. Upon such revocation, or at the expiration of the waiver period, any such DCO shall require divestiture of any relevant entity's ownership or voting rights percentages to an individual and/or aggregate level that is consistent with the First or Second Alternative, or such other level that the Commission deems appropriate based on the foregoing factors as set forth in Section 726(b) of the Dodd-Frank Act.

4. Questions on the First and Second Alternatives and the Waiver

The Commission seeks comment on the questions set forth below on the First and Second Alternatives, as well as the Waiver:

a. First and Second Alternatives

- Are the First and Second Alternatives effective for mitigating, on a prophylactic basis, conflicts of interest arising from the control that (i) one member may exert as a dominant voting shareholder of a DCO and (ii) the enumerated entities may collectively exert as voting shareholders of a DCO (specifically with respect to the DCO risk assessments referenced above)? What methods, other than the First and Second Alternatives, should the Commission consider to mitigate such conflicts of interest? What are the advantages and disadvantages of such methods?
- Under what circumstances would the First and Second Alternatives not be appropriate for a DCO? For example, should the First and Second Alternatives apply equally to established DCOs and start-up DCOs?[89]
- Are the percentages that the Commission specifies in the First and Second Alternatives effective for mitigating conflicts of interest arising from the control that (i) one member may exert as a dominant voting shareholder of a DCO and (ii) the enumerated entities may collectively exert as voting shareholders of a DCO? If not, what alternative percentages should the Commission consider to achieve such mitigation?
- Would the First and Second Alternatives be effective to mitigate any potential conflicts of interest not discussed herein? If not, then what other equity ownership and voting limits should the Commission consider?
- Should the limits in the First and Second Alternatives only apply to clearing members, and not enumerated entities that are not clearing members? Should the limits in the First and Second Alternatives apply only to

[87] *See, e.g.,* Comments from Jeremy Barnum, Managing Director, J.P. Morgan ("Barnum") ("So, on the question of—on the question of ownership of clearinghouses and expertise and the Lynch amendment, the—it is very appealing in principle to imagine that these systemically important financial players into which we are putting much more risk, could somehow be entirely free of the nefarious influence of the evil dealers who contributed to the crisis to quote Mr. Greenberger. But, unfortunately, they are, in fact, the market participants who need to use the clearinghouses"), Roundtable Tr. at 115; Comments from Olesky ("I think it's really important to recognize—for all of us to recognize—that market participants really engender many market facilities. And in my experience in the investment of capital and the knowledge about a particular space has led directly to innovations and advances both with Tradeweb and another company I was with, BrokerTech; exchanges; clearing corps. If you go back in history, those are the folks that have the capital to support this innovation and the knowledge and experience to move it forward. And while it's easy to sort of be critical of that group, I think it's also important not to cut off that flow of capital into innovative organizations that are really groups of market participants that are investing in these types of mechanisms * * * Tradeweb was started in 1997 with the internet with a group of banks. We had four banks initially. Then we sold 100 percent of the company in 2004 and we weren't owned by any banks for 4 years. Then we had another investment back in, and we had a minority stake by some banks. I think we really have to separate out the ownership argument from the governance argument, because it's critical to be able to access that capital for entrepreneurs and for innovators when they're trying to build these mechanisms"), Roundtable Tr. at 60 to 61.

[88] *See, e.g.,* Comments of Roger Liddell, Chief Executive Officer, LCH.Clearnet Group ("Liddell") ("To go back to the question, I think with established organizations, then I think the concept of some combination of ownership limits and voting caps actually does make sense. For example, in the [LCH] clearinghouse, we've got a 5 percent voting cap and have done for many years. And the reason for that was to take away any incentive for anyone to build up a stake greater than that so that we would be highly unlikely to ever have less than 20 shareholders. That works well for us"), Roundtable Tr. at 118 to 119.

[89] *See, e.g.,* Comments from Olesky, *supra* note 87; Comments from Liddell ("However, to pick upon the point that Lee Olesky made before, I think you have to be a little bit careful in how you treat entrepreneurials or starter ventures because most of the successful starter ventures have started with a relatively small number of banks sharing an interest in creating something which then becomes a lot bigger"), Roundtable Tr. at 119.

DCOs, and not to their parent companies?

b. Waiver

• The Commission seeks comment on (i) the circumstances which may require an alternative ownership structure for a DCO, (ii) the types of alternative ownership structures of DCOs that may require flexibility in setting ownership or voting rights levels consistent with achieving the goal of Section 726 of the Dodd-Frank Act to mitigate conflicts of interest, and (iii) the appropriate means to provide such flexibility to the Commission during the DCO application process if such an organization were to adopt an alternative structure.

ii. DCMs or SEFs

The Commission proposes a 20 percent limitation on the voting equity that any single member (and related persons) may own in a DCM or SEF. As mentioned above, economic research suggests that holding 20 percent voting equity of an entity would be sufficient for control, especially if such entity has otherwise diffuse ownership. Such a limitation would prevent any one member of a DCM or SEF from dominating the decision-making process. The Commission also proposes an identical limitation on voting rights; and if the DCM or SEF is a subsidiary, extending the limitation to the shareholders of its direct or indirect parent. If any parent is publicly-listed, then that parent would have to comply with shareholder voting requirements promulgated by the SEC or the exchange on which the parent is listed.

The Commission, however, does not propose imposing a limitation on the voting equity that the enumerated entities may own in the aggregate. As mentioned above, the Dodd-Frank Act specifically attempts to encourage sustained competition between multiple DCMs and SEFs over listing the same swap contract. Based on comments from Roundtable participants, the enumerated entities would be the most likely source of funding for a new DCM or SEF.[90] In this instance, the Commission believes that the benefits of sustained competition between new DCMs and SEFs outweigh the incremental benefit of better governance through limitations on the aggregate influence of the enumerated entities.[91]

1. Questions on DCM or SEF Limits on Ownership and Voting Power

The Commission seeks comment on the questions set forth below on the DCM or SEF limits on ownership and voting power:

• Are the single-member limits on ownership and voting power effective for mitigating, on a prophylactic basis, the conflicts of interest that Section II identifies? What methods, other than such limits, should the Commission consider to mitigate such conflicts of interest? What are the advantages and disadvantages of such methods?

• Should the Commission also consider instituting a waiver procedure for DCMs and SEFs with respect to the single-member limitation?

• Should the single-member limitation be extended to the parent company of a DCM or SEF?

## IV. Effectiveness and Transition Period

As noted above, the Commission is contemplating rulemakings on further defining certain entities implicated by the proposed rules (*e.g.,* swap dealers, major swap participants, and swap execution facilities). The Commission anticipates that such rulemakings would be completed by the statutory deadline of July 15, 2011. Therefore, the Commission is proposing a staggered effective date for the final rules on mitigation of conflicts of interest. Any portion of the final rules implicating entities subject to further definition would not become effective until sixty (60) days after July 15, 2011. Portions of the final rules not involving such entities would become effective sixty (60) days after the **Federal Register** publication of the final rules.

Although the Commission proposes that the final rules become effective within the time periods specified above, consistent with the DCM Conflicts of Interest Release, the Commission will permit each existing DCO, DCM, and SEF to phase-in implementation of the final rules over two (2) years or two regularly-scheduled Board of Directors elections. The Commission expects, however, all new DCO, DCM, and SEF applicants to fully comply with the final rules.

The Commission requests comment on the (i) timing of effectiveness for the final rules, and (ii) the length of the phase-in implementation period. The Commission further requests comment on whether new DCO, DCM, and SEF applicants should have to demonstrate compliance with the final rules to receive registration.

## V. Numbering

As the proposed rules constitute amendments or additions to Regulation Parts 1, 37, 38, 39, and 40, the Commission anticipates that the numbering of such proposed rules will change upon completion of other rulemakings concerning such parts.

## VI. Related Matters

*a. Regulatory Flexibility Act*

The Regulatory Flexibility Act ("RFA") requires that agencies, in proposing rules, consider the impact of those rules on "small entities."[92] The term "small entity" has the same meaning as the term "small business" under the RFA[93] and the term "small business" generally has the same meaning as the term "small business concern" under section 3 of the Small Business Act.[94]

The proposed rules detailed in this release would only affect DCOs, DCMs, and SEFs. The Commission has previously determined that DCOs[95] and DCMs[96] are not "small entities" for purposes of the RFA. In contrast, SEFs constitute a new category of registrant that the Dodd-Frank Act created. Accordingly, the Commission has not addressed the question of whether SEFs are, in fact, "small entities" for purposes of the RFA.

The Dodd-Frank Act defines a SEF to mean a trading system or platform in which multiple participants have the

[90] *See, e.g.,* Comments of McVey ("I think when it comes to ownership we have to realize that we are embarking on a major transformation of OTC markets and all of these entities are going to need capital to provide the market efficiencies that we're all seeking to achieve. And rightly or wrongly, historically a tremendous amount of the capital for clearing, e-trading, data and affirmation hubs, has come from the dealer community, and I think it would be very dangerous to cut off an important source of capital that can lead to some of the market improvements that we're all seeking to achieve"), Roundtable Tr. at 121 to 122.

[91] *See, generally,* Comments of Barnum ("The traditional vertically integrated exchange model for futures works beautifully in a whole range of respects for those products from the perspective of liquidity and systemic risk, but it has a couple problems. It is—it does seem to create some natural monopoly properties. You can debate whether they're severe enough to warrant action or not and that's one of the kinds of tensions that needs to be balanced. In addition, they work very well for the types of products that naturally attract liquidity on exchanges. The whole premise of this is that we're pushing a whole new set of products with different liquidity characteristics into central counterparties. That means that you cannot apply exactly the same framework. There are new challenges that are being introduced. They create tensions. And those tensions need to be looked at rationally in a continuum framework that balances different social goods against each other"), Roundtable Tr. at 116 to 117.

[92] 5 U.S.C. 601 *et seq.*

[93] 5 U.S.C. 601(6).

[94] A "small business concern" is generally defined as one which is independently owned and operated and which is not dominant in its field of operation. 15 U.S.C. 632.

[95] 66 FR 45604, 45609 (August 29, 2001).

[96] 47 FR 18618, 18619 (April 30, 1982).

ability to execute or trade swaps by accepting bids and offers made by multiple participants in the facility or system, through any means of interstate commerce, including any trading facility that facilitates the execution of swaps between persons and is not a designated contract market.[97] The Commission is hereby proposing that SEFs not be considered to be "small entities" for essentially the same reasons that DCMs and DCOs have previously been determined not to be small entities. These reasons include the fact that the Commission designates a contract market or registers a derivatives clearing organization only when it meets specific criteria including expenditure of sufficient resources to establish and maintain adequate self-regulatory programs. Likewise, the Commission will register an entity as a SEF only after it has met specific criteria including the expenditure of sufficient resources to establish and maintain an adequate self-regulatory program.[98] Accordingly, the Commission does not expect the rules, as proposed herein, to have a significant impact on a substantial number of small entities. Therefore, the Chairman, on behalf of the Commission, hereby certifies, pursuant to 5 U.S.C. 605(b), that the proposed amendments will not have a significant economic impact on a substantial number of small entities. The Commission invites the public to comment on whether SEFs covered by these rules should be considered small entities for purposes of the RFA.

*b. Paperwork Reduction Act*

The Paperwork Reduction Act ("PRA")[99] imposes certain requirements on Federal agencies in connection with their conducting or sponsoring any collection of information as defined by the PRA. The proposed rules do not require a new collection of information on the part of any entities that would be subject to the proposed rules. Accordingly, for purposes of the PRA, the Commission certifies that the proposed rules, if promulgated in final form, would not impose any new reporting or recordkeeping requirements.

*c. Cost-Benefit Analysis*

Section 15(a) of the CEA[100] requires that the Commission, before promulgating a regulation or issuing an order, to consider the costs and benefits of its action. By its terms, Section 15(a) of the CEA does not require the Commission to quantify the costs and benefits of a new regulation or to determine whether the benefits of the regulation outweigh its costs. Rather, Section 15(a) of the CEA simply requires the Commission to "consider the costs and benefits" of its action.

Section 15(a) of the CEA further specifies that costs and benefits shall be evaluated in light of the following considerations: (1) Protection of market participants and the public; (2) efficiency and competition; (3) financial integrity of the futures markets and price discovery; (4) sound risk management practices; and (5) other public interest considerations. Accordingly, the Commission could, in its discretion, give greater weight to any one of the five considerations and could determine that, notwithstanding its costs, a particular regulation was necessary or appropriate to protect the public interest or to effectuate any of the provisions or to accomplish any of the purposes of the Act.

The Commission has evaluated the costs and benefits of the proposed rules, in light of the specific provisions of Section 15(a) of the CEA, as follows:

1. *Protection of market participants and the public.* The proposed rules concern governance and conflicts of interest and seek to improve governance arrangements to prevent conflicts of interest that if not addressed, would serve the interests of one group of constituents over other groups, including other market participants and the public. The proposed rules require governance arrangements that allow the registered entities to better serve the public interest.

2. *Efficiency and competition.* The proposed rules provide for the identification and mitigation of conflicts of interest, which improves efficiency in decision-making and increases fair access to clearing and markets which improves competition.

3. *Financial integrity of futures markets and price discovery.* The proposed rules facilitate transparency in governance which, in turn, facilitates transparency in matters governed including increased fair access to clearing and trading which, in turn, facilitates price discovery. This decreases risk which, in turn, increases financial integrity.

4. *Sound risk management practices.* The proposed rules provide for participation in decision-making by those who share in the risk presented by the operation of the registered entity. The governance arrangements provided by the proposed rules provide for a balance among different interests (including the public interest) so that risks presented by one group's interests will not dominate decision-making in the organization. This balance should prevent excess risk associated with any one group's interests from affecting operations.

5. *Other public interest considerations.* The proposed rules provide for governance arrangements for DCOs, DCMs, and SEFs, as well as methods of mitigating the presence of conflicts of interest, that should, for the reasons, cited above, operate in the best interests of the public.

Accordingly, after considering the five factors enumerated above, the Commission has determined to propose the regulations set forth below. The Commission invites public comment on its evaluation of the costs and benefits of the proposed rules. Specifically, commenters are invited to submit data quantifying the costs and benefits of the proposed rules with their comment letters.

## VII. Text of Proposed Rules

### List of Subjects

*17 CFR Part 1*

Definitions, Directors, Committees.

*17 CFR Part 37*

Swap execution facility, Conflict of Interest, Membership, Access, Voting, Ownership.

*17 CFR Part 38*

Designated contract markets, Conflict of interest, Membership, Access, Voting, Ownership.

*17 CFR Part 39*

Registered clearing organization, Conflict of interest, Membership, Access, Voting, Ownership.

*17 CFR Part 40*

Governance, Directors, Committees, Conflict of interest.

For the reasons stated in this release, the Commission hereby amends 17 CFR parts 1, 37, 38, 39, and 40 as follows:

## PART 1—GENERAL REGULATIONS UNDER THE COMMODITY EXCHANGE ACT

1. Revise the authority citation for part 1 to read as follows:

[97] *See* Section 721 of the Dodd-Frank Act. The Commission anticipates proposing regulations that would further specify those entities that must register as a SEF. The Commission does not believe that such proposals would alter its determination that a SEF is not a "small entity" for purposes of the RFA.

[98] See Core Principle 2 applicable to SEFs under Section 733 of the Dodd-Frank Act.

[99] 44 U.S.C. 3501 *et seq.*

[100] 7 U.S.C. 19(a).

**Authority:** 7 U.S.C. 1a, 2, 2a, 4, 4a, 6, 6a, 6b, 6c, 6d, 6e, 6f, 6h, 6i, 6j, 6k, 6l, 6m, 6n, 60, 6p, 7, 7a, 7b, 8, 9, 12, 12c, 13a, 13a–1, 16, 16a, 19, 21, 23, and 24 and Sec. 726, Pub. L. 111–203, 124 Stat. 1376.

2. Section 1.3 is amended by adding paragraphs (zz) through (aaa) to read as follows:

**§ 1.3 Definitions**

(zz) *Board of Directors.* This term means the Board of Directors or Board of Governors of a company or organization, or equivalent governing body.

(aaa) *Disciplinary Panel.* This term shall be as defined in § 40.9(c)(3)(i).

(bbb) *Executive Committee.* This term shall mean a committee of the Board of Directors that may exercise the authority delegated to it by the Board of Directors with respect to the management of the company or organization.

(ccc) *Public Director.* This term means a member of the Board of Directors (each, a "director") of a registered derivatives clearing organization (as defined in Section 1a(15) of the Act), a board of trade designated as a contract market pursuant to Section 5 of the Act, or a registered swap execution facility (as defined in Section 1a(50) of the Act), as applicable, who has been found, by the Board of Directors of the registered entity, on the record, to have no material relationship with such registered entity. The Board of Directors must make such finding upon the nomination or appointment of the director and as often as necessary in light of all circumstances relevant to such director, but in no case less than annually.

(1) For purposes of this definition, a "material relationship" is one that reasonably could affect the independent judgment or decision-making of the director. In making the finding specified in paragraph (ccc) of this section, the Board of Directors need not consider previous service as a director of the registered entity to constitute a "material relationship." Circumstances in which a director shall be considered to have a "material relationship" with the registered entity include, but are not limited to, the following:

(i) Such director is an officer or an employee of the registered entity, or an officer or an employee of its affiliate. In this context, "affiliate" includes parents or subsidiaries of the registered entity or entities that share a common parent with the registered entity;

(ii) Such director is a member of the registered entity, or a director, an officer, or an employee of a member. In this context, "member" is defined according to Section 1a(34) of the Act and any regulation promulgated thereunder, including, without limitation, §§ 1.3(c) and (q) of this chapter and any successor provisions;

(iii) Such director is an officer of another entity, which entity has a compensation committee (or similar body) on which any officer of the registered entity serves;

(iv) Such director, or an entity with which the director is a partner, an officer, an employee, or a director, receives more than $100,000 in combined annual payments for legal, accounting, or consulting services from the registered entity, any affiliate thereof (as defined in paragraph (ccc)(1)(i) of this section), any member of the registered entity (as defined in paragraph (ccc)(1)(ii) of this section), or any affiliate of such member. Compensation for services as a director of the registered entity or as a director of an affiliate thereof does not count toward the $100,000 payment limit, nor does deferred compensation for services rendered prior to becoming a director of the registered entity, so long as such compensation is in no way contingent, conditioned, or revocable; or

(v) Notwithstanding paragraph (ccc)(1)(iv) of this section, in the case of a public director that is a member of the Regulatory Oversight Committee, the Risk Management Committee (or any subcommittee thereof), or the Membership or Participation Committee (or any committee serving a similar function), such director (other than in the capacity of a member of such committee, any other committee, or the Board of Directors, in each case, of the registered entity), accepts, directly or indirectly, any consulting, advisory, or other compensatory fee from the registered entity, any affiliate thereof (as defined in paragraph (ccc)(1)(i) of this section), any member of the registered entity (as defined in paragraph (ccc)(1)(ii) of this section), or any affiliate of such member, other than deferred compensation for service rendered prior to becoming a member of the Regulatory Oversight Committee, the Risk Management Committee (or any subcommittee thereof), or the Membership or Participation Committee (or any committee serving a similar function), *provided that* such compensation is in no way contingent, conditioned, or revocable.

(vi) Any of the relationships set forth in paragraphs *(ccc)(1)(i)* through (ccc)(1)(v) of this section apply to the "immediate family" of such director, *i.e.,* spouse, parents, children, and siblings, in each case, whether by blood, marriage, or adoption, or any person residing in the home of the director or that of his or her "immediate family."

(2) All of the disqualifying circumstances described in paragraph (ccc)(1)(i) through (ccc)(1)(v) of this section shall be subject to a one-year look back.

(3) A public director of any registered entity specified in paragraph (ccc) of this section may also serve as a public director of an affiliate of the registered entity (as defined in paragraph (ccc)(1)(i) of this section) if he or she otherwise meets the requirements in paragraph (ccc)(1)(i) through (ccc)(1)(v) of this section.

(ddd) *Membership or Participation Committee.* This term shall be as defined in § 37.19(c)(1)(i), with respect to a registered swap execution facility, and § 38.851(c)(1)(i), with respect to a designated contract market.

(eee) *Nominating Committee.* This term shall be as defined in § 40.9(c)(1)(i).

(fff) *Regulatory Oversight Committee.* This term shall be as defined in § 37.19(b)(1), with respect to a registered swap execution facility, and § 38.851(b)(1), with respect to a designated contract market.

(ggg) *Risk Management Committee.* This term shall be as defined in § 39.13(g)(1).

## PART 37—SWAP EXECUTION FACILITIES

3. Revise the authority citation for part 37 to read as follows:

**Authority:** Sec. 726, Pub. L. 111–203, 124 Stat. 1376.

4. Revise the heading to Part 37 to read as set forth above.

5. Add § 37.19 to read as follows:

**§ 37.19 Conflicts of Interest.**

(a) *General.* The swap execution facility shall:

(1) Establish and enforce rules to minimize conflicts of interest in its decision-making process; and

(2) Establish a process for resolving the conflicts of interest. Nothing in this section shall supersede any requirement applicable to the registered swap execution facility under § 40.9 of this chapter.

(b) *Regulatory Oversight Committee.*

(1) *General.* A registered swap execution facility shall have a regulatory oversight committee (the "Regulatory Oversight Committee"), which shall:

(i) Monitor the regulatory program of the registered entity for sufficiency, effectiveness, and independence;

(ii) Oversee all facets of the regulatory program, including:

(A) Trade practice and market surveillance; audits, examinations, and

other regulatory responsibilities with respect to members (including ensuring compliance with, if applicable, financial integrity, financial reporting, sales practice, recordkeeping, and other requirements); and the conduct of investigations;

(B) Reviewing the size and allocation of the regulatory budget and resources, and the number, hiring, termination, and compensation of regulatory personnel;

(C) Reviewing the performance of the Chief Compliance Officer (as referenced in Section 5h(f)(15) of the Act) and making recommendations with respect to such performance to the Board of Directors;

(D) Recommending changes that would ensure fair, vigorous, and effective regulation; and

(E) Reviewing all regulatory proposals prior to implementation and advising the Board of Directors as to whether and how such changes may impact regulation.

(2) *Reporting.* The Regulatory Oversight Committee shall report to the Board of Directors of the registered swap execution facility.

(3) *Composition.* The Regulatory Oversight Committee shall be composed entirely of Public Directors.

(4) *Delegation.* The Regulatory Oversight Committee shall oversee the regulatory program of the registered swap execution facility on behalf of the Board of Directors. The Board of Directors shall delegate sufficient authority, dedicate sufficient resources, and allow sufficient time for the Regulatory Oversight Committee to fulfill its mandate.

(c) *Membership or Participation.*

(1) *Committee.*

(i) *General.* A registered swap execution facility shall have a membership or participation committee (the "Membership or Participation Committee"), which shall, at a minimum, perform the following functions:

(A) Determine the standards and requirements for initial and continuing membership or participation eligibility;

(B) Review appeals of staff denials of membership or participation applications; and

(C) Approve rules that would result in different categories or classes of members or participants receiving disparate access to the registered swap execution facility.

(ii) *Reporting.* The Membership or Participation Committee shall report to the Board of Directors of the registered swap execution facility.

(iii) *Composition.* The Membership or Participation Committee shall be composed of thirty-five percent Public Directors.

(iv) *Delegation.* The Board of Directors may choose to delegate the performance of the functions of the Membership or Participation Committee to one or more other committees, *provided that* each such committee meets the composition requirements set forth in paragraph (c)(1)(iii) of this section. If the Board of Directors chooses to so delegate, the registered swap execution facility would no longer need to maintain a Membership or Participation Committee.

(2) *Access.*

(i) In reviewing appeals of staff denials of membership or participation applications, the Membership or Participation Committee (or entity performing the functions of such committee) shall not uphold any staff denial if the relevant application meets the standards and requirements that such committee sets forth.

(ii) The Membership or Participation Committee (or entity performing the functions of such committee) shall not, and shall not permit the registered swap execution facility to, restrict access or impose burdens on access in a discriminatory manner, within each category or class of members or participants or between similarly-situated categories or classes of members or participants.

(d) *Limits on Voting Equity Ownership and the Exercise of Voting Power.*

(1) *Definitions.* For purposes of this § 37.19(d):

(i) *Related Persons* means, with respect to any member of a registered swap execution facility:

(A) Any person that, directly or indirectly, is a parent or subsidiary of, or shares a common parent with, such member;

(B) Any partner, director, officer, or other employee of such member;

(C) Any immediate family member of such member, or any immediate family member of such member's spouse, in each case, who has the same home as such member; or

(D) Any immediate family member of the persons enumerated in paragraph (d)(1)(i)(B) of this section, or any immediate family member of such person's spouse, in each case, who has the same home as such person.

(2) *Limits.* A registered swap execution facility shall not permit any member, together with any Related Persons of such member, to:

(i) Beneficially own, directly or indirectly, more than twenty percent of any class of equity interest of the registered swap execution facility entitled to vote; or

(ii) Directly or indirectly vote, cause the vote of, give any consent or proxy with respect to the voting of, or enter into any shareholder agreement regarding the voting of, any interest in the registered swap execution facility that exceeds twenty percent of the voting power of any class of equity interest of the registered swap execution facility.

(3) *Parent Companies.* If the registered swap execution facility is a subsidiary, paragraph (d)(2) of this section shall apply to its parent, whether direct or indirect, in the same manner as it applies to the registered swap execution facility. If any parent is publicly-listed on a domestic exchange, then such parent must follow the voting requirements promulgated by the Securities and Exchange Commission or the entity on which such parent is listed.

(4) *Remediation.* A registered swap execution facility must have rules addressing the manner in which it would remediate any breach of the limits set forth in paragraph (d)(2) of this section. Such rules must specify, at a minimum:

(i) The manner in which the registered swap execution facility would redeem any equity interest that a member or a Related Person purchased in excess of the limits set forth in paragraph (d)(2) of this section;

(ii) The manner in which the registered swap execution facility would disregard any votes cast in excess of such limits; and

(iii) The manner in which the registered swap execution facility would cause any breach of such limits to be reported to the Chief Compliance Officer (as referenced in Section 5h(f)(15) of the Act).

## PART 38—DESIGNATED CONTRACT MARKETS

6. Revise the authority citation for part 38 to read as follows:

**Authority:** 7 U.S.C. 2, 5, 6, 6c, 7, 7a–2 and 12a and Sec. 726, Pub. L. 111–203, 124 Stat. 1376.

7. Section 38.1 is amended by adding a new sentence to the end of the section to read as follows:

### § 38.1 Scope.

* * * Nothing in this Part 38 shall apply to a board of trade designated as a contract market pursuant to Section 5f of the Act.

8. Add § 38.851 to read as follows:

### § 38.851 Conflicts of interest.

(a) *General.* A designated contract market shall establish and enforce rules

to minimize conflicts of interest in its decision-making process and establish a process for resolving any conflicts of interest. Nothing in this section shall supersede any requirement applicable to the designated contract market under § 40.9 of this chapter.

(b) *Regulatory Oversight Committee.*

(1) *General.* A designated contract market shall have a regulatory oversight committee ("Regulatory Oversight Committee"), which shall:

(i) Monitor the regulatory program of the registered entity for sufficiency, effectiveness, and independence;

(ii) Oversee all facets of the regulatory program, including:

(A) Trade practice and market surveillance; audits, examinations, and other regulatory responsibilities with respect to members (including ensuring compliance with, if applicable, financial integrity, financial reporting, sales practice, recordkeeping, and other requirements); and the conduct of investigations;

(B) Reviewing the size and allocation of the regulatory budget and resources, and the number, hiring, termination, and compensation of regulatory personnel;

(C) Supervising the chief regulatory officer of the designated contract market, who will report directly to the Regulatory Oversight Committee;

(D) Recommending changes that would ensure fair, vigorous, and effective regulation; and

(E) Reviewing all regulatory proposals prior to implementation and advising the Board of Directors as to whether and how such changes may impact regulation.

(2) *Reporting.* The Regulatory Oversight Committee shall report to the Board of Directors of the designated contract market.

(3) *Composition.* The Regulatory Oversight Committee shall be composed entirely of Public Directors.

(4) *Delegation.* The Regulatory Oversight Committee shall oversee the regulatory program of the designated contract market on behalf of the Board of Directors. The Board of Directors shall delegate sufficient authority, dedicate sufficient resources, and allow sufficient time for the Regulatory Oversight Committee to fulfill its mandate.

(c) *Membership or Participation.*

(1) *Committee.*

(i) *General.* A designated contract market shall have a membership or participation committee ("Membership or Participation Committee"), which shall, at a minimum, perform the following functions:

(A) Determine the standards and requirements for initial and continuing membership or participation eligibility;

(B) Review appeals of staff denials of membership or participation applications; and

(C) Approve rules that would result in different categories or classes of members or participants receiving disparate access to the designated contract market.

(ii) *Reporting.* The Membership or Participation Committee shall report to the Board of Directors of the designated contract market.

(iii) *Composition.* The Membership or Participation Committee shall be composed of thirty-five percent Public Directors.

(iv) *Delegation.* The Board of Directors may choose to delegate the performance of the functions of the Membership or Participation Committee to one or more other committees, *provided that* each such committee meets the composition requirements set forth in paragraph (c)(1)(iii) of this section. If the Board of Directors chooses to so delegate, the registered swap execution facility would no longer need to maintain a Membership or Participation Committee.

(2) *Access.*

(i) In reviewing appeals of staff denials of membership or participation applications, the Membership or Participation Committee (or entity performing the functions of such committee) shall not uphold any staff denial if the relevant application meets the standards and requirements that such committee sets forth.

(ii) The Membership or Participation Committee (or entity performing the functions of such committee) shall not, and shall not permit the registered swap execution facility to, restrict access or impose burdens on access in a discriminatory manner, within each category or class of members or participants or between similarly-situated categories or classes of members or participants.

(d) *Limits on Voting Equity Ownership and the Exercise of Voting Power.*

(1) *Definitions.* For purposes of this § 38.851(d):

(i) *Related Persons* means, with respect to any member of a designated contract market:

(A) Any person that, directly or indirectly, is a parent or subsidiary of, or shares a common parent with, such member;

(B) Any partner, director, officer, or other employee of such member;

(C) Any immediate family member of such member, or any immediate family member of such member's spouse, in each case, who has the same home as such member; or

(D) Any immediate family member of the persons enumerated in paragraph (d)(1)(i)(B) of this section, or any immediate family member of such person's spouse, in each case, who has the same home as such person.

(2) *Limits.* A designated contract market shall not permit any member, together with any Related Persons of such member, to:

(i) Beneficially own, directly or indirectly, more than twenty percent of any class of equity interest of the designated contract market entitled to vote; or

(ii) Directly or indirectly vote, cause the vote of, give any consent or proxy with respect to the voting of, or enter into any shareholder agreement regarding the voting of, any interest in the designated contract market that exceeds twenty percent of the voting power of any class of equity interest of the designated contract market.

(3) *Parent Companies.* If the designated contract market is a subsidiary, paragraph (d)(2) of this section shall apply to its parent, whether direct or indirect, in the same manner as it applies to the designated contract market. If any parent is publicly-listed on a domestic exchange, then such parent must follow the voting requirements promulgated by the Securities and Exchange Commission or the entity on which such parent is listed.

(4) *Remediation.* A designated contract market must have rules addressing the manner in which it would remediate any breach of the limits set forth in paragraph (d)(2) of this section. Such rules must specify, at a minimum:

(i) The manner in which the designated contract market would redeem any equity interest that a member or a Related Person purchased in excess of the limits set forth in paragraph (d)(2) of this section;

(ii) The manner in which the designated contract market would disregard any votes cast in excess of such limits; and

(iii) The manner in which the designated contract market would cause any breach of such limits to be reported to the chief regulatory officer.

## PART 39—DERIVATIVES CLEARING ORGANIZATIONS

9. Revise the authority citation for part 39 read as follows:

**Authority:** 7 U.S.C. 7b and Sec. 726, Pub. L. 111–203, 124 Stat. 1376.

10. Add § 39.13 to read as follows:

**§ 39.13 Risk Management.**

(a) through (g) [Reserved]

(g) *Risk Management Committee.*

(1) *General.* A derivatives clearing organization shall have a risk management committee (the "Risk Management Committee"), which shall, at a minimum, perform the following functions:

(i) Advise the Board of Directors on significant changes to the derivatives clearing organization's risk model and default procedures;

(ii) Determine the standards and requirements for initial and continuing clearing membership eligibility;

(iii) Approve or deny (or review approvals or denials of) clearing membership applications;

(iv) Determine products eligible for clearing; and

(v) Review the performance of the Chief Compliance Officer (as referenced in Section 5b(i) of the Act) and make recommendations with respect to such performance to the Board of Directors.

(2) *Reporting.* The Risk Management Committee shall report to the Board of Directors of the derivatives clearing organization.

(3) *Composition.*

(i) The Risk Management Committee shall be composed of at least thirty-five percent Public Directors of a derivatives clearing organization and at least ten percent representatives of customers. In this context, a "customer" means any customer of a clearing member, including, without limitation:

(A) Any "customer" or "commodity customer" within the meaning of § 1.3(k) of this chapter;

(B) Any "foreign futures or foreign options customer" within the meaning of § 30.1(c) of this chapter; and

(C) Any customer entering into a cleared swap (as defined in Section 1a(7) of the Act).

(ii) The remaining members of such Risk Management Committee (or subcommittee thereof as described in paragraph (g)(5) of this section) may be, in the discretion of the derivatives clearing organization, representatives of clearing members. No such member shall be an employee of the derivatives clearing organization.

(iii) The Chairman of the Risk Management Committee (or subcommittee thereof as described in paragraph (g)(5) of this section) shall be a Public Director.

(4) *Meetings.* The Risk Management Committee shall hold regular meetings. The Committee may invite employees of the derivatives clearing organization to attend its meetings in a non-voting capacity.

(5) *Delegation.* The Risk Management Committee may delegate, in writing, the performance of the functions enumerated in paragraph (g)(1)(ii) to (iv) of this section to a subcommittee, *provided that* such subcommittee meets the composition requirements set forth in paragraph (g)(3) of this section. If the Risk Management Committee chooses to so delegate, then it would no longer be subject to such composition requirements.

(6) *Discretion.*

(i) No decision of a subcommittee with delegated authority under paragraph (g)(5) of this section, pertaining to the functions enumerated in paragraph (g)(1)(ii) to (iv) of this section, may be subject to the approval of, or otherwise restricted or limited by, a body other than the Board of Directors or the Risk Management Committee of the derivatives clearing organization, including, without limitation, any advisory committee.

(ii) No decision of the Risk Management Committee pertaining to the functions enumerated in paragraph (g)(1)(ii) to (iv) of this section, may be subject to the approval of, or otherwise restricted or limited by, a body other than the Board of Directors of the derivatives clearing organization, including, without limitation, any advisory committee.

11. Add § 39.25 to read as follows:

**§ 39.25 Conflicts of interest.**

(a) *General.* (1) A derivatives clearing organization shall establish and enforce rules to minimize conflicts of interest in its decision-making process and establish a process for resolving any conflicts of interest.

(2) Governance arrangements for derivatives clearing organizations should be clear and transparent and be designed to promote the safety and efficiency of the derivatives clearing organization, to support the stability of the broader financial system and other relevant public interest considerations, and to support the objectives of relevant stakeholders.

(3) Nothing in this section shall supersede any requirement applicable to the derivatives clearing organization under § 40.9 of this chapter.

(b) *Limits on Voting Equity Ownership and the Exercise of Voting Power.*

(1) *Definitions.* For purposes of this § 39.25(b):

(i) *Affiliate* means any person that, directly or indirectly, controls, is controlled by, or is under common control with, another person.

(ii) *Enumerated Entities* means:

(A) A bank holding company (as defined in Section 2 of the Bank Holding Company Act of 1956 (12 U.S.C. 1841)) with total consolidated assets of $50,000,000,000 or more,

(B) A nonbank financial company (as defined in Section 102 of the Dodd-Frank Wall Street Reform and Consumer Protection Act) supervised by the Board of Governors of the Federal Reserve System,

(C) An Affiliate of such bank holding company or nonbank financial company,

(D) A swap dealer (as defined in Section 1a(49) of the Act and any regulations promulgated thereunder),

(E) A major swap participant (as defined in Section 1a(33) of the Act and any regulations promulgated thereunder), and

(F) An associated person of a swap dealer or major swap participant (as defined in Section 1a(3) of the Act and any regulations promulgated thereunder).

(iii) *Related Persons* means, with respect to any person:

(A) An Affiliate of such person;

(B) Any partner, director, officer, or other employee of such person;

(C) Any immediate family member of such person, or any immediate family member of such person's spouse, in each case, who has the same home as such person; or

(D) Any immediate family member of the persons enumerated in paragraph (b)(1)(iii)(B) of this section, or any immediate family member of such person's spouse, in each case, who has the same home as such person.

(2) *Limits.* A derivatives clearing organization shall choose to comport with either paragraph (b)(2)(i) or (b)(2)(ii) of this section:

(i)(A) The derivatives clearing organization shall not permit any member, together with any Related Persons of such member, to:

*(1)* Beneficially own, directly or indirectly, more than twenty percent of any class of equity interest of the derivatives clearing organization entitled to vote; or

*(2)* Directly or indirectly vote, cause the vote of, give any consent or proxy with respect to the voting of, or enter into any shareholder agreement regarding the voting of, any interest in the derivatives clearing organization that exceeds twenty percent of the voting power of any class of equity interest of the derivatives clearing organization.

(B) Additionally, a derivatives clearing organization shall not permit the Enumerated Entities (whether or not they are clearing members), together with any Related Persons of such Enumerated Entities, to collectively:

*(1)* Own, on a beneficial basis, directly or indirectly, more than forty percent of

any class of equity interest of the derivatives clearing organization entitled to vote; or

*(2)* Directly or indirectly vote, cause the vote of, give any consent or proxy with respect to the voting of, or enter into any shareholder agreement regarding the voting of, any interest in the derivatives clearing organization that exceeds forty percent of the voting power of any class of equity interest of the derivatives clearing organization.

(C) The derivatives clearing organization shall ensure that no resolution or similar measure on which the Enumerated Entities are entitled to vote shall be passed by less than a majority of all outstanding equity interests similarly entitled to vote.

(ii) The derivatives clearing organization shall not permit any member or any Enumerated Entity (whether or not such entity is a member), together with any Related Persons in each case thereof, to:

(A) Beneficially own, directly or indirectly, more than five percent of any class of equity interest of the derivatives clearing organization entitled to vote; or

(B) Directly or indirectly vote, cause the vote of, give any consent or proxy with respect to the voting of, or enter into any shareholder agreement regarding the voting of, any interest in the derivatives clearing organization that exceeds five percent of the voting power of any class of equity interest of the derivatives clearing organization.

(3) *Waiver.*

(i) A derivatives clearing organization may request that the Commission waive the requirements set forth in paragraph (b)(2) of this section.

(ii)(A) The Commission may grant a waiver for a period of time that it deems reasonable if, upon a showing by a derivatives clearing organization, the Commission determines that, with respect to the derivatives clearing organization, the requirements set forth in paragraph (b)(2) of this section are not necessary or appropriate to:

*(1)* Improve the governance of the derivatives clearing organization;

*(2)* Mitigate systemic risk;

*(3)* Promote competition;

*(4)* Mitigate conflicts of interest in connection with a swap dealer or major swap participant's conduct of business with the derivatives clearing organization, including with respect to Section 2(h)(1)(B) and Section 5b(c)(2)(c) of the Act; and

(5) Otherwise accomplish the purposes of the Act.

(B) The Commission may, at any time, revoke the waiver upon its own motion. Upon such revocation, or at the expiration of the waiver period, the derivatives clearing organization shall require all equity holders to comport, through divestiture or other means, with the requirements set forth in paragraph (b)(2) of this section.

(4) *Parent Companies.* If the derivatives clearing organization is a subsidiary, paragraph (b)(2) of this section shall apply to its parent, whether direct or indirect, in the same manner as it applies to the derivatives clearing organization. If any parent is publicly listed on a domestic exchange, then such parent must follow the voting requirements promulgated by the Securities and Exchange Commission or the entity on which such parent is listed.

(5) *Remediation.* A derivatives clearing organization must have rules addressing the manner in which it would remediate any breach of the limits set forth in paragraph (b)(2) of this section. Such rules must specify, at a minimum:

(i) The manner in which the derivatives clearing organization would redeem any equity interest that a member, the Enumerated Entities, or a Related Person in each case thereof, purchased in excess of the limits set forth in paragraph (b)(2) of this section;

(ii) The manner in which the derivatives clearing organization would disregard any votes cast in excess of such limits; and

(iii) The manner in which the derivatives clearing organization would cause any breach of such limits to be reported to the Chief Compliance Officer (as referenced in Section 5b(i) of the Act).

## PART 40—PROVISIONS COMMON TO REGISTERED ENTITIES

1. Revise the authority citation for part 40 to read as follows:

**Authority:** 7 U.S.C. 1a, 2, 5, 6, 7, 7a, 8, and 12a, and Sec. 726, Pub. L. 111–203, 124 Stat. 1376.

2. Add § 40.9 to read as follows:

### § 40.9 Governance.

(a) *General.* (1) Nothing in this section shall apply to a board of trade designated as a contract market pursuant to Section 5f of the Act.

(2) Capitalized terms not defined herein shall have the meanings assigned to them in § 1.3 of this chapter.

(3) Nothing in this section shall supersede any requirement applicable to the registered entity under Parts 37, 38, or 39 of this chapter.

(b) *The Board of Directors.*

(1) *General.*

(i) The Board of Directors of a registered derivatives clearing organization, a designated contract market, or a registered swap execution facility shall be composed of at least thirty-five percent, but no less than two, Public Directors.

(ii) The roles and responsibilities of such Board of Directors must be clearly articulated, especially in respect of the manner in which the Board of Directors ensures that a registered entity referenced in paragraph (b)(1)(i) of this section complies with all statutory, regulatory, and self-regulatory responsibilities under the Act and the regulations promulgated thereunder.

(2) *Parent Companies.*

(i) For purposes of paragraph (b)(2) of this section, "operate" shall mean the direct exercise of control (including through the exercise of veto power) over the day-to-day business operations of a registered entity specified in paragraph (b)(1)(i) of this section by the sole or majority shareholder of such registered entity, whether through the ownership of voting equity, by contract, or otherwise. The term "operate" shall not prohibit an entity, acting as the sole or majority shareholder of such registered entity, from exercising its rights as a shareholder under any contract, agreement, or other legal obligation.

(ii) A registered entity specified in paragraph (b)(1)(i) of this section shall not permit itself to be operated by any entity unless such entity agrees that:

(A) Paragraph (b)(1) of this section shall apply to such entity in the same manner as it applies to the registered entity;

(B) The officers, directors, employees, and agents of such entity shall be deemed to be the officers, directors, employees, and agents of the registered entity, and shall thereby be subject to the authority of the Commission pursuant to the Act and the regulations promulgated thereunder; and

(C) Any books and records of such entity relating to such operation shall be deemed to be the books and records of the registered entity for purposes of the Act and the regulations promulgated thereunder. Such books and records shall be subject at all times to inspection and copying by the Commission, regardless of whether such books and records contain confidential information, as long as such entity operates the registered entity.

(3) *Expertise.* The members of the Board of Directors, including Public Directors, of each registered entity specified in paragraph (b)(1)(i) of this section, shall be of sufficiently good repute and, where applicable, have sufficient expertise in financial services, risk management, and clearing services.

(4) *Compensation.* The compensation of the Public Directors and other non-executive members of the Board of Directors of a registered entity specified in paragraph (b)(1)(i) of this section shall not be linked to the business performance of such registered entity.

(5) *Annual Self-Review.* The Board of Directors of a registered entity specified in paragraph (b)(1)(i) of this section shall review its performance and that of its individual members annually. It should consider periodically using external facilitators for such reviews.

(6) *Board Member Removal.* A registered entity specified in paragraph (b)(1)(i) of this section shall have procedures to remove a member from the Board of Directors, where the conduct of such member is likely to be prejudicial to the sound and prudent management of the registered entity.

(c) *Committees and Panels.*

(1) *Nominating Committee.*

(i) *General.* Each registered derivatives clearing organization, designated contract market, or registered swap execution facility must have a nominating committee ("Nominating Committee"), which shall, at a minimum:

(A) identify individuals qualified to serve on the Board of Directors, consistent with criteria approved by the Board of Directors, and with the composition requirements set forth in this section; and

(B) Administer a process for the nomination of individuals to the Board of Directors.

(ii) *Reporting.* The Nominating Committee shall report to the Board of Directors of the registered entity.

(iii) *Composition.* The Nominating Committee shall be composed of at least fifty-one percent Public Directors. The chair of the Nominating Committee shall be a Public Director.

(2) *Executive Committee.* Any Executive Committee of a registered derivatives clearing organization, designated contract market, or registered swap execution facility shall be composed of at least thirty-five percent, but no less than two, Public Directors.

(3) *Disciplinary Panels.*

(i) *General.* Each registered derivatives clearing organization, designated contract market, or registered swap execution facility must have one or more disciplinary panels (each, a "Disciplinary Panel"), each of which shall be responsible for conducting hearings, rendering decisions, and imposing sanctions with respect to disciplinary matters.

(ii) *Composition.* Each Disciplinary Panel shall include at least one person who would not be disqualified from serving as a Public Director by § 1.3(ccc)(1)(i)–(vi) and (2) of this chapter (a "Public Participant"). Such Public Participant shall chair each Disciplinary Panel. In addition, any registered entity specified in paragraph (c)(3)(i) of this section shall adopt rules that would, at a minimum:

(A) Further preclude any group or class of participants from dominating or exercising disproportionate influence on a Disciplinary Panel and

(B) Prohibit any member of a Disciplinary Panel from participating in deliberations or voting on any matter in which the member has a financial interest.

(iii) *Appeals.* If the rules of the registered entity provide that the decision of a Disciplinary Panel may be appealed to another committee of the Board of Directors (or similar body), then such committee must also include at least one Public Participant, and such Public Participant must chair the committee.

(iv) *Exception.* Notwithstanding the foregoing, paragraphs (c)(3)(ii) through (c)(3)(iii) of this section do not apply to a Disciplinary Panel convened for cases solely involving decorum or attire.

(v) *Delegation.* With respect to a registered derivatives clearing organization, the Board of Directors may delegate to the Risk Management Committee the performance of the functions of the Disciplinary Panel. If the Board of Directors so delegates:

(A) The registered derivatives clearing organization need no longer maintain a Disciplinary Panel, but

(B) Paragraph (c)(3)(iii) of this section would still apply to any committee (or similar body) to which a decision of the Risk Management Committee may be appealed.

Issued in Washington, DC, on October 1, 2010, by the Commission.

**David A. Stawick,**

*Secretary of the Commission.*

**Concurring Statement of Commissioner Scott D. O'Malia**

**October 1, 2010 Public Meeting**

I concur in the Commission's proposal of rules pursuant to Section 726 of the Dodd-Frank Act (the "Act"). However, I have a number of concerns associated with the prescriptiveness of the proposed conflict of interest rules. I believe, given the goals of the Act, it is appropriate to consider more flexible ownership structures and voting rights levels as well as the availability of waivers for derivatives clearing organizations ("DCOs").

*Ownership and Voting Limits on DCOs*

A main goal of the Act is to mitigate systemic risk in the U.S. financial system by imposing a mandatory clearing requirement on swaps. Additionally, the business of clearing is serious and financially complex. I am concerned that the proposed rules may not properly consider the effect on mitigation of systemic risk, competition, and capital formation in the DCO space, or afford the Commission with the necessary flexibility to achieve those outcomes. Given that the Commission has yet to consider any new DCO applications under the Act, it is extremely unwise to conduct an experiment with the ownership structure of DCOs.

Second, a stated goal of the Act was to provide all market participants with fair, open, and non-discriminatory access to DCOs. To achieve that end, Congress included Open Access and Participant and Product Eligibility provisions in the Act.[101] Each provision addresses and attempts to eliminate the potential for clearing entities to use ownership control to obstruct market participants from gaining access to a DCO. Rather than utilizing the limited and inflexible ownership caps in the proposed rules, I believe that the open access and eligibility provisions will be more effective in achieving the Act's goals of fair, open, and non-discriminatory access to DCOs.

Third, an overarching goal of the Act is the international harmonization of financial regulation. I believe that it's especially important for the Commission to harmonize its rules with those of foreign regulators in order to prevent regulatory arbitrage. With that said, the European Commission released (September 15, 2010) a proposal on financial reform which does not place individual or aggregate ownership limits on DCOs under European Union jurisdiction.

For the aforementioned reasons, I am in favor of a more flexible approach to limitations on DCO ownership and voting rights, including the availability of a full waiver for individual and aggregate ownership or voting limits on swap dealers or major swap participants that hold or desire to hold debt or equity positions in DCOs.

*Public Directors*

I fully support the Commission's decision to require a registered entity to have its board of directors and certain other committees composed of thirty-five percent (35%) public directors. This standard is consistent with the Commission's previous core principle 15 for designated contract markets ("DCMs"). The Commission thoroughly vetted this percentage with the public in a recent rulemaking and it concluded that having a board of directors for DCMs composed of thirty-five percent (35%) public directors was neither overly burdensome nor cost prohibitive. Today's proposed rulemaking also raises the question as to whether it is desirable to expand the existing rule from thirty-five percent (35%) up to fifty-one percent (51%) for DCMs, DCOs, and swap execution facilities. I am interested to know how this proposal would enhance the governance of the existing board structures of certain registered entities, and more specifically, how it would expand the clearing and risk management expertise of a DCO.

[101] Section 2(h)(1)(B) and Section 5b(c)(2)(c) of the Act.

I strongly encourage the public to closely analyze the language of each proposed rule and to provide the Commission with constructive and detailed comments on each of them. In particular, I am interested to know (i) what effect the Commission's proposed rules on voting and ownership limitations will have on competition, raising capital, and managing risk, and (ii) whether or not the open access and eligibility provisions in Sections 2(h)(1)(B) and 5b(c)(2)(c) of the Act would be a more effective method for the Commission to expand access to clearing, rather than placing limits on the voting and ownership of DCOs.

**Proposed Requirements for Derivatives Clearing Organizations, Designated Contract Markets, and Swap Execution Facilities Regarding the Mitigation of Conflicts of Interest**

**Commissioner Jill E. Sommers, Dissenting**

The Commission is voting today on a proposal to implement two sections of the Dodd-Frank Act regarding the governance of CFTC regulated trading venues and clearinghouses that trade or clear swaps and how to mitigate conflicts of interest that may arise in connection with ownership interests that certain entities may have in these registrants. Specifically, Section 725(d) of the Act directs the Commission to:

Adopt rules mitigating conflicts of interest in connection with the conduct of business by a swap dealer or a major swap participant with at [DCO], [DCM], or a [SEF] that clears or trades swaps in which the swap dealer or major swap participant has a material debt or material equity investment.

Section 726 of the Act provides that the Commission shall adopt rules which "may" include numerical limits on the degree of control or voting rights that certain enumerated entities may possess with respect to DCOs, DCMs and SEFs if the Commission determines, after a review:

That such rules are necessary or appropriate to improve the governance of, or to mitigate systemic risk, promote competition, or mitigate conflicts of interest in connection with a swap dealer or major swap participant's conduct of business with, a [DCO], [DCM], or [SEF] that clears or posts swaps or makes swaps available for trading and in which such swap dealer or major swap participant has a material debt or equity investment.

I recognize that these provisions direct the Commission to adopt strong governance rules to mitigate conflicts of interest in connection with the interaction between swap dealers and major swap participants and DCOs, DCMs and SEFs in which they have a material debt or equity investment. In my opinion, however, the voting equity restrictions being proposed are not necessary or appropriate to mitigate the perceived conflicts and in fact, may do more harm than good to the emerging marketplace for trading and clearing swaps.

In 2009, after more than two years of study, the Commission finalized acceptable practices to provide a safe harbor for complying with Core Principle 15 for DCMs dealing with conflicts of interest. I support making those acceptable practices mandatory for DCMs, DCOs and SEFs, as augmented by some of the additional provisions being proposed today, such as the Risk Management Committee for DCOs. I believe that strong governance rules, coupled with the Commission's ultimate authority to determine which swaps must be cleared, under Section 723 of Dodd-Frank, is sufficient to ensure that swaps that should be listed for trading and cleared will be listed for trading and cleared.

I have grave concerns that the proposed limitations on voting equity, especially those proposed for enumerated entities in the aggregate with respect to DCOs, may stifle competition by preventing new DCMs, DCOs and SEFs that trade or clear swaps from being formed. The Commission recognizes in the preamble to the proposal that the enumerated entities will be the most likely source of funding for new DCMs and SEFs and thus chose not to propose the aggregate limits for trading venues. I believe the same logic applies with even greater force for DCOs. I am equally concerned that a number of recent entrants into the swaps trading and clearing space will potentially be required to disband their operations if they are unable to attract the required amount of non-voting equity within the two-year/two board election cycles proposed. I also note that the European Commission explicitly rejected ownership limitations in its proposal for regulating OTC derivatives announced September 15th because such limitations may have negative consequences for market structures. I agree. And I hope that we will be mindful of global consistency as we move forward. The marketplace for trading and clearing swaps is in its infancy. I strongly believe that the limitations the Commission is proposing will have the effect of inhibiting emerging competition rather than promoting it. I therefore cannot support today's proposal.

[FR Doc. 2010–26220 Filed 10–15–10; 8:45 am]

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## SECURITIES AND EXCHANGE COMMISSION

## 17 CFR Part 275

**[Release No. IA–3098; File No. S7–25–10]**

**RIN 3235–AK66**

## Family Offices

**AGENCY:** Securities and Exchange Commission.

**ACTION:** Proposed rule.

**SUMMARY:** The Securities and Exchange Commission (the "Commission") is proposing a rule to define "family offices" that would be excluded from the definition of an investment adviser under the Investment Advisers Act of 1940 ("Advisers Act") and thus would not be subject to regulation under the Advisers Act.

**DATES:** Comments must be received on or before November 18, 2010.

**ADDRESSES:** Comments may be submitted by any of the following methods:

*Electronic Comments*

- Use the Commission's Internet comment form, *http://www.sec.gov/rules/proposed.shtml*; or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number S7–25–10 on the subject line; or
- Use the Federal eRulemaking Portal, *http://www.regulations.gov*. Follow the instructions for submitting comments.

*Paper Comments*

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number S7–25–10. This file number should be included on the subject line if e-mail is used. To help us process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Web site, *http://www.sec.gov/rules/proposed.shtml*. Comments are also available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549 on official business days between the hours of 10 a.m. and 3 p.m. All comments received will be posted without change; we do not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly.

**FOR FURTHER INFORMATION CONTACT:** Sarah ten Siethoff, Senior Special Counsel, or Vivien Liu, Senior Counsel, at (202) 551–6787 or *IArules@sec.gov,* Office of Investment Adviser Regulation, Division of Investment Management, U.S. Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–8549.

**SUPPLEMENTARY INFORMATION:** The Securities and Exchange Commission is requesting public comment on proposed rule 202(a)(11)(G)–1 [17 CFR 275.202(a)(11)(G)–1] under the Investment Advisers Act of 1940 [15 U.S.C. 80b] (the "Advisers Act" or "Act").[1]

**Table of Contents**

I. Background

[1] 15 U.S.C. 80b. Unless otherwise noted, when we refer to the Advisers Act, or any paragraph of the Advisers Act, we are referring to 15 U.S.C. 80b of the United States Code, at which the Advisers Act is codified.

II. Discussion
III. General Request for Comment
IV. Paperwork Reduction Act
V. Cost-Benefit Analysis
VI. Initial Regulatory Flexibility Analysis
VII. Statutory Authority
Text of Proposed Rule

## I. Background

"Family offices" are entities established by wealthy families to manage their wealth, plan for their families' financial future, and provide other services to family members. Single family offices generally serve families with at least $100 million or more of investable assets.[2] Industry observers have estimated that there are 2,500 to 3,000 single family offices managing more than $1.2 trillion in assets.[3]

Family office services typically include managing securities portfolios, providing personalized financial, tax, and estate planning advice, providing accounting services, and directing charitable giving, in each case to members of a family. Some family offices even provide services such as travel planning or managing a family's art collection or household staff.[4] Family offices generally meet the definition of "investment adviser" under the Advisers Act, as we and our staff have interpreted the term, because, among the variety of services provided, family offices are in the business of providing advice about securities for compensation.[5]

We understand that many family offices have been structured to take advantage of the exemption from registration under section 203(b)(3) of the Advisers Act for any adviser that during the course of the preceding 12 months had fewer than 15 clients and neither held itself out to the public as an investment adviser nor advised any registered investment company or business development company.[6] Other family offices have sought and obtained from us orders under the Advisers Act declaring those offices not to be investment advisers within the intent of section 202(a)(11) of the Advisers Act.[7] We have issued more than a dozen of these orders since the 1940s.

The Commission issued those exemptive orders pursuant to a provision of the Advisers Act that authorizes us to exclude any person that falls within the Advisers Act's definition of investment adviser, but that we conclude is "not within the intent" of that definition.[8] We viewed the typical single family office as not the sort of arrangement that Congress designed the Advisers Act to regulate. We also were concerned that application of the Advisers Act would intrude on the privacy of family members. Thus, each of our orders exempted the particular family office from all of the provisions of the Advisers Act (and not merely the registration provisions). As a consequence, disputes among family members concerning the operation of the family office could be resolved within the family unit or, if necessary, through state courts under laws specifically designed to govern family disputes, but without the involvement of the Commission.

Our exemptive orders have included conditions designed to distinguish between a "family office," as described above, and a "family-run office" that, although owned and controlled by a single family, provides advice to a broader group of clients and much more resembles the business model common among many smaller investment adviser firms that are registered with the Commission or state regulatory authorities.[9] Accordingly, and as described in more detail below, our exemptive orders have limited relief to those family offices that provide advisory services only to members of a single family and their lineal descendants, with very limited exceptions.

On July 21, 2010, President Obama signed into law the Dodd-Frank Wall Street Reform and Consumer Protection Act (the "Dodd-Frank Act").[10] The Dodd-Frank Act, among other matters, will repeal the 15-client exemption contained in section 203(b)(3) of the Advisers Act, effective July 21, 2011.[11] The primary purpose of repealing this exemption was to require advisers to private funds, such as hedge funds, to register under the Advisers Act.[12] But another potential consequence, which Congress recognized, was that many family offices that have relied on that exemption would be required to register under the Advisers Act or seek an exemptive order before that section of the Dodd-Frank Act becomes effective.

To prevent that consequence, section 409 of the Dodd-Frank Act creates a new exclusion from the Advisers Act in section 202(a)(11)(G), under which family offices, as defined by the Commission, are not investment advisers subject to the Advisers Act.[13] Section 409 instructs that any definition the Commission adopts should be "consistent with the previous exemptive policy" of the Commission and recognize "the range of organizational, management, and employment structures and arrangements employed by family offices."[14] We have taken this legislative instruction into account in

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[2] *See* John J. Bowen, Jr., *In the Family Way,* Financial Planning (Aug. 1, 2004); Robert Frank, *Minding the Money—'Family Office' Chiefs Get Plied with Perks; Club Membership, Jets,* The Wall Street Journal (Sept. 7, 2007), at W2. A recent study found the average net worth of a single family office was $517 million. *See* Russ Alan Prince *et al.,* The Family Office: Advising the Financial Elite (2010) ("The Family Office").

[3] *See* Pamela J. Black, *The Rise of the Multi-Family Office,* Financial Planning (Apr. 27, 2010). A single family office generally provides services only to members of a single family.

[4] *See* Raphael Amit, *et al., Single Family Offices: Private Wealth Management in the Family Context,* Wharton Global Family Alliance (Apr. 1, 2008), *available at http://knowledge.wharton.upenn.edu/papers/1354.pdf* ("Wharton Study"); The Family Office, *supra* note 2; Angelo J. Robles, *Creating a Single Family Office for Wealth Creation and Family Legacy Sustainability,* Family Office Association, *available at http://familyofficeassociation.org/dwnld/FOA_White_Paper.pdf.*

[5] 15 U.S.C. 80b–2(a)(11). *See Applicability of the Investment Advisers Act to Financial Planners, Pension Consultants, and Other Persons Who Provide Investment Advisory Services as a Component of Other Financial Services,* Investment Advisers Act Release No. 1092 (Oct. 8, 1987) [52 FR 38400 (Oct. 16, 1987)]. There are certain exceptions to this definition, but the typical single family office does not meet any of these exceptions.

[6] 15 U.S.C. 80b–2(b)(3).

[7] *See, e.g., In the Matter of Donner Estates, Inc.,* Investment Advisers Act Release No. 21 (Nov. 3, 1941); *In the Matter of the Pitcairn Company,* Investment Advisers Act Release No. 52 (Mar. 2, 1949) ("Pitcairn"); *In the Matter of Roosevelt & Son,* Investment Advisers Act Release No. 54 (Aug. 31, 1949); *Bear Creek Inc.,* Investment Advisers Act Release Nos. 1931 (Mar. 9, 2001) (notice) [66 FR 15150 (Mar. 15, 2001)] and 1935 (Apr. 4, 2001) (order); *Riverton Management, Inc.,* Investment Advisers Act Release Nos. 2459 (Dec. 9, 2005) [70 FR 74381 (Dec. 15, 2005)] and 2471 (Jan. 6, 2006) (order).

[8] 15 U.S.C. 80b–2(a)(11)(G), which will be re-designated as 15 U.S.C. 80b–2(a)(11)(H) on July 21, 2010. If a person is excluded from the definition of an investment adviser, no state can require that person to register as an investment adviser. *See* 15 U.S.C. 80b–3A(b)(1).

[9] There also are commercial family offices, which are for-profit organizations that serve a much larger number of families and typically are registered as an investment adviser with the Commission or one or more states. *See* The Family Office, *supra* note 2. For example, GenSpring Family Offices, LLC reports on Part 1 of its Form ADV that it provides investment advisory services to 5000 clients.

[10] Pub. L. 111–203, 124 Stat. 1376 (2010).

[11] *See* section 403 of the Dodd-Frank Act.

[12] *See* S. Conf. Rep. No. 111–176, at 38–39 (2010) ("Senate Committee Report").

[13] The Senate Report states that "family offices are not investment advisers intended to be subject to registration under the Advisers Act" and that "the Advisers Act is not designed to regulate the interactions of family members, and registration would unnecessarily intrude on the privacy of the family involved." Senate Committee Report, *supra* note 12, at 75.

[14] Section 409(b) of the Dodd-Frank Act. Section 409 also includes a "grandfathering clause" that precludes us from excluding certain family offices from the definition solely because they provide investment advice to certain clients and had provided investment advice to those clients before January 1, 2010. *See* section 409(b)(3) of the Dodd-Frank Act.

formulating our proposed rule, as further detailed below.

## II. Discussion

We propose to adopt new rule 202(a)(11)(G)–1 under the Advisers Act to define family offices that would be excluded from the definition of "investment adviser" under the Advisers Act. As a consequence, these family offices would not be subject to any of the provisions of the Advisers Act.

Proposed rule 202(a)(11)(G)–1 largely would codify the exemptive orders that we have issued to family offices. Each of these exemptive orders reflected the specific factual situation presented by the family office applicant. Drafting a rule defining family offices, however, requires us to turn these fact-specific exemptive orders into a rule of general applicability. Thus, the proposed rule would not (and could not) match the exact representations, conditions or terms contained in every exemptive order as they varied to accommodate the particular circumstances of each family office. For example, some of these orders have permitted specific individuals to be treated as a member of a family for purposes of the exemption.[15] Moreover, the Commission's views have changed over time as we have gained experience with family offices, and as we have been presented with new issues. Finally, some questions raised by this rulemaking have never been presented to us in the context of an exemptive request, but seem appropriate to address in a rule of general applicability.

The proposal, which we discuss in more detail below, reflects the Commission's current exemptive policy regarding family offices, and thus the policy judgments that we have made in granting the more recent orders, which Congress understood. Where terms and conditions in exemptive applications have varied over the years, we have sought to distill the policy rationale for the term or condition, and designed our proposed rule to align with the general policy.

The core policy judgment that formed the basis of our exemptive orders (and which prompted Congressional action) is the lack of need for application of the Advisers Act to the typical single family office.[16] The Act was not designed to regulate the interactions of family members in the management of their own wealth. Accordingly, most of the conditions of the proposed rule (like our exemptive orders) operate to restrict the structure and operation of a family office relying on the rule to activities unlikely to involve commercial advisory activities, while permitting traditional family office activities involving charities, tax planning, and pooled investing.

Finally, we note that the failure of a family office to be able to meet the conditions of this rule would not preclude the office from providing advisory services to family members either collectively or individually. In such a situation, a family office could seek an exemptive order from the Commission or, in the absence of such an order, the family office would be subject to the Advisers Act and would have to register unless another exemption is available. A number of family offices currently are registered under the Advisers Act.

We request comment generally on our approach to the proposed rule and its implementation of section 409 of the Dodd-Frank Act. Are other approaches available that we should consider?

### *A. Family Office Structure and Scope of Activities*

As discussed below, the proposed rule contains three general conditions. First, it would limit the availability of the rule to family offices that provide advice about securities only to certain family members and key employees. Second, it would require that family members wholly own and control the family office. Third, it would preclude a family office from holding itself out to the public as an investment adviser. In addition to these conditions, we have incorporated into the rule the "grandfathering" provision required by section 409 of the Dodd-Frank Act.[17]

#### 1. Family Clients

We propose that excluded family offices not be permitted to have any investment advisory clients other than "family clients."[18] As discussed in more detail below, family clients would include family members, certain employees of the family office, charities established and funded exclusively by family members or former family members, trusts or estates existing for the sole benefit of family clients, and entities wholly owned and controlled exclusively by, and operated for the sole benefit of, family clients (with certain exceptions), and, under certain circumstances, former family members and former employees.

##### a. Family Member

We propose to define the term "family member" to include the individual and his or her spouse or spousal equivalent for whose benefit the family office was established and any of their subsequent spouses or spousal equivalents, their parents, their lineal descendants (including by adoption and stepchildren), and such lineal descendants' spouses or spousal equivalents.[19] Except as discussed below, this definition generally corresponds to the types of clients that family offices have advised under our exemptive orders.

Our exemptive orders issued to family offices typically have included adopted children as family members because adopted children generally are not treated differently as a legal matter than children by birth.[20] However, our exemptive orders have not always included stepchildren as "family members."[21] Proposed rule 202(a)(11)(G)–1 would include stepchildren as family members. We recognize that stepchildren are not treated as consistently as adopted children under relevant tax, family, and

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[15] *See, e.g., Adler Management, L.L.C.,* Investment Advisers Act Release Nos. 2500 (Mar. 21, 2006) [71 FR 15498 (Mar. 28, 2006)] (notice) and 2508 (Apr. 14, 2006) (order) ("Adler") (permitting one particular "long-standing loyal family employee" to hold a beneficial interest in a family entity advised by the family office).

[16] We note that the proposed rule would exclude directors, partners, trustees, and employees of family offices from regulation under the Advisers Act only when they are acting within the scope of their position or employment.

[17] *See supra* note 14 and section II.A.4 of this release.

[18] Proposed rule 202(a)(11)(G)–1(b)(1).

[19] Proposed rule 202(a)(11)(G)–1(d)(3).

[20] *See, e.g., WLD Enterprises, Inc.,* Investment Advisers Act Release Nos. 2804 (Oct. 17, 2008) [73 FR 63218 (Oct. 23, 2008)] (notice) and 2807 (Nov. 14, 2008) (order) ("WLD"); *Woodcock Financial Management Company,* LLC, Investment Advisers Act Release Nos. 2772 (Aug. 26, 2008) [73 FR 51322 (Sept. 2, 2008)] (notice) and 2787 (Sept. 24, 2008) (order); Adler, *supra* note 15. For an example of the legal treatment of adopted children, *see, e.g.,* National Conference of Commissioner on Uniform State Laws, *Uniform Adoption Act,* (1994), at § 1–104 (each adoptive parent and the adoptee have the legal relationship of parent and child and have all the rights and duties of that relationship). This treatment is also reflected in Federal laws. For example, section 2(a)(51)(ii) of the Investment Company Act of 1940 recognizes adopted children as "lineal descendants" for purposes of determining whether a person is a "qualified purchaser."

[21] Our exemptive orders issued to family offices in two instances have included family offices advising stepchildren. *See* WLD, *supra* note 20 (included two stepchildren of the patriarch's son and their spouses and children, but required that those individuals be provided with written disclosure describing the material terms and effects of the exemptive order and that the office obtain written consent from these individuals); *Woodcock Financial Management Company, LLC,* Investment Advisers Act Release Nos. 2772 (Aug. 26, 2008) [73 FR 51322 (Sept. 2, 2008)] (notice) and 2787 (Sept. 24, 2008) (order) ("Woodcock") (including matriarch's children from a former marriage and their lineal descendants, and the spouses of such children and descendents).

estate law.[22] However, we are proposing including stepchildren in our definition of a family client based on our understanding of their close ties to the family members who would be included in the definition, and on the fact that permitting stepchildren to be included as clients of the family office leaves to the family members whether they wish to include stepchildren as part of the family office clientele. Indeed, nothing in our proposed rule would mandate that the family office provide advice to any particular family member; it simply permits such advice.[23] We request comment on our proposed inclusion of stepchildren within the meaning of the term "family members" for purposes of the "family office" definition. Should we include stepchildren? Are there any additional conditions that we should impose if stepchildren are included?

We also propose including "spousal equivalents," using the definition of that term currently used under our auditor independence rules.[24] We are not aware of any applicant that requested that spousal equivalents be included as a permitted client of any family office covered by our exemptive orders, and thus have never provided such relief. However, we believe that permitting spousal equivalents to be a family office client seems appropriate in a rule of general applicability. We request comment on our proposed definition of spousal equivalent.

The proposed rule also would permit a family office relying on the exclusion to provide investment advice to parents of the family office's founders.[25] While the family offices that have obtained an exemptive order from the Commission typically were managing wealth built by an older generation—and thus the "parents" are typically the "founders," we understand that this may not always be the case. For example, some entrepreneurs (such as in the technology and private fund management sectors) have built sizeable fortunes at an early age and may form a family office.[26] These younger founders may wish to include one or more of their parents as a client of the family office. We request comment on including parents of the founders as a "family member" under the proposed rule.

Our proposed definition of "family member" also would include siblings of the founders of the family office, their spouses or spousal equivalents, their lineal descendants (including by adoption and stepchildren), and such lineal descendants' spouses or spousal equivalents.[27] We have issued an exemptive order to a family office that advised siblings of one of the founders and certain of those siblings' descendants.[28] These individuals have close family ties to the founders and allowing family members to choose to include these individuals as family office clients does not appear to us to expand the family office's clientele to such an extent that it starts to resemble a typical commercial investment adviser. We request comment on including siblings and their spouses and descendants in the definition of family client.

More generally, we request comment on our definition of family member. Are we drawing the line too broadly or too narrowly regarding when the clientele of a family office starts to resemble that of a typical commercial investment adviser and not a single family? For example, certain legally created relationships such as certain types of guardianships may resemble the type of relationship that is included in the definition of family member depending on the facts and circumstances. Are there other types of family members that should be included? Why or why not? We note that family offices would still be able to seek a Commission exemptive order if they wanted to continue to advise family that did not meet our proposed definition of family member.

We are aware that some families have added other families to their family office's clientele to achieve economies of scale and thus save on costs.[29] The rule would not extend to family offices serving multiple families. We have never granted an exemptive order to a multifamily office declaring them not to be an investment adviser and thus including them would seem to be inconsistent with our prior exemptive policy. Many multifamily offices more resemble a typical commercial investment adviser appropriately subject to the Advisers Act. Should we permit multifamily offices to operate under this exclusion from the Advisers Act? If so, how would we distinguish between a multi-family commercial office and an office more closely resembling those operating under our exemptive orders (except providing advice to multiple families)?

b. Involuntary Transfers

We recognize that family offices may encounter situations in which assets under management are transferred involuntarily. We note that one implication of the proposed rule would be that a family office could continue to provide advice without becoming an investment adviser under the Advisers Act to a person that receives assets in an involuntary transfer only if the involuntary transaction is to a person that is a family client. For example, if

[22] For example, under state inheritance law, stepchildren typically are not granted the inheritance rights of genetic children unless they are adopted. *See, e.g.,* Mass. Gen. Laws Ann. Ch. 190B, § 1–201(5) (West 2010); Alaska Stat. § 13.06.050(5) (2010); Fla. Stat. Ann. § 731.201(3) (West 2010); Haw. Rev. Stat. § 560:1–201(5) (2009), (32). *See also* Susan N. Gary, *We Are Family: The Definition of Parent and Child for Succession Purposes,* 34 ACTEC J. 171, 172 (Winter 2008). Other states provide limited inheritance rights to stepchildren. *See, e.g.,* Cal. Prob. Code § 6454 (West 2010) (stating that a stepchild may inherit through intestate succession if (1) the relationship began during the child's minority and continued throughout the joint lifetimes of the child and the child's stepparent and (2) it is established by clear and convincing evidence that the stepparent would have adopted the stepchild but for a legal barrier); Conn. Gen. Stat. Ann. § 45a–439(a)(1) (West 2010) (stating that if a person dies intestate without any surviving children, spouse, parents, siblings, or other next of kin, then the estate is distributed to stepchildren rather than escheat to the state); Md. Code Ann., Est. & Trusts § 3–104(e) (2010) (same). Other legal contexts have been more generous in ascribing legal rights to stepchildren. For example, some states have inheritance tax statutes that treat stepchildren the same as natural or adopted children. *See* Wendy C. Gerzog, *Families for Tax Purposes: What About the Steps?,* 42 U. Mich. J.L. Reform 805, at n.37 and accompanying text (Summer 2009). The laws of inheritance are beginning to ascribe more rights to stepchildren. In 2008, the Uniform Probate Code was amended to recognize as a "child" for purposes of intestate succession any child for whom a parent-child relationship exists, regardless of whether the child's genetic parents are married and regardless of whether the child is a genetic child of each parent. *See* Uniform Probate Code §§ 2–115 to 2–122. Some states have begun to amend their intestacy laws to reflect these amendments. *See, e.g.,* H.B. 09–1287, 67th Gen. Assem., 1st Reg. Sess. (Colo. 2009); H.B. 1072, 61st Leg. Assem., Reg. Sess. (N.D. 2009).

[23] Thus, for example, this context differs from the intestacy context where family is often defined narrowly because the decedent is not alive to state whether or not he or she wishes his or her stepchildren to inherit his or her estate.

[24] *See* 17 CFR 210.2–01(f)(9) and (13); *Revision of the Commission's Auditor Independence Requirements,* Securities Act Release No. 7919 (Nov. 21, 2000) [65 FR 76008 (Dec. 5, 2000)], at section IV.H.8. Spousal equivalent is defined as a cohabitant occupying a relationship generally equivalent to that of a spouse. *See* proposed rule 202(a)(11)(G)–1(d)(7).

[25] Proposed rule 202(a)(11)(G)–1(d)(3).

[26] *See, e.g., Google Executives Eye Family Office,* Private Asset Management (Dec. 5, 2005), at 1; Jim Grote, Old Money vs. New Money, Financial Advisor Magazine (May 2003).

[27] Proposed rule 202(a)(11)(G)–1(d)(3).

[28] The order was to a family office that advised siblings of one of the founders, those siblings' spouses, their children and their spouses, and their grandchildren and spouses (the applicant was required to give these individuals a disclosure statement describing the material legal effects associated with a Commission order exempting the family office from regulation under the Advisers Act). *See* WLD, *supra* note 20.

[29] *See* Hannah Shaw Grove & Russ Alan Prince, *E Pluribus Unum,* Registered Rep (May 1, 2004). These multi-family offices generally serve families with a lesser average net worth. *See* The Family Office, *supra* note 2 (finding that the average net worth for a multi-family office client to be $116 million).

a family member in his will left assets in a family office-advised private fund to a charity that did not qualify as a family client, generally after that family member died the family office could not continue to provide investment advice with respect to those assets and still rely on rule 202(a)(11)(G)–1 to be excluded from the definition of an investment adviser. The proposed rule would permit the family office to continue to advise such a client without violating the terms of the exclusion for four months following the transfer of assets resulting from the involuntary event, which should allow that family office to orderly transition that client's assets to another investment adviser, seek exemptive relief, or otherwise restructure its activities to comply with the Advisers Act.[30]

We believe that this treatment of involuntary transfers is appropriate because after such a bequest, the office would no longer be providing advice solely to members of a single family, and after several such bequests the office would cease to operate as a family office. Indeed, we have never issued an exemptive order to a family office permitting involuntary transfers to non-family members. However, we recognize that the Commission in some contexts has treated involuntary transfers in this manner and in other contexts permitted involuntary transfers outside the family.[31] We request comment on our proposed approach regarding involuntary transfers. Should we permit family clients to transfer assets advised by the family office to non-family clients if there is a death or other involuntary event without jeopardizing the ability of the family office to rely on the exclusion under proposed rule 202(a)(11)(G)–1? If so, under what conditions and to what types of transferees? How would we distinguish between a typical commercial adviser serving both related and unrelated clients from a family office resembling those operating under our prior exemptive orders? Should we allow a different period of time or transition mechanism to transfer assets that a non-family client receives in an involuntary transfer to another investment adviser?

c. Former Family Members

None of our exemptive orders have permitted former family members to receive investment advice from an exempt family office.[32] However, we recognize that divorces and other events may occur in some families covered by the rule and that addressing in our proposed rule the effect of these circumstances on the family office would provide clarity to family offices affected by such a legal separation from the family.

We propose permitting former family members, *i.e.,* former spouses, spousal equivalents and stepchildren, to retain any investments held through the family office at the time they became a former family member.[33] However, we propose to limit former family members from making any new investments through the family office.[34] Our approach is designed to prevent such a separation from resulting in harmful investment or tax consequences, while also recognizing that such persons are no longer members of the family controlling the office, and thus would not be subject to the protections we assume accompany membership in a family. We request comment on this approach. Should we exclude former family members? Are there other approaches to treating such persons that we should consider?

d. Family Trusts, Charitable Organizations, and Other Family Entities

We also propose to treat as a "family client" any charitable foundation, charitable organization, or charitable trust established and funded exclusively by one or more family members[35] and any trust or estate existing for the sole benefit of one or more family clients.[36] Similarly, we would also treat as a family client any company,[37] including a pooled investment vehicle, that is wholly owned and controlled, directly or indirectly, by one or more family clients and operated for the sole benefit of family clients.[38] We generally have included these types of companies and organizations when owned and controlled by family members to be treated as permitted clients of the family office under our exemptive orders.[39] Including them should allow the family office to structure its activities through typical investment structures. We request comment on this aspect of our proposal.

[30] Proposed rule 202(a)(11)(G)–1(b)(1).

[31] For example, under our rules addressing the exclusion of private funds from the definition of an investment company, the Commission has treated an involuntary transfer of securities as if the transfer had not occurred, consistent with the direction from Congress in the Investment Company Act. *See* 15 U.S.C. 80a–3(c)(1)(B) 15 U.S.C. 80a–3(c)(7)(A); 17 CFR 270.3c–6. However, under our rules relating to the registration of securities pursuant to certain compensatory benefit plans, we have only permitted involuntary transfers to family members without jeopardizing the ability of the person to continue to rely on the exemptive provision. *See* 17 CFR 230.701 (exempting offers and sales of securities under a written compensatory benefit plan or written compensation contract for the participation of employees, directors, general partners, trustees, officers, or consultants and advisors, and their family members who acquire such securities from such persons through gifts or domestic relations orders). *See also* General Instruction A.1(a)(5) to Form S–8 (The form also is available for the exercise of employee benefit plan options and the subsequent resale of the underlying securities by an employee's family member who has acquired the options from the employee through a gift or a domestic relations order.); *Registration of Securities on Form S–8,* Securities Act Release No. 7646 (Feb. 26, 1999) [64 FR 11103 (Mar. 8, 1999)], at section III.A.2 (explicitly rejecting expanding the availability of the abbreviated disclosure in Form S–8 for the exercise of employee benefit plan options transferred by gift to charities or to other "unrelated persons who are the object of the employee's generosity" and stating that "[w]hile we seek to facilitate employees' estate planning through the amendments we adopt today, we must keep in mind that investor protection is our primary objective" and to "permit entities that are not controlled by, or for the primary benefit of, an employee's family members to exercise options on Form S–8 would suggest that the abbreviated Form S–8 disclosure is adequate for the offer and sale of securities to non-employees generally. As discussed above, we remain firmly persuaded of the contrary view.").

[32] By including in the definition of "founders" any subsequent spouse of a founder, our proposed rule would address the situation in which the founders divorce and one or both of the founders subsequently remarries. *See* proposed rule 202(a)(11)(G)–1(d)(5). Again, we are not aware of any applicant for an exemptive order having requested that the order cover this situation, but in formulating a rule of general applicability, we thought it important to address the impact of this situation on the family office's exclusion under the Advisers Act.

[33] Proposed rule 202(a)(11)(G)–1(d)(2)(vi), and (d)(4).

[34] The proposed rule would permit the family office to provide investment advice with respect to additional investments that the former spouse or spousal equivalent was contractually obligated to make, and that relate to a family-office advised investment existing, prior to the time the person became a former spouse or spousal equivalent (*e.g.,* if the individual has a previously existing capital commitment to a private fund advised by the family office). *See* proposed rule 202(a)(11)(G)–1(d)(2)(vi).

[35] Proposed rule 202(a)(11)(G)–1(d)(2)(iii).

[36] Proposed rule 202(a)(11)(G)–1(d)(2)(iv).

[37] "Company" is defined in section 202(a)(5) of the Advisers Act to mean "a corporation, a partnership, an association, a joint-stock company, a trust, or any organized group of persons, whether incorporated or not; or any receiver, trustee in a case under title 11, or similar official, or any liquidating agent for any of the foregoing, in his capacity as such."

[38] Proposed rule 202(a)(11)(G)–1(d)(2)(v). Under proposed rule 202(a)(11)(G)–1(d)(1), control would be defined as the power to exercise a controlling influence over the management or policies of an entity, unless such power is solely the result of being an officer of such entity. If any of these companies are pooled investment vehicles, they must be exempt from registration as an investment company under the Investment Company Act of 1940 because the Advisers Act requires that an adviser to a registered investment company must register. *See* 15 U.S.C. 80b–3a(a)(1)(B).

[39] *See, e.g.,* Woodcock, *supra* note 21; *Kamilche Company,* Investment Advisers Act Release Nos. 1958 (Jul. 31, 2001) [66 FR 41063 (Aug. 6, 2001)] (notice) and 1970 (Aug. 27, 2001) (order).

e. Key Employees

We also are proposing to treat as family members certain key employees of the family office so that they may receive investment advice from and participate in investment opportunities provided by the family office. Such persons have been treated like family members in some of our exemptive orders.[40] Permitting participation by key employees allows such family offices to incentivize key employees to take a job with the family office and to create positive investment results at the family office under terms that could be available to them as employees of other types of money management firms. It is our understanding that in some cases family offices may need to provide such incentives to attract highly skilled investment professionals who may not otherwise be attracted to work at a family office.[41]

The Dodd-Frank Act acknowledges the Commission's exemptive policy in this area by requiring that in defining a "family office" we "recognize the range of organizational, management, and employment structures and arrangements employed by family offices" in defining excluded family offices.[42] The Senate committee report explained that some family offices have non-family member directors, officers, and employees that may co-invest with family members, enabling them to share in the profits of investments that they oversee and better aligning the interests of such persons with those of the family members served by the family office.[43] The report states that it expected that "such arrangements would not automatically exclude a family office from the definition."[44]

The proposed rule would permit the family office to provide investment advice to any natural person (including persons who hold joint and community property with their spouse) who is (i) an executive officer, director, trustee, general partner, or person serving a similar capacity of the family office, or (ii) any other employee of the family office (other than an employee performing solely clerical, secretarial, or administrative functions) who, in connection with his or her regular duties, has participated in the investment activities of the family office, or similar functions or duties for or on behalf of another company, for at least twelve months.[45]

We believe that this standard would limit employees who participate without the protections of the Advisers Act (or family membership) to those employees that are likely to be in a position or have a level of knowledge and experience in financial matters sufficient to be able to evaluate the risks and take steps to protect themselves. This definition of key employee is based on the "knowledgeable employee standard" currently contained in Advisers Act rule 205–3(d)(iii), which specifies the types of clients to whom the adviser may charge performance fees.[46] We adopted the knowledgeable employee exception in the performance fee rule based on a similar policy conclusion that these types of employees are likely to be sophisticated financially and not need the protections of the Advisers Act's restrictions on performance fees.[47]

Similar to our treatment of family members under the proposed rule, key employees would be able to structure their investments through trusts and other entities, subject to the conditions relating to control and ownership described earlier in this Release.[48] Upon the end of key employees' employment by the family office, key employees (including their trusts and controlled entities) would not be permitted to make additional investments through the family office.[49] Similar to our treatment of former spouses, spousal equivalents, and stepchildren, our proposed rule would not require former key employees to liquidate or transfer investments held through the family office at the time of the end of their employment, however, to avoid imposing possible adverse tax or investment consequences that might otherwise result.

We request comment on our proposed treatment of investments by employees of the family office. Should we permit key employees to receive investment advice through the family office? Do family offices rely on allowing co-investment to attract talented investment professionals to work at the family office? Should the definition of key employee be based on the knowledgeable employee standard in rule 205–3 under the Advisers Act? Are there restrictions that we should consider imposing as a condition to such investment to help protect non-family members investing through the family office? Should we allow former key employees to retain their investments through the family office at the time of termination? Are any of our conditions too restrictive? For example, should we modify or eliminate the 12-month experience requirement for key employees? If so, how and why? Are there other types of individuals or entities that should be permitted to invest through the family office without jeopardizing that family office's exclusion under the Advisers Act?

More broadly, we request comment on our definition of who is considered a "family client." We have not included every type of individual or entity that has been included in a prior exemptive order based on specific facts and circumstances. We do not believe we could have taken such an approach in a rule of general applicability and we note that family offices would remain free to seek a Commission exemptive order to advise an individual or entity

[40] *See, e.g.,* WLD, *supra* note 20 (family office provided investment advice to several executives of the family business and their trusts); Gates Capital Partners, LLC/Bear Creek, Inc., Investment Advisers Act Release Nos. 2590 (Feb. 16, 2007) [72 FR 8405 (Feb. 26, 2007)] (notice) and 2599 (Mar. 20, 2007) (order) (two pooled investment vehicles advised by the family office had non-voting interests owned by certain senior employees of the family office); Adler, *supra* note 15 (one long-standing employee held interest in one family office advised entity). These key employees typically either had their investments frozen or were permitted to continue their side-by-side investments through the family office but upon termination of employment were limited to investments at the time of termination along with reinvestment of accretions or distributions on the investment.

[41] *See e.g.,* Robert Frank, *Minding the Money—'Family Office' Chiefs Get Plied with Perks; Club Membership, Jets.* The Wall Street Journal, at W2 (Sept. 7, 2007) ("a growing number of wealthy families are dangling the biggest perk of all: allowing their family office manager to become a "participant," investing his or her own funds along with the family money in big deals"). *But see* Thomas Coyle, *Family Offices Mostly unscathed by Overhaul,* Dow Jones News Service (Jul. 16, 2010) ("family office recruiters don't think co-investment plays a big role in attracting family office managers").

[42] Section 409(b)(2) of the Dodd-Frank Act.

[43] Senate Committee Report, *supra* note 12, at 76.

[44] *Id.*

[45] Proposed rule 202(a)(11)(G)–1(d)(6). The proposed rule also would permit the family office to provide investment advice to trusts created for the sole benefit of family clients (which could include these key employees), and to other entities wholly owned and controlled by and operated for the sole benefit of family clients. Proposed rule 202(a)(11)(G)–1(d)(2)(iv)–(v).

[46] The knowledgeable employee standard in Advisers Act rule 205–3 was itself based on the similar standard under the Investment Company Act of 1940 for knowledgeable employees of private funds that are exempt from registration under the Investment Company Act through section 3(c)(1) or 3(c)(7) of the Investment Company Act. *See* rule 3c–5 under the Investment Company Act [17 CFR 270.3c–5]; *Exemption To Allow Investment Advisers To Charge Fees Based upon a Share of Capital Gains upon or Capital Appreciation of a Client's Account,* Investment Advisers Act Release No. IA–1731 (Jul. 15, 1998) [63 FR 39022 (Jul. 21, 1998)], at nn.24–28 and accompanying text.

[47] *See Exemption To Allow Investment Advisers To Charge Fees Based upon a Share of Capital Gains upon or Capital Appreciation of a Client's Account,* Investment Advisers Act Release No. IA–1731 (Jul. 15, 1998) [63 FR 39022 (Jul. 21, 1998)], at nn.24–28 and accompanying text.

[48] *See* section II.A.1.d of this Release. *See also* WLD, *supra* note 20 (permitting the family office to advise key employee trusts).

[49] Proposed rule 202(a)(11)(G)–1(d)(2)(vii).

that does not meet our proposed family client definition. However, we request comment on our approach. Are there other individuals or entities that should be included? Under our proposed rule, the family office could not provide investment advice to a person that may have a long employment relationship with the family but does not qualify as a "key employee." Are there other types of individuals that commonly have close ties to a family that should be included as a family client? We note that as a family office extends its provision of investment advice beyond family members, it increasingly resembles a more typical commercial investment advisory business, and not a family managing its own wealth.

2. Ownership and Control

We propose that to operate under the proposed exclusion from the Advisers Act the family office be wholly owned and controlled, either directly or indirectly, by family members.[50] This condition generally is consistent with our exemptive orders[51] and assures that the family is in a position to protect its own interests and thus is less likely to need the protection of the Federal securities laws.

This condition also helps distinguish family offices from family-run offices that may provide advice to other people, as well as other families, and operates as a more typical commercial investment adviser. Most family offices that have obtained an exemptive order from the Commission under the Advisers Act have represented that they did not operate for the purpose of generating a profit and charged fees designed to just cover their costs.[52] This feature helped distinguish these family offices from the family-run investment advisory businesses that the Advisers Act appropriately regulates. Requiring that the family office be wholly owned by family members alleviates any concern that we may otherwise have about the profit structure of the family office, because any profits generated by the family office from managing family clients' assets only accrue to family members. Accordingly, we are not proposing a specific condition regarding whether the family office generates a profit.

We request comment on the condition that the family office be wholly owned and controlled by family members. Are there reasons that we should not require that the family office be wholly owned and controlled by family members? Should some minor ownership stake of non-family members be permitted?[53] If we permitted non-family members to own a minor ownership stake in the family office, what other protections should we impose to ensure that the family office did not operate as a more typical commercial investment adviser? Are there other restrictions on ownership and control of the family office that we should impose consistent with our policy goals? Should we also require that the family office be operated without the intent of generating a profit or only charge fees designed to cover its costs and the compensation of its employees?

3. Holding Out

Consistent with our exemptive orders,[54] we propose to prohibit a family office relying on the rule from holding itself out to the public as an investment adviser.[55] Holding itself out to the public as an investment adviser suggests that the family office is seeking to enter into typical advisory relationships with non-family clients, and thus is inconsistent with the basis on which we have provided exemptive orders and this proposed rule.[56] We request comment on this proposed condition. Are there circumstances where a family office holding itself out to the general public as an investment adviser should nevertheless be excluded from the protections afforded to the investing public under the Advisers Act?

4. Grandfathering Provisions

The Dodd-Frank Act prohibits us from excluding from our definition of family office persons not registered or required to be registered on January 1, 2010 that would meet all of the required conditions under rule 202(a)(11)(G)–1 but for their provision of investment advice to certain clients specified in section 409(b)(3) of the Dodd-Frank Act.[57] We have incorporated this required grandfathering into paragraph (c) of our proposed rule.[58]

*B. Effect of Rule on Previously Issued Exemptive Orders*

As discussed above, the Commission has issued orders under section 202(a)(11)(G) of the Advisers Act to certain family offices declaring them and their employees acting within the scope of their employment to not be investment advisers within the intent of the Act. In some areas these exemptive orders may be slightly broader than the rule we are proposing today, and in other areas they may be narrower.

We are not proposing to rescind the orders we have issued to family offices because we do not believe that the policy behind the previously issued orders differs substantially from that of our proposal. Further, single family offices do not compete with one another and thus there is no need to rescind exemptive orders to create a "level playing field." Family offices currently

[50] Proposed rule 202(a)(11)(G)–1(b)(2).

[51] *See, e.g.,* WLD, *supra* note 20 (requiring that a majority of the board of directors of the family office be comprised of family members and that the family office be wholly owned by family members); *Slick Enterprises, Inc.,* Investment Advisers Act Release Nos. 2736 (May 22, 2008) [73 FR 30984 (May 29, 2008)] (notice) and 2745 (June 20, 2008) (order) (same) ("Slick").

[52] *See, e.g.,* WLD, *supra* note 20; Adler, *supra* note 15; *Parkland Management Company, L.L.C.,* Investment Advisers Act Release Nos. 2362 (Feb. 24, 2005) [70 FR 10155 (Mar. 2, 2005)] (notice) and 2369 (Mar. 22, 2005) (order); *Longview Management Group LLC,* Investment Advisers Act Release Nos. 2008 (Jan. 3, 2002) [67 FR 1251 (Jan. 9, 2002)] (notice) and 2013 (Feb. 7, 2002) (order).

[53] In one case we granted an exemptive order to a family office in which four churches owned a small interest in the family office. *See* Pitcairn, *supra* note 7. In one other case we granted an exemptive order to a family office owned by a trust in which half of the trustees were independent and half of the trustees were family members. *See Moreland Management Company,* Investment Advisers Act Release Nos. 1700 (Feb. 12, 1998) [63 FR 8710 (Feb. 20, 1998)] (notice) and 1706 (Mar. 10, 1998) (order).

[54] *See, e.g.,* WLD, *supra* note 20; Woodcock, *supra* note 21; Slick, *supra* note 51.

[55] Proposed rule 202(a)(11)(G)–1(b)(3).

[56] We note that the exemption from registration under section 202(b)(3) of the Advisers Act is not available to a person that holds himself out as an investment adviser. In addition, our staff has stated that a person that holds himself out as an investment adviser or as one who provides investment advice satisfies the "in the business" element of being an investment adviser under the Advisers Act. *See Applicability of the Investment Advisers Act to Financial Planners, Pension Consultants, and Other Persons Who Provide Investment Advisory Services as a Component of Other Financial Services,* Investment Advisers Act Release No. 1092 (Oct. 8, 1987) [52 FR 38400 (Oct. 16, 1987)].

[57] *See* section 409(b)(3) and (c) of the Dodd-Frank Act. The family office must have been providing investment advice to such clients before January 1, 2010. The grandfathered clients are natural persons who, at the time of their investment, are officers, directors, or employees of the family office, and had invested with the family office before January 1, 2010. These clients must be accredited investors under Regulation D of the Securities Act of 1933. The other grandfathered clients are investment advisers registered under the Advisers Act that in turn provide investment advice and identify investment opportunities to the family office and invest in such transactions on substantially the same terms as the family office invests, but does not invest in other funds advised by the family office and whose assets as to which the family office directly or indirectly provides investment advice represent, in the aggregate, not more than 5% of the value of the total assets as to which the family office provides investment advice. *See* proposed rule 202(a)(11)(G)–1(c).

[58] A family office that will only qualify for the exclusion under section 202(a)(11)(G) of the Advisers Act, as amended by the Dodd-Frank Act, because of section 409(b)(3) of the Dodd-Frank Act will still be subject to paragraphs (1), (2) and (4) of section 206 of the Advisers Act. *See* section 409(c) of the Dodd-Frank Act.

operating under these orders could continue to rely on those orders or, if they meet the conditions of proposed rule 202(a)(11)(G)–1, they could rely on the rule. We request comment on whether we should rescind previous orders granted to family offices under section 202(a)(11)(G) of the Advisers Act. Should we rescind the very early orders that did not impose all of the same conditions as more recent orders?

## III. General Request for Comment

The Commission requests comment on the rule proposed in this Release, suggestions for additional changes to the existing rules and comment on other matters that might have an effect on the proposals contained in this Release. Commenters should provide empirical data to support their views.

## IV. Paperwork Reduction Act

Proposed rule 202(a)(11)(G)–1 does not contain a "collection of information" requirement within the meaning of the Paperwork Reduction Act of 1995.[59] Accordingly, the Paperwork Reduction Act is not applicable.

## V. Cost-Benefit Analysis

We have identified certain costs and benefits of the proposed new rule, and we request comment on all aspects of this cost benefit analysis, including identification and assessment of any costs and benefits not discussed in this analysis. We seek comment and data on the value of the benefits identified. We also welcome comments on the accuracy of the cost estimates in this analysis, and request that commenters provide data that may be relevant to these cost estimates. In addition, we seek estimates and views regarding these costs and benefits for particular family offices as well as any other costs or benefits that may result from the adoption of the proposed new rule.

In proposing this rule, we are responding to the Dodd-Frank Act's repeal of section 203(b)(3) of the Advisers Act and proposing a new exclusion for a "family office," which Congress anticipated we would define.[60] Proposed rule 202(a)(11)(G)–1 would exclude from regulation under the Advisers Act family offices that meet the qualifications and conditions contained in the proposed rule. Among other matters, to qualify as an excluded family office, the family office generally must have no non-family clients, must be wholly owned and controlled by family members, and must not hold itself out to the public as an investment adviser.

### *A. Benefits*

As discussed earlier in this Release, we expect that proposed rule 202(a)(11)(G)–1 would yield several important benefits. First, the proposed rule would result in several benefits for excluded family offices that do not already have an exemptive order. They would not be subject to the costs of registering with the Commission as an investment adviser and its associated compliance costs (or if they were previously registered, they would benefit from the reduced regulatory costs after de-registering in reliance on the exclusion). These reduced regulatory costs should result in direct cost savings to these family offices, and thus to their family clients. Excluded family offices would be able to maintain greater privacy because they would not have to make the public filings with the Commission that they would otherwise have to make as a registered investment adviser.

The proposed rule also would benefit the Commission and family offices that meet the conditions of the proposed rule and their clients by eliminating the costs and inefficiencies of seeking (and considering) individual exemptive orders. As discussed above, family offices that did not qualify for the exemption from registration contained in section 203(b)(3) of the Advisers Act often applied to the Commission for exemptive relief from the Advisers Act. Following the repeal of the exemption contained in section 203(b)(3), we would expect a much greater number of family offices to otherwise apply for exemptive relief absent our rule proposal.[61] We estimate that a typical family office (and thus indirectly their family clients) would incur legal fees of $200,000 on average to engage in the exemptive order application process, including preparation and revision of an application and consultations with Commission staff.[62] The proposed rule would benefit qualifying family offices and their family clients by eliminating the costs of applying to the Commission for an exemptive order to avoid registration and the associated compliance burdens. It also would benefit excluded family offices and their family clients by eliminating the uncertainty that they might not obtain such an order.

The proposed rule also would benefit the Commission by freeing staff resources from reviewing and processing family office exemptive applications that would result from the repeal of section 203(b)(3) of the Advisers Act in many cases where the staff would likely recommend to the Commission that exclusion from regulation under the Advisers Act was appropriate and in the public interest, allowing the staff to target its work more efficiently, and thus would indirectly benefit investors.

We seek comment on whether the elimination of these costs would result in additional benefits to family offices or their clients.

### *B. Costs*

We recognize that there are costs that could result if we adopted our proposed rule. We do not expect that the proposed rule would impose any significant costs on family offices currently operating under a Commission exemptive order. We are permitting these family offices to continue to rely on their exemptive orders and thus would expect them to do so if the costs to do so were lower than complying with the proposed rule. We expect that most of these family offices could satisfy all the conditions of the rule without changing their structure or operations. However, these family offices may incur one-time "learning costs" in determining the differences between their orders and the rule. We expect that such costs would be no more than $5,000 on average for a family office if it hires an external consulting firm or law firm to assist in determining the differences.[63] There are 13 family offices that have obtained exemptive orders. Accordingly, we estimate that these family offices collectively would incur outside consulting or legal expenses of $65,000 to discern the differences between their orders and the rule.

As discussed above, there are a number of family offices that currently are not registered as an investment adviser in reliance on the exemption from registration in section 203(b)(3) of the Advisers Act. The proposed rule would not impose any costs on those advisers because they currently are exempt from registration and thus would have no reason to consider whether they would rather rely on the proposed rule to relieve them of the

[59] 44 U.S.C. 3501 *et seq.*

[60] *See* section 409 of the Dodd-Frank Act.

[61] *See supra* note 3 and accompanying text for industry estimates of the number of single family offices.

[62] This estimate is based on our understanding of typical outside legal fees for past applications.

[63] We expect that a family office would need no more than 10 hours of consulting or legal advice to learn the differences between its order and the rule. We estimate that this advice would cost the family office $500 per hour based on our understanding of the rates typically charged by outside consulting or law firms.

burdens associated with being a registered investment adviser. After July 21, 2010, section 203(b)(3) of the Advisers Act will be repealed and as a result, some of these family offices would be subject to the costs and burdens of registration under the Advisers Act. However, these costs are a consequence of section 403 of the Dodd-Frank Act repealing the section 203(b)(3) exemption, and not this rulemaking. Accordingly, we do not attribute these costs to this rulemaking and thus are not considering them.

We recognize that some family offices may decide to restructure their business to meet the conditions imposed by proposed rule 202(a)(11)(G)–1 so that they would avoid the costs and burdens of registration in reliance on our proposed rule. Some family offices may need to reorganize the ownership or control structure of the family office in order to meet the family office definition under the proposed rule. We estimate that this type of reorganization could be accomplished without significant costs being imposed on the family office because we estimate that most family offices are wholly owned and those that are not only have a small number of non-family members with ownership interests. Other family offices may have to terminate providing investment advice to certain persons because they would not meet the definition of a "family client," which may require these individuals to divest interests in pooled investment vehicles and other entities advised by the family office. The costs of any such restructuring would be highly dependent on the nature and extent of investment of these non-qualifying clients through the family office, which we understand may vary significantly from family office to family office.

Finally, if there were any family offices that previously registered with the Commission, but now may de-register in reliance on the new family office exclusion in the Advisers Act, the proposed rule may have competitive effects on investment advisers that may compete with the family office for the provision of investment management services to family clients since these third party investment advisers would bear the regulatory costs associated with compliance with the Advisers Act or state investment adviser regulatory requirements. We do not expect that the proposed rule would impact capital formation.

We request comment on this analysis. Would family offices that currently rely on an order bear lower costs if they rely on the proposed rule? What amount and types of costs will these family offices bear as a result of the proposed rule? How many family offices are likely to restructure and in what ways? At what cost? What competitive impacts may result if registered family offices de-register if the proposed rule is adopted?

### C. Request for Comment

The Commission requests comments on all aspects of the cost-benefit analysis, including the accuracy of the potential costs and benefits identified and assessed in this Release, as well as any other costs or benefits that may result from the proposals. We encourage commenters to identify, discuss, analyze, and supply relevant data regarding these or additional costs and benefits. For purposes of the Small Business Regulatory Enforcement Fairness Act of 1996,[64] the Commission also requests information regarding the potential annual effect of the proposals on the U.S. economy. Commenters are requested to provide empirical data to support their views.

## VI. Initial Regulatory Flexibility Analysis

The Commission has prepared the following Initial Regulatory Flexibility Analysis ("IRFA") regarding proposed rule 202(a)(11)(G)–1 in accordance with section 3(a) of the Regulatory Flexibility Act.[65]

### A. Reasons for Proposed Action

We are proposing rule 202(a)(11)(G)–1 defining family offices excluded from regulation under the Advisers Act because we are required to do so under Section 409 of the Dodd-Frank Act.

### B. Objectives and Legal Basis

As described more fully in Sections I and II of this Release, the general objective of proposed rule 202(a)(11)(G)–1 is to define a family office consistent with prior Commission exemptive policy consistent with the Dodd-Frank Act. The Commission is proposing rule 202(a)(11)(G)–1 pursuant to our authority set forth in section 202(a)(11)(G) of the Advisers Act [15 U.S.C. 80b–2(a)(11)(G)].

### C. Small Entities Subject to the Rule

Under Commission rules, for the purposes of the Advisers Act and the Regulatory Flexibility Act, an investment adviser generally is a small entity if it: (i) Has assets under management having a total value of less than $25 million; (ii) did not have total assets of $5 million or more on the last day of its most recent fiscal year; and (iii) does not control, is not controlled by, and is not under common control with another investment adviser that has assets under management of $25 million or more, or any person (other than a natural person) that had $5 million or more on the last day of its most recent fiscal year.[66]

We do not have data and are not aware of any databases that compile information regarding how many family offices would be a small entity under this definition, but since family offices only are established for the very wealthy and given the statistics noted earlier showing that they generally serve families with at least $100 million or more of investable assets and have an average net worth of $517 million, we believe it is unlikely that any family offices would be small entities.[67]

### D. Reporting, Recordkeeping, and Other Compliance Requirements

Proposed rule 202(a)(11)(G)–1 would impose no reporting, recordkeeping or other compliance requirements.

### E. Duplicative, Overlapping, or Conflicting Federal Rules

The Commission has not identified any Federal rules that duplicate, overlap, or conflict with the proposed rule.

### F. Significant Alternatives

The Regulatory Flexibility Act directs the Commission to consider significant alternatives that would accomplish the stated objective, while minimizing any significant impact on small entities. In connection with the proposed rules and amendments, the Commission considered the following alternatives: (i) The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (ii) the clarification, consolidation, or simplification of compliance and reporting requirements under the rule for small entities; (iii) the use of performance rather than design standards; and (iv) an exemption from coverage of the rule, or any part thereof, for small entities.

[64] Pub. L. 104–121, Title II, 110 Stat. 857 (1996) (codified in various sections of 5 U.S.C., 15 U.S.C. and as a note to 5 U.S.C. 601).

[65] 5 U.S.C. 603(a).

[66] 17 CFR 275.0–7(a).

[67] *See supra* note 2 and accompanying text. *See also* The Family Office, *supra* note 2 (finding investable assets of single family offices surveyed ranged from $197 million to $843 million); Family Wealth Alliance, Single-Family Office Study Executive Summary, *available at http://www.fwalliance.com/store/2ndannualsinglefamilystudy.html* (finding assets under management of surveyed single family offices ranged from $51 million to $2.1 billion); Wharton Study, *supra* note 4, at 4 (stating that surveyed single family offices had at least $100 million in investable assets).

Proposed rule 202(a)(11)(G)–1 is exemptive and compliance with the rule would be voluntary. We therefore do not believe that different or simplified compliance, timetable, or reporting requirements, or an exemption from coverage of the proposed rule for small entities would be appropriate. The conditions in the proposed rule are designed to ensure that family offices operating under the rule would only impact the family itself and not the general public and, accordingly, the protections of the Advisers Act are not warranted. Reducing these conditions for smaller family offices would be inconsistent with the policy underlying the exclusion and would harm investor protection.

Our prior exemptive orders have not made any differentiation based on the size of the family office. In addition, as discussed above, we expect that very few, if any, family offices are small entities. The Commission also believes that proposed rule 202(a)(11)(G)–1 would decrease burdens on small entities by making it unnecessary for them to seek an exemptive order from the Commission to operate without registration under the Advisers Act. As a result, we do not anticipate that the potential impact of the proposed rule on small entities would be significant.

The proposed rule specifies broad conditions with which a family office must comply to rely on the exclusion; the proposed rule leaves to each family office how to structure its specific operations to meet these conditions. The proposed rule thus already incorporates performance rather than design standards. For these reasons, alternatives to the proposed rule appear unnecessary and in any event are unlikely to minimize any impact that the proposed rule might have on small entities.

*G. Solicitation of Comments*

We encourage written comments on matters discussed in this IRFA. In particular, the Commission seeks comment on:

- The number of small entities that would be affected by the proposed rule; and
- Whether the effect of the proposed rule on small entities would be economically significant.

Commenters are asked to describe the nature of any effect and provide empirical data supporting the extent of the effect.

**VII. Statutory Authority**

We are proposing rule 202(a)(11)(G)–1 [17 CFR 275.202(a)(11)(G)–1] pursuant to our authority set forth in section 202(a)(11)(G) of the Advisers Act [15 U.S.C. 80b–2(a)(11)(G)].

**List of Subjects in 17 CFR Part 275**

Reporting and recordkeeping requirements, Securities.

**Text of Proposed Rule**

For the reasons set out in the preamble, Title 17, Chapter II of the Code of Federal Regulations is proposed to be amended as follows.

## PART 275—RULES AND REGULATIONS, INVESTMENT ADVISERS ACT OF 1940

1. The authority citation for Part 275 continues to read in part as follows:

**Authority:** 15 U.S.C. 80b–2(a)(11)(G), 80b–2(a)(17), 80b–3, 80b–4, 80b–4a, 80b–6(4), 80b–6a, and 80b–11, unless otherwise noted.

* * * * *

2. Section 275.202(a)(11)(G)–1 is added to read as follows:

**§ 275.202(a)(11)(G)–1 Family offices.**

(a) *Exclusion.* A family office, as defined in this section, shall not be considered to be an investment adviser for purpose of the Act.

(b) *Family office.* A family office is a company (including its directors, partners, trustees, and employees acting within the scope of their position or employment) that:

(1) Has no clients other than family clients; provided that if a person that is not a family client becomes a client of the family office as a result of the death of a family member or key employee or other involuntary transfer from a family member or key employee, that person shall be deemed to be a family client for purposes of this § 275.202(a)(11)(G)–1 for four months following the transfer of assets resulting from the involuntary event;

(2) Is wholly owned and controlled (directly or indirectly) by family members; and

(3) Does not hold itself out to the public as an investment adviser.

(c) *Grandfathering.* A family office as defined in paragraph (a) of this section shall not exclude any person, who was not registered or required to be registered under the Act on January 1, 2010, solely because such person provides investment advice to, and was engaged before January 1, 2010 in providing investment advice to:

(1) Natural persons who, at the time of their applicable investment, are officers, directors, or employees of the family office who have invested with the family office before January 1, 2010 and are accredited investors, as defined in Regulation D under the Securities Act of 1933;

(2) Any company owned exclusively and controlled by one or more family members; or

(3) Any investment adviser registered under the Act that provides investment advice to the family office and who identifies investment opportunities to the family office, and invests in such transactions on substantially the same terms as the family office invests, but does not invest in other funds advised by the family office, and whose assets as to which the family office directly or indirectly provides investment advice represents, in the aggregate, not more than 5 percent of the value of the total assets as to which the family office provides investment advice; provided that a family office that would not be a family office but for this paragraph (c) shall be deemed to be an investment adviser for purposes of paragraphs (1), (2) and (4) of section 206 of the Act.

(d) *Definitions.* For purposes of this section:

(1) *Control* means the power to exercise a controlling influence over the management or policies of a company, unless such power is solely the result of being an officer of such *company.*

(2) *Family client* means:

(i) Any family member;

(ii) Any key employee;

(iii) Any charitable foundation, charitable organization, or charitable trust, in each case established and funded exclusively by one or more family members or former family members;

(iv) Any trust or estate existing for the sole benefit of one or more family clients;

(v) Any limited liability company, partnership, corporation, or other entity wholly owned and controlled (directly or indirectly) exclusively by, and operated for the sole benefit of, one or more family clients; provided that if any such entity is a pooled investment vehicle, it is excepted from the definition of "investment company" under the Investment Company Act of 1940;

(vi) Any former family member, provided that from and after becoming a former family member the individual shall not receive investment advice from the family office (or invest additional assets with a family office-advised trust, foundation or entity) other than with respect to assets advised (directly or indirectly) by the family office immediately prior to the time that the individual became a former family member, except that a former family member shall be permitted to receive investment advice from the family office with respect to additional investments that the former family member was

contractually obligated to make, and that relate to a family-office advised investment existing, in each case prior to the time the person became a former family member; or

(vii) Any former key employee, provided that upon the end of such individual's employment by the family office, the former key employee shall not receive investment advice from the family office (or invest additional assets with a family office-advised trust, foundation or entity) other than with respect to assets advised (directly or indirectly) by the family office immediately prior to the end of such individual's employment, except that a former key employee shall be permitted to receive investment advice from the family office with respect to additional investments that the former key employee was contractually obligated to make, and that relate to a family-office advised investment existing, in each case prior to the time the person became a former key employee.

(3) *Family member* means:

(i) The founders, their lineal descendants (including by adoption and stepchildren), and such lineal descendants' spouses or spousal equivalents;

(ii) The parents of the founders; and

(iii) The siblings of the founders and such siblings' spouses or spousal equivalents and their lineal descendants (including by adoption and stepchildren) and such lineal descendants' spouses or spousal equivalents.

(4) *Former family member* means a spouse, spousal equivalent, or stepchild that was a family member but is no longer a family member due to a divorce or other similar event.

(5) *Founders* means the natural person and his or her spouse or spousal equivalent for whose benefit the family office was established and any subsequent spouse of such individuals.

(6) *Key employee* means any natural person (including any person who holds a joint, community property, or other similar shared ownership interest with that person's spouse or spousal equivalent) who is an executive officer, director, trustee, general partner, or person serving in a similar capacity of the family office or any employee of the family office (other than an employee performing solely clerical, secretarial, or administrative functions with regard to the family office) who, in connection with his or her regular functions or duties, participates in the investment activities of the family office, provided that such employee has been performing such functions and duties for or on behalf of the family office, or substantially similar functions or duties for or on behalf of another company, for at least 12 months.

(7) *Spousal equivalent* means a cohabitant occupying a relationship generally equivalent to that of a spouse.

Dated: October 12, 2010.

By the Commission.

**Elizabeth M. Murphy,**

*Secretary.*

[FR Doc. 2010–26086 Filed 10–15–10; 8:45 am]

**BILLING CODE 8011–01–P**

## DEPARTMENT OF EDUCATION

### 34 CFR Part 668

**RIN 1840–AD04**

**[Docket ID ED–2010–OPE–0012]**

### Program Integrity: Gainful Employment

**AGENCY:** Office of Postsecondary Education, Department of Education.

**ACTION:** Notice of public meeting sessions.

**SUMMARY:** The Secretary of Education (Secretary) announces public meeting sessions to receive oral presentations and to interact with commenters regarding comments that were submitted to the Department of Education in response to its Notice of Proposed Rulemaking on Program Integrity: Gainful Employment, published in the **Federal Register** on July 26, 2010 (75 FR 43616).

**DATES:** The public meeting sessions will be held on the dates and at the locations specified later in this document.

**FOR FURTHER INFORMATION CONTACT:** Leigh Arsenault, U.S. Department of Education, 400 Maryland Avenue, SW., Room 7E304, Washington, DC 20202. Telephone: 202–453–7127 or by e-mail: *Leigh.Arsenault@ed.gov.*

If you use a telecommunications device for the deaf (TDD), call the Federal Relay Service (FRS), toll free, at 1–800–877–8339.

**SUPPLEMENTARY INFORMATION:** On July 26, 2010, the Department published a notice of proposed rulemaking (NPRM) in the **Federal Register** proposing regulations for determining whether a postsecondary educational program provides training that leads to gainful employment in a recognized occupation and the conditions under which such a program would remain eligible for the student financial assistance programs authorized under title IV of the Higher Education Act of 1965, as amended (HEA). Comments on the Department's proposed regulations were due on September 9, 2010. The Department received over 90,000 comments from a wide range of stakeholders, including for-profit universities and colleges, community colleges, students, higher education associations, members of Congress, financial analysts, economists, and college and university faculty.

The Department appreciates the tremendous feedback, both positive and negative, that it received on the proposed regulations. The response from so many individuals and entities demonstrates how important the issues relating to gainful employment and this rulemaking are. To better understand parties' comments and have an opportunity to interact with commenters, the Department will hold four public meeting sessions over the course of two days. During this time, commenters who have timely submitted comments on the NPRM may orally present their comments to a panel of Department representatives. Commenters also may have an opportunity to respond to questions from the Department about their comments.

**Public Meeting Dates, Times, Locations, and Registration Information**

The four public meeting sessions will be held on the following dates and times at the U.S. Department of Education, Barnard Auditorium, 400 Maryland Avenue, SW., Washington, DC 20202.

*Session 1:* November 4, 2010, from 9 a.m. to 12 p.m.

*Session 2:* November 4, 2010, from 1 p.m. to 4:30 p.m.

*Session 3:* November 5, 2010, from 9 a.m. to 12 p.m.

*Session 4:* November 5, 2010, from 1 p.m. to 4:30 p.m.

*Oral Presentations From Commenters*

Oral presentations at the public meeting sessions will be limited only to individuals or entities that timely submitted comments on the NPRM and only to the comments the commenter submitted. No new topics or concerns may be introduced. Each commenter who is interested in making an oral presentation of comments on the NPRM will be allowed a total of five minutes. The Department will not accept any written materials from any presenter or other individual or entity attending the public meeting sessions.

If you are interested in making an oral presentation of your comments at one of the public meeting sessions, you must register at *http://usdoedregistration.ed.gov/profile/web/index.cfm?PKwebID=0x3626e49.* We will accept registrations at this Web site, beginning at 12 noon, Washington, DC

time, on October 18, 2010, through 12 noon, Washington, DC time, on October 20, 2010. Please include in your registration the following information regarding your comments and oral presentation:

- Name of individual or entity that submitted the comments to the Department and the date the comments were submitted.
- Name of individual who will be making the oral presentation on behalf of the commenter.
- E-mail address of the individual who will be making the oral presentation.
- If available, the number assigned to your comments by *http://www.regulations.gov.*
- The preferred date and session for your presentation.

We will follow the following registration process for presentations for the public meeting sessions.

- Upon receipt of the information identified above, the Department will verify that it is accurate (i.e., that the individual or entity identified timely submitted a comment on the NPRM) and will send an e-mail to the commenter indicating whether the commenter has been selected to make a presentation at one of the public meeting sessions and the specific time slot reserved for that commenter's presentation.
- A commenter may make only one presentation at the public meeting sessions; the Department reserves the right to reject the registration of an entity or individual that submitted separate comments but is affiliated with a commenter that is selected to make a presentation.
- We anticipate receiving a large number of registrations from commenters for the four public meeting sessions. In addition, we are interested in hearing from a broad range of the commenters during those sessions. In the event that we receive more registrations than we are able to accommodate and to ensure a broad representation of commenters, the Department may randomly select among the registrations the commenters who will be invited to make a presentation at a session.
- We will not accept any walk-in registrations at any of the November 4 or November 5 public meeting sessions.

*Public Attendance at the Meetings*

The public meeting sessions are open to members of the public; however, given space constraints, we may not be able to accommodate all persons interested in attending. Members of the public interested in attending the public meeting sessions will be required to register at *http://usdoedregistration.ed.gov/profile/web/index.cfm?PKwebID=0x3626e49.* We will accept registrations at this Web site, beginning at 12 noon, Washington, DC time, on October 18, 2010, through 12 noon, Washington, DC time, on October 20, 2010.

Members of the public interested in attending will need to indicate in their registration the session they wish to attend. The Department will send an e-mail to the individual indicating whether the individual has been selected to attend one of the public meeting sessions. Again, we will not accept any written materials from any presenter or other individual or entity attending the public meeting sessions. We also will not accept any walk-in registrations to attend any of the public meeting sessions on November 4 or November 5.

*Availability of Information From the Public Meeting Sessions*

The Department is committed to gathering and sharing publicly the presentations made at these public meeting sessions. Each session will be videotaped and/or transcribed, and the video and/or transcript will be available for viewing at *http://usdoedregistration.ed.gov/profile/web/index.cfm?PKwebID=0x3626e49.*

*Assistance to Individuals With Disabilities at the Public Meeting Sessions*

The meeting sites will be accessible to individuals with disabilities and sign language interpreters will be available. If you need an auxiliary aid or service other than a sign language interpreter to participate in the session (*e.g.,* interpreting service such as oral, cued speech, or tactile interpreter; assisted listening device; or materials in alternate format), notify the contact person listed under **FOR FURTHER INFORMATION CONTACT** at least two weeks before the scheduled meeting date. Although we will attempt to meet a request we receive after this date, we may not be able to make available the requested auxiliary aid or service because of insufficient time to arrange it.

*Accessible Format:* Individuals with disabilities can obtain this document in an accessible format (*e.g.,* braille, large print, audiotape, or computer diskette) on request to the program contact person listed under **FOR FURTHER INFORMATION CONTACT**.

*Electronic Access to This Document:* You can view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at the following site: *http://www.ed.gov/news/fedregister.*

To use PDF you must have Adobe Acrobat Reader, which is available free at this site.

**Note:** The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: *http://www.gpoaccess.gov/nara/index.html.*

Dated: October 13, 2010.

**Arne Duncan,**

*Secretary of Education.*

[FR Doc. 2010–26180 Filed 10–15–10; 8:45 am]

**BILLING CODE 4000–01–P**

## FEDERAL COMMUNICATIONS COMMISSION

### 47 CFR Part 20

**[DA 10–1936; WT Docket No. 07–250]**

### Hearing Aid Compatibility Proceeding; Request That Comments Address Effects of New Legislation

**AGENCY:** Federal Communications Commission.

**ACTION:** Request for comments.

**SUMMARY:** In this document, the Wireless Telecommunications Bureau requests that the comments in the pending Hearing Aid Compatibility proceeding address the effects of the Twenty-First Century Communications and Video Accessibility Act of 2010, if any, on the proposed rules.

**DATES:** Interested parties may file comments on or before October 25, 2010, and reply comments on or before November 22, 2010.

**ADDRESSES:** You may submit comments, identified by WT Docket No. 07–250, by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Federal Communications Commission's Web Site: http://www.fcc.gov/cgb/ecfs/.* Follow the instructions for submitting comments.
- *Mail:* Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail (although the Commission continues to experience delays in receiving U.S. Postal Service mail). All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.

• *People with Disabilities:* Contact the FCC to request reasonable accommodations (accessible format documents, sign language interpreters, CART, *etc.*) by e-mail: *FCC504@fcc.gov* or phone: 202–418–0530 or TTY: 202–418–0432.

For detailed instructions for submitting comments and additional information on the rulemaking process, see the **SUPPLEMENTARY INFORMATION** section of this document.

**FOR FURTHER INFORMATION CONTACT:** Zhaohui Yang, Wireless Telecommunications Bureau, (202) 418–1476, e-mail *Zhaohui.Yang@fcc.gov.*

**SUPPLEMENTARY INFORMATION:** This is a summary of the Wireless Telecommunications Bureau's public notice released on October 12, 2010. The full text of the public notice is available for public inspection and copying during business hours in the FCC Reference Information Center, Portals II, 445 12th Street, SW., Room CY–A257, Washington, DC 20554. It may also be purchased from the Commission's duplicating contractor at Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20554; the contractor's Web site, *http://www.bcpiweb.com;* or by calling (800) 378–3160, facsimile (202) 488–5563, or e-mail *FCC@BCPIWEB.com.* Copies of the public notice also may be obtained via the Commission's Electronic Comment Filing System (ECFS) by entering the docket number, WT Docket No. 07–250. Additionally, the complete public notice is available on the Federal Communications Commission's Web site at *http://www.fcc.gov.*

On October 8, 2010, President Obama signed into law the Twenty-First Century Communications and Video Accessibility Act of 2010,[1] ensuring that individuals with disabilities have access to emerging Internet Protocol-based communication and video programming technologies in the 21st Century. Section 102 of the Act extends hearing aid compatibility requirements to customer premises equipment "used with advanced communications services that is designed to provide 2-way voice communications via a built-in speaker intended to be held to the ear in a manner functionally equivalent to a telephone." The Act preserves the exemption of mobile handsets from the general requirement that all telephones be hearing aid-compatible, while maintaining the Commission's authority to revoke or limit such exemption if certain conditions are met.

On August 5, 2010, the Commission released a Further Notice of Proposed Rulemaking (FNPRM), FCC 10–145, seeking comment on proposed revisions to the rules governing hearing aid compatibility of mobile handsets. 75 FR 54546 (Sept. 8, 2010). Among other things, the Commission proposed to extend its rules beyond the current scope of 47 CFR 20.19(a) to include customer equipment used to provide wireless voice communications over any type of network among members of the public or a substantial portion of the public. The Commission sought comment on whether considerations of technological feasibility or marketability prevent application of these requirements to such customer equipment.

The Wireless Telecommunications Bureau requests that comments on the FNPRM address the effect of the new legislation, if any, on the proposed rules. Comments remain due on October 25, 2010, and reply comments are due on November 22, 2010.

**Procedural Matters**

The rulemaking shall be treated as a "permit-but-disclose" proceeding in accordance with the Commission's *ex parte* rules. Persons making oral *ex parte* presentations are reminded that memoranda summarizing the presentations must contain summaries of the substance of the presentations and not merely a listing of the subjects discussed. More than a one or two sentence description of the views and arguments presented generally is required. Other requirements pertaining to oral and written presentations are set forth in Section 1.1206(b) of the Commission's rules.

Pursuant to sections 1.415 and 1.419 of the Commission's rules, 47 CFR 1.415 and 1.419, interested parties may file comments and reply comments on or before the dates indicated on the first page of this document. All filings related to this public notice should refer to WT Docket No. 07–250. Comments may be filed using: (1) The Commission's Electronic Comment Filing System (ECFS), (2) the Federal Government's eRulemaking Portal, or (3) by filing paper copies. *See Electronic Filing of Documents in Rulemaking Proceedings,* 63 FR 24121 (1998).

• *Electronic Filers:* Comments may be filed electronically using the Internet by accessing the ECFS: *http://www.fcc.gov/cgb/ecfs/* or the Federal eRulemaking Portal: *http://www.regulations.gov.* Filers should follow the instructions provided on the Web site for submitting comments.

• For ECFS filers, if multiple docket or rulemaking numbers appear in the caption of this proceeding, filers must transmit one electronic copy of the comments for each docket or rulemaking number referenced in the caption. In completing the transmittal screen, filers should include their full name, U.S. Postal Service mailing address, and the applicable docket or rulemaking number. Parties may also submit an electronic comment by Internet e-mail. To get filing instructions, filers should send an e-mail to *ecfs@fcc.gov,* and include the following words in the body of the message, "get form." A sample form and directions will be sent in response.

• *Paper Filers:* Parties who choose to file by paper must file an original and four copies of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding, filers must submit two additional copies for each additional docket or rulemaking number.

Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail (although the Commission continues to experience delays in receiving U.S. Postal Service mail). All filings must be addressed to the Commission's Secretary, Marlene H. Dortch, Office of the Secretary, Federal Communications Commission, 445 12th Street, SW., Washington, DC 20554.

• All hand-delivered or messenger-delivered paper filings for the Commission's Secretary must be delivered to FCC Headquarters at 445 12th Street, SW., Room TW–A325, Washington, DC 20554. The filing hours at this location are 8 a.m. to 7 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of *before* entering the building.

• Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743.

• U.S. Postal Service first-class, Express, and Priority mail must be addressed to 445 12th Street, SW., Washington DC 20554.

Parties shall send one copy of their comments and reply comments to Best Copy and Printing, Inc., Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20554, (202) 488–5300, or via e-mail to *FCC@BCPIWEB.com.* Comments filed in response to this public notice will be available for public inspection and copying during business

[1] S. 3304, 111th Cong. sec. 102 (as signed by President, Oct. 8, 2010); see also S. 3828, 111th Cong. (as signed by President, Oct. 8, 2010).

hours in the FCC Reference Information Center, Portals II, 445 12th Street, SW., Room CY–A257, Washington, DC 20554, and via the Commission's Electronic Comment Filing System (ECFS) by entering the docket number, WT Docket No. 07–250. The comments may also be purchased from Best Copy and Printing, Inc., telephone (202) 488–5300, facsimile (202) 488–5563, TTY (202) 488–5562, or e-mail *FCC@BCPIWEB.com.*

To request materials in accessible formats for people with disabilities (Braille, large print, electronic files, audio format), send an e-mail to *fcc504@fcc.gov* or call the Consumer & Governmental Affairs Bureau at 202–418–0530 (voice), 202–418–0432 (tty).

Federal Communications Commission.

**Jane E. Jackson,**

*Associate Chief, Wireless Telecommunications Bureau.*

[FR Doc. 2010–26174 Filed 10–15–10; 8:45 am]

**BILLING CODE 6712–01–P**

## FEDERAL COMMUNICATIONS COMMISSION

### 47 CFR Parts 73 and 74

**[MB Docket No. 03–185; FCC 10–172]**

### Digital Low Power Television, Television Translator, and Television Booster Stations and Digital Class A Television Stations

**AGENCY:** Federal Communications Commission.

**ACTION:** Proposed rule.

**SUMMARY:** In this document, the Commission proposes and seeks comment on rules and issues that need to be resolved to complete the low power television station digital transition. Although Congress established a hard deadline of June 12, 2009 for full-power stations to cease analog operations and begin operating only in digital, many low power television stations are continuing to transmit analog signals.

**DATES:** Comments for this proceeding are due on or before December 17, 2010 reply comments are due on or before January 18, 2011. Written PRA comments on the proposed information collection requirements contained herein must be submitted by the public, Office of Management and Budget (OMB), and other interested parties on or before December 17, 2010.

**ADDRESSES:** You may submit comments, identified by MB Docket No. 03–185 and/or FCC 10–172, by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Federal Communications Commission's Web Site: http://www.fcc.gov/cgb/ecfs/.* Follow the instructions for submitting comments.
- *Mail:* Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail (although we continue to experience delays in receiving U.S. Postal Service mail.) All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.
- *People With Disabilities:* Contact the FCC to request reasonable accommodations (accessible format documents, sign language interpreters, CART, etc.) by e-mail: *FCC504@fcc.gov* or phone: 202–418–0530 or TTY: 202–418–0432.

For detailed instructions for submitting comments and additional information on the rulemaking process, *see* the **SUPPLEMENTARY INFORMATION** section of this document.

In addition to filing comments with the Secretary, a copy of any PRA comments on the proposed collection requirements contained herein should be submitted to the Federal Communications Commission via e-mail to *PRA@fcc.gov* and to *Cathy.Williams@fcc.gov* and also to Nicholas A. Fraser, Office of Management and Budget, via e-mail to *Nicholas_A._Fraser@omb.eop.gov* or via fax at 202–395–5167.

**FOR FURTHER INFORMATION CONTACT:** Shaun Maher, *Shan.Maher@fcc.gov* of the Media Bureau, Video Division, (202) 418–1600. For additional information concerning the Paperwork Reduction Act information collection requirements contained in this document, send an e-mail to *PRA@fcc.gov* or contact Cathy Williams at (202) 418–2918, or via e-mail at *Cathy.Williams@fcc.gov.*

**SUPPLEMENTARY INFORMATION:** This is a summary of the Commission's *Further Notice of Proposed Rulemaking and Memorandum Opinion and Order* ("*FNPRM and MO&O*"), FCC 10–172, adopted on September 17, 2010, and released on September 17, 2010. The full text of this document is available for public inspection and copying during regular business hours in the FCC Reference Center, Federal Communications Commission, 445 12th Street, SW., CY–A257, Washington, DC 20554. These documents will also be available via ECFS *(http://www.fcc.gov/cgb/ecfs/).* (Documents will be available electronically in ASCII, Word 97, and/or Adobe Acrobat.) The complete text may be purchased from the Commission's copy contractor, 445 12th Street, SW., Room CY–B402, Washington, DC 20554. To request this document in accessible formats (computer diskettes, large print, audio recording, and Braille), send an e-mail to *fcc504@fcc.gov* or call the Commission's Consumer and Governmental Affairs Bureau at (202) 418–0530 (voice), (202) 418–0432 (TTY).

Pursuant to §§ 1.415 and 1.419 of the Commission's rules, 47 CFR 1.415, 1.419, interested parties may file comments and reply comments on or before the dates indicated on the first page of this document. Comments may be filed using: (1) The Commission's Electronic Comment Filing System (ECFS), (2) the Federal Government's eRulemaking Portal, or (3) by filing paper copies. *See Electronic Filing of Documents in Rulemaking Proceedings,* 63 FR 24121 (1998).

- *Electronic Filers:* Comments may be filed electronically using the Internet by accessing the ECFS: *http://www.fcc.gov/cgb/ecfs/* or the Federal eRulemaking Portal: *http://www.regulations.gov.* Filers should follow the instructions provided on the Web site for submitting comments.
- For ECFS filers, if multiple docket or rulemaking numbers appear in the caption of this proceeding, filers must transmit one electronic copy of the comments for each docket or rulemaking number referenced in the caption. In completing the transmittal screen, filers should include their full name, U.S. Postal Service mailing address, and the applicable docket or rulemaking number. Parties may also submit an electronic comment by Internet e-mail. To get filing instructions, filers should send an e-mail to *ecfs@fcc.gov,* and include the following words in the body of the message, "get form." A sample form and directions will be sent in response.
- *Paper Filers:* Parties who choose to file by paper must file an original and four copies of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding, filers must submit two additional copies for each additional docket or rulemaking number.

Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail (although we continue to experience delays in receiving U.S. Postal Service mail). All filings must be addressed to the Commission's Secretary, Office of

the Secretary, Federal Communications Commission.

• The Commission's contractor will receive hand-delivered or messenger-delivered paper filings for the Commission's Secretary at FCC Headquarters building located at 445 12th Street, SW., Room TW–A325, Washington, DC 20054. The filing hours at this location are 8 a.m. to 7 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of before entering the building.

• Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743.

• U.S. Postal Service first-class, Express, and Priority mail must be addressed to 445 12th Street, SW., Washington DC 20554.

To request materials in accessible formats for people with disabilities (braille, large print, electronic files, audio format), send an e-mail to *fcc504@fcc.gov* or call the Consumer & Governmental Affairs Bureau at 202–418–0530 (voice), 202–418–0432 (tty). To view or obtain a copy of this information collection request (ICR) submitted to OMB: (1) Go to this OMB/GSA Web page: *http://www.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 OMB control number of this ICR as shown in this section (or its title if there is no OMB control number) and then click on the ICR Reference Number. A copy of the FCC submission to OMB will be displayed.

**Initial Paperwork Reduction Act of 1995 Analysis**

This document contains proposed revised information collection requirements. As part of its continuing effort to reduce paperwork burden and as required by the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–3520), the Federal Communications Commission invites the general public and other Federal agencies to comment on the following information collection(s). Public and agency comments are due December 17, 2010. Comments should address: (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 estimates; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology. In addition, pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, see 44 U.S.C. 3506(c)(4), we seek specific comment on how we might "further reduce the information collection burden for small business concerns with fewer than 25 employees."

*OMB Control Numbers:* 3060–0016.

*Title:* Application for Authority to Construct or Make Changes in a Low Power TV, TV Translator or TV Booster Station, FCC Form 346; 47 CFR 74.793(d); LPTV Out-of-Core Digital Displacement Application.

*Form Numbers:* FCC Form 346.

*Type of Review:* Revision of a currently approved collection.

*Respondents:* Business or other for profit entities; not for profit institutions; State, local or Tribal government.

*Number of Respondents/Responses:* 3,500 respondents; 3,500 responses.

*Estimated Hours per Response:* 9.5 hours.

*Frequency of Response:* On occasion reporting requirement; one time reporting requirement; third party disclosure requirement.

*Total Annual Burden:* 33,250 hours.

*Total Annual Cost:* $19,418,000.

*Obligation to Respond:* Required to obtain or retain benefits. The statutory authority for this information collection is contained in sections 154(i), 301, 303, 307, 308 and 309 of the Communications Act of 1934, as amended.

*Nature and Extent of Confidentiality:* There is no need for confidentiality with this collection of information.

*Privacy Act Assessment:* No impact(s).

*Needs and Uses:* In the *FNPRM and MO&O,* the Commission considers issues that need to be resolved to complete the low power television station digital transition. Moreover, the *FNPRM and MO&O* adopts the following proposed information collection requirements:

47 CFR 74.793(d) proposes that certain digital low power and TV translator stations will be required to submit information as to vertical radiation patterns as part of their applications (FCC Forms 346 and 301–CA) for new or modified construction permits.

*LPTV Out-of-Core Digital Displacement Application.* The Commission proposes to require all low power station with facilities on out-of-core channels (channels 52–59) to submit a digital displacement (FCC Form 346) application proposing an in-core channel (channels 2–51, excluding channel 37) not later than June 30, 2011.

*OMB Control Numbers:* 3060–0932.

*Title:* Application for Authority to Construct or Make Changes in a Class A Television Broadcast Station, FCC Form 301–CA; 47 CFR 73.3572(h); 47 CFR 74.793(d).

*Form Numbers:* FCC Form 301–CA.

*Type of Review:* Revision of a currently approved collection.

*Respondents:* Business or other for profit entities; not for profit institutions; State, local or Tribal government.

*Number of Respondents/Responses:* 400 respondents; 400 responses.

*Estimated Hours per Response:* 9.5 hours.

*Frequency of Response:* On occasion reporting requirement; Third party disclosure requirement; One time reporting requirement.

*Total Annual Burden:* 3,800 hours.

*Total Annual Cost:* $3,199,200.

*Obligation to Respond:* Required to obtain or retain benefits. The statutory authority for this information collection is contained in sections 154(i), 301, 307, 308, 309 and 319 of the Communications Act of 1934, as amended.

*Nature and Extent of Confidentiality:* There is no need for confidentiality with this collection of information.

*Privacy Act Assessment:* No impact(s).

*Needs and Uses:* In the *FNPRM and MO&O,* the Commission considers issues that need to be resolved to complete the low power television station digital transition. Moreover, the *FNPRM and MO&O* adopts the following proposed information collection requirement:

47 CFR 73.3572(h) proposes that Class A station licensees shall file a minor change application (FCC Form 301–CA) for either the flash cut channel or the digital companion channel they choose to retain for post-transition digital operations and shall also certify that their proposed post-transition digital facilities meet all Class A TV interference protection requirements.

47 CFR 74.793(d) proposes that all digital low power and TV translator stations shall be required to submit information as to vertical radiation patterns as part of their applications (FCC Forms 346 and 301–CA) for new or modified construction permits.

*OMB Control Numbers:* 3060–1086.

*Title:* Section 74.786, Digital Channel Assignments; § 74.787, Digital Licensing; § 74.790, Permissible Service of Digital TV Translator and LPTV Stations; § 74.794, Digital Emissions, and § 74.796, Modification of Digital Transmission Systems and Analog Transmission Systems for Digital Operation; LPTV Digital Transition Consumer Education Information.

*Form Numbers:* Not applicable.

*Type of Review:* Revision of a currently approved collection.

*Respondents:* Business or other for profit entities; not for profit institutions; State, local or Tribal government.

*Number of Respondents/Responses:* 7,636 respondents; 40,290 responses.

*Estimated Hours per Response:* 0.50–4 hours.

*Frequency of Response:* Recordkeeping requirement; one-time reporting requirement; Third party disclosure requirement.

*Total Annual Burden:* 77,542 hours.

*Total Annual Cost:* $95,930,000.

*Obligation to Respond:* Required to obtain or retain benefits. The statutory authority for this information collection is contained in section 301 of the Communications Act of 1934, as amended.

*Nature and Extent of Confidentiality:* There is no need for confidentiality with this collection of information.

*Privacy Act Assessment:* No impact(s).

*Needs and Uses:* In the *FNPRM and MO&O,* the Commission considers issues that need to be resolved to complete the low power television station digital transition. Moreover, the *FNPRM and MO&O* adopts the following proposed information collection requirement:

*LPTV Digital Transition Consumer Education Information.* The Commission proposes to require, where technically feasible, stations in the low power television services to provide notice of their upcoming digital transition to their viewers.

Also, the information collection requirements contained in §§ 74.786, 74.787, 74.790, 74.794 and 74.796 of the Commission rules are covered under OMB control number 3060–1086 and have already been approved by OMB. Lastly, the information collection requirements pertaining to the protection of analog LPTV and resolving channel conflict are also covered under this collection and have been approved by OMB.

The Commission's *FNPRM and MO&O* also contains an information collection requirement pertaining to 47 CFR 73.624(g), FCC Form 317, which is subject to the Paperwork Reduction Act of 1995 (PRA), Public Law 104–13. It will be submitted to the Office of Management and Budget (OMB) for review under section 3507(d) of the PRA. OMB, the general public, and other Federal agencies will be invited to comment on the information collection requirements contained in this proceeding. The Commission will publish a separate document in the **Federal Register** at a later date seeking these comments.

**Synopsis of Further Notice of Proposed Rulemaking**

*Analog Cut-Off Date*

1. We seek comment on the appropriate date for the termination of analog operations in the low power television and Class A television services. We also seek detailed information on the equipment and other costs of the digital conversion that will be incurred by low power television stations. We seek comment on whether to adopt an analog shutoff date in 2012, giving low power television stations approximately three years after the June 12, 2009 full-power transition date to convert to digital operation. Under this approach, analog station licenses would terminate at that time, and analog construction permits would have to be modified for digital operations prior to the transition date. With the full power transition now complete and providing the incentive for viewers, we believe it is appropriate to now require low power television stations to complete their transition to digital.

2. We also believe that establishing an analog termination date for the low power television services in 2012 is consistent with the Broadband Plan's recommendations related to increasing the efficient use of broadcast TV bands and facilitating the deployment of new mobile broadband facilities. In addition, we note that adoption of a 2012 analog termination date would give those low power television stations that continued to operate in analog mode a total period of approximately three years from the June 12, 2009 full power digital transition to apply for and construct digital facilities. We believe that should be a sufficient time period for low power television stations to successfully complete their transition. We also note that a three-year period from the full-service television transition deadline would coincide with the construction period that low power stations received to complete construction of digital facilities as set by the Commission in the Digital LPTV Order. In addition, a 2012 date would allow most low power stations that obtained a digital companion channel five plus years from the grant of their construction permit (most of which were granted in 2006 or 2007) to transition to complete digital operation without the loss of existing analog service.

3. We seek comment on whether an analog shutoff date in 2012 would permit sufficient time for the digital conversion of the remaining stations in the low power television service and, if so, when in 2012 would be the best time to require an analog shutoff. Furthermore, we seek comment on how to address "hardship" cases for those stations that, despite their best efforts, are unable to make a timely conversion. In this regard, we seek detailed information on the equipment and other costs of the digital conversion that will be incurred by low power television stations. We also seek comment on whether to permit stations located in communities that rely solely on over-the-air service from stations in the low power services to seek additional time to continue operating their analog facilities after the transition date. We seek comment on how to define such communities.

4. We also seek comment on alternative timeframes or transition mechanisms. Those commenters advocating other dates or mechanisms should specifically address how their proposal would better facilitate the digital transition of low power television stations and the advantages of their approach. We seek comment on whether VHF channels, which are now underutilized, accompanied by additional power, provide a viable alternative for continued operation. If so, we seek comment on the characteristics of the locations where such operations would be successful and the necessary increased power levels. Therefore, we seek comment on whether adoption of an analog termination by the end of 2015 or after the recommended reallocation of spectrum from the broadcast TV bands is complete (as envisioned by the Broadband Plan) would be more appropriate and less disruptive for the low power television services. We ask commenters to indicate if their answer to this question would turn on whether funds would be available to reimburse them for the costs of such a second transition.

5. Whichever date we decide for stations in the low power television services to complete their transition to digital, we seek comment on what kind of Commission outreach to those communities most affected by this phase of the DTV transition would be

appropriate, and what form that outreach should take.

*Out-of-Core Transition Date*

6. To begin the process of clearing the 700 MHz band, we propose adopting a date by which existing low power stations must submit a displacement application for an in-core (channels 2–51 excluding channel 37) digital channel. We tentatively conclude that use of the 700 MHz band as a temporary measure to assist low power stations with their digital transition is no longer necessary and the time has come for low power television stations to vacate this band. We seek comment on this proposal. We propose an "out-of-core transition date" of December 31, 2011, by which we would require all low power television stations to cease all operations (both analog and digital) on channels 52–69. We seek comment on this proposed date and welcome comment on alternative deadlines for the cessation of low power television operations on channels 52–69.

7. We propose requiring that all low power stations with facilities on channels 52–69 submit a digital displacement application proposing an in-core channel (channels 2–51 excluding channel 37) not later than June 30, 2011—six months prior to the "out-of-core transition date." We seek comment on the proposed submission deadline and welcome comment on alternative deadlines for the submission of a digital displacement application. We propose that any low power television station that cannot identify a workable in-core channel and submit a digital displacement application by the deadline be required to cease operations altogether by the "out-of-core transition date." We seek comment on this proposal. Furthermore, we seek comment on how to address "hardship" cases for those stations that, despite their best efforts, are unable to identify an in-core channel and submit the required displacement application by the announced deadline.

8. We propose to extend the notification and termination provisions contained in § 74.703(g) of the rules to analog LPTV and TV translator facilities in the 700 MHz band. We believe that we should extend the notification and termination provisions in § 74.703(g) of the rules to analog LPTV and TV translator stations in the 700 MHz band. We believe that extension of the notification and termination provisions will greatly facilitate the clearing of the 700 MHz band in advance of the proposed December 31, 2011 "out-of-core transition date."

*Filing Freeze*

9. Effective upon the adoption date of this Further Notice of Proposed Rulemaking, we announce a freeze on the filing of (1) applications for new analog low power television and TV translator facilities; and (2) applications for new or modified, analog or digital, low power television stations on channels 52–69, including applications for flash-cut and digital companion channel facilities on these channels. We seek comment on whether to dismiss those applications for new analog low power television facilities that remain pending after the May 24, 2010 deadline for amendment to specify digital facilities.

10. The Media Bureau will consider, on a case-by-case basis, requests for waiver of this freeze when an application is necessary or otherwise in the public interest for technical or other reasons to maintain quality service to the public, such as when zoning restrictions preclude tower construction at a particular site or when unforeseen events, such as extreme weather events or other extraordinary circumstances, require relocation to a new tower site. As with any request for waiver of our rules, a request for waiver of the freeze will be granted only upon a showing of good cause and when grant of the waiver will serve the public interest.

11. The decision to impose this freeze is procedural in nature and therefore the freeze is not subject to the notice and comment and effective date requirements of the Administrative Procedure Act. Moreover, there is good cause for the Commission's not using notice and comment procedures in this case, and not delaying the effect of the freeze until 30 days after publication in the **Federal Register**, because to do either would be impractical, unnecessary, and contrary to the public interest because compliance would undercut the purposes of the freeze.

*Surrender of Channels*

12. For stations choosing to surrender their analog station license and continue operating their digital companion channel, we seek comment on whether to allow such stations to simply notify the Commission of this decision and whether to delegate to the Media Bureau the authority to determine the timetable and procedures for such notifications in order to expedite the process. If an entity that holds a construction permit for unbuilt analog and companion digital stations and the analog permit expires and is forfeited, we seek comment on whether the digital construction permit should be forfeited notwithstanding the later expiration date on the digital construction permit. We also seek comment on how to address situations in which the digital companion station is constructed, and the construction permit for the related unbuilt analog station expires.

13. We seek comment on whether to permit stations to simply discontinue operation of their licensed analog stations at any time they deem appropriate and without notification to their viewers, provided, however, that their companion digital channels are licensed and operational. Alternatively, we seek comment on whether stations in the low power television services should be required to provide notice of their upcoming transition to digital where technically feasible, as a courtesy to their viewers. We seek comment on whether to require only those stations that are suitably-equipped to provide notice of their upcoming transition to digital. We seek comment on whether such a viewer notification would impose undue burdens on stations in the low power television service, and is unnecessary in light of the completion of the full-power television digital transition.

*Class A Television Transition to Digital*

14. We propose that Class A TV station licensees file a minor change application for either the "flash cut" channel on which they are now operating in analog or the digital companion channel they choose to retain for post-transition operations. Class A stations thereby will be able to obtain primary, protected regulatory status on their desired post-transition digital channel. We also propose that all Class A applicants certify that their proposed facilities meet all Class A interference protection requirements. We seek comment on these proposed procedures.

*Ancillary and Supplementary Services*

15. We seek comment on whether to widen the class of low power television broadcasters included in § 73.624(g) to include permittees of low power television stations operating pursuant to a digital STA and to require such permittees to file the annual ancillary and supplementary services report to enable the Commission to assess the nature of ancillary and supplementary services, if any, that are provided by low power television licensees and permittees and the extent to which feeable services are offered.

*Minor Change Definition*

16. We propose that any digital low power television modification that

proposes a change in transmitter site of greater than 30 miles (48 kilometers) from the reference coordinates of the existing station's antenna location will be considered a new proposal for low power television stations. Those transmitter site changes that are truly minor would continue to be treated as a minor change in the rules and those that involve a substantial relocation of facilities would be deemed a major change.

*Vertical Antenna Patterns*

17. We propose to revise the vertical patterns used in the temporary prediction methodology for the low power television services that the Commission previously adopted. We are considering revising FCC Forms 346 and 301–CA to start collecting the vertical patterns. Rather than undertaking the task of collecting vertical patterns from existing stations, we are considering the use of assumed vertical patterns. Also, existing stations would have the option of filing applications for minor changes to their facilities and submitting the actual vertical patterns with their applications. We seek comment on this proposed methodology.

18. We also seek comment as to whether the power levels and interference protection criteria currently specified in the rules are appropriate to ensure that post-transition low power TV signals provided to consumers will be of an estimable quality. If not, we seek comment on what modifications are needed and how would such modifications improve the ability of consumers to receive service. We seek comment as to whether there is specific testing necessary to test out such modifications or to determine the digital signal strength in distinct geographic locations.

*Use of Full-Power DTV Emission Mask*

19. We see comment on whether to adopt rules allowing use of full-power DTV emission masks by low power television stations.

**Initial Regulatory Flexibility Analysis**

20. As required by the Regulatory Flexibility Act of 1980, as amended ("RFA") [1] the Commission has prepared this present Initial Regulatory Flexibility Analysis ("IRFA") concerning the possible significant economic impact on small entities by the policies and rules proposed in this *FNPRM and MO&O.* Written public comments are requested on this IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines for comments indicated on the first page of the NPRM. The Commission will send a copy of the NPRM, including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration (SBA).[2] In addition, the NPRM and IRFA (or summaries thereof) will be published in the **Federal Register**.[3]

**Need for and Objectives of the Proposed Rules**

21. In the NPRM, the Commission considers matters related to the low power television digital transition. The following matters are considered in the Notice and are more fully defined and described below: The adoption of an analog shutoff date for low power television stations; the adoption of an earlier transition date for low power television stations on TV channels 52–69 (the so-called "out-of-core" channels); the adoption of procedures for stations to notify the Commission of their final digital channel; whether to make low power television permittees subject to the Commission's ancillary and supplementary fee rules; whether to modify the Commission's minor change rule so that it covers a proposed change in a low power television station's transmitter site of up to 30 miles (48 kilometers) from the reference coordinates of the station's transmitting antenna; whether to revise the vertical antenna patterns used in the prediction methodology for the low power television services; and whether to allow low power television stations to use the emission mask used by full power television stations.

22. The NPRM seeks comment on establishing an analog shutoff date in 2012 for low power TV, TV translator and Class A TV stations, giving these stations the flexibility of three additional years from the conclusion of the full power television transition in on June 12, 2009, to convert to digital, i.e., analog station licenses would terminate at that time and analog construction permits would have to be modified for digital operations.

23. The Commission seeks comment on whether to require existing analog and digital low power television stations on channels 52–69 (the so-called "out of core" channels) to file an application for an in-core channel 2–51 by June 30, 2011, and discontinue operations on their out-of-core channel by December 31, 2011.

24. The Commission seeks comment on whether to delegate to the Media Bureau the authority to establish timeframes and procedures for stations to notify the Commission as to whether they intend to convert to digital on their existing analog channel (a so-called "flash cut") or if they intend to continue to operate their second digital channel and terminate operations on their analog channel.

25. The Commission seeks comment on whether to make low power television station permittees subject to the Commission's ancillary and supplementary fee rules. Currently, low power television station licensees are subject to the rules and the Commission seeks comment on whether permittees (defined as those stations constructed and operating but have not yet received a grant of their license) should also be subject to these rules.

26. The Commission seeks comment whether to change the Commission's minor change rule. This proposal seeks to modify the rule to prevent stations from proposing a major change in their facilities (a change that would require the payment of a filing fee) in a minor change application. To remedy this problem, the Commission proposes limiting transmitter site changes in minor change applications to no more than 30 miles (48 kilometers) from the reference coordinates of the existing station's transmitting antenna.

27. The Commission proposes allowing low power television stations to use the emission mask used by full power television stations. This proposal would permit stations to secure a channel in areas where unused channels are scarce by allowing for more efficient use of channels.

28. Finally, the Commission seeks comment on whether to revise the vertical patterns used in the temporary interference prediction methodology for the low power television services that the FCC adopted in its 2004 Digital LPTV Order. Use of the actual vertical patterns of proposed low power television facilities would enable a more realistic determination of the service areas of these stations and their potential for interfering with other stations, as well as more accurate determinations of application mutual exclusivity.

**Legal Basis**

29. The authority for the action proposed in this rulemaking is contained in sections 1, 4(i) and (j), 5(c)(1), 7, 301, 302, 303, 307, 308, 309, 312, 316, 319, 324, 332, 336, and 337 of the Communications Act of 1934, 47 U.S.C 151, 154(i) and (j), 155(c)(1), 157,

[1] *See* 5 U.S.C. 603. The RFA, *see* 5 U.S.C. 601 *et seq.,* has been amended by the Small Business Regulatory Enforcement Fairness Act of 1996 ("SBREFA"), Pub. L. 104–121, Title II, 110 Stat. 847 (1996).

[2] *See* 5 U.S.C. 603(a).

[3] *See id.* 603(a).

301, 302, 303, 307, 308, 309, 312, 316, 319, 324, 332, 336, and 337.

**Description and Estimate of the Number of Small Entities to Which the Proposed Rules Will Apply**

30. The RFA directs the Commission to provide a description of and, where feasible, an estimate of the number of small entities that will be affected by the proposed rules, if adopted.[4] The RFA generally defines the term "small entity" as having the same meaning as the terms "small business," "small organization," and "small government jurisdiction."[5] In addition, the term "small business" has the same meaning as the term "small business concern" under the Small Business Act.[6] A small business concern is one which: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the SBA.[7]

31. *Television Broadcasting.* The SBA defines a television broadcasting station as a small business if such station has no more than $14 million in annual receipts.[8] Business concerns included in this industry are those "primarily engaged in broadcasting images together with sound."[9] According to Commission staff review of the BIA Publications, Inc. Master Access Television Analyzer Database (BIA) on March 30, 2007, about 986 of an estimated 1,374 commercial television stations[10] (or approximately 72 percent) have revenues of $13.5 million or less and thus qualify as small entities under the SBA definition. We note, however, that, in assessing whether a business concern qualifies as small under the above definition, business (control) affiliations[11] must be included. Our estimate, therefore, likely overstates the number of small entities that might be affected by our action, because the revenue figure on which it is based does not include or aggregate revenues from affiliated companies. The Commission has estimated the number of licensed NCE television stations to be 380.[12] The Commission does not compile and otherwise does not have access to information on the revenue of NCE stations that would permit it to determine how many such stations would qualify as small entities.

32. *Class A TV, LPTV, and TV translator stations.* The same SBA definition that applies to television broadcast licensees would apply to these stations. The SBA defines a television broadcast station as a small business if such station has no more than $14 million in annual receipts.[13]

33. Currently, there are approximately 567 licensed Class A stations, 2,227 licensed LPTV stations, 4,518 licensed TV translators, and 11 TV booster stations.[14] Given the nature of these services, we will presume that all of these licensees qualify as small entities under the SBA definition. We note, however, that under the SBA's definition, revenue of affiliates that are not LPTV stations should be aggregated with the LPTV station revenues in determining whether a concern is small. Our estimate may thus overstate the number of small entities since the revenue figure on which it is based does not include or aggregate revenues from non-LPTV affiliated companies. We do not have data on revenues of TV translator or TV booster stations, but virtually all of these entities are also likely to have revenues of less than $13 million and thus may be categorized as small, except to the extent that revenues of affiliated non-translator or booster entities should be considered.

34. In addition, an element of the definition of "small business" is that the entity not be dominant in its field of operation. We are unable at this time to define or quantify the criteria that would establish whether a specific television station is dominant in its field of operation. Accordingly, the estimate of small businesses to which rules may apply do not exclude any television station from the definition of a small business on this basis and are therefore over-inclusive to that extent. Also as noted, an additional element of the definition of "small business" is that the entity must be independently owned and operated. We note that it is difficult at times to assess these criteria in the context of media entities and our estimates of small businesses to which they apply may be over-inclusive to this extent.

35. *Electronics Equipment Manufacturers.* Rules adopted in this proceeding could apply to manufacturers of television receiving equipment and other types of consumer electronics equipment. The SBA has developed definitions of small entity for manufacturers of audio and video equipment[15] as well as radio and television broadcasting and wireless communications equipment.[16] These categories both include all such companies employing 750 or fewer employees. The Commission has not developed a definition of small entities applicable to manufacturers of electronic equipment used by consumers, as compared to industrial use by television licensees and related businesses. Therefore, we will utilize the SBA definitions applicable to manufacturers of audio and visual equipment and radio and television broadcasting and wireless communications equipment, since these are the two closest NAICS Codes applicable to the consumer electronics equipment manufacturing industry. However, these NAICS categories are broad and specific figures are not available as to how many of these establishments manufacture consumer equipment. According to the SBA's regulations, an audio and visual equipment manufacturer must have 750 or fewer employees in order to qualify as a small business concern.[17] Census Bureau data indicates that there are 554 U.S. establishments that manufacture audio and visual equipment, and that

[4] *Id.* sec. 603(b)(3).

[5] 5 U.S.C. 601(6).

[6] *Id.* sec. 601(3) (incorporating by reference the definition of "small business concern" in 15 U.S.C. 632). Pursuant to 5 U.S.C. 601(3), the statutory definition of a small business applies "unless an agency, after consultation with the Office of Advocacy of the Small Business Administration and after opportunity for public comment, establishes one or more definitions of such term which are appropriate to the activities of the agency and publishes such definition(s) in the **Federal Register**." 5 U.S.C. 601(3).

[7] 15 U.S.C. 632. Application of the statutory criteria of dominance in its field of operation and independence are sometimes difficult to apply in the context of broadcast television. Accordingly, the Commission's statistical account of television stations may be over-inclusive.

[8] *See* 13 CFR 121.201, NAICS Code 515120.

[9] NAICS Code 515120. This category description continues, "These establishments operate television broadcasting studios and facilities for the programming and transmission of programs to the public. These establishments also produce or transmit visual programming to affiliated broadcast television stations, which in turn broadcast the programs to the public on a predetermined schedule. Programming may originate in their own studios, from an affiliated network, or from external sources." Separate census categories pertain to businesses primarily engaged in producing programming. *See* Motion Picture and Video Production, NAICS code 512110; Motion Picture and Video Distribution, NAICS Code 512120; Teleproduction and Other Post-Production Services, NAICS Code 512191; and Other Motion Picture and Video Industries, NAICS Code 512199.

[10] Although we are using BIA's estimate for purposes of this revenue comparison, the Commission has estimated the number of licensed commercial television stations to be 1374. *See* News Release, "Broadcast Station Totals as of December 31, 2006" (dated Jan. 26, 2007); *see http://www.fcc.gov/mb/audio/totals/bt061231.html.*

[11] "[Business concerns] are affiliates of each other when one concern controls or has the power to control the other or a third party or parties controls or has to power to control both." 13 CFR 121.103(a)(1).

[12] Broadcast Stations Total as of December 31, 2006.

[13] *See* 13 CFR 121.201, NAICS Code 515120.

[14] *See* News Release, "Broadcast Station Totals as of December 31, 2006" (dated Jan. 26, 2007); *http://www.fcc.gov/mb/audio/totals/bt061231.html.*

[15] 13 CFR 121.201, NAICS Code 334310.

[16] 13 CFR 121.201, NAICS Code 334220.

[17] 13 CFR 121.201, NAICS Code 334310.

542 of these establishments have fewer than 500 employees and would be classified as small entities.[18] The remaining 12 establishments have 500 or more employees; however, we are unable to determine how many of those have fewer than 750 employees and therefore, also qualify as small entities under the SBA definition. Under the SBA's regulations, a radio and television broadcasting and wireless communications equipment manufacturer must also have 750 or fewer employees in order to qualify as a small business concern.[19] Census Bureau data indicates that there 1,215 U.S. establishments that manufacture radio and television broadcasting and wireless communications equipment, and that 1,150 of these establishments have fewer than 500 employees and would be classified as small entities.[20] The remaining 65 establishments have 500 or more employees; however, we are unable to determine how many of those have fewer than 750 employees and therefore, also qualify as small entities under the SBA definition. We therefore conclude that there are no more than 542 small manufacturers of audio and visual electronics equipment and no more than 1,150 small manufacturers of radio and television broadcasting and wireless communications equipment for consumer/household use.

**Description of Projected Reporting, Recordkeeping and Other Compliance Requirements**

36. The Notice proposes one new reporting or recordkeeping requirement. The Notice proposes requiring that low power stations submit information as to vertical radiation patterns as part of their applications (FCC Form 346) for new or modified construction permits. Otherwise, existing rules and forms will be used to undertake the proposals set forth in the Notice.

**Steps Taken To Minimize Significant Impact on Small Entities, and Significant Alternatives Considered**

37. The RFA requires an agency to describe any significant alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives (among others): (1) The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance or reporting requirements under the rule for small entities; (3) the use of performance, rather than design, standards; and (4) an exemption from coverage of the rule, or any part thereof, for small entities.[21]

38. The Commission's proposed adoption of an analog shutoff date in 2012 would minimize impact on small entities by allowing them three additional years from the full power television transition that occurred on June 12, 2009, to complete their transition to digital. Adoption of an early low power transition date was not considered as it was felt that many small entities would not be ready to transition any sooner and would be forced off the air.

39. With respect to requiring stations on out-of-core channels to transition at an early date—on December 31, 2011, the Commission found that the burden on small entities of adopting an earlier deadline was more than outweighed by the need to clear out-of-core channels for new uses by commercial wireless (including mobile broadband) and public safety entities. It was determined that adoption of a later transition date for low power television stations on these channels would delay progress on clearing these channels.

40. The Commission's proposal to establish timeframes and procedures for stations to notify the Commission as to whether they intend to convert to digital on their existing analog channel (a so-called "flash cut") or if they intend to continue to operate their second digital channel and terminate operations on their analog channel prevented a significant impact on small entities. Low power stations will not be burdened with having to complete and file a lengthy progress report, as was required of full power television stations, but rather will only have to file a simple informal notification to make their final digital choice known to the Commission

41. With respect to subjecting low power television station permittees to the Commission's ancillary and supplementary fee rules, the Commission found that the burden on small entities of having to comply with these rules was outweighed by the need to eliminate ambiguity in the rules and to provide efficient use and administration of spectrum.

42. The Commission did not find that there would be a significant impact on small entities by its proposed change to its Commission's low power television minor change rule. The change would have little impact and any impact would affect all entities equally.

43. The Commission did not find that there would a significant impact on small entities by its proposal to permit stations to use the emission mask used by full power television stations. Use would be voluntary and any impact would affect all entities equally.

44. The Commission's proposal to revise the vertical patterns used in the temporary interference prediction methodology for the low power television services would not have a significant impact on small entities. Use of the actual vertical patterns of proposed low power television facilities will simplify the engineering filings on FCC Form 346, making it easier for all applicants to complete the form, and thus saving applicants time and money. Any burden from this requirement would impact all entities equally.

**Federal Rules Which Duplicate, Overlap, or Conflict With the Commission's Proposals**

45. None.

46. The Commission will send a copy of the Further Notice of Proposed Rulemaking, including the Initial Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

47. Television, Television Broadcasting, Low Power Television.

**List of Subjects**

*47 CFR Part 73*

Radio broadcast services.

*47 CFR Part 74*

Auxiliary, Experimental radio, Special broadcast and other program distributional services.

Federal Communications Commission.

**Marlene H. Dortch,**

*Secretary.*

**Rule Changes**

For the reasons discussed in the preamble, the Federal Communications

[18] Economics and Statistics Administration, Bureau of Census, U.S. Department of Commerce, 1997 Economic Census, Industry Series—Manufacturing, Audio and Video Equipment Manufacturing, Table 4 at 9 (1999). The amount of 500 employees was used to estimate the number of small business firms because the relevant Census categories stopped at 499 employees and began at 500 employees. No category for 750 employees existed. Thus, the number is as accurate as it is possible to calculate with the available information.

[19] 13 CFR 121.201, NAICS Code 334220.

[20] Economics and Statistics Administration, Bureau of Census, U.S. Department of Commerce, 1997 Economic Census, Industry Series—Manufacturing, Radio and Television Broadcasting and Wireless Communications Equipment Manufacturing, Table 4 at 9 (1999). The amount of 500 employees was used to estimate the number of small business firms because the relevant Census categories stopped at 499 employees and began at 500 employees. No category for 750 employees existed. Thus, the number is as accurate as it is possible to calculate with the available information.

[21] 5 U.S.C. 603(c)(1)–(c)(4).

Commission proposes to amend 47 CFR parts 73 and 74 as follows:

## PART 73—RADIO BROADCAST SERVICES

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

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

2. Section 73.624 is amended by revising paragraph (g) introductory text to read as follows:

**§ 73.624 Digital television broadcast stations.**

* * * * *

(g) Commercial and noncommercial DTV licensees and permittees, and low power television, TV translator and Class A television stations DTV licensees and permittees, must annually remit a fee of five percent of the gross revenues derived from all ancillary and supplementary services, as defined by paragraph (b) of this section, which are *feeable,* as defined in paragraphs (g)(2)(i) and through (ii) of this section.

* * * * *

3. Section 73.3572 is amended by adding paragraph (h) to read as follows:

**§ 73.3572 Processing of TV broadcast, Class A TV broadcast, low power TV, TV translators, and TV booster applications.**

* * * * *

(h) Class A TV station licensees shall file a minor change application for either the flash cut channel or the digital companion channel they choose to retain for post-transition digital operations. Class A TV stations will retain primary, protected regulatory status on their desired post-transition digital channel. Class A TV applicants must certify that their proposed post-transition digital facilities meet all Class A TV interference protection requirements.

## PART 74—EXPERIMENTAL RADIO, AUXILIARY, SPECIAL BROADCAST AND OTHER PROGRAM DISTRIBUTIONAL SERVICES

4. The authority citation for part 74 is revised to read as follows:

**Authority:** 47 U.S.C. 154, 303, 307, 309, 336 and 554.

5. Section 74.787 is amended by revising paragraph (b)(1) to read as follows:

**§ 74.787 Digital licensing.**

* * * * *

(b) * * *

(1) Applications for major changes in digital low power television and television translator stations include:

(i) Any change in the frequency (output channel) not related to displacement relief;

(ii) Any change in transmitting antenna location where the protected contour resulting from the change does not overlap some portion of the protected contour of the authorized facilities of the existing station; or

(iii) Any change in transmitting antenna location of greater than 30 miles (48 kilometers) from the reference coordinates of the existing station's antenna location.

* * * * *

6. Section 74.793 is amended by revising paragraphs (c) and (d) to read as follows:

**§ 74.793 Digital low power TV and TV translator station protection of broadcast stations.**

* * * * *

(c) The following D/U signal strength ratio (db) shall apply to the protection of stations on the first adjacent channel. The D/U ratios for "Digital TV-into-analog TV" shall apply to the protection of Class A TV, LPTV, and TV translator stations. The D/U ratios for "Digital TV-into-digital TV" shall apply to the protection of DTV, digital Class A TV, digital LPTV, and digital TV translator stations. The D/U ratios correspond to the digital LPTV or TV translator station's specified out-of-channel emission mask.

| | Simple mask | Stringent mask | Full service mask |
|---|---|---|---|
| Digital TV-into-analog | 10 | 0 | Lower (−14)/Upper (−17) |
| TV Digital TV-into-digital TV | −7 | −12 | Lower (−28)/Upper (−26). |

(d) For analysis of predicted interference from digital low power TV and TV translator stations, the relative field strength values of the antenna vertical radiation pattern provided by the applicant will be used instead of the values in Table 8 in OET Bulletin 69.

* * * * *

7. Section 74.794 is amended by revising paragraph (a)(1) and by adding paragraph (a)(2)(iii) to read as follows:

**§ 74.794 Digital emissions.**

(a) (1) An applicant for a digital LPTV or TV translator station construction permit shall specify that the station will be constructed to confine out-of-channel emissions within one of the following emission masks: Simple, stringent, or full service.

(2) * * *

(iii) *Full service mask.* (A) The power level of emissions on frequencies outside the authorized channel of operation must be attenuated no less than the following amounts below the average transmitted power within the authorized channel. In the first 500 kHz from the channel edge the emissions must be attenuated no less than 47 dB. More than 6 MHz from the channel edge, emissions must be attenuated no less than 110 dB. At any frequency between 0.5 and 6 MHz from the channel edge, emissions must be attenuated no less than the value determined by the following formula:

Attenuation in dB = −11.5 ([Delta] f + 3.6);

Where:

[Delta] f = frequency difference in MHz from the edge of the channel.

(B) This attenuation is based on a measurement bandwidth of 500 kHz. Other measurement bandwidths may be used as long as appropriate correction factors are applied. Measurements need not be made any closer to the band edge than one half of the resolution bandwidth of the measuring instrument. Emissions include sidebands, spurious emissions, and radio frequency harmonics. Attenuation is to be measured at the output terminals of the transmitter (including any filters that may be employed). In the event of interference caused to any service, greater attenuation may be required.

* * * * *

[FR Doc. 2010–26062 Filed 10–15–10; 8:45 am]

BILLING CODE 6712–01–P

**DEPARTMENT OF TRANSPORTATION**

**Pipeline and Hazardous Materials Safety Administration**

**49 CFR Part 195**

**[Docket No. PHMSA–2010–0229]**

**RIN 2137–AE66**

## Pipeline Safety: Safety of On-Shore Hazardous Liquid Pipelines

**AGENCY:** Pipeline and Hazardous Materials Safety Administration (PHMSA), Department of Transportation (DOT).

**ACTION:** Advance notice of proposed rulemaking (ANPRM).

**SUMMARY:** PHMSA is considering whether changes are needed to the regulations covering hazardous liquid onshore pipelines. In particular, PHMSA is seeking comment on whether it should extend regulation to certain pipelines currently exempt from regulation; whether other areas along a pipeline should either be identified for extra protection or be included as additional high consequence areas (HCAs) for Integrity management (IM) protection; whether to establish and/or adopt standards and procedures for minimum leak detection requirements for all pipelines; whether to require the installation of emergency flow restricting devices (EFRDs) in certain areas; whether revised valve spacing requirements are needed on new construction or existing pipelines; whether repair timeframes should be specified for pipeline segments in areas outside the HCAs that are assessed as part of the IM; and whether to establish and/or adopt standards and procedures for improving the methods of preventing, detecting, assessing and remediating stress corrosion cracking (SCC) in hazardous liquid pipeline systems. Comments should address the public safety and environmental aspects of new requirements, as well as the cost implications and regulatory burden.

**DATES:** Persons interested in submitting written comments on this ANPRM must do so by January 18, 2011. PHMSA will consider late filed comments so far as practicable.

**ADDRESSES:** You may submit comments identified by the docket number PHMSA–2010–0229 by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the online instructions for submitting comments.
- *Fax:* 1–202–493–2251.
- *Mail:* Hand Delivery: U.S. DOT Docket Management System, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590–0001 between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

*Instructions:* If you submit your comments by mail, submit two copies. To receive confirmation that PHMSA received your comments, include a self-addressed stamped postcard.

**Note:** Comments are posted without changes or edits to *http://www.regulations.gov,* including any personal information provided. There is a privacy statement published on *http://www.regulations.gov.*

**FOR FURTHER INFORMATION CONTACT:** Mike Israni, by telephone at 202–366–4571, by fax at 202–366–4566, or by mail at U.S. DOT, PHMSA, 1200 New Jersey Avenue, SE., PHP–10, Washington, DC 20590–0001.

**SUPPLEMENTARY INFORMATION:**

### I. Background

Congress has authorized Federal regulation of the transportation of hazardous liquid by pipeline under the Commerce Clause of the U.S. Constitution. That authorization is codified in the Pipeline Safety Laws (49 U.S.C. 60101 *et seq.*), a series of statutes that are administered by the DOT, PHMSA. PHMSA has used that authority to promulgate comprehensive minimum safety standards for the transportation of hazardous liquid by pipeline.

Congress established the current framework for regulating hazardous liquid pipelines in the Hazardous Liquid Pipeline Safety Act of 1979, Public Law 96–129 (HLPSA). That law, modeled on the Natural Gas Pipeline Safety Act of 1968, Public Law 90–481, delegated to DOT the authority to develop, prescribe, and enforce minimum Federal safety standards for the transportation of hazardous liquids by pipeline. Congress has since enacted additional legislation that is currently codified in the Pipeline Safety Laws, including:

- In 1992, Congress added the environment to the list of statutory factors that must be considered in establishing safety standards for hazardous liquid pipelines, mandated that regulations be issued to establish criteria for operators to use in identifying and inspecting pipelines located in areas that are unusually sensitive to environmental damage, that cross a navigable waterway, or that have a high population density, and required regulations be issued to define the term "gathering line" and establish safety standards for certain "regulated gathering lines," Public Law 102–502.
- In 1996, Congress limited the operator identification requirement mandate to pipelines that cross a waterway where a substantial likelihood of commercial navigation exists, required that certain areas where a pipeline rupture would likely cause permanent or long-term environmental damage be considered in determining whether an area is unusually sensitive to environmental damage, and mandated that regulations be issued for the qualification and testing of certain pipeline personnel, Public Law 104–304.
- In 2006, Congress mandated that regulations be issued for low-stress hazardous liquid pipelines and pipeline control room management, Public Law 109–468.

PHMSA administers compliance with these statutes and has promulgated comprehensive safety standards and regulations for the transportation of hazardous liquid by pipeline. That includes regulations for the:

- Design and construction of new pipeline systems or those that have been relocated, replaced, or otherwise changed (Subparts C and D of 49 CFR Part 195).
- Pressure testing of new pipelines (Subpart E of 49 CFR Part 195).
- Operation and maintenance of pipeline systems, including for inspecting and reburying pipelines in the Gulf of Mexico and its inlets, establishing programs for public awareness and damage prevention, managing the integrity of pipelines in HCAs, and managing the operation of pipeline control rooms (Subpart F of 49 CFR Part 195).
- Protecting steel pipelines from the adverse effects of internal and external corrosion (Subpart H of 49 CFR Part 195).
- Integrity management (IM) in High Consequence Areas (HCAs, 49 CFR 195.452).

As a result of PHMSA's review of the performance of the hazardous liquid IM program, PHMSA is considering new regulation in several areas.

### II. Advance Notice of Proposed Rulemaking

Within this ANPRM, PHMSA is seeking public comment on six specific topic areas:

- Scope of the pipeline safety regulations and existing regulatory exceptions,
- The criteria for designation as a High Consequence Area (HCA),
- Leak detection and Emergency Flow Restricting Devices (EFRD),

- Valve spacing,
- Repair criteria in non-HCA areas, and,
- Stress Corrosion Cracking (SCC).

Each topic is discussed in more detail in this document.

*A. Scope of the Pipeline Safety Regulations and Existing Regulatory Exceptions*

The Pipeline Safety Regulations apply to most onshore [1] pipeline facilities used for the transportation of hazardous liquids, as defined in 49 CFR 195.2, to include petroleum, petroleum products, or anhydrous ammonia. The Pipeline Safety Regulations apply to any pipeline that transports a highly volatile liquid, the transportation of hazardous liquid through a pipeline other than a gathering line that has a maximum operating pressure (MOP) of greater than 20% of specified minimum yield strength (SMYS), any hazardous liquid pipeline that crosses a waterway used for commercial navigation, the transportation of hazardous liquid through regulated onshore gathering lines, and the transportation of hazardous liquid through certain low-stress pipelines.

The Pipeline Safety Regulations do not apply to all onshore hazardous liquid pipeline facilities. Exceptions are provided where required by statute, including for onshore production, refining, or manufacturing facilities; storage or in-plant piping systems associated with onshore production, refining, or manufacturing facilities; the transportation of hazardous liquid through low-pressure rural gathering lines that are less than 6-inches in diameter and not located in an area that is unusually sensitive to environmental damage; and the movement of hazardous liquid by non-pipeline modes of transportation. Regulations associated with these statutory exemptions are not under consideration in this ANPRM.

Regulatory exceptions also exist in the current Pipeline Safety Regulations. These exceptions include facilities that were determined to not pose a significant risk to public safety at the time the rule was promulgated, for example: Pipelines used to transport hazardous liquids by gravity, pipelines used to gather hazardous liquids in certain rural areas, and pipelines used to move carbon dioxide beyond certain points in production, injection, or recovery operations.

Regulatory exceptions also include facilities that are reserved for regulation by the States or other Federal agencies, such as offshore pipelines in State waters; producer-operated on the outer continental shelf (OCS); breakout tanks that receive and store hazardous liquid, but not for reinjection and continued transportation by pipeline; non-transportation related onshore and offshore oil facilities; and underground storage facilities.

PHMSA is seeking public comment on whether the regulatory exceptions noted above should be repealed or modified. In particular:

A.1 Should PHMSA repeal or modify:

○ The exception in section 195.1(b)(2) of the Pipeline Safety Regulations for the transportation of hazardous liquid through a pipeline by gravity?

○ Any exception in sections 195.1(a)(4)(ii) or 195.11(a) for the gathering of hazardous liquids by pipeline in rural areas?

○ The exception in section 195.1(b)(10) for the transportation of carbon dioxide by pipeline downstream of certain points in injection or recovery operations?

○ The exception in sections 195.1(b)(5) for the transportation of hazardous liquid in offshore pipelines in State waters?

○ The exceptions in sections 195.1(b)(6) and (7) for the transportation of hazardous liquid in a producer-operated pipeline on the OCS?

○ The exception in section 195.2 for breakout tanks that are not used to relieve surges in a hazardous liquid pipeline system or to receive and store hazardous transported by pipeline for reinjection and continued transportation by pipeline?

○ Any other exception or limitation in the Pipeline Safety Regulations that applies to the transportation of hazardous liquid by pipeline?

A.2 Should PHMSA promulgate new or additional safety standards for:

○ Underground hazardous liquid storage facilities?

○ Any other pipeline facility used in the transportation of hazardous liquid by pipeline?

A.3 Should PHMSA take these actions in any particular order to best protect the public, property, or the environment?

If commenters suggest modification, PHMSA requests specific proposals for what elements of the exception should be modified. With regards to questions A.1–A.2, PHMSA requests commenters to provide information and supporting data related to:

- The potential costs of repealing or modifying the existing regulatory exceptions listed above.
- The potential quantifiable safety and societal benefits of repealing or modifying the exceptions listed above.
- The potential impacts on small businesses of repealing or modifying the existing regulatory exceptions listed above.
- The potential environmental impacts of repealing or modifying the existing regulatory exceptions listed above.

*B. Definition of High Consequence Area*

A High Consequence Area (HCA) is currently defined in § 195.450 as a commercially navigable waterway, a high population area, or an other populated area. Some of these HCAs include areas with high population density, sole source drinking water supplies, and ecological resources that are unusually sensitive to environmental damage. PHMSA currently regulates approximately 173,000 miles of hazardous liquid pipelines. Approximately 76,000, or 44%, of these miles are in areas that could affect an HCA. The IM requirements specify how pipeline operators must identify, prioritize, assess, evaluate, repair and validate—through comprehensive analyses—the integrity of hazardous liquid pipelines that, in the event of a leak or failure, could affect HCAs within the United States.

Although operators may voluntarily apply IM practices to pipe line segments that are deemed to not affect an HCA, the regulations do not require operators to do so.

PHMSA is now considering what additional safety measures should be taken to increase the level of safety for those pipelines that could not affect HCA areas. PHMSA is considering whether the Integrity Management (IM) requirements in Part 195 should be the model for adding additional safety measures for pipelines that could not affect HCAs. PHMSA is also considering expanding the definition of an HCA so that more miles of pipe are subject to those requirements.

Questions

B.1 Should PHMSA amend the existing criteria for identifying high consequence areas, to expand the miles of pipeline included in an HCA? If so, what amendments to the criteria should PHMSA consider? Is there information

[1] The Pipeline Safety Statutes provide PHMSA with jurisdiction over all offshore hazardous liquid pipelines. However, PHMSA does not exercise the full measure of that authority for reasons of policy. PHMSA allows States to regulate certain offshore hazardous liquid pipelines in their own waters under 49 CFR 195.1(b)(5). PHMSA also allows the Department of the Interior to regulate certain hazardous liquid pipelines on the OCS under 49 CFR 195.1(b)(7), a provision that codifies a 1996 Memorandum of Understanding between PHMSA and DOI.

or data that supports an amendment to the existing criteria? What are the potential costs and benefits associated with an amendment to the existing criteria? How would amendments to the current criteria impact State and Local governments and other entities?

B.2 Does existing criteria capture any HCAs that, based on risk, do not provide a substantial benefit for inclusion as an HCA? Should PHMSA amend the existing criteria in any way which could better focus the identification of an HCA based on risk? Would it be more beneficial to include more miles of pipeline under existing HCA IM procedures, or, to focus more intense safety measures on the highest risk, highest consequence areas?

B.3 Should the phrase "commercially navigable waterways", as used in the definition of an HCA, be revised to "navigable waters" or "waters of the United States" consistent with the Clean Water Act? Are there any potential cost impacts or quantifiable benefits of such a change?

B.4 What processes do pipeline operators undertake to determine whether areas surrounding pipeline right of ways (ROWs) meet the HCA criteria as set forth in 195.450? Are all areas that qualify as HCAs based on proximity to ROWs properly identified? Are there ways that PHMSA can improve the process of ROW HCA criteria determinations?

B.5 What, if any, input and/or oversight should the general public and/or local communities play in the identification of HCAs? If commenters believe that the public or local communities should provide input and/or oversight, how should PHMSA gather information and interface with these entities? Should State and Local governments be involved in the HCA identification and oversight process?

B.6 Should PHMSA develop additional safety measures, including those similar to IM, for areas outside of HCAs?

B.7 Should major road crossings and/or railway crossings be included as HCAs?

B.8 If commenters suggest modification to the existing regulatory requirements, PHMSA requests that commenters be as specific as possible. In addition, PHMSA requests commenters to provide information and supporting data related to:

- The potential costs of modifying the existing regulatory requirements.
- The potential quantifiable safety and societal benefits of modifying the existing regulatory requirements.
- The potential impacts on small businesses of modifying the existing regulatory requirements.
- The potential environmental impacts of modifying the existing regulatory requirements.

*C. Leak Detection Equipment and Emergency Flow Restricting Devices*

Better, more effective leak detection systems and technologies and Emergency Flow Restriction Devices (EFRDs) are a key means to reducing the consequences of hazardous liquid spills. EFRDs are "check valves" or remotely controlled valves (RCVs) that can be activated automatically or remotely from a control room, to isolate sections of a pipeline. The sooner these tools can detect a spill and isolate pipeline segments, the lower the impact of a pipeline accident. Leak detection can alert a pipeline operator to the presence and, with some methods, the location of a leak. An effective leak detection system can limit the consequences of a hazardous liquid spill by alerting the operator to the leak in a timely manner and allowing for faster response efforts. Leak detection systems may be incorporated into an operator's Supervisory Control and Data Acquisition (SCADA) system for controlling the pipeline. EFRDs can limit the volume of hazardous liquid released after the location of the release has been identified. EFRDs are a critical means of reducing the consequences of a pipeline accident.

PHMSA is seeking to increase and improve the use of leak detection and EFRDs on hazardous liquids pipelines. To this end, PHMSA is considering whether to establish and/or adopt standards and procedures, through a rulemaking proceeding, for minimum leak detection requirements for all pipelines. PHMSA is also considering whether to require the installation of EFRDs in certain areas and/or provide additional guidance to operators on installing EFRDs in the optimum locations.

PHMSA has performed or sponsored numerous workshops and studies on leak detection and EFRDs over the years. As a result of continued study of leak detection issues, and the recommendations of the advisory committee, the public and industry, PHMSA implemented specific leak detection requirements in its IM rule for hazardous liquid pipelines (65 FR 75378; December 1, 2000). Some methods of leak detection include—Dynamic flow modeling, tracer chemical, release detection cable, shut-in (static) release detection, and pressure point analysis release detection software (*See* 65 FR 75378, 75398–99 for detailed descriptions of these systems).

The regulation, 49 CFR 195.452(i)(3), requires an operator to have a means to detect leaks on the sections of its pipeline system that could affect HCAs. An operator must also evaluate and modify its leak detection system to protect HCAs. An operator's evaluation must, at least, consider the following factors—length and size of the pipeline, type of product carried, the pipeline's proximity to the HCA, the swiftness of leak detection, location of nearest response personnel, leak history and risk assessment results. The IM regulations, Appendix C to Part 195, also specify that the location of pipeline segments as it relates to the ability of the operator to detect and respond to a leak is a risk factor to be considered when establishing the frequency of assessment.

Under Section 21 of the Pipeline Inspection, Protection, Safety and Enforcement Act of 2006 (Pub. L. 109–468), Congress directed PHMSA to prepare a report on leak detection systems utilized by operators of hazardous liquid pipelines. Specifically, Congress asked for a discussion of the inadequacies of current leak detection systems, including their ability to detect ruptures, small leaks that are ongoing or intermittent, and what can be done to foster development of better technologies as well as address existing technological inadequacies. PHMSA completed the Leak Detection Technology Study on December 31, 2007. The study can be found at: *http://www.phmsa.dot.gov/pipeline/library.* In short, the study found that no single solution exists to effectively detect all hazardous liquid pipeline leaks and few exist that reliably detect small leaks.

On January 26, 2010, PHMSA issued an advisory bulletin, ADB–10–01 (75 FR 4134), reminding operators of the importance of prompt and effective leak detection capability in protecting public safety and the environment. The bulletin advised operators of all hazardous liquid pipelines, not just those subject to the IM rule, to perform an engineering analysis to determine if a computer-based leak detection system is necessary to improve leak detection performance and line balance processes. In response to this bulletin and PHMSA's imposition of leak detection requirements in the IM rule, the National Transportation Safety Board (NTSB) closed an open safety recommendation on the installation of computer-based leak detection systems.

In the Pipeline Safety Act of 1992 (Pub. L. 102–508), Congress directed the

Office of Pipeline Safety (OPS) to survey and assess the effectiveness of EFRDs and other procedures, systems, and equipment used to detect and locate hazardous liquid pipeline ruptures, and to prescribe regulations on the circumstances where an operator of a hazardous liquid pipeline facility must use an EFRD or such other procedure, system, or equipment. In response to the mandate, an NTSB recommendation, and following a 1991 OPS report titled "Emergency Flow Restricting Devices Study," the agency issued an ANPRM soliciting public input on EFRDs. (59 FR 2802; January 19, 1994). The ANPRM also sought comments on leak detection.

OPS studied the issue for some time and explained in detail the research it had performed in the NPRM for hazardous liquid IM. (*See* 65 FR 21695, 21700; April 24, 2000). In the final rule, OPS concluded that the decision to install EFRDs should not be mandatory but should be left to the operator, who must consider specific factors when making the determination. The rule, 49 CFR 195.452(i)(4), requires an operator to determine whether to install an EFRD based on the operator's risk analysis. In making this determination, an operator must, at least, consider the following factors: The swiftness of leak detection and pipeline shutdown capabilities, the type of commodity carried, the rate of potential leakage, the volume that can be released, topography or pipeline profile, the potential for ignition, proximity to power sources, location of nearest response personnel, specific terrain between the pipeline segment and the high consequence area, and benefits expected by reducing the spill size. The rule, Appendix C to part 195, also requires an operator to maintain certain records on the criteria for determining EFRD installation.

There is currently no regulatory requirement to install EFRDs on pipelines not subject to the IM rule. Although the pipeline safety regulations, 49 CFR 195.260, require the installation of valves at locations that will minimize damage or pollution from accidental hazardous liquid discharges. Outside of HCA's, current regulations, §§ 195.134 and 195.444 require operators who choose to install computational pipeline monitoring (CPM) leak detection systems to comply with the American Petroleum Institute (API) standard API 1130 "Computational Pipeline Monitoring for Liquids: Pipeline Segment" in designing, operating, maintaining, testing, recordkeeping, and dispatcher training on the system.

Questions

C.1 Should leak detection requirements be expanded to all hazardous liquid pipeline systems under PHMSA's regulatory jurisdiction? Is there a specific subset of hazardous liquid pipeline not currently subject to leak detection requirements that should be? What are the potential quantifiable costs and benefits of expanding existing hazardous liquid pipeline leak detection requirements?

C.2 What additional industry practices or standards are available for leak detection that PHMSA should consider for widespread adoption? Is there new or existing leak detection technology that PHMSA should be aware of and should consider for widespread adoption?

C.3 How do existing industry practices or standards for leak detection address the following factors: Leak size and flow rate sensitivity, response time, leak location accuracy, rates of false alarms and misses, instrument accuracy, personnel training and qualification requirements, system size and complexity (including batch line factors), leak size or leak flow rate versus response time, release volume estimation accuracy, detection of pre-existing leaks, detection of a leak in a shut-in pipeline, detection of a leak in pipelines under a slack line condition and/or during transient conditions, sensitivity to flow conditions, sensitivity to multiphase flow, retrofit feasibility, system testing and maintenance requirements?

C.4 Should current state regulations inform PHMSA's consideration of performance based leak detection standards? For example, the regulations of The Alaska Department of Environmental Conservation, (18 Alaska Administrative Code 75.055), set out minimum detection sensitivity based on a percentage of daily pipeline throughput. What specific performance measures should PHMSA consider?

C.5 If PHMSA adopts new leak detection requirements, should there be different performance standards for sensitive areas? For example, should PHMSA require operators to install more sensitive leak detection equipment, such as externally-based systems, in those areas?

C.6 If new leak detection standards were developed, what key issues should they address?

C.7 Are there statistics available on the extent to which the application of existing practices or standards has contributed to reduced spill volumes and consequences?

C.8 What industry practices or standards are available for the location and performance requirements of EFRDs?

C.9 Do such practices or standards, if any, set maximum spill volume requirements, EFRD activation timing, or methods for integration of EFRD operation with an operator's SCADA and leak detection systems?

C.10 Should PHMSA specify the criteria where an operator must install an EFRD?

C.11 Should PHMSA mandate the use of EFRDs in all locations?

C.12 What leak detection methods or technologies require further research and development in order to demonstrate their efficacy?

C.13 If commenters suggest modification to the existing regulatory requirements, PHMSA requests that commenters be as specific as possible. In addition, PHMSA requests commenters to provide information and supporting data related to:

- The potential costs of modifying the existing regulatory requirements.
- The potential quantifiable safety and societal benefits of modifying the existing regulatory requirements.
- The potential impacts on small businesses of modifying the existing regulatory requirements.
- The potential environmental impacts of modifying the existing regulatory requirements.

*D. Valve Spacing*

Under § 195.258, valves must be installed in a location that is accessible to authorized employees. Under § 195.260, a valve must be installed on each mainline at locations along the pipeline system that will minimize damage or pollution from accidental hazardous liquid discharge, as appropriate for the terrain in open country, for offshore areas, or for population areas. In addition, valves must be installed on each side of a water crossing more than 100 feet wide from high-water mark to high-water mark and valves must be installed on each side of a reservoir holding water for human consumption. For areas covered by IM requirements, § 195.452(i)(4) states that an operator must evaluate and, if appropriate, take additional measures to prevent and mitigate the consequences of pipeline failures that could affect an HCA. One of the actions that an operator may take to protect an HCA is to install EFRDs. EFRDs are check valves or remote control valves that are operated from a location remote from where the valve is located.

In addition, the standard for the installation of valves at water crossings (100 foot wide bodies of water) may not adequately protect certain bodies of

water that are less than 100 feet wide. The current standard, which allows operators to make a subjective decision on the location of valves, may be too subjective. PHMSA is therefore reviewing the regulations to determine if the regulations should be revised to: (1) Cover more bodies of water under the provisions of § 195.260(e); (2) require the installation of valves at specified locations throughout each pipeline system; and (3) mandate the use of EFRDs, in particular remote controlled valves, in all systems, not just in HCAs. PHMSA believes that these actions are necessary to properly mitigate the release of hazardous liquids after a failure of the pipeline system has occurred.

Questions

D.1 What is the average distance between valves that are currently installed according to the requirements in § 195.260(c)? Are these manually operated valves or are these valves controlled remotely?

D.2 Should PHMSA adopt standards by which operators evaluate valve spacing and valve locations?

D.3 Should PHMSA specify the maximum distance between valves? If so, is there an ideal spacing to reduce risks and potential consequences? What projected costs and benefits would result from this specification?

D.4 Should PHMSA prescribe additional requirements for locating valves near HCAs beyond those currently prescribed for EFRDs?

D.5 Should PHMSA revise the standard in § 195.260(e) to include narrower bodies of water? If so, what projected costs and benefits would result from this change?

D.6 Should PHMSA consider a requirement for all valves to be capable of being controlled remotely? If so, what projected costs and benefits would result from this requirement?

D.7 Should PHMSA require installation of EFRDs to protect HCAs? If so, what projected costs and benefits would result from this requirement?

D.8 If PHMSA proposes to revise the requirements relative to valve location, should the change be applicable to all pipelines or should PHMSA only apply this change to new construction? Could they also apply any time a segment of pipe is repaired or replaced? If such a requirement were to be adopted, under what circumstances should PHMSA consider waiving this requirement? How would limitations to the applicability of this requirement (such as, limitation to new construction) impact the projected costs and benefits resulting from the requirement?

D.9 What are the cost impacts relative to changes in the requirements of valve location based on the type of valves installed?

D.10 If commenters suggest modification to the existing regulatory requirements, PHMSA requests that commenters be as specific as possible. In addition, PHMSA requests commenters to provide information and supporting data related to:

- The potential costs of modifying the existing regulatory requirements.
- The potential quantifiable safety and societal benefits of modifying the existing regulatory requirements.
- The potential impacts on small businesses of modifying the existing regulatory requirements.
- The potential environmental impacts of modifying the existing regulatory requirements.

*E. Repair Criteria*

Operators have reported that up to 86 percent of all the pipelines subject to the pipeline safety regulations have been inspected with an in-line inspection tool (*i.e.,* a "smart pig"). Since the adoption of the IM requirements into Part 195, approximately 32,000 repairs have made to those pipelines that could affect an HCA, and over 67,000 repairs have been made in pipelines deemed to not affect an HCA. The IM regulations (49 CFR 195.452(h)) require "prompt action" to address all anomalous conditions discovered. More specifically, the IM regulations mandate "immediate" pressure reduction, pipeline shutdown, or repair of the following conditions: 80 percent or greater wall loss; a predicted burst pressure less than the established maximum allowable operating pressure (MAOP) at the location of the anomaly; a dent located at the top of the pipeline (between the four and eight o'clock positions) with any indication of metal loss, cracking, or a stress riser or with a depth greater than six percent of the pipeline's diameter; or any anomaly that in the judgment of the person designated by the operator to evaluate assessment results requires immediate action. Furthermore, operators must remediate dents at the top of the pipeline with a depth greater than three percent of the pipeline diameter and dents on the bottom of the pipeline that have any indication of metal loss, cracking, or a stress riser.

Finally, the integrity management regulations in 49 CFR 195.452 require remediation within 180 days for various conditions, including: A dent with a depth greater than two percent of a pipeline's diameter that affects pipe curvature at a weld, a dent at the top of the pipeline with a depth greater than two percent of the pipeline's diameter, a dent at the bottom of the pipeline with a depth greater than six percent of the pipeline's diameter, a calculated operating pressure less than the current established MOP at the location of the anomaly, 50 percent or greater wall loss, a determined crack, corrosion along the longitudinal weld, or a gouge or groove deeper than 12.5 percent of the nominal wall.

The assessments operators have been conducting on their pipeline segments that could affect HCAs have often extended to areas beyond the HCAs. Up to now, PHMSA has enforced the IM repair criteria as only applying to the anomalous conditions discovered in the HCAs. If through the integrity assessment or information analysis, the operator discovers anomalous conditions in the areas outside the HCA, PHMSA has allowed operators to use the prompt remediation requirements in § 195.422 rather than the IM repair time frames. PHMSA is now considering if the IM repair time frames should also be enforced to apply to the pipeline segments located in non-HCA areas when anomalous conditions in these areas are discovered through the integrity assessment or information analysis. This would provide greater assurance that defects on non-HCA related areas are repaired in a timely manner. PHMSA would like input from the public on the following:

E.1 Should anomalous conditions in non-HCA areas qualify as repair conditions subject to the IM repair schedules? If so, which ones? What projected costs and benefits would result from this requirement?

E.2 Should PHMSA consider a risk tiering—where the conditions in the HCA areas would be addressed first, followed by the conditions in the non-HCA areas? How should PHMSA evaluate and measure risk in this context, and what risk factors should be considered?

E.3 What should be the repair schedules for anomalous conditions discovered in non-HCA areas through the integrity assessment or information analysis? Would a shortened repair schedule significantly reduce risk? How should PHMSA determine guidelines for repair schedules in non-HCA areas?

E.4 Have ILI tool capability advances resulted in a need to update the "dent with metal loss" repair criteria?

E.5 Should PHMSA adopt explicit standards to account for the known accuracy of in-line inspection tools when comparing in-line inspection tool data with the repair criteria?

E.6 Should PHMSA adopt standards for conducting in-line inspections using "smart pigs," the qualification of persons interpreting in-line inspection data, the review of ILI results including the integration of other data sources in interpreting ILI results, and/or the quality and accuracy of in-line inspection tool performance, in order to gain a greater level of assurance that injurious pipeline defects are discovered?

E.7 If commenters suggest modification to the existing regulatory requirements, PHMSA requests that commenters be as specific as possible. In addition, PHMSA requests commenters to provide information and supporting data related to:

- The potential costs of modifying the existing regulatory requirements.
- The potential quantifiable safety and societal benefits of modifying the existing regulatory requirements.
- The potential impacts on small businesses of modifying the existing regulatory requirements.
- The potential environmental impacts of modifying the existing regulatory requirements.

*F. Stress Corrosion Cracking*

Stress Corrosion Cracking (SCC) is the cracking induced from the combined influence of tensile stress and a corrosive medium. SCC has caused numerous pipeline failures on hazardous liquids pipelines, including a 2003 failure on a Kinder Morgan pipeline in Arizona,a 2004 failure on an Explorer Pipeline Company pipeline in Oklahoma, a 2005 failure on an Enterprise Products Operating line in Missouri, and a 2008 failure on an Oneok NGL Pipeline in Iowa. Better, more effective methods of preventing, detecting, assessing and remediating SCC in pipelines are important to making further reductions in pipeline failures.

PHMSA is seeking to improve understanding and mitigation of SCC threats on hazardous liquids pipelines. To this end, PHMSA is considering whether to establish and/or adopt standards and procedures, through a rulemaking proceeding, for improving the methods of preventing, detecting, assessing and remediating SCC in hazardous liquid pipeline systems.

PHMSA has taken numerous steps over many years to improve the understanding and mitigation of SCC hazardous liquids pipelines. These have included public workshops and studies on SCC. Initiatives taken, sponsored and/or supported by PHMSA designed to enhance understanding of SCC include:

- 1999 and 2004 SCC Studies— Two comprehensive studies on SCC were conducted for PHMSA's predecessor agency, the Research and Special Programs Administration (RSPA). First, "Stress Corrosion Cracking Study," Report No. DTRS56, prepared by General Physics Corporation in May 1999. Second, "Stress Corrosion Cracking Study," Report No. DTRS56–02–D–70036, submitted by Michael Baker Jr., Inc., in September 2004. These studies sought to improve understanding of SCC and to identify practical methods to prevent, detect and address SCC as well as provide a framework for potential future research. The 2004 study is available at: *http://primis.phmsa.dot.gov/meetings/DocHome.mtg?doc=1.*
- Liquid IM Rules—The IM rule (65 FR 75378; December 1, 2000) for hazardous liquid pipelines in high consequence areas included guidance on the types of internal inspection tools operators should use for the integrity assessments required as part of their IM plans. Appendix C to Part 195, "Guidance for Implementation of an IM Program," provides that crack detection tools should be used for detecting cracks and crack-like features, including SCC, where such features are a risk factor on the pipeline segment.
- 2003 Advisory Bulletin— In response to three SCC-driven failures of hazardous liquid pipelines in the US in 2003 and other SCC incidents around the world, PHMSA issued an advisory bulletin, "Stress Corrosion Cracking Threats to Gas and Hazardous Liquid Pipelines" (68 FR 58166; October 8, 2003), urging all pipeline owners and operators to consider SCC as a possible safety risk on their pipeline systems and to include SCC assessment and remediation in their IM plans, for those systems subject to IM rules. For systems not subject to the IM rules, the bulletin urged owners and operators to assess the impact of SCC on pipeline integrity and to plan integrity verification activities accordingly.
- 2003 Public Workshop— PHMSA sponsored a public workshop on SCC on December 3, 2003, in Houston, TX. Numerous PHMSA representatives, state officials, industry, consultants and officials from the National Energy Board of Canada attended and shared their respective experiences with SCC. The workshop also served as a forum for identifying issues for consideration in the 2004 Baker SCC study.
- 2005 Rulemaking—PHMSA issued rules that covered direct assessment, a process of managing the effects of external corrosion, internal corrosion or SCC on pipelines made primarily of steel or iron. "Standards for Direct Assessment of Gas and Hazardous Liquid Pipelines" (70 FR 61571; October 25, 2005). In the portion of the proposed rulemaking applicable to direct assessment of SCC on hazardous liquid pipeline facilities, PHMSA considered cross-referencing certain existing Part 192 gas regulations, and the associated American Society of Mechanical Engineers (ASME) B31.8S standard. B31.8S includes specific standards for SCC. PHMSA later determined that such a cross-reference would be problematic for a variety of reasons, including the fact that B31.8S was developed for and limited to onshore gas pipeline systems. At that time, the Technical Hazardous Liquid Pipeline Safety Standards Committee (THLPSSC) recommended that PHMSA consider adopting a standard that NACE International was developing for direct assessment of SCC. PHMSA elected to consider the recently published NACE Standard "RP0204–2004, Stress Corrosion Cracking Direct Assessment Methodology" for possible future rulemaking action.

Questions

*Existing Standards:*

F.1 Current Federal pipeline safety regulations for hazardous liquids, § 195.553, Appendix C to Part 195, and § 195.588, address direct assessment of SCC but do not set forth standards for performing direct assessment, other types of assessments, or how to prevent or remediate SCC. Does the NACE SP0204–2008 (formerly RP0204) Standard "Stress Corrosion Cracking Direct Assessment Methodology" address the full lifecycle concerns associated with SCC? Should PHMSA consider this, or any other standards to govern the SCC assessment procedures? Do these standards vary significantly from existing practices associated with SCC assessments?

F.2 Are there statistics available on the extent to which the application of the NACE Standard, or other standards, have affected the number of SCC indications operators have detected on their pipelines and the number of SCC-related pipeline failures?

F.3 Are there practices or standards that address prevention, detection, assessment, and remediation of SCC on hazardous liquid pipeline systems?

F.4 If new standards were to be developed for SCC, what key issues should they address?

*Existing Industry Practices:*

PHMSA is interested in the extent to which operators have implemented Canadian Energy Pipeline Association (CEPA) Stress Corrosion Cracking,

Recommended Practices 2nd Edition, 2007, and what the results have been.

F.5 Are there statistics available on the extent to which hazardous liquid pipeline operators apply the CEPA practices?

F.6 Are there statistics available that compare the number of SCC indications detected and SCC-related failures, between operators applying the CEPA practices and those applying other SCC standards or practices?

F.7 Do the CEPA practices address the full lifecycle concerns associated with SCC?

F.8 Are there additional industry practices that address SCC?

*The Effectiveness of SCC Detection Tools and Methods:*

F.9 Are there statistics available on the extent to which various tools and methods can accurately detect and determine the severity of SCC?

F.10 Are tools or methods available to accurately detect and determine the severity of SCC when it is associated with longitudinal pipe seams?

F.11 Should PHMSA require that operators perform a critical analysis of all factors that influence SCC to determine if SCC is a credible threat for each pipeline segment? What experience-based indications have proven reliable in determining whether SCC could be present?

F.12 Should PHMSA require an integrity assessment using methods capable of detecting SCC whenever a credible threat of SCC is identified?

F.13 Should PHMSA require a periodic analysis of the effectiveness of operator corrosion management programs, which integrate information about cathodic protection, coating anomalies, in-line inspection data, corrosion coupon data, corrosion inhibitor usage, analysis of corrosion products, environmental and soil data, and any other pertinent information related to corrosion management?

F.14 What further action should be taken to address corrosion issues?

F.15 If commenters suggest modification to the existing regulatory requirements, PHMSA requests that commenters be as specific as possible. In addition, PHMSA requests commenters to provide information and supporting data related to:

- The potential costs of modifying the existing regulatory requirements.
- The potential quantifiable safety and societal benefits of modifying the existing regulatory requirements.
- The potential impacts on small businesses of modifying the existing regulatory requirements.
- The potential environmental impacts of modifying the existing regulatory requirements.

## III. Regulatory Notices

### *A. Executive Order 12866 and DOT Regulatory Policies and Procedures*

E.O. 12866 requires agencies to regulate in the "most cost-effective manner," to make a "reasoned determination that the benefits of the intended regulation justify its costs," and to develop regulations that "impose the least burden on society." We therefore request comments, including specific data if possible, concerning the costs and benefits of revising the pipeline safety regulations to accommodate any of the changes suggested in this advance notice.

### *B. Executive Order 13132: Federalism*

Executive Order 13132 requires agencies to assure meaningful and timely input by state and local officials in the development of regulatory policies that may 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. PHMSA is inviting comments on the effect a possible rulemaking adopting any of the amendments discussed in this document may have on the relationship between national government and the states.

### *C. Regulatory Flexibility Act*

Under the Regulatory Flexibility Act of 1980 (5 U.S.C. 601 *et seq.*), we must consider whether a proposed rule would have a significant economic impact on a substantial number of small entities. "Small entities" include small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations under 50,000. If your business or organization is a small entity and if adoption of any of the amendments discussed in this ANPRM could have a significant economic impact on your operations, please submit a comment to explain how and to what extent your business or organization could be affected.

### *D. National Environmental Policy Act*

The National Environmental Policy Act of 1969 (NEPA) requires Federal agencies to consider the consequences of Federal actions and that they prepare a detailed statement analyzing if the action significantly affects the quality of the human environment. Interested parties are invited to address the potential environmental impacts of this ANPRM. We are particularly interested in comments about compliance measures that would provide greater benefit to the human environment or on alternative actions the agency could take that would provide beneficial impacts.

### *E. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments*

Executive Order 13175 requires agencies to assure meaningful and timely input from Indian tribal government representatives in the development of rules that "significantly or uniquely affect" Indian communities and that impose "substantial and direct compliance costs" on such communities. We invite Indian tribal governments to provide comments on any aspect of this ANPRM that may affect Indian communities.

### *F. Paperwork Reduction Act*

Under 5 CFR Part 1320, PHMSA analyzes any paperwork burdens if any information collection will be required by a rulemaking. We invite comment on the need for any collection of information and paperwork burdens, if any.

### *G. Privacy Act Statement*

Anyone can search the electronic form of comments received in response to 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.). DOT's complete Privacy Act Statement was published in the **Federal Register** on April 11, 2000 (65 FR 19477).

**Authority:** 49 U.S.C. 60101 *et seq.;* 49 CFR 1.53.

Issued in Washington, DC, on October 8, 2010.

**Jeffrey D. Wiese,**

*Associate Administrator for Pipeline Safety.*

[FR Doc. 2010–26006 Filed 10–15–10; 8:45 am]

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## DEPARTMENT OF COMMERCE

## National Oceanic and Atmospheric Administration

## 50 CFR Part 622

**[Docket No. 100803319–0475–01]**

**RIN 0648–BA04**

## Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Reef Fish Fishery of the Gulf of Mexico; Red Grouper Management Measures

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and

Atmospheric Administration (NOAA), Commerce.

**ACTION:** Proposed rule; request for comments.

**SUMMARY:** NMFS issues this proposed rule that would implement actions identified in a regulatory amendment to the Fishery Management Plan for the Reef Fish Resources of the Gulf of Mexico (FMP) prepared by the Gulf of Mexico Fishery Management Council (Council). This proposed rule would reduce the commercial quota for red grouper and, thus, the combined commercial quota for shallow water grouper (SWG) species, and require vessels with valid commercial Gulf of Mexico (Gulf) reef fish permits to mark their buoy gear with the official vessel number. This rule also proposes minor revisions to codified text, including a revised definition of buoy gear, re-codification of the commercial and recreational quotas for greater amberjack, revision of the recreational accountability measure for greater amberjack, and removal of outdated language for the red snapper individual fishing quota (IFQ) program. The intended effect of this proposed rule is to help prevent overfishing of red grouper while achieving optimum yield (OY) by reducing red grouper harvest consistent with the findings of the recent stock assessment for this species, and to implement technical corrections to the regulations.

**DATES:** Written comments must be received on or before November 2, 2010.

**ADDRESSES:** You may submit comments on the proposed rule identified by 0648–BA04 by any of the following methods:

- *Electronic submissions:* Submit electronic comments via the Federal e-Rulemaking Portal: *http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Mail:* Peter Hood, Southeast Regional Office, NMFS, 263 13th Avenue South, St. Petersburg, FL 33701.

*Instructions:* No comments will be posted for public viewing until after the comment period has closed. All comments received are a part of the public record and will generally be posted to *http://www.regulations.gov* without change. All Personal Identifying Information (for example, name, address, *etc.*) voluntarily submitted by the commenter may be publicly accessible. Do not submit Confidential Business Information or otherwise sensitive or protected information.

To submit comments through the Federal e-rulemaking portal: *http://www.regulations.gov,* enter "NOAA–NMFS–2010–0161" in the keyword search, then check the box labeled "Select to find documents accepting comments or submissions," then select "Send a comment or submission." NMFS will accept anonymous comments (enter N/A in the required field if you wish to remain anonymous). You may submit attachments to electronic comments in Microsoft Word, Excel, WordPerfect, or Adobe PDF file formats only.

Comments received through means not specified in this rule will not be considered.

Copies of the regulatory amendment, which includes an environmental assessment and a regulatory impact review, may be obtained from the Gulf of Mexico Fishery Management Council, 2203 North Lois Avenue, Suite 1100, Tampa, FL 33607; telephone 813–348–1630; fax 813–348–1711; e-mail *gulfcouncil@gulfcouncil.org;* or may be downloaded from the Council's Web site at *http://www.gulfcouncil.org/.*

Comments regarding the burden-hour estimates or other aspects of the collection-of-information requirements contained in this proposed rule may be submitted in writing to Rich Malinowski, Southeast Regional Office, NMFS, 263 13th Avenue South, St. Petersburg, FL 33701; and OMB, by e-mail at *OIRASubmission@omb.eop.gov,* or by fax to 202–395–7285.

**FOR FURTHER INFORMATION CONTACT:** Peter Hood, 727–824–5305.

**SUPPLEMENTARY INFORMATION:** The reef fish fishery of the Gulf of Mexico is managed under the FMP. The FMP was prepared by the Council and is implemented through regulations at 50 CFR part 622 under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act).

## Background

The Magnuson-Stevens Act requires NMFS and regional fishery management councils to prevent overfishing and achieve, on a continuing basis, the OY from Federally managed fish stocks. These mandates are intended to ensure fishery resources are managed for the greatest overall benefit to the nation, particularly with respect to providing food production and recreational opportunities, and protecting marine ecosystems. To further this goal, the Magnuson-Stevens Act requires fishery managers to end overfishing of stocks while achieving OY from the fishery, and to minimize bycatch and bycatch mortality to the extent practicable.

*Status of Stock*

Red grouper were declared overfished and placed under a rebuilding plan in 2004. A 2007 stock assessment determined that overfishing had ended and stock biomass had increased to OY. The 2007 assessment showed the stock was rebuilt and was close to its OY spawning stock biomass level. With this update in stock status, new regulations were implemented in 2009 (74 FR 17603), that increased the commercial red grouper quota from 5.31 million lb (2.41 million kg) to 5.75 million lb (2.61 million kg) and increased the red grouper recreational bag limit from 1 fish to 2 fish (within a 4-fish grouper aggregate bag limit). In the same amendment that established these regulations (Amendment 30B to the FMP), the Council set red grouper catch limits and catch targets. The catch limit was set at the equilibrium (*i.e.,* long-term average) maximum sustainable yield (MSY) or the yield for the current year corresponding to the fishing mortality at MSY ($F_{MSY}$). The catch target was set at the equilibrium OY or the yield for the current year corresponding to the fishing mortality at OY ($F_{OY}$).

The objective of the 2009 Southeast Data, Assessment, and Review (SEDAR) update assessment for Gulf red grouper was to update the 2007 SEDAR 12 red grouper assessment. The 2009 SEDAR update assessment indicated that the stock continues to be neither overfished nor undergoing overfishing. However, this update assessment indicated the stock had declined since 2005. A large part of the decline was attributed to an episodic mortality event in 2005 (most likely associated with red tide) that resulted in an approximate 20 percent mortality of the red grouper stock, in addition to mortalities resulting from fishing and other natural causes. The hurricanes that impacted the Gulf region in 2005 are not considered to have contributed to this decline.

A SEDAR update assessment for Gulf gag was also conducted in 2009. Recent discussions of how the update assessment treated commercial and recreational discards prompted the Council to revisit the size distribution of gag recreational discards and the magnitude of gag commercial discards at its August 2010 meeting. Concerns regarding gag discards became apparent because of a discrepancy that resulted from the discard sizes for headboats, which were assigned using headboat observer data, and the discard sizes for the private and charter boats, which were assigned using a combination of the Mote Marine Laboratory tagging data

and four fishery-dependent data sources. A consequence of this assignment was that the imputed size distribution for the private/charter fleets during the most recent 4 years was unexpectedly narrow and close to the recreational minimum size limit; however, gag discards from headboat observer data were not truncated, *i.e.,* observer discard samples were distributed across a wider representation of gag size classes.

Therefore, the Council requested the assessment review panel reexamine the update assessment given these discrepancies in the discard information. In contrast, red grouper recreational discard sizes for all recreational vessels were assigned using headboat observer data and the imputed size distribution was not as truncated, which results in a much less substantial impact on the outcome of the assessment. Because the same concerns were not triggered for red grouper, the Council did not make a similar request to reexamine the red grouper assessment. However, the Council did recognize the effects discard estimation could have on the assessment and, therefore, requested the NMFS Southeast Fisheries Science Center review observer discard information to determine the magnitude of these effects on red grouper.

*Red Grouper Total Allowable Catch (TAC)*

The current red grouper TAC of 7.57 million lb (3.43 million kg), implemented in 2009 through Amendment 30B to the FMP, must be reduced to prevent overfishing of red grouper. As a result of the findings of the 2009 stock assessment update, the Council's Scientific and Statistical Committee (SSC) recommended an acceptable biological catch (ABC) level of 6.31 million lb (2.86 million kg). This amount is equal to 85 percent of the yield at $F_{MSY,}$ which is expected to result in a less than 50-percent (15- to 45-percent) probability of overfishing. To reduce this probability of overfishing even further, the Council set the TAC at the yield associated with $F_{OY,}$ which is consistent with the method used to set TAC in Amendment 30B to the FMP. Therefore, a reduced red grouper TAC of 5.68 million lb (2.58 million kg), which is the yield associated with $F_{OY}$, is contained in the regulatory amendment.

*Allocation*

The recreational and commercial allocations for red grouper are proposed to remain consistent with those established in Amendment 30B to the FMP. Therefore, 76 percent of the TAC would be allocated to the commercial sector and 24 percent of the TAC would be allocated to the recreational sector.

*Management Measures Contained in This Proposed Rule*

The regulatory amendment would set TAC for 2011 and subsequent fishing years at the yield associated with $F_{OY}$ of 5.68 million lb (2.58 million kg). Based on the current commercial and recreational allocations, the proposed TAC would be implemented by setting the commercial quota for Gulf red grouper at 4.32 million lb (1.96 million kg). The decrease in the red grouper quota by 1.43 million lb (0.65 million kg) would therefore decrease the combined SWG quota by 1.43 million lb (0.65 million kg) to 6.22 million lb (2.82 million kg). This reduced SWG quota would also be implemented through this rule.

Management measures for the recreational sector would remain the same. The current 2-fish bag limit would allow red grouper to stay within the annual target catch of 1.36 million lb (0.62 million kg). Preliminary estimates of 2009 recreational landings remain consistent with recent years at 0.98 million lb (0.44 million kg), which is lower than the 2011 catch target. Assuming recreational effort does not substantially increase in 2011, current regulations should be adequate to maintain the harvest at or below the annual target catch.

*Buoy Gear Marking Requirement and Revised Definition*

NMFS proposes requiring buoy gear used or possessed in the Gulf EEZ to be marked with the official vessel number (U.S. Coast Guard documentation number or State registration number) and proposes revising the definition of buoy gear, as defined in § 622.2, through this rulemaking. Buoy gear is listed as an authorized gear in the hook-and-line component of the Gulf reef fish fishery under the Allowable Gear Rule (§ 600.725, 64 FR 67511).

In 1990, through Amendment 1 to the Gulf Reef Fish FMP, the Council established and NMFS implemented, in § 622.34(c), a longline and buoy gear boundary, shoreward of which the directed harvest of reef fish with longlines and buoy gear was prohibited. After this boundary was established, the use of buoy gear was reduced significantly. Many reef fish bottom longline vessels began using modified versions of traditional buoy gear to continue fishing in areas where bottom longlines were prohibited through emergency regulations initiated May 1, 2009 (74 FR 20229) and revised October 21, 2009 (74 FR 53889). Subsequently, reef fish vessels that did not qualify for a bottom longline endorsement through the regulations implementing Amendment 31 to the Gulf Reef Fish FMP (75 FR 21512, April 26, 2010) are converting to buoy gear to continue fishing for reef fish in the eastern Gulf.

Buoy gear for use in the Gulf reef fish fishery is legally defined in § 622.2 as fishing gear consisting of a float and one or more weighted lines suspended there from, generally long enough to reach the bottom. A hook or hooks (usually 6–10) are on the lines at or near the end. The float and line(s) drift freely and are retrieved periodically to remove catch and re-bait hooks.

NMFS has determined the established definition of buoy gear is ambiguous and does not adequately define the type of gear traditionally used, which limits the enforceability of restrictions on this gear type. Under the current definition, there can be any number of lines suspended from a float, and although the number of hooks is recommended to be 6–10, there is no real restriction on the number of hooks that can be fished per float. Therefore, NMFS is proposing to modify its definition of buoy gear. The proposed definition is more specific, which would reduce regulatory confusion among fishery participants and would improve enforcement requirements as this gear type becomes more commonly used by the commercial reef fish sector.

*Re-Codification of the Quotas for Greater Amberjack*

On June 22, 2010 (75 FR 35335), NMFS published a temporary rule to implement accountability measures for commercial and recreational greater amberjack in the Gulf for the 2010 fishing year. In the course of this rulemaking, NMFS inadvertently removed the commercial and recreation quotas for greater amberjack for 2011 and subsequent fishing years. This rule proposes to re-codify those quotas as specified in § 622.42(a)(1)(v).

*Revision to the Recreational Accountability Measures for Greater Amberjack*

This rule proposes to revise the recreational accountability measure for greater amberjack by clarifying that if recreational landings exceed the quota, at or near the beginning of the following fishing year, the quota for that following fishing year will be reduced by the amount of the overage in the prior fishing year. This clarification is an addition to the current accountability measure which states that the length of the recreational fishing season will be

reduced by the amount necessary to recover the overage from the prior fishing year.

*Removal of Outdated Language for the Red Snapper IFQ Program*

On November 22, 2006 (71 FR 67447), NMFS published a final rule to implement Amendment 26 to the FMP, which established the red snapper IFQ program. During the rulemaking, two paragraphs of codified text, § 622.42(a)(1)(i)(A) and (B), were inadvertently not removed from the regulations. This rule proposes to remove this outdated language.

These additional measures are unrelated to the actions contained in the red grouper regulatory amendment.

**Classification**

Pursuant to section 304(b)(1)(A) of the Magnuson-Stevens Act, the NMFS Assistant Administrator has determined that this proposed rule is consistent with the regulatory amendment, other provisions of the Magnuson-Stevens Act, and other applicable law, subject to further consideration after public comment.

This proposed rule has been determined to be not significant for purposes of Executive Order 12866.

NMFS prepared an IRFA, as required by section 603 of the Regulatory Flexibility Act, for this proposed rule. The IRFA describes the economic impact that this proposed rule, if adopted, would have on small entities. A description of the action, why it is being considered, and the objectives of, and legal basis for this action are contained at the beginning of this section in the preamble and in the **SUMMARY** section of the preamble. A copy of the full analysis is available from the Council (*see* **ADDRESSES**). A summary of the IRFA follows.

The Magnuson-Stevens Act provides the statutory basis for the proposed rule. The proposed rule would reduce the red grouper commercial quota from 5.75 million lb (2.53 million kg) to 4.32 million lb (1.96 million kg), and thus the combined SWG commercial quota from 7.65 million lb (3.47 million kg) as specified in § 622.42(a)(1)(iii)(A) for 2011 and subsequent fishing years to 6.22 million lb (2.82 million kg) for 2011 and subsequent fishing years, and require vessels with valid commercial Gulf reef fish permits to mark their buoy gear with the official vessel number. This rule also proposes minor revisions to the codified text, including a revised definition of buoy gear, re-codification of the commercial and recreational quotas for greater amberjack, revision of the recreational accountability measure for greater amberjack, and removal of outdated language for the red snapper IFQ program. The purpose of this proposed rule is to help prevent overfishing of red grouper while achieving OY by reducing red grouper harvest consistent with the findings of the recent stock assessment for this species.

No duplicative, overlapping, or conflicting Federal rules have been identified.

This proposed rule is expected to directly affect commercial harvesting operations. The Small Business Administration (SBA) has established size criteria for all major industry sectors in the U.S. including fish harvesters. A business involved in fish harvesting is classified as a small business if it is independently owned and operated, is not dominant in its field of operation (including its affiliates), and has combined annual receipts not in excess of $4.0 million (NAICS code 114111, finfish fishing) for all its affiliated operations worldwide.

This proposed rule is expected to directly affect commercial fishing vessels whose owners possess commercial Gulf reef fish permits or red grouper fishing quota shares. As of August 10, 2010, 951 entities possessed a valid or renewable Gulf reef fish permit. These 951 entities are expected to be directly affected by the proposed action to require vessels to mark their buoy gear with their official vessel number.

As of October 1, 2009, 970 entities owned a valid commercial Gulf reef fish permit and thus were eligible for initial shares and allocation in the grouper and tilefish IFQ program. Of these 970 entities, 908 entities initially received shares and allocation of grouper or tilefish, and 815 entities specifically received red grouper shares and an initial allocation of the commercial sector's red grouper quota in 2010. These 815 entities are expected to be directly affected by the proposed action to reduce the red grouper commercial quota.

Of the 815 entities that initially received red grouper shares, 191 were not commercially fishing in 2008 or 2009 and thus had no commercial fishing revenue during these years. On average, these 191 entities received an initial allocation of 6,459 lb (2,936 kg) of red grouper in 2010. Eight of these 191 entities also received a bottom longline endorsement in 2010. These 8 entities received a much higher initial allocation of red grouper in 2010, with an average of approximately 44,000 lb (20,000 kg).

The other 624 entities that initially received red grouper shares and allocations in 2010 were active in commercial fisheries in 2008 or 2009. The maximum annual commercial fishing revenue in 2008 or 2009 by an individual vessel with a commercial Gulf reef fish permit or red grouper fishing quota shares was approximately $606,000 (2008 dollars). Based on this value, all commercial fishing vessels expected to be directly affected by this proposed rule are determined for the purpose of this analysis to be small business entities.

Of the 624 commercial fishing vessels with commercial landings in 2008 or 2009, 126 vessels did not have any red grouper landings in 2008 or 2009. Their average annual gross revenue in these 2 years was approximately $55,800 (2008 dollars). The vast majority of these vessels' commercial fishing revenue is from a combination of landings of snapper, mackerel, dolphin, and wahoo. However, as described in the regulatory amendment, in 2009, they did become relatively more dependent on landings of highly migratory species (HMS) species and relatively less dependent on landings of deep-water grouper species. On average, in 2010, these vessels received an initial allocation of 2,524 lb (1,147) of red grouper quota. Five of these vessels also received a bottom longline endorsement in 2010.

The remaining 498 commercially active fishing vessels did have landings of red grouper in 2008 or 2009. Their average annual gross revenue from commercial fishing was approximately $66,000 (2008 dollars) between the two years. On average, these vessels had 9,425 lb (4,284 kg) and 6,734 lb (3,061 kg) of red grouper landings in 2008 and 2009 respectively, or 8,053 lb (3,660 kg) between the 2 years. Red grouper landings accounted for approximately 35 percent of these vessels' annual average gross revenue, and thus they are relatively dependent on revenue from red grouper landings. These vessels' average initial red grouper allocation in 2010 was 8,404 lb (3,820 kg). Therefore, on average, their 2008 and 2009 red grouper landings are very near their 2010 red grouper allocation, though their red grouper landings differed considerably between 2008 and 2009.

Of these 498 vessels, 49 vessels also received a bottom longline endorsement in 2010. These particular vessels' average annual revenue was approximately $156,000 (2008 dollars) in 2008 and 2009. Revenue from red grouper landings decreased from approximately $104,000 to $65,000 in 2009. Nonetheless, these vessels remain highly dependent on revenue from red

grouper landings, which averaged approximately 36,000 lb (13,364 kg) in 2008 and 23,000 lb (10,455 kg) in 2009. Their average initial 2010 allocation of red grouper was approximately 42,000 lb (19,091 kg) and thus their recent year's harvest has been within that 2010 average allocation, particularly in 2009.

The proposed rule would not alter existing reporting or record keeping requirements but would alter certain compliance requirements. Specifically, vessels with valid commercial Gulf reef fish permits would be required to mark their buoy gear with their official vessel number. The most significant burden imposed by this requirement is the time needed to mark the gear. Under the proposed definition of buoy gear, the maximum number of buoys per vessel is expected to be 20. The time required to mark each buoy is estimated to be approximately 20 minutes. Thus, the annual time burden per vessel is approximately 6.67 hours. According to the most recent data from the Bureau of Labor Statistics (BLS), the average nominal wage for fishers and fishing related workers is $12.79, or $12.74 in 2008 dollars. This value is used as a monetary estimate of the opportunity cost of time on a per hour basis. Thus, the annual opportunity cost per vessel resulting from this requirement is estimated to be approximately $85. For the 951 vessels with valid or renewable commercial Gulf reef fish permits, the annual opportunity cost is estimated to be $80,812. Since opportunity costs impose no direct financial costs, this increase in opportunity costs is not expected to reduce profit for these vessels.

The 191 entities with red grouper shares that did not participate in commercial fishing in 2008 or 2009 have no commercial fishing revenue and did not earn profit from commercial fishing in those 2 years. Under the proposed action to decrease the red grouper commercial quota, allocation of red grouper in 2011 would be reduced, on average, by approximately 1,608 lb (731 kg). Using the 2008 average price of $2.85 per lb, this loss in allocation could potentially represent an annual loss of nearly $4,600 in gross revenue per entity. For the eight entities with red grouper shares that also possess longline endorsements, the average annual allocation of red grouper would be reduced by nearly 11,000 lb (5,000 kg). Thus, the potential loss in gross revenue, estimated to be nearly $31,400, could be much higher. However, in general, this potential loss in gross revenue could only reduce profit if these entities not only become active in commercial fishing, but specifically intend to harvest red grouper in 2011 and at a level above their reduced allocation. It is important to note that the commercial sector has not harvested the commercial red grouper quota since the 2006 fishing year. Alternatively, these potential losses in gross revenue could be due to these entities' inability to sell the allocations they are losing under the proposed action, though this possibility presumes that a demand for these allocations exists. Regardless, the significance of this potential loss in gross revenue to these 191 entities cannot be evaluated given the lack of information on potential gross revenue and profit from commercial fishing in general and specifically for red grouper.

Profit estimates are not currently available for the 126 entities with red grouper shares that participated in commercial fisheries other than red grouper. However, since these vessels did not have any red grouper landings, none of their gross revenue and thus none of their profit were the result of red grouper harvests. Under the proposed action to decrease the red grouper commercial quota, the average allocation of red grouper in 2011 would be reduced by approximately 629 lb (286 kg). Using the 2008 average price of $2.85 per pound, this loss in allocation could potentially represent an annual loss of nearly $1,800 in gross revenue per entity. However, this potential loss in gross revenue could only lead to a loss in profit if these entities intend to become active in the red grouper component of the Gulf reef fish fishery in 2011 and at a level above their reduced allocation. Thus, for example, assuming these vessels intend to harvest red grouper in 2011 at a level equivalent to their 2010 allocation, and this harvest was in addition to, rather than in place of, their recent commercial fishing activities, the reduction in allocation could lead to a maximum loss of approximately three percent in gross revenue which could in turn reduce profit. Alternatively, losses in gross revenue could be due to these entities' inability to sell the allocations being lost under the proposed action, though this possibility presumes that a demand for the allocations exists.

Profit estimates are not currently available for the 498 entities with red grouper shares that participated in the commercial red grouper sector of the Gulf reef fish fishery in 2008 or 2009. Under the proposed action to decrease the red grouper quota, these vessels' red grouper allocations would be reduced by approximately 2,092 lb (951 kg) on average. As these vessels have been harvesting at levels near their 2010 allocation in recent years on average, this reduction in red grouper allocation is likely to lead to a future reduction in red grouper landings and therefore gross revenue. Using the average 2008 price of $2.85 per pound, it is estimated that these vessels could lose nearly $6,000, or approximately 9 percent, in average annual gross revenue. A loss in gross revenue of this magnitude would likely lead to a reduction in profit.

However, for the 49 vessels with red grouper shares that were active in the red grouper component of the Gulf reef fish fishery and also received a bottom longline endorsement in 2010, their allocation of red grouper in 2011 would decrease by approximately 10,400 lb (4,727 kg) under the proposed action. For these particular vessels, the loss in red grouper landings could range from zero to the full amount of the decrease in allocation, though the latter is unlikely given new regulations restricting the use of longline gear. Even if these vessels intended to harvest red grouper in 2011 at levels comparable to 2008, prior to the implementation of regulations restricting the use of longline gear, they would only lose approximately 4,600 lb (2,091 kg) in red grouper landings rather than the full amount of their reduced allocation. This loss in landings is estimated to be valued at approximately $13,000 in gross revenue, or 8 percent of their average annual gross revenue. Such a loss in gross revenue would likely reduce their profit. However, if they intend to harvest at levels comparable to 2009, then their reduced allocation would still be above their intended landings. Therefore, the reduction in allocation would not lead to a reduction in landings from what they would have otherwise been and thus gross revenue and profit would also not be reduced.

Two alternatives, including the status quo, were considered for the action to reduce the red grouper commercial quota to 4.32 million lb (1.96 million kg). The first alternative, the status quo, would have maintained the red grouper commercial quota at the current level of 5.75 million lb (2.61 million kg). This alternative is not consistent with the goals and objectives of the Council's plan to manage red grouper to achieve the mandates of the Magnuson-Stevens Act. Specifically, this alternative would be inconsistent with current National Standard 1 guidance because the associated TAC of 7.57 million lb (3.43 million kg) would be above the ABC of 6.31 million lb (2.86 million kg) recommended by the Council's SSC.

The second alternative would have would set the red grouper commercial quota at 4.80 million lb (2.18 million kg). This amount is equal to 85 percent

of the yield at $F_{MSY}$, which the SSC considered sufficient to reduce the probability that overfishing might occur in 2011. However, this alternative is inconsistent with the method established by the Council in Amendment 30B where the annual catch target would be based on the yield associated with $F_{OY}$.

One alternative, the status quo, was considered for the action to require vessels with valid commercial Gulf reef fish permits to mark their buoy gear with the official vessel number. The Council and NMFS have determined that the current definition of buoy gear is ambiguous. This ambiguity has led to problems with monitoring and enforcement of buoy gear regulations and thus a clearer definition of this gear type is being proposed. By not requiring the marking of buoy gear, this alternative would not improve the monitoring and enforcement of buoy gear regulations since law enforcement personnel would not be able to determine which vessel deployed the gear if the gear is left unattended.

Notwithstanding any other provision of law, no person is required to respond to, nor shall a person be subject to a penalty for failure to comply with, a collection-of-information subject to the requirements of the Paperwork Reduction Act (PRA), unless that collection-of-information displays a currently valid Office of Management and Budget (OMB) control number.

This proposed rule contains a collection-of-information requirement subject to the PRA applicable to vessels in the Gulf reef fish fishery, namely, a requirement to mark buoy gear with the official vessel number (U.S. Coast Guard documentation number or State registration number).

This requirement has been submitted to OMB for approval. The public reporting burden for this collection-of-information is estimated to average 20 minutes per buoy. This estimate of the public reporting burden includes the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection-of-information. Public comment is sought regarding: Whether this proposed collection-of-information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; the accuracy of the burden estimate; 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, including through the use of automated collection techniques or other forms of information technology. Send comments regarding the burden estimate or any other aspect of the collection-of-information requirement, including suggestions for reducing the burden, to NMFS and to OMB (*see* **ADDRESSES**).

**List of Subjects in 50 CFR Part 622**

Fisheries, Fishing, Puerto Rico, Reporting and recordkeeping requirements, Virgin Islands.

Dated: October 12, 2010.

**John Oliver,**

*Deputy Assistant Administrator for Operations, National Marine Fisheries Service.*

For the reasons set out in the preamble, 50 CFR part 622 is proposed to be amended as follows:

## PART 622—FISHERIES OF THE CARIBBEAN, GULF, AND SOUTH ATLANTIC

1. The authority citation for part 622 continues to read as follows:

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

2. In § 622.2, the definition of "buoy gear" is revised to read as follows:

**§ 622.2 Definitions and acronyms.**

* * * * *

*Buoy gear* means fishing gear that fishes vertically in the water column that consists of a single drop line suspended from a float, from which no more than 10 hooks can be connected between the buoy and the terminal end, and the terminal end contains a weight that is no more than 10 lb (4.5 kg). The drop line can be rope (hemp, manila, cotton or other natural fibers; nylon, polypropylene, spectra or other synthetic material) or monofilament, but must not be cable or wire. The gear is free-floating and not connected to other gear or the vessel. The drop line must be no greater than 2 times the depth of the water being fished. All hooks must be attached to the drop line no more than 30 ft (9.1 m) from the weighted terminal end. These hooks may be attached directly to the drop line; attached as snoods (defined as an offshoot line that is directly spliced, tied or otherwise connected to the drop line), where each snood has a single terminal hook; or as gangions (defined as an offshoot line connected to the drop line with some type of detachable clip), where each gangion has a single terminal hook.

* * * * *

3. In § 622.6, paragraph (b)(3) is added to read as follows:

**§ 622.6 Vessel and gear identification.**

* * * * *

(b) * * *

(3) *Buoy gear.* In the Gulf EEZ, if buoy gear is used or possessed, each buoy must display the official number of the vessel.

4. In § 622.42, the first sentence of the introductory text is revised; paragraphs (a)(1)(i)(A) and (B) are removed; paragraphs (a)(1)(iii)(A) and (C) are revised; and paragraphs (a)(1)(v) and (a)(2)(ii) are added to read as follows:

**§ 622.42 Quotas.**

Quotas apply for the fishing year for each species or species group, unless accountability measures are implemented during the fishing year pursuant to § 622.49, due to a quota overage occurring the previous year, in which case a reduced quota will be specified through notification in the **Federal Register**. * * *

(a) * * *

(1) * * *

(iii) * * *

(A) *SWG combined*—6.22 million lb (2.82 million kg).

* * * * *

(C) *Red grouper*—4.32 million lb (1.96 million kg).

* * * * *

(v) Greater amberjack—503,000 lb (228,157 kg), round weight.

* * * * *

(2) * * *

(ii) *Recreational quota for greater amberjack.* The recreational quota for greater amberjack is 1,368,000 lb (620,514 kg), round weight.

* * * * *

5. In § 622.49, the second sentence of paragraph (a)(1)(ii) is revised to read as follows:

**§ 622.49 Accountability measures.**

(a) * * *

(1) * * *

(ii) * * * In addition, if despite such closure, recreational landings exceed the quota, the AA will file a notification with the Office of the Federal Register, at or near the beginning of the following fishing year, to reduce the quota for that following year by the amount of the overage in the prior fishing year, and to reduce the length of the recreational fishing season for the following fishing year by the amount necessary to recover the overage from the prior fishing year. * * *

* * * * *

[FR Doc. 2010–26197 Filed 10–15–10; 8:45 am]

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**DEPARTMENT OF COMMERCE**

**National Oceanic and Atmospheric Administration**

**50 CFR Part 622**

**[Docket No. 100806332–0491–01]**

**RIN 0648–BA02**

## Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Reef Fish Fishery of the Gulf of Mexico; Gag Grouper Management Measures

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

**ACTION:** Proposed temporary rule; request for comments.

**SUMMARY:** NMFS issues this proposed temporary rule that would implement interim measures to reduce overfishing of gag in the Gulf of Mexico (Gulf). This proposed rule would reduce the commercial quota for gag and, thus, the combined commercial quota for shallow-water grouper species (SWG), prohibit recreational harvest of gag, and suspend red grouper multi-use allocation in the Gulf grouper and tilefish individual fishing quota (IFQ) program, as requested by the Gulf of Mexico Fishery Management Council (Council). The intended effect of this proposed rule is to reduce overfishing of the gag resource in the Gulf.

**DATES:** Written comments must be received on or before November 2, 2010.

**ADDRESSES:** You may submit comments on the proposed rule identified by NOAA–NMFS–2010–0168 by any of the following methods:

- *Electronic submissions:* Submit electronic comments via the Federal e-Rulemaking Portal: *http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Mail:* Peter Hood, Southeast Regional Office, NMFS, 263 13th Avenue South, St. Petersburg, FL 33701.

*Instructions:* No comments will be posted for public viewing until after the comment period has closed. All comments received are a part of the public record and will generally be posted to *http://www.regulations.gov* without change. All Personal Identifying Information (for example, name, address, *etc.*) voluntarily submitted by the commenter may be publicly accessible. Do not submit Confidential Business Information or otherwise sensitive or protected information.

NMFS will accept anonymous comments (enter N/A in the required field if you wish to remain anonymous). You may submit attachments to electronic comments in Microsoft Word, Excel, WordPerfect, or Adobe PDF file formats only.

Comments received through means not specified in this rule will not be considered.

Copies of documents supporting this proposed rule, which include an environmental assessment and an initial regulatory flexibility analysis (IRFA), may be obtained from Peter Hood, Southeast Regional Office, NMFS, 263 13th Avenue South, St. Petersburg, FL 33701.

**FOR FURTHER INFORMATION CONTACT:** Peter Hood, telephone: 727–824–5305 or e-mail: *Peter.Hood@noaa.gov.*

**SUPPLEMENTARY INFORMATION:** The reef fish fishery of the Gulf of Mexico is managed under the FMP. The FMP was prepared by the Council and is implemented through regulations at 50 CFR part 622 under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act).

### Background

The Magnuson-Stevens Act requires NMFS and regional fishery management councils to prevent overfishing and achieve, on a continuing basis, the optimum yield (OY) from Federally managed fish stocks. These mandates are intended to ensure fishery resources are managed for the greatest overall benefit to the nation, particularly with respect to providing food production and recreational opportunities, and protecting marine ecosystems. To further this goal, the Magnuson-Stevens Act requires fishery managers to end overfishing of stocks while achieving, on a continuing basis, the OY from each fishery, and to minimize bycatch and bycatch mortality to the extent practicable.

In a letter dated August 11, 2009, NMFS informed the Council that gag are overfished and undergoing overfishing. Under section 304(e) of the Magnuson-Stevens Act, after a Council has been notified of a stock's overfishing status, a fishery management plan or plan amendment must be developed and implemented within two years of notification, to end overfishing and rebuild the stock. The Council is currently developing Amendment 32 to the FMP which includes measures to end overfishing of gag and establish a rebuilding plan for the gag stock. However, because Amendment 32, if approved, would not likely be implemented until late 2011 or the beginning of 2012, this temporary rule contains management measures intended to address overfishing of gag on an interim basis. NMFS proposes a reduced commercial quota for gag of 100,000 lb (45,359 kg), a reduced commercial SWG quota of 4.83 million lb (2.19 million kg), a suspension of red grouper multi-use shares in the Gulf grouper and tilefish IFQ program, and a prohibition on the recreational harvest of gag. These measures will remain in effect for 180 days, with the possibility of extending for another 186 days, unless amended by subsequent rulemaking.

*Status of Stock*

The Southeast Data, Assessment, and Review (SEDAR) update assessment for gag was conducted in April 2009, with the objective of updating the 2006 SEDAR 10 gag benchmark assessment. Data sources for the update assessment included both fishery-dependent and fishery-independent data through 2008. The Council's Scientific and Statistical Committee (SSC) recommended a model that allows the natural mortality rate from 2005, a year when there was an extensive red tide event along the West Florida Shelf, to adjust above the base natural mortality rate. This corresponds to an 18-percent mortality rate. The SSC recommended an acceptable biological catch (ABC) of 1.17 million lb (0.53 million kg) which is the 2011 yield estimated by the fishing mortality rate (F) needed to rebuild the stock in 10 years.

In the course of developing management alternatives for gag, potential inconsistencies in commercial and recreational estimates of discards were discovered. Preliminary estimates of commercial gag discards provided by NOAA's Southeast Fisheries Science Center (SEFSC) indicated commercial discards were two orders of magnitude greater when estimated using reef fish observer data compared with methods used in the SEDAR update assessment for the stock. Additionally, size and age distributions computed for recreational discards in the update assessment indicated most discards were close to the minimum size limit in more recent years. However, Mote Marine Laboratory tagging data and headboat and Florida Fish and Wildlife Conservation Commission observer data indicated a broader size range for discarded fish. The Council discussed these discrepancies at their August 2010 meeting and agreed that another review of the gag assessment would be conducted in the fall or winter of 2010 to address these discrepancies. Therefore, NMFS anticipates a subsequent rulemaking after the review

has been completed based on revised assessment information.

A red grouper update assessment was conducted at same time as the gag update assessment. Because of the difference in how recreational discard size distributions were estimated between the assessments, the discrepancies in discard information did not trigger the same concerns for red grouper. Therefore, the Council did not make a similar request for the red grouper assessment to be reviewed. However, the Council did recognize the effects discard estimation could have on the assessment and, therefore, requested the SEFSC to review observer discard information to determine the magnitude of these effects for red grouper.

*Grouper and Tilefish IFQ Program*

The commercial sector is currently managed under an IFQ program implemented in January 2010. Under this program, each qualifying fisherman was allocated IFQ shares based on historical participation in the grouper and tilefish component of the Gulf reef fish fishery. Each year, fishermen receive allocation based on the current quota and the amount of shares each holds. To allow for flexibility and to reduce bycatch, at the beginning of each fishing year, a percentage of each fisherman's gag and red grouper allocations are designated as multi-use allocations. The IFQ program designates 4 percent of red grouper allocation and 8 percent of gag allocation to multi-use allocation. Red grouper multi-use allocation is allocation that may be used to harvest red grouper after all of an IFQ account holder's (shareholder or allocation holder's) red grouper allocation has been used or transferred; and to harvest gag after both gag and gag multi-use allocation has been used or transferred. Gag multi-use allocation is allocation that may be used to harvest gag after all of an IFQ account holder's (shareholder or allocation holder's) gag allocation has been used or transferred; and to harvest red grouper after both red grouper and red grouper multi-use allocation has been used or transferred. However, using all of the current red grouper multi-use allocations to harvest gag, alone could result in gag commercial landings exceeding the quota. This action does not reduce the overall red grouper allocation but will prohibit the conversion of red grouper multi-use allocation that could lead to additional gag landings.

*Management Measures Contained in This Proposed Rule*

This interim rule would reduce the commercial quota for gag to 100,000 lb (45,359 kg). This quota would be released at the beginning of the 2011 fishing year so IFQ participants would have the opportunity to fish their allocation throughout the year.

The SSC had previously recommended a commercial gag quota of 390,000 lb (176,901 kg). However, because of the method by which dead discards were calculated in the gag update assessment, the review of the update assessment could result in a lower allowable harvest. This lower harvest would be implemented through Amendment 32 to the FMP. If NMFS were to prohibit commercial harvest completely through this interim rule, then any gag incidentally caught when fisherman target other reef fish would result in discards. Therefore, the Council requested, and NMFS proposes a quota of 100,000 lb (45,359 kg), which would allow a minimum level of incidentally caught gag to be retained and counted against the commercial quota.

Because of the proposed reduction in the gag commercial quota, the commercial quota for SWG is proposed to be reduced to 4.83 million lb (2.19 million kg). Within the SWG quota are separate quotas for gag and red grouper. The other SWG species included in this combined quota include black grouper, scamp, yellowfin grouper, rock hind, red hind, and yellowmouth grouper. Additionally, for the purposes of the IFQ program for Gulf groupers and tilefishes in § 622.20(b)(2)(v), speckled hind and warsaw grouper are considered SWG species under certain circumstances. After all of an IFQ account holder's deep-water grouper (DWG) allocation has been landed and sold, or transferred, or if an IFQ account holder has no DWG allocation, then other SWG allocation may be used to land and sell speckled hind and warsaw grouper. In this interim rule, the reduction of the SWG quota directly corresponds to the amount of the reduction in the commercial quota for gag.

This interim rule would also suspend red grouper multi-use allocation to ensure the gag commercial quota is not exceeded. Red grouper multi-use allocation will be addressed further in Amendment 32 to the FMP.

This interim rule would prohibit the recreational harvest of gag by setting the recreational bag limit for gag to zero. However, it is the intent of the Council to allow a 2011 recreational harvest of gag, likely in a limited gag fishing season, through management measures to be implemented through Amendment 32. Although gag landings may be reduced through more restrictive bag limits, proportional reductions in gag discards and associated discard mortality are not likely based on high levels of gag bycatch and bycatch mortality within other components of the Gulf reef fish fishery.

At its August 2010 Council meeting, the Council indicated a preference for a summer recreational fishing season for gag based on projections from the 2009 gag stock assessment, and expressed its intent to implement such a recreational season in Amendment 32.

The rationale for prohibiting gag recreational harvest is based on the high rate of gag regulatory discards. Most of the recreational effort occurs in the coastal and nearshore waters where juvenile gag typically reside. Although the average estimated recreational discard mortality rates are lower than the commercial discard mortality rates (32 percent for the recreational sector and 67 percent for the commercial sector), the total number of dead discards within the recreational sector may still be comparatively high given the high encounter rate in the recreational sector. Therefore, to meet the Council's intent to allow a recreational gag season later in 2011, it is important to reduce the number of recreational dead discards through this temporary rule to allow for the longest season length possible through Amendment 32.

For the commercial sector, the encounter rate of regulatory discards is lower than that for the recreational sector because commercial fishing effort primarily occurs in offshore waters where adult gag typically reside. However, with a higher discard rate, the likelihood of a gag surviving after capture in the commercial sector is much lower because of the effects of barotrauma that occur during commercial harvest of gag in deeper waters.

Therefore, the Council requested a minimal commercial gag quota to account for gag that are caught incidentally during the targeting of other reef fish species and allow those incidental gag to be counted against the commercial quota rather than be discarded dead.

*Future Action*

NMFS has determined that this proposed rule is necessary to reduce overfishing of gag in the Gulf of Mexico. NMFS will consider all public comments received on this proposed rule in determining whether to proceed with a final rule and, if so, whether any revisions would be appropriate in the final rule. If NMFS issues a final rule, it would be effective for not more than

180 days after publication, as authorized by section 305(c) of the Magnuson-Stevens Act. The final rule could be extended for an additional 186 days, provided that the public has had an opportunity to comment on the rule.

NMFS acknowledges the need to continue monitoring all sources of gag mortality to determine the appropriate level of future actions necessary to ensure progress consistent with the stock rebuilding plan over the long term.

**Classification**

Pursuant to section 304(b)(1)(A) of the Magnuson-Stevens Act, the NMFS Assistant Administrator has determined that this proposed rule is consistent with the regulatory amendment, other provisions of the Magnuson-Stevens Act, and other applicable law, subject to further consideration after public comment.

This proposed rule has been determined to be not significant for purposes of Executive Order 12866.

NMFS prepared an IRFA, as required by section 603 of the Regulatory Flexibility Act, for this proposed rule. The IRFA describes the economic impact that this proposed rule, if adopted, would have on small entities. A description of the action, why it is being considered, and the objectives of, and legal basis for this action are contained at the beginning of this section in the preamble and in the **SUMMARY** section of the preamble. A copy of the full analysis is available from the Council (*see* **ADDRESSES**). A summary of the IRFA follows.

The Magnuson-Stevens Act provides the statutory basis for the proposed rule. The proposed temporary rule would reduce the commercial quota for gag, reduce the combined commercial SWG quota, prohibit recreational harvest of gag, and suspend red grouper multi-use allocation in the Gulf grouper and tilefish IFQ program. The purpose of this proposed temporary rule is to reduce overfishing of the gag resource in the Gulf.

No duplicative, overlapping, or conflicting Federal rules have been identified.

This proposed temporary rule is expected to directly affect commercial harvesting and for-hire operations. The Small Business Administration (SBA) has established size criteria for all major industry sectors in the U.S. including fish harvesters. A business involved in fish harvesting is classified as a small business if it is independently owned and operated, is not dominant in its field of operation (including its affiliates), and has combined annual receipts not in excess of $4.0 million (NAICS code 114111, finfish fishing) for all its affiliated operations worldwide. For for-hire vessels, the other qualifiers apply and the receipts threshold is $7.0 million (NAICS code 713990, recreational industries).

This proposed temporary rule is expected to directly affect commercial fishing vessels whose owners possess gag fishing quota shares and for-hire fishing vessels that harvest gag. As of October 1, 2009, 970 entities owned a valid commercial Gulf reef fish permit and thus were eligible for initial shares and allocation in the grouper and tilefish IFQ program. Of these 970 entities, 908 entities initially received shares and allocation of grouper or tilefish, and 875 entities specifically received gag shares and an initial allocation of the commercial sector's gag quota in 2010. These 875 entities are expected to be directly affected by the proposed actions to reduce the commercial quota for gag and disallow the conversion of red grouper allocation to multi-use allocation.

Of the 875 entities that initially received gag shares, 215 were not commercially fishing in 2008 or 2009 and thus had no commercial fishing revenue during these years. On average, these 215 entities received an initial allocation of 874 lb (397 kg) of gag in 2010. Eight of these 215 entities also received a bottom longline endorsement in 2010. These 8 entities received a much higher initial allocation of gag in 2010, with an average of 3,139 lb (1,427 kg).

The other 660 entities that initially received gag shares and allocations in 2010 were active in commercial fisheries in 2008 or 2009. The maximum annual commercial fishing revenue in 2008 or 2009 by an individual vessel with commercial gag fishing quota shares was approximately $606,000 (2008 dollars).

The average charterboat is estimated to earn approximately $88,000 (2008 dollars) in annual revenue, while the average headboat is estimated to earn approximately $461,000 (2008 dollars). Based on these values, all commercial and for-hire fishing vessels expected to be directly affected by this proposed temporary rule are determined for the purpose of this analysis to be small business entities.

Of the 660 commercial fishing vessels with commercial landings in 2008 or 2009, 139 vessels did not have any gag landings in 2008 or 2009. Their average annual gross revenue in these 2 years was approximately $50,800 (2008 dollars). The vast majority of these vessels' commercial fishing revenue is from a combination of snapper, mackerel, dolphin, and wahoo landings. On average, in 2010, these vessels received an initial allocation of 540 lb (245 kg) of gag quota.

The remaining 521 commercially active fishing vessels did have landings of gag in 2008 or 2009. Their average annual gross revenue from commercial fishing was approximately $71,000 (2008 dollars) between the two years. On average, these vessels had 2,375 lb (1,080 kg) and 1,300 lb (591 kg) of gag landings in 2008 and 2009 respectively, or 1,835 lb (834 kg) between the 2 years. Gag landings accounted for approximately 8 percent of these vessels' annual average gross revenue, and thus they are somewhat though not significantly dependent on revenue from gag landings. These vessels' average initial gag allocation in 2010 was 2,121 lb (964 kg). Therefore, on average, their 2008 gag landings were very near their 2010 gag allocation, but their 2009 gag landings were considerably less than their 2010 allocation.

Of these 521 vessels, 52 vessels also received a bottom longline endorsement in 2010. These particular vessels' average annual revenue was approximately $156,000 (2008 dollars) in 2008 and 2009. Revenue from gag landings fell from approximately $15,900 to $8,400 in 2009 and thus they became relatively less dependent on gag landings. These vessels are highly dependent on revenue from red grouper landings, which accounted for 54 percent and 47 percent of their gross revenue in 2008 and 2009 respectively. Revenue from deep-water grouper (DWG) landings decreased only slightly, from approximately $36,000 in 2008 to $31,000 in 2009, and thus these vessels became relatively more dependent on revenue from DWG landings. Their average initial 2010 allocation of gag was approximately 5,507 lb (2,503 kg) while their average gag landings were 3,933 lb (1,788 kg) and 2,204 lb (1,002 kg) in 2008 and 2009 respectively. Thus, vessels that now have a bottom longline endorsement have been harvesting well within that allocation in recent years, particularly in 2009.

The for-hire fleet is comprised of charter vessels, which charge a fee on a vessel basis, and headboats, which charge a fee on an individual angler (head) basis. The harvest of gag in the EEZ by for-hire vessels requires a charter vessel/headboat permit for Gulf reef fish. On March 23, 2010, there were 1,376 valid or renewable for-hire Gulf reef fish permits. A valid permit is a non-expired permit. Expired reef fish for-hire permits may not be actively

fished, but are renewable for up to 1 year after expiration. Because of the extended renewal period, numerous permits may be expired but renewable at any given time of the year during the renewal period after the permit's expiration. The majority (823, or approximately 60 percent) of the 1,376 valid or renewable permits were registered with Florida addresses. The registration address for the Federal permit does not restrict operation to Federal waters off that State; however, vessels would be subject to any applicable State permitting requirements. Although the permit does not distinguish between headboats and charter vessels, it is estimated that 79 headboats operate in the Gulf. The majority of these vessels (43, or approximately 54 percent) operate from Florida ports. Given that nearly 99 percent of target effort for gag and 97 percent of the economic impacts from the recreational sector for gag in the Gulf reef fish fishery are in west Florida, it is assumed that the 823 for-hire vessels (780 charter vessels and 43 headboats) in Florida are expected to be directly affected by the proposed action to reduce the recreational bag limit for gag to zero.

The 215 entities with gag shares that did not participate in commercial fishing in 2008 or 2009 have no commercial fishing revenue and did not earn profit from commercial fishing in those 2 years. Under the proposed action to decrease the commercial quota for gag, their allocation of gag in 2011 would be reduced, on average, from 874 lb (397 kg) to 61 lb (28 kg), or by approximately 813 lb (370 kg). Using the 2008 average price of $3.52 per lb, this loss in allocation could potentially represent an annual loss of nearly $2,900 in gross revenue per entity. For the eight entities with gag shares that also possess longline endorsements, their average annual allocation of gag would be reduced from 3,139 lb (1,427 kg) to 220 lb (100 kg), or by 2,919 lb (1,327 kg). Thus, their potential loss in gross revenue, estimated to be nearly $10,280, could be much higher. However, in general, this potential loss in gross revenue could only reduce profit if these entities not only become active in commercial fishing, but specifically intend to harvest gag in 2011 and at a level above their reduced allocation. Alternatively, these potential losses in gross revenue could be due to these entities' inability to sell the allocations they are losing under the proposed action, though this possibility presumes that a demand for these allocations exists. Regardless, the significance of this potential loss in gross revenue to these 215 entities cannot be evaluated given the lack of information on potential gross revenue and profit from commercial fishing in general and specifically for gag.

Profit estimates are not currently available for the 139 entities with gag shares that participated in commercial fisheries other than gag. However, since these vessels did not have any gag landings, none of their gross revenue and thus none of their profit were the result of gag harvests. Under the proposed action to decrease the commercial quota for gag, their average allocation of gag in 2011 would be reduced from 540 lb (245 kg) to 38 lb (17 kg), or by approximately 502 lb (228 kg). Using the 2008 average price of $3.52 per pound, this loss in allocation could potentially represent an annual loss of nearly $1,800 in gross revenue per entity. However, this potential loss in gross revenue could only lead to a loss in profit if these entities intend to become active in the gag component of the Gulf reef fish fishery in 2011 and at a level above their reduced allocation. Thus, for example, assuming these vessels intend to harvest gag in 2011 at a level equivalent to their 2010 allocation, and this harvest was in addition to, rather than in place of, their recent commercial fishing activities, the reduction in allocation could lead to a maximum loss of approximately three percent in gross revenue which could in turn reduce profit. Alternatively, these losses in gross revenue could be due to these entities' inability to sell the allocations they are losing under the proposed action, though this possibility presumes that a demand for these allocations exists.

Profit estimates are not currently available for the 521 entities with gag shares that participated in the commercial gag sector of the Gulf reef fish fishery in 2008 or 2009. Under the proposed action to decrease the commercial gag quota, these vessels' gag allocations would be reduced from 2,121 lb (964 kg) to 148 lb (67 kg), or by approximately 1,973 lb (897 kg) on average. As these vessels have been harvesting at levels near their 2010 allocation in recent years on average, this reduction in gag allocation is likely to lead to a future reduction in gag landings and therefore gross revenue. Using the average 2008 price of $3.52 per pound, it is estimated that these vessels could lose nearly $6,950, or approximately 10 percent, in average annual gross revenue. A loss in gross revenue of this magnitude would likely lead to a reduction in profit.

However, for the 52 vessels with gag shares that were active in the gag component of the Gulf reef fish fishery and also received a bottom longline endorsement in 2010, their allocation of gag in 2011 would decrease from 5,707 lb (2,594 kg) to 400 lb (182 kg), or by approximately 5,307 lb (2,412 kg) under the proposed action. This loss in landings is estimated to be valued at approximately $18,700 in gross revenue, or 12 percent of their average annual gross revenue. Such a loss in gross revenue would likely reduce their profit.

Under the proposed action to suspend the conversion of red grouper allocation into multi-use allocation valid toward the harvest of red grouper or gag, minimal adverse economic effects are expected as a result of commercial fishing entities not being allowed to convert 4 percent of their red grouper allocation into multi-use allocation. Multi-use allocation that has been converted from red grouper allocation can only be used to possess, land, or sell gag after an entity's gag and gag multi-use allocation has been landed, sold, or transferred. Given the proposed reduction in the commercial gag quota, it is likely these entities will exhaust their gag and gag multi-use allocations relatively early in 2011. Revenue from gag landings is greater than revenue from an equivalent amount of red grouper landings since gag commands a relatively higher market price. Thus, total commercial fishing revenue and, therefore, profit per vessel could be slightly less than if the multi-use conversion were allowed to continue.

Net operating revenues (NOR) are assumed to be representative of profit for for-hire vessels. It is assumed that 823 for-hire vessels, 780 charter vessels and 43 headboats, participate in the recreational gag component of the Gulf reef fish fishery. Estimates of NOR from recreational fisheries other than gag and thus across all fisheries in which these charter vessels and headboats participate are not currently available. However, on average, NOR for charter vessels from trips targeting gag are estimated to be approximately $1.34 million per year while NOR for headboats from trips targeting gag are estimated to be $81,000 per year. Thus, NOR for all trips targeting gag is estimated to be approximately $1.35 million per year. The average annual NOR from trips targeting gag is estimated to be $1,716 per charter vessel and $1,881 per headboat.

When the length of the gag season is reduced by setting the recreational bag limit for gag at zero, some trips that formerly targeted gag will instead target

other species while other trips that formerly targeted gag will be cancelled. Assuming the NOR per trip is constant regardless of the species targeted, for-hire operators will only lose NOR from trips cancelled as a result of the shortened season length. Information regarding the number of trips cancelled as a result of the shortened season is not currently available. Thus, this analysis assumes that all of the current for-hire trips targeting gag will be cancelled. Because some of these trips would probably not be cancelled, this assumption is expected to overestimate the actual reduction in NOR associated with a shorter season. Thus, the following estimates of losses in NOR and profit for charter vessels and headboats should be considered maximum values.

Under the proposed action to set the gag recreational bag limit for gag at zero, the losses in NOR from trips targeting gag for charter vessels and headboats are estimated to be approximately $750,000 and $43,000, respectively, if the proposed temporary rule is not extended for up to 186 days as allowed under the Magnuson-Stevens Act for interim measures. Thus, the losses in NOR from trips targeting gag are estimated to be $962 and $1,000 per charter vessel and headboat, respectively. These NOR losses represent a loss in profit from trips targeting gag of approximately 56 percent and 53 percent per charter vessel and headboat, respectively. However, if the proposed temporary rule is extended, the losses in NOR for charter vessels and headboats are estimated to be approximately $1.34 million and $81,000, respectively. Thus, the losses in NOR are estimated to be $1,716 and $1,881 per charter vessel and headboat, respectively. These losses in NOR represent a loss in profit from trips targeting gag of 100 percent per charter vessel and headboat, respectively. The proposed action is not expected to affect profit for charter vessels and headboats from trips not targeting gag. Vessel dependence on fishing for individual species cannot be determined with available data. Although some vessels are likely more dependent on trips that target gag than other vessels, overall, about three percent of for-hire anglers are estimated to target gag. As a result, while the proposed action would be expected to substantially affect the NOR derived from gag trips, overall, gag trips do not comprise a substantial portion of total for-hire trips nor would they, by extension, be expected to account for a substantial portion of total for-hire NOR.

No additional economic effects would be expected to result from the revised SWG quota because the updated SWG quota simply reflects the proposed reduction in the commercial gag quota, the effects of which have already been discussed.

Three alternatives, including the status quo, were considered for the action to reduce the commercial quota for gag from 1.49 million lb (0.68 million kg) to 100,000 lb (45,359 kg) in 2011. The first alternative, the status quo, would have maintained the commercial quota for gag at 1.49 million lb (0.68 million kg) in 2011. This alternative is not consistent with the goals and objectives of the Council's plan to manage gag to achieve the mandates of the Magnuson-Stevens Act. Specifically, selection of this alternative would be inconsistent with current National Standard 1 guidance because this quota would be above the ABC recommended by the Council's SSC of 1.17 million lb (0.53 million kg) for 2011. In addition, this alternative would promote overfishing and slow recovery of the stock.

The second alternative would have set the commercial quota for gag at 390,000 lb (0.18 million kg), with one option to release the entire quota on January 1, 2011 and a second option to release 50 percent of the quota on January 1, 2001 and the remaining 50 percent on July 1, 2011. This quota is based on projected $F_{OY}$ yield streams, 1.01 million lb (0.46 million kg) for 2011, and is consistent with the methods used by the Council in Amendment 30B for setting the annual catch target. This harvest level corresponds with the Council's initial request for an interim rule at its June 2010 meeting. The commercial quota for gag under this alternative is less than what the quota would be if based on the SSC's ABC recommendation ($F_{Rebuild}$ yield stream) of 1.17 million lb (0.53 million kg). Based on the SSC's recommendation, selecting this alternative would have a less than 50 percent chance of overfishing by the commercial sector and would provide a greater than 50 percent chance of rebuilding the stock if this yield stream is adhered to in future actions. However, recent discrepancies with the estimation of dead discards could affect how the assessment projects the status of the stock. If these discrepancies show a more pessimistic condition of the stock when the assessment is rerun, then selecting this alternative could result in harvest levels inconsistent with rebuilding the stock within the time frames outlined in the Magnuson-Stevens Act. Should these discrepancies result in a more optimistic condition of the stock, then the commercial quota for gag could be increased in subsequent actions.

The third alternative is the most conservative and would set the commercial quota for gag equal to zero. Under this alternative, any addition to the quota would be initiated through Amendment 32 or some other rulemaking vehicle. Closure of the commercial sector to gag would benefit the stock by ending overfishing as well as halt gag fishing during the primary gag spawning season. However, this alternative would not allow gag allocation holders to land gag that might be caught incidentally when fishing for other species. Instead, these fish would have to be released. Because the commercial sector generally operates in relatively deep waters, a large proportion of these fish would likely die from barotrauma and handling. Release mortality has been estimated to be 67 percent on average for commercial discards. This high rate of discard mortality would contribute to overall mortality, thereby slowing recovery of the stock and thus is contrary to the Council's objectives.

Two alternatives, including the status quo, were considered for the action to suspend the ability of allocation holders to convert red grouper allocation into multi-use allocation valid toward the harvest of red grouper or gag. The first alternative, the status quo, would continue to allow 4 percent of the red grouper allocation to be converted into multi-use allocation. This alternative is expected to result in gag harvests that would exceed specified annual catch limits, promote overfishing, and therefore slow recovery of the stock, contrary to the Council's objectives. Further, this alternative is also expected to result in greater adverse economic effects stemming from the corrective measures that would be implemented to address the over-harvesting of gag.

The second alternative would allow a smaller percentage (1.6 percent) of red grouper allocation to be converted into multi-use allocation based on the buffer existing between the commercial annual catch limit (ACL) and quota for gag. This alternative is consistent with a gag commercial ACL of 1.76 million lb (0.8 million kg) and a 1.49 million lb (0.68 million kg) commercial quota for gag. Since the proposed commercial quota for gag is only 100,000 lb (45,359 kg), the percentage of red grouper allocation that could be converted to multi-use allocation is too high under this alternative as it is expected to result in gag harvests that would exceed specified ACLs, promote overfishing,

and therefore slow recovery of the stock, contrary to the Council's objectives.

Two alternatives, including the status quo, were considered for the action to set the recreational bag limit at zero. The first alternative, the status quo, would maintain the recreational catch target at 2.20 million lb (1 million kg) as defined in Amendment 30B and thus maintain the current recreational bag limit of 2 gag within the 4-fish aggregate grouper bag limit. Selection of this alternative would be inconsistent with current National Standard 1 guidance because this level of harvest would be above the ABC recommended by the Council's SSC of 1.17 million lb (0.53 million kg) for 2011. In addition, this alternative would promote overfishing and slow recovery of the stock.

The second alternative would set the gag bag limit to zero on the date when 620,000 lb (0.28 million kg) of gag is projected to be landed by the recreational sector in 2011. This harvest level is consistent with the fishing mortality rate associated with the OY used by the Council in Amendment 30B to set the recreational annual catch target. Under certain assumptions regarding the disposition of discards, this alternative is expected to result in a fishing season of 83 days. Given the closure of the shallow water grouper (SWG) recreational sector annually from February 1 to March 31, fishing would be allowed for the month of January and from April 1 to May 22. However, this fishing season is dependent on achieving the same percentage reduction in dead discards as obtained from the harvest. If these levels of reduction are not met, then harvesting this amount of fish could exceed the reductions needed for the stock to recover under the rebuilding plan being developed in Amendment 32 which, in turn, could require deeper cuts in future harvests than those projected by the current assessment update.

Although by regulation, the actions in this proposed temporary rule do not need to end overfishing, they do need to reduce overfishing. This alternative could limit the types of long-term measures developed by the Council in Amendment 32 that could be applied to the 2011 fishing year since the 620,000 lb (0.28 million kg) catch target would likely be achieved before rulemaking from Amendment 32 is implemented. Therefore, the harvest for the rest of the fishing year could be zero and any long-term measures developed in Amendment 32 would not apply until 2012.

Further, recent discrepancies with the estimation of dead discards could affect how the assessment projects the status of the stock. If these discrepancies show a more pessimistic condition of the stock when the assessment is rerun, then selecting this alternative could result in harvest levels inconsistent with rebuilding the stock within the time frames outlined in the Magnuson-Stevens Act. This is particularly important for the recreational sector which harvests a greater proportion of the gag total catch than the commercial sector. Conversely, should these discrepancies result in a more optimistic condition of the stock, the recreational catch target and bag limit could be increased in subsequent actions.

This proposed temporary rule does not establish any new reporting, record-keeping, or other compliance requirements.

**List of Subjects in 50 CFR Part 622**

Fisheries, Fishing, Puerto Rico, Reporting and recordkeeping requirements, Virgin Islands.

Dated: October 12, 2010.

**John Oliver,**

*Deputy Assistant Administrator for Operations, National Marine Fisheries Service.*

For the reasons set out in the preamble, 50 CFR part 622 is proposed to be amended as follows:

## PART 622—FISHERIES OF THE CARIBBEAN, GULF, AND SOUTH ATLANTIC

1. The authority citation for part 622 continues to read as follows:

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

**§ 622.20 [Amended]**

2. In § 622.20, paragraph (b)(2)(iv)(A) is suspended.

3. In § 622.34, paragraph (v) is added to read as follows:

**§ 622.34 Gulf EEZ seasonal and/or area closures.**

* * * * *

(v) *Closure of the recreational sector for gag.* The recreational sector for gag in the Gulf EEZ is closed. During the closure, all recreational harvest and possession of gag grouper in or from the Gulf EEZ is prohibited. Such fish caught in the Gulf EEZ must be released immediately with a minimum of harm.

4. In § 622.39, paragraph (b)(1)(ii) is suspended, and paragraph (b)(1)(viii) is added, to read as follows:

**§ 622.39 Bag and possession limits.**

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(b) * * *

(1) * * *

(viii) Groupers, combined, excluding goliath grouper, Nassau grouper, and gag—4 per person per day, but not to exceed 1 speckled hind or 1 warsaw grouper per vessel per day, or 2 red grouper per person per day. However, no grouper may be retained by the captain or crew of a vessel operating as a charter vessel or headboat. The bag limit for such captain and crew is zero.

* * * * *

5. In § 622.42, paragraphs (a)(1)(iii)(A)(*3*) and (a)(1)(iii)(B)(*3*) are suspended, and paragraphs (a)(1)(iii)(A)(*4*) and (a)(1)(iii)(B)(*4*) are added, to read as follows:

**§ 622.42 Quotas.**

(a) * * *

(1) * * *

(iii) * * *

(A) * * *

(*4*) For fishing year 2011 and subsequent fishing years—4.83 million lb (2.19 million kg).

(B) * * *

(*4*) For fishing year 2011 and subsequent fishing years—100,000 lb (45,359 kg).

* * * * *

[FR Doc. 2010–26198 Filed 10–15–10; 8:45 am]

**BILLING CODE 3510–22–P**

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

### 50 CFR Part 648

**[Docket No. 080513659–0476–01]**

**RIN 0648–AW75**

## Fisheries of the Northeastern United States; Atlantic Herring Fishery; Amendment 4

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

**ACTION:** Proposed rule; request for comments.

**SUMMARY:** NMFS proposes regulations to implement measures in Amendment 4 to the Atlantic Herring (Herring) Fishery Management Plan (FMP). Amendment 4 was developed by the New England Fishery Management Council (Council) to bring the FMP into compliance with new Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) requirements by: Revising definitions and the specifications-setting process, consistent with annual catch limit (ACL) requirements; and establishing fishery closure thresholds, a haddock incidental catch cap, and overage paybacks as

accountability measures (AMs). In addition, the amendment designates herring as a "stock in the fishery"; establishes an interim acceptable biological catch (ABC) control rule; and makes adjustments to the specification process by eliminating consideration of total foreign processing (JVPt), including joint venture processing (JVP) and internal waters processing (IWP), and reserve from the specification process, and eliminates the Council's consideration of total allowable level of foreign fishing (TALFF).

**DATES:** Public comments must be received no later than 5 p.m., eastern standard time, on December 2, 2010.

**ADDRESSES:** An environmental assessment (EA) was prepared for Amendment 4 that describes the proposed action and other considered alternatives and provides a thorough analysis of the impacts of the proposed measures and alternatives. Copies of Amendment 4, including the EA, the Regulatory Impact Review (RIR), and the Initial Regulatory Flexibility Analysis (IRFA), are available from: Paul J. Howard, Executive Director, New England Fishery Management Council, 50 Water Street, Mill 2, Newburyport, MA 01950, telephone (978) 465–0492. The EA/RIR/IRFA is also accessible via the Internet at *http://www.nero.nmfs.gov.*

You may submit comments, identified by 0648–AW75, by any one of the following methods:

(A) *Electronic Submissions:* Submit all electronic public comments via the Federal e-Rulemaking portal *http://www.regulations.gov;*

(B) *Fax:* (978) 281–9135, Attn: Carrie Nordeen;

(C) Mail to NMFS, Northeast Regional Office, 55 Great Republic Drive, Gloucester, MA 01930. Mark the outside of the envelope "Comments on Herring Amendment 4."

*Instructions:* No comments will be posted for public viewing until after the comment period has closed. All comments received are a part of the public record and will generally be posted to *http://www.regulations.gov* without change. All Personal Identifying Information (e.g., name, address) voluntarily submitted by the commenter may be publicly accessible. Do not submit Confidential Business Information or otherwise sensitive or protected information.

NMFS will accept anonymous comments (enter N/A in the required fields, if you wish to remain anonymous). You may submit attachments to electronic comments in Microsoft Word, Excel, WordPerfect, or Adobe PDF formats only.

**FOR FURTHER INFORMATION CONTACT:** Carrie Nordeen, Fishery Policy Analyst, 978–281–9272, fax 978–281–9135.

**SUPPLEMENTARY INFORMATION:**

## Background

The Magnuson-Stevens Act, which was re-authorized in January 2007, now requires the establishment of ACLs and AMs to end and/or prevent overfishing in all FMPs. A notice of intent (NOI) was published in the **Federal Register** (73 FR 26082, May 8, 2008) announcing the Council's intent to develop Amendment 4 and prepare an environmental impact statement (EIS) analyzing the impacts of the proposed management measures. As stated in the NOI, the purpose of Amendment 4 is to bring the Herring FMP into compliance with ACL and AM requirements. Because herring is not subject to overfishing, the Herring FMP is required to be in compliance with ACL and AM requirements by 2011. In addition, the NOI also identified the following issues to be addressed: Catch monitoring and reporting, interactions with river herring, access by midwater trawl vessels to groundfish closed areas, and interactions with the Atlantic mackerel fishery. In June 2009, the Council determined there was not sufficient time to develop and implement all of the measures contemplated in the NOI by 2011, so it decided to split Amendment 4 into two separate actions. The Council determined that Amendment 4 would continue to address ACL and AM requirements and other specification issues, but that all other issues (e.g., catch monitoring and reporting, interactions with river herring and Atlantic mackerel, access to groundfish closed areas) would be considered in Amendment 5 to the Herring FMP. A supplemental NOI, announcing this change and notifying the public that an EA, rather than an EIS, was being prepared to analyze the impacts of Amendment 4, was published in the **Federal Register** on December 28, 2009 (74 FR 68577).

The Council held three public meetings on Amendment 4 during January 2010. Following the public comment period that ended on January 12, 2010, the Council adopted Amendment 4 on January 26, 2010.

This action proposes management measures that were recommended by the Council as part of Amendment 4. If implemented, these management measures would:

- Revise current definitions and the specification-setting process to include ACLs and AMs;
- Designate herring as a "stock in the fishery;"
- Establish an interim ABC control rule;
- Eliminate JVPt, including JVP and IWP, and reserve from the specifications process; and
- Eliminate the Council's consideration of TALFF.

A Notice of Availability (NOA) for Amendment 4 was published on August 12, 2010 (75 FR 48920). The comment period on the NOA ends on October 12, 2010.

## Proposed Measures

The proposed measures are based on the description of the measures in Amendment 4; NMFS seeks comments on all proposed measures.

### *ACL Specification Process*

The Magnuson-Stevens Act requires each Regional Fishery Management Council to establish a mechanism for specifying ACLs that do not exceed fishing-level recommendations made by its Scientific and Statistical Committee (SSC) and prevent overfishing. While the current Herring FMP contains a specification-setting process and measures to prevent overfishing, several modifications to the specification process are necessary to bring the FMP into compliance with new Magnuson-Stevens Act requirements. These modifications include: The addition of new FMP definitions; changes to the existing FMP definition for optimum yield (OY); incorporation of SSC recommendations into the specification of ABC; and explicit consideration of scientific and management uncertainty when setting specifications.

Amendment 4 proposes that the herring specifications set an overfishing limit (OFL), which corresponds to a maximum sustainable yield (MSY). ABC would be recommended by the Council's SSC. During the setting of ABC, scientific uncertainty would be considered, and ABC may be reduced from the OFL to account for scientific uncertainty. Scientific uncertainty includes, but is not limited to, uncertainty related to stock size estimates, variability around estimates of recruitment, and consideration of ecosystem issues.

Amendment 4 also proposes to set a stock-wide ACL that would be equal to or less than ABC. During the setting of the stock-wide ACL, management uncertainty would be considered. The stock-wide ACL may reduced from the ABC to account for management uncertainty, which includes, but is not limited to, uncertainty related to expected catch of herring in the New Brunswick weir fishery and discard

estimates of herring caught in Federal and state waters.

The stock-wide ACL is specified to account for all herring catch. Estimates of discards are reported by harvesters, and provided by NMFS observers. The available information suggests that discards in the herring fishery are low, relative to the amount of landed herring. Therefore, the Council determined no specific deduction is required, between the ABC and stock-wide ACL, to account for management uncertainty related to discards at this time. If new information on discards becomes available, Amendment 4 proposes to provide the Council with flexibility to incorporate that information into the stock-wide ACL-setting process as appropriate.

The Herring FMP authorizes specifications for JVPt, JVP, IWP, reserve, and TALFF to be set for the herring fishery. Historically, JVPt (including JVP and IWP) was allocated to enable foreign processing operations to accept catch from U.S. vessels; TALFF was allocated to ensure fish were available to foreign processing vessels when U.S. vessels could not supply it. The U.S. herring fishery has experienced growth in both harvesting and processing capacity, accordingly neither JVPt or TALFF have been allocated since 2005. Because the U.S. herring industry is capable of harvesting and processing the entire available yield in the foreseeable future, and to maximize U.S. economic benefits, Amendment 4 proposes to eliminate the annual specifications of JVPt, JVP, and IWP from the Herring FMP. Additionally, while TALFF could still be awarded consistent with the Magnuson-Stevens Act, if the Secretary of Commerce determines there is inadequate domestic harvesting capacity and other requirements of the Magnuson-Stevens Act Section 201 are satisfied, Amendment 4 proposes that the Council would not consider TALFF during development of the specifications.

Historically, the reserve was specified to buffer against such things as uncertainty in stock size estimates, uncertainty in Canadian catch, excess U.S. capacity entering the herring fishery, and fluctuations in import/export demand. With the implementation of limited access in 2008 and Amendment 4's proposed consideration of sources of scientific and management uncertainty in the setting of OFL, ABC, and ACL, the Council concluded that specifying a reserve is no longer necessary. Therefore, Amendment 4 proposes to eliminate the specification of reserve from the Herring FMP.

With the implementation of Amendment 1 to the Herring FMP (72 FR 11252, March 12, 2007), the Council has the authority to set herring specifications for a period of 3 years. Amendment 4 proposes to maintain the current schedule of setting herring specifications for a period of 3 years.

The herring stock complex is considered to be a single stock, but it is comprised of inshore (Gulf of Maine (GOM)) and offshore (Georges Bank (GB)) stock components. These stock components segregate during spawning and mix during feeding and migration. Herring management areas were developed in recognition of these different stock components; each management area has a total allowable catch (TAC) to allow the fishing mortality of the stock components to be managed independently. Area 1 is located in the GOM and is divided into an inshore section (Area 1A) and an offshore section (Area 1B). Area 2 is located in the coastal waters between Massachusetts and North Carolina, and Area 3 is on GB. Because the inshore stock component has substantially less biomass than the offshore stock component, it is likely more vulnerable to overfishing. Amendment 4 proposes maintaining the function of the herring management area TACs, but re-defining each area TAC as an area sub-ACL. The Area 1A TAC is currently allocated to two seasonal periods. The first season extends from January 1 through May 31, and the second season extends from June 1 through December 31. Amendment 4 proposes to maintain these periods and allocate the Area 1A sub-ACL into two seasonal periods, January 1 through May 31, and June 1 through December 31.

The specification of OY is required by the Magnuson-Stevens Act and authorized in the current Herring FMP. OY is derived from MSY, as reduced by relevant economic, social, or ecological factors. Amendment 4 proposes that OY remain part of the specification-setting process, and that it would be equal to or less than ABC and used to address uncertainty related to economic, social, or ecological factors. For example, the Council may choose to allocate an OY that is reduced from ABC to address the role of herring as forage or the fishing mortality rate on the inshore stock component. If the Council allocates a reduced OY, it would be in addition to any consideration of scientific or management uncertainty and would be a specific reduction to address a specific issue.

*Stocks in a Fishery*

The Magnuson-Stevens Act requires that an FMP contain a description of the fish species in a fishery, and National Standard 1 guidelines task the Council with determining which specific target stocks and/or non-target stocks to include in the fishery. Target stocks are defined as stocks that fishers seek to catch for sale or personal use, and non-target stocks are fish caught incidentally during the pursuit of target stocks. In general, any stock managed through an FMP is considered to be in that fishery. While other species are caught incidentally when fishing for herring, herring is the target stock, and the only stock directly managed by the Herring FMP. For these reasons, Amendment 4 proposes that herring be the stock in the fishery. The Council retains the authority to designate additional stocks in the fishery in a future action. Bycatch in the herring fishery will continue to be addressed and minimized to the extent possible, consistent with other requirements of the Magnuson-Stevens Act.

*Interim ABC Control Rule*

The ABC control rule is the specified method of setting the ABC, giving full consideration to scientific uncertainty. The ABC control rule is based on scientific advice from a Council's SSC and, when possible, considers the probability of overfishing. The ABC control rule should consider the scientific uncertainty associated with stock assessment results, including time lags in updating assessments, the degree of retrospective revision of assessment results, and the uncertainty of stock projections.

During development of the 2010–2012 herring specifications, the SSC identified two sources of scientific uncertainty in the 2009 herring assessment: (1) The assessment model has a strong retrospective pattern that reduces estimates of stock size when updated with new (2001–2007) data; and (2) biomass projections suggest the herring stock can not rebuild to $B_{MSY}$ (biomass that would support MSY) using long-term projections at $F_{MSY}$ (fishing mortality rate for MSY). Given this magnitude of scientific uncertainty, the SSC determined that a herring ABC control rule cannot be derived until a new benchmark assessment is conducted to address these issues. In the meantime, the Council recommended that Amendment 4 contain an interim ABC control rule based on the SSC's 2010–2012 herring ABC recommendation. The interim control rule proposes that ABC be set

based on recent catch in the herring fishery, and that the Council determine the desired risk tolerance in setting the ABC. For example, recent catch could be the most recent catch data (single year) or an average of recent data (3-year or 5-year average). This interim ABC control rule will remain in effect until a new ABC control rule is developed following the next herring assessment.

*Accountability Measures*

The Magnuson-Stevens Act requires AMs to be developed in association with ACLs. AMs should minimize the frequency and magnitude of catch in excess of the ACLs (overages) and provide for subsequent harvest adjustments if ACLs are exceeded. Amendment 4 proposes designating two existing management measures as AMs, as well as establishing an additional AM that would require an overage deduction, if catch exceeds the stock-wide ACL or a sub-ACL. Amendment 4 also proposes that these AMs can be modified, as necessary, through a framework adjustment to the Herring FMP or through the herring fishery specifications process.

Current herring regulations at § 648.201(a) state that, if NMFS determines catch will reach 95 percent of the TAC allocated to a management area or seasonal period, then NMFS shall prohibit vessels from fishing for, possessing, catching, transferring, or landing more than 2,000 lb (907.2 kg) of herring per trip from that area or period. The remaining 5 percent of the TAC for that management area or period provides for the incidental catch of herring in other fisheries. In recognition that this measure functions as an AM, by slowing catch to prevent or minimize catch in excess of a management area or seasonal period TAC/sub-ACL, Amendment 4 proposes that this management area closure measure be designated as an AM.

Similarly, current Northeast multispecies regulations at § 648.86(a)(3)(ii) specify a haddock incidental catch cap to control haddock catch by herring vessels in the GOM/GB Herring Exemption Area. When the Regional Administrator has determined that the haddock incidental catch cap has been caught, all vessels issued a herring permit are prohibited from fishing for, possessing, or landing herring in excess of 2,000 lb (907.2 kg) per trip in the GOM/GB Herring Exemption Area. Additionally, the haddock possession limit for all vessels issued All Areas or Areas ⅔ Limited Access permits is reduced to 0 lb (0 kg) in all of the herring management areas. Amendment 16 to the Northeast Multispecies FMP (Amendment 16) designated haddock catch in the herring fishery as a sub-ACL for the Multispecies FMP (75 FR 18262, April 9, 2010). Consistent with Multispecies Amendment 16, Herring Amendment 4 proposes that the current haddock incidental catch cap be designated as an AM in the Herring FMP, with the clarification that the 0-lb (0-kg) haddock possession limit does not apply to herring vessels that also possess a Northeast multispecies permit and are operating on a declared groundfish trip.

As a way to account for ACL overages in the herring fishery, Amendment 4 proposes an AM that would provide for overage deductions. Once the total catch of herring for a fishing year is determined, using all available information, any ACL or sub-ACL overage would result in a reduction of the corresponding ACL/sub-ACL the following year. For example, if final accounting of the 2011 total herring catch in Area 1A, which is generally available in the spring of 2012, indicated that the Area 1A sub-ACL was exceeded by 5 mt, then, in 2013, the sub-ACL for Area 1A would be reduced by 5 mt to account for the overage that occurred during 2011. Additionally, if Amendment 4 is effective prior to final catch accounting for 2010, then any overage in 2010 would be deducted in 2012. All overage deductions would be announced by NMFS in the **Federal Register** prior to the start of the fishing year.

## Classification

Pursuant to section 304(b)(1)(A) of the Magnuson-Stevens Act, the NMFS Assistant Administrator has determined preliminarily that this proposed rule is consistent with Amendment 4 to the Herring FMP, other provisions of the Magnuson-Stevens Act, and other applicable law, subject to further consideration after public comment.

This proposed rule has been determined to be not significant for purposes of Executive Order 12866.

An IRFA was prepared, as required by section 603 of the Regulatory Flexibility Act (RFA). The IRFA, which includes this section of the preamble to this rule and analyses contained in Amendment 4 and its accompanying EA/RIR/IRFA, describes the economic impact this proposed rule, if adopted, would have on small entities. A description of the action, why it is being considered, and the legal basis for this action are contained at the beginning of this section in the preamble and in the **SUMMARY** section of the preamble.

*Description and Estimate of Number of Small Entities to Which the Rule Would Apply*

All participants in the herring fishery are small entities, as none grossed more than $4 million annually; therefore, there are no disproportionate economic impacts on small entities. The proposed measures in Amendment 4 will affect all participants in the herring fishery, as they revise current definitions and the specifications-setting process in the Herring FMP, but these measures are not anticipated to have direct economic impacts. In 2009, there were 41 vessels issued All Areas Limited Access Permits, 4 vessels issued Areas 2 and 3 Limited Access Permits, 54 vessels issued Limited Access Incidental Catch Permits, and 2,272 vessels issued Open Access Permits. Section 6.2 in Amendment 4 describes the vessels, key ports, and revenue information for the herring fishery in more detail.

*Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements*

This action does not contain any new collection-of-information, reporting, recordkeeping, or other compliance requirements. It does not duplicate, overlap, or conflict with any other Federal rules.

*Economic Impacts of the Proposed Action Compared to Significant Non-Selected Alternatives*

The proposed measures Amendment 4 are not anticipated to have direct economic effects on herring fishery participants. A detailed economic analysis of the proposed measures, as well as the non-selected alternatives, is in Section 7.2 of Amendment 4. The proposed measures are designed to bring the Herring FMP into compliance with new Magnuson-Stevens Act requirements by revising current definitions and the specification-setting process to include ACLs and AMs. In addition, the amendment designates herring as a "stock in the fishery;" establishes an interim ABC control rule; and makes adjustments to the specification process by eliminating JVPt, including JVP and IWP, and reserve from the specifications process, and eliminating the Council's consideration of TALFF. Alternative to the proposed measures is the status quo, which would retain all current definitions and the current specification process.

The current Herring FMP contains a specification-setting process and measures to prevent overfishing. The proposed action would re-define: The

specification-setting process to include OFL, ABC, and ACL; the allocating of OY; the management area TACs as sub-ACLs; and the management area closure measure and haddock incidental catch cap as AMs. Additionally, the proposed action includes an AM that would provide for an overage deduction if total catch exceeded an ACL. Because Amendment 4 proposes only minor adjustments to the existing specification-setting process and measures that prevent overfishing, the proposed action has no direct economic effects beyond those associated with the non-selected, status quo alternative. However, by revising the specifications-setting process to make the process, and the SSC's involvement in the process, more explicit and providing for overage deductions, the proposed action has the potential to better prevent overfishing, possibly creating a more sustainable fishery and better ensuring the longevity of the herring fishery as an economic resource, as compared to the non-selected, status quo alternative.

Designating herring as the stock in the fishery is administrative. While other species are caught incidentally when fishing for herring, herring is the only stock directly managed by the Herring FMP. Because there may be non-target stocks that warrant consideration in the future, the Council retains authority to designate additional stocks in the fishery in a future action. Designating herring as the stock in the fishery will not change how the current FMP operates; therefore, there are no economic differences between the proposed action and the non-selected, status quo alternative.

As described previously, the current Herring FMP contains a specifications-setting process and measures to prevent overfishing. Therefore, establishing an ABC control rule in Amendment 4 is similar to the non-selected, status quo, alternative. However, making the ABC-setting process, and the SSC's involvement in that process, explict has the potential to better prevent overfishing, possibly creating a more sustainable fishery and better ensuring the longevity of the herring fishery as an economic resource, as compared to the non-selected, status quo alternative.

Amendment 4 proposes to eliminate JVPt, including JVP and internal waters processing IWP, and reserve from the specifications process. Because the U.S. herring fishery has experienced growth in both harvesting and processing capacity, and has sufficient capacity to harvest the available yield, JVPt, including JVP and IWP, has been allocated at zero since 2005. Accordingly, there are no economic differences between the proposed action and the non-selected, status quo alternative. Historically, the reserve was specified to buffer against such things as uncertainty in stock size estimates, uncertainty in Canadian catch, excess U.S. capacity entering the herring fishery, and fluctuations in import/export demand. With Amendment 4's proposed consideration of OFL, ABC, and ACL to account for sources of scientific and management uncertainty, specifying a reserve is redundant; therefore, there are no economic differences between the proposed action and the non-selected, status quo alternative. Additionally, while TALFF could still be awarded, consistent with the Magnuson-Stevens Act, by the Secretary of Commerce, Amendment 4 proposes that the Council would not consider TALFF during development of the specifications. Like JVPt, TALFF has been specified at zero since 2005. Because there is no functional difference between not considering TALFF and setting TALFF at zero, there are no economic differences between the proposed action and the non-selected, status quo alternative.

**List of Subjects in 50 CFR Part 648**

Fisheries, Fishing, Recordkeeping and reporting requirements.

Dated: October 12, 2010.

**John Oliver,**

*Deputy Assistant Administrator for Operations, National Marine Fisheries Service.*

For the reasons set out in the preamble, 50 CFR part 648 is proposed to be amended as follows:

## PART 648—FISHERIES OF THE NORTHEASTERN UNITED STATES

1. The authority citation for part 648 continues to read as follows:

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

2. In § 648.200, paragraphs (a) introductory text, (b)(1), (b)(2), (b)(3), (b)(4), (e), and (f) introductory text are revised, and paragraphs (b)(5) and (g) are added to read as follows:

### § 648.200 Specifications.

(a) The Atlantic Herring Plan Development Team (PDT) shall meet at least every 3 years, but no later than July of the year before new specifications are implemented, with the Atlantic States Marine Fisheries Commission's (Commission) Atlantic Herring Plan Review Team (PRT) to develop and recommend the following specifications for a period of 3 years for consideration by the New England Fishery Management Council's Atlantic Herring Oversight Committee: Overfishing Limit (OFL), Acceptable Biological Catch (ABC), Annual Catch Limit (ACL), Optimum yield (OY), domestic annual harvest (DAH), domestic annual processing (DAP), U.S. at-sea processing (USAP), border transfer (BT), the sub-ACL for each management area, including seasonal periods as specified at § 648.201(d) and modifications to sub-ACLs as specified at § 648.201(f), and the amount to be set aside for the RSA (from 0 to 3 percent of the sub-ACL from any management area). Recommended specifications shall be presented to the New England Fishery Management Council (Council).

* * * * *

(b) * * *

(1) OFL must be equal to catch resulting from applying the maximum fishing mortality threshold to a current or projected estimate of stock size. When the stock is not overfished and overfishing is not occurring, this is usually the fishing rate supporting maximum sustainable yield ($F_{MSY}$). Catch that exceeds this amount would result in overfishing.

(2) ABC must be equal to or less than the OFL. The Council's Scientific and Statistical Committee (SSC) shall recommend ABC to the Council. Scientific uncertainty, including, but not limited to, uncertainty around stock size estimates, variability around estimates of recruitment, and consideration of ecosystem issues, shall be considered when setting ABC. If the stock is not overfished and overfishing is not occurring, then ABC may be based on $F_{MSY}$ or its proxy, recent catch, or any other factor the SSC determines appropriate. If the stock is overfished, then ABC may be based on the rebuilding fishing mortality rate for the stock ($F_{REB}$), or any other factor the SSC determines appropriate.

(3) ACL must be equal to or less than the ABC. Management uncertainty, which includes, but is not limited to, expected catch of herring in the New Brunswick weir fishery and the uncertainty around discard estimates of herring caught in Federal and state waters, shall be considered when setting the ACL. Catch in excess of the ACL shall trigger accountability measures (AMs), as described at § 648.201(a).

(4) OY may not exceed OFL (i.e., MSY) and must take into account the need to prevent overfishing while allowing the fishery to achieve OY on a continuing basis. OY is prescribed on the basis of MSY, as reduced by social, economic, and ecological factors. OY may equal DAH.

(5) DAH is comprised of DAP and BT.

* * * * *

(e) *In-season adjustments.* The specifications and sub-ACLs established pursuant to this section may be adjusted by NMFS to achieve conservation and management objectives, after consulting with the Council, during the fishing year in accordance with the Administrative Procedure Act (APA). Any adjustments must be consistent with the Atlantic Herring FMP objectives and other FMP provisions.

(f) *Management areas.* The specifications process establishes sub-ACLs and other management measures for the three management areas, which may have different management measures. Management Area 1 is subdivided into inshore and offshore sub-areas. The management areas are defined as follows:

* * * * *

(g) All aspects of AMs, as described at § 648.201(a), can be modified through the specifications process.

3. Section 648.201 is revised to read as follows:

**§ 648.201 AMs and harvest controls.**

(a) *AMs.* (1) *Management area closure.* If NMFS projects that catch will reach 95 percent of the annual sub-ACL allocated to a management area before the end of the fishing year, or 95 percent of the Area 1A sub-ACL allocated to the first seasonal period as set forth in paragraph (d) of this section, NMFS shall prohibit vessels, beginning the date the catch is projected to reach 95 percent of the sub-ACL, from fishing for, possessing, catching, transferring, or landing >2,000 lb (907.2 kg) of Atlantic herring per trip and/or >2,000 lb (907.2 kg) of Atlantic herring per day in such area, except as provided in paragraphs (b) and (c) of this section. These limits shall be enforced based on a calendar day, without regard to the length of the trip. NMFS shall implement these restrictions, in accordance with the APA, through notification in the **Federal Register**.

(2) *Haddock incidental catch cap.* If NMFS determines that the incidental catch allowance in § 648.85(d) has been caught, all vessels issued an Atlantic herring permit or fishing in the Federal portion of the Gulf of Maine/Georges Bank (GOM/GB) Herring Exemption Area, defined at § 648.85(a)(3)(ii)(A)(*1*), shall be prohibited from fishing for, possessing, or landing herring in excess of 2,000 lb (907.2 kg) per trip in or from the GOM/GB Herring Exemption Area, unless all herring possessed and landed by the vessel were caught outside the GOM/GB Herring Exemption Area and the vessel complies with the gear stowage provisions specified in § 648.23(b) while transiting the Exemption Area. Upon this determination, the haddock possession limit shall be reduced to 0 lb (0 kg) for all vessels that have an All Areas Limited Access Herring Permit and/or an Areas 2 and 3 Limited Access Herring Permit, regardless of where they were fishing, unless the vessel also possesses a Northeast Multispecies permit and is operating on a declared groundfish trip. NMFS shall implement the described fishing restrictions in accordance with the APA.

(3) *ACL overage deduction.* If NMFS determines that total catch exceeded any ACL or sub-ACL for a fishing year, then the amount of the overage shall be subtracted from that ACL or sub-ACL for the fishing year following total catch determination. NMFS shall make such determinations and implement any changes to ACLs or sub-ACLs, in accordance with the APA, through notification in the **Federal Register**, prior to the start of the fishing year during which the reduction would occur.

(b) A vessel may transit an area that is limited to the 2,000-lb (907.2-kg) limit specified in paragraph (a) of this section with >2,000 lb (907.2 kg) of herring on board, provided such herring were caught in an area or areas not subject to the 2,000-lb (907.2-kg) limit specified in paragraph (a) of this section, and that all fishing gear is stowed and not available for immediate use as required by § 648.23(b), and provided the vessel is issued a vessel permit appropriate to the amount of herring on board and the area where the herring was harvested.

(c) A vessel may land in an area that is limited to the 2,000-lb (907.2-kg) limit specified in paragraph (a) of this section with >2,000 lb (907.2 kg) of herring on board, provided such herring were caught in an area or areas not subject to the 2,000-lb (907.2-kg) limit specified in paragraph (a) of this section, and that all fishing gear is stowed and not available for immediate use as required by § 648.23(b), and provided the vessel is issued a vessel permit appropriate to the amount of herring on board and the area where the herring was harvested.

(d) The sub-ACL for Management Area 1A is divided into two seasonal periods. The first season extends from January 1 through May 31, and the second season extends from June 1 through December 31. Seasonal sub-ACLs for Area 1A, including the specification of the seasonal periods, shall be set through the annual specification process described in § 648.200.

(e) Up to 500 mt of the Area 1A sub-ACL shall be allocated for the fixed gear fisheries in Area 1A (weirs and stop seines) that occur west of 44°36.2 N. Lat. and 67°16.8 W. long (Cutler, Maine). This set-aside shall be available for harvest by fixed gear within the specified area until November 1 of each fishing year. Any portion of this allocation that has not been utilized by November 1 shall be restored to the sub-ACL allocation for Area 1A.

(f) If NMFS determines that the New Brunswick weir fishery landed less than 9,000 mt through October 15, NMFS will allocate an additional 3,000 mt to the Area 1A sub-ACL in November. NMFS will notify the Council of this adjustment and publish the adjustment in the **Federal Register**.

4. In § 648.204, paragraphs (a) introductory text, (a)(1), (a)(2), (a)(3), and (a)(4) are revised to read as follows:

**§ 648.204 Possession restrictions.**

(a) A vessel must be issued a valid limited access herring permit to fish for, possess, or land more than 6,600 lb (3 mt) of Atlantic herring from any herring management area in the EEZ, provided that the area has not been closed due to the attainment of 95 percent of the sub-ACL allocated to the area, as specified in § 648.201.

(1) A vessel issued an All Areas Limited Access Herring Permit may fish for, possess, or land Atlantic herring with no possession restriction from any of the herring management areas defined in § 648.200(f), provided that the area has not been closed due to the attainment of 95 percent of the sub-ACL allocated to the area, as specified in § 648.201.

(2) A vessel issued only an Areas 2 and 3 Limited Access Herring Permit may fish for, possess, or land Atlantic herring with no possession restriction only from Area 2 or Area 3 as defined in § 648.200(f), provided that the area has not been closed due to the attainment of 95 percent of the sub-ACL allocated to the area, as specified in § 648.201. Such a vessel may fish in Area 1 only if issued an open access herring permit or a Limited Access Incidental Catch Herring Permit, and only as authorized by the respective permit.

(3) A vessel issued a Limited Access Incidental Catch Herring Permit may fish for, possess, or land up to 55,000 lb (25 mt) of Atlantic herring in any calendar day, from any management area defined in § 648.200(f), provided that the area has not been closed due to the attainment of 95 percent of the sub-ACL allocated to the area.

(4) A vessel issued an open access herring permit may not fish for, possess, or land more than 6,600 lb (3 mt) of Atlantic herring from any herring management area per trip and/or per calendar day, provided that the area has not been closed due to the attainment of 95 percent of the sub-ACL allocated to the area, as specified in § 648.201.

* * * * *

5. In § 648.206, paragraphs (b)(8), (b)(25), (b)(28), and (b)(30) are revised, and paragraph (b)(31) is added to read as follows:

**§ 648.206 Framework provisions.**

* * * * *

(b) * * *

(8) Distribution of the ACL;

* * * * *

(25) In-season adjustments to ACLs;

* * * * *

(28) ACL set-aside amounts, provisions, adjustments;

* * * * *

(30) AMs; and

(31) Any other measure currently included in the FMP.

* * * * *

6. In § 648.207, paragraph (g) is revised to read as follows:

**§ 648.207 Herring Research Set-Aside (RSA).**

* * * * *

(g) If a proposal is approved, but a final award is not made by NMFS, or if NMFS determines that the allocated RSA cannot be utilized by a project, NMFS shall reallocate the unallocated or unused amount of the RSA to the respective sub-ACL by publication of a notice in the **Federal Register** in compliance with the Administrative Procedure Act, provided that the RSA can be available for harvest before the end of the fishing year for which the RSA is specified.

* * * * *

[FR Doc. 2010–26195 Filed 10–15–10; 8:45 am]

BILLING CODE 3510–22–P

# Notices

Federal Register
Vol. 75, No. 200
Monday, October 18, 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.

## ADMINISTRATIVE CONFERENCE OF THE UNITED STATES

### Notice of Public Meeting of the Committee on Administration

**AGENCY:** Administrative Conference of the United States.

**ACTION:** Notice of meeting.

**SUMMARY:** Notice is hereby given that the Administrative Conference of the United States will host a public meeting of the Committee on Administration of the Assembly of the Conference on Wednesday, November 3, 2010 from 1 p.m. to 4 p.m. to consider a report examining the application of ethics rules to employees of government contractors. To facilitate public participation, the Administrative Conference is inviting public comment on the report to be considered at the meeting, to be submitted in writing no later than October 29, 2010.

**DATES:** Meeting to be held November 3, 2010. Comments must be received by October 29, 2010.

**ADDRESSES:** Meeting to be held at Administrative Conference of the United States, Suite 706 South, 1120 20th Street, NW., Washington, DC 20036. Submit comments to either of the following:

(1) *E-mail: Comments@acus.gov,* with "Ethics Rules" in the subject line; or

(2) *Mail:* Ethics Rules Comments, Administrative Conference of the United States, Suite 706 South, 1120 20th Street, NW., Washington, DC 20036.

**FOR FURTHER INFORMATION CONTACT:** Reeve T. Bull, Designated Federal Officer, Administrative Conference of the United States, Suite 706 South, 1120 20th Street, NW., Washington, DC 20036; Telephone 202–480–2080.

**SUPPLEMENTARY INFORMATION:** The Administrative Conference of the United States (ACUS) is charged with developing recommendations for the improvement of Federal administrative procedures (5 U.S.C. 591).

The Conference has engaged a Professor of Law at Washington University in St. Louis School of Law, Kathleen Clark, to research and prepare a report regarding whether ethics regulations analogous to those applicable to government employees should apply to government contractors and, if so, how such regulations should be imposed (the "Ethics Report"). A copy of the Ethics Report will be available at *http://www.acus.gov.* The Committee on Administration has been tasked with reviewing this report and developing recommendations for consideration by the Assembly of the Conference.

From 1 p.m. to 4 p.m. on November 3, 2010, the Committee on Administration will hold a meeting to consider the Ethics Report and formulate appropriate recommendations in response thereto. This meeting will be open to the public and may end prior to 4 p.m. if business is concluded prior to that time. Members of the public are invited to attend the meeting in person, subject to space limitations, and the Conference will also provide remote public access to the meeting.

Anyone who wishes to attend the meeting in person is asked to RSVP to *Comments@acus.gov.* Remote access information will be posted on the Conference's Web site, *http://www.acus.gov,* by no later than October 29, 2010, and will also be available by the same date by calling the phone number listed above. Members of the public who attend the Committee's meeting may be permitted to speak only at the discretion of the Committee Chair, with unanimous approval of the Committee. The Conference welcomes the attendance of the public and will make every effort to accommodate persons with physical disabilities or special needs. If you need special accommodations due to a disability, please inform the Designated Federal Officer no later than 7 days in advance of the meeting using the contact information provided above.

Members of the public may submit written comments on the report to either of the addresses listed above no later than October 29, 2010. All comments will be delivered to the Designated Federal Officer listed on this notice. The Designated Federal Officer will post all comments that relate to the report on the Conference's Web site after the close of the comments period.

Dated: October 13, 2010.

**Paul R. Verkuil,**

*Chairman.*

[FR Doc. 2010–26162 Filed 10–15–10; 8:45 am]

**BILLING CODE 6110–01–P**

## DEPARTMENT OF AGRICULTURE

### Economic Research Service

### Notice of Intent To Request New Information Collection

**AGENCY:** Economic Research Service, USDA.

**ACTION:** Notice and request for comments.

**SUMMARY:** In accordance with the Paperwork Reduction Act of 1995, this notice invites the general public and other public agencies to send comments regarding any aspect of this proposed information collection. This is a new collection to develop a Sampling Frame of Farm to School efforts.

**DATES:** Written comments on this notice must be received on or before December 17, 2010 to be assured of consideration.

**ADDRESSES:** Address all comments concerning this notice to Katherine Ralston, Food Economics Division, Economic Research Service, U.S. Department of Agriculture, 1800 M St., NW., Room N2163, Washington, DC 20036–5801. Comments may also be submitted via fax to the attention of Katherine Ralston at 202–694–5663 or via e-mail to *kralston@ers.usda.gov.* Comments will also be accepted through the Federal eRulemaking Portal. Go to *http://www.regulations.gov,* and follow the online instructions for submitting comments electronically.

All written comments will be open for public inspection at the office of the Economic Research Service during regular business hours (8:30 a.m. to 5 p.m., Monday through Friday) at 1800 M St., NW., Room N2163, Washington, DC 20036–5801.

All responses to this notice will be summarized and included in the request for Office of Management and Budget approval. All comments will be a matter of public record. Comments are invited on: (a) Whether the proposed collection of information is necessary for the

proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

**FOR FURTHER INFORMATION CONTACT:** For further information contact Katherine Ralston at the address in the preamble. Tel. 202–694–5463.

**SUPPLEMENTARY INFORMATION:**

*Title:* Census Survey of Farm to School Initiatives.

*OMB Number:* 0536–XXXX.

*Expiration Date:* Three years from the date of approval.

*Type of Request:* New collection.

**Abstract**

The Food, Conservation, and Energy Act of 2008, also known as the 2008 Farm Bill, amended the National School Lunch Act to allow institutions receiving funds through that act and the Child Nutrition Act of 1966 to apply a geographic preference to the procurement of unprocessed locally grown or locally raised agricultural products. This amendment provides local institutions more flexibility and increases opportunities for USDA to promote local foods in the school meal programs. While this part of the 2008 Farm Bill has yet to be funded, USDA has taken action to explore the issue through the Farm to School Initiative. USDA recognizes the growing interest among school districts and communities to incorporate regionally and locally produced farm foods into school nutrition programs supported by USDA. USDA school nutrition programs include the National School Lunch Program (NSLP), the School Breakfast Program (SBP), the Special Milk Program (SMP), which funds milk for students without access to other meal programs, and the Fresh Fruit and Vegetable Program (FFVP), which funds the purchase of fresh fruits and vegetables provided as free snacks to students in selected schools with the States' highest percentages of students certified for free and reduced price meals.

USDA is supporting Farm to School efforts through a number of initiatives, and continues to look for ways to help facilitate this important connection. In late 2009, USDA established "*Know Your Farmer, Know Your Food*," an initiative which focuses on the importance of understanding where our food comes from and how it gets to our plates. In response to the growing demand for Farm to School activities, the "USDA Farm to School Team" was developed out of the "Know Your Farmer, Know Your Food" Initiative.

Successful Farm to School efforts have the potential to benefit multiple stakeholders, including the schools, the farmers, and the children. Through these efforts, schools are able to bring fresh, locally grown foods to school meal programs, while local farmers are able to attract new business by selling fruits and vegetables to schools in their area. In addition, activities surrounding Farm to School often help children learn essential lessons about how farm fresh produce is grown and its role in a nutritious, healthful diet. Introducing local farm products in both the classroom and the cafeteria allows children to experience the value and appeal of a diet rich in fresh fruits and vegetables. Many Farm to School activities include bringing students to farms and farmers into classrooms, as well as creating school gardens that both teach students about agriculture and support the meal program.

While anecdotal evidence and case studies suggest that Farm to School activities improve students' nutrition and local economies, more representative objective research to measure these benefits and identify factors associated with success and cost-effectiveness are hampered by the lack of data. Surveys of school food authorities (SFAs) have included questions to indicate whether the SFA purchases locally, but the surveys have not included questions about the nature of the activities, and the samples of SFAs have not been large enough to yield a sufficient sample of SFAs implementing Farm to School activities for statistical analysis.

The information to be collected by the Farm to School Census Survey is necessary to develop a stratified sampling frame for more detailed future surveys. Currently, the National Farm to School Network, through the Urban and Environmental Policy Institute at Occidental College, maintains the only national database of Farm to School initiatives. This database is created by information entered by programs directly on to the National Farm to School Network's Web site, and as a result is not a complete representation of Farm to School activity in the country. The Census Survey will contact 50 State agriculture departments, 50 State education departments, 50 State Farm to School coordinators, and 50 State cooperative extension offices to develop a list of school districts involved in Farm to School activities and their contact information. School districts identified on this list will be contacted to the following collect information on key characteristics:

- Contact information, including county, school district name and zip code.
- School nutrition programs available in the SFA or school (NSLP, SBP, SMP, and/or FFVP).
- When the efforts started.
- Types of activities:
  - Local foods week or harvest of the month.
  - Use of geographic preference in procurement.
  - Direct local procurement for meals and/or snacks, including snacks supported by the Fresh Fruit and Vegetable Program.
  - Use of commodity dollars for locally sourced items through State Farm to School program.
  - Requests for local sourcing through Department of Defense produce procurement (DoD Fresh).
  - School gardens for snacks, meals or other use.
  - Curriculum and classroom education out of classroom activities, farm tours.
  - Agriscience programs.
- Number of schools participating.
- Number of children participating, if not all.
- Number of farmers/distributors supplying local product.
- Most common foods purchased locally.
- Requirement of Good Agriculture Practices (GAP) certification.
- Level of external grant funding received specific for Farm to School related efforts.

Information on other potential stratification characteristics will be obtained by matching data from the Common Core Data to the database of SFAs implementing Farm to School activities and other geo-coded data.

Data collection instruments will be kept as simple and respondent-friendly as possible. Responses are voluntary and will be made publicly available only with permission of the respondent.

*Affected Public:* Respondent groups include: (1) State agriculture department officials, (2) State education department officials, (3) State cooperative extension officials, (4) State Farm to School coordinators, and (5) local Farm to School coordinators.

*Estimated Number of Respondents:* The estimated number of respondents

for the sampling frame includes: (1) 50 State agriculture department representatives, (2) 50 State department of education representatives, (3) 50 State cooperative extension representatives, (4) up to 50 State Farm to School coordinators, and (5) up to 1,000 local Farm to School coordinators. Ninety percent of each group is expected to respond. Estimates of the percentages of respondents who will agree to complete the interview are based on previous experience with developing the currently available database of farm to school initiatives.

*Estimated Number of Responses per Respondent:* 20 for State-level respondents, 10 for local-level respondents. Estimated responses per respondent are as follows: Up to 200 State officials will be asked to identify local school districts which participate in Farm to School activities and provide contact information. An average of 20 school districts per respondent will be identified. An estimated 1,000 school districts will be contacted to obtain information on 10 key characteristics. (**Note:** identified school districts will overlap, so that redundant phone information serves as validation).

*Estimated Total Responses:* 14,000.

*Estimated Time per Response:* We estimate the time per response as 0.05 hours (3 minutes) for State-level respondents to provide contact information for each school district within the state, and 0.25 hours (15 minutes) per question for local-level respondents to provide information on each key characteristic, on average. These estimates of respondent burden are based on experience with previous data collection efforts for Farm to School initiatives.

*Estimated Total Burden on Respondents:* 2,700 hours. See the table below for the estimated total annual burden for each instrument.

REPORTING BURDEN

| Description | Estimated number of respondents | Responses per respondent | Total annual responses | Estimated average number of hours per response | Estimated total annual hours of response burden |
|---|---|---|---|---|---|
| Request for programs in the state | 200 | 20 | 4,000 | .05 | 200 |
| Key Characteristics | 1,000 | 10 | 10,000 | .25 | 2,500 |
| Total responding burden | 1,200 | | 14,000 | | 2,700 |

Dated: September 15, 2010.

**Katherine R. Smith,**

*Administrator, Economic Research Service.*

[FR Doc. 2010–26083 Filed 10–15–10; 8:45 am]

**BILLING CODE 3410–18–P**

## DEPARTMENT OF AGRICULTURE

### Forest Service

### Information Collection; Commercial Use of the Woodsy Owl Symbol

**AGENCY:** Forest Service, USDA.

**ACTION:** Notice; request for comment.

**SUMMARY:** In accordance with the Paperwork Reduction Act of 1995, the Forest Service is seeking comments from all interested individuals and organizations on the currently approved information collection, Commercial Use of the Woodsy Owl Symbol.

**DATES:** Comments must be received in writing on or before December 17, 2010 to be assured of consideration. Comments received after that date will be considered to the extent practicable.

**ADDRESSES:** Comments concerning this notice should be addressed to the Forest Service, U.S. Department of Agriculture, Office of the Conservation Education Program, Program Manager National Symbols, 1400 Independence Avenue, SW., Mail Stop 1147, Washington, DC 20250–1147.

Comments also may be submitted via e-mail to *ivelez@fs.fed.us.* The public may inspect comments received at the Office of Conservation Education Program, Room 1C, U.S. Forest Service, Yates Building, 201 14th Street, SW., Washington, DC. Visitors are urged to call ahead to 202–205–5681 to facilitate entrance into the building.

**FOR FURTHER INFORMATION CONTACT:** Iris Velez, Program Manager National Symbols, Office of Conservation Education Program, at 202–205–5681. Individuals who use telecommunication devices for the deaf (TDD) may call the Federal Relay Service (FRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern Standard Time, Monday through Friday.

**SUPPLEMENTARY INFORMATION:**

*Title:* Commercial Use of the Woodsy Owl Symbol.

*OMB Number:* 0596–0087.

*Expiration Date of Approval:* 04/30/2011.

*Type of Request:* Extension of a currently approved collection.

*Abstract:* The Woodsy Owl-Smokey Bear Act of 1974 established the Woodsy Owl symbol and slogan, authorizes the Secretary of Agriculture to manage the use of the slogan and symbol, authorizes the licensing of the symbol for commercial use, and provides for continued protection of the symbol. Part 272 of Title 36 of the Code of Federal Regulations authorizes the Chief of the Forest Service to approve commercial use of the Woodsy Owl symbol and to collect royalty fees. Commercial use includes replicating Woodsy Owl symbol or logo on items, such as tee shirts, mugs, pins, figurines, ornaments, stickers, and toys and using the image and or slogan of the icon in motion pictures, documentaries, television magazine stories, and books, magazines, and other for-profit paper products.

Woodsy Owl is America's symbol for the conservation of the environment. The public service campaign slogans associated with Woodsy Owl are "Give a Hoot, Don't Pollute" and "Lend a Hand, Care for the Land." The mission statement of the Woodsy Owl's conservation campaign is to help young children discover the natural world and join in life-long actions to care for that world.

The USDA Forest Service National Symbols Program Manager will use the collected information to determine if the applicant will receive a license or renewal of an existing license and the associated royalty fees. Information collected includes, but is not limited to, tenure of business or non-profit organization, current or planned products, physical location, projected sales volume, and marketing plans. Licensees submit quarterly reports, which include:

1. A list of each item sold with the Woodsy Owl symbol.

2. Projected sales of each item.

3. The sales price of each item.

4. Total sales subject to Forest Service royalty fee.

5. Royalty fee due based on sales quantity and price.

6. Description and itemization of deductions (such as fees waived or previously paid as part of advance royalty payment).

7. The new total royalty fee the business or organization must pay after deductions.

8. The running total amount of royalties accrued in that fiscal year.

9. The typed name and signature of the business or organizational employee certifying the truth of the report.

Data gathered in this information collection are not available from other sources.

*Estimate of Annual Burden:* 30 minutes per responses.

*Type of Respondents:* Individuals, for-profit businesses and non-profit organizations.

*Estimated Annual Number of Respondents:* 15.

*Estimated Annual Number of Responses per Respondent:* 5.

*Estimated Total Annual Burden on Respondents:* 37.5 hours.

*Comment Is Invited:* Comment is invited on: (1) Whether this collection of information is necessary for the stated purposes and the proper performance of the functions of the Agency, including whether the information will have practical or scientific utility; (2) the accuracy of the Agency's estimate of the burden of the collection of information, including the validity of the methodology and assumptions used; (3) 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 the use of automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

All comments received in response to this notice, including names and addresses when provided, will be a matter of public record. Comments will be summarized and included in the submission request toward Office of Management and Budget approval.

Dated: October 12, 2010.

**Robin L. Thompson,**

*Associate Deputy Chief, State and Private Forestry.*

[FR Doc. 2010–26165 Filed 10–15–10; 8:45 am]

**BILLING CODE 3410–11–P**

## DEPARTMENT OF COMMERCE

### Bureau of Industry and Security

### Action Affecting Export Privileges; Joseph Piquet and Related Person Alphatronx, Inc.

In the Matter of: Joseph Piquet, 76067–004, currently incarcerated at FCI Miami, Federal Correctional Institution, P.O. Box 779800, Miami, FL 33177, and 1258 SW. Maplewood Dr., Port St. Lucie, FL 34986, Respondent, Alphatronx, Inc., 1258 SW. Maplewood Drive, Port St. Lucie, FL 34986, Related Person.

### Order Making Order Denying Export Privileges of Joseph Piquet Applicable to Related Person Alphatronx, Inc.

Pursuant to Sections 766.25(h) and 766.23 of the Export Administration Regulations [1] ("EAR"), the Bureau of Industry and Security ("BIS"), U.S. Department of Commerce, through its Office of Export Enforcement ("OEE"), has requested that I make the Denial Order that was imposed against the individual Joseph Piquet ("Piquet") on May 28, 2010 (75 FR 32742, June 9, 2010) applicable to Alphatronx, Inc. ("Alphatronx"), 1258 SW. Maplewood Dr., Port St. Lucie, FL, 34986, (hereinafter, the "Related Person"), as a person related to Piquet.

Section 766.23 of the EAR provides that "[i]n order to prevent evasion, certain types of orders under this part may be made applicable not only to the respondent, but also to other persons then or thereafter related to the respondent by ownership, control, position of responsibility, affiliation, or other connection in the conduct of trade or business. Orders that may be made applicable to related persons include those that deny or affect export privileges * * *." 15 CFR 766.23(a).

On May 28, 2010, I issued an Order pursuant to Section 11(h) of the Export Administration Act of 1979, as amended (currently codified at 50 U.S.C. app. sections 2401–2420 (2000)) ("Act") [2] and Section 766.25 of the EAR denying the export privileges under the Regulations of Piquet for 10 years. The Order was based on Piquet's conviction of violating the International Emergency Economic Powers Act (50 U.S.C. 1701 *et seq.* (2000)) ("IEEPA") and Section 38 of the Arms Export Control Act (22 U.S.C. 2778 (2000)). Piquet was convicted based on his role in a conspiracy to purchase high-tech military and dual-use electronic components from a domestic corporation and to then ship the items from the United States to Hong Kong and the People's Republic of China without first obtaining the required export licenses. Among the commodities involved in this conspiracy were high power amplifiers designed for use by the U.S. military in early warning radar and missile target acquisition systems, and low noise amplifiers that have both commercial and military use.

BIS has presented evidence that indicates that Alphatronx is related to Piquet by ownership, control, position of responsibility, affiliation, or other connection in the conduct of trade or business, and that it is necessary to add this entity to the Piquet Denial Order in order to avoid evasion of that Order. The basis for naming Alphatronx to the Piquet Denial Order is that Piquet is the owner and President of Alphatronx and that Piquet made the decisions to utilize his company Alphatronx to carry out the conspiracy and subsequent violations of the AECA and IEEPA.

As provided in Section 766.23 of the EAR, I gave notice to Alphatronx that its export privileges under the EAR could be denied for up to 10 years due to its relationship with Piquet and that BIS believes naming Alphatronx as a related party to Piquet would be necessary to prevent evasion of a denial order imposed against Piquet. In providing such notice, I gave Alphatronx an opportunity to oppose its addition to the Piquet Denial Order as a related party. Having received no submission, I have decided, following consultations with BIS's Office of Export Enforcement, including its Director, to name Alphatronx as a Related Person to the Piquet Denial Order, thereby denying Alphatronx export privileges for 10 years from the date of Piquet's conviction.

I have also decided to revoke all licenses issued pursuant to the Act or EAR in which Alphatronx had an interest at the time of Piquet's conviction. The 10-year denial period will end on May 14, 2019.

Accordingly, *it is hereby ordered:*

First, that having been provided notice and opportunity for comment as provided in Sections 766.25 and 766.23 of the Export Administration Regulations (the "Regulations"), the following entity, Alphatronx, Inc., with a last known address at 1258 SW. Maplewood Dr., Port St. Lucie, FL,

[1] The EAR are currently codified at 15 CFR Parts 730–774 (2010).

[2] 50 U.S.C. app. sections 2401–2420 (2000). Since August 21, 2001, the Act has been in lapse and the President, through Executive Order 13222 of August 17, 2001 (3 CFR 2001 Comp. 783 (2002)), which has been extended by successive Presidential Notices, the most recent being that of August 12, 2010 (75 FR 50,681 (Aug. 16, 2010)), has continued the Regulations in effect under the International Emergency Economic Powers Act (50 U.S.C. 1701 *et seq.* (2000)).

34986, has been determined to be related to Piquet by affiliation, ownership, control, or position of responsibility in the conduct of trade or related services, and it has been deemed necessary to make the Order denying the export privileges of Piquet applicable to Alphatronx in order to prevent evasion of the Piquet Denial Order.

Second, that the denial of export privileges described in the Piquet Denial Order, which was published in the **Federal Register** on June 9, 2010 at 75 FR 32742, shall be made applicable to Alphatronx until its expiration on May 14, 2019, as follows:

I. Alphatronx, with a last known address at 1258 SW. Maplewood Dr., Port St. Lucie, FL, 34986, and when acting for or on behalf of Alphatronx, its successors or assigns, employees or agents (collectively, "Related Person") may not participate, directly or indirectly, in any way in any transaction involving any commodity, software or technology (hereinafter collectively referred to as "item") exported or to be exported from the United States that is subject to the Regulations, or in any other activity subject to the Regulations, including, but not limited to:

A. Applying for, obtaining, or using any license, License Exception, or export control document;

B. Carrying on negotiations concerning, or ordering, buying, receiving, using, selling, delivering, storing, disposing of, forwarding, transporting, financing, or otherwise servicing in any way, any transaction involving any item exported or to be exported from the United States that is subject to the Regulations, or in any other activity subject to the Regulations; or

C. Benefiting in any way from any transaction involving any item exported or to be exported from the United States that is subject to the Regulations, or in any other activity subject to the Regulations.

II. No person may, directly or indirectly, do any of the following:

A. Export or reexport to or on behalf of the Related Person any item subject to the Regulations;

B. Take any action that facilitates the acquisition or attempted acquisition by the Related Person of the ownership, possession, or control of any item subject to the Regulations that has been or will be exported from the United States, including financing or other support activities related to a transaction whereby the Related Person acquires or attempts to acquire such ownership, possession or control;

C. Take any action to acquire from or to facilitate the acquisition or attempted acquisition from the Related Person of any item subject to the Regulations that has been exported from the United States;

D. Obtain from the Related Person in the United States any item subject to the Regulations with knowledge or reason to know that the item will be, or is intended to be, exported from the United States; or

E. Engage in any transaction to service any item subject to the Regulations that has been or will be exported from the United States and which is owned, possessed or controlled by the Related Person, or service any item, of whatever origin, that is owned, possessed or controlled by the Related Person if such service involves the use of any item subject to the Regulations that has been or will be exported from the United States. For purposes of this paragraph, servicing means installation, maintenance, repair, modification or testing.

Third, that in accordance with the provisions of Section 766.23(c) of the Regulations, the Related Person may, at any time, make an appeal related to this Order by filing a full written statement in support of the appeal with the Office of the Administrative Law Judge, U.S. Coast Guard ALJ Docketing Center, 40 South Gay Street, Baltimore, Maryland 21202–4022.

Fourth, that this Order does not prohibit any export, reexport, or other transaction subject to the Regulations where the only items involved that are subject to the Regulations are the foreign-produced direct product of U.S.-origin technology.

Fifth, that this Order is effective immediately and shall remain in effect until May 14, 2019.

Sixth, that this Order shall be published in the **Federal Register** and a copy served on the Related Person.

Issued this 7th day of October 2010.

**Bernard Kritzer,**

*Director, Office of Exporter Services.*

[FR Doc. 2010–26118 Filed 10–15–10; 8:45 am]

**BILLING CODE 3510–DT–P**

## DEPARTMENT OF COMMERCE

### Bureau of Industry and Security

### Action Affecting Export Privileges; Parto Abgardan Cooling Towers Co.

Parto Abgardan Cooling Towers Co., P.O. Box 966, Folsom, CA 95763; and
P.O. Box 19395/5478, Tehran, Iran; and
No. 56 Shaydaee St., Yakhchal St., Shariati Ave., Tehran 19497, Iran; and
No. 56 Sheidaei St., Yakhchal St., Dr. Shariati Ave., Tehran 19497, Iran; and
No. 56 Corner of Noushin Blind Alley, Sheidaei St., Yakhchal St., Dr. Shariati Ave., Tehran (19497), Iran; and
No. 56 Next to Noushin Blind Alley, Sheidaei St., Yakhchal St., Dr. Shariati Ave., Tehran (19497), Iran; and
No. 56, Corner of Noushin Dd. End, Sheidaie St., Yakhchal St., Shariati St., 19497, Tehran, Iran.

**Order Making Denial of Export Privileges of Aqua-Loop Cooling Towers, Co. Applicable to Parto Abgardan Cooling Towers Co.**

Pursuant to Section 766.23 of the Export Administration Regulations ("EAR" or "Regulations"), the Bureau of Industry and Security ("BIS"), U.S. Department of Commerce, through its Office of Export Enforcement ("OEE"), has requested that I make the denial order that was issued against Aqua-Loop Cooling Towers, Co. ("Aqua-Loop") on March 25, 2010 ("Denial Order"), applicable to the following entity, as a person related to Aqua-Loop:

Parto Abgardan Cooling Towers Co.,
P.O. Box 966, Folsom, CA 95763; and
P.O. Box 19395/5478, Tehran, Iran; and
No. 56 Shaydaee St., Yakhchal St., Shariati Ave., Tehran 19497, Iran; and
No. 56 Sheidaei St., Yakhchal St., Dr. Shariati Ave., Tehran 19497, Iran; and
No. 56 Corner of Noushin Blind Alley, Sheidaei St., Yakhchal St., Dr. Shariati Ave., Tehran (19497), Iran; and
No. 56 Next to Noushin Blind Alley, Sheidaei St., Yakhchal St., Dr. Shariati Ave., Tehran (19497), Iran; and
No. 56, Corner of Noushin Dd. End, Sheidaie St., Yakhchal St., Shariati St., 19497, Tehran, Iran.

The Denial Order was effective upon issuance, was published in the **Federal Register** on April 2, 2010 (see 75 FR 16732 (April 2, 2010)), and will remain in effect until March 25, 2020.

**I. Background**

*A. The Denial Order*

The Denial Order denies the export privileges of Aqua-Loop until March 25, 2020, pursuant to Section 764.3(a)(2) of the Regulations, and was issued based upon my approval of a settlement agreement entered into by BIS and Aqua-Loop. Specifically, in July 2009, BIS filed a Charging Letter against Aqua-Loop for violating the Regulations by causing unlicensed exports to Parto Abgardan in Iran of items subject to the Regulations, knowingly violating the Regulations in connection with the export of those items, and conspiring with Parto Abgardan and others, known

and unknown, to violate the Regulations in connection with the export of those items and other items that Aqua-Loop, Parto Abgardan and their co-conspirators sought to export to Iran without the required U.S. Government authorization.

BIS alleged, *inter alia,* that in furtherance of the conspiracy, Aqua-Loop and Parto Abgardan participated in a scheme to have Aqua-Loop source or obtain items from U.S. distributors and then have the items exported to Parto Abgardan in Iran, via a United Arab Emirates ("U.A.E.") entity identified by Parto Abgardan. The charges referenced, *inter alia,* documentary evidence in which Parto Abgardan told Aqua-Loop: "Since [the U.S. company] can't sell directly to Iran, they are OK with selling it domestically and then we can transfer it from US to Dubai and then to Iran. With your permission, we are going to give Aqua-Loop's information to them so they can send you their offer" based on the technical information provided to the U.S. company by Parto Abgardan. The charging letter provided additional details concerning the long-running conspiracy between Aqua-Loop and Parto Abgardan, which continued from at least in or about June 2004, through at least in or about April 2005.[1]

Aqua-Loop settled these charges with BIS in March 2010, agreeing to the imposition of the Denial Order and to a $100,000 monetary penalty, with the monetary penalty suspended for a period of ten years. At the same time, Aqua-Loop's co-owner and president, Bob Rahimzadeh, settled with BIS on the same terms regarding charges that he caused unlicensed exports and committed knowing violations of the Regulations relating to the same transactions.[2]

*B. BIS's Related Person's Notice Letter and Request*

On May 21, 2010, pursuant to Section 766.23 of the Regulations, BIS notified Parto Abgardan of its intent to add the company as a person related to Aqua-Loop by ownership, control, position of responsibility, affiliation, or other connection in the conduct of trade or business, by letter sent in accordance with Sections 766.5(b) and 766.23(b). The letter also requested that Parto Abgardan provide additional information to BIS concerning the company's structure, affiliates and major shareholder(s).

As part of its request, BIS presented evidence of conspiracy between Aqua-Loop and Parto Abgardan to violate the Regulations. BIS also has evidence indicating, *inter alia,* that Parto Abgardan's Web site identifies a "sister factory" in the United States. For contacts relating to the United States, Parto Abgardan's Web site provides contact information that includes Aqua-Loop's California mailing address, phone number, and fax number, without identifying Aqua-Loop separately by name. In contrast, Parto Abgardan's Web site provides Iranian mailing address, phone number, and fax number as contact information for "all countries except U.S."

BIS's submission also included evidence that the owner and managing director of Parto Abgardan in Iran, Mahmoud Lazemizadeh, also is a co-owner of Aqua-Loop.[3] Moreover, Mahmoud Lazemizadeh's nephew, Behzad Lazemizadeh, was a mechanical engineer and manager of Parto Abgardan's technical office before he was transferred to Aqua-Loop in California for five years.

*C. Parto Abgardan's Response*

Mahmoud Lazemizadeh responded by email on Parto Abgardan's behalf on June 14, 2010. He asserted that Parto Abgardan is an Iranian company and that there was "no connection of any kind between this company and Aqua-Loop cooling towers Co. [sic]." He also asserted that Parto Abgardan and Aqua-Loop had the same dealings with each other as between Parto Abgardan and any "other representative of other European or Asian companies * * *."

**II. Related Persons Under Section 766.23**

Section 766.23(a) of the Regulations provides that:

> In order to prevent evasion, certain types of orders under [Part 766] may be made applicable not only to the respondent, but also to other persons then or thereafter related to the respondent by ownership, control, position of responsibility, affiliation, or other connection in the conduct of trade or business. Orders that may be made applicable to related persons include those that deny or affect export privileges, including temporary denial orders, and those that exclude a respondent from practice before BIS.

15 CFR 766.23(a).

Section 766.23(b) provides, in pertinent part, that upon a finding by the Assistant Secretary for Export Enforcement that a denial order should be made applicable to a related person or persons in order to prevent evasion of that denial order, the Assistant Secretary shall issue or amend the order accordingly. 15 CFR 766.23(b).

**III. Findings**

BIS notified Parto Abgardan of its intent to add the company as a related person in accordance with Section 766.23(b) of the Regulations. As indicated by BIS, with regard to the United States market, Parto Abgardan's Web site directs its (potential) customers and others to make U.S.-related contacts using Aqua-Loop's address in Folsom, California, and Aqua-Loop's phone number and fax number there, whereas all contacts elsewhere in the world are to be made directly to Parto Abgardan in Iran. Parto Abgardan's Web site also discusses a "sister factory" in the United States, in further apparent reference to Aqua-Loop. Moreover, the record also shows that Parto Abgardan's owner and managing director, Mahmoud Lazemizadeh, is a co-owner of Aqua-Loop, while his nephew, Behzad Lazemizadeh, is an employee of Parto Abgardan and a former employee of Aqua-Loop. The record thus amply shows that Parto Abgardan is related to Aqua-Loop.

The record similarly demonstrates that adding Parto Abgardan to the Denial Order is justified in order to prevent evasion of that Order. I find that BIS has presented evidence showing that Parto Abgardan and Aqua-Loop participated in a long-running conspiracy to violate the Regulations. That evidence shows, *inter alia,* that acting in concert with Parto Abgardan, Aqua-Loop sourced or obtained items in the United States and then exported them or caused their export to Parto Abgardan in Iran, via a U.A.E. middleman identified by Parto Abgardan, without the required U.S. Government licenses. These actions included Parto Abgardan's efforts to obtain a filament winding machine from a U.S. supplier, during which Parto Abgardan told Aqua-Loop: "Since they [the U.S. supplier] can't sell directly to Iran, they are OK with selling it domestically and then we can transfer it from U.S. to Dubai and then to Iran. With your permission we are going to give Aqua-Loop's information to them so they can send you their offer" based on the technical information provided to the U.S. company by Parto Abgardan.

This long-running collaboration points to a substantial continued risk of diversion and evasion presented by the

[1] The charges filed against Aqua-Loop are contained in the Order issued upon settlement, which was subsequently published in the **Federal Register**. 75 FR 16,732 (April 2, 2010).

[2] The charges filed against Bob Rahimzadeh are contained in the Order issued upon settlement, which was subsequently published in the **Federal Register**. 75 FR 16,735 (April 2, 2010).

[3] Mahmoud Lazemizadeh is a U.S. citizen who resides in Iran.

ongoing business relationship between Parto Abgardan and Aqua-Loop, which is highlighted by Parto Abgardan's own Web site, and Mahmoud Lazemizadeh's control of Parto Abgardan and his ownership interest in Aqua-Loop. These concerns are only heightened by Parto Abgardan's assertions that there is no connection between the two entities, when, in fact, its owner is a co-owner of Aqua-Loop and its Web site, references a "sister factory" in the United States and lists Aqua-Loop's mailing address and contact information in California.

Based on the foregoing and the record as a whole, I find that Parto Abgardan is a person related to Aqua-Loop by "ownership, control, position of responsibility, affiliation, or other connection in the conduct of trade or business" pursuant to Section 766.23 of the Regulations, and that the Denial Order issued against Aqua-Loop should be made applicable to Parto Abgardan in order to prevent evasion of that Order.

**IV. Order**

*It is therefore ordered:*

First, that Parto Abgardan Cooling Towers Co. ("Parto Abgardan"), located at the following addresses: P.O. Box 966, Folsom, CA 95763; and P.O. Box 19395/5478, Tehran, Iran; and No. 56 Shaydaee St., Yakhchal St., Shariati Ave., Tehran (19497), Iran; and No. 56 Sheidaei St., Yakhchal St., Dr. Shariati Ave., Tehran (19497), Iran; and No. 56 Corner of Noushin Blind Alley, Sheidaei St., Yakhchal St., Dr. Shariati Ave., Tehran (19497), Iran; and No. 56 Next to Noushin Blind Alley, Sheidaei St., Yakhchal St., Dr. Shariati Ave., Tehran (19497), Iran; and No. 56, Corner of Noushin Dd. End, Sheidaie St., Yakhchal St., Shariati St., (19497), Tehran, Iran, and Parto Abgardan's successors or assigns and, when acting for or on behalf of the Parto Abgardan, its officers, representatives, agents, or employees (Parto Abgardan and each of the foregoing as stated, a "Denied Person"), may not, directly or indirectly, participate in any way in any transaction involving any commodity, software or technology (hereinafter collectively referred to as "item") exported or to be exported from the United States that is subject to the Regulations, or in any other activity subject to the Regulations, including, but not limited to:

A. Applying for, obtaining, or using any license, License Exception, or export control document;

B. Carrying on negotiations concerning, or ordering, buying, receiving, using, selling, delivering, storing, disposing of, forwarding, transporting, financing, or otherwise servicing in any way, any transaction involving any item exported or to be exported from the United States that is subject to the Regulations, or in any other activity subject to the Regulations; or

C. Benefiting in any way from any transaction involving any item exported or to be exported from the United States that is subject to the Regulations, or in any other activity subject to the Regulations.

Second, no person may, directly or indirectly, do any of the following:

A. Export or reexport to or on behalf of the Denied Person any item subject to the Regulations;

B. Take any action that facilitates the acquisition or attempted acquisition by the Denied Person of the ownership, possession, or control of any item subject to the Regulations that has been or will be exported from the United States, including financing or other support activities related to a transaction whereby the Denied Person acquires or attempts to acquire such ownership, possession or control;

C. Take any action to acquire from or to facilitate the acquisition or attempted acquisition from the Denied Person of any item subject to the Regulations that has been exported from the United States;

D. Obtain from the Denied Person in the United States any item subject to the Regulations with knowledge or reason to know that the item will be, or is intended to be, exported from the United States; or

E. Engage in any transaction to service any item subject to the Regulations that has been or will be exported from the United States and which is owned, possessed or controlled by the Denied Person, or service any item, of whatever origin, that is owned, possessed or controlled by the Denied Person if such service involves the use of any item subject to the Regulations that has been or will be exported from the United States. For purposes of this paragraph, servicing means installation, maintenance, repair, modification or testing.

Third, that in accordance with the provisions of Section 766.23(c) of the Regulations, the Denied Person may, at any time, make an appeal related to this Order by filing a full written statement in support of the appeal with the Office of the Administrative Law Judge, U.S. Coast Guard ALJ Docketing Center, 40 South Gay Street, Baltimore, Maryland 21202–4022.

This Order shall be published in the **Federal Register** and a copy provided to the denied person.

This Order is effective upon issuance and shall remain in effect until March 25, 2020.

Entered this 6th day of October 2010.

**David W. Mills,**

*Assistant Secretary of Commerce for Export Enforcement.*

[FR Doc. 2010–26117 Filed 10–15–10; 8:45 am]

**BILLING CODE 3510–DT–P**

## DEPARTMENT OF COMMERCE

### Bureau of the Census

**[Docket Number 100921463–0460–01]**

### Annual Retail Trade Survey

**AGENCY:** Bureau of the Census, Department of Commerce.

**ACTION:** Notice of determination.

**SUMMARY:** The United States Department of Commerce's Bureau of the Census (Census Bureau) publishes this notice to announce that the Director of the Census Bureau has determined the need to conduct the 2010 Annual Retail Trade Survey (ARTS). ARTS covers employer firms with establishments located in the United States and classified in the Retail Trade and/or Accommodation and Food Services sectors as defined by the 2002 North American Industry Classification System (NAICS). Through this survey, the Census Bureau will collect data covering annual sales, annual e-commerce sales, year-end inventories held inside and outside the United States, total operating expenses, purchases, accounts receivables, and, for selected industries, merchandise line sales, percent of sales by class of customer, and percent of e-commerce sales to customers located outside the United States. These data are collected to provide a sound statistical basis for the formation of policy by various government agencies. Results will be available for use for a variety of public and business needs such as economic and market analysis, company performance, and forecasting future demand.

**ADDRESSES:** The Census Bureau will provide report forms to businesses included in the survey. Additional copies are available upon written request to the Director, U.S. Census Bureau, Washington, DC 20233–0101.

**FOR FURTHER INFORMATION CONTACT:** Aneta Erdie, Service Sector Statistics Division, at (301) 763–4841 or by e-mail at *aneta.erdie@census.gov.*

**SUPPLEMENTARY INFORMATION:** Sections 182, 224, and 225 of Title 13 of the United States Code authorize the Census

Bureau to take surveys that are necessary to produce current data on the subjects covered by the major censuses. As part of this authorization, the Census Bureau conducts the ARTS to provide continuing and timely national statistical data on retail trade, and accommodation and food services activity for the period between economic censuses. ARTS is a continuation of similar retail trade surveys conducted each year since 1951 (except 1954). ARTS covers employer firms with establishments located in the United States and classified in the Retail Trade and/or Accommodation and Food Services sectors as defined by the 2002 North American Industry Classification System (NAICS). ARTS provides, on a comparable classification basis, annual sales, annual e-commerce sales, purchases, total operating expenses, accounts receivables, and year-end inventories held inside and outside the United States for 2010. The Census Bureau has determined that the conduct of this survey is necessary because these data are not available publicly on a timely basis from non-governmental or other governmental sources.

The Census Bureau will request a sample of firms operating retail, accommodation, and/or food services establishments in the United States to respond to the 2010 ARTS. Firms are selected for this survey using a stratified random sample based on industry groupings and annual sales size. We will provide report forms to the firms covered by this survey in January 2011, and will require their responses within 30 days after receipt. Firms' responses to the ARTS survey are required by law (Title 13 U.S.C. 182, 224, and 225). The sample of firms selected will provide, with measurable reliability, statistics on annual sales, annual e-commerce sales, purchases, total operating expenses, accounts receivables, and year-end inventories held both inside and outside the United States for 2010.

The data collected in this survey will be similar to that collected in the past and within the general scope and nature of those inquiries covered in the economic census. These data are collected to provide a sound statistical basis for the formation of policy by various government agencies. Results will be available for use for a variety of public and business needs such as economic and market analysis, company performance, and forecasting future demand.

Notwithstanding any other provision of law, no person is required to respond to, nor shall a person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the Paperwork Reduction Act (PRA) unless that collection of information displays a current valid Office of Management and Budget (OMB) control number. In accordance with the PRA, 44 U.S.C. 3501–3521, OMB has approved the Annual Retail Trade Survey under OMB Control Number 0607–0013.

Based upon the foregoing, I have directed that an annual survey be conducted for the purpose of collecting these data.

Dated: October 12, 2010.

**Robert M. Groves,**

*Director, Bureau of the Census.*

[FR Doc. 2010–26145 Filed 10–15–10; 8:45 am]

**BILLING CODE 3510–07–P**

## DEPARTMENT OF COMMERCE

## Bureau of the Census

**[Docket Number 100921462–0461–01]**

## Annual Wholesale Trade Survey

**AGENCY:** Bureau of the Census, Commerce.

**ACTION:** Notice of determination.

**SUMMARY:** The United States Department of Commerce's Bureau of the Census (Census Bureau) publishes this notice to announce that the Director of the Census Bureau has determined the need to conduct the 2010 Annual Wholesale Trade Survey (AWTS). AWTS covers firms with establishments located in the United States and classified in the Wholesale Trade Sector as defined by the 2002 North American Industry Classification System (NAICS). Specifically, AWTS includes wholesale distributors; manufacturers' sales branches and offices; and agents, brokers, and electronic markets. Through this survey, the Census Bureau will collect data on annual sales, e-commerce sales, purchases, total operating expenses, year-end inventories held both inside and outside the United States, commissions, total operating revenue, and gross selling value. These data are collected to provide a sound statistical basis for the formation of policy by various government agencies. These data will be available for use for a variety of public and business needs such as economic and market analysis, company performance, and forecasting future demand.

**ADDRESSES:** The Census Bureau will provide report forms to businesses included in the survey. Additional copies are available upon written request to the Director, U.S. Census Bureau, Washington, DC 20233–0101.

**FOR FURTHER INFORMATION CONTACT:** John Miller, Service Sector Statistics Division, on (301) 763–2758 or by e-mail on *john.p.miller@census.gov.*

**SUPPLEMENTARY INFORMATION:** Sections 182, 224, and 225 of Title 13 of the United States Code authorize the Census Bureau to take surveys that are necessary to produce current data on the subjects covered by the major censuses. As part of this authorization, the Census Bureau conducts the AWTS to provide continuing and timely national statistics data on wholesale trade activity for the period between economic censuses.

For 2010, the survey will, as it has in the past, consist of a sample of wholesale distributors; manufacturers' sales branches and offices; and agent, brokers, and electronic markets. The data collected in this survey will be similar to that collected in the past and within the general scope and nature of those inquiries covered in the economic census. These data are collected to provide a sound statistical basis for the formation of policy by various government agencies. These data will be available for use for a variety of public and business needs such as economic and market analysis, company performance, and forecasting future demand.

From wholesale distributors, the Census Bureau will collect data covering sales, e-commerce sales, year-end inventories held inside and outside the United States, purchases, and total operating expenses. From manufacturers' sales branches and offices, the Census Bureau will collect data covering annual sales, e-commerce sales, year-end inventories held inside and outside the United States and total operating expenses. From agents, brokers, and electronic markets, the Census Bureau will collect data covering commissions, total operating revenue, gross selling value, and total operating expenses. For more information on the components of wholesale activity covered under this survey, please see the North American Industry Classification System Web site at *http://www.census.gov/eos/www/naics/index.html.* The Census Bureau has determined that the conduct of this survey is necessary as these data are not available publicly on a timely basis from non-governmental or other government sources.

The Census Bureau will request a sample of firms engaged in the three covered wholesale activities to respond to the 2010 AWTS. Firms are selected for this survey using a stratified random

sample based on industry groupings and annual sales size. We will provide report forms to the firms covered by this survey in January 2011 and will require their responses within 30 days after receipt. Responses to AWTS are required by law (Title 13 U.S.C. Sections 182, 224, and 225). The sample of firms selected will provide, with measurable reliability, statistics on annual sales, e-commerce sales, purchases, total operating expenses, year-end inventories held both inside and outside the Unites States, commissions, total operating revenue, and gross selling value for 2010.

Notwithstanding any other provision of law, no person is required to respond to, nor shall a person be subject to a penalty for failure to comply with, a collection of information subject to requirements of the Paperwork Reduction Act (PRA) unless that collection of information displays a current valid Office of Management and Budget (OMB) control number. In accordance with the PRA, 44 U.S.C. 3501–3521, OMB approved the AWTS under OMB control number 0607–0195.

Based upon the foregoing, I have directed that the annual survey be conducted for the purpose of collecting these data.

Dated: October 12, 2010.

**Robert M. Groves,**

*Director, Bureau of the Census.*

[FR Doc. 2010–26149 Filed 10–15–10; 8:45 am]

**BILLING CODE 3510–07–P**

## DEPARTMENT OF COMMERCE

### International Trade Administration

**[A–570–894]**

### Certain Tissue Paper Products From the People's Republic of China: Final Results of the 2008–2009 Antidumping Duty Administrative Review

**AGENCY:** Import Administration, International Trade Administration, Department of Commerce.

**SUMMARY:** On April 13, 2010, the Department of Commerce (the Department) published the preliminary results of the 2008–2009 administrative review of the antidumping duty order on certain tissue paper products from the People's Republic of China (PRC) covering the period March 1, 2008, through February 28, 2009. This administrative review covers two exporters of the subject merchandise: Max Fortune Industrial Limited (Max Fortune) and Seaman Paper Asia Co., Ltd. (Seaman Paper Asia). We invited interested parties to comment on the preliminary results.

Based on our analysis of the comments received, we have made changes to the margin calculations. The weighted-average dumping margins are listed below in the section entitled "Final Results of Review."

**DATES:** *Effective Date:* October 18, 2010.

**FOR FURTHER INFORMATION CONTACT:** Brian Smith or Gemal Brangman, AD/CVD Operations, Office 2, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; *telephone:* (202) 482–1766 or (202) 482–3773, respectively.

**SUPPLEMENTARY INFORMATION:**

#### Background

On April 13, 2010, the Department published the preliminary results of this administrative review. *See Certain Tissue Paper Products From the People's Republic of China: Preliminary Results of the 2008–2009 Administrative Review,* 75 FR 18812 (April 13, 2010) (*Preliminary Results*). In response to the interested parties' requests, we extended the deadlines for submitting case and rebuttal briefs for consideration in the final results of this administrative review.

On May 13, 2010, Max Fortune requested a hearing.

On May 28, 2010, Max Fortune requested the public disclosure of certain information designated as business proprietary that was included in the petitioner's [1] September 15, 2009, submissions and examined by the Department during verification.[2] On June 8, 2010, the Department informed Max Fortune that it was unable to grant its May 28, 2010, request because doing so would reveal the source of the information for which the Department granted the petitioner business proprietary treatment.

On June 25, 2010, Max Fortune submitted its case brief. Neither Seaman Paper Asia nor the petitioner submitted case briefs. On July 1, 2010, the petitioner submitted its rebuttal brief.

On July 14, 2010, the Department notified the parties that as a result of the recent decision in *Dorbest Limited et al.* v. *United States,* No. 2009–1257, –1266 (Fed. Cir. May 14, 2010) (*Dorbest*), issued by the United States Court of Appeals for the Federal Circuit (CAFC), the Department would be reconsidering its valuation of the labor wage rate in this review. The Department placed export data on the record of the review and gave parties a specified period of time to comment on the narrow issue of the labor wage value and the methodology proposed to value labor for margin calculation purposes in light of the CAFC's decision in *Dorbest*.[3] On July 15, 2010, the Department corrected certain wage rate data placed on the record on July 14, 2010.[4]

On July 20, 2010, Max Fortune withdrew its May 13, 2010, request for a hearing. No other party in this review requested a hearing.

On July 22, 2010, Max Fortune submitted comments on the wage rate data and proposed methodology the Department placed on the record on July 14, 2010.

On July 23, 2010, the Department held meetings with Max Fortune's and the petitioner's counsels to discuss the issues raised in Max Fortune's case brief.[5]

On August 9, 2010, the Department placed on the record an additional clarification/correction of the surrogate wage rate data contained in the Department's July 14, 2010, memorandum.[6]

On August 9, 2010, the Department postponed the final results of this review until October 11, 2010.[7] *See Notice of Extension of Time Limit for Final Results of Antidumping Duty Administrative Review: Certain Tissue Paper Products From the People's Republic of China,* 75 FR 49888 (August 16, 2010).

On August 16, 2010, Max Fortune submitted comments and additional data regarding the wage rate issue in response to the Department's August 9, 2010, memorandum.

On September 21 and 24, 2010, the Department held additional meetings with Max Fortune's and the petitioner's counsels, respectively, to discuss the

[1] The petitioner is the Seaman Paper Company of Massachusetts, Inc.

[2] Max Fortune also requested in its May 28, 2010, letter that the Department grant an additional extension of the deadline to submit case and rebuttal briefs and extend the final results deadline.

[3] *See* the Department's memorandum to the file entitled, "Data on Labor Wage," dated July 14, 2010.

[4] *See* the Department's memorandum to the file entitled, "Wage Rate Calculation—Error in Currency Conversion of the Hourly Wage Rate for El Salvador," dated July 15, 2010.

[5] *See* the Department's memoranda to the file entitled, "Ex Parte Meeting with Counsel for Max Fortune Industrial Limited and Max Fortune (FZ) Paper Products Co., Ltd. (Max Fortune)," dated July 26, 2010, and "Ex Parte Meeting with the Petitioner's Counsel," dated July 26, 2010.

[6] *See* the Department's memorandum to the file entitled, "Honduras Data on Labor Wage Rate," dated August 9, 2010 (August 9, 2010 memorandum).

[7] Since October 11, 2010, is a federal holiday, the final results are due on the next business day, October 12, 2010.

issues raised in Max Fortune's case brief.[8]

We have conducted this administrative review in accordance with sections 751(a) and 777(i)(1) of the Tariff Act of 1930, as amended (the Act), 19 CFR 351.213, and 19 CFR 351.221.

**Period of Review**

The period of review (POR) is March 1, 2008, through February 28, 2009.

**Scope of the Order**

The tissue paper products covered by this order are cut-to-length sheets of tissue paper having a basis weight not exceeding 29 grams per square meter. Tissue paper products subject to this order may or may not be bleached, dye-colored, surface-colored, glazed, surface decorated or printed, sequined, crinkled, embossed, and/or die cut. The tissue paper subject to this order is in the form of cut-to-length sheets of tissue paper with a width equal to or greater than one-half (0.5) inch. Subject tissue paper may be flat or folded, and may be packaged by banding or wrapping with paper or film, by placing in plastic or film bags, and/or by placing in boxes for distribution and use by the ultimate consumer. Packages of tissue paper subject to this order may consist solely of tissue paper of one color and/or style, or may contain multiple colors and/or styles.

The merchandise subject to this order does not have specific classification numbers assigned to them under the Harmonized Tariff Schedule of the United States (HTSUS). Subject merchandise may be under one or more of several different subheadings, including: 4802.30, 4802.54, 4802.61, 4802.62, 4802.69, 4804.31.1000, 4804.31.2000, 4804.31.4020, 4804.31.4040, 4804.31.6000, 4804.39, 4805.91.1090, 4805.91.5000, 4805.91.7000, 4806.40, 4808.30, 4808.90, 4811.90, 4823.90, 4802.50.00, 4802.90.00, 4805.91.90, 9505.90.40. The tariff classifications are provided for convenience and customs purposes; however, the written description of the scope of this order is dispositive.[9]

Excluded from the scope of this order are the following tissue paper products: (1) Tissue paper products that are coated in wax, paraffin, or polymers, of a kind used in floral and food service applications; (2) tissue paper products that have been perforated, embossed, or die-cut to the shape of a toilet seat, *i.e.,* disposable sanitary covers for toilet seats; (3) toilet or facial tissue stock, towel or napkin stock, paper of a kind used for household or sanitary purposes, cellulose wadding, and webs of cellulose fibers (HTSUS 4803.00.20.00 and 4803.00.40.00).

**Separate Rates**

In our *Preliminary Results* at 75 FR 18814, we determined that both Max Fortune and Seaman Paper Asia met the criteria for the application of a separate rate, as both companies are wholly foreign-owned companies registered and located in Hong Kong. We have not received any information since the issuance of the *Preliminary Results* that provides a basis for the reconsideration of this determination. Therefore, the Department continues to find that Max Fortune and Seaman Paper Asia both meet the criteria for a separate rate for purposes of the final results of this review.

**Application of Adverse Facts Available**

In the *Preliminary Results,* we applied total adverse facts available (AFA) to Max Fortune pursuant to section 776(a)(2)(A), (C), and (D) and 776(b) of the Act, because we determined based on our findings at verification and our analysis of the record information, that we could not rely upon the data submitted by Max Fortune to calculate an accurate dumping margin.

As explained in the *Preliminary Results* at 75 FR 18814–18815, the petitioner placed on the record a substantial amount of information, supporting its allegations that, among other things, Max Fortune did not report: (1) Multiple affiliates involved in the production and/or sale of the subject merchandise exported to the United States during the POR; and (2) multiple unaffiliated suppliers of raw materials and converting services involved in the production of the subject merchandise exported to the United States during the POR.[10] The petitioner obtained the information supporting its allegations from a foreign market researcher (FMR), and the company that furnished this data to the FMR later became a part of this proceeding in order to provide the Department the ability to conduct verification of these data. In response to the allegations made by the petitioner, Max Fortune asserted that its PRC affiliate, Max Fortune (FZ) Paper Products Co., Ltd. Fuzhou (Max Fortune Fuzhou), produced all of the tissue paper it sold to the United States during the POR.[11]

After conducting verification of the data submitted on the record by Max Fortune and the other company referred to above, we found that for certain U.S. sales reported by Max Fortune in its U.S. sales listing which we selected for examination at verification, Max Fortune Fuzhou was not the only producer of the tissue paper sold in those transactions, contrary to Max Fortune's representations throughout this review.[12] As a result, we concluded that Max Fortune withheld critical information (*i.e.,* the identities of additional tissue paper suppliers and/or processors associated with the tissue paper it sold to the United States during the POR, and their respective factors of production (FOP) data), and in so doing, significantly impeded this proceeding and precluded the Department from being able to calculate an accurate dumping margin for Max Fortune in this review based on its reported data. We also stated that based upon our verification of the two companies, our experience in conducting such verifications, the number and level of detail of documents supplied by the other company, and our careful analysis of the record, we could not conclude that the documents supplied by Max Fortune were the actual documents used in the transactions at issue.

Therefore, we were unable to verify any of Max Fortune's FOP data. Given the nature and extent of the information in Max Fortune's possession which Max Fortune withheld from disclosure (*i.e.,* the actual documentation associated with its U.S. sales transactions), we concluded that Max Fortune failed to cooperate by not acting to the best of its ability to comply with the Department's request for information in this review. Consequently, pursuant to sections 776(a)(2)(A), (C), and (D) and 776(b) of the Act, we found it appropriate to apply total AFA to Max Fortune in the

[8] *See* the Department's memoranda to the file entitled, "Ex Parte Meeting with Counsel for Max Fortune Industrial Limited and Max Fortune (FZ) Paper Products Co., Ltd. (Max Fortune)," dated September 21, 2010, and "Ex Parte Meeting with the Petitioner's Counsel," dated September 30, 2010.

[9] On January 30, 2007, at the direction of U.S. Customs and Border protection (CBP), the Department added the following HTSUS classifications to the AD/CVD module for tissue paper: 4802.54.3100, 4802.54.6100, and 4823.90.6700. However, we note that the six-digit classifications for these numbers were already listed in the scope.

[10] *See* the petitioner's submission on September 15, 2009.

[11] *See* Max Fortune's submission dated October 19, 2009.

[12] *See* Memorandum from John M. Andersen, Acting Deputy Assistant Secretary for AD/CVD Operations, to Ronald K. Lorentzen, Deputy Assistant Secretary for Import Administration, entitled "Whether To Assign Max Fortune Industrial Limited (Max Fortune HK) and Max Fortune (FZ) Paper Products Co., Ltd. (Max Fortune Fuzhou) (collectively Max Fortune) a Margin Based on Adverse Facts Available in the Preliminary Results," dated April 7, 2010.

*Preliminary Results*.[13] Consistent with the statute, court precedent, and numerous other cases cited in the *Preliminary Results* at 75 FR 18815, as AFA, we assigned Max Fortune the highest rate on the record of any segment of this proceeding, *i.e.,* 112.64 percent. We determined in the *Preliminary Results* that this rate was fully corroborated, consistent with section 776(c) of the Act. *See Preliminary Results* at 75 FR 18815.

For these final results of review, Max Fortune provided comments in its case brief disputing the Department's preliminary AFA decision, and the petitioner provided rebuttal comments. In its case brief, Max Fortune raises questions regarding the accuracy and reliability of the data provided by the other company which the Department verified and used as the basis for determining that the documents supplied by Max Fortune were not the actual documents used in the transactions at issue. Furthermore, Max Fortune contends that the Department's verification of its data was flawless and, therefore, cannot support the application of AFA to Max Fortune, particularly in light of the irregularities and unexplained inconsistencies which Max Fortune alleges are present in the data and accounting records provided by the other company which served as the basis for the Department's preliminary decision not to rely on Max Fortune's data.

Upon consideration of the arguments of the parties and further review of the entire administrative record, including the other company's extensive and detailed data which Max Fortune alleges are not reliable, we continue to find it appropriate to apply total AFA to Max Fortune. Although much of the data Max Fortune provided to the Department was aggregate and general, Max Fortune is correct in its claim that nothing in its response, when viewed in isolation and on its face, made it evident that Max Fortune supplied the Department with documents not used in its transactions. However, at verification, for example, when Department officials requested more specific labor records, Max Fortune was unable to supply such data.[14] This was consistent with other record information—Max Fortune provided adequate general documentation but could not give more specific information on request. The other company, however, unlike Max Fortune, supplied the Department with an extensive amount of detailed information.[15] Thus, after reviewing the record evidence as a whole, we find that it impugns the veracity of the data Max Fortune presented to the Department, both in its questionnaire responses and at verification for its reported U.S. sales made during the POR. For complete discussion, *see* Comment 1 of the Memorandum to Ronald K. Lorentzen, Deputy Assistant Secretary for Import Administration, from Susan H. Kuhbach, Acting Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, entitled "Issues and Decision Memorandum for the Final Results of the 2008–2009 Administrative Review of Certain Tissue Paper Products from the People's Republic of China (PRC)" (Issues and Decision Memorandum) accompanying this **Federal Register** notice; and Memorandum from the Team to The File, entitled, "Analysis of Data-Specific Items Raised in the Case Brief Submitted by Max Fortune Industrial Limited (Max Fortune HK) and Max Fortune (FZ) Paper Products Co., Ltd. (Max Fortune Fuzhou) (collectively Max Fortune)," dated October 12, 2010.

Section 776(a)(2) of the Act states that the Department may use "facts available" if, *inter alia,* an interested party (A) withholds information that has been requested by the Department; (C) significantly impedes a proceeding under the antidumping statute; or (D) if information is supplied by a company that cannot be "verified as provided in section 782(i)." All of these provisions apply in this case, as Max Fortune's misrepresentations call into question the veracity of the FOP data Max Fortune submitted in this review.

As noted above, the Department has concluded that Max Fortune mischaracterized and withheld information from the Department that was fundamental and material to the Department's dumping margin analysis. For multiple U.S. sales transactions in its U.S. sales listing, Max Fortune should have reported FOP data for tissue paper supplied and/or processed by unaffiliated companies. Instead, Max Fortune misled the Department by claiming it produced and processed all of the tissue paper included in its U.S. sales listing. Therefore, its actions significantly impeded the Department's ability to conduct this administrative review. Further, its actions have led us to conclude that the information and records provided by its PRC affiliated producer, Max Fortune Fuzhou, at verification are not reliable. Accordingly, pursuant to section 776(a)(2)(A), (C), and (D) of the Act, we have concluded that the application of facts available is warranted in this case with respect to Max Fortune.

Section 776(b) of the Act states that if the Department concludes that a party has failed to cooperate by not acting to the best of its ability to comply with a request for information, it may "use an inference that is adverse to the interests of that party." It is the Department's practice to make an adverse inference "to ensure that the party does not obtain a more favorable result by failing to cooperate than if it had cooperated fully." *See* Statement of Administrative Action accompanying the Uruguay Round Agreements Act, H. Doc. No. 103–316 at 870 (1994) (SAA) at 870. In this case, Max Fortune has provided documents on the record that were not the actual documents used with respect to the U.S. sales transactions at issue. Accordingly, Max Fortune did not act to the best of its ability when it provided the Department with incorrect and misleading characterizations with respect to its agreement with other companies and the tissue paper included in its reported U.S. sales transactions, and Max Fortune Fuzhou's sourcing from other PRC tissue paper suppliers of some of that tissue paper.

Consequently, pursuant to sections 776(a)(2)(A), (C), and (D) and section 776(b) of the Act, we find it appropriate to apply total AFA to Max Fortune in this review. To calculate an antidumping duty margin for Max Fortune, even based on partial adverse facts available, would effectively reward Max Fortune's efforts to create an administrative record that cannot be verified and otherwise does not reflect the actual chain of production and processing of the U.S. sales transaction at issue. As a result, the Department has no confidence in any information supplied by Max Fortune for dumping margin calculation purposes. Thus, the application of total AFA is appropriate in this case.

[13] *See* Shanghai Taoen, *International Trading Company* v. *United States,* 360 F.Supp. 2d. 1339, 1344 (CIT 2005) (finding that the application of total AFA was warranted in light of evidence on the record that the respondent "purposely withheld" and provided misleading information to avoid a higher dumping margin).

[14] *See* Memorandum to The File from Case Analysts entitled "Verification of the Sales and Factors Questionnaire Response of Max Fortune (FZ) Paper Products Co., Ltd. and Max Fortune Industrial Limited in the Antidumping Duty Administrative Review of Certain Tissue Paper Products from the People's Republic of China," dated April 7, 2010 (Max Fortune Verification Report) at page 23.

[15] Memorandum to The File from Case Analysts entitled "Verification of Data Submitted by {Anonymous Company} in the Antidumping Duty Administrative Review of Certain Tissue Paper Products from the People's Republic of China," dated April 7, 2010 at pages 10–16.

Section 776(c) of the Act provides that when the Department selects from among the facts otherwise available and relies on "secondary information," the Department shall, to the extent practicable, corroborate that information from independent sources reasonably at the Department's disposal. To corroborate the information, the Department seeks to determine that the information used has probative value. *See* SAA at 870. The Department has determined that to have probative value, information must be reliable and relevant. *See Certain Tissue Paper Products from the People's Republic of China: Final Results and Final Rescission, In Part, of Antidumping Duty Administrative Review,* 72 FR 58642 (October 16, 2007), and accompanying Issues and Decision Memorandum at Comment 6.

For the final results, as AFA, we have continued to assign Max Fortune the highest rate on the record for any segment of this proceeding—*i.e.,* 112.64 percent. This rate represents the highest rate from the petition in the less-than-fair-value investigation segment of this proceeding. *See Notice of Final Determination of Sales at Less Than Fair Value: Certain Tissue Paper Products from the People's Republic of China,* 70 FR 7475 (February 14, 2005).

We find that the 112.64 percent rate is both reliable and relevant. *See Preliminary Results* at 75 FR 18815, and Issues and Decision Memorandum at Comment 1. Thus, we have concluded it has probative value. As a result, we determine that the 112.64 percent rate is corroborated to the extent practicable for the purposes of this administrative review, in accordance with section 776(c) of the Act, and may reasonably be applied as AFA to the exports of the subject merchandise by Max Fortune.

**Analysis of Comments Received**

All issues raised in the case and rebuttal briefs by the parties and to which we have responded are addressed in the Issues and Decision Memorandum, which is hereby adopted by this notice. A list of the issues raised, all of which are in the Issues and Decision Memorandum, is attached to this notice as Appendix I. Parties can find a complete discussion of all issues raised in the briefs and the corresponding recommendations in this public memorandum, which is on file in the Central Records Unit (CRU), room 7046 of the Department of Commerce. In addition, a complete version of the Issues and Decision Memorandum can be accessed directly on the Web at *http://trade.gov/ia.* The paper copy and electronic version of the Issues and Decision Memorandum are identical in content.

**Changes From the Preliminary Results**

Based on the information submitted and our analysis of the comments received, we made one change to the margin calculations for Seaman Paper Asia. Specifically, we recalculated the surrogate wage rate used to value Seaman Paper Asia's labor costs. *See* Comment 2 of the Issues and Decision Memorandum for further discussion.

**Final Results of Review**

We determine that the following antidumping duty margins exist in these final results for the period March 1, 2008, through February 28, 2009:

CERTAIN TISSUE PAPER PRODUCTS FROM THE PRC

| Individually reviewed exporter 2008–2009 administrative review | Weighted-average percent margin (percent) |
|---|---|
| Seaman Paper Asia Company Ltd | 0.00 |
| Max Fortune Industrial Ltd | 112.64 |

**Assessment**

Upon issuance of the final results, the Department will determine, and CBP shall assess, antidumping duties on all appropriate entries covered by this review. The Department intends to issue assessment instructions to CBP 15 days after the publication date of the final results of this review.

In accordance with 19 CFR 351.212(b)(1), for Seaman Paper Asia, we calculated an importer-specific *ad valorem* duty assessment rate based on the ratio of the total amount of dumping duties calculated for the examined sale to the total entered value of the examined sale because Seaman Paper Asia reported entered value information. Where the importer-specific *ad valorem* rate is zero or *de minimis,* we will instruct CBP to liquidate appropriate entries without regard to antidumping duties. *See* 19 CFR 351.106(c)(2).

With respect to Max Fortune, we will instruct CBP to liquidate appropriate entries at the PRC-wide rate of 112.64 percent.

**Cash Deposit Requirements**

The following cash deposit requirements will be effective upon publication of the notice of final results of the administrative review for all shipments of certain tissue paper products from the PRC entered, or withdrawn from warehouse, for consumption on or after the date of publication, as provided by section 751(a)(2)(C) of the Act: (1) A cash deposit rate of 0.00 percent will be required for certain tissue paper products from the PRC exported by Seaman Paper Asia; (2) a cash deposit rate of 112.64 percent will be required for certain tissue paper products from the PRC exported by Max Fortune; (3) for previously reviewed or investigated companies not listed above that have separate rates, the cash deposit rate will continue to be the company-specific rate published for the most recent period; (4) for all other PRC exporters of subject merchandise, which have not been found to be entitled to a separate rate, the cash deposit rate will be PRC-wide rate of 112.64 percent; and (5) for all non-PRC exporters of subject merchandise, the cash deposit rate will be the rate applicable to the PRC exporter that supplied that non-PRC exporter. These deposit requirements, when imposed, shall remain in effect until further notice.

**Notification to Importers**

This notice also serves as the final reminder to importers of their responsibility under 19 CFR 351.402(f) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and in the subsequent assessment of double antidumping duties.

**Notification to Interested Parties**

This notice serves as the only reminder to parties subject to administrative protective order (APO) of their responsibility concerning the disposition of proprietary information

disclosed under APO in accordance with 19 CFR 351.305(a)(3). Timely written notification of the return or destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

We are issuing and publishing these final results of review in accordance with sections 751(a)(1) and 777(i)(1) of the Act and 19 CFR 351.221(b)(5).

Dated: October 12, 2010.

**Ronald K. Lorentzen,**

*Deputy Assistant Secretary for Import Administration.*

**Appendix—List of Issues**

Comment 1: Application of Adverse Facts Available to Max Fortune

Comment 2: Appropriate Surrogate Labor Rate

[FR Doc. 2010–26194 Filed 10–15–10; 8:45 am]

**BILLING CODE 3510–DS–P**

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

**RIN 0648–XZ74**

### Fisheries of the South Atlantic and Gulf of Mexico; Southeast Data, Assessment, and Review (SEDAR); Assessment Webinar 8 for SEDAR 22 Yellowedge Grouper and Tilefish

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

**ACTION:** Notice of SEDAR 22 Gulf of Mexico yellowedge grouper and tilefish assessment webinar 8.

**SUMMARY:** The SEDAR 22 assessments of the Gulf of Mexico stocks of yellowedge grouper and tilefish will consist of a series of workshops and webinars: A Data Workshop, a series of Assessment webinars, and a Review Workshop. *See* **SUPPLEMENTARY INFORMATION.**

**DATES:** The eighth SEDAR 22 Assessment Process webinar will be held on Wednesday, November 3, 2010 from 10 a.m. to approximately 2 p.m. (Eastern). The established times may be adjusted as necessary to accommodate the timely completion of discussion relevant to the assessment process. Such adjustments may result in the meeting being extended from, or completed prior to the time established by this notice.

**ADDRESSES:** The meeting will be held via webinar. The webinar is open to members of the public. Those interested in participating should contact Julie Neer at SEDAR (*See* **FOR FURTHER INFORMATION CONTACT**) to request an invitation providing webinar access information.

A listening station will be available at the Gulf of Mexico Fishery Management Council office located at 2203 N. Lois Avenue, Suite 1100, Tampa, FL 33607. Those interested in participating via the listening station should contact Julie A. Neer at SEDAR (*See* **FOR FURTHER INFORMATION CONTACT**) at least 1 day prior to the webinar.

**FOR FURTHER INFORMATION CONTACT:** Julie A. Neer, SEDAR Coordinator, 4055 Faber Place, Suite 201, North Charleston, SC 29405; telephone: (843) 571–4366; e-mail: *Julie.neer@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 is a three-step process including: (1) Data Workshop, (2) Assessment Process utilizing webinars and (3) 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 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 Summary documenting Panel opinions regarding the strengths and weaknesses of the stock assessment and input data. Participants for SEDAR Workshops are appointed by the Gulf of Mexico, South Atlantic, and Caribbean Fishery Management Councils 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 22 Assessment Webinar VIII**

Using datasets recommended from the Data Workshop, participants will employ assessment models to evaluate stock status, estimate population benchmarks and management criteria, and project future conditions. Participants will recommend the most appropriate methods and configurations for determining stock status and estimating population parameters.

Although non-emergency issues not contained in this agenda may come before this group for discussion, those issues may not be the subject of formal action during this meeting. Action will be restricted to those issues specifically listed in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided 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 1 business day prior to the meeting.

Dated: October 13, 2010.

**Tracey L. Thompson,**

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

[FR Doc. 2010–26126 Filed 10–15–10; 8:45 am]

**BILLING CODE 3510–22–P**

## DEPARTMENT OF COMMERCE

### Foreign-Trade Zones Board

**[Order No. 1709]**

### Grant of Authority for Subzone Status; SICK, Inc. (Photo-Electronic Industrial Sensors); Bloomington, MN

Pursuant to its authority under the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a–81u), the Foreign-Trade Zones Board (the Board) adopts the following Order:

*Whereas,* the Foreign-Trade Zones Act provides for "* * * the establishment * * * of foreign-trade zones in ports of entry of the United States, to expedite and encourage foreign commerce, and for other purposes," and authorizes the Foreign-Trade Zones Board to grant to qualified corporations the privilege of establishing foreign-trade zones in or adjacent to U.S. Customs and Border Protection ports of entry;

*Whereas,* the Board's regulations (15 CFR part 400) provide for the establishment of special-purpose subzones when existing zone facilities cannot serve the specific use involved,

and when the activity results in a significant public benefit and is in the public interest;

*Whereas,* the Greater Metropolitan Area Foreign Trade Zone Commission, grantee of Foreign-Trade Zone 119 (Minneapolis, Minnesota), has made application to the Board for authority to establish a special-purpose subzone at the photo-electronic industrial sensor manufacturing and distribution facility of SICK, Inc., located in Bloomington, Minnesota (FTZ Docket 49–2009, filed 11–10–2009);

*Whereas,* notice inviting public comment has been given in the **Federal Register** (74 FR 59523, 11–18–2009) and the application has been processed pursuant to the FTZ Act and the Board's regulations; and,

*Whereas,* the Board adopts the findings and recommendations of the examiner's report, and finds that the requirements of the FTZ Act and Board's regulations are satisfied, and that the proposal is in the public interest;

*Now, therefore,* the Board hereby grants authority for subzone status for activity related to the manufacturing and distribution of photo-electronic industrial sensors at the SICK, Inc., facility located in Bloomington, Minnesota (Subzone 119G), as described in the application and **Federal Register** notice, subject to the FTZ Act and the Board's regulations, including Section 400.28.

Signed at Washington, DC, October 7, 2010.

**Ronald K. Lorentzen,**

*Deputy Assistant Secretary for Import Administration, Alternate Chairman, Foreign-Trade Zones Board.*

Attest:

**Andrew McGilvray,**

*Executive Secretary.*

[FR Doc. 2010–26173 Filed 10–15–10; 8:45 am]

**BILLING CODE P**

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

**RIN 0648–XZ73**

### New England Fishery Management Council; Public Meeting

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

**ACTION:** Notice of a public meeting.

**SUMMARY:** The New England Fishery Management Council (Council) is scheduling a public meeting of its Scallop Committee in November 2010 to consider actions affecting New England fisheries in the exclusive economic zone (EEZ). Recommendations from this group will be brought to the full Council for formal consideration and action, if appropriate.

**DATES:** This meeting will be held on Thursday, November 4, 2010 at 9 a.m.

**ADDRESSES:** This meeting will be held at the Providence Biltmore, 11 Dorrance Street, Providence, RI 02903; telephone: (401) 421–0700; fax: (401) 455–3050.

*Council address:* New England Fishery Management Council, 50 Water Street, Mill 2, Newburyport, MA 01950.

**FOR FURTHER INFORMATION CONTACT:** Paul J. Howard, Executive Director, New England Fishery Management Council; telephone: (978) 465–0492.

**SUPPLEMENTARY INFORMATION:** The Scallop Committee will review Framework 22 alternatives and analyses as well as input from the Advisory Panel and Plan Development Team. The Committee will identify preferred alternatives for the Council to consider when it takes final action at the November 16–18 Council Meeting, including research priority recommendations for the 2012 Research Set-Aside program. If time permits, other issues may be discussed.

Although non-emergency issues not contained in this agenda may come before this group for discussion, those issues may not be the subject of formal action during this meeting. Action will be restricted to those issues specifically listed in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the Council's intent to take final action to address the emergency.

#### Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Paul J. Howard, Executive Director, at (978) 465–0492, at least 5 days prior to the meeting date.

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

Dated: October 13, 2010.

**Tracey L. Thompson,**

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

[FR Doc. 2010–26141 Filed 10–15–10; 8:45 am]

**BILLING CODE 3510–22–P**

## DEPARTMENT OF COMMERCE

### International Trade Administration

### The U.S. Travel & Tourism Advisory Board: Information-Gathering Session of the U.S. Travel and Tourism Advisory Board

**AGENCY:** International Trade Administration, U.S. Department of Commerce.

**ACTION:** Notice of a public information-gathering session.

**SUMMARY:** The U.S. Travel and Tourism Advisory Board ("Board") will convene a public information-gathering session in Las Vegas, where the members will hear presentations made by various government officials on issues related to the travel & tourism sector. The agenda for the event includes updates regarding implementation of the Travel Promotion Act, the Administration's travel and tourism initiatives, implementation of the National Export Initiative, and the programs and activities of the Departments of Homeland Security, State, and Transportation impacting the travel and tourism sector. During this information-gathering session, the Board will also receive an update on the work of the Board's subcommittees on Marketing, Outreach & Coordination; Travel Facilitation; Research; and Advocacy. The Board will not deliberate on any advice or recommendations during this session. This event is strictly an information-gathering session. The Board was re-chartered in September 2009 to advise the Secretary of Commerce on matters relating to the U.S. travel and tourism industries.

*Date:* October 26, 2010.

*Time:* 9 a.m. (PT).

**ADDRESSES:** Caesar's Palace Las Vegas Hotel & Casino, 3570 Las Vegas Boulevard South, Las Vegas, NV 89109. All non-government attendees must pre-register because of hotel security. This program will be physically accessible to people with disabilities. Seating is limited and will be available on a first come, first served basis. Requests for sign language interpretation, other auxiliary aids, or pre-registration, should be submitted no later than October 19, 2010, to Jennifer Pilat, the U.S. Travel and Tourism Advisory Board, Room 4043, 1401 Constitution Avenue, NW., Washington, DC, 20230, telephone 202–482–4501, *jennifer.pilat@trade.gov.* Last minute requests will be accepted, but may be impossible to fill.

**FOR FURTHER INFORMATION CONTACT:** Jennifer Pilat, the U.S. Travel and Tourism Advisory Board, Room 4043,

1401 Constitution Avenue, NW., Washington, DC 20230, telephone: 202–482–4501, e-mail: *jennifer.pilat@trade.gov*.

**SUPPLEMENTARY INFORMATION:** No time will be available for oral comments from members of the public attending the session. Any member of the public may submit pertinent written comments to be considered as part of the Board's information-gathering at any time before and after the session.

Comments may be submitted to Jennifer Pilat at the contact information indicated above. To ensure transmission to the Board prior to the session, comments must be received no later than 5 p.m. (ET) on October 18, 2010. Comments received after that date will be distributed to the members but may not be transmitted to the Board prior to the session.

Dated: October 13, 2010

**Jennifer Pilat,**

*Executive Secretary, U.S. Travel and Tourism Advisory Board.*

[FR Doc. 2010–26207 Filed 10–13–10; 4:15 pm]

**BILLING CODE 3510–DR–P**

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

**RIN 0648–XZ72**

### New England Fishery Management Council; Public Meeting

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

**ACTION:** Notice of a public meeting.

**SUMMARY:** The New England Fishery Management Council (Council) is scheduling a public meeting of its Scallop Advisory Panel, in November, 2010, to consider actions affecting New England fisheries in the exclusive economic zone (EEZ). Recommendations from this group will be brought to the full Council for formal consideration and action, if appropriate.

**DATES:** This meeting will be held on Wednesday, November 3, 2010 at 9 a.m.

**ADDRESSES:** This meeting will be held at the Providence Biltmore, 11 Dorrance Street, Providence, RI 02903; telephone: (401) 421–0700; fax: (401) 455–3050.

• *Council address:* New England Fishery Management Council, 50 Water Street, Mill 2, Newburyport, MA 01950.

**FOR FURTHER INFORMATION CONTACT:** Paul J. Howard, Executive Director, New England Fishery Management Council; telephone: (978) 465–0492.

**SUPPLEMENTARY INFORMATION:** The Advisory Panel will review Framework 22 alternatives and analyses. Framework 22 is considering fishery specifications for fishing years 2011 and 2012 including access area trips, open area day-at-sea allocations and general category measures. This action also includes measures to limit fishing in the Mid-Atlantic during the summer and fall to reduce interactions with sea turtles. Lastly, the advisors will make research priority recommendations for the 2012 Research Set-Aside Program, which will be included in Framework 22. The Advisory Panel recommendations will be forwarded to the Scallop Oversight Committee to consider as preferred alternatives the following day (see agenda below). The Council is scheduled for final action on Framework 22 at the November Council meeting in Brewster, MA, November 16–18, 2010.

Although non-emergency issues not contained in this agenda may come before this group for discussion, those issues may not be the subject of formal action during this meeting. Action will be restricted to those issues specifically listed in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the Council's intent to take final action to address the emergency.

#### Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Paul J. Howard, Executive Director, at (978) 465–0492, at least 5 days prior to the meeting date.

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

Dated: October 13, 2010.

**Tracey L. Thompson,**

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

[FR Doc. 2010–26140 Filed 10–15–10; 8:45 am]

**BILLING CODE 3510–22–P**

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

**RIN 0648–XZ71**

### Fisheries of the South Atlantic and Gulf of Mexico; South Atlantic Fishery Management Council; Public Meeting

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

**ACTION:** Notice of a public meeting.

**SUMMARY:** The South Atlantic Fishery Management Council (SAFMC) will hold a meeting of its Scientific and Statistical Committee (SSC) to review fishery management plan (FMP) amendments under development and provide fishing level recommendations for South Atlantic red snapper. The meeting will be held in North Charleston, SC. *See* **SUPPLEMENTARY INFORMATION.**

**DATES:** The meeting will be held November 8–10, 2010. See **SUPPLEMENTARY INFORMATION** for specific dates and times.

**ADDRESSES:** The meeting will be held at the Holiday Inn, 5264 International Boulevard, North Charleston, SC 29418; telephone: (843) 308–9330; fax: (843) 308–9331.

**FOR FURTHER INFORMATION CONTACT:** Kim Iverson, Public Information Officer, 4055 Faber Place Drive, Suite 201, North Charleston, SC 29405; telephone: (843) 571–4366; e-mail: *Kim.Iverson@safmc.net.*

**SUPPLEMENTARY INFORMATION:** Under the Magnuson-Stevens Reauthorized Act, the SSC is the body responsible for reviewing the Council's scientific materials. The SSC will discuss several amendments to Fishery Management Plans and develop fishing level recommendations.

*Meeting Schedule:*

November 8, 2010, 10 a.m.–5 p.m.

November 9, 2010, 9 a.m.–5 p.m.

November 10, 2010, 9 a.m.–2 p.m.

Although non-emergency issues not contained in this agenda may come before this group for discussion, those issues may not be the subject of formal action during these meetings. Action will be restricted to those issues specifically listed in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided 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 the meeting.

Dated: October 13, 2010.

**Tracey L. Thompson,**

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

[FR Doc. 2010–26125 Filed 10–15–10; 8:45 am]

**BILLING CODE 3510–22–P**

## DEPARTMENT OF COMMERCE

### Bureau Industry Security

### Membership of the Bureau Industry Security Performance Review Board

**AGENCY:** Bureau Industry Security, Department of Commerce.

**ACTION:** Notice of membership on the Bureau Industry Security's Performance Review Board membership.

**SUMMARY:** In accordance with 5 U.S.C. 4314(c)(4), the Bureau Industry Security (BIS), Department of Commerce (DOC), announce the appointment of those individuals who have been selected to serve as members of BIS's Performance Review Board. The Performance Review Board is responsible for (1) reviewing performance appraisals and rating of Senior Executive Service (SES) members and (2) making recommendations to the appointing authority on other performance management issues, such as pay adjustments, bonuses and Presidential Rank Awards for SES members. The appointment of these members to the Performance Review Board will be for a period of twenty-four (24) months.

**DATES:** The period of appointment for those individuals selected for BIS's Performance Review Board begins on October 18, 2010.

**FOR FURTHER INFORMATION CONTACT:** Ruthie B. Stewart, Department of Commerce Human Resources Operations Center (DOCHROC), Office of Executive Resources Operations, 14th and Constitution Avenue, NW., Room C–200, Washington, DC 20230, at (202) 482–3130.

**SUPPLEMENTARY INFORMATION:** In accordance with 5 U.S.C. 4314(c)(4), the Bureau Industry Security (BIS), Department of Commerce (DOC), announce the appointment of those individuals who have been selected to serve as members of BIS's Performance Review Board. The Performance Review Board is responsible for (1) reviewing performance appraisals and rating of Senior Executive Service (SES) members and (2) making recommendations to the appointing authority on other performance management issues, such as pay adjustments, bonuses and Presidential Rank Awards for SES members. The appointment of these members to the Performance Review Board will be for a period of twenty-four (24) months.

The period of appointment for those individuals selected for BIS's Performance Review Board begins on October 18, 2010. The name, position title, and type of appointment of each member of BIS's Performance Review Board are set forth below by organization:

**Department of Commerce, Office of the Secretary**

Michael Levitt, Assistant General Counsel for Legislation and Regulations, OGC.

**Department of Commerce, Bureau Industry Security**

Daniel O. Hill, Deputy Under Secretary;

Matthew S. Borman, Deputy Assistant Secretary for Export Administration;

Gay Shrum, CFO and Director of Administration.

**Susan Boggs,**

*Director, Office of Staffing, Recruitment and Classification, Department of Commerce Human Resources Operations Center.*

[FR Doc. 2010–26168 Filed 10–15–10; 8:45 am]

**BILLING CODE 3510–25–P**

## DEPARTMENT OF COMMERCE

### Economic Development Administration

### Membership of the Economic Development Administration Performance Review Board

**AGENCY:** Economic Development Administration, Department of Commerce.

**ACTION:** Notice of membership on the Economic Development Administration's Performance Review Board membership.

**SUMMARY:** In accordance with 5 U.S. C. 4314 (c) (4), the Economic Development Administration (EDA), Department of Commerce (DOC), announce the appointment of those individuals who have been selected to serve as members of EDA's Performance Review Board. The Performance Review Board is responsible for (1) reviewing performance appraisals and rating of Senior Executive Service (SES) members and (2) making recommendations to the appointing authority on other performance management issues, such as pay adjustments, bonuses and Presidential Rank Awards for SES members. The appointment of these members to the Performance Review Board will be for a period of twenty-four (24) months.

**DATES:** The period of appointment for those individuals selected for EDA's Performance Review Board begins on October 18, 2010.

**FOR FURTHER INFORMATION CONTACT:** Ronda L. Holbrook, Department of Commerce Human Resources Operations Center (DOCHROC), Office of Executive Resources Operations, 14th and Constitution Avenue, NW., Room C–200, Washington, DC 20230, at (202) 482–5243.

**SUPPLEMENTARY INFORMATION:** In accordance with 5 U.S. C. 4314 (c) (4), the Economic Development Administration (EDA), Department of Commerce (DOC), announce the appointment of those individuals who have been selected to serve as members of EDA's Performance Review Board. The Performance Review Board is responsible for (1) reviewing performance appraisals and rating of Senior Executive Service (SES) members and (2) making recommendations to the appointing authority on other performance management issues, such as pay adjustments, bonuses and Presidential Rank Awards for SES members. The appointment of these members to the Performance Review Board will be for a period of twenty-four (24) months.

**DATES:** The period of appointment for those individuals selected for EDA's Performance Review Board begins on October 18, 2010. The name, position title, and type of appointment of each member of EDA's Performance Review Board are set forth below by organization:

**Department of Commerce, Office of the Secretary**

Rick Siger, Chief of Staff, Office of the Deputy Secretary;

Gordon Alton, Deputy Director for Financial Management.

**Department of Commerce, Minority Business Development Agency**

Edith McCloud, Chief of Staff.

**Department of Commerce, Economic Development Administration**

Barry Bird, Chief Counsel.

**Susan Boggs,**

*Director, Office of Staffing, Recruitment and Classification, Department of Commerce Human Resources Operations Center.*

[FR Doc. 2010–26167 Filed 10–15–10; 8:45 am]

**BILLING CODE 3510–25–P**

## DEPARTMENT OF COMMERCE

### Economic Development Administration

### Notice of Petitions by Firms for Determination of Eligibility To Apply for Trade Adjustment Assistance

**AGENCY:** Economic Development Administration, Department of Commerce.

**ACTION:** Notice and opportunity for public comment.

Pursuant to Section 251 of the Trade Act of 1974, as amended (19 U.S.C. 2341 *et seq.*), the Economic Development Administration (EDA) has received petitions for certification of eligibility to apply for Trade Adjustment Assistance from the firms listed below. Accordingly, EDA has initiated investigations to determine whether increased imports into the United States of articles like or directly competitive with those produced by each of these firms contributed importantly to the total or partial separation of the firm's workers, or threat thereof, and to a decrease in sales or production of each petitioning firm.

LIST OF PETITIONS RECEIVED BY EDA FOR CERTIFICATION OF ELIGIBILITY TO APPLY FOR TRADE ADJUSTMENT ASSISTANCE 10/1/2010–10/12/2010

| Firm name | Address | Date accepted for investigation | Products |
|---|---|---|---|
| Absolute Automation Systems, Inc. | N56 W24842 N. Corporate Circle, Sussex, WI 53089. | 10/7/2010 | The firm manufactures industrial control panels, hi-volume control panels, and machine control panels. |
| Electro-Mechanical Products, Inc. | 1100 W. Louisiana Avenue, Denver, CO 80223. | 10/7/2010 | The firm manufactures parts of electro-mechanical industrial machinery heat exchangers and laser components. |
| Euro Marble & Granite, Inc ..... | 4552 N. Ruby Street, Schiller Park, IL 60176. | 10/7/2010 | The firm manufactures cut stone and stone products such as countertops and sinks. |
| Gulf Coast Manufacturing, LLC | 3622 West Main Street, Gray, LA 70359. | 10/7/2010 | The firm manufactures oil and gas well service equipment for both land and offshore applications. |
| Jersey Shore Steel Company ... | 70 Maryland Street, Jersey Shore, PA 17740. | 10/7/2010 | The firm manufactures small angle steel sections for furniture and agriculture. |
| Nolte Precise Manufacturing, Inc. | 6850 Colerain Avenue, Cincinnati, OH 45239. | 10/12/2010 | The firm manufactures custom, precision machined components typically from steel, some from plastic. |

Any party having a substantial interest in these proceedings may request a public hearing on the matter. A written request for a hearing must be submitted to the Trade Adjustment Assistance for Firms Division, Room 7106, Economic Development Administration, U.S. Department of Commerce, Washington, DC 20230, no later than ten (10) calendar days following publication of this notice.

Please follow the requirements set forth in EDA's regulations at 13 CFR 315.9 for procedures to request a public hearing. The Catalog of Federal Domestic Assistance official number and title for the program under which these petitions are submitted is 11.313, Trade Adjustment Assistance for Firms.

Dated: October 12, 2010.

**Miriam Kearse,**

*Project Coordinator, TAA for Firms.*

[FR Doc. 2010–26181 Filed 10–15–10; 8:45 am]

**BILLING CODE 3510–24–P**

## DEPARTMENT OF COMMERCE

### International Trade Administration

**[A–570–901]**

### Certain Lined Paper Products From the People's Republic of China: Notice of Preliminary Results of the Antidumping Duty Administrative Review

**AGENCY:** Import Administration, International Trade Administration, Department of Commerce.

**SUMMARY:** The Department of Commerce ("the Department") is conducting the third administrative review of the antidumping duty order on certain lined paper products ("CLPP") from the People's Republic of China ("PRC") with respect to four producers/exporters for the period September 1, 2008, through August 31, 2009. If these preliminary results are adopted in our final results of this review, we will instruct U.S. Customs and Border Protection ("CBP") to assess antidumping duties on all appropriate entries of subject merchandise during the period of review.

Interested parties are invited to comment on these preliminary results. We intend to issue the final results no later than 120 days from the date of publication of this notice, pursuant to section 751(a)(3)(A) of the Tariff Act of 1930, as amended ("the Act").

**DATES:** Effective Date: October 18, 2010.

**FOR FURTHER INFORMATION CONTACT:** Cindy Lai Robinson or Stephanie Moore, AD/CVD Operations, Office 3, Import Administration, International Trade Administration, Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; *telephone:* (202) 482–3797 or (202) 482–3692, respectively.

**SUPPLEMENTARY INFORMATION:**

#### Background

On September 1, 2009, the Department of Commerce ("the Department") published in the **Federal Register** the notice of the "Opportunity to Request Administrative Review" of the antidumping duty order on certain lined paper products from People's Republic of China, for the period September 1, 2008, through August 31, 2009. *See Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation: Opportunity to Request Administrative Review,* 74 FR 45179 (September 1, 2009). On September 28, 2009, we received a review request from the "Watanabe Group" (consisting of Watanabe Paper Products (Shanghai) Co., Ltd. ("Watanabe Shanghai"); Watanabe Paper Products (Linqing) Co., Ltd. ("Watanabe Linqing"); and Hotrock Stationery (Shenzhen) Co., Ltd. ("Hotrock Shenzhen")) (hereafter referred to as "Watanabe" or the Watanabe Group). On September 30, 2009, we received a

request from petitioner [1] to review the following four companies: Shanghai Lian Li Paper Products Co. Ltd. ("Lian Li"); Hwa Fuh Plastics Co., Ltd./Li Teng Plastics (Shenzhen) Co., Ltd. ("Hwa Fuh/Li Teng"); Leo's Quality Products Co., Ltd./Denmax Plastic Stationery Factory ("Leo/Denmax"); and the Watanabe Group. On October 26, 2009, we published the notice of initiation of this antidumping duty administrative review with respect to the above four companies. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Request for Revocation in Part,* 74 FR 54956 (October 26, 2009) ("*Initiation Notice*").

**Respondents and Questionnaires**

On November 9, 2009, we issued a questionnaire to Hwa Fuh/Li Teng, Leo/Denmax, Lian Li, and the Watanabe Group via FedEx Express.

On November 6, 2009, and January 13, 2010, Lian Li and Leo/Denmax submitted letters, respectively, certifying that they did not export the subject merchandise to the United States during the period of review ("POR"). Both Lian Li and Leo/Denmax requested that the Department rescind the administrative review with respect to each company.

On December 11, 2009, subsequent to the notification from FedEx Express that the questionnaire package to Hwa Fuh/Li Teng was not deliverable because of an invalid address and phone number in Shenzhen, China, we resent the Department's original questionnaire to Hwa Fuh's address in Taichung, Taiwan. In the December 11, 2009, letter, we requested that Hwa Fuh (in Taiwan) forward the questionnaire to Li Teng (in Shenzhen). During November and December 2009, we also made three attempts to contact Hwa Fuh/Li Teng by phoning Hwa Fuh/Li Teng numbers in Shenzhen China and in Taichung Taiwan. However, we were unable to reach Hwa Fuh/Li Teng.

On December 16, 2009, Watanabe submitted its section A response to the Department's original questionnaire, to which petitioner submitted its comments on January 15, 2010. On January 8, 2010, Watanabe submitted its sections C and D responses to the Department's original questionnaire, to which petitioner provided its comments on February 2, 2010. Watanabe also submitted separate rate application on January 8, 2010. On March 19, 2010, the Department issued first supplemental questionnaire to Watanabe, which provided its response on April 21, 2010. On May 7, 2010, petitioner provided its comments on Watanabe's first supplemental response. On May 24, 2010, the Department issued its second supplemental questionnaire to Watanabe, which provided its response on June 21, 2010, and on July 2, 2010, the Department issued its third supplemental questionnaire to Watanabe, which provided its response on July 12, 2010. On July 16, 2010, petitioner provided its comments on Watanabe's second supplemental response and comments on the upcoming verification. On July 16, 2010, the Department issued sales and factors of production verification agendas to Watanabe. On July 19, 2010, the petitioner provided additional pre-verification comments with respect to Watanabe.

The Department conducted sales and factors of production verification of Watanabe from July 26 through 30, 2010 in Shanghai, China. On August 11, 2010, we received Watanabe's minor correction provided at the outset of the verification.

On August 27, 2010, the petitioner submitted comments concerning Watanabe's questionnaire responses and the verification on those responses. This letter contained certain business proprietary information ("BPI") that called into question the reliability of the documents reviewed at verification and taken as exhibits and therefore, the reliability of Watanabe's response. On September 2, 2010, petitioners met Department officials to discuss these comments.[2] On September 3, 2010, the Department issued a letter to Watanabe requesting rebuttal comments to the petitioner's August 27, 2010, allegations.

Watanabe submitted its rebuttal comments on September 10, 2010. In its comments, Watanabe did not address these allegations directly as it claimed that it did not have access to certain BPI documents.

On September 20, 2010, the petitioner submitted a letter which authorized release of certain documents to Watanabe. On September 21, 2010, the Department issued a letter to Watanabe asking them to specifically address the allegations contained in the petitioner's August 27, 2010 letter.

On September 28, 2010, Watanabe submitted a letter in response to the Department's September 21, 2010 letter. Watanabe submitted certain factual information and repeated arguments made in its previous letter. *See* "Adverse Facts Available" ("AFA") section below for a detailed discussion.

**Period of Review**

The period of review ("POR") is September 1, 2008, through August 31, 2009.

**Case Calendar**

On May 18, 2010, the Department extended the time limits for the preliminary results. *See Certain Lined Paper Products from India and People's Republic of China: Extension of Time Limits for the Preliminary Results of Antidumping Duty Administrative Reviews,* 75 FR 27706 (May 18, 2010). Additionally, as explained in the memorandum from the Deputy Assistant Secretary for Import Administration, the Department has exercised its discretion to toll deadlines for the duration of the closure of the Federal Government from February 5, through February 12, 2010. Thus, all deadlines in this segment of the proceeding have been extended by seven days. *See* Memorandum to the Record from Ronald Lorentzen, DAS for Import Administration, regarding "Tolling of Administrative Deadlines As a Result of the Government Closure During the Recent Snowstorm," dated February 12, 2010. The revised deadline for the preliminary results of this review is October 7, 2010.[3]

**Surrogate Country and Factors**

On March 3, 2010, the Department sent interested parties a letter requesting comments on the surrogate country and information pertaining to valuing factors of production ("FOPs"). On April 19, 2010, Watanabe submitted surrogate value comments regarding various Indian sources. On June 21 and July 30, 2010, the petitioner submitted surrogate value information for use in the preliminary results. On July 6, 2010, Watanabe submitted comments objecting to the petitioner's June 21, 2010 submission as being untimely. On July 15, 2010, the petitioner submitted rebuttal comments with respect to Watanabe's objection comment. The petitioner argued that the deadline set by the Department was applicable to the preliminary results and it did not apply to the final results.

**Scope of the Order**

The scope of this order includes certain lined paper products, typically school supplies (for purposes of this scope definition, the actual use of or

[1] The petitioner is the Association of American School Paper Suppliers ("AASPS").

[2] *See* September 2, 2010, Ex Parte Memorandum

[3] Where a statutory deadline falls on a weekend, federal holiday, or any other day when the Department is closed, the Department will continue its longstanding practice of reaching the determination on the next business day. In this instance, the preliminary results will be released no later than October 8, 2010.

labeling of these products as school supplies or non-school supplies is not a defining characteristic) composed of or including paper that incorporates straight horizontal and/or vertical lines on ten or more paper sheets (there shall be no minimum page requirement for looseleaf filler paper) including but not limited to such products as single- and multi-subject notebooks, composition books, wireless notebooks, looseleaf or glued filler paper, graph paper, and laboratory notebooks, and with the smaller dimension of the paper measuring 6 inches to 15 inches (inclusive) and the larger dimension of the paper measuring 8¾ inches to 15 inches (inclusive). Page dimensions are measured size (not advertised, stated, or "tear-out" size), and are measured as they appear in the product (*i.e.,* stitched and folded pages in a notebook are measured by the size of the page as it appears in the notebook page, not the size of the unfolded paper). However, for measurement purposes, pages with tapered or rounded edges shall be measured at their longest and widest points. Subject lined paper products may be loose, packaged or bound using any binding method (other than case bound through the inclusion of binders board, a spine strip, and cover wrap). Subject merchandise may or may not contain any combination of a front cover, a rear cover, and/or backing of any composition, regardless of the inclusion of images or graphics on the cover, backing, or paper. Subject merchandise is within the scope of this order whether or not the lined paper and/or cover are hole punched, drilled, perforated, and/or reinforced. Subject merchandise may contain accessory or informational items including but not limited to pockets, tabs, dividers, closure devices, index cards, stencils, protractors, writing implements, reference materials such as mathematical tables, or printed items such as sticker sheets or miniature calendars, if such items are physically incorporated, included with, or attached to the product, cover and/or backing thereto.

Specifically excluded from the scope of this order are:

- Unlined copy machine paper;
- Writing pads with a backing (including but not limited to products commonly known as "tablets," "note pads," "legal pads," and "quadrille pads"), provided that they do not have a front cover (whether permanent or removable). This exclusion does not apply to such writing pads if they consist of hole-punched or drilled filler paper;
- Three-ring or multiple-ring binders, or notebook organizers incorporating such a ring binder provided that they do not include subject paper;
- Index cards;
- Printed books and other books that are case bound through the inclusion of binders board, a spine strip, and cover wrap;
- Newspapers;
- Pictures and photographs;
- Desk and wall calendars and organizers (including but not limited to such products generally known as "office planners," "time books," and "appointment books");
- Telephone logs;
- Address books;
- Columnar pads & tablets, with or without covers, primarily suited for the recording of written numerical business data;
- Lined business or office forms, including but not limited to: pre-printed business forms, lined invoice pads and paper, mailing and address labels, manifests, and shipping log books;
- Lined continuous computer paper;
- Boxed or packaged writing stationery (including but not limited to products commonly known as "fine business paper," "parchment paper", and "letterhead"), whether or not containing a lined header or decorative lines;
- Stenographic pads ("steno pads"), Gregg ruled ("Gregg ruling" consists of a single- or double-margin vertical ruling line down the center of the page. For a six-inch by nine-inch stenographic pad, the ruling would be located approximately three inches from the left of the book.), measuring 6 inches by 9 inches;

Also excluded from the scope of this order are the following trademarked products:

- *Fly™ lined paper products:* A notebook, notebook organizer, loose or glued note paper, with papers that are printed with infrared reflective inks and readable only by a Fly™ pen-top computer. The product must bear the valid trademark Fly™ (products found to be bearing an invalidly licensed or used trademark are not excluded from the scope).
- *Zwipes™:* A notebook or notebook organizer made with a blended polyolefin writing surface as the cover and pocket surfaces of the notebook, suitable for writing using a specially-developed permanent marker and erase system (known as a Zwipes™ pen). This system allows the marker portion to mark the writing surface with a permanent ink. The eraser portion of the marker dispenses a solvent capable of solubilizing the permanent ink allowing the ink to be removed. The product must bear the valid trademark Zwipes™ (products found to be bearing an invalidly licensed or used trademark are not excluded from the scope).
- *FiveStar®Advance™:* A notebook or notebook organizer bound by a continuous spiral, or helical, wire and with plastic front and rear covers made of a blended polyolefin plastic material joined by 300 denier polyester, coated on the backside with PVC (polyvinyl chloride) coating, and extending the entire length of the spiral or helical wire. The polyolefin plastic covers are of specific thickness; front cover is 0.019 inches (within normal manufacturing tolerances) and rear cover is 0.028 inches (within normal manufacturing tolerances). Integral with the stitching that attaches the polyester spine covering, is captured both ends of a 1″ wide elastic fabric band. This band is located 2⅜″ from the top of the front plastic cover and provides pen or pencil storage. Both ends of the spiral wire are cut and then bent backwards to overlap with the previous coil but specifically outside the coil diameter but inside the polyester covering. During construction, the polyester covering is sewn to the front and rear covers face to face (outside to outside) so that when the book is closed, the stitching is concealed from the outside. Both free ends (the ends not sewn to the cover and back) are stitched with a turned edge construction. The flexible polyester material forms a covering over the spiral wire to protect it and provide a comfortable grip on the product. The product must bear the valid trademarks FiveStar®Advance™ (products found to be bearing an invalidly licensed or used trademark are not excluded from the scope).
- *FiveStar Flex™:* A notebook, a notebook organizer, or binder with plastic polyolefin front and rear covers joined by 300 denier polyester spine cover extending the entire length of the spine and bound by a 3-ring plastic fixture. The polyolefin plastic covers are of a specific thickness; front cover is 0.019 inches (within normal manufacturing tolerances) and rear cover is 0.028 inches (within normal manufacturing tolerances). During construction, the polyester covering is sewn to the front cover face to face (outside to outside) so that when the book is closed, the stitching is concealed from the outside. During construction, the polyester cover is sewn to the back cover with the outside of the polyester spine cover to the inside back cover. Both free ends (the ends not sewn to the cover and back) are stitched with a turned edge construction. Each

ring within the fixture is comprised of a flexible strap portion that snaps into a stationary post which forms a closed binding ring. The ring fixture is riveted with six metal rivets and sewn to the back plastic cover and is specifically positioned on the outside back cover. The product must bear the valid trademark FiveStar Flex™ (products found to be bearing an invalidly licensed or used trademark are not excluded from the scope).

Merchandise subject to this order is typically imported under headings 4820.10.2050, 4810.22.5044, 4811.90.9090, 4820.10.2010, 4820.10.2020 of the Harmonized Tariff Schedule of the United States ("HTSUS"). The HTSUS headings are provided for convenience and customs purposes; however, the written description of the scope of this order is dispositive.

**Claims of No Shipments by Lian Li and Leo/Denmax**

Lian Li and Leo/Denmax filed no shipment certifications indicating that they did not export subject merchandise to the United States during the POR. On November 9, 2009, we conducted an internal query of the U.S. Customs and Border Protection ("CBP") entry data with respect to both companies. The CBP data entry confirms Lian Li and Leo/Denmax's claims of no shipments. However, we found that Lian Li's manufacturer ID number was used by other producers/reporters and therefore, appeared on the entry data. On November 13, 2009, we requested that CBP provide entry packets for those entries where Lian Li's ID appeared on the entry data. We received the entry packets from CBP on November 24 and December 4, 2009. We found no evidence from the CBP entry data packets that Lian Li had any entries, exports, or sales to the United States of subject merchandise during the POR.

On December 11, 2009, the petitioner submitted comments on Lian Li's November 6, 2009, letter. We rejected the petitioner's December 11, 2009, letter because the submission over bracketed certain information which is public in nature. On December 22, 2009, the petitioner resubmitted its comments claiming that Lian Li might have shipped subject merchandise to the United States as a "Free and Dutiable" Type "01" entry, *i.e.,* printed matter.[4]

Because printed matter is not subject merchandise under the *CLPP Order,*[5] the Department directed petitioner to CBP in regards to any concerns of possible manipulation of entry data and product classification by Lian Li.

In addition, on January 28, 2010, we sent CBP a "No Shipments Inquiry" with regard to Lian Li and Leo/Denmax. The inquiry requested that the CBP report within 10 days of receipt of the message any entries from the two companies. *See* Message from the Department to CBP, dated January 28, 2010. We have not received any entry information from CBP within the time limit.

Furthermore, on March 29, 2010, the Department issued a second letter to Lian Li and Leo/Denmax requesting further clarification as to whether they have not sold or shipped, directly or indirectly, any lined paper products (both subject and non-subject) to the United States during the POR. Lian Li provided its response on April 12, 2010, confirming no shipments or no knowledge of third country transshipments of subject merchandise to the United States during the POR. On April 15, 2010, Leo/Denmax also submitted a letter to recertify that it did not have any exports, sales, or entries, either directly or indirectly, of subject merchandise to the United States during the POR. Leo/Denmax again requested that the Department rescind the administrative review with respect to Leo/Denmax.

With regard to the Lian Li and Leo/Denmax claims of no shipments, our practice since implementation of the 1997 regulations concerning no-shipment respondents has been to rescind the administrative review if the respondent certifies that it had no shipments and we have confirmed through our examination of CBP data that there were no shipments of subject merchandise during the POR. *See Antidumping Duties; Countervailing Duties,* 62 FR 27296, 27393 (May 19, 1997), and *Oil Country Tubular Goods from Japan: Preliminary Results of Antidumping Duty Administrative Review and Partial Rescission of Review,* 70 FR 53161, 53162 (September 7, 2005), unchanged in *Oil Country Tubular Goods from Japan: Final Results and Partial Rescission of Antidumping Duty Administrative Review,* 71 FR 95 (January 3, 2006). As a result, in such circumstances, we normally instruct CBP to liquidate any entries from the no-shipment company at the deposit rate in effect on the date of entry.

In our May 6, 2003, "automatic assessment" clarification, we explained that, where respondents in an administrative review demonstrate that they had no knowledge of sales through resellers to the United States, we would instruct CBP to liquidate such entries at the all-others rate applicable to the proceeding. *See Antidumping and Countervailing Duty Proceedings: Assessment of Antidumping Duties,* 68 FR 23954 (May 6, 2003).

Based on Lian Li's and Leo/Denmax's assertion of no shipments and confirmation of that claim by CBP data, we preliminarily determine that Lian Li and Leo/Denmax had no sales to the United States during the POR.

Because "as entered" liquidation instructions do not alleviate the concerns which the May 2003 clarification was intended to address, we find it appropriate in this case to instruct CBP to liquidate any existing entries of merchandise produced by Lian Li and Leo/Denmax and exported by other parties at the PRC-wide entity rate should we continue to find at the time of our final results that Lian Li and Leo/Denmax had no shipments of subject merchandise from the PRC. *See, e.g., Certain Frozen Warmwater Shrimp from India: Partial Rescission of Antidumping Duty Administrative Review,* 73 FR 77610, 77612 (December 19, 2008). In addition, the Department finds that it is more consistent with the May 2003 clarification not to rescind the review in part in these circumstances but, rather, to complete the review with respect to Lian Li and Leo/Denmax and issue appropriate instructions to CBP based on the final results of the review. *See* the Assessment Rates section of this notice below.

**Preliminary Partial Rescission**

With respect to HwaFu/Li Teng, the Department was unable to find correct addresses for Hwa Fu/Li Teng. Specifically, the Department made five different attempts to deliver the questionnaire, but was unable to find a valid address for the company. *See*

[4] The petitioner provided an import manifest from the Port Import Export Reporting Service ("PIERS") which pertains to shipment of goods listed as "printed matter" that entered into the United States in December 2008. The petitioner points out that the commodity description indicates that the goods were produced and/or shipped by Lian Li. The petitioner argues that because Lian Li is assigned a very low antidumping duty rate, the potential for manipulation of entry form data and product classification data is very real. Therefore, the petitioner requests that the Department query CBP both generally and with specific reference to Lian Li's CBP code for antidumping purposes (A–570–901–010) and the company's manufacturer ID, and to release the data provided by CBP to parties so that these parties can comment on the results of the CBP query. *See* the petitioner's submission dated December 11, 2009.

[5] *See Notice of Amended Final Determination of Sales at Less Than Fair Value: Certain Lined Paper Products from the People's Republic of China; Notice of Antidumping Duty Orders: Certain Lined Paper Products from India, Indonesia and the People's Republic of China; and Notice of Countervailing Duty Orders: Certain Lined Paper Products from India and Indonesia,* 71 FR 56949 (September 28, 2006) ("*CLPP Order*").

Memorandum to the File from Cindy Robinson, Senior International Trade Analyst, AD/CVD Operations, Office 3, regarding "*Antidumping Duty Administrative Review of Certain Lined Paper Products from the People's Republic of China: Proof of Non-Delivery to Hwa Fu/Li Teng.*" dated October 7, 2010. Therefore, the Department preliminarily rescinds the review with respect to these companies, in accordance with our practice. *See,* e.g., *Silicon Metal from the People's Republic of China: Preliminary Results and Preliminary Partial Rescission of Antidumping Duty Administrative Review* 73 FR 12378, March 7, 2008.

**Verification**

As provided in section 782(i) of the Act, we conducted verification of information provided by Watanabe in the administrative review of the order on subject merchandise from the PRC using standard verification procedures, including the examination of relevant sales and factors of production information, financial records, and the selection and review of original documentation containing relevant information. Our verification results are outlined in the public version of our verification report dated October 7, 2010, which is on file in the CRU.

**Non-Market Economy Country Status**

In every case conducted by the Department involving the PRC, the PRC has been treated as a non-market economy ("NME") country. *See, e.g., Honey from the People's Republic of China: Preliminary Results and Partial Rescission of Antidumping Duty Administrative Review,* 70 FR 74764 (December 16, 2005) (unchanged in final).[6] Pursuant to section 771(18)(C)(i) of the Act, any determination that a foreign country is an NME country shall remain in effect until revoked by the administering authority. *See, e.g., Freshwater Crawfish Tail Meat from the People's Republic of China: Notice of Preliminary Results of Antidumping Duty Administrative Review,* 70 FR 58672 (October 7, 2005) (unchanged in final);[7] and *Carbazole Violet Pigment 23 from the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review and Rescission in Part,* 71 FR 65073, 65074 (November 7, 2006) (unchanged in final).[8] None of the parties to this proceeding has contested such treatment. Accordingly, we calculated NV in accordance with section 773(c) of the Act, which applies to NME countries.

**Separate Rate Determination**

A designation as an NME remains in effect until it is revoked by the Department. *See* section 771(18)(C) of the Act. Accordingly, there is a rebuttable presumption that all companies within the PRC are subject to government control and, thus, should be assessed a single antidumping duty rate. *See Notice of Final Determination of Sales at Less Than Fair Value, and Affirmative Critical Circumstances, In Part: Certain Lined Paper Products From the People's Republic of China,* 71 FR 53079 (September 8, 2006); *Final Determination of Sales at Less Than Fair Value and Final Partial Affirmative Determination of Critical Circumstances: Diamond Sawblades and Parts Thereof from the People's Republic of China,* 71 FR 29303 (May 22, 2006).

In the *Initiation Notice,* the Department notified parties of the application process by which exporters and producers may obtain separate rate status in NME investigations. *See Initiation Notice.* It is the Department's policy to assign all exporters of the merchandise subject to review in NME countries a single rate unless an exporter can affirmatively demonstrate an absence of government control, both in law (*de jure)* and in fact (*de facto*), with respect to exports. To establish whether a company is sufficiently independent to be entitled to a separate, company-specific rate, the Department analyzes each exporting entity in an NME country under the test established in *Notice of Final Determination of Sales at Less than Fair Value: Sparklers from the People's Republic of China,* 56 FR 20588 (May 6, 1991) ("*Sparklers*"), as amplified by *Notice of Final Determination of Sales at Less Than Fair Value: Silicon Carbide from the People's Republic of China,* 59 FR 22585 (May 2, 1994) ("*Silicon Carbide*").

However, if the Department determines that a company is wholly foreign-owned or located in a market economy, then a separate rate analysis is not necessary to determine whether it is independent from government control. It is the Department's practice to require a party to submit evidence that it operates independently of the state-controlled entity in each segment of a proceeding in which it requests separate rate status. The process requires exporters to submit a separate-rate status application. *See Tapered Roller Bearings and Parts Thereof, Finished or Unfinished, from the People's Republic of China: Final Results of 2005–2006 Administrative Review and Partial Rescission of Review,* 72 FR 56724 (October 4, 2007), *Peer Bearing Co. Changshan* v. *United States,* 587 F.Supp. 2d 1319, 1324–25 (CIT 2008) (affirming the Department's determination in that review).

As discussed below, we preliminarily determine not to rely on Watanabe's responses. Therefore, we preliminarily determine that the Watanabe Group has not demonstrated that it operates free from government control. Thus, we find that for purposes of the preliminary results of this review, the Watanabe Group is part of the PRC-wide entity.

**Application of Facts Available**

We find that there is credible evidence on the record that documents submitted by Watanabe at verification are either inaccurate, internally inconsistent, or are otherwise unreliable. Petitioner submitted invoices that are corroborated by Watanabe's own records and show that Watanabe's claimed sales and payment values do not tie to its own internal bookkeeping. Because we relied on these books and records during our verification of the information in Watanabe's questionnaire response, we have concluded that the information in the questionnaire response is not useable for purposes of these preliminary results. Although Watanabe provided some explanation that they claim renders petitioner's allegation invalid, we find that Watanabe's explanations do not sufficiently address the discrepancies raised by petitioner that implicate the veracity of Watanabe's financial information. Because this issue arose fairly late in the proceeding, *i.e.,* less than two months prior to the deadline for these preliminary results, we find that we may need to collect additional information in order to more fully evaluate this issue for purposes of the final results.

On August 27, 2010, the petitioner filed a letter claiming that evidence contained in its submission showed that, at the very least, Watanabe submitted false invoices at verification that do not tie to its own records and are physically different from invoices petitioner submitted, which it sought directly from its membership. Petitioner

[6] *See Honey from the People's Republic of China: Final Results and Final Rescission, in Part, of Antidumping Duty Administrative Review,* 71 FR 34893 (June 16, 2006).

[7] *See Freshwater Crawfish Tail Meat from the People's Republic of China: Notice of Final Results of Antidumping Duty Administrative Review,* 71 FR 7013 (February 10, 2006).

[8] *See Carbazole Violet Pigment 23 from the People's Republic of China: Final Results of Antidumping Duty Administrative Review and Rescission in Part,* 72 FR 26589 (May 10, 2007).

argued that (1) although filed after the regulatory deadline for submission of information to rebut, clarify, or correct factual information, consistent with prior practice, the Department should nonetheless accept the information that demonstrates that fraudulent documents have been submitted, consistent with the Department's practice in Certain Oil Country Tubular Goods; and (2) the information it submitted has critical implications for the veracity of Watanabe's financial information such that the Department cannot use Watanabe's data for purposes of the preliminary results. *See e.g.,* Letter to Hon. Gary F. Locke from petitioner, re: Certain Oil Country Tubular Goods from the People's Republic of China (Feb. 22, 2010) Case No. A–570–943; Memo to All interested Parties from Wendy J. Frankel, re: Release of Customs & Border Protection Information (March 9, 2010) Case No. A–570–943.

Petitioner specifically cited to the invoices it submitted and the supplied payment documentation at Verification Exhibit 14 at page 1 Watanabe provided to establish that the sales and payment values do not tie to Watanabe's own internal records.

On September 3, 2010, we asked Watanabe to address the petitioner's August 27 allegation that Watanabe provided false documentation (including falsified invoices) during the Department's verification.

On September 10, 2010, Watanabe submitted its response, claiming that petitioner's submission should be rejected as untimely. It further contended that the Department should not decline to rely on the verification documents Watanabe provided. Watanabe went on to argue that because petitioner claimed proprietary treatment for vast portions of the information provided, it and its legal representative and accountants could not see the information. Watanabe asserted that it is unable to meaningfully respond and, as such, the Department should refuse to consider the information. Watanabe also argued petitioner's reference to verification exhibits in the absence of a verification report is pure speculation as to its contents. Further, Watanabe argued that the documents petitioner refers to relate to third country sales, which it claims are irrelevant to the Department's inquiry into U.S. sales and the mere allegation that such third country sales were diverted to the United States is insufficient. Finally, Watanabe argued that petitioner should be made to explain how it came to be informed about confidential verification exhibits.

Regarding the payment for the invoices, Watanabe explained that invoice value and payments do not necessarily need to correspond to each other on a one-to-one basis for a variety of reasons, *e.g.,* it is common practice for some invoices to be partially paid in different payments or that one payment might cover more than one invoice. Moreover, there may be quality disputes between buyer and seller, or simply a breach of faith by the buyer. Such discrepancies can sometimes result in adjustments at the end of the accounting period.

On September 20, 2010, per Watanabe's request to reveal the confidential information so that it may substantively comment, in accordance with 19 CFR 351.306(a)(5), petitioner authorized the Department to release directly to Watanabe, for comment, invoices that it had attached to its August 27, 2010 submission. On September 21, 2010, the Department issued a letter to Watanabe releasing those invoices to Watanabe and again requested that they respond to petitioner's allegation that Watanabe provided false documentation during the Department's recent verification of Watanabe's questionnaire response. On September 24, 2010, due to a national holiday, Watanabe requested an extension for a period of one week from the date the company reopens, which was not provided.

On September 30, 2010, Watanabe submitted a letter in which it repeated many of the arguments raised in its September 10, 2010 letter. Watanabe also asserted that the information provided by petitioner was fabricated and is therefore unknown to it; because of this, Watanabe argued that it could not adequately respond to these allegations. In addition, Watanabe provided certain Customs data of record to establish that it had properly reported all of its sales.

**Analysis**

Watanabe has made a number of arguments about why the Department should reject petitioner's allegations, each of which are addressed below.

Watanabe argues that the factual information submitted by petitioners was untimely filed. While we agree that this filing was past the deadlines in 19 CFR 351.301(b)(2) and (c)(1), the Department has the discretion under 19 CFR 351.203(b) to extend any deadline for good cause. Given the significance of the issues raised by petitioners, we extended the deadline for factual information, and accepted petitioner's allegation and information, and requested that Watanabe respond.

Watanabe also argues that petitioner should be made to explain how it came to be informed about confidential verification exhibits. However, in letters dated August 30, 2010, and September 17, and 20, 2010, petitioner adequately explained how it had obtained the new factual information that it had submitted, specifying that it had been done without explaining or providing any data to its membership. There has been no allegation of an APO violation nor is there any evidence of improper treatment of BPI on the record of this case.

Watanabe argues that petitioner's arguments are without merit as they are taken out of context because the verification report had not been issued at the time. We agree that it is unfortunate that this issue arose before the verification report had been issued. However, in accordance with standard practice, Watanabe served the petitioner a copy of the verification exhibits within 5 days of the conclusion of verification. As discussed below, it is clear from the exhibits that they were obtained as part of the standard verification procedures of "Quantity and Value Reconciliation" and "Completeness Tests." The procedures and the relevant discussion of factual information are in the October 7, 2010, Verification Report.

Additionally, Watanabe claims that it is unable to adequately respond these allegations because Watanabe itself was unable to access to certain information. This claim is without merit. The issues raised by petitioner relate directly to Watanabe's own proprietary information contained in the verification exhibits. Both in the public and Watanabe proprietary version of petitioner's August 27, 2010, letter, and in the Department's letters of September 3, and 21, 2010, the factual bases of the petitioner's allegation is clear.

As to the merits of petitioner's allegations, petitioner supplied invoices which they claimed correspond to invoices related to third-country sales reviewed at verification and provided as verification exhibits. Specifically, petitioner points to the similarity between the products listed, quantities and other details in the two sets of invoices. However, they note the significant differences in payment amounts between the two sets of invoices. Additionally, petitioner provided documentation demonstrating payment in the amount listed on the petitioner-provided invoice and receipt of that amount as recorded in Watanabe supplied payment documentation at Verification Exhibit 14 at page 1. For three of Watanabe's third-country sales,

petitioner provided documentation demonstrating payment in the amount listed on the invoices petitioner provided and not those provided by Watanabe. This raises a fundamental question about the reliability of the documents reviewed at verification.

The invoices in question were reviewed as part verification procedure called "Quantity and Value Reconciliation" and "Completeness Tests" which is a procedure done to test whether the total quantity and value of sales reported by the respondent tie to their books and records. This is one of the central elements of verification—to ensure that respondent reported all the necessary sales. The total sales of a company include sales to the United States, the home market, and third countries. Without this step, we have no way of determining whether all the U.S. sales during the POR were properly reported. As detailed in the verification report, we selected sample transactions from Watanabe's list of total sales and reviewed them to determine if they were properly reported. This list identified the total quantity and value for each transaction. Thus, the invoices we reviewed showed total revenue based on the prices listed on them. This list of total sales, including the quantity and value, was then tied to Watanabe's 2008 and 2009 Financial Statements.

To date, Watanabe's substantive response to the presentation of these invoices and payment data by petitioner is to provide a copy of one Customs data record. This is intended to support the value as reported on one of the invoices provided by Watanabe at verification, to claim that the allegations of petitioner appears to be based on made-up documents, and to claim that frequently, customers pay amounts that differ from the invoiced amount.

Watanabe has not, however, addressed why the specific amount on invoices petitioner provided tie directly to Watanabe's payment records. Petitioner specifically cited to these invoices and the payment documents Watanabe provided as Verification Exhibit 14 at page 1 to show that the sales and payment values do not tie to Watanabe's own internal records, but to the invoices provided by petitioner. Watanabe's answers provide possible explanations as to why the payment amount on invoices it provided may not appear in its ledgers, but do not adequately explain why instead the payment amounts on invoices petitioner provided are clearly identifiable in the Watanabe-supplied payment documentation at Verification Exhibit 14 at page 1.

While Watanabe questions the existence of any motive to misreporting third country sales and attempts to impugn the behavior of petitioner, we are not satisfied with its response to the allegations.

Regardless of the motives of either party, we preliminarily determine that petitioner has provided credible evidence of misreporting of sales values by Watanabe. The fact that the total revenue associated with the invoiced amounts petitioner submitted tied to the company book and records tends to show that the prices on the invoices reviewed at verification are incorrect, thus fundamentally calling into question the reliability of Watanabe's records. As such, these records do not appear to be a reliable basis to use for our calculations. It is Watanabe's responsibility to provide a clear explanation of what is the basis for these different invoices, and how these differences can be explained and clearly tied to the records examined at verification so that we can determine that such records are reliable. Petitioner provided to Watanabe invoices it obtained from the members of its association, and linked the invoiced amount to the payment documentation Watanabe supplied as Verification Exhibit 14 at page 1.

Watanabe has not refuted the evidence showing the values on the invoices petitioner provided tie to Watanabe's own records. Because Watanabe has failed to provide an adequate explanation at the time of these preliminary results, we have relied on facts available for purposes of these preliminary results. However, as this issue has arisen late in the proceeding and there were certain constraints associated with proprietary treatment, we will continue to probe this issue further for purposes of the final results.

Section 776(a) of the Act provides that the Department will apply "facts otherwise available" ("FA") if, *inter alia,* necessary information is not available on the record or an interested party: (1) Withholds information that has been requested by the Department; (2) fails to provide such information within the deadlines established, or in the form or manner requested by the Department, subject to subsections (c)(1) and (e) of section 782 of the Act; (3) significantly impedes a proceeding; or (4) provides such information, but the information cannot be verified.

According to section 776(b) of the Act, if the Department finds that an interested party fails to cooperate by not acting to the best of its ability to comply with requests for information, the Department may use an inference that is adverse to the interests of that party in selecting from the facts otherwise available. *See also India Lined Paper AR1 Final; Notice of Final Results of Antidumping Duty Administrative Review: Stainless Steel Bar from India,* 70 FR 54023, 54025–26 (September 13, 2005); and *Notice of Final Determination of Sales at Less Than Fair Value and Final Negative Critical Circumstances: Carbon and Certain Alloy Steel Wire Rod from Brazil,* 67 FR 55792, 55794–96 (August 30, 2002). Adverse inferences are appropriate "to ensure that the party does not obtain a more favorable result by failing to cooperate than if it had cooperated fully." *See Statement of Administrative Action accompanying the Uruguay Round Agreements Act,* H.R. Rep. No. 103–316, Vol. 1, at 870 (1994) ("*SAA*"), reprinted in 1994 U.S.C.C.A.N. 4040, 4198–99. Furthermore, "affirmative evidence of bad faith on the part of a respondent is not required before the Department may make an adverse inference." *See Antidumping Duties; Countervailing Duties; Final Rule,* 62 FR 27296, 27340 (May 19, 1997); *see also Nippon Steel Corp.* v. *United States,* 337 F.3d 1373, 1382–83 (Fed. Cir. 2003) ("*Nippon*").

We find that the PRC-wide entity, including Watanabe, did not act to the best of its ability in this proceeding, within the meaning of section 776(b) of the Act, because it failed to respond to the Department's requests for information and failed to provide any additional information. Based on all of the above, the Department preliminarily finds that adverse inference is warranted in selecting from the facts otherwise available. *See Nippon,* 337 F.3d at 1382–83.

Section 776(b) of the Act provides that the Department may use as AFA information derived from: (1) The petition; (2) the final determination in the investigation; (3) any previous review; or (4) any other information placed on the record. The Department's practice, when selecting an AFA rate from among the possible sources of information, has been to ensure that the margin is sufficiently adverse "as to effectuate the statutory purposes of the adverse facts available rule to induce respondents to provide the Department with complete and accurate information in a timely manner." *See, e.g., Certain Steel Concrete Reinforcing Bars from Turkey; Final Results and Rescission of Antidumping Duty Administrative Review in Part,* 71 FR 65082, 65084 (November 7, 2006).

To ensure that the margin is sufficiently adverse so as to induce

cooperation, we have preliminarily assigned to the PRC-wide entity, including Watanabe, the rate of 258.21 percent, the highest rate on the record of this proceeding. This rate was assigned to the PRC-wide entity in the investigation of CLPP from the PRC. *See Notice of Amended Final Determination of Sales at Less Than Fair Value: Certain Lined Paper Products from the People's Republic of China; Notice of Antidumping Duty Orders: Certain Lined Paper Products from India, Indonesia and the People's Republic of China; and Notice of Countervailing Duty Orders: Certain Lined Paper Products from India and Indonesia,* 71 FR 56949 (September 28, 2006). As explained below, this rate has been corroborated.

**Corroboration of Secondary Information**

Section 776(c) of the Act provides that, when the Department relies on secondary information rather than on information obtained in the course of an investigation or review, it shall, to the extent practicable, corroborate that information from independent sources that are reasonably at its disposal. Secondary information is defined as information derived from the petition that gave rise to the investigation or review, the final determination concerning the subject merchandise, or any previous review under section 751 of the Act concerning the subject merchandise. *See SAA* at 870. Corroborate means that the Department will satisfy itself that the secondary information to be used has probative value. *Id.* To corroborate secondary information, the Department will, to the extent practicable, examine the reliability and relevance of the information to be used. *See Preliminary Results of Antidumping Duty Administrative Reviews and Partial Termination of Administrative Reviews: Tapered Roller Bearings and Parts Thereof, Finished and Unfinished from Japan, and Tapered Roller Bearings Four Inches or Less in Outside Diameter, and Components Thereof, from Japan,* 61 FR 57391, 57392 (November 6, 1996) (unchanged in the final determination), *Final Results of Antidumping Duty Administrative Reviews and Termination in Part: Tapered Roller Bearings and Parts Thereof, Finished and Unfinished from Japan, and Tapered Roller Bearings Four Inches or Less in Outside Diameter, and Components Thereof, from Japan,* 62 FR 11825 (March 13, 1997). Independent sources used to corroborate such evidence may include, for example, published price lists, official import statistics and customs data, and information obtained from interested parties during the particular investigation. *See Notice of Preliminary Determination of Sales at Less Than Fair Value: High and Ultra-High Voltage Ceramic Station Post Insulators from Japan,* 68 FR 35627 (June 16, 2003) (unchanged in final determination) *Notice of Final Determination of Sales at Less Than Fair Value: High and Ultra High Voltage Ceramic Station Post Insulators from Japan,* 68 FR 62560 (November 5, 2003); and *Notice of Final Determination of Sales at Less Than Fair Value: Live Swine From Canada,* 70 FR 12181, 12183–84 (March 11, 2005).

The AFA rate selected here is from the original investigation and was applied to Watanabe in the second Administrative Review. This rate was calculated based on information contained in the petition, which was corroborated for the final determination. No additional information has been presented in the current review which calls into question the reliability of the information. Therefore, the Department finds that the information continues to be reliable.

**Preliminary Results of the Review**

The Department has determined that the following preliminary dumping margin exists for the period September 1, 2008, through August 31, 2009:

| Producer/manufacturer | Weighted-average margin |
|---|---|
| PRC-Wide Rate (which includes the Watanabe Group) | 258.21% |

**Disclosure and Public Hearing**

The Department will disclose to parties the calculations performed in connection with these preliminary results within five days of the date of publication of this notice. *See* 19 CFR 351.224(b). Because, as discussed above, we intend to seek additional information, we will establish the briefing schedule at a later time, and will notify parties of the schedule in accordance with 19 CFR 351.309. Parties who submit case briefs or rebuttal briefs in this proceeding are requested to submit with each argument: (1) A statement of the issue; (2) a brief summary of the argument; and (3) a table of authorities. *See* 19 CFR 351.309(c)(2).

Pursuant to 19 CFR 351.310(c), interested parties who wish to request a hearing, or to participate if one is requested, must submit a written request to the Assistant Secretary for Import Administration, Room 1117, within 30 days of the date of publication of this notice. Requests should contain: (1) The party's name, address and telephone number; (2) the number of participants; and (3) a list of issues to be discussed. *Id.* Issues raised in the hearing will be limited to those raised in the respective case briefs. The Department will issue the final results of this administrative review, including the results of its analysis of the issues raised in any written briefs, not later than 120 days after the date of publication of this notice, pursuant to section 751(a)(3)(A) of the Act.

**Assessment Rates**

Upon issuance of the final results, the Department will determine, and CBP shall assess, antidumping duties on all appropriate entries covered by this review. The Department intends to issue assessment instructions to CBP 15 days after the publication date of the final results of this review. We will instruct CBP to liquidate the Watanabe Group's appropriate entries at the PRC-wide rate of 258.21 percent.

**Cash Deposit Requirements**

The following cash deposit requirements will be effective upon publication of the notice of final results of the administrative review for all shipments of CLPP from the PRC entered, or withdrawn from warehouse, for consumption on or after the date of publication, as provided by section 751(a)(2)(C) of the Act: (1) For previously reviewed or investigated companies not listed above that have separate rates, the cash-deposit rate will continue to be the company-specific rate published for the most recent period; (2) for all other PRC exporters of subject merchandise, which have not been found to be entitled to a separate rate, the cash-deposit rate will be PRC-wide rate of 258.21 percent; and (3) for all non-PRC exporters of subject merchandise, the cash-deposit rate will be the rate applicable to the PRC

exporter that supplied that non-PRC exporter. These deposit requirements, when imposed, shall remain in effect until further notice.

**Notification to Importers**

This notice also serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This determination is issued and published in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: October 7, 2010.

**Ronald K. Lorentzen,**

*Deputy Assistant Secretary for Import Administration.*

[FR Doc. 2010–26186 Filed 10–15–10; 8:45 am]

**BILLING CODE 3510–DS–P**

## CONSUMER PRODUCT SAFETY COMMISSION

### Sunshine Act Meeting

**TIME AND DATE:** Wednesday, October 20, 2010, 2 p.m.–4 p.m.

**PLACE:** Hearing Room 420, Bethesda Towers, 4330 East West Highway, Bethesda, Maryland.

**STATUS:** Commission Meeting—Open to the Public.

**Matter To Be Considered**

*Briefing Matter:* Publicly Available Consumer Product Safety Information Database—Final Rule.

A live Webcast of the Meeting can be viewed at *http://www.cpsc.gov/webcast.*

For a recorded message containing the latest agenda information, call (301) 504–7948.

**CONTACT PERSON FOR MORE INFORMATION:** Todd A. Stevenson, Office of the Secretary, U.S. Consumer Product Safety Commission, 4330 East West Highway, Bethesda, MD 20814, (301) 504–7923.

Dated: October 12, 2010.

**Todd A. Stevenson,**

*Secretary.*

[FR Doc. 2010–26232 Filed 10–14–10; 4:15 pm]

**BILLING CODE 6355–01–P**

## CORPORATION FOR NATIONAL AND COMMUNITY SERVICE

### Proposed Information Collection; Comment Request

**AGENCY:** Corporation for National and Community Service.

**ACTION:** Notice.

**SUMMARY:** The Corporation for National and Community Service (hereinafter the "Corporation"), as part of its continuing effort to reduce paperwork and respondent burden, conducts a pre-clearance consultation program to provide the general public and federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) (44 U.S.C. Sec. 3506(c)(2)(A)). This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirement on respondents can be properly assessed.

Currently, the Corporation is soliciting comments concerning its proposed collection request for the National Evaluation of the Learn and Serve America School-Based Program (NELSAP). The evaluation utilizes an experimental design to assess the impact of Learn and Serve America-funded service-learning activities on student outcomes. The evaluation will demonstrate the effectiveness of service-learning as a pedagogical method. Participation in the information collection is voluntary and will not be used in grant funding decisions.

Copies of the information collection request can be obtained by contacting the office listed in the addresses section of this notice.

**DATES:** Written comments must be submitted to the individual and office listed in the **ADDRESSES** section by December 17, 2010.

**ADDRESSES:** You may submit comments, identified by the title of the information collection activity, by any of the following methods:

(1) *By mail sent to:* Corporation for National and Community Service, Office of Strategy; Attention: Kimberly Spring, Room 10906B; 1201 New York Avenue, NW., Washington, DC 20525.

(2) By hand delivery or by courier to the Corporation's mailroom at Room 8100 at the mail address given in paragraph (1) above, between 9 a.m. and 4 p.m. Monday through Friday, except Federal holidays.

(3) *By fax to:* (202) 606–3464, Attention: Kimberly Spring

(4) *Electronically through the Corporation's e-mail address system: kspring@cns.gov.*

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. eastern time, Monday through Friday.

**FOR FURTHER INFORMATION CONTACT:** Kimberly Spring, (202) 606–6629, or by e-mail at *kspring@cns.gov.*

**SUPPLEMENTARY INFORMATION:** The Corporation is particularly interested in comments that:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Corporation, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are expected to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology (e.g., permitting electronic submissions of responses).

**Background**

The Corporation is implementing NELSAP under the authority of Section 120 of the National and Community Service Act of 1990 (42 U.S.C. 12565), which requires the Corporation to support an assessment of the impact of service-learning activities carried out under the Learn and Serve America Program. NELSAP will assess the impact of Learn and Serve America-funded service-learning activities on ninth and tenth grade students' academic achievement, academic engagement, and civic engagement in core academic areas (English, math, science, and social studies). Data will be collected from students on their academic and civic engagement; teachers on the implementation aspects of treatment (service-learning) and control (non-service-learning) classrooms; and school and district administrators on students' school records and academic achievement. In cases of missing extant content-based test scores for participating classrooms, students will complete a norm-based

standardized test. The information will be collected utilizing a variety of means, including paper surveys, on-line surveys, and telephone interviews.

**Current Action**

This is a new information collection request. The data collection will involve a random control trial of service-learning to assess the impact of Learn and Serve America-funded service-learning activities on ninth and tenth grade students' academic achievement, academic engagement, and civic engagement in core academic areas.

*Type of Review:* New.

*Agency:* Corporation for National and Community Service.

*Title:* National Evaluation of Learn and Serve America School-Based Program.

*OMB Number:* None.

*Agency Number:* None.

*Affected Public:* Public school district administrators, public school teachers, and public school students.

*Total Respondents:* 93 district administrators; 185 teachers; 7400 students.

*Frequency:* Once.

*Average Time per Response:* 24 hours for district administrators; 19 hours for teachers; 3 hours for students.

*Estimated Total Burden Hours:* 27,947 hours.

*Total Burden Cost (capital/startup):* None.

*Total Burden Cost (operating/maintenance):* None.

Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they will also become a matter of public record.

Dated: October 12, 2010.

**Heather Peeler,**

*Chief Strategy Officer, Office of Strategy.*

[FR Doc. 2010–26107 Filed 10–15–10; 8:45 am]

**BILLING CODE 6050–$$–P**

## COUNCIL ON ENVIRONMENTAL QUALITY

### Final Guidance, "Federal Greenhouse Gas Accounting and Reporting"

**AGENCY:** Council on Environmental Quality.

**ACTION:** Notice of availability of Final Guidance.

**SUMMARY:** On October 5, 2009, President Obama signed Executive Order 13514 ("Executive Order" or "E.O. 13514"), entitled "Federal Leadership in Environmental, Energy, and Economic Performance." 74 FR 52117, Oct. 8, 2009. The purpose of the Executive Order is to establish an integrated strategy toward sustainability in the Federal Government and to make reduction of greenhouse gas (GHG) emissions a priority for Federal agencies. Among other provisions, E.O. 13514 requires agencies to measure, report, and reduce their GHG emissions. It also requires the Chair of the Council on Environmental Quality (CEQ) to issue guidance establishing government-wide requirements for Federal agencies in calculating and reporting GHG emissions associated with agency operations. This Final Guidance, "Federal Greenhouse Gas Accounting and Reporting," is available as of October 6, 2010 at: *http://www.whitehouse.gov/administration/eop/ceq/sustainability/fed-ghg.*

**DATES:** The Final Guidance, "Federal Greenhouse Gas Accounting and Reporting" is available as of October 6, 2010.

**ADDRESSES:** The Final Guidance, "Federal Greenhouse Gas Accounting and Reporting" documents are available at: *http://www.whitehouse.gov/administration/eop/ceq/sustainability/fed-ghg.*

**FOR FURTHER INFORMATION CONTACT:** Leslie Gillespie-Marthaler, Senior Program Manager, Office of the Federal Environmental Executive (OFEE) at (202) 456–5117.

**SUPPLEMENTARY INFORMATION:** Federal agencies are required, under Section 2(c) of E.O. 13514, to establish and report to the CEQ Chair and OMB Director a comprehensive inventory of absolute GHG emissions, including scope 1, scope 2, and specified scope 3 emissions for fiscal year 2010, and thereafter, annually. The Final Guidance, "Federal Greenhouse Gas Accounting and Reporting" establishes government-wide requirements for Federal agencies in calculating and reporting GHG emissions associated with agency operations. The Final Guidance is accompanied by a separate Draft Technical Support Document for Federal GHG Accounting and Reporting (TSD), which provides detailed information on Federal inventory reporting requirements and calculation methodologies.

Section 9(a) of E.O. 13514 directed the Department of Energy's Federal Energy Management Program (FEMP), in coordination with the Environmental Protection Agency, Department of Defense, General Services Administration, Department of the Interior, Department of Commerce, and other agencies as appropriate, to develop recommended Federal GHG reporting and accounting procedures. These recommendations established the foundation for Federal guidance.

The Chair, Council on Environmental Quality is required, under Section 5(a) of E.O. 13514, to issue guidance for Federal agency greenhouse gas (GHG) accounting and reporting. CEQ provided the draft guidance for public review and comment from July 1, 2010 to September 1, 2010. Those comments can be viewed on the CEQ Web site at *http://www.whitehouse.gov/administration/eop/ceq/sustainability/fed-ghg/view-comments.* CEQ is committed to open government principles and leading by example to ensure that the Federal Government is transparent in its processes for accounting and reporting of Federal GHG emissions.

The Federal Government seeks to continually improve both the quality of data and methods necessary for calculating GHG emissions. Over time, additional requirements, methodologies, and procedures will be included in revisions to this document and supporting documents to improve the Federal Government's overall ability to accurately account for and report GHG emissions.

Dated: October 12, 2010.

**Nancy H. Sutley,**

*Chair, Council on Environmental Quality.*

[FR Doc. 2010–26139 Filed 10–15–10; 8:45 am]

**BILLING CODE 3125–W0–P**

## DEPARTMENT OF DEFENSE

### Office of the Secretary

### Federal Advisory Committee; Defense Advisory Committee on Military Personnel Testing

Agency: Under Secretary of Defense for Personnel and Readiness; DoD.

**ACTION:** Meeting notice.

**SUMMARY:** Under the provisions of the Federal Advisory Committee Act of 1972 (5 U.S.C., Appendix, as amended), the Government in the Sunshine Act of 1976 (5 U.S.C. 552b, as amended), and 41 CFR 102–3.150, the Department of Defense announces that the Defense Advisory Committee on Military Personnel Testing will meet November 18–19, 2010, in Carmel, CA.

**DATES:** The meeting will be held on Thursday, November 18 (from 8:30 a.m. to 4 p.m.) and Friday, November 19, 2010 (from 8:30 a.m. to noon).

**ADDRESSES:** The meeting will be held at the Pine Inn, Ocean Avenue between Lincoln St. and Monte Verde St., Carmel, CA 91921.

**FOR FURTHER INFORMATION CONTACT:** *Committee's Designated Federal Officer or Point of Contact:* Dr. Jane M. Arabian, Assistant Director, Accession Policy, Office of the Under Secretary of Defense (Personnel and Readiness), Room 3D1066, The Pentagon, Washington, DC 20301–4000, telephone (703) 697–9271.

**SUPPLEMENTARY INFORMATION:**

**Purpose of the Meeting**

The purpose of the meeting is to review planned changes and progress in developing computerized and paper-and-pencil enlistment tests.

**Agenda**

The agenda includes an overview of current enlistment test development timelines and planned research for the next 3 years.

**Public's Accessibility to the Meeting**

Pursuant to 5 U.S.C. 552b and 41 CFR 102–3.140 through 102–3.165, and the availability of space, this meeting is open to the public.

**Oral Presentations/Written Statements**

Persons desiring to make oral presentations or submit written statements for consideration at the Committee meeting must contact Dr. Jane M. Arabian (see **FOR FURTHER INFORMATION CONTACT**) no later than November 10, 2010.

Dated: October 13, 2010.

**Mitchell S. Bryman,**

*Alternate OSD Federal Register Liaison Officer, Department of Defense.*

[FR Doc. 2010–26189 Filed 10–15–10; 8:45 am]

**BILLING CODE 5001–06–P**

## DEPARTMENT OF DEFENSE

### Department of the Air Force

**[Docket ID: USAF–2010–0026]**

### Privacy Act of 1974; System of Records

**AGENCY:** Department of the Air Force; DoD.

**ACTION:** Notice to delete a system of records.

**SUMMARY:** The Department of the Air Force proposes to delete a system of records notice in its existing inventory of record systems subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended.

**DATES:** This proposed action will be effective without further notice on November 17, 2010, unless comments are received which result in a contrary determination.

**ADDRESSES:** You may submit comments, identified by dock number and title, by any of the following methods:

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

* *Mail:* Federal Docket Management System Office, Room 3C843 Pentagon, 1160 Defense Pentagon, Washington, DC 20301–1160.

*Instructions:* All submissions received must include the agency name and docket number for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the Internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information

**FOR FURTHER INFORMATION CONTACT:** Mr. Charles J. Shedrick, 703–696–6488.

**SUPPLEMENTARY INFORMATION:** The Department of the Air Force systems of records notices subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the Department of the Air Force Privacy Office, Air Force Privacy Act Office, Office of Warfighting Integration and Chief Information officer, ATTN: SAF/XCPPI, 1800 Air Force Pentagon, Washington DC 20330–1800

The Department the Air Force proposes to delete one system of records notice from its inventory of record systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended. The proposed deletion is not within the purview of subsection (r) of the Privacy Act of 1974, (5 U.S.C. 552a), as amended, which requires the submission of a new or altered system report.

Dated: October 13, 2010.

**Mitchell S. Bryman,**

*Alternate OSD Federal Register Liaison Officer, Department of Defense.*

**Deletion:**

F071 AF OSI B

**SYSTEM NAME:**

Security and Related Investigative Records (June 11, 1997; 62 FR 31793).

**REASON:**

This system is covered by systems of records notices F031 AF SP M, Personnel Security Access Records (October 9, 1997; 62 FR 52695) and V5–05, Joint Personnel Adjudication System (JPAS) (July 1, 2005; 70 FR 38120).

[FR Doc. 2010–26190 Filed 10–15–10; 8:45 am]

**BILLING CODE 5001–06–P**

## DEPARTMENT OF DEFENSE

### Department of the Air Force

**[Docket ID: USAF–2010–0025]**

### Privacy Act of 1974; System of Records

**AGENCY:** Department of the Air Force; DoD.

**ACTION:** Notice to alter a system of records.

**SUMMARY:** The Department of the Air Force is proposing to alter a system of records notice in its existing inventory of records systems subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended.

**DATES:** The proposed action will be effective on November 17, 2010, unless comments are received that would result in a contrary determination.

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

• *Federal Rulemaking Portal: http://www.regulations.gov*. Follow the instructions for submitting comments.

• *Mail:* Federal Docket Management System Office, Room 3C843 Pentagon, 1160 Defense Pentagon, Washington, DC 20301–1160.

*Instructions:* All submissions received must include the agency name and docket number for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the Internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

**FOR FURTHER INFORMATION CONTACT:** Mr. Charles J. Shedrick, 703–696–6488.

**SUPPLEMENTARY INFORMATION:** The Department of the Air Force systems of records notices subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the Air Force Privacy Office, Air Force Privacy Act Office, Office of Warfighting Integration and Chief Information officer, ATTN: SAF/XCPPI, 1800 Air Force Pentagon, Washington, DC 20330–1800.

The proposed systems reports, as required by 5 U.S.C. 552a(r) of the Privacy Act, were submitted on September 24, 2010, to the House Committee on Oversight and Government Reform, the Senate Committee on Homeland Security and Governmental Affairs, and the Office of Management and Budget pursuant to

paragraph 4c of Appendix I to Office of Management and Budget Circular No. A–130, "Federal Agency Responsibilities for Maintaining Records About Individuals," dated February 8, 1996 (February 20, 1996; 61 FR 6427).

Dated: October 13, 2010.

**Mitchell S. Bryman,**

*Alternate OSD Federal Register Liaison Officer, Department of Defense.*

**F071 AF OSI F**

**SYSTEM NAME:**

Investigative Applicant Processing Records (July 15, 2005; 62 FR 31793).

**CHANGES:**

* * * * *

**SYSTEM LOCATION:**

Delete entry and replace with "Headquarters, Air Force Office of Special Investigations (AFOSI), 1535 Command Drive, Andrews AFB, MD 20762–7002."

* * * * *

**CATEGORIES OF RECORDS IN THE SYSTEM:**

Delete entry and replace with "Name, Social Security Number (SSN), case file number, application documentation, school and college ability test results, results of the Air Force Office of Special Investigation (AFOSI) applicant inquiry, and the personnel security investigation concerning the individual."

**AUTHORITY FOR MAINTENANCE OF THE SYSTEM:**

Delete entry and replace with "10 U.S.C. 8013, Secretary of the Air Force; 10 U.S.C. 47, Uniform Code of Military Justice and 8012, 8013; DoD Directive 7730.47, Defense Incident Based Reporting System (DIBRS); 18 U.S.C. 922, Brady Handgun Violence Prevention Act; 28 U.S.C. 534, Uniform Federal Crime Reporting Act; 42 U.S.C. 10601, Victims Rights and Restitution Act of 1990; and E.O. 9397 (SSN), as amended."

* * * * *

**STORAGE:**

Delete entry and replace with "Paper records and electronic storage media."

**RETRIEVABILITY:**

Delete entry and replace with "By individual's name, Social Security Number (SSN), or Case File Number."

**SAFEGUARDS:**

Delete entry and replace with "Records are accessed by custodian of the records system and by persons responsible for servicing the records system in performance of their official duties who are properly screened and cleared for need-to-know. Buildings are equipped with alarms, security guards, and/or security-controlled areas accessible only to authorized persons. Electronically and optically stored records are maintained in "fail-safe" system software with password-protected access."

**RETENTION AND DISPOSAL:**

Delete entry and replace with "Disapproved applications are maintained at the Headquarters Office of Special Investigation and destroyed 10 years after disapproval.

Approved applications are maintained at the Headquarters Office of Special Investigation and destroyed 10 years after individuals' termination, decertification, discharge, or reassignment.

Applications maintained at the Air Force Office of Special Investigation field units are destroyed 1 year after processing is completed or when no longer needed whichever is sooner."

**SYSTEM MANAGER(S) AND ADDRESS:**

Delete entry and replace with "Director of Warfighting Integration, HQ AFOSI/XI, 1535 Command Drive, Andrews AFB, MD 20762–7002."

**NOTIFICATION PROCEDURE:**

Delete entry and replace with "Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to the Chief, Information Release Branch, HQ AFOSI/XILI, ATTN: Freedom of Information/Privacy Act Officer, P.O. Box 2218, Waldorf, MD 20604–2218.

Requester must provide their name, address, phone number, e-mail address, a brief description of the information they are seeking and are required to sign and date the penalty of perjury clause attesting that they are the person they say they are."

**RECORD ACCESS PROCEDURES:**

Delete entry and replace with "Individuals seeking access to information about themselves contained in this system should address written inquiries to the Chief, Information Release Branch, HQ AFOSI/XILI, ATTN: Freedom of Information/Privacy Act Officer, P.O. Box 2218, Waldorf, MD 20604–2218.

Requester must provide their name, address, phone number, e-mail address, a brief description of the information they are seeking and are required to sign and date the penalty of perjury clause attesting that they are the person they say they are."

**CONTESTING RECORD PROCEDURES:**

Delete entry and replace with "The Air Force rules for accessing records, and for contesting contents and appealing initial agency determinations are published in Air Force Instruction 33–332; 32 CFR part 806b; or may be obtained from the system manager."

* * * * *

**F071 AF OSI F**

**SYSTEM NAME:**

Investigative Applicant Processing Records.

**SYSTEM LOCATION:**

Headquarters, Air Force Office of Special Investigations (AFOSI), 1535 Command Drive, Andrews AFB, MD 20762–7002.

**CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:**

All AFOSI personnel, allocations and applicants for AFOSI duty.

**CATEGORIES OF RECORDS IN THE SYSTEM:**

Name, Social Security Number (SSN), case file number, application documentation, school and college ability test results, results of the Air Force Office of Special Investigation (AFOSI) applicant inquiry, and the personnel security investigation concerning the individual.

**AUTHORITY FOR MAINTENANCE OF THE SYSTEM:**

10 U.S.C. 8013, Secretary of the Air Force; 10 U.S.C. 47, Uniform Code of Military Justice and 8012, 8013; DoD Directive 7730.47, Defense Incident Based Reporting System (DIBRS); 18 U.S.C. 922, Brady Handgun Violence Prevention Act; 28 U.S.C. 534, Uniform Federal Crime Reporting Act; 42 U.S.C. 10601, Victims Rights and Restitution Act of 1990; and E.O. 9397 (SSN), as amended.

**PURPOSE(S):**

Compiled to assist in the selection and retention of Air Force Office of Special Investigation personnel.

Used by the Air Force Offices of Special Investigation Applicant Review Board and the Director of Personnel Management to select Air Force Office of Special Investigation trainees and support personnel.

Used by the Commander, Air Force Office of Special Investigation to reassign or retain Air Force Office of Special Investigation personnel.

**ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:**

In addition to those disclosures generally permitted under 5 U.S.C.

552a(b) of the Privacy Act of 1974, these contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

The DoD 'Blanket Routine Uses' published at the beginning of the Air Force's compilation of systems of records notices apply to this system.

**POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:**

**STORAGE:**

Paper records and electronic storage media.

**RETRIEVABILITY:**

By individual's name, Social Security Number (SSN), or Case File Number.

**SAFEGUARDS:**

Records are accessed by custodian of the records system and by persons responsible for servicing the records system in performance of their official duties who are properly screened and cleared for need-to-know. Buildings are equipped with alarms, security guards, and/or security-controlled areas accessible only to authorized persons. Electronically and optically stored records are maintained in "fail-safe" system software with password-protected access.

**RETENTION AND DISPOSAL:**

Disapproved applications are maintained at the Headquarters Office of Special Investigation and destroyed 10 years after disapproval.

Approved applications are maintained at the Headquarters Office of Special Investigation and destroyed 10 years after individuals' termination, decertification, discharge, or reassignment.

Applications maintained at the Air Force Office of Special Investigation field units are destroyed 1 year after processing is completed or when no longer needed whichever is sooner.

**SYSTEM MANAGER(S) AND ADDRESS:**

Director of Warfighting Integration, HQ AFOSI/XI, 1535 Command Drive, Andrews AFB, MD 20762–7002.

**NOTIFICATION PROCEDURES:**

Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to the Chief, Information Release Branch, HQ AFOSI/XILI, ATTN: Freedom of Information/Privacy Act Officer, P.O. Box 2218, Waldorf, MD 20604–2218.

Requester must provide their name, address, phone number, e-mail address, a brief description of the information they are seeking and are required to sign and date the penalty of perjury clause attesting that they are the person they say they are.

**RECORD ACCESS PROCEDURES:**

Individuals seeking access to information about themselves contained in this system should address written inquiries to the Chief, Information Release Branch, HQ AFOSI/XILI, ATTN: Freedom of Information/Privacy Act Officer, P.O. Box 2218, Waldorf, MD 20604–2218.

Requester must provide their name, address, phone number, e-mail address, a brief description of the information they are seeking and are required to sign and date the penalty of perjury clause attesting that they are the person they say they are.

**CONTESTING RECORD PROCEDURES:**

The Air Force rules for accessing records, and for contesting contents and appealing initial agency determinations are published in Air Force Instruction 33–332; 32 CFR part 806b; or may be obtained from the system manager.

**RECORD SOURCE CATEGORIES:**

Information obtained from previous employers, financial institutions, educational institutions, police and investigating officers, the bureau of motor vehicles, a state or local government, an international organization, a corporation, witnesses, or source documents (such as reports) prepared on behalf of the Air Force by boards, committees, panels, auditors, and so forth. Data is extracted from individual military or civilian personnel records.

**EXEMPTIONS CLAIMED FOR THE SYSTEM:**

Investigatory material compiled solely for the purpose of determining suitability, eligibility, or qualifications for federal civilian employment, military service, federal contracts, or access to classified information may be exempt pursuant to 5 U.S.C. 552a(k)(5), but only to the extent that such material would reveal the identity of a confidential source.

An exemption rule for this record system has been promulgated in accordance with 5 U.S.C. 553(b)(1), (2) and (3) and (e) and published in 32 CFR part 806b. For additional information, contact the system manager.

[FR Doc. 2010–26188 Filed 10–15–10; 8:45 am]

**BILLING CODE 5001–06–P**

## DEPARTMENT OF ENERGY

### Western Area Power Administration

### Transmission Infrastructure Program—TransWest Express Transmission Project Capacity

**AGENCY:** Western Area Power Administration, Department of Energy.

**ACTION:** Notice of request for Statements of Interest.

**SUMMARY:** The Western Area Power Administration (Western), a Federal power marketing administration of the United States Department of Energy (DOE), is requesting Statements of Interest (SOIs) from entities that are interested in purchasing transmission service. Western is currently evaluating its role in the TransWest Express Transmission Project (TWE Project) that would create a new transmission path from south central Wyoming to southern Nevada. As part of that evaluation, Western is requesting SOIs from any entity or entities desiring to purchase Long-Term Firm Transmission Service to deliver generation over the TWE Project.

**DATES:** To be assured consideration, all responses should be received by Western on or before 4 p.m. MST on December 2, 2010.

**ADDRESSES:** Send written responses to: T. Craig Knoell, Transmission Infrastructure Program Manager, Western Area Power Administration, P.O. Box 281213, Lakewood, CO 80228–8213. Responses may be delivered by certified mail, commercial mail, e-mail: *txrfi@wapa.gov,* or fax: 720–962–7700.

**FOR FURTHER INFORMATION CONTACT:** Ms. Stacey Harris, Public Utilities Specialist-TWE Project Manager, Transmission Infrastructure Program, Western Area Power Administration, P.O. Box 281213, Lakewood, CO 80228–8213, e-mail: *txrfi@wapa.gov.* This notice also is available on Western's Web site at *http://www.wapa.gov/fedreg/fedreg10.htm.*

**SUPPLEMENTARY INFORMATION:** Western markets and transmits Federal power resources from various multi-purpose hydroelectric projects to customers in accordance with Federal law. Western owns and operates an integrated 17,000 circuit mile, high-voltage transmission system across 15 western states covering a 1.3 million square mile service area. Western's transmission system is used to deliver Federal hydropower to Western's customers. In addition, the system is used to deliver power from interconnected power producers, including clean renewable energy resources.

Under section 402 of the American Recovery and Reinvestment Act (Recovery Act), 42 U.S.C. 16421a, Public Law 111–5, 123 Stat. 141, Div A, Title IV, section 402 (2009) (adding Section 301 to the Hoover Power Plant Act of 1984 [Public Law 98–381, Title III, section 301]), Western may borrow funds from the United States Treasury to construct, finance, facilitate, plan, operate, maintain, and/or study construction of new or upgraded electric power transmission lines and related facilities with at least one terminus in Western's marketing area, that deliver or facilitate the delivery of power from renewable resources constructed or reasonably expected to be constructed after the date of enactment of the Recovery Act. In order to implement section 402, on March 4, 2009, Western published a Notice of Proposed Program and Request for Public Comments in the **Federal Register** (74 FR 9391) describing its proposed Transmission Infrastructure Program (TIP) and soliciting public input on that program. After considering the comments received on its March 4 notice, Western published its final TIP Notice of Program on May 14, 2009 (74 FR 22732).

Western also published a Notice of Availability of Request for Interest on March 4, 2009, (74 FR 9391) that solicited interest in proposed transmission projects that resulted in the submission of over 200 SOIs, including a SOI for the TWE Project. Western is evaluating its potential participation in the TWE Project. The TWE Project is proposed as a 725-mile, 3,000-megawatt (MW), 600-kilovolt (kV), two-terminal, direct-current (DC) transmission system with terminals in Wyoming and Nevada and a potential interconnection at the Intermountain Power Project near Delta, Utah. The northern substation/converter station would be located near the Platte substation, in Carbon County, Wyoming. The southern substation/converter station would be located in southern Nevada near the Eldorado Valley. The northern terminal of the line is anticipated to interconnect with the planned 500-kV alternating current (AC) system that PacifiCorp has proposed as part of the Energy Gateway project. The southern terminal of the line would be interconnected with the 500-kV AC substations within the Eldorado Valley, where power can be wheeled to the various markets in the region. The estimated cost for the project is $3 billion and the planned in-service date is 2015. Western anticipates that it will be able to make approximately 250 MW of unidirectional surplus transmission capacity available from the Carbon County, Wyoming area to the Clark County, Nevada area.

In this notice, Western solicits SOIs to allow Western to determine the level of interest in Western's portion of long-term firm transmission service on the TWE Project. Information received through this effort may assist Western in acquiring TWE Project support and approval. Specifically, Western is soliciting any and all interest from entities looking to transfer energy from the Carbon County, Wyoming area to the Clark County, Nevada area. Western's rate would be cost-based; however, Western does not currently have sufficient information to estimate a rate. An expression of interest in purchasing this long-term firm transmission service made by submitting a SOI is not binding or promissory. SOIs submitted with respect to this notice should, at a minimum, include the following information:

1. Name and general description of the entity submitting the SOI.

2. Name, mailing address, telephone number, facsimile number, and e-mail address of that entity's primary contact.

3. Preferred interconnection points.

4. Description of the resources the proposed TWE Project transmission path would facilitate delivery of, including type(s) of resources, general location of generation and load or markets, existing interconnection requests, anticipated resource capacity and capacity factor of resource, estimated commercial operation date of generation, and any other information that would be useful in evaluating submitted SOIs.

5. The amount of transmission capacity and desired term of agreement for long-term firm transmission service and the interconnection or receipt points on the proposed path.

6. A general description of financing for generation.

7. A statement of financial stability.

Entities intending to submit a SOI should request from Western a SOI Evaluation Agreement. Entities must then execute the SOI Evaluation Agreement and pay a non-refundable SOI Evaluation Cost in the sum of $5,000. Western intends to use these funds to defray its cost in evaluating the SOIs and to continue its efforts in considering its potential participation in the TWE Project. By submitting an SOI and associated Evaluation Cost, submitters will be included for future consideration for Western's capacity in the TWE Project should the project proceed and Western participate in it.

Western will treat data submitted by entities in this process, including financing arrangements with other parties, in accordance with the Freedom of Information Act (FOIA). Participants may identify for confidential treatment all or part of a submitted document under the FOIA exemption for "Confidential Business Information" with appropriate markings. Such markings will be considered in the event a FOIA request for the information is received.

**Environmental Compliance**

In compliance with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321, *et seq.*), the Council on Environmental Quality Regulations for implementing NEPA (40 CFR Parts 1500–1508) and the DOE NEPA Implementing Procedures and Guidelines (10 CFR Part 1021), Western has determined that this action is categorically excluded from further NEPA analysis. Future actions under this authority will undergo appropriate NEPA analysis.

Dated: October 7, 2010.

**Timothy J. Meeks,**

*Administrator.*

[FR Doc. 2010–26143 Filed 10–15–10; 8:45 am]

**BILLING CODE 6450–01–P**

## ENVIRONMENTAL PROTECTION AGENCY

**[FRL–9214–5; Docket ID No. EPA–HQ–ORD–2010–0744]**

## Integrated Risk Information System (IRIS); Request for Chemical Substance Nominations for 2011 Program

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

**ACTION:** Request for chemical substance nominations for the IRIS 2011 Program.

**SUMMARY:** EPA's IRIS is a human health assessment program that evaluates quantitative and qualitative risk information on effects that may result from exposure to specific chemical substances found in the environment. EPA is soliciting public nominations for chemical substances for its 2011 agenda. EPA invites the public to submit nominations for substances to be considered for an assessment or reassessment in its IRIS Program in accordance with the instructions provided at the end of this notice.

**DATES:** Nominations must be submitted within 60 days of the publication of this notice. The 60-day period begins October 18, 2010, and ends December 17, 2010.

**ADDRESSES:** Nominations may be submitted electronically via *http://www.regulations.gov,* by e-mail, by mail, by facsimile, or by hand delivery/courier. Please follow the detailed instructions provided in the **SUPPLEMENTARY INFORMATION** section of this notice.

**FOR FURTHER INFORMATION CONTACT:** For information on the IRIS Program, contact Abdel Kadry, PhD, Program Director, National Center for Environmental Assessment (mail code 8601PY), Office of Research and Development, U.S. Environmental Protection Agency, Washington, DC 20460; or send electronic mail inquiries to: *FRNquestions@epa.gov*. For general questions about access to IRIS or the content of IRIS, please call the IRIS Hotline at (202) 566–1676 or send electronic mail inquiries to *hotline.iris@epa.gov.*

**SUPPLEMENTARY INFORMATION:**

## I. Background

EPA's IRIS is a human health assessment program that evaluates quantitative and qualitative risk information on effects that may result from exposure to specific chemical substances found in the environment. Through the IRIS Program, EPA provides the highest quality science-based human health assessments to support the Agency's regulatory activities. The IRIS database contains information for more than 540 chemical substances that can be used to support the first two steps (hazard identification and dose-response evaluation) of the risk assessment process. When supported by available data, IRIS provides oral reference doses (RfDs) and inhalation reference concentrations (RfCs) for chronic noncancer health effects, as well as assessments of potential carcinogenic effects resulting from chronic exposure. Combined with specific exposure information, government and private entities use IRIS to help characterize public health risks of chemical substances in site-specific situations and thereby support risk management decisions designed to protect public health.

From FY2008 to the present, the following IRIS assessments were completed and posted on the IRIS database:

| | |
|---|---|
| acrylamide | 79–06–1 |
| bromobenzene | 108–86–1 |
| carbon tetrachloride | 56–23–5 |
| cerium oxide and cerium compounds | 1306–38–3 |
| chlordecone (kepone) | 143–50–0 |
| chloroprene | 126–99–8 |
| decabromodiphenyl ether | 1163–19–5 |
| cis-1,2-dichloroethylene | 156–59–2 |
| trans-1,2-dichloroethylene | 156–60–5 |
| 1,4-dioxane (oral) | 123–91–1 |
| ethylene glycol monobutyl ether (EGBE) | 111–76–2 |
| hexabromodiphenyl ether | 68631–49–2 |
| 2-hexanone | 591–78–6 |
| hydrogen cyanide | 74–90–8 |
| nitrobenzene | 98–95–3 |
| pentabromodiphenyl ether | 60348–60–9 |
| pentachlorophenol | 87–86–5 |
| propionaldehyde | 123–38–6 |
| tetrabromodiphenyl ether | 5436–43–1 |
| 1,1,2,2-tetrachloroethane | 79–34–5 |
| thallium | 7440–28–0 |
| 1,2,3-trichloropropane | 96–18–4 |

The assessments listed below are currently on the IRIS agenda. The status and planned milestone dates can be found on the IRIS track system, accessible on the IRIS Web site (*http://www.epa.gov/iris*). All cancer and noncancer health endpoints due to chronic exposure are being assessed unless otherwise noted. Not all of the assessments on the IRIS agenda have been started, but most are in the various review steps of the IRIS process. The remainder will start draft development as resources become available.

| | |
|---|---|
| acetaldehyde | 75–07–0 |
| acrylonitrile | 107–13–1 |
| alkylates | various |
| ammonia | 7664–41–7 |
| tert-amyl methyl ether (TAME) | 994–05–8 |
| antimony | 7440–36–0 |
| arsenic, inorganic (cancer) | 7440–38–2 |
| arsenic, inorganic (noncancer) | 7440–38–2 |
| benzo(a)pyrene | 50–32–8 |
| beryllium (cancer) | 7440–41–7 |
| biphenyl | 92–52–4 |
| bisphenol A | 80–05–7 |
| n-butanol | 71–36–3 |
| tert-butanol | 75–65–0 |
| butyl benzyl phthalate | 85–68–7 |
| cadmium | 7440–43–9 |
| carbonyl sulfide | 463–58–1 |
| chloroethane | 75–00–3 |
| chloroform | 67–66–3 |
| chromium VI | 18540–29–9 |
| cobalt | 7440–48–4 |

| | |
|---|---|
| copper | 7440–50–8 |
| di-n-butyl phthalate | 84–74–2 |
| 1,2-dichlorobenzene | 95–50–1 |
| 1,3-dichlorobenzene | 541–73–1 |
| 1,4-dichlorobenzene | 106–46–7 |
| 1,2-dichloroethane (ethylene dichloride) | 107–06–2 |
| dichloromethane (methylene chloride) | 75–09–2 |
| diethyl phthalate | 84–66–2 |
| di(2-ethylhexyl)adipate | 103–23–1 |
| di(2-ethylhexyl) phthalate | 117–81–7 |
| diisobutyl phthalate | 84–69–5 |
| diisononyl phthalate | 58033–90–2 |
| diisopropyl ether (DIPE) | 108–20–3 |
| 4,4'-dimethyl-3-oxahexane (TAEE) | 919–94–8 |
| 1,4-dioxane (inhalation) | 123–91–1 |
| dipentyl phthalate | 131–18–0 |
| ethanol | 64–17–5 |
| ethyl tertiary butyl ether (ETBE) | 637–92–3 |
| ethylbenzene | 100–41–4 |
| ethylene oxide (cancer) | 75–21–8 |
| formaldehyde | 50–00–0 |
| hexabromocyclododecane (mixed stereoisomers) | 3194–55–6, 25637–99–5 |
| hexachlorobutadiene | 87–68–3 |
| hexachloroethane | 67–72–1 |
| hexahydro-1,3,5-trinitro-triazine (RDX) | 121–82–4 |
| isopropanol | 67–63–0 |
| Libby amphibole asbestos | 1332–21–4 |
| manganese | 7439–9 |
| methanol | l67–56–1 |
| methyl tert-butyl ether (MTBE) | 1634–04–4 |
| mirex | 2385–85–5 |
| naphthalene | 91–20–3 |
| nickel (soluble salts) | various |
| halogenated platinum salts and platinum compounds | various |
| polychlorinated biphenyls (PCBs) (noncancer) | various |
| polycyclic aromatic hydrocarbon (PAH) mixtures | various |
| refractory ceramic fibers | not applicable |
| styrene | 100–42–5 |
| 2,3,7,8-tetrachlorodibenzo-p-dioxin and related compounds | 1746–01–6, various |
| tetrachloroethylene (perchloroethylene) | 127–18–4 |
| tetrahydrofuran | 109–99–9 |
| trichloroacetic acid | 76–03–9 |
| trichloroethylene | 79–01–6 |
| 1,2,4-trimethylbenzene | 95–63–6 |
| 1,3,5-trimethylbenzene | 108–67–8 |
| tungsten and related compounds | 7440–33–7, various |
| urea | 57–13–6 |
| uranium (natural) | 7440–61–1 |
| vanadium pentoxide | 1314–62–1 |
| vinyl acetate | 108–05–4 |

The alkylates, listed above, are a distillation fraction of petroleum and are present in gasoline. Common alkylates found in gasoline for which IRIS assessments have not been recently completed include n-heptane, methylcyclohexane, 2-methylbutane, 2-methylpentane, 3-methylpentane, n-octane, 2,3,3-trimethylpentane, 2,3,4-trimethylpentane, and 2,2,5-trimethylhexane. EPA will evaluate the feasibility of conducting an assessment of alkylates, the approach to be taken in the assessment, and the identities of the compounds that will be assessed.

The following phthalates have been added to the IRIS agenda: Diisobutyl phthalate, diisononyl phthalate, and dipentyl phthalate. These additions to the IRIS agenda are in response to recommendations made by the National Academy of Sciences in the report, "Phthalates and Cumulative Risk Assessment—The Tasks Ahead" (NAS, 2008).

Perfluorooctanoic acid—ammonium salt (PFOA) and perfluorooctane sulfonate—potassium salt (PFOS) have been withdrawn from the IRIS agenda. In December 2009, EPA published the "Long-Chain Perfluorinated Chemicals (PFCs) Action Plan Summary" (*http://www.epa.gov/opptintr/existingchemicals/pubs/actionplans/pfcs.html*), part of EPA Administrator Lisa Jackson's comprehensive approach to enhance the Agency's current chemicals management program under the Toxic Substances Control Act. PFOA and PFOS are included in the Agency's action plan for this class of chemicals. The listing of asbestos in the IRIS agenda has been revised to specify Libby amphibole asbestos. EPA is focusing on the Libby amphibole in order to respond to needs of the Agency and the Libby community. The assessment for weathered toxaphene has been withdrawn because of lack of data to support an IRIS assessment.

Today's notice invites voluntary public nominations for chemical substances not already listed in this notice. Today's notice also invites comments on assessments on the current IRIS agenda. To nominate a substance, please complete the form below and submit it to EPA by one of the methods detailed below. A fill-and-print version of this form can be found on the IRIS Web site, *http://www.epa.gov/iris,* under IRIS Agenda. Nominations and comments are most

useful if they identify the nominator (including full name, title, affiliation, mailing address, e-mail address, and telephone number) and provide information on the criteria EPA uses to evaluate the priority of the chemicals:
Identification of nominator:
Nominator's name:
Title:
Affiliation:
Telephone No.:
Address:
e-mail address:
Chemical Substance Name:
Common Synonym(s), if any:
CAS No.:

*Information for Prioritizing Nominations*

1. What is the potential public health impact for this chemical?
2. Is this assessment needed to fulfill a chemical-specific EPA mandate or program need (e.g., statutory, regulatory, or court-ordered deadline)? Please describe the mandate or program need. When is the assessment needed?
3. Is this assessment a priority for stakeholders outside of EPA (e.g., states, tribes, local governments, environmental organizations, industries, or other IRIS users)? Why is it a priority?
4. Are you aware of other assessments of this substance that may be available to EPA (e.g., an EPA program has assessed this substance, but it has not received Agency-wide IRIS review, a state or other federal agency has an assessment, or another government or private organization has assessed this substance)? If possible, please provide specific information to allow EPA to locate and obtain the assessment.
5. For substances being nominated for IRIS reassessment, what, if any, significant new scientific data or risk assessment methodology is available that you believe would be likely to appreciably change the existing IRIS assessment? Please provide specific citations and other information that would allow EPA to locate and obtain the papers or data.
6. Are you aware of other factors that would make this substance a priority for IRIS assessment (e.g., widespread exposure, expected toxicity, or potentially susceptible populations)?

**II. How To Submit Nominations and Comments to the Docket at *http://www.regulations.gov***

—*http://www.regulations.gov:* Follow the on-line instructions for submitting comments.
—*E-Mail: ORD.Docket@epa.gov.*
—*Hand Delivery:* The OEI Docket is located in the EPA Headquarters Docket Center, EPA West Building, Room 3334, 1301 Constitution Ave., NW., Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Eastern Standard Time, Monday through Friday, excluding federal holidays. The telephone number for the Public Reading Room is (202) 566–1744. Deliveries are only accepted during the docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information. Consult EPA's Web site at *http://www.epa.gov/epahome/dockets.htm* for current information on docket operations, locations and telephone numbers.

*Instructions:* Direct your nominations to Docket ID No. EPA–HQ–ORD–2010–0744. Please ensure that your comments are submitted within the specified nomination period. Nominations received after the closing date will be marked "late," and may be considered only if time permits. It is EPA's policy to include all comments it receives in the public docket without change and to make the comments available online at *http://www.regulations.gov,* including any personal information provided, unless comments include 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 comments. If you send e-mail comments directly to EPA without going through *http://www.regulations.gov,* your e-mail address will be automatically captured and included as part of the comments that are placed in the public docket and made available on the Internet. If you submit electronic comments, EPA recommends that you include your name and other contact information in the body of your comments and with any disk or CD–ROM you submit. If EPA cannot read your comments due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comments. 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: 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 materials, such as copyrighted material, are publicly available only in hard copy. Publicly available docket materials are available either electronically in *http://www.regulations.gov* or in hard copy at the OEI Docket in the EPA Headquarters Docket Center.

Dated: October 12, 2010.

**Darrell Winner,**

*Acting Director, National Center for Environmental Assessment.*

[FR Doc. 2010–26159 Filed 10–15–10; 8:45 am]

**BILLING CODE 6560–50–P**

## FEDERAL COMMUNICATIONS COMMISSION

**[DA 10–1937]**

### Consumer Advisory Committee

**AGENCY:** Federal Communications Commission.

**ACTION:** Notice.

**SUMMARY:** The Commission announces the next meeting date and agenda of its Consumer Advisory Committee ("Committee"). The purpose of the Committee is to make recommendations to the Commission regarding consumer issues within the jurisdiction of the Commission and to facilitate the participation of all consumers in proceedings before the Commission.

**DATES:** The meeting of the Committee will take place on Wednesday, November 10, 2010, 9 a.m. to 4 p.m., at the Commission's Headquarters Building, Room TW–C305.

**ADDRESSES:** Federal Communications Commission, 445 12th Street, SW., Washington, DC 20554.

**FOR FURTHER INFORMATION CONTACT:** Scott Marshall, Consumer and Governmental Affairs Bureau, (202) 418–2809 (voice), (202) 418–0179 (TTY), or e-mail *Scott.Marshall@fcc.gov.*

**SUPPLEMENTARY INFORMATION:** This is a summary of the Commission's document DA 10–1937 released October 7, 2010, announcing the agenda, date and time of the Committee's next meeting. At its November 10, 2010 meeting, the Committee is expected to consider a recommendation regarding a pilot project aimed at identifying methods and strategies to improve federal/state collaboration on consumer complaint processing. A 2nd

recommendation on consumer bill shock may also be considered. The Committee is also expected to receive updates relative to prior recommendations on matters including National Broadband Plan implementation, Universal service, and consumer information disclosures. Reports will also be received regarding activities of the Disability Rights Office and other consumer topics. A limited amount of time on the agenda will be available for oral comments from the public attending at the meeting site.

Meetings are open to the public and are broadcast live with open captioning over the Internet from the FCC Live web page at *http://www.fcc.gov/live/.*

The Committee is organized under, and operates in accordance with, the provisions of the Federal Advisory Committee Act, 5 U.S.C., App. 2 (1988). A notice of each meeting will be published in the **Federal Register** at least fifteen (15) days in advance of the meeting. Records will be maintained of each meeting and made available for public inspection. Members of the public may send written comments to: Scott Marshall, Designated Federal Officer of the Committee at *scott.marshall@fcc.gov.*

The meeting site is fully accessible to people using wheelchairs or other mobility aids. Sign language interpreters, open captioning, assistive listening devices, and Braille copies of the agenda and handouts will be provided on site.

Simultaneous with the webcast, the meeting will be available through Accessible Event, a service that works with your web browser to make presentations accessible to people with disabilities. You can listen to the audio and use a screen reader to read displayed documents. You can also watch the video with open captioning. The Web site to access Accessible Event is *http://accessibleevent.com.* The web page prompts for an Event Code which is, 005202376. To learn about the features of Accessible Event, consult its User's Guide at: *http://accessibleevent.com/doc/user_guide/.* Other reasonable accommodations for people with disabilities are available upon request. The request should include a detailed description of the accommodation needed and contact information. Please provide as much advance notice as possible; last minute requests will be accepted, but may be impossible to fill. Send an e-mail to *fcc504@fcc.gov* or call the Consumer and Governmental Affairs Bureau at 202–418–0530 (voice), 202–418–0432 (TTY).

Federal Communications Commission.

**Joel Gurin,**

*Chief, Consumer and Governmental Affairs Bureau.*

[FR Doc. 2010–26179 Filed 10–15–10; 8:45 am]

**BILLING CODE 6712–01–P**

## DEPARTMENT OF DEFENSE

## GENERAL SERVICES ADMINISTRATION

## NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

**[OMB Control No. 9000–0012; Docket 2010–0083; Sequence 28]**

## Submission for OMB Review; OMB Control No. 9000–0012, Termination Settlement Proposal Forms—FAR (Standard Forms 1435 Through 1440)

**AGENCY:** Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

**ACTION:** Notice of request for public comments regarding an extension to an existing OMB clearance (9000–0012).

**SUMMARY:** Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Regulatory Secretariat will be submitting to the Office of Management and Budget (OMB) a request to review and approve an extension of a currently approved information collection requirement concerning Termination Settlement Proposal Forms—FAR (Standard Forms 1435 through 1440).

Public comments are particularly invited on: Whether this collection of information is necessary for the proper performance of functions of the FAR, and whether it will have practical utility; whether our estimate of the public burden of this collection of information is accurate, and based on valid assumptions and methodology; ways to enhance the quality, utility, and clarity of the information to be collected; and ways in which we can minimize the burden of the collection of information on those who are to respond, through the use of appropriate technological collection techniques or other forms of information technology.

**DATES:** Submit comments on or before November 17, 2010.

**ADDRESSES:** Submit comments identified by Information Collection 9000–0012 by any of the following methods:

- *Regulations.gov: http://www.regulations.gov.* Submit comments via the Federal eRulemaking portal by inputting "Information Collection 9000–0012" under the heading "Enter Keyword or ID" and selecting "Search". Select the link "Submit a Comment" that corresponds with "Information Collection 9000–0012". Follow the instructions provided at the "Submit a Comment" screen. Please include your name, company name (if any), and "Information Collection 9000–0012" on your attached document.
- *Fax:* 202–501–4067.
- *Mail:* General Services Administration, Regulatory Secretariat (MVCB), 1800 F Street, NW., Room 4041, Washington, DC 20405. ATTN: Hada Flowers/IC 9000–0012.

*Instructions:* Please submit comments only and cite Information Collection 9000–0012, in all correspondence related to this collection. All comments received will be posted without change to *http://www.regulations.gov,* including any personal and/or business confidential information provided.

**SUPPLEMENTARY INFORMATION:**

### A. Purpose

The termination settlement proposal forms (Standard Forms 1435 through 1440) provide a standardized format for listing essential cost and inventory information needed to support the terminated contractor's negotiation position. Submission of the information assures that a contractor will be fairly reimbursed upon settlement of the terminated contract.

### B. Annual Reporting Burden

*Respondents:* 872.

*Responses per Respondent:* 2.4.

*Total Responses:* 2,092.

*Hours per Response:* 2.4.

*Total Burden Hours:* 5,023.

*Obtaining Copies of Proposals:* Requester may obtain a copy of the proposal from the General Services Administration, Regulatory Secretariat (MVCB), 1800 F Street, NW., Room 4041, Washington, DC 20405, telephone (202) 501–4755. Please cite OMB Control No. 9000–0012, Termination Settlement Proposal Forms—FAR (SF's 1435 through 1440), in all correspondence.

Dated: October 13, 2010.

**Edward Loeb,**

*Director, Acquisition Policy Division.*

[FR Doc. 2010–26146 Filed 10–15–10; 8:45 am]

**BILLING CODE 6820–34–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

**[Docket No. FDA–2009–D–0568]**

### Agency Information Collection Activities; Submission for Office of Management and Budget Review; Comment Request; Draft Guidance for Industry on Planning for the Effects of High Absenteeism to Ensure Availability of Medically Necessary Drug Products

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA) is announcing that a proposed collection of information has been submitted to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995.

**DATES:** Fax written comments on the collection of information by November 17, 2010.

**ADDRESSES:** To ensure that comments on the information collection are received, OMB recommends that written comments be faxed to the Office of Information and Regulatory Affairs, OMB, Attn: FDA Desk Officer, FAX: 202–395–7285, or e-mailed to *oira_submission@omb.eop.gov.* All comments should be identified with the OMB control number 0910–NEW and title Draft Guidance for Industry on Planning for the Effects of High Absenteeism to Ensure Availability of Medically Necessary Drug Products (MNPs). Also include the FDA docket number found in brackets in the heading of this document.

**FOR FURTHER INFORMATION CONTACT:** Elizabeth Berbakos, Office of Information Management, Food and Drug Administration, 1350 Piccard Dr., PI50–400Q, Rockville, MD 20850, 301–796–7392, *Elizabeth.berbakos@fda.hhs.gov.*

**SUPPLEMENTARY INFORMATION:** In compliance with 44 U.S.C. 3507, FDA has submitted the following proposed collection of information to OMB for review and clearance.

### Draft Guidance for Industry on Planning for the Effects of High Absenteeism to Ensure Availability of Medically Necessary Drug Products

The draft guidance recommends that manufacturers of drug and therapeutic biological products and manufacturers of raw materials and components used in those products develop a written Emergency Plan (Plan) for maintaining an adequate supply of MNPs during an emergency that results in high employee absenteeism. The draft guidance discusses the issues that should be covered by the Plan, such as: (1) Identifying a person or position title (as well as two designated alternates) with the authority to activate and deactivate the Plan and make decisions during the emergency; (2) prioritizing the manufacturer's drug products based on medical necessity; (3) identifying actions that should be taken prior to an anticipated period of high absenteeism; (4) identifying criteria for activating the Plan; (5) performing quality risk assessments to determine which manufacturing activities may be reduced to enable the company to meet a demand for MNPs; (6) returning to normal operations and conducting a post-execution assessment of the execution outcomes; and (7) testing the Plan. The draft guidance recommends developing a Plan for each individual manufacturing facility as well as a broader Plan that addresses multiple sites within the organization (for purposes of this analysis, we consider the Plan for an individual manufacturing facility as well as the broader Plan to comprise one Plan for each manufacturer). Based on FDA's data on the number of manufacturers that would be covered by the draft guidance, we estimate that approximately 70 manufacturers will develop an Emergency Plan as recommended by the draft guidance (*i.e.,* 1 Plan per manufacturer to include all manufacturing facilities, sites, and drug products), and that each Plan will take approximately 500 hours to develop, maintain, and update.

The draft guidance also encourages manufacturers to include a procedure in their Plan for notifying CDER when the Plan is activated and when returning to normal operations. The draft guidance recommends that these notifications occur within 1 day of a Plan's activation and within 1 day of a Plan's deactivation. The draft guidance specifies the information that should be included in these notifications, such as which drug products will be manufactured under altered procedures, which products will have manufacturing temporarily delayed, and any anticipated or potential drug shortages. We expect that approximately two notifications (for purposes of this analysis, we consider an activation and a deactivation notification to equal one notification) will be sent to CDER by approximately two manufacturers each year, and that each notification will take approximately 16 hours to prepare and submit.

This draft guidance also refers to previously approved collections of information found in FDA regulations. Under the draft guidance, if a manufacturer obtains information after releasing an MNP under its Plan leading to suspicion that the product might be defective, CDER should be contacted immediately (*drugshortages@fda.hhs.gov*) in adherence to existing recall reporting regulations (21 CFR 7.40) (OMB control number 0910–0249) or defect reporting requirements for drug application products (21 CFR 314.81(b)(1)) and therapeutic biological products regulated by CDER (21 CFR 600.14) (OMB control numbers 0910–0001 and 0910–0458, respectively).

The following collections of information found in FDA current good manufacturing practice (CGMP) regulations in part 211 (21 CFR part 211) are approved under OMB control number 0190–0139. The draft guidance encourages manufacturers to maintain records, in accordance with the CGMP requirements (*see, e.g.,* § 211.180), that support decisions to carry out changes to approved procedures for manufacturing and release of products under the Plan. The draft guidance states: A Plan should be developed, written, reviewed, and approved within the site's change control quality system in accordance with the requirements in §§ 211.100(a) and 211.160(a); execution of the Plan should be documented in accordance with the requirements described in § 211.100(b); and standard operating procedures should be reviewed and revised or supplementary procedures developed and approved to enable execution of the Plan.

In the **Federal Register** of January 8, 2010 (75 FR 1060), FDA announced the availability of the draft guidance. In that **Federal Register** notice, FDA provided the public with 60 days to comment on the proposed collection of information. FDA received the following comments that pertained to the information collection in the draft guidance.

Some comments stated that pharmaceutical companies already have business continuity plans that address shortages of medically necessary products and that these plans take into account high absenteeism and other factors that could affect production. FDA believes that a general business continuity plan is unlikely to take into account individual products or how execution of the plan would affect product quality.

Some comments stated that the recommendation that the Plan be

maintained in the Quality System is burdensome and provides no value to ensuring protection of public health. FDA agrees with these comments and has revised the guidance to recommend that only the parts of the Plan that could have an effect on product quality be reviewed and approved by the Quality Unit before implementation of the Plan.

One comment stated that with adequate inventory on hand, an absenteeism-specific business plan might not be needed. FDA disagrees with the comment. As we discussed in the guidance, potential shortages could arise from emergencies not contemplated by inventory policy.

One comment stated that establishing provisions to use resources available at other sites will require significant effort. FDA recommends that these provisions be considered as part of the overall Plan for handling emergencies.

Some comments suggested different timeframes for notifying FDA of activation and deactivation of the Plan, stating that 1 day is too short a time. FDA did not change its recommendation for 1-day notification for Plan activation and deactivation because informing FDA of this activity in as close to real time as possible will assist the FDA in making critical decisions related to managing the causal event.

Some comments stated that testing the implementation of the Plan and producing test batches would be impractical and expensive. FDA agrees with these comments and has revised its recommendation to test the implementation of the Plan and removed its recommendation to produce test batches of the drug product.

FDA estimates the burden of this collection of information as follows:

TABLE 1—ESTIMATED ANNUAL REPORTING BURDEN [1]

| | Number of respondents | Annual frequency per response | Total annual responses | Hours per response | Total hours |
|---|---|---|---|---|---|
| Notify FDA of Plan activation and deactivation | 2 | 1 | 2 | 16 | 32 |
| Total | | | | | 32 |

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

TABLE 2—ESTIMATED RECORDKEEPING BURDEN [1]

| | Number of recordkeepers | Annual frequency per recordkeeping | Total annual records | Hours per record | Total hours |
|---|---|---|---|---|---|
| Develop initial Plan | 70 | 1 | 70 | 500 | 35,000 |
| Total | | | | | 35,000 |

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

Dated: October 12, 2010.

**Leslie Kux,**

*Acting Assistant Commissioner for Policy.*

[FR Doc. 2010–26103 Filed 10–15–10; 8:45 am]

**BILLING CODE 4160–01–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### Proposed Collection; Comment Request; the NIH–American Association for Retired Persons (AARP) Interactive Comprehensive Lifestyle Interview by Computer Study (iCLIC) (NCI)

**SUMMARY:** In compliance with the requirement of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, for opportunity for public comment on proposed data collection projects, the National Cancer Institute (NCI), the National Institutes of Health (NIH) will publish periodic summaries of proposed projects to be submitted to the Office of Management and Budget (OMB) for review and approval.

**PROPOSED COLLECTION:** *Title:* NIH-American Association for Retired Persons (AARP) interactive Comprehensive Lifestyle Interview by Computer Study (iCLIC). *Type of Information Collection Request:* Extension. *Need and Use of Information Collection:* The Nutritional Epidemiology Branch of the Division of Cancer Epidemiology and Genetics of the National Cancer Institute has planned this study to evaluate the feasibility of using these three new computerized questionnaires as well as the Diet and Health Questionnaire (DHQ), a well-established food frequency questionnaire in a population of early-to-late-middle-aged men and women. Participants will be asked to complete computerized questionnaires over a 90 day period, with some questionnaires in a series being completed twice. This evaluation study comprises the necessary performance and feasibility tests for the new computerized questionnaires, which will provide an opportunity to assess the possibility of administering computerized questionnaires in future large prospective cohort studies. The computerized questionnaires will support the ongoing examination between cancer and other health outcomes with nutritional, physical activity, and lifestyle exposures. The computerized questionnaires adhere to The Public Health Service Act, Section 412 (42 U.S.C. 285a–1) and Section 413 (42 U.S.C. 285a–2), which authorizes the Division of Cancer Epidemiology and Genetics of the National Cancer Institute (NCI) to establish and support programs for the detection, diagnosis, prevention and treatment of cancer; and to collect, identify, analyze and disseminate information on cancer research, diagnosis, prevention and treatment. *Frequency of Response:* Either 1 or 2 times. *Affected Public:* Individuals. *Type of Respondents:* U.S. adults (aged 50 and over). The annual reporting burden is displayed in the table below. The estimated total annualized burden hours being requested is 6886. The annualized cost to respondents is estimated at $121,743. There are no Capital Costs, Operating Costs, and/or Maintenance Costs to report.

TABLE 1—ESTIMATES OF ANNUAL BURDEN HOURS

| Instrument(s) tested | Frequency of response | Average time per response (minutes/hour) | Number of respondents | Annual hour burden |
|---|---|---|---|---|
| Read Invitation (Attachments 3) | 1.00 | 1/60 (0.017) | 16,667.00 | 278 |
| Pre-Enrollment (Attachment 6) | 1.00 | 10/60 (0.167) | 2,312.00 | 385 |
| Enrollment Process (Attachment 7) | 1.00 | 5/60 (0.083) | 2,288.00 | 191 |
| ASA24 (Attachments 4–1) | 2.00 | 30/60 (0.500) | 1,944.00 | 1,944 |
| ACT–24 (Attachments 4–2) | 2.00 | 15/60 (0.250) | 1,944.00 | 972 |
| LHQ (Attachments 4–3) | 1.00 | 20/60 (0.333) | 1,944.00 | 648 |
| DHQ (Attachments 4–4) | 1.00 | 45/60 (0.750) | 1,944.00 | 1,458 |
| Web Re-entry (Attachment 8) | 6.00 | 5/60 (0.083) | 1,944.00 | 972 |
| Evaluation Survey (Attachment 9) | 1.00 | 1/60 (0.017) | 2,288.00 | 38 |
| Totals | | | 33,275.00 | 6,886 |

*Request for Comments:* Written comments and/or suggestions from the public and affected agencies are invited on one or more of the following points: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the function of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

**FOR FURTHER INFORMATION CONTACT:** To request more information on the proposed project or to obtain a copy of the data collection plans and instruments, contact Arthur Schatzkin, M.D., Dr.P.H, Chief, Nutritional Epidemiology Branch, Division of Cancer Epidemiology and Genetics, National Cancer Institute, NIH, DHHS, Executive Plaza South, Room 3040, 6120 Executive Blvd., EPS–MSC 7242, Bethesda, MD 20892–7335 or call non-toll-free number 301–594–2931 or e-mail your request, including your address to: *schatzka@mail.nih.gov.*

*Comments Due Date:* Comments regarding this information collection are best assured of having their full effect if received within 60 days of the date of this publication.

Dated: October 12, 2010.

**Vivian Horovitch-Kelley,**

*NCI Project Clearance Liaison, National Institutes of Health.*

[FR Doc. 2010–26187 Filed 10–15–10; 8:45 am]

**BILLING CODE 4140–01–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

**[Docket No. FDA–2010–N–0273]**

### Agency Information Collection Activities; Submission for Office of Management and Budget Review; Comment Request; Current Good Manufacturing Practice Quality System Regulations

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA) is announcing that a proposed collection of information has been submitted to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995.

**DATES:** Fax written comments on the collection of information by November 17, 2010.

**ADDRESSES:** To ensure that comments on the information collection are received, OMB recommends that written comments be faxed to the Office of Information and Regulatory Affairs, OMB, Attn: FDA Desk Officer, FAX: 202–395–7285, or e-mailed to *oira_submission@omb.eop.gov.* All comments should be identified with the OMB control number 0910–0073. Also include the FDA docket number found in brackets in the heading of this document.

**FOR FURTHER INFORMATION CONTACT:** Daniel Gittleson, Office of Information Management, Food and Drug Administration, 1350 Piccard Dr., PI50–400B, Rockville, MD 20850, 301–796–5156, *Daniel.Gittleson@fda.hhs.gov.*

**SUPPLEMENTARY INFORMATION:** In compliance with 44 U.S.C. 3507, FDA has submitted the following proposed collection of information to OMB for review and clearance.

**Medical Devices: Current Good Manufacturing Practice Quality System Regulations—21**

CFR Part 820 (OMB Control Number 0910–0073)—Extension

Under section 520(f) of the Federal Food, Drug, and Cosmetic Act (the FD&C act) (21 U.S.C. 360j(f)), the Secretary of the Department of Health and Human Services has the authority to prescribe regulations requiring that the methods used in, and the facilities and controls used for, the manufacture, preproduction design validation (including a process to assess the performance of a device but not including an evaluation of the safety and effectiveness of a device), packing, storage, and installation of a device conform to current good manufacturing practice (CGMP), as described in such regulations, to assure that the device will be safe and effective and otherwise in compliance with the act.

The CGMP/quality system (QS) regulation implementing authority provided by this statutory provision is found under part 820 (21 CFR part 820) and sets forth basic CGMP requirements governing the design, manufacture, packing, labeling, storage, installation, and servicing of all finished medical devices intended for human use. The authority for this regulation is covered under sections 501, 502, 510, 513, 514, 515, 518, 519, 520, 522, 701, 704, 801, and 803 of the FD&C act (21 U.S.C. 351, 352, 360, 360c, 360d, 360e, 360h, 360i, 360j, 360l, 371, 374, 381, and 383). The CGMP/QS regulation includes requirements for purchasing and service controls, clarifies recordkeeping requirements for device failure and complaint investigations, clarifies requirements for verifying/validating production processes and process or product changes, and clarifies

requirements for product acceptance activities quality data evaluations and corrections of nonconforming product/quality problems.

Requirements are compatible with specifications in the international standards "ISO 9001: Quality Systems Model for Quality Assurance in Design/Development, Production, Installation, and Servicing." The CGMP/QS information collections will assist FDA inspections of manufacturers for compliance with QS requirements encompassing design, production, installation, and servicing processes.

Section 820.20(a) through (e) requires management with executive responsibility to establish, maintain, and/or review the following topics: (1) The quality policy, (2) the organizational structure, (3) the quality plan, and (4) the quality system procedures of the organization.

Section 820.22 requires the conduct and documentation of QS audits and re-audits. Section 820.25(b) requires the establishment of procedures to identify training needs and documentation of such training.

Section 820.30(a)(1) and (b) through (j), requires in respective order, the establishment, maintenance, and/or documentation of the following topics: (1) Procedures to control design of class III and class II devices and certain class I devices as listed therein; (2) plans for design and development activities and updates; (3) procedures identifying, documenting, and approving design input requirements; (4) procedures defining design output, including acceptance criteria, and documentation of approved records; (5) procedures for formal review of design results and documentation of results in the design history file (DHF); (6) procedures for verifying device design and documentation of results and approvals in the DHF; (7) procedures for validating device design, including documentation of results in the DHF; (8) procedures for translating device design into production specifications; (9) procedures for documenting, verifying, and validating approved design changes before implementation of changes; and (10) the records and references constituting the DHF for each type of device.

Section 820.40 requires manufacturers to establish and maintain procedures controlling approval and distribution of required documents and document changes.

Section 820.40(a) and (b) requires the establishment and maintenance of procedures for the review, approval, issuance, and documentation of required records (documents) and changes to those records.

Section 820.50(a)(1), (a)(2), (a)(3), and (b) requires the establishment and maintenance of procedures and requirements to ensure service and product quality, records of acceptable suppliers, and purchasing data describing specified requirements for products and services.

Sections 820.60 and 820.65 require, respectively, the establishment and maintenance of procedures for identifying all products from receipt to distribution and for using control numbers to track surgical implants and life-sustaining or supporting devices and their components.

Section 820.70(a)(1) through (a)(5), (b) through (e), (g)(1) through (g)(3), (h), and (i) requires the establishment, maintenance, and/or documentation of the following topics: (1) Process control procedures; (2) procedures for verifying or validating changes to specification, method, process, or procedure; (3) procedures to control environmental conditions and inspection result records; (4) requirements for personnel hygiene; (5) procedures for preventing contamination of equipment and products; (6) equipment adjustment, cleaning, and maintenance schedules; (7) equipment inspection records; (8) equipment tolerance postings, procedures for utilizing manufacturing materials expected to have an adverse effect on product quality; and (9) validation protocols and validation records for computer software and software changes.

Sections 820.72(a), (b)(1), and (b)(2) and 820.75(a) through (c) require, respectively, the establishment, maintenance, and/or documentation of the following topics: (1) Equipment calibration and inspection procedures; (2) national, international or in-house calibration standards; (3) records that identify calibrated equipment and next calibration dates; (4) validation procedures and validation results for processes not verifiable by inspections and tests; (5) procedures for keeping validated processes within specified limits; (6) records for monitoring and controlling validated processes; and (7) records of the results of revalidation where necessitated by process changes or deviations.

Sections 820.80(a) through (e) and 820.86, respectively, require the establishment, maintenance, and/or documentation of the following topics: (1) Procedures for incoming acceptance by inspection, test, or other verification; (2) procedures for ensuring that in process products meet specified requirements and the control of product until inspection and tests are completed; (3) procedures for, and records that show, incoming acceptance or rejection is conducted by inspections, tests or other verifications; (4) procedures for, and records that show, finished devices meet acceptance criteria and are not distributed until device master record (DMR) activities are completed; (5) records in the device history record (DHR) showing acceptance dates, results, and equipment used; and (6) the acceptance/rejection identification of products from receipt to installation and servicing.

Sections 820.90(a), (b)(1), and (b)(2) and 820.100 require, respectively, the establishment, maintenance and/or documentation of the following topics: (1) Procedures for identifying, recording, evaluating, and disposing of nonconforming product; (2) procedures for reviewing and recording concessions made for, and disposition of, nonconforming product; (3) procedures for reworking products, evaluating possible adverse rework effect and recording results in the DHR; (4) procedures and requirements for corrective and preventive actions, including analysis, investigation, identification and review of data, records, causes, and results; and (5) records for all corrective and preventive action activities.

Section 820.100(a)(1) through (a)(7) states that procedures and requirements shall be established and maintained for corrective/preventive actions, including the following: (1) Analysis of data from process, work, quality, servicing records; investigation of nonconformance causes; (2) identification of corrections and their effectiveness; (3) recording of changes made; and (4) appropriate distribution and managerial review of corrective and preventive action information. Section 820.120 states that manufacturers shall establish/maintain procedures to control labeling storage/application; and examination/release for storage and use, and document those procedures.

Sections 820.120(b) and (d), 820.130, 820.140, 820.150(a) and (b), 820.160(a) and (b), and 820.170(a) and (b), respectively, require the establishment, maintenance, and/or documentation of following topics: (1) Procedures for controlling and recording the storage, examination, release, and use of labeling; (2) the filing of labels/labeling used in the DHR; (3) procedures for controlling product storage areas and receipt/dispatch authorizations; (4) procedures controlling the release of products for distribution; (5) distribution records that identify consignee, product, date, and control

numbers; and (6) instructions, inspection and test procedures that are made available, and the recording of results for devices requiring installation.

Sections 820.180(b) and (c), 820.181(a) through (e), 820.184(a) through (f), and 820.186 require, respectively, the maintenance of records that are: (1) Retained at prescribed site(s), made readily available and accessible to FDA and retained for the device's life expectancy or for 2 years; (2) contained or referenced in a DMR consisting of device, process, quality assurance, packaging and labeling, and installation, maintenance, and servicing specifications and procedures; (3) contained in a DHR and demonstrate the manufacture of each unit, lot, or batch of product in conformance with DMR and regulatory requirements, include manufacturing and distribution dates, quantities, acceptance documents, labels and labeling, control numbers; and (4) contained in a quality system record (QSR), consisting of references, documents, procedures, and activities not specific to particular devices.

Sections 820.198(a) through (c) and 820.200(a) through (d), respectively, require the establishment, maintenance, and/or documentation of the following topics: (1) Complaint files and procedures for receiving, reviewing and evaluating complaints; (2) complaint investigation records identifying the device, complainant, and relationship of the device to the incident; (3) complaint records that are reasonably accessible to the manufacturing site or at prescribed sites; (4) procedures for performing and verifying that device servicing requirements are met and that service reports involving complaints are processed as complaints; and (5) service reports that record the device, service activity, and test and inspection data. Section 820.250 requires the establishment and maintenance of procedures to identify valid statistical techniques necessary to verify process and product acceptability; and sampling plans, when used, which are written and based on valid statistical rationale; and procedures for ensuring adequate sampling methods. The CGMP/QS regulation amends and revises the CGMP requirements for medical devices set out under part 820. The regulation adds design and purchasing controls; modifies previous critical device requirements; revises previous validation and other requirements; and harmonizes device CGMP requirements with QS specifications in the international standard "ISO 9001: Quality Systems Model for Quality Assurance in Design/Development, Production, Installation, and Servicing." The rule does not apply to manufacturers of components or parts of finished devices, nor to manufacturers of human blood and blood components subject to 21 CFR part 606. With respect to devices classified in class I, design control requirements apply only to class I devices listed in § 820.30(a)(2) of the regulation. The rule imposes burden upon: (1) Finished device manufacturer firms, which are subject to all recordkeeping requirements; (2) finished device contract manufacturers, specification developers; and (3) repacker, relabelers, and contract sterilizer firms, which are subject only to requirements applicable to their activities. In addition, remanufacturers of hospital single-use devices (SUDs) will now be considered to have the same requirements as manufacturers in regard to this regulation. The establishment, maintenance and/or documentation of procedures, records, and data required by this regulation will assist FDA in determining whether firms are in compliance with CGMP requirements, which are intended to ensure that devices meet their design, production, labeling, installation, and servicing specifications and, thus are safe, effective and suitable for their intended purpose. In particular, compliance with CGMP design control requirements should decrease the number of design-related device failures that have resulted in deaths and serious injuries.

The CGMP/QS regulation applies to approximately 8,924 respondents. These recordkeepers consist of 8,945 original respondents and an estimated 18 hospitals that remanufacture or reuse SUDs. They include manufacturers, subject to all requirements and contract manufacturers, specification developers, repackers, relabelers, and contract sterilizers, subject only to requirements applicable to their activities. Hospital remanufacturers of SUDs are now defined to be manufacturers under guidelines issued by FDA's Center for Devices and Radiological Health (CDRH), Office of Surveillance and Biometrics. Respondents to this collection have no reporting activities, but must make required records available for review or copying during FDA inspection. The regulation contains additional recordkeeping requirements in such areas as design control, purchasing, installation, and information relating to there manufacture of SUDs. The estimates for this burden are derived from those incremental tasks that were determined when the new CGMP/QS regulation became final as well as those carryover requirements. The carryover requirements are based on decisions made by the agency on July 16, 1992, under OMB Control Number 0910–0073, which still provides valid base line data.

**Explanation of Recordkeeping Burden Estimate**

FDA estimates respondents will have a total annual recordkeeping burden of approximately 3,105,552 hours. This figure also consists of approximately 143,052 hours spent on a startup basis by 734 new firms.

Burden (labor) hour and cost estimates were originally developed under FDA contract by Eastern Research Group, Inc. (ERG), in 1996 when the CGMP/QS regulation became final. Additional factors considered in deriving estimates included the following:

- Establishment type: Query has been made of CDRH's registration/listing databank and the current count was 7,748 domestic firms subject to CGMPs. It was also calculated that each year, the number of new domestic firms subject to CGMPs is 734. The average amount of firms therefore subject to CGMPs over the 3 years is therefore 8,924 and this figure has been used to calculate the total burden. Because the total number of registered firms is not static, the number of respondents will fluctuate from year to year resulting in slight changes to the overall burden.
- During the last report it was estimated that this number was 8,963. When the last set of numbers was calculated, FDA was still using a paper based system to register and list firms. On October 1, 2007, FDA switched to an electronic system for registration and listing. Also at that time the Food and Drug Administration Amendments Act of 2007 instituted an establishment registration fee for some types of facilities. FDA believes that during the fiscal year 2008 annual registration cycle, establishments that had previously registered but were not required to do so, removed themselves from inventory of active establishments. FDA believes that the current figures reported by the electronic system more accurately reflect the inventory of registered establishments.
- Potentially affected establishments: Except for manufacturers, not every type of firm is subject to every CGMP/QS requirement. For example, all are subject to Quality Policy (§ 820.20(a)), Document Control (§ 820.40), and other requirements, whereas only manufacturers and specification developers are subject to subpart C, Design Controls. The type of firm

subject to each requirement was identified by the ERG.

• FDA estimated the burden hours (and costs) for the previous CGMP regulation in 1992. That estimate was submitted to OMB on May 4, 1992, under OMB Paperwork Reduction Act Control Number 0910–0073. It was approved by OMB on July 16, 1992, and expired on June 30, 1995. The methodology used is different than that used by ERG in estimating incremental tasks when the new CGMP/QS became final rule. Nevertheless, the agency believes its 1992 estimate adequately represents labor hours (and costs) needed to comply with previous CGMP requirements carried over into the new CGMP/QS regulation. The 1992 estimate used 9,289 respondents (rather than 8,924 respondents), which compensates for differences in methodology.

In the **Federal Register** of June 24, 2010 (75 FR 36092), FDA published a 60-day notice requesting public comment on the proposed collection of information. FDA received two comments, however only one was regarding the information collection. One part of the comment questioned a technical reference found within the 60-day notice, stating not that the reference was incorrect, but that it may be somewhat misleading since the reference is updated on a regular basis and this was not communicated in the notice. While the commenter is correct that ISO 9001 is on version 2008 and ISO/DIS 13485 is on version 2003, the standard ISO 9001 and ISO/DIS 13485 are referenced because they are the standard regardless of version.

Another part of the comment maintains that the term "collect" is misleading as it pertains to recordkeeping requirements because relevant documents are only submitted if requested; however, the comment agrees that the information collection is necessary. Under the PRA regulations, records retention is considered "information collection," as defined by the PRA 5 CFR 1320.3

A third part of the comment stated that it was not clear to whom the regulations applied based on the statement, "[e]xcept for manufacturers, not every type of firm is subject to every CGMP/QS requirement." FDA believes the scope of the regulations found at part 820.1 makes it clear to whom the requirements are applicable.

The commenter questioned the validity and availability of a study that was conducted by the ERG in 1996, claiming that without benefit of the study itself, comments regarding burden estimates were too difficult to make. As a basis for its burden estimates, the agency relied in part on certain pieces of information found in the 1996 study and recommends that FDA make this document part of the docket. The study was submitted to OMB as part of the original PRA approval and is part of the Federal docket.

The commenter states that FDA assumes that the burden for each firm is the same, i.e., each of the 8,924 firms has exactly the same burden. The flexibility of the system suggests that the "one size fits all" approach in the **Federal Register** is not appropriate. The PRA burden placed on the 8,924 firms is an average burden on respondents.

The commenter believes that the estimates the agency provides are too low, but does not offer an alternative methodology for estimating that the agency may review. The comment goes on to suggest, however, that a new analysis similar to the 1996 study be conducted and serve as the basis for future burden estimates because our estimates have not changed in several years. While FDA agrees that additional analysis is always helpful in determining burden, the agency does perform ongoing reviews of the burden associated with PRA burden as required under the PRA for purposes of evaluating burden associated with its information collection requests, and has done so for purposes of renewing these CGMP/QS regulations.

Finally, the commenter suggests that the agency's regulation regarding electronic signatures found at part 11 (21 CFR part 11) is overly cumbersome to many firms. Part 11 is a separate regulation from part 820, and it is only mentioned for reference purposes in the preamble. The record keeping for part 11 is not within the scope of this paperwork analysis.

Also, CDRH is proactive in ensuring that the medical device industry and other affected individuals are made aware of on-going issues relating to the CGMP/QS regulations. FDA's Medical Device GMP/QS experts have participated in numerous conferences and seminars relating to the CGMP/QS regulatory requirements. During these sessions, our GMP/QS experts share information through speeches and panel discussions that provide a forum for open discussion. During these discussions guidance and direction is often given to the audience to help them understand their regulatory responsibilities under the GMP/QS regulation. In addition, issues are sometimes identified by the audience that provides the agency areas that we may need to clarify to affected individuals.

FDA estimates the burden of this collection of information as follows:

TABLE 1—ESTIMATED ANNUAL RECORDKEEPING BURDEN [1]

| CFR section | Number of recordkeepers | Annual frequency per recordkeeping | Total annual records | Hours per record | Total hours |
|---|---|---|---|---|---|
| 820.20(a) | 8,924 | 1 | 8,924 | 7 | 62,468 |
| 820.20(b) | 8,924 | 1 | 8,924 | 4 | 35,696 |
| 820.20(c) | 8,924 | 1 | 8,924 | 6 | 53,544 |
| 820.20(d) | 8,924 | 1 | 8,924 | 10 | 89,240 |
| 820.20(e) | 8,924 | 1 | 8,924 | 10 | 89,240 |
| 820.22 | 8,924 | 1 | 8,924 | 33 | 294,492 |
| 820.25(b) | 8,924 | 1 | 8,924 | 13 | 116,012 |
| 820.30(a)(1) | 8,924 | 1 | 8,924 | 2 | 17,848 |
| 820.30(b) | 8,924 | 1 | 8,924 | 6 | 53,544 |
| 820.30(c) | 8,924 | 1 | 8,924 | 2 | 17,848 |
| 820.30(d) | 8,924 | 1 | 8,924 | 2 | 17,848 |
| 820.30(e) | 8,924 | 1 | 8,924 | 23 | 205,252 |
| 820.30(f) | 8,924 | 1 | 8,924 | 37 | 330,188 |
| 820.30(g) | 8,924 | 1 | 8,924 | 37 | 330,188 |
| 820.30(h) | 8,924 | 1 | 8,924 | 3 | 26,772 |
| 820.30(i) | 8,924 | 1 | 8,924 | 17 | 151,708 |
| 820.30(j) | 8,924 | 1 | 8,924 | 3 | 26,772 |

TABLE 1—ESTIMATED ANNUAL RECORDKEEPING BURDEN [1]—Continued

| CFR section | Number of recordkeepers | Annual frequency per recordkeeping | Total annual records | Hours per record | Total hours |
|---|---|---|---|---|---|
| 820.40 | 8,924 | 1 | 8,924 | 9 | 80,316 |
| 820.40(a) and (b) | 8,924 | 1 | 8,924 | 2 | 17,848 |
| 820.50(a)(1) through (a)(3) | 8,924 | 1 | 8,924 | 22 | 196,328 |
| 820.50(b) | 8,924 | 1 | 8,924 | 6 | 53,544 |
| 820.6 | 8,924 | 1 | 8,924 | 1 | 8,924 |
| 820.65 | 8,924 | 1 | 8,924 | 1 | 8,924 |
| 820.70(a)(1) through (a)(5) | 8,924 | 1 | 8,924 | 2 | 17,848 |
| 820.70(b) and (c) | 8,924 | 1 | 8,924 | 2 | 17,848 |
| 820.70(d) | 8,924 | 1 | 8,924 | 3 | 26,772 |
| 820.70(e) | 8,924 | 1 | 8,924 | 2 | 17,848 |
| 820.70(g)(1) through (g)(3) | 8,924 | 1 | 8,924 | 1 | 8,924 |
| 820.70(h) | 8,924 | 1 | 8,924 | 2 | 17,848 |
| 820.70(i) | 8,924 | 1 | 8,924 | 8 | 71,392 |
| 820.72(a) | 8,924 | 1 | 8,924 | 5 | 44,620 |
| 820.72(b)(1) and (b)(2) | 8,924 | 1 | 8,924 | 1 | 8,924 |
| 820.75(a) | 8,924 | 1 | 8,924 | 3 | 26,772 |
| 820.75(b) | 8,924 | 1 | 8,924 | 1 | 8,924 |
| 820.75(c) | 8,924 | 1 | 8,924 | 1 | 8,924 |
| 820.80(a) through (e) | 8,924 | 1 | 8,924 | 5 | 44,620 |
| 820.86 | 8,924 | 1 | 8,924 | 1 | 8,924 |
| 820.90(a) | 8,924 | 1 | 8,924 | 5 | 44,620 |
| 820.90(b)(1) and (b)(2) | 8,924 | 1 | 8,924 | 5 | 44,620 |
| 820.100(a)(1) through (a)(7) | 8,924 | 1 | 8,924 | 12 | 107,088 |
| 820.100(b) | 8,924 | 1 | 8,924 | 1 | 8,924 |
| 820.120(b) | 8,924 | 1 | 8,924 | 1 | 8,924 |
| 820.120(d) | 8,924 | 1 | 8,924 | 1 | 8,924 |
| 820.130 | 8,924 | 1 | 8,924 | 1 | 8,924 |
| 820.140 | 8,924 | 1 | 8,924 | 6 | 53,544 |
| 820.150(a) and (b) | 8,924 | 1 | 8,924 | 6 | 53,544 |
| 820.160(a) and (b) | 8,924 | 1 | 8,924 | 1 | 8,924 |
| 820.170(a) and (b) | 8,924 | 1 | 8,924 | 2 | 17,848 |
| 820.180(b) and (c) | 8,924 | 1 | 8,924 | 2 | 17,848 |
| 820.181(a) through (e) | 8,924 | 1 | 8,924 | 1 | 8,924 |
| 820.184(a) through (f) | 8,924 | 1 | 8,924 | 1 | 8,924 |
| 820.186 | 8,924 | 1 | 8,924 | 1 | 8,924 |
| 820.198(a) through (c) | 8,924 | 1 | 8,924 | 5 | 44,620 |
| 820.200(a) and (d) | 8,924 | 1 | 8,924 | 3 | 26,772 |
| 820.25 | 8,924 | 1 | 8,924 | 1 | 8,924 |
| Totals | | | | | 3,105,552 |

[1] There are no capital or operating and maintenance costs associated with this collection of information.

Dated: October 12, 2010.

**Leslie Kux,**

*Acting Assistant Commissioner for Policy.*

[FR Doc. 2010–26102 Filed 10–15–10; 8:45 am]

**BILLING CODE 4160–01–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

**[Docket No. FDA–2010–N–0344]**

### Agency Information Collection Activities; Submission for Office of Management and Budget Review; Comment Request; Testing Communications on Medical Devices and Radiation-Emitting Products

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA) is announcing that a proposed collection of information has been submitted to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995.

**DATES:** Fax written comments on the collection of information by November 17, 2010.

**ADDRESSES:** To ensure that comments on the information collection are received, OMB recommends that written comments be faxed to the Office of Information and Regulatory Affairs, OMB, Attn: FDA Desk Officer, FAX: 202–395–7285, or e-mailed to *oira_submission@omb.eop.gov.* All comments should be identified with the OMB control number 0910–NEW and the title "Testing Communications on Medical Devices and Radiation-Emitting Products." Also include the FDA docket number found in brackets in the heading of this document.

**FOR FURTHER INFORMATION CONTACT:** Daniel Gittleson, Office of Information Management, Food and Drug Administration, 1350 Piccard Dr., PI50–400B, Rockville, MD 20850, 301–796–5156, *Daniel.Gittleson@fda.hhs.gov.*

**SUPPLEMENTARY INFORMATION:** In compliance with 44 U.S.C. 3507, FDA has submitted the following proposed collection of information to OMB for review and clearance.

### Testing Communications on Medical Devices and Radiation-Emitting Products—(OMB Control Number 0910–NEW)

FDA is authorized by section 1003(d)(2)(D) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 393(d)(2)(D)) to conduct educational and public information programs

relating to the safety of regulated medical devices and radiation-emitting products. FDA must conduct needed research to ensure that such programs have the highest likelihood of being effective. Improving communications about medical devices and radiation-emitting products will involve many research methods, including individual indepth interviews, mall-intercept interviews, focus groups, self-administered surveys, gatekeeper reviews, and omnibus telephone surveys.

The information collected will serve three major purposes. First, as formative research it will provide critical knowledge needed about target audiences to develop messages and campaigns about medical device and radiation-emitting product use. Knowledge of consumer and health care professional decisionmaking processes will provide the better understanding of target audiences that FDA needs to design effective communication strategies, messages, and labels. These communications will aim to improve public understanding of the risks and benefits of using medical devices and radiation-emitting products by providing users with a better context in which to place risk information more completely.

Second, as initial testing, it will allow FDA to assess the potential effectiveness of messages and materials in reaching and successfully communicating with their intended audiences. Testing messages with a sample of the target audience will allow FDA to refine messages while still in the developmental stage. Respondents will be asked to give their reaction to the messages in either individual or group settings.

Third, as evaluative research, it will allow FDA to ascertain the effectiveness of the messages and the distribution method of these messages in achieving the objectives of the message campaign. Evaluation of campaigns is a vital link in continuous improvement of communications at FDA.

Annually, FDA projects about 30 studies using a variety of research methods and lasting an average of 0.17 hours each (varying from 0.08–1.5 hours). The operating and maintenance costs include contractor expenses for designing and conducting information collection activities, specifically, drawing samples, training interviewers, collecting and analyzing information, and reporting and disseminating findings. FDA estimates the burden of this collection of information based on prior recent experience with the various types of data collection methods described earlier. FDA is requesting this burden so as not to restrict the Agency's ability to gather information on public sentiment for its proposals in its regulatory and communications programs.

In the **Federal Register** of July 13, 2010 (75 FR 39952), FDA published a 60-day notice requesting public comment on the proposed collection of information. FDA received one comment, however it was not related to the collection of information.

FDA estimates the burden of this collection of information as follows:

TABLE 1—ESTIMATED ANNUAL REPORTING BURDEN [1]

| Anticipated data collection methods | Number of respondents | Annual frequency per response | Total annual responses | Hours per response | Total hours |
|---|---|---|---|---|---|
| Individual indepth interviews | 360 | 1 | 360 | .75 | 270 |
| General public focus group interviews | 144 | 1 | 144 | 1.5 | 216 |
| Intercept interviews: Central location | 600 | 1 | 600 | .25 | 150 |
| Intercept interviews: Telephone | 10,000 [2] | 1 | 10,000 | .08 | 800 |
| Self-administered surveys | 2,400 | 1 | 2,400 | .25 | 600 |
| Gatekeeper reviews | 400 | 1 | 400 | .50 | 200 |
| Omnibus surveys | 2,400 | 1 | 2,400 | .17 | 408 |
| Total (general public) | 16,304 | | 16,304 | | 2,644 |
| Physician focus group interviews | 144 | 1 | 144 | 1.5 | 216 |
| Total (physician) | 144 | ..... | 144 | ..... | 216 |
| Total (overall) | 16,448 | ..... | 16,448 | ..... | 2,860 |

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.
[2] Brief interviews with callers to test message concepts and strategies following their call-in request to an FDA Center 1–800 number.

Dated: October 13, 2010.

**Leslie Kux,**

*Acting Assistant Commissioner for Policy.*

[FR Doc. 2010–26119 Filed 10–15–10; 8:45 am]

**BILLING CODE 4160–01–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Disease Control and Prevention

### Disease, Disability, and Injury Prevention and Control Special Emphasis Panel: Notice of Charter Renewal

This gives notice under the Federal Advisory Committee Act (Pub. L. 92–463) of October 6, 1972, that Disease, Disability, and Injury Prevention and Control Special Emphasis Panel, Centers for Disease Control and Prevention, Department of Health and Human Services, has been renewed for a 2-year period through September 18, 2012.

For information, contact Gladys G. Lewellen, M.B.A, M.P.A., Designated Federal Officer, Disease, Disability, and Injury Prevention and Control Special Emphasis Panel, Centers for Disease Control and Prevention, Department of Health and Human Services, 1600 Clifton Road, NE., Mailstop E11, Atlanta, Georgia 30333, telephone (404) 498–1519 or fax (404) 498–1541.

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee

management activities, for both CDC and the Agency for Toxic Substances and Disease Registry.

Dated: October 8, 2010.

**Elaine L. Baker,**

*Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.*

[FR Doc. 2010–26114 Filed 10–15–10; 8:45 am]

**BILLING CODE 4163–18–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### Government-Owned Inventions; Availability for Licensing

**AGENCY:** National Institutes of Health, Public Health Service, HHS.

**ACTION:** Notice.

**SUMMARY:** The inventions listed below are owned by an agency of the U.S. Government and are available for licensing in the U.S. in accordance with 35 U.S.C. 207 to achieve expeditious commercialization of results of federally-funded research and development. Foreign patent applications are filed on selected inventions to extend market coverage for companies and may also be available for licensing.

**ADDRESSES:** Licensing information and copies of the U.S. patent applications listed below may be obtained by writing to the indicated licensing contact at the Office of Technology Transfer, National Institutes of Health, 6011 Executive Boulevard, Suite 325, Rockville, Maryland 20852–3804; telephone: 301/496–7057; fax: 301/402–0220. A signed Confidential Disclosure Agreement will be required to receive copies of the patent applications.

**Prevention and Treatment of Herpes Virus Infection by Inhibition of the JMJD2 Family of Histone Demethylases**

*Description of Invention:* Investigators at the NIH have discovered a potential means for preventing or treating a herpes virus infection by inhibiting the activity of the host cell's histone demethylases. When herpesviruses enter a cell, they are inactivated by cellular defense mechanisms that wrap the viral genome in repressive chromatin structures. In order for viral replication to progress, the host's own histone demethylases are recruited to the viral genome to reverse this repression. In a preceding invention, the laboratory disclosed that viral replication and reactivation can be significantly reduced through inhibition of the histone demethylase LSD1 using Mono-Amino Oxidase Inhibitors (MAOIs); drugs that are in clinical use. The current invention further discloses that inhibition of a second set of histone demethylases (JMJD2 family) using a specific JMJD2 inhibitor, dimethyloxaloylglycine (DMOG), also results in significant repression of herpes viral replication.

Either alone or in combination, small molecule inhibition of LSD1 and the JMJD2 family present novel approaches for preventing herpes virus infection and halting viral reactivation that can lead to a disease that ranges from mild core sores to herpesvirus keratitis and life-threatening encephalitis. Additionally, chromatin-mediated repression of viral genomes and the requirement to de-repress these genomes for productive infection appears to be general to herpesviruses. Therefore, this treatment could also be applicable to chicken pox, shingles, CMV disease, mononucleosis, and Kaposi's sarcoma.

*Applications:* Prevention or treatment of infection by herpes simplex virus and other diseases caused by herpesviruses (i.e. Epstein-Barr virus, cytomegalovirus, varicella zoster, and Kaposi's sarcoma-associated herpesvirus).

*Advantage:* Inhibition of histone demethylases provides an alternative pathway for repressing herpes virus infection as compared to purine analog antivirals. While purine analogs are the most widely prescribed treatment for herpes infection, drug resistance is prevalent. Additionally, inhibition of histone demethylases results in no expression of viral gene products; in contrast to DNA replication inhibitors.

*Development Status:*

- Early-stage development
- Pre-clinical data available for mice
- Further pre-clinical and clinical development is needed

*Market:*

- Genital herpes can result from infection with either HSV type 2 or type 1, mainly by HSV type 2 in the U.S., which typically causes more recurrent and severe manifestations of the disease.
- According to the Centers for Disease Control and Prevention, nationwide, 16.2%, or about one out of six, people 14 to 49 years of age have genital HSV–2 infection.
- HSV keratitis is the most frequent cause of corneal blindness in the United States.

*Inventors:* Thomas Kristie et al. (NIAID)

*Publications:* None related to this invention available at this time.

*Patent Status:* U.S. Provisional Application No. 61/366,563 filed 22 Jul 2010 (HHS Reference No. E–184–2010/0–US–01).

*Related Technologies:* "Use of Mono-Amine Oxidase Inhibitors to Prevent Herpes Virus Infections and Reactivation from Latency"—HHS Reference No. E–275–2008/2–PCT–02.

*Licensing Status:* Available for licensing.

*Licensing Contacts:*

- Eric W. Odom, PhD; 301–435–5009; *odome@mail.nih.gov*.
- Susan O. Ano, PhD; 301–435–5515; *anos@mail.nih.gov*.

*Collaborative Research Opportunity:* The NIAID Laboratory of Viral Diseases is seeking statements of capability or interest from parties interested in collaborative research to further develop, evaluate, or commercialize prevention and treatment of viral diseases. Please contact Thomas Kristie, PhD at 301.496.3854 or *tkristie@niaid.nih.gov* for more information.

**Treatment of Inflammatory Bowel Disease (IBD) Using IL–13 Modulators and Inhibitors**

*Description of Invention:* Ulcerative colitis (UC), a chronic inflammatory disease of the colorectum, affects approximately 400,000 people in the United States. The cause of UC is not known, although an abnormal immunological response to bacterial antigens in the gut microflora is thought to be involved. Available for licensing are broad claims covering (1) treatments preventing the inflammatory response of colitis by modulating IL–13 and Natural Killer T cell (NKT) activity and (2) methods for screening for therapeutic compounds effective for colitis. NIH scientists and their collaborators have used a mouse model of experimental colitis (oxazolone colitis, OC) to show that IL–13, a Th2 cytokine, is a significant pathologic factor in OC and that neutralizing IL–13 in these animals effectively prevents colitis. Inflammation in this mouse model has also been shown to be effectively blocked by neutralizing IL–13 or by inhibiting the activation of NK–T cells through CD1.

Oxazolone colitis (OC) is a colitis induced by intrarectal administration of a relatively low dose of the haptenating agent oxazolone subsequent to skin sensitization with oxazolone. A highly reproducible and chronic colonic inflammation is obtained that is histologically similar to human ulcerative colitis. Studies show that NKT cells, rather than conventional CD4+T cells, mediate oxazolone colitis,

are the source of IL–13, and are activated by CD1 expressing intestinal epithelial cells. Tissue removed from UC patients were also shown to contain increased numbers of nonclassical NKT cells that produce markedly increased amounts of IL–13. In addition, these NKT cells are cytotoxic for epithelial cells, supporting the concept that epithelial damage is a key factor in UC.

*Applications:* Development of IL–13 and CD1 based therapeutics to treat or prevent ulcerative colitis.

*Development Status:* Small animal model studies.

*Inventors:* Warren Strober, Ivan Fuss, Frank Heller, Richard Blumberg (NIAID).

*Related Publications:*

1. IJ Fuss et al. Nonclassical CD1d-restricted NK T cells that produce IL–13 characterize an atypical Th2 response in ulcerative colitis. J Clin Invest. 2004 May;113(10):1490–1497. [PubMed: 15146247].

2. F Heller et al. Oxazolone colitis, a Th2 colitis model resembling ulcerative colitis, is mediated by IL–13-producing NK–T cells. Immunity 2002 Nov;17(5):629–638. [PubMed: 12433369].

*Patent Status:*

- U.S. Patent No. 7,666,411 issued 23 Feb 2010 (HHS Reference No. E–131–2002/0–US–02).
- U.S. Patent Application No. 12/709,029 filed 19 Feb 2010 (HHS Reference No. E–131–2002/0–US–10).
- International patent/patent application filings.

*Related Technologies:* Related IBD technologies also available for licensing include IL–13 mutant and chimeric molecules (HHS Reference No. E–003–2005/0) and NF-kappa B decoy oligonucleotides (HHS Reference No. E–108–2005/0).

*Licensing Status:* Available for licensing.

*Licensing Contact:* Sury Vepa, PhD, J.D.; 301–435–5020; *vepas@mail.nih.gov*.

Dated: October 12, 2010.

**Richard U. Rodriguez,**

*Director, Division of Technology Development and Transfer, Office of Technology Transfer, National Institutes of Health.*

[FR Doc. 2010–26153 Filed 10–15–10; 8:45 am]

**BILLING CODE 4140–01–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### Government-Owned Inventions; Availability for Licensing

**AGENCY:** National Institutes of Health, Public Health Service, HHS.

**ACTION:** Notice.

**SUMMARY:** The inventions listed below are owned by an agency of the U.S. Government and are available for licensing in the U.S. in accordance with 35 U.S.C. 207 to achieve expeditious commercialization of results of Federally-funded research and development. Foreign patent applications are filed on selected inventions to extend market coverage for companies and may also be available for licensing.

**ADDRESSES:** Licensing information and copies of the U.S. patent applications listed below may be obtained by writing to the indicated licensing contact at the Office of Technology Transfer, National Institutes of Health, 6011 Executive Boulevard, Suite 325, Rockville, Maryland 20852–3804; telephone: 301/496–7057; fax: 301/402–0220. A signed Confidential Disclosure Agreement will be required to receive copies of the patent applications.

**Mouse Anti-Mouse CXCL9 (Mig) Monoclonal Antibodies**

*Description of Invention:* This technology describes monoclonal antibodies against mouse chemokine (C–X–C motif) ligand 9 (CXCL9), also known as Monokine induced by gamma interferon (Mig). CXCL9 is a secreted protein that functions to attract white cells and increased expression of CXCL9 has been linked to several diseases. The inventors at the NIH generated over 100 anti-mouse CXCL9 antibodies from a CLXL9/Mig knockout mouse and further characterized several antibodies to show neutralization of CXCL9. As such, these antibodies could be used to measure concentrations of mouse CLXL9 in laboratory samples and block the activity of CXCL9 in injected mice. These antibodies are suitable for ELISA and Western blot. The antibodies have not been tested in flow cytometry or immunohistochemistry, but may also be useful for these applications.

*Applications*

- ELISA assays for detection and measurement of CXCL9.
- Neutralization of CXCL9 activity in mouse models and *in vitro* assays to study the role of CXCL9 in immune response and disease.

*Advantages:* Can be used in mice without eliciting endogenous antibodies reacting against the injected anti-CXCL9.

*Development Status:* The technology is currently in the pre-clinical stage of development.

*Inventors:* Joshua M. Farber and Hongwei H. Zhang (NIAID).

*Patent Status:* HHS Reference No. E–198–2009/0—Research Tool. Patent protection is not being pursued for this technology.

*Licensing Status*

Available for licensing.

*Licensing Contact:* Whitney A. Hastings; 301–451–7337; *hastingw@mail.nih.gov.*

**Signal-to-Noise Enhancement in Imaging Applications Using a Time-Series of Images**

*Description of Invention:* The invention offered for licensing relates to the field of imaging and specifically to the field of medical imaging. The apparatus and method of the invention provide for noise reduction in imaging applications that use a time-series of images. In one embodiment of the invention, a time-series of images is acquired using a same imaging protocol of the same subject area, but the images are spaced in time by one or more time intervals (*e.g.,* 1, 2, 3 * * * seconds apart). A sub-region is projected across all of the images to perform a localized analysis (corresponding X–Y pixels or X–Y–Z voxels are analyzed across all images) that identifies temporal components within each sub-region. Subsequently, within the sub-regions, only those temporal components are selected whose amplitude is above a predetermined amplitude threshold. The images are then reconstructed using the sub-regions with reduced components. A maximal-intensity-projection (MIP) is applied in the temporal domain (tMIP) in order to obtain a single image with reduced noise (this can be done either at the sub-region level or at the reconstructed image level). The technology can be applied to a broad spectrum of medical imaging technologies such as MRI, X-Ray, CT and others.

*Applications:* Medical imaging and diagnostics applied to MRI, X-Ray, CT scans or other imaging modalities including PET, SPECT, ultrasound or optical.

*Advantages:* Enhancing signal-to-noise of medical imaging techniques.

*Development Status*

- Proof of concept has been demonstrated. Data is available.

• Need to acquire further data to establish clinical utility of the method and to further optimize the protocol.

*Market*

• According to market research reports the market for medical imaging equipment industry in the United States is approximately $9.0 billion now and has been growing by approximately 7.6% annually.

• The United States market for computed tomography (CT) scanning systems is estimated to touch $3.6 billion by the end of 2009. The U.S. accounts for over 50.0% of the worldwide market.

• Worldwide MRI equipment market is estimated to reach $5.5 billion by 2010, according to new report by Global Industry Analysts, Inc. (*http://www.strategyr.com/Magnetic_Resonance_Imaging_MRI_Equipment_Market_Report.asp*). In the United States the market for such equipment is estimated at $1.9 billion for 2008, as stated the same report. The very high-field MRI systems market in the United States is projected to reach $968 million by the year 2010. Very High-Field Systems also represent the fastest growing segment, as hospitals and clinics upgrade old equipment with state-of-the-art systems.

• Enhancements in imaging technologies to achieve better image clarity, reliability and speed are being constantly pursued by medical imaging companies. Technologies that offer such improvements therefore present excellent commercial potential. Thus the subject invention which can be applied in a broad spectrum of imaging technologies offers such good commercial potential.

*Inventors:* Han Wen and Vinay Pai (NHLBI).

*Relevant Articles*

1. Fish DA, Grochmalicki J, Pike ER. Scanning singular-value-decomposition method for restoration of images with space-variant blur. J Opt Soc Am A, 13(3), pp. 464–469, March 1996.

2. Du X, Dunxu Y, Cuihua L, Jing L. "A novel approach to SVD-based image filtering improvement," International Conference on Computer Science and Software Engineering, vol 6, pp. 133–136, 2008.

*Patent Status:* U.S. Provisional Application No. 61/266,442 filed 03 Dec 2009 (HHS Reference No. E–292–2009/0–US–01).

*Related Technologies:* Image denoising techniques such as singular value decomposition (SVD).

*Licensing Status:* Available for licensing.

*Licensing Contacts*

• Uri Reichman, PhD, MBA; 301–435–4616; *UR7a@nih.gov.*

• John Stansberry, PhD; 301–435–5236; *stansbej@mail.nih.gov.*

*Collaborative Research Opportunity:* The National Heart, Lung, and Blood Institute is seeking statements of capability or interest from parties interested in collaborative research to implement the technology described above on specific commercial platforms. Please contact Denise Crooks, PhD at 301–435–0103 or via e-mail at *crooksd@nhlbi.nih.gov* for more information.

**Inverse Agonists of the TSH Receptor for the Treatment of Thyroid Cancer and Hyperthyroidism**

*Description of Invention:* This technology features small molecule inverse agonists of the thyroid-stimulating hormone (TSH) receptor that may be readily synthesized, and are likely to prove effective for oral administration. These compounds may potentially be used to treat recurrent thyroid cancer and some cases of hyperthyroidism, and also represent unique tools for investigating the role of TSH receptor signaling in these diseases.

According to the National Cancer Institute, over 37,000 new cases of thyroid cancer were diagnosed in the United States in 2008. Approximately 10% to 30% of patients thought to be disease-free after initial treatment will develop recurrent cancer or metastases, and unless the recurrence is detected early, the prognosis is generally poor.

As the TSH receptor is known to stimulate proliferation of thyroid cancer cells, it has been suggested that suppression of basal TSH receptor signaling may improve outcomes in the treatment of recurrent thyroid cancer. The compounds disclosed in this technology suppress basal signaling by the TSH receptor, and are thus excellent candidates for a suppression-based treatment approach.

*Applications*

• Lead compounds for the development of therapeutics for recurrent or metastatic thyroid cancer.

• Lead compounds for the development of therapeutics for hyperthyroidism associated with constitutive TSH receptor signaling.

• Tool for probing the role of basal TSH signaling in normal endocrine function and in disease states.

*Development Status: In vitro* studies in primary human thyrocytes have been performed.

*Inventors:* Marvin C. Gershengorn and Susanne Neumann (NIDDK); Wenwei Huang and Craig J. Thomas (NHGRI).

*Relevant Publications*

1. S Neumann, W Huang, E Eliseeva, S Titus, CJ Thomas, MC Gershengorn. A small molecule inverse agonist for the human thyroid-stimulating hormone receptor. Endocrinology. 2010 Jul;151(7):3454–3459. [PubMed: 20427476]

2. S Moore, H Jaeschke, G Kleinau, S Neumann, S Costanzi, JK Jiang, J Childress, BM Raaka, A Colson, R Paschke, G Krause, CJ Thomas, MC Gershengorn. Evaluation of small-molecule modulators of the luteinizing hormone/choriogonadotropin and thyroid stimulating hormone receptors: Structure-activity relationships and selective binding patterns. J Med Chem. 2006 Jun 29;49(13):3888–3896. [PubMed: 16789744]

3. S Neumann, G Kleinau, S Costanzi, S Moore, BM Raaka, CJ Thomas, G Krause, MC Gershengorn. A low molecular weight antagonist for the human thyrotropin receptor with therapeutic potential for hyperthyroidism. Endocrinology. 2008 Dec;149(12):5945–5950. [PubMed: 18669595]

*Patent Status:* U.S. Provisional Application No. 61/322,138 filed 08 Apr 2010 (HHS Reference No. E–067–2010/0–US–01).

*Related Technologies*

• HHS Reference No. E–223–2006/0.
• HHS Reference No. E–223–2006/1.
• HHS Reference No. E–284–2008/0.

*Licensing Status:* Available for licensing.

*Licensing Contact:* Tara Kirby, PhD; 301–435–4426; *tarak@mail.nih.gov.*

*Collaborative Research Opportunity:* The NIDDK Office of Technology Transfer and Development is seeking statements of capability or interest from parties interested in collaborative research to further develop inverse agonists of the TAS receptor. Please contact Marguerite J. Miller at 301–496–9003 or *millermarg@mail.nih.gov* for more information.

**Small-Molecule TSH Receptor Modulators for Diagnosis and Treatment of Thyroid Disease and Cancer**

*Description of Invention:* NIH investigators have discovered a series of low molecular weight thyroid-stimulating hormone (TSH) receptor modulators for use in evaluation and treatment of thyroid diseases, including thyroid cancer, hypothyroidism, and hyperthyroidism. Certain compounds

encompassed by this technology are more potent and/or more specific TSH receptor activators than currently-available compounds; also, as small molecules, these compounds are orally available and are expected to be less costly and more straightforward to produce than recombinant protein counterparts currently on the market.

According to the National Cancer Institute, over 37,000 new cases of thyroid cancer were diagnosed in the United States in 2008, and over 1,500 people died of this disease. These numbers reflect a progressive increase in the incidence of thyroid cancer over the last several years. Because most cases of thyroid cancer are diagnosed in patients between the ages of 20 and 54, these patients will undergo decades of follow-up monitoring after cancer treatment. For the last decade, recombinant TSH protein has been used in this follow-up to increase detection sensitivity for recurrent or metastatic thyroid cancer, and to eliminate side effects associated with withdrawal of hormone replacement therapy. A small-molecule TSH receptor agonist encompassed by this technology would have utility similar to recombinant TSH, but would have several distinct advantages. For example, as a small molecule, rather than a recombinant protein, such a compound would be orally available, and would be less difficult and expensive to produce. These compounds are also more potent and/or specific for the TSH receptor than other known small-molecule TSH receptor agonists. In addition to use in thyroid cancer screening, these compounds may also be useful for adjunctive treatment (with radioactive iodide) of thyroid cancer, and certain forms of hypothyroidism.

Hyperthyroidism, or an overactive thyroid gland, affects about 1% of people in the United States and is often caused by autoimmune over-stimulation of the thyroid gland (Graves' disease), or by thyroid tumors. Drugs currently used for treatment of hyperthyroidism inhibit synthesis of thyroid hormones; the TSH receptor antagonist compounds encompassed by this technology have the advantage of directly inhibiting activity of the TSH receptor, rather than inhibiting thyroid hormone synthesis.

*Applications*

- Diagnostic tools for evaluation and treatment of thyroid cancer.
- Therapeutics for thyroid cancer, hyperthyroidism, and hypothyroidism.

*Market:* Approximately 1 in 13 Americans suffers from a thyroid disorder, and 10 million have a thyroid-related condition that requires ongoing immunodiagnostic monitoring.

*Development Status:* Early stage.

*Inventors:* Marvin C. Gershengorn et al. (NIDDK)

*Publications*

1. Moore S, Jaeschke H, Kleinau G, Neumann S, Costanzi S, Jiang JK, Childress J, Raaka BM, Colson A, Paschke R, Krause G, Thomas CJ, Gershengorn MC. Evaluation of small-molecule modulators of the luteinizing hormone/choriogonadotropin and thyroid stimulating hormone receptors: structure-activity relationships and selective binding patterns. J Med Chem. 2006 Jun 29;49(13):3888–3896. [PubMed: 16789744]

2. Neumann S, Kleinau G, Costanzi S, Moore S, Raaka BM, Thomas CJ, Krause G, Gershengorn MC. A low molecular weight antagonist for the human thyrotropin receptor with therapeutic potential for hyperthyroidism. Endocrinology 2008 Dec;149(12):5945–5950. [PubMed: 18669595]

3. Unpublished data are also available for review under a CDA.

*Patent Status*

HHS Reference Nos. E–223–2006/0 and E–223–2006/1—

- International Patent Application No. PCT/US2007/011951 filed 17 May 2007, which published as WO 2007/136776 on 29 Nov 2007
- National Phase entered in Australia, Canada, Europe, Japan, and the United States

HHS Reference No. E–284–2008/0—

- International Patent Application No. PCT/US2008/011958 filed 20 Oct 2008.

*Licensing Status:* Available for licensing.

*Licensing Contact:* Tara L. Kirby, PhD; 301–435–4426; *tarak@mail.nih.gov*.

*Collaborative Research Opportunity:* The NIDDK Clinical Endocrinology Branch is seeking statements of capability or interest from parties interested in collaborative research to further develop, evaluate, or commercialize small molecule TSH receptor modulators. Please contact Marguerite J. Miller at 301–496–9003 or *millermarg@mail.nih.gov* for more information.

Dated: October 12, 2010.

**Richard U. Rodriguez,**

*Director, Division of Technology Development and Transfer, Office of Technology Transfer, National Institutes of Health.*

[FR Doc. 2010–26160 Filed 10–15–10; 8:45 am]

**BILLING CODE 4140–01–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Institute of General Medical Sciences; 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 Institute of General Medical Sciences Special Emphasis Panel; Review of Minority Biomedical Research Neuro Grant Applications.

*Date:* November 12, 2010.

*Time:* 8:30 a.m. to 5 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Hyatt Regency-Bethesda, 7400 Wisconsin Avenue, One Bethesda Metro Center, Bethesda, MD 20814.

*Contact Person:* John J. Laffan, Ph.D., Scientific Review Officer, Office of Scientific Review, National Institute of General Medical Sciences, National Institutes of Health, Natcher Building, Room 3AN18J, Bethesda, MD 20892, 301–594–2773, *laffanjo@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.375, Minority Biomedical Research Support; 93.821, Cell Biology and Biophysics Research; 93.859, Pharmacology, Physiology, and Biological Chemistry Research; 93.862, Genetics and Developmental Biology Research; 93.88, Minority Access to Research Careers; 93.96, Special Minority Initiatives, National Institutes of Health, HHS)

Dated: October 12, 2010.

**Jennifer Spaeth,**

*Director, Office of Federal Advisory Committee Policy.*

[FR Doc. 2010–26185 Filed 10–15–10; 8:45 am]

**BILLING CODE 4140–01–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Institute of Diabetes and Digestive and Kidney Diseases; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the National Institute of

Diabetes and Digestive and Kidney Diseases Special Emphasis Panel, October 13, 2010, 7 p.m. to October 14, 2010, 5 p.m., Radisson National Airport, 2020 Jefferson Davis Highway, Arlington, VA 22202 which was published in the **Federal Register** on September 16, 2010, 179 FR 56551.

The meeting location has changed. The meeting will be held at the Hilton Crystal City at Washington Reagan National Airport, 2399 Jefferson Davis Highway in Arlington, VA 22202. The meeting is closed to the public.

Dated: October 7, 2010.

**Jennifer S. Spaeth,**

*Director, Office of Federal Advisory Committee Policy.*

[FR Doc. 2010–26183 Filed 10–15–10; 8:45 am]

**BILLING CODE 4140–01–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Institute of Environmental Health Sciences; 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 Institute of Environmental Health Sciences Special Emphasis Panel; Toxicology Training Using Systems-Based Technology.

*Date:* November 1, 2010.

*Time:* 2:30 p.m. to 4:30 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Nat. Inst. of Environmental Health Sciences, Building 101, Rodbell Auditorium, 111 T. W. Alexander Drive, Research Triangle Park, NC 27709.

*Contact Person:* Leroy Worth, PhD, Scientific Review Officer, Scientific Review Branch, Division of Extramural Research and Training, Nat. Institute of Environmental Health Sciences, P. O. Box 12233, MD EC–30/Room 3171, Research Triangle Park, NC 27709, (919) 541–0670, *worth@niehs.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.115, Biometry and Risk Estimation—Health Risks from Environmental Exposures; 93.142, NIEHS Hazardous Waste Worker Health and Safety Training; 93.143, NIEHS Superfund Hazardous Substances—Basic Research and Education; 93.894, Resources and Manpower Development in the Environmental Health Sciences; 93.113, Biological Response to Environmental Health Hazards; 93.114, Applied Toxicological Research and Testing, National Institutes of Health, HHS)

Dated: October 8, 2010.

**Jennifer S. Spaeth,**

*Director, Office of Federal Advisory Committee Policy.*

[FR Doc. 2010–26192 Filed 10–15–10; 8:45 am]

**BILLING CODE 4140–01–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Disease Control and Prevention

### Health Resources and Services Administration CDC/HRSA Advisory Committee on HIV and STD Prevention and Treatment (CHACHSPT)

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), CDC/HRSA announces the following meeting of the aforementioned committee:

*Times and Dates:*

8 a.m.–5:30 p.m., November 15, 2010.

8 a.m.–3 p.m., November 16, 2010.

*Place:* Omni Shoreham Hotel, 2500 Calvert Street, NW., (at Connecticut Avenue) Washington, DC 20008. Telephone: (202) 234–0700.

*Status:* Open to the public, limited only by the space available. The meeting room will accommodate approximately 100 people.

*Purpose:* This Committee is charged with advising the Director, CDC, and the Administrator, HRSA, regarding activities related to prevention and control of HIV/AIDS and other STDs; the support of health care services to persons living with HIV/AIDS; and the education of health professionals and the public about HIV/AIDS and other STDs.

*Matters To Be Discussed:* Agenda items include issues regarding: (1) HHS coordination and implementation of the National HIV/AIDS Strategy; (2) CHACHSPT Realignment Program Review Workgroup update; (3) update on strategies to educate the medical community on the need to routinely offer HIV testing to females, older persons, and other patients determined to be at low risk; and (4) updates on HIV prevention research and program implementation.

Agenda items are subject to change as priorities dictate.

*Contact Person for More Information:* Margie Scott-Cseh, CDC, National Center for HIV/AIDS, Viral Hepatitis, STD, and TB Prevention, 1600 Clifton Road, NE., Mailstop E–07, Atlanta, Georgia 30333, Telephone (404) 639–8317.

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: October 8, 2010.

**Elaine L. Baker,**

*Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.*

[FR Doc. 2010–26144 Filed 10–15–10; 8:45 am]

**BILLING CODE 4163–18–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Disease Control and Prevention

### Healthcare Infection Control Practices Advisory Committee (HICPAC)

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the CDC announces the following meeting of the aforementioned committee:

*Times and Dates:*

9 a.m.–5 p.m., November 4, 2010.

9 a.m.–12 p.m., November 5, 2010.

*Place:* Washington Marriott at Metro Center, Salons C–D, 775 12th Street, NW., Washington, DC 20005

*Status:* This meeting is open to the public, limited only by the space available. Please register for the meeting online at *http://www.cdc.gov/hicpac* or by sending an e-mail to *hicpac@cdc.gov*.

*Purpose:* The Committee is charged with providing advice and guidance to the Secretary, the Assistant Secretary for Health, the Director, CDC, and the Director, National Center for Emerging and Zoonotic Infectious Diseases (NCEZID), regarding the practice of healthcare infection control and strategies for surveillance, prevention, and control of healthcare-associated infections (e.g., nosocomial infections), antimicrobial resistance, and related events in settings where healthcare is provided, including hospitals, ambulatory and long-term care facilities, and home health agencies. The Committee shall advise CDC on periodic updating of guidelines and other policy statements regarding prevention of healthcare-associated infections and healthcare-related conditions.

*Matters To Be Discussed:* The agenda will include updates on CDC's activities for healthcare-associated infections; the draft guideline for the Prevention of Norovirus Gastroenteritis Outbreaks in Healthcare Settings; draft guideline for prevention of infections among patients in neonatal intensive care units (NICU); draft guideline for Infection Control in Healthcare Personnel; and discussion of

infection control in ambulatory care settings.

Agenda items are subject to change as priorities dictate.

*Contact Person for More Information:* Michelle King, HICPAC, Division of Healthcare Quality Promotion, CDC, l600 Clifton Road, NE., Mailstop A–07, Atlanta, Georgia 30333. Telephone (404) 639–2936. E-mail: *hicpac@cdc.gov.*

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both CDC and the Agency for Toxic Substances and Disease Registry.

Dated: October 8, 2010.

**Elaine L. Baker,**

*Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.*

[FR Doc. 2010–26113 Filed 10–15–10; 8:45 am]

**BILLING CODE 4163–18–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Institute of Mental Health; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. 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:* National Institute of Mental Health Special Emphasis Panel; ITVA Conflicts & Eating Disorders.

*Date:* November 10, 2010.

*Time:* 1 p.m. to 3:30 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Rockville, MD 20852 (Telephone Conference Call).

*Contact Person:* Francois Boller, MD, PhD, Scientific Review Officer, Division of Extramural Activities, National Institute of Mental Health, NIH, Neuroscience Center, 6001 Executive Blvd., Room 6142, MSC 9606, Bethesda, MD 20892–9606, 301–443–1513, *bollerf@mail.nih.gov.*

*Name of Committee:* National Institute of Mental Health Special Emphasis Panel; Services Conflicts.

*Date:* November 12, 2010.

*Time:* 11 a.m. to 12 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Rockville, MD 20852 (Telephone Conference Call).

*Contact Person:* Aileen Schulte, PhD, Scientific Review Officer, Division of Extramural Activities, National Institute of Mental Health, NIH, Neuroscience Center, 6001 Executive Blvd, Room 6140, MSC 9608, Bethesda, MD 20892–9608, 301–443–1225, *aschulte@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.242, Mental Health Research Grants; 93.281, Scientist Development Award, Scientist Development Award for Clinicians, and Research Scientist Award; 93.282, Mental Health National Research Service Awards for Research Training, National Institutes of Health, HHS)

Dated: October 8, 2010.

**Jennifer S. Spaeth,**

*Director, Office of Federal Advisory Committee Policy.*

[FR Doc. 2010–26161 Filed 10–15–10; 8:45 am]

**BILLING CODE 4140–01–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

**[Docket No. FDA–2010–N–0389]**

### Medical Device User Fees; Public Meeting; Extension of Comment Period

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Notice; extension of comment period.

**SUMMARY:** The Food and Drug Administration (FDA) is extending to November 1, 2010, the comment period for the notice that appeared in the **Federal Register** of August 13, 2010 (75 FR 49502). In the notice, FDA requested input and comments from interested stakeholders on the Agency's medical user fee program and requested suggestions regarding the commitments FDA should propose for the next reauthorized program. The Agency is taking this action to allow interested persons additional time to submit comments.

**DATES:** Submit either electronic or written comments and information by November 1, 2010.

**ADDRESSES:** Submit electronic comments to *http://www.regulations.gov.* Submit written comments to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. To ensure consideration, all comments must be received by November 1, 2010. Identify comments with the docket number found in brackets in the heading of this document.

**FOR FURTHER INFORMATION CONTACT:** James Swink, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 66, rm. 1609, Silver Spring, MD 20993–0002, 301–796–6313, FAX: 301–847–8121, e-mail: *James.Swink@fda.hhs.gov.*

**SUPPLEMENTARY INFORMATION:**

#### I. Background

In the **Federal Register** of August 13, 2010 (75 FR 49502), FDA published a notice announcing a public meeting on September 14, 2010, and the opening of a public docket to seek input and comments from interested stakeholders to discuss the Agency's medical user fee program and requested suggestions regarding the commitments FDA should propose for the next reauthorized program. Interested persons were invited to submit comments to the public docket by October 14, 2010. At this time, the Agency is announcing its intention to post the transcript of the September 14, 2010, public meeting and is extending the comment period until November 1, 2010, to continue to receive public comments.

#### II. Request for Comments

Interested persons may submit to the Division of Dockets Management (see **ADDRESSES**) either electronic or written comments regarding this document. It is only necessary to send one set of comments. It is no longer necessary to send two copies of mailed comments. Identify comments with the docket number found in brackets in the heading of this document. Received comments may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

Dated: October 14, 2010.

**Leslie Kux,**

*Acting Assistant Commissioner for Policy.*

[FR Doc. 2010–26253 Filed 10–14–10; 4:15 pm]

**BILLING CODE 4160–01–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Disease Control and Prevention

### Meeting of the Task Force on Community Preventive Services

**AGENCY:** Centers for Disease Control and Prevention (CDC), Department of Health and Human Services (HHS).

**ACTION:** Notice of meeting.

**SUMMARY:** The Centers for Disease Control and Prevention (CDC) announces the next meeting of the Task Force on Community Preventive Services (Task Force). The Task Force is an independent, nonfederal body of nationally known leaders in public health practice, policy, and research who are appointed by the CDC Director. The Task Force was convened in 1996 by the Department of Health and Human Services (HHS) to assess the effectiveness of community, environmental, population, and healthcare system interventions in public health and health promotion. During this meeting the Task Force will consider the findings of systematic reviews and issue recommendations and findings to help inform decision making about policy, practice, and research in a wide range of U.S. settings. The Task Force's recommendations, along with the systematic reviews of the scientific evidence on which they are based, are compiled in the *Guide to Community Preventive Services (Community Guide).*

**DATES:** The meeting will be held on Wednesday, October 20, 2010 from 8:30 a.m. to 5:30 p.m., MDT and Thursday, October 21, 2010 from 8:30 a.m. to 1 p.m., MDT.

**ADDRESSES:** The meeting will be held at the Curtis Hotel, 1405 Curtis Street, Denver, Colorado 80202, phone (303) 571–0300.

**FOR FURTHER INFORMATION CONTACT:** Freda Parker, Division of Community Preventive Services, Epidemiology and Analysis Program Office, Office of Surveillance, Epidemiology, and Laboratory Services, Centers for Disease Control and Prevention, 1600 Clifton Road, Atlanta, Georgia 30333, phone: (404) 498–1119, e-mail: *communityguide@cdc.gov.*

*Purpose:* The Task Force is meeting to consider findings of reviews and issue recommendations and findings to help inform decision makers about policy, practice, and research in a wide range of U.S. settings.

*Matters To Be Discussed:* Effectiveness of: Health Communication Campaigns with Product Distribution to Improve Health Behaviors; Responsible Beverage Service (RBS) Training to Decrease Underage Drinking and Excessive Alcohol Consumption; Health Care System-Based Interventions Implemented in Combination to Increase Vaccination Rates; Economic evaluation of Immunization Information Systems; Proposals regarding use of an Existing Review of Early Childhood Education; and Prioritization of Reviews of Tobacco Prevention. Agenda items are subject to change as priorities dictate.

*Meeting Accessibility:* This meeting is open to the public, limited only by space available.

Dated: October 12, 2010.

**Tanja Popovic,**

*Deputy Associate Director for Science, Centers for Disease Control and Prevention.*

[FR Doc. 2010–26133 Filed 10–15–10; 8:45 am]

**BILLING CODE 4163–18–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Health Resources and Services Administration

### Statement of Organization, Functions and Delegations of Authority

This notice amends Part R of the Statement of Organization, Functions and Delegations of Authority of the Department of Health and Human Services (HHS), Health Resources and Services Administration (HRSA) (60 FR 56605, as amended November 6, 1995; as last amended at 75 FR 61157–61160 dated October 4, 2010).

This notice reflects organizational changes in the Health Resources and Services Administration. This notice updates the functional statement for the Office of Special Health Affairs (RA1). Specifically, this notice establishes the Office of Emergency Preparedness and Continuity of Operations (RA15) within the Office of Special Health Affairs (RA1).

**Chapter RA1—Office of Special Health Affairs**

*Section RA1–10, Organization*

Delete in its entirety and replace with the following:

The Office is headed by the Director, Office of Special Health Affairs (RA1), who reports directly to the Administrator, Health Resources and Services Administration. Office of Special Health Affairs includes the following components:

(1) Office of the Director (RA1);

(2) Office of Health Equity (RA11);

(3) Office of Global Health Affairs (RA12);

(4) Office of Strategic Priorities (RA13);

(5) Office of Health Information Technology and Quality (RA14); and

(6) Office of Emergency Preparedness and Continuity of Operations (RA15).

*Section RA1–20, Functions*

(1) Delete the functional statement for the Office of the Director (RA1) and replace in its entirety; and (2) establish the Office of Emergency Preparedness and Continuity of Operations (RA15).

**Office of the Director (RA1)**

Provides overall leadership, direction, coordination, and planning in the support of the Agency's cross-cutting health programs. Specifically: (1) Plans and directs activities to advance health equity and improve minority health and eliminate health disparities; (2) develops strategies to maximize HRSA's participation in efforts to improve health care for vulnerable populations worldwide; (3) provides leadership and direction to improve the delivery and quality of oral and behavioral health care and other Agency strategic priority health concerns; (4) provides leadership and direction in the development of policies on health information technology and quality; (5) provides support for the Department's Medical Claims Review Panel; and (6) coordinates HRSA activities related to emergency preparedness planning, policy, and continuity of operations and Government.

**Office of Health Equity (RA11)**

Serves as the principal advisor and coordinator to the Agency for the special needs of minority and disadvantaged populations, including: (1) Provides leadership and direction to address HHS and HRSA Strategic Plan goals and objectives related to improving minority health and eliminating health disparities; (2) establishes and manages an Agency-wide data collection system for minority health activities and initiatives including the White House Initiatives for Historically Black Colleges and Universities, Educational Excellence for Hispanic Americans, Tribal Colleges and Universities, Asian Americans and Pacific Islanders, and departmental initiatives; (3) implements activities to increase the availability of data to monitor the impact of Agency programs in improving minority health and eliminating health disparities; (4) participates in the formulation of HRSA's goals, policies, legislative proposals, priorities, and strategies as

they affect health professional organizations and institutions of higher education and others involved in or concerned with the delivery of culturally-appropriate, quality health services to minorities and disadvantaged populations; (5) consults with Federal agencies and other public and private sector agencies and organizations to collaborate in addressing health equity, including enhancing cultural competence in health service providers; (6) establishes short-term and long-range objectives; and (7) participates in the focus of activities and objectives in assuring equity in access to resources and health careers for minorities and the disadvantaged.

**Office of Global Health Affairs (RA12)**

Serves as the principal advisor to the Agency on global health issues. Specifically: (1) Provides leadership, coordination, and advancement of global health activities relating to health care services for vulnerable and at-risk populations and for training programs for health professionals; (2) provides support for the Agency's International Visitors Program; and (3) provides leadership within HRSA for the support of global health and coordinates policy development with the Office of Global Health Affairs (OGHA) and other departmental agencies.

**Office of Strategic Priorities (RA13)**

Serves as the principal advisor to the Administrator on major health priorities including, but not limited to oral and mental health. Specifically: (1) Provides leadership and coordination to improve oral and behavioral health infrastructure, delivery, and systems of care; (2) establishes short-term and long-term goals and objectives to improve the quality of oral and behavioral health care; (3) collaborates with other departmental and Federal agencies to promote oral and behavioral health by building public-private partnerships; (4) coordinates oral and behavioral health activities across HRSA programs; and (5) establishes program goals, objectives and priorities to improve oral and behavioral health status and outcomes to eliminate disparities.

**Office of Health Information Technology and Quality (RA14)**

Serves as the principal advisor and coordinator to the Agency for health information technology and quality. Specifically: (1) Provides support, policy direction, and leadership for HRSA's health quality efforts; (2) serves as the focal point for developing policy to promote the coordination and advancement of health information technology, including telehealth to HRSA's programs, including the use of electronic health record systems; (3) develops an Agency-wide health information technology and telehealth strategy for HRSA; (4) assists HRSA components in program-level health information technology and health quality efforts; (5) ensures successful dissemination of appropriate information technology advances, such as electronic health records systems, to HRSA programs; (6) works collaboratively with States, foundations, national organizations, private sector providers, as well as departmental agencies and other Federal departments in order to promote the adoption of health information technology and health quality policy; (7) ensures the health information technology policy and activities of HRSA are coordinated with those of other HHS components; (8) assesses the impact of health information technology and quality initiatives in the community, especially for the uninsured, underserved, and special needs populations; (9) translates technological advances in health information technology to HRSA's programs; (10) provides guidance in using the results of the medical claims review process to HRSA programs to improve quality; and (11) provides support for the Department's Medical Claims Review Panel.

**Office of Emergency Preparedness and Continuity of Operations (RA15)**

(1) Coordinates HRSA activities related to emergency preparedness planning and policy; (2) oversees the HRSA Emergency Operations Center; (3) serves as HRSA's liaison to HHS and interagency partners on emergency preparedness matters; (4) coordinates HRSA continuity of operations and continuity of Government activities and maintains HRSA's Alternate Operating Facilities; (5) provides guidance on workforce health protection issues for emergencies and disasters; (6) ensures HRSA's commissioned corps is ready to respond to public health challenges and emergencies identified by the Secretary; and (7) in conjunction with the Office of Force Readiness and Deployment, ensures the readiness and deployment capability of officers assigned to HRSA.

**Section RA–30, Delegations of Authority**

All delegations of authority and re-delegations of authority made to HRSA officials that were in effect immediately prior to this reorganization, and that are consistent with this reorganization, shall continue in effect pending further re-delegation.

This reorganization is upon date of signature.

Dated: October 8, 2010.

**Mary K. Wakefield,**

*Administrator.*

[FR Doc. 2010–26079 Filed 10–15–10; 8:45 am]

**BILLING CODE 4165–15–P**

## DEPARTMENT OF HOMELAND SECURITY

### U.S. Customs and Border Protection

**[Docket No. USCBP–2010–0031]**

### Notice of Meeting of the Advisory Committee on Commercial Operations of Customs and Border Protection (COAC)

**AGENCY:** U.S. Customs and Border Protection, Department of Homeland Security (DHS).

**ACTION:** Notice of Federal Advisory Committee meeting.

**SUMMARY:** The Advisory Committee on Commercial Operations of U.S. Customs and Border Protection (COAC) will meet on November 9, 2010, in Washington, DC. The meeting will be open to the public.

**DATES:** COAC will meet on Tuesday, November 9, 2010, from 1 p.m.–5 p.m. Please note that the meeting may close early if the committee completes its business. If you plan on attending, please register either online at *https://apps.cbp.gov/te_registration/index.asp?w=31,* or by e-mail to *tradeevents@dhs.gov* by close-of-business on November 4, 2010.

**ADDRESSES:** The meeting will be held at the Ronald Reagan Building in the Horizon Ballroom, 1300 Pennsylvania Avenue, NW., Washington, DC 20229. The public is invited to submit comments and/or written material on any of the identified agenda items as set forth below. Please note that any comments or written materials that are mailed should reach the contact person at the address listed below before November 4, 2010, so that copies of your submitted materials can be distributed to committee members prior to the meeting. Comments must be identified by USCBP–2010–0031 and may be submitted by one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *E-mail: tradeevents@dhs.gov.* Include the docket number in the subject line of the message.

- *Fax:* 202–325–4290.
- *Mail:* Ms. Wanda Tate, Office of Trade Relations, U.S. Customs and Border Protection, Department of Homeland Security, 1300 Pennsylvania Avenue, NW., Room 5.2–A, Washington, DC 20229.

*Instructions:* All submissions received must include the words "Department of Homeland Security" and the docket number for this action. Comments received will be posted without alteration at *http://www.regulations.gov,* including any personal information provided.

*Docket:* For access to the docket to read background documents or comments received by COAC, please go to *http://www.regulations.gov.*

**FOR FURTHER INFORMATION CONTACT:** Ms. Wanda Tate, Office of Trade Relations, U.S. Customs and Border Protection, Department of Homeland Security, 1300 Pennsylvania Avenue, NW., Room 5.2–A, Washington, DC 20229; *tradeevents@dhs.gov;* telephone 202–344–1440; facsimile 202–325–4290.

**SUPPLEMENTARY INFORMATION:** Pursuant to the Federal Advisory Committee Act (5 U.S.C. App.), DHS hereby announces the meeting of the Advisory Committee on Commercial Operations of Customs and Border Protection (COAC). COAC is tasked with providing advice to the Secretary of Homeland Security, the Secretary of the Treasury, and the Commissioner of U.S. Customs and Border Protection (CBP) on matters pertaining to the commercial operations of CBP and related functions within DHS or the Department of the Treasury.

The seventh meeting of the eleventh term of COAC will be held at the date, time and location specified above. A tentative agenda for the meeting is set forth below.

**Tentative Agenda**

1. Management by Account—CBP's Future Trade Vision.
2. Importer Security Filing ("10+2").
3. Intellectual Property Rights Enforcement.
4. Agriculture Program Update.
5. Air Cargo Security.
6. Automation/International Trade Data System.
7. The National Strategies to Secure the Flow of Commerce in the Global Supply Chain.
8. Bond Issues.

**Procedural**

This meeting is open to the public; however, participation in COAC deliberations is limited to committee members, Department of Homeland Security officials, and persons invited to attend the meeting for special presentations. Please note that the meeting may close early if all business is finished.

All visitors to the Ronald Reagan Building will have to go through a security checkpoint to be admitted to the building. Since seating is limited, all persons attending this meeting should provide notice by close-of-business on November 4, 2010, by registering online at *https://apps.cbp.gov/te_registration/index.asp?w=31* or, alternatively, by contacting Ms. Wanda Tate, Office of Trade Relations, U.S. Customs and Border Protection, Department of Homeland Security, 1300 Pennsylvania Avenue, NW., Washington, DC 20229; *tradeevents@dhs.gov;* telephone 202–344–1440; facsimile 202–325–4290.

**Information on Services for Individuals With Disabilities**

For information on facilities or services for individuals with disabilities or to request special assistance at the meeting, contact Ms. Wanda Tate as soon as possible.

Dated: October 12, 2010.

**Michael Schreffler,**

*Acting Director, Office of Trade Relations, U.S. Customs and Border Protection.*

[FR Doc. 2010–26101 Filed 10–15–10; 8:45 am]

**BILLING CODE 9111–14–P**

## DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

**[Docket No. FR–5415–N–21]**

## Notice of Availability: Notice of Funding Availability (NOFA) for HUD's Fiscal Year (FY) 2010 Capital Fund Education and Training Community Facilities (CFCF) Program

**AGENCY:** Office of the Chief of the Human Capital Officer, HUD.

**ACTION:** Notice.

**SUMMARY:** HUD announces the availability on its Web site of the applicant information, submission deadlines, funding criteria, and other requirements for the FY2010 Capital Fund Education and Training Community Facilities (CFCF) Program. Approximately $35 million is made available through the CFCF NOFA, by the Consolidated Appropriations Act, 2010 (Pub. L. 111–117, approved December 16, 2009). The CFCF NOFA provides capital funding to Public Housing Agencies (PHAs) for the construction, rehabilitation, or purchase of facilities to provide early childhood education, adult education, and job training programs for public housing residents based on an identified need. PHAs may use CFCF program funding to rehabilitate existing community facilities that will offer comprehensive, integrated services. These facilities will offer services to help public housing residents achieve better educational and economic outcomes resulting in long-term economic self-sufficiency.

The notice providing information regarding the application process, funding criteria and eligibility requirements can be found using the Department of Housing and Urban Development agency link on the Grants.gov/Find Web site at *http://www.grants.gov/search/agency.do.* A link to Grants.gov is also available on the HUD Web site at *http://www.hud.gov/offices/adm/grants/fundsavail.cfm.* The Catalogue of Federal Domestic Assistance (CFDA) number for the Capital Fund Education and Training Community Facilities (CFCF) Program is 14–890. Applications must be submitted electronically through *Grants.gov.*

**FOR FURTHER INFORMATION CONTACT:** Questions regarding the FY2010 Capital Fund Education and Training Community Facilities (CFCF) Program NOFA should be directed to Alan Kaufmann, Public Housing Revitalization Specialist, Office of Public and Indian Housing, Department of Housing and Urban Development, at telephone number 202–402–4126. You may also submit questions by e-mail to *PIHOCI@hud.gov.* Questions regarding the 2010 General Section should be directed to the Office of Grants Management and Oversight at 202–708–0667 or the NOFA Information Center at 800–HUD–8929 (toll free). Persons with hearing or speech impairments may access these numbers via TTY by calling the Federal Information Relay Service at 800–877–8339.

Dated: October 13, 2010.

**Barbara S. Dorf,**

*Director, Office of Departmental Grants Management and Oversight, Office of the Chief of the Human Capital Officer.*

[FR Doc. 2010–26199 Filed 10–15–10; 8:45 am]

**BILLING CODE 4210–67–P**

## DEPARTMENT OF THE INTERIOR

### Fish and Wildlife Service

**[FWS–R9–FHC–2011–N228; 94100–1311–0000–N5]**

### Proposed Information Collection; OMB Control Number 1018–0078; Injurious Wildlife; Importation Certification for Live Fish and Fish Eggs

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Notice; request for comments.

**SUMMARY:** We (U.S. Fish and Wildlife Service) will ask the Office of Management and Budget (OMB) to approve the information collection (IC) described below. As required by the Paperwork Reduction Act of 1995 and as part of our continuing efforts to reduce paperwork and respondent burden, we invite the general public and other Federal agencies to take this opportunity to comment on this IC. This IC is scheduled to expire on February 28, 2011. We 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.

**DATES:** To ensure that we are able to consider your comments on this IC, we must receive them by December 17, 2010.

**ADDRESSES:** Send your comments on the IC to Hope Grey, Information Collection Clearance Officer, Fish and Wildlife Service, MS 222–ARLSQ, 4401 North Fairfax Drive, Arlington, VA 22203 (mail); or *hope_grey@fws.gov* (e-mail).

**FOR FURTHER INFORMATION CONTACT:** To request additional information about this IC, contact Hope Grey by mail or e-mail (see **ADDRESSES**) or by telephone at (703) 358–2482.

**SUPPLEMENTARY INFORMATION:**

#### I. Abstract

The Lacey Act (18 U.S.C. 42) (Act) prohibits the possession or importation of any animal or plant deemed to be and prescribed by regulation to be injurious to:

- Human beings;
- The interests of agriculture, horticulture, and forestry; or
- Wildlife or the wildlife resources of the United States.

The Department of the Interior is charged with enforcement of this Act. The Act and regulations at 50 CFR part 16 allow for the importation of animals classified as injurious if specific criteria are met. To effectively carry out responsibilities and protect the aquatic resources of the United States, we must gather information on the animals being imported with regard to their source, destination, and health status. It is also imperative that we ensure the qualifications of those individuals who provide the fish health data upon which we base our decision to allow importation.

We use three forms to collect this information:

*(1) FWS Form 3–2273 (Title 50 Certifying Official Form).* New applicants and those seeking recertification as a Title 50 certifying official provide information so that we can assess their qualifications. Information includes, but is not limited to:

- Name, position title, current place of employment (with address) and work phone number, fax number, and e-mail address.
- Professional degrees.
- Primary duties.
- Areas of expertise and related certifications.
- Facilities available for diagnostic tests and available equipment.

*(2) FWS Form 3–2274 (U.S. Title 50 Certification Form).* The certifying official uses this form to affirm the health status of the fish or their reproductive products to be imported. Information includes, but is not limited to:

- Certifying official's name and date of most recent certification.
- Number, life stage, and species of animals or eggs.
- Site and date of sample collection.
- Name and address of laboratory conducting the assays.
- Site from which the animals or eggs will be shipped.
- Dates of the shipment.
- Means of shipment and anticipated border crossing.

*(3) FWS Form 3–2275 (Title 50 Importation Request Form).* We use the information on this form to ensure the safety of the shipment and to track and control importations. Information includes, but is not limited to:

- Name and address of company/agency and facility receiving animals or eggs.
- Number, life stage, and species of animals or eggs.
- Origin of animals or eggs.
- Name and address of exporter.

#### II. Data

*OMB Control Number:* 1018–0078.

*Title:* Injurious Wildlife; Importation Certification for Live Fish and Fish Eggs, 50 CFR 16.13.

*Service Form Number(s):* 3–2273, 3–2274, and 3–2275.

*Type of Request:* Extension without change.

*Description of Respondents:* Aquatic animal health professionals seeking to be certified Title 50 inspectors; certified Title 50 inspectors who have performed health certifications on live salmonids; and any entity wishing to import live salmonids or their reproductive products into the United States.

*Respondent's Obligation:* Required to obtain or retain a benefit.

*Frequency of Collection:* On occasion.

| Activity | Number of Respondents | Number of Responses | Completion time per response | Total annual burden hours |
|---|---|---|---|---|
| FWS Form 3–2273 | 16 | 16 | 1 hour | 16 |
| FWS Form 3–2274 | 25 | 50 | 30 minutes | 25 |
| FWS Form 3–2275 | 25 | 50 | 15 minutes | 13 |
| Total | 66 | 116 | | 54 |

#### III. Comments

We invite comments concerning this information collection on:

- Whether or not the collection of information is necessary, including whether or not the information will have practical utility;
- The accuracy of our estimate of the burden for this collection of information;
- 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.

Comments that you submit in response to this notice are a matter of public record. We will include or summarize each comment in our request to OMB to approve this IC. 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: October 12, 2010.

**Hope Grey,**

*Information Collection Clearance Officer, Fish and Wildlife Service.*

[FR Doc. 2010–26157 Filed 10–15–10; 8:45 am]

**BILLING CODE 4310–55–P**

## DEPARTMENT OF THE INTERIOR

### Fish and Wildlife Service

**[FWS–R7–FHC–2010–N229; 71490–1351–0000–L5]**

### Proposed Information Collection; OMB Control Number 1018–0066; Marine Mammal Tagging, Marking, and Reporting Certificates

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Notice; request for comments.

**SUMMARY:** We (U.S. Fish and Wildlife Service) will ask the Office of Management and Budget (OMB) to approve the information collection (IC) described below. As required by the Paperwork Reduction Act of 1995 and as part of our continuing efforts to reduce paperwork and respondent burden, we invite the general public and other Federal agencies to take this opportunity to comment on this IC. This IC is scheduled to expire on March 31, 2011. We 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.

**DATES:** To ensure that we are able to consider your comments on this IC, we must receive them by December 17, 2010.

**ADDRESSES:** Send your comments on the IC to Hope Grey, Information Collection Clearance Officer, Fish and Wildlife Service, MS 222–ARLSQ, 4401 North Fairfax Drive, Arlington, VA 22203 (mail); or *hope_grey@fws.gov* (e-mail).

**FOR FURTHER INFORMATION CONTACT:** To request additional information about this IC, contact Hope Grey by mail or e-mail (see **ADDRESSES**) or by telephone at (703) 358–2482.

**SUPPLEMENTARY INFORMATION:**

#### I. Abstract

Under section 101(b) of the Marine Mammal Protection Act of 1972 (MMPA), as amended (16 U.S.C. 1361–1407), Alaska Natives residing in Alaska and dwelling on the coast of the North Pacific or Arctic Oceans may harvest polar bears, northern sea otters, and Pacific walrus for subsistence or handicraft purposes. Section 109(i) of the MMPA authorizes the Secretary of the Interior to prescribe marking, tagging, and reporting regulations applicable to the Alaska Native subsistence and handicraft take.

On behalf of the Secretary, we implemented regulations at 50 CFR 18.23(f) for Alaska Natives harvesting polar bear, northern sea otter, and Pacific walrus. These regulations enable us to gather data on the Alaska Native subsistence and handicraft harvest and on the biology of polar bear, northern sea otter, and Pacific walrus in Alaska to determine what effect such take may be having on these populations. The regulations also provide us with a means of monitoring the disposition of the harvest to ensure that any commercial use of products created from these species meets the criteria set forth in section 101(b) of the MMPA. We use three forms to collect the information, which includes, but is not limited to:

- Date of kill.
- Sex of the animal.
- Kill location.
- Age of the animal (i.e., adult, subadult, cub, or pup).
- Form of transportation used to make the kill of polar bears.
- Amount of time (i.e., hours/days hunted) spent hunting polar bears.
- Type of take (live killed or beach found) for walrus.
- Number of otters present in and number of otters harvested from pod.
- Condition of the bear and whether or not polar bear cubs were present.
- Name of the hunter or possessor of the specified parts at the time of marking, tagging, and reporting.

#### II. Data

*OMB Control Number:* 1018–0066.

*Title:* Marine Mammal Tagging, Marking, and Reporting Certificates, 50 CFR 18.23(f).

*Service Form Number(s):* R7–50, R7–51, R7–52.

*Type of Request:* Extension of currently approved collection.

*Description of Respondents:* Individuals and households.

*Respondent's Obligation:* Required to obtain or retain a benefit.

*Frequency of Collection:* On occasion.

| Activity | Number of respondents | Number of responses | Completion time per response | Total annual burden hours |
|---|---|---|---|---|
| R7–50 (walrus) | 620 | 620 | 15 minutes | 155 |
| R7–51 (polar bear) | 25 | 25 | 15 minutes | 13 |
| R7–52 (sea otter) | 750 | 750 | 15 minutes | 188 |
| Totals | 1,395 | 1,395 | | 356 |

#### III. Comments

We invite comments concerning this information collection on:

- Whether or not the collection of information is necessary, including whether or not the information will have practical utility;
- The accuracy of our estimate of the burden for this collection of information;
- 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.

Comments that you submit in response to this notice are a matter of public record. We will include or summarize each comment in our request to OMB to approve this IC. 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: October 12, 2010.

**Hope Grey,**

*Information Collection Clearance Officer, Fish and Wildlife Service.*

[FR Doc. 2010–26156 Filed 10–15–10; 8:45 am]

**BILLING CODE 4310–55–P**

## DEPARTMENT OF THE INTERIOR

### Fish and Wildlife Service

**[FWS–R9–R–2009–N279; [93261–1263–000–5C]**

### Draft Friends Organizations Policy

**AGENCY:** Fish and Wildlife Service, Department of the Interior.

**ACTION:** Notice; request for comment.

**SUMMARY:** We, the U.S. Fish and Wildlife Service (Service), propose to establish a policy to guide Service employees to increase efficiency and effectiveness in achieving the Service's mission through partnerships with Friends organizations (volunteer/advocate). Today, Friends organizations play a vital role in helping to fulfill the Service's mission of "working with others, to conserve, protect and enhance fish, wildlife, and plants and their habitats for the continuing benefit of the American people."

This draft policy provides guidance for Service employees who work with Friends organizations to increase community involvement in our programs. Specifically, it includes guidance regarding financial and administrative practices, Friends Partnership Agreements, and revenue generating operations. We propose to incorporate this draft policy as Part 633, chapters 1–4 of the Fish and Wildlife Service Manual.

**DATES:** To ensure consideration, please send your written comments by December 2, 2010.

**ADDRESSES:** You may submit comments on this draft policy by any of the following methods:

*U.S. Mail or Hand Delivery:* Kevin Kilcullen, Visitor Services, National Wildlife Refuge System, U.S. Fish and Wildlife Service, 4401 North Fairfax Drive, Room 635, Arlington, VA 22203;

*Fax:* 703–358–2517; or

*E-mail: refugesystempolicycomments@fws.gov.*

**FOR FURTHER INFORMATION CONTACT:** Kevin Kilcullen, at address or fax above, or telephone: 703–358–2382.

**SUPPLEMENTARY INFORMATION:** The draft guidance document which is the subject of this notice is available at: *http://www.fws.gov/refuges/friends.*

**Background**

The National Wildlife Refuge System Volunteer and Community Partnership Enhancement Act of 1998 (16 U.S.C. 742f) amended the Fish and Wildlife Act of 1956 to promote volunteer programs and community partnerships for the benefit of national wildlife refuges. The Act states that we will "encourage the use of volunteers in the management of refuges and facilitate partnerships between the Refuge System and non-Federal entities to promote public awareness of the resources of the Refuge System and public participation in the conservation of those resources." The National Fish Hatchery System Volunteer Act of 2006 (16 U.S.C. 760aa) provides for the expansion of volunteer projects and community partnerships of the National Fish Hatchery System. The Act states that we will "enhance an existing volunteer program of the United States Fish and Wildlife Service and promote community partnerships for the benefit of national fish hatcheries and fisheries program offices." Both Acts direct us to work with volunteers and partners to promote public awareness and participation in our conservation programs. This draft policy for Friends organizations was based on these statutory requirements.

The National Friends Program was established in 1996 to encourage and organize community involvement in Service activities. The program works to expand the number and effectiveness of community-based Friends organizations which assist us in delivering our mission. During the last decade, the Friends program has grown substantially in size and complexity. There are more than 230 Friends organizations, with an estimated total of 40–60,000 members. These organizations significantly strengthen the work of refuges, waterfowl production areas, and fish hatcheries and program offices across the country.

**Draft Policy**

We recognize that Friends provide many vital services to our sites and programs. This draft policy provides guidance on roles and responsibilities for both the Service and Friends organizations. The purpose of this draft policy is to provide Service employees with guidance when working with Friends organizations.

*Chapter 1* of this draft policy identifies the authorities for working with Friends organizations; describes the relationship between the Service and Friends organizations; and describes the responsibilities of Service employees and Friends organizations.

*Chapter 2* describes the information we need when we consider the financial and administrative activities under Friends agreements, including the practices and activities that the Service may allow on Government property.

*Chapter 3* describes the major components of, and process for developing and modifying, the legal Friends Partnership Agreement between Friends organizations and the Service.

*Chapter 4* describes how we work with Friends organizations to manage revenue-generating operations on Service property.

**Request for Public Comments**

We seek public comments on the draft Friends policy, and will consider comments and any additional information we receive during the comment period (*see* **DATES**). You may submit comments to any of the places cited in **ADDRESSES.** Please submit Internet comments as an ASCII file, avoiding the use of special characters and any form of encryption.

**Public Availability of Comments**

Before including your address, phone number, e-mail address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Dated: October 4, 2010.

**Daniel M. Ashe,**

*Deputy Director, Fish and Wildlife Service.*

[FR Doc. 2010–26080 Filed 10–15–10; 8:45 am]

**BILLING CODE 4310–55–P**

## DEPARTMENT OF THE INTERIOR

### National Park Service

### Draft General Management Plan and Environmental Impact Statement, Hampton National Historic Site, Maryland

**AGENCY:** National Park Service, Department of the Interior.

**ACTION:** Notice of Availability of the Draft General Management Plan and Environmental Impact Statement for Hampton National Historic Site, Maryland.

**SUMMARY:** Pursuant to the National Environmental Policy Act of 1969, 42 U.S.C. 4332 (2) (C), the National Park Service (NPS) announces the

availability of the Draft Environmental Impact Statement for the General Management Plan (Draft GMP/EIS) for Hampton National Historic Site, Maryland. The purpose of the Draft GMP/EIS is to provide a clear definition of the park's purpose, significance, fundamental resources and values, and the direction that will guide and coordinate all subsequent planning and management.

**DATES:** The National Park Service will accept comments on the Draft GMP/EIS from the public for 60 days from the date the Environmental Protection Agency publishes their Notice of Availability in the **Federal Register**. Public meetings will be held during the 60-day review period to solicit comments on the Draft GMP/EIS. Dates, times, and locations will be announced on the NPS Planning, Environment, and Public Comment (PEPC) Web site (*http://parkplanning.nps.gov/hamp*), the park website (*http://www.nps.gov/hamp*), in local papers, and can also be obtained by contacting the park at (410) 823–1309.

**ADDRESSES:** Copies of the Draft GMP/EIS will be available for public review and comment online at the NPS PEPC Web site (*http://parkplanning.nps.gov/hamp*), and at the park's Web site (*http://www.nps.gov/hamp*). Printed copies (in limited quantity) and CDs can be requested by calling the park at (410) 823–1309. Printed hardcopies can be viewed at the following locations:

Hampton National Historic Site, 535 Hampton Lane, Towson, Maryland 21286;

Fort McHenry National and Historic Shrine, End of East Fort Avenue, Baltimore, Maryland 21230;

Towson Branch Library/Baltimore County Library, 320 York Avenue, Towson, Maryland 21204;

Baltimore County Tourism Office and Towson Chamber of Commerce, 44 West Chesapeake Avenue, Towson, Maryland 21204.

**FOR FURTHER INFORMATION CONTACT:** Gay Vietzke, Superintendent, Hampton National Historic Site, 535 Hampton Road, Towson, Maryland, 21286–1397, (410) 823–1309.

**SUPPLEMENTARY INFORMATION:** Consistent with National Park Service laws, regulations, and policies, and the purpose of the National Historic Site, the Draft GMP/EIS describes and analyzes three alternatives (1–3) to guide the management of the National Historic Site over the next 15 to 20 years. The alternatives incorporate various management prescriptions to ensure protection, access and enjoyment of the park's resources. *Alternative 1*, the no action alternative, proposes to maintain the current interpretive focus, visitor experience and management direction. Construction of a new collections storage building, that has begun, would be completed. *Alternative 2: Experiencing the Past* proposes to remove post-1948 development and consolidate administrative functions to recreate the feeling of the Hampton Estate near the end of its period of greatest significance. Historic structures and cultural landscapes would be rehabilitated, to the greatest extent possible, to facilitate this visitor experience. *Alternative 3:* Broadening the Hampton Experience, the NPS preferred alternative, proposes to expand the visitor experience to include the entire story of the park from the 18th century through today, to rehabilitate select historic structures and cultural landscapes for interpretation and to rehabilitate the remaining park historic and modern buildings for visitor services and park operations.

The Draft GMP/EIS evaluates potential environmental consequences of implementing the three alternatives. It describes the affected natural, cultural, scenic, and socioeconomic environments within and near the park and analyzes potential impacts on park resources and values. Resource impact topics analyzed include: cultural landscapes, historic structures, archeological resources, ethnography, wetlands, water quality, vegetation, wildlife, land use, visitor experience, and operations and maintenance.

If you wish to comment on the Draft GMP/EIS, you may submit your comments by any one of several methods. The preferred method to comment is to submit comments electronically through the NPS PEPC Web site at (*http://parkplanning.nps.gov/hamp*). You may also send written comments to Superintendent Gay Vietzke, Hampton National Historic Site, 535 Hampton Road, Towson, Maryland, 21286.

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.

**Dennis R. Reidenbach,**

*Regional Director, Northeast Region, National Park Service.*

[FR Doc. 2010–25833 Filed 10–15–10; 8:45 am]

**BILLING CODE 4312–56–P**

## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

**[LLID9570000.LL14200000.BJ0000]**

### Idaho: Filing of Plats of Survey

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice of Filing of Plats of Surveys.

**SUMMARY:** The Bureau of Land Management (BLM) has officially filed the plats of survey of the lands described below in the BLM Idaho State Office, Boise, Idaho, effective 9 a.m., on the dates specified.

**FOR FURTHER INFORMATION CONTACT:** Bureau of Land Management, 1387 South Vinnell Way, Boise, Idaho, 83709–1657.

**SUPPLEMENTARY INFORMATION:** These surveys were executed at the request of the Bureau of Land Management to meet their administrative needs. The lands surveyed are:

The plat, in two sheets, representing the entire survey record of the dependent resurvey of a portion of the subdivisional lines, and the subdivision of sections 12 and 13, T. 7 S., R. 34 E., of the Boise Meridian, Idaho, Group Number 1148, was accepted July 15, 2010.

The plat constituting the entire survey record of the dependent resurvey of a portion of the subdivisional lines and the subdivision of sections 8, 9, and 17, T. 6 S., R. 35 E., of the Boise Meridian, Idaho, Group Number 1283, was accepted August 24, 2010.

The supplemental plat in section 19, T. 2 N., R. 10 E., of the Boise Meridian, Idaho, Group Number 1337, was prepared to show amended lottings, was accepted September 30, 2010.

These surveys were executed at the request of the Bureau of Indian Affairs to meet their administrative needs. The lands surveyed are:

The field notes representing the remonumentation of the ¼ section corner of sections 31 and 32, T. 36 N., R. 1 E., Boise Meridian, Idaho, Group Number 1000, was accepted July 2, 2010.

The plat constituting the entire survey record of the dependent resurvey of a

portion of the subdivision of section 15, and a metes-and-bounds survey in the NW1/4 of the NW1/4 of section 15, T. 33 N., R. 3 E., Boise Meridian, Idaho, Group Number 1309, was accepted July 14, 2010.

The plat representing the dependent resurvey of portions of the south boundary, north boundary, and subdivisional lines, and the subdivision of sections 11, 26, and 35, and the metes-and-bounds survey of Tract 37, T. 4 S., R. 43 E., of the Boise Meridian, Idaho, Group Number 1277, was accepted July 22, 2010.

The plat constituting the retracement of a portion of the new south boundary of the Fort Hall Indian Reservation, portions of the south boundary and subdivisional lines and the metes-and-bounds survey of tract numbers 37 and 38 in sections 27 and 34, T. 5 S., R. 34 E., of the Boise Meridian, Idaho, Group Number 1294, was accepted September 29, 2010.

The plat representing the dependent resurvey of a portion of the subdivisional lines, and the corrective dependent resurvey of portions of the subdivisional lines and the subdivision of section 20, and the metes-and-bounds survey of Tracts 37, 38, and 39, T. 7 S., R. 36 E., of the Boise Meridian, Idaho, Group Number 1300, was accepted September 30, 2010.

The plat in six sheets, representing the dependent resurvey of portions of the south boundary and east boundary, and the subdivisional lines, and the subdivision of certain sections, metes-and-bounds surveys in sections 15 and 16, and the survey of the 2008–2010 meanders of the Blackfoot River in sections 10, 11, 12, 15, 16, 17, 18, and 19 and the north boundary of the Fort Hall Indian Reservation in sections 10, 11, 12, 15, 16, 17, 18, and 19, and a portion of the 2008–2010 median line in section 10, T. 2 S., R. 37 W., of the Boise Meridian, Idaho, Group Number 1268, was accepted September 30, 2010.

The survey was executed at the request of the U. S. Forest Service, to meet their administrative needs. The lands surveyed are:

The supplemental plat of Tract 37, T. 43 N., R. 3 W., of the Boise Meridian, Idaho, Group Number 1330, was accepted September 1, 2010.

Dated: October 6, 2010.

**Stanley G. French,**

*Chief Cadastral Surveyor for Idaho.*

[FR Doc. 2010–26116 Filed 10–15–10; 8:45 am]

**BILLING CODE 4310–GG–P**

## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

**[LLCA 942000 L57000000 BX0000]**

### Filing of Plats of Survey: California

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice.

**SUMMARY:** The plats of survey of lands described below are scheduled to be officially filed in the Bureau of Land Management California State Office, Sacramento, California, on the next business day following the plat acceptance date.

**ADDRESSES:** A copy of the plats may be obtained from the Land Office at the California State Office, Bureau of Land Management, 2800 Cottage Way, Sacramento, California 95825, upon required payment.

**FOR FURTHER INFORMATION CONTACT:** Chief, Branch of Geographic Services, Bureau of Land Management, California State Office, 2800 Cottage Way, Room W–1623, Sacramento, California 95825, (916) 978–4310.

**SUPPLEMENTARY INFORMATION:** These surveys were executed to meet the administrative needs of various agencies; the Bureau of Land Management, Bureau of Indian Affairs, National Park Service, U.S. Forest Service or the Army Corps of Engineers. A person or party who wishes to protest against a survey must file a notice that they wish to protest (at the above address) with the California State Director, Bureau of Land Management, Sacramento, California. The lands surveyed are:

**Mount Diablo Meridian, California**

T. 9 S., R. 2 W., accepted July 12, 2010.
T. 9 N., R. 17 E., accepted July 14, 2010.
T. 26 N., R. 15 E., accepted August 4, 2010.
T. 22 S., R. 9 E., accepted August 4, 2010.
T. 40–41 N., R. 7 E., accepted September 23, 2010.
T. 18 N., R. 8 E., accepted September 27, 2010.

**San Bernardino Meridian, California**

T. 9 S., R. 2 W., accepted July 12, 2010.
T. 15 S., R. 6 E., accepted July 27, 2010.
T. 9 N., R. 20 W., accepted August 05, 2010.
T. 1 S., R. 3–4 E., accepted August 16, 2010.

**Authority:** 43 U.S.C., Chapter 3.

Dated: October 4, 2010.

**Lance J. Bishop,**

*Chief, Branch of Geographic Services.*

[FR Doc. 2010–26063 Filed 10–15–10; 8:45 am]

**BILLING CODE 4310–40–P**

## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

**[LLWY912000 L12100000.XX0000 252W.00]**

### Notice of Intent To Reestablish and Call for Nominations for the Wyoming Resource Advisory Council

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice.

**SUMMARY:** The BLM is publishing this notice in accordance with the Federal Land Policy and Management Act (FLPMA) and the Federal Advisory Committee Act (FACA). The Bureau of Land Management (BLM) gives notice that the Secretary of the Interior is reestablishing the Wyoming Resource Advisory Council (RAC). This notice is also to solicit public nominations for the RAC. The RAC provides advice and recommendations on land use planning and management of the public lands within the State of Wyoming.

**DATES:** All nominations must be received no later than December 2, 2010.

**ADDRESSES:** Nominations should be sent to the Ms. Cindy Wertz, Wyoming State Office, Bureau of Land Management, 5353 Yellowstone Road, P.O. Box 1828, Cheyenne, WY 82003, (307) 775–6014.

**FOR FURTHER INFORMATION CONTACT:** Ms. Cindy Wertz, Public Affairs Specialist, Wyoming State Office, Bureau of Land Management, 5353 Yellowstone Road, Cheyenne, WY 82003, telephone (307) 775–6014; or e-mail *Cindy_Wertz@blm.gov.*

**SUPPLEMENTARY INFORMATION:** FLPMA (43 U.S.C. 1739) directs the Secretary of the Interior to involve the public in planning and issues related to management of lands administered by the BLM. Section 309 of FLPMA directs the Secretary to establish 10- to 15-member citizen-based advisory councils that are consistent with FACA. The rules governing RACs are found at 43 CFR subpart 1784. As required by FACA, RAC membership must be balanced and representative of the various interests concerned with the management of the public lands. These include three categories:

*Category One*—Holders of Federal grazing permits and representatives of organizations associated with energy and mineral development, timber industry, transportation or rights-of-way, developed outdoor recreation, off-highway vehicle use, and commercial recreation;

*Category Two*—Representatives of nationally or regionally recognized

environmental organizations; archaeological and historic organizations, dispersed recreation activities, and wild horse and burro organizations; and

*Category Three*—Representatives of State, county, or local elected office; representatives and employees of a State agency responsible for managing natural resources; representatives of Indian tribes within or adjacent to the area for which the council is organized; representatives of academia who are employed in natural sciences; and the public-at-large.

Individuals may nominate themselves or others. Nominees must be residents of the State of Wyoming. The BLM will evaluate nominees based on their education, training, experience, and knowledge of the geographical area of the RAC. Nominees should demonstrate a commitment to collaborative resource decision-making. The Obama Administration prohibits individuals who are currently federally registered lobbyists from serving on any FACA and non-FACA boards, committees, or councils. The following must accompany all nominations:

—Letters of reference from represented interests or organizations;
—A completed background information nomination form; and
—Any other information that addresses the nominee's qualifications.

Simultaneous with this notice, the BLM Wyoming State Office will issue a press release providing additional information for submitting nominations, with specifics about the positions available on the RAC. The terms of the appointments range from 1 to 3 years in order to stagger future expirations.

*Certification Statement:* I hereby certify that the BLM Wyoming Resource Advisory Council is necessary and in the public interest in connection with the Secretary's responsibilities to manage the lands, resources, and facilities administered by the BLM.

**Ken Salazar,**

*Secretary.*

[FR Doc. 2010–26171 Filed 10–15–10; 8:45 am]

**BILLING CODE 4310–84–P**

## DEPARTMENT OF THE INTERIOR

### Geological Survey

### National Earthquake Prediction Evaluation Council (NEPEC) Advisory Committee

**AGENCY:** U.S. Geological Survey, Interior.

**ACTION:** Notice of meeting.

**SUMMARY:** Pursuant to Public Law 96–472, the National Earthquake Prediction Evaluation Council (NEPEC) will hold a 2-day meeting on November 3 and 4, 2010. The meeting will be held on the campus of the California Institute of Technology, Pasadena, California 91106. The Council is comprised of members from academia and the Federal Government. The Council shall advise the Director of the U.S. Geological Survey (USGS) on proposed earthquake predictions, on the completeness and scientific validity of the available data related to earthquake predictions, and on related matters as assigned by the Director. Additional information about the Council may be found at: *http://earthquake.usgs.gov/aboutus/nepec/.*

At the meeting, the Council will review plans and progress related to understanding, forecasting and communicating about earthquake occurrence in California, the Pacific Northwest, and the Central United States. The Council will ratify the charges to NEPEC subcommittees that will focus on: (1) Methods for rapidly estimating the probability of a large earthquake following a possible foreshock or during a swarm of seismicity, procedures by which Council findings are to be transmitted to the USGS, and the format and content of earthquake advisory statements that may be composed and delivered at times of heightened concern; (2) earthquake occurrence and forecasting in the Pacific Northwest; (3) earthquake occurrence and forecasting in the Central and Eastern U.S.; and (4) review procedures for the project intended to deliver an updated Uniform California Earthquake Rupture Forecast (UCERF3) in summer 2012.

Workshops and meetings of the National Earthquake Prediction Evaluation Council are open to the public. A draft workshop agenda is available on request (contact information below). In order to ensure sufficient seating and hand-outs, it is requested that visitors pre-register by November 1. Members of the public wishing to make a statement to the Committee should provide notice of that intention by November 1 so that time may be allotted in the agenda.

**DATES:** November 3, 2009, commencing at 8:30 a.m. and adjourning at 5:30 p.m., and November 4, 2009, commencing at 8:30 a.m. and adjourning at Noon.

*Contact:* Dr. Michael Blanpied, Executive Secretary, National Earthquake Prediction Evaluation Council, U.S. Geological Survey, MS 905, 12201 Sunrise Valley Drive, Reston, Virginia 20192, (703) 648–6696, E-mail: *mblanpied@usgs.gov.*

Dated: October 8, 2010.

**William S. Leith,**

*Acting Associate Director for Natural Hazards.*

[FR Doc. 2010–26164 Filed 10–15–10; 8:45 am]

**BILLING CODE 4311–AM–P**

## DEPARTMENT OF THE INTERIOR

### National Park Service

### Cape Cod National Seashore, South Wellfleet, MA; Cape Cod National Seashore Advisory Commission

**AGENCY:** National Park Service, Interior.

**ACTION:** Two hundred seventy-sixth notice of meeting.

**SUMMARY:** Notice is hereby given in accordance with the Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770, 5 U.S.C. App 1, Section 10) of a meeting of the Cape Cod National Seashore Advisory Commission.

**DATES:** The meeting of the Cape Cod National Seashore Advisory Commission will be held on November 15, 2010, at 1 p.m.

**ADDRESSES:** The Commission members will meet in the meeting room at Headquarters, 99 Marconi Station, Wellfleet, Massachusetts.

**SUPPLEMENTARY INFORMATION:** The Commission was reestablished pursuant to Public Law 87–126 as amended by Public Law 105–280. The purpose of the Commission is to consult with the Secretary of the Interior, or his designee, with respect to matters relating to the development of Cape Cod National Seashore, and with respect to carrying out the provisions of sections 4 and 5 of the Act establishing the Seashore.

The regular business meeting is being held to discuss the following:

1. Adoption of Agenda
2. Approval of Minutes of Previous Meetings (July 19, 2010, and September 13, 2010)
3. Reports of Officers
4. Reports of Subcommittees
5. Superintendent's Report
   Update on Dune Shacks
   Improved Properties/Town Bylaws
   Herring River Wetland Restoration
   Wind Turbines/Cell Towers
   Flexible Shorebird Management
   Highlands Center Update
   Alternate Transportation funding
   Ocean stewardship topics
   Other construction projects
6. Old Business
7. New Business
8. Date and agenda for next meeting

9. Public comment and
10. Adjournment

The meeting is open to the public. It is expected that 15 persons will be able to attend the meeting in addition to Commission members.

Interested persons may make oral/written presentations to the Commission during the business meeting or file written statements. Such requests should be made to the park superintendent prior to the meeting. Before including your address, phone number, e-mail address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

**FOR FURTHER INFORMATION CONTACT:** Further information concerning the meeting may be obtained from the Superintendent, Cape Cod National Seashore, 99 Marconi Site Road, Wellfleet, MA 02667.

Dated: October 12, 2010.

**George E. Price, Jr.,**

*Superintendent.*

[FR Doc. 2010–26134 Filed 10–15–10; 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 September 25, 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., MS 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 November 2, 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.

**Paul Loether,**

*National Register of Historic Places/National Historic Landmarks Program.*

**ARKANSAS**

**Jefferson County**

St. Peter's Rock Missionary Baptist Church, 2911 W 12th St, Pine Bluff, 10000881

**DISTRICT OF COLUMBIA**

**District of Columbia**

Dent, James C., House, 156 Q St SW, Washington, D.C., 10000880

**ILLINOIS**

**Cook County**

River Forest Women's Club, 526 Ashland Ave, River Forest, 10000882

**LOUISIANA**

St. John the Baptist Haydel-Jones House, 2245 LA HWY 18, Edgard, 10000886

**MISSISSIPPI**

**Chickasaw County**

U.S. Post Office, 217 N Jackson St, Houston, 10000884

**Forrest County**

Meador Homestead, 6775 US Hwy 49, Hattisburg, 10000885

**Lee County**

Clark, R.C., House, 215 N Church St, Tupelo, 10000883

**NEW JERSEY**

**Middlesex County**

Saint Mary of Mount Virgin Roman Catholic Church, 190 Sandford St, New Brunswick, 10000877

**VERMONT**

**Orange County**

Bridge 22, Town Highway 27 (Creamery Rd), Bradford, 10000878

**WISCONSIN**

**Washington County**

St. Agnes Convent and School, 1386 Fond du Lac St, West Bend, 10000879

[FR Doc. 2010–26097 Filed 10–15–10; 8:45 am]

**BILLING CODE 4312–51–P**

## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

**[LLMT922200–10–L13100000–FI0000–P;MTM 98742]**

### Notice of Proposed Reinstatement of Terminated Oil and Gas Lease MTM 98742, Montana

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice.

**SUMMARY:** Under the provisions of the Mineral Leasing Act of 1920, as amended, Coburn, LLC timely filed a petition for reinstatement of competitive oil and gas lease MTM 98742, for land in Fergus County, Montana. The lessee paid the required rental accruing from the date of termination.

The Bureau of Land Management (BLM) has not issued a valid lease to any other interest affecting the lands. The lessee agrees to new lease terms for rentals and royalties of $10 per acre and 16–2/3 percent. The lessee paid the $500 administration fee for the reinstatement of the lease and the $163 cost for publishing this notice.

The lessee has met the requirements for reinstatement of the lease under Section 31(d) and (e) of the Mineral Leasing Act of 1920 (30 U.S.C. 188). The BLM is proposing to reinstate the lease, effective the date of termination, subject to:

- The original terms and conditions of the lease, except as otherwise provided;
- The increased rental of $10 per acre;
- The increased royalty of 16–2/3 percent;
- The $163 cost of publishing this notice; and
- The $500 administration fee.

**FOR FURTHER INFORMATION CONTACT:** Teri Bakken, Chief, Fluids Adjudication Section, Bureau of Land Management Montana State Office, 5001 Southgate Drive, Billings, Montana 59101–4669, 406–896–5091.

**Teri Bakken,**

*Chief, Fluids Adjudication Section.*

[FR Doc. 2010–26169 Filed 10–15–10; 8:45 am]

**BILLING CODE 4310–DN–P**

## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

**[LLMTL06000–L14300000.ET0000; MTM 89170]**

### Public Land Order No. 7753; Extension of Public Land Order No. 7464; Montana

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Public Land Order.

**SUMMARY:** This order further extends the duration of the withdrawal created by Public Land Order No. 7464 for an additional 5-year period. This extension is necessary to continue protection of the Bureau of Land Management's Zortman-Landusky mining area which would otherwise expire on October 4, 2010.

**DATES:** *Effective Date:* October 5, 2010.

**FOR FURTHER INFORMATION CONTACT:** Micah Lee, Bureau of Land Management, Lewistown Field Office, P.O. Box 1160, Lewistown, Montana 59457, (406) 538–1910, or Sandra Ward, Bureau of Land Management, Montana State Office, 5001 Southgate Drive, Billings, Montana 59101–4669, (406) 896–5052.

**SUPPLEMENTARY INFORMATION:** The purpose for which the withdrawal was first made requires this extension to continue protection of the Zortman-Landusky mining area until reclamation is completed. The withdrawal has been extended once by Public Land Order No. 7643 (70 FR 49944 (2005)).

**Order**

By virtue of the authority vested in the Secretary of the Interior by Section 204 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714, it is ordered as follows:

1. Public Land Order No. 7464 (65 FR 59463 (2000)), as extended by Public Land Order No. 7643 (70 FR 49944 (2005)), which withdrew 3,530.62 acres of public land from settlement, sale, location, or entry under the general land laws, including the United States mining laws (30 U.S.C. ch. 2), to protect the Zortman-Landusky Mining Area, is hereby further extended for an additional 5-year period.

2. Public Land Order No. 7464 will expire October 4, 2015, unless, as a result of a review conducted prior to the expiration date pursuant to Section 204(f) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714(f), the Secretary determines that the withdrawal shall be further extended.

Dated: October 4, 2010.

**Wilma A. Lewis,**

*Assistant Secretary—Land and Minerals Management.*

[FR Doc. 2010–26170 Filed 10–15–10; 8:45 am]

**BILLING CODE 4310–DN–P**

## INTERNATIONAL TRADE COMMISSION

**[Investigation No. 731–TA–125 (Third Review)]**

### Potassium Permanganate From China Determination

On the basis of the record [1] developed in the subject five-year review, the United States International Trade Commission (Commission) determines, pursuant to section 751(c) of the Tariff Act of 1930 (19 U.S.C. 1675(c)), that revocation of the antidumping duty order on potassium permanganate from China would be likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time.

**Background**

The Commission instituted this review on May 3, 2010 (75 FR 23298) and determined on August 6, 2010 that it would conduct an expedited review (75 FR 51112, August 18, 2010).

The Commission transmitted its determination in this review to the Secretary of Commerce on September 30, 2010. The views of the Commission are contained in USITC Publication 4183 (September 2010), entitled *Potassium Permanganate from China: Investigation No. 731–TA–125* (Third Review).

Issued: October 1, 2010.

By order of the Commission.

**William R. Bishop,**

*Acting Secretary to the Commission.*

[FR Doc. 2010–26112 Filed 10–15–10; 8:45 am]

**BILLING CODE P**

## INTERNATIONAL TRADE COMMISSION

**[Inv. No. 337–TA–741]**

### In the Matter of Certain Liquid Crystal Display Devices, Including Monitors, Televisions, and Modules, and Components Thereof; Notice of Investigation

**AGENCY:** U.S. International Trade Commission.

**ACTION:** Institution of investigation pursuant to 19 U.S.C. 1337.

**SUMMARY:** Notice is hereby given that a complaint was filed with the U.S. International Trade Commission on August 27, 2010, under section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, on behalf of Thomson Licensing SAS of France and Thomson Licensing LLC of Princeton, New Jersey. An amended complaint was filed on September 16, 2010. The amended complaint alleges violations of section 337 based upon the importation into the United States, the sale for importation, and the sale within the United States after importation of certain liquid crystal display devices, including monitors, televisions, and modules, and components thereof by reason of infringement of certain claims of U.S. Patent No. 6,121,941 ("the '941 patent"); U.S. Patent No. 5,978,063 ("the '063 patent"); U.S. Patent No. 5,648,674 ("the '674 patent"); U.S. Patent No. 5,621,556 ("the '556 patent"); and U.S. Patent No. 5,375,006 ("the '006 patent"). The amended complaint further alleges that an industry in the United States exists as required by subsection (a)(2) of section 337.

The complainants request that the Commission institute an investigation and, after the investigation, issue an exclusion order and cease and desist orders.

**ADDRESSES:** The amended complaint, except for any confidential information contained therein, is available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, SW., Room 112, Washington, DC 20436, telephone 202–205–2000. Hearing impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its Internet server at *http://www.usitc.gov.* The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov.*

**FOR FURTHER INFORMATION CONTACT:** Daniel L. Girdwood, Esq., Office of Unfair Import Investigations, U.S. International Trade Commission, telephone (202) 205–3409.

[1] The record is defined in sec. 207.2(f) of the Commission's Rules of Practice and Procedure (19 CFR 207.2(f)).

**Authority:** The authority for institution of this investigation is contained in section 337 of the Tariff Act of 1930, as amended, and in section 210.10 of the Commission's Rules of Practice and Procedure, 19 CFR 210.10 (2010).

*Scope of Investigation:* Having considered the amended complaint, the U.S. International Trade Commission, on October 8, 2010, *ordered that*—

(1) Pursuant to subsection (b) of section 337 of the Tariff Act of 1930, as amended, an investigation be instituted to determine whether there is a violation of subsection (a)(1)(B) of section 337 in the importation into the United States, the sale for importation, or the sale within the United States after importation of certain liquid crystal display devices, including monitors, televisions, and modules, and components thereof that infringe one or more of claims 1 and 4 of the '941 patent; claims 1–4, 8, 11, 12, 14, 17, and 18 of the '063 patent; claims 1, 7–9, 11, 13, 14, and 16–18 of the '674 patent; claim 3 of the '556 patent; and claims 4, 7–10, and 14 of the '006 patent, and whether an industry in the United States exists as required by subsection (a)(2) of section 337;

(2) For the purpose of the investigation so instituted, the following are hereby named as parties upon which this notice of investigation shall be served:

(a) The complainants are:

Thomson Licensing SAS, 1–5 rue Jeanne d'Arc, 92130 Issy-les-Moulineaux, France.

Thomson Licensing LLC, 2 Independence Way, Princeton, New Jersey 08543.

(b) The respondents are the following entities alleged to be in violation of section 337, and are the parties upon which the amended complaint is to be served:

Chimei Innolux Corporation, No. 160 Kesyue Road, Jhunan Science Park, Miaoli County 350, Taiwan.

Innolux Corporation, 2525 Brockton Drive, Suite 300, Austin, TX 78758.

Chi Mei Optoelectronics USA, Inc., 101 Metro Drive, Suite 510, San Jose, CA 95110.

MStar Semiconductor, Inc., 4F–1, No. 26, Tai-Yuan Street, ChuPei, Hsinchu Hsien, Taiwan 302.

Qisda Corporation, 157 Shan-Ying Road, Gueishan, Taoyuan 333, Taiwan.

Qisda America Corporation, 8941 Research Drive, Suite 200, Irvine, CA 92618.

Qisda (Suzhou) Co., Ltd., No. 169 Zhujiang Road, Suzhou, China 215015.

BenQ Corporation, 16 Jihu Road, Neihu, Taipei 114, Taiwan.

BenQ America Corp., 15375 Barranca Parkway, Suite A–205, Irvine, CA 92618.

BenQ Latin America, 8200 NW 33rd Street, Suite 301, Miami, FL 33122.

Realtek Semiconductor Corporation, No. 2 Innovation Road II, Hsinchu Science Park, Hsinchu 300, Taiwan.

(c) The Commission investigative attorney, party to this investigation, is Daniel L. Girdwood, Esq., Office of Unfair Import Investigations, U.S. International Trade Commission, 500 E Street, SW., Suite 401, Washington, DC 20436; and

(3) For the investigation so instituted, the Honorable Paul J. Luckern, Chief Administrative Law Judge, U.S. International Trade Commission, shall designate the presiding Administrative Law Judge.

Responses to the amended complaint and the notice of investigation must be submitted by the named respondents in accordance with section 210.13 of the Commission's Rules of Practice and Procedure, 19 CFR 210.13. Pursuant to 19 CFR 201.16(d)-(e) and 210.13(a), such responses will be considered by the Commission if received not later than 20 days after the date of service by the Commission of the amended complaint and the notice of investigation. Extensions of time for submitting responses to the amended complaint and the notice of investigation will not be granted unless good cause therefor is shown.

Failure of a respondent to file a timely response to each allegation in the amended complaint and in this notice may be deemed to constitute a waiver of the right to appear and contest the allegations of the amended complaint and this notice, and to authorize the administrative law judge and the Commission, without further notice to the respondent, to find the facts to be as alleged in the amended complaint and this notice and to enter an initial determination and a final determination containing such findings, and may result in the issuance of an exclusion order or a cease and desist order or both directed against the respondent.

Issued: October 12, 2010.

By order of the Commission.

**William R. Bishop,**

*Acting Secretary to the Commission.*

[FR Doc. 2010–26110 Filed 10–15–10; 8:45 am]

**BILLING CODE P**

## INTERNATIONAL TRADE COMMISSION

**[Inv. No. 337–TA–742]**

### In the Matter of: Certain Digital Televisions and Components Thereof; Notice of Investigation

**AGENCY:** U.S. International Trade Commission.

**ACTION:** Institution of investigation pursuant to 19 U.S.C. 1337.

**SUMMARY:** Notice is hereby given that a complaint was filed with the U.S. International Trade Commission on September 15, 2010, under section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, on behalf of LG Electronics, Inc. of Korea. The complaint alleges violations of section 337 based upon the importation into the United States, the sale for importation, and the sale within the United States after importation of certain digital televisions and components thereof by reason of infringement of certain claims of U.S. Patent No. RE 37,070 ("the '070 patent"); U.S. Patent No. 6,785,906 ("the '906 patent"); and U.S. Patent No. 6,598,233 ("the '233 patent"). The complaint further alleges that an industry in the United States exists as required by subsection (a)(2) of section 337.

The complainant requests that the Commission institute an investigation and, after the investigation, issue an exclusion order and cease and desist orders.

**ADDRESSES:** The complaint, except for any confidential information contained therein, is available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, SW., Room 112, Washington, DC 20436, telephone 202–205–2000. Hearing impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its Internet server at *http://www.usitc.gov*. The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov.*

**FOR FURTHER INFORMATION CONTACT:** Kecia R. Reynolds, Esq., Office of Unfair Import Investigations, U.S. International

Trade Commission, telephone (202) 205–2580.

*Authority:* The authority for institution of this investigation is contained in section 337 of the Tariff Act of 1930, as amended, and in section 210.10 of the Commission's Rules of Practice and Procedure, 19 CFR 210.10 (2010).

*Scope of Investigation:* Having considered the complaint, the U.S. International Trade Commission, on October 8, 2010, ordered that—

(1) Pursuant to subsection (b) of section 337 of the Tariff Act of 1930, as amended, an investigation be instituted to determine whether there is a violation of subsection (a)(1)(B) of section 337 in the importation into the United States, the sale for importation, or the sale within the United States after importation of certain digital televisions and components thereof that infringe one or more of claims 1, 4–9, 12–14, and 17–30 of them '070 patent; claims 1–20 and 22–26 of the '906 patent; and claims 1–25 of the '233 patent, and whether an industry in the United States exists as required by subsection (a)(2) of section 337;

(2) For the purpose of the investigation so instituted, the following are hereby named as parties upon which this notice of investigation shall be served:

(a) The complainant is: LG Electronics, Inc., LG Twin Towers, 20, Yeouido-dong, Yeongdeungpo-gu, Seoul, 150–721, Korea.

(b) The respondents are the following entities alleged to be in violation of section 337, and are the parties upon which the complaint is to be served:

Vizio, Inc., 39 Tesla, Irvine, CA 92618.

AmTRAN Technology Co., Ltd., 17f, 268, Lien Cheng Rd., Chungho City, Taipei, 23553, Taiwan.

AmTRAN Logistic, Inc., 9531 Irvine Center Dr., Irvine, CA 92618–4654.

(c) The Commission investigative attorney, party to this investigation, is Kecia R. Reynolds, Esq., Office of Unfair Import Investigations, U.S. International Trade Commission, 500 E Street, SW., Suite 401, Washington, DC 20436; and

(3) For the investigation so instituted, the Honorable Paul J. Luckern, Chief Administrative Law Judge, U.S. International Trade Commission, shall designate the presiding Administrative Law Judge.

Responses to the complaint and the notice of investigation must be submitted by the named respondents in accordance with section 210.13 of the Commission's Rules of Practice and Procedure, 19 CFR 210.13. Pursuant to 19 CFR 201.16(d)–(e) and 210.13(a), such responses will be considered by the Commission if received not later than 20 days after the date of service by the Commission of the complaint and the notice of investigation. Extensions of time for submitting responses to the complaint and the notice of investigation will not be granted unless good cause therefor is shown.

Failure of a respondent to file a timely response to each allegation in the complaint and in this notice may be deemed to constitute a waiver of the right to appear and contest the allegations of the complaint and this notice, and to authorize the administrative law judge and the Commission, without further notice to the respondent, to find the facts to be as alleged in the complaint and this notice and to enter an initial determination and a final determination containing such findings, and may result in the issuance of an exclusion order or a cease and desist order or both directed against the respondent.

Issued: October 12, 2010.

By order of the Commission.

**William R. Bishop,**

*Acting Secretary to the Commission.*

[FR Doc. 2010–26111 Filed 10–15–10; 8:45 am]

**BILLING CODE P**

## DEPARTMENT OF JUSTICE

### Notice of Lodging of Consent Decree Under the Comprehensive Environmental Response, Compensation, and Liability Act

Notice is hereby given that on October 8, 2010 a proposed consent decree ("proposed Decree") in *United States* v. *Albert Investment Co., Inc., et al.,* Civil Action No. 08–637C, was lodged with the United States District Court for the Western District of Oklahoma.

In this action under Section 107(a) of the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. 9607(a) ("CERCLA"), the United States and State of Oklahoma's complaint seeks reimbursement of response costs incurred or to be incurred for response actions taken and damages for injury to, destruction of, or loss of natural resources, including the reasonable costs of assessing such injury destruction or loss, at or in connection with the release or threatened release of hazardous substances at the Double Eagle Superfund Site, in Oklahoma City, Oklahoma.

The proposed Decree is an amended version of an earlier Decree which was lodged in the case, and which has now been withdrawn. The proposed Decree requires the defendants to pay approximately $6,268,643 to the United States and the State in reimbursement of past response costs and $329,929 in state and federal natural resource damages. The proposed Decree provides the defendants with a covenant not to sue under Sections 106 and 107(a) of CERCLA, 42 U.S.C. 9606 and 9607(a) that are subject various reopeners and reservations.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the proposed 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, and should refer to *United States* v. *Albert Investment Co., Inc., et al.,* D.J. Ref. 90–11–2–857/5.

The proposed Decree may be examined at the Office of the United States Attorney for the Western District of Oklahoma, 210 Park Avenue, Suite 400, Oklahoma City, Oklahoma 73102, 1445 Ross Avenue, Suite 1200, Dallas, Texas 75202. During the public comment period, the proposed 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 proposed 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 $20.25 (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 Chief, Environmental Enforcement Section, Environment and Natural Resources Division.*

[FR Doc. 2010–26136 Filed 10–15–10; 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

Notice is hereby given that on October 8, 2010 a proposed consent decree ("proposed Decree") in *United States* v. *Union Pacific Railroad Company, et al.,* Civil Action No. 06–887C, was lodged with the United States District Court for the Western District of Oklahoma.

In this action under Section 107(a) of the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. 9607(a) ("CERCLA"), the United States and State of Oklahoma's complaint seeks reimbursement of response costs incurred or to be incurred for response actions taken and damages for injury to, destruction of, or loss of natural resources, including the reasonable costs of assessing such injury destruction or loss, at or in connection with the release or threatened release of hazardous substances at the Double Eagle Superfund Site, in Oklahoma City, Oklahoma.

The proposed Decree requires the settling defendants to pay $13,606,241 to the United States and the State in reimbursement of past response costs, $160,000 in future response costs and $450,000 in state and federal natural resource damages.

The proposed Decree provides the settling defendants with a covenant not to sue under Sections 106 and 107(a) of CERCLA, 42 U.S.C. 9606 and 9607(a) that are subject to various reopeners and reservations.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the proposed 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, D.C. 20044–7611, and should refer to *United States* v. *Union Pacific Railway Company et al.,* D.J. Ref. 90–11–2–857/1.

The proposed Decree may be examined at the Office of the United States Attorney for the Western District of Oklahoma, 210 Park Avenue, Suite 400, Oklahoma City, Oklahoma 73102, 1445 Ross Avenue, Suite 1200, Dallas, Texas 75202. During the public comment period, the proposed 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 proposed 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 $80.00 (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 Chief, Environmental Enforcement Section, Environment and Natural Resources Division.*

[FR Doc. 2010–26137 Filed 10–15–10; 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

Notice is hereby given that on October 8, 2010, a proposed Consent Decree in *United States of America* v. *AMETEK, Inc., et al.,* Civil Action No. 10–cv–5291, was lodged with the United States District Court for the Eastern District of Pennsylvania.

In this action the United States sought to recover from the defendants response costs incurred by the United States Environmental Protection Agency ("EPA") and future costs in responding to releases or threatened releases of hazardous substances at or from the North Penn Area 2 Superfund Site, located in Hatfield Township, Montgomery County, Pennsylvania (the "Site"). The Consent Decree obligates AMETEK, Inc. and Penn Color, Inc., to perform remedial work at the Site and to reimburse EPA's past and future response costs related to the Site.

The Consent Decree requires the settling parties to pay to finance and perform remaining cleanup at the Site by establishing and maintaining a performance guarantee initially in the amount of $2,039,900.00. The Consent Decree also requires the settling parties to pay the EPA Hazardous Substance Superfund the principal sum of $185,522.41, due within thirty (30) days of entry of the Consent Decree. The settling parties are also required to pay all future response costs within thirty (30) days of receiving a bill from EPA.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the Decree. Comments should be addressed to the Assistant Attorney General, Environmental 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. *AMETEK, Inc., et al.,* Civil Action No. 10–cv–5291 (E.D.Pa.), D.J. Ref. 90–11–2–09537.

The Decree may be examined at the Office of the United States Attorney, Eastern District of Pennsylvania, 615 Chestnut Street, Suite 1250, Philadelphia, PA 19106, and at U.S. EPA Region III, 1650 Arch Street, Philadelphia, PA 19103. During the public comment period, the 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 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 $23.50 (25 cents per page reproduction cost) payable to the U.S. Treasury or, if by email 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. 2010–26138 Filed 10–15–10; 8:45 am]

**BILLING CODE 4410–15–P**

## DEPARTMENT OF JUSTICE

### Bureau of Alcohol, Tobacco, Firearms, and Explosives

**[OMB Number 1140–0084]**

### Agency Information Collection Activities: Proposed Collection; Comments Requested

**ACTION:** Revision 60-day notice of information collection under review: Application and Permit for Temporary Importation of Firearms and Ammunition by Nonimmigrant Aliens.

The Department of Justice (DOJ), Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF), will be submitting the following information

collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted for "sixty days" until December 17, 2010. This process is conducted in accordance with 5 CFR 1320.10.

If you have comments especially on the estimated public burden or associated response time, suggestions, or need a copy of the proposed information collection instrument with instructions or additional information, please contact Desiree Winger, Firearms and Explosives Imports Branch, 244 Needy Road, Martinsburg, WV 25401.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

—Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

—Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

—Enhance the quality, utility, and clarity of the information to be collected; and

—Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

**Overview of This Information Collection**

(1) *Type of Information Collection:* Revision of a currently approved collection.

(2) *Title of the Form/Collection:* Application and Permit For Temporary Importation of Firearms and Ammunition by Nonimmigrant Aliens.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection: Form Number:* ATF F 6NIA (5330.3D), Bureau of Alcohol, Tobacco, Firearms and Explosives.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary:* Individuals or households. *Other:* None. This information collection is needed to determine if the firearms or ammunition listed on the application qualify for importation and to certify that a nonimmigrant alien is in compliance with 18 U.S.C. 922(g)(5)(B). This application will also serve as the authorization for importation.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* It is estimated that 15,000 respondents will complete a 30 minute form.

(6) *An estimate of the total public burden (in hours) associated with the collection:* There are an estimated 7,500 annual total burden hours associated with this collection.

*If additional information is required contact:* Lynn Murray, Department Clearance Officer, Policy and Planning Staff, Justice Management Division, U.S. Department of Justice, Two Constitution Square, 145 N Street, NE., Suite 2E–502, Washington, DC 20530.

Dated: October 12, 2010.

**Lynn Murray,**

*Department Clearance Officer, PRA, U.S. Department of Justice.*

[FR Doc. 2010–26124 Filed 10–15–10; 8:45 am]

**BILLING CODE 4410–FY–P**

## DEPARTMENT OF JUSTICE

### Bureau of Alcohol, Tobacco, Firearms and Explosives

**[OMB Number 1140–0006]**

### Agency Information Collection Activities: Proposed Collection; Comments Requested

**ACTION:** Revision 60-day notice of information collection under review: Application and permit for importation of firearms, ammunition and Implements of War.

The Department of Justice (DOJ), Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF), has submitted the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted for "sixty days" until December 17, 2010. This process is conducted in accordance with 5 CFR 1320.10.

If you have comments especially on the estimated public burden or associated response time, suggestions, or need a copy of the proposed information collection instrument with instructions or additional information, please contact Desiree Winger, Firearms and Explosives Imports Branch, 244 Needy Road, Martinsburg, WV 25405.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

—Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

—Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

—Enhance the quality, utility, and clarity of the information to be collected; and

—Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

**Overview of This Information Collection**

(1) *Type of Information Collection:* Revision of a currently approved collection.

(2) *Title of the Form/Collection:* Application and Permit For Importation of Firearms, Ammunition and Implements of War.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Form Number: ATF F 6, Part II (5330.3B). Bureau of Alcohol, Tobacco, Firearms and Explosives.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Individuals or households. Other: Business or other for-profit, Federal Government, State, Local or Tribal Government. The information collection is needed to determine whether firearms, ammunition and implements of war are eligible for importation into the United States. The information is used to secure authorization to import such articles. The form is used by persons who are members of the United States Armed Forces.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* It is estimated that 9,000

respondents will complete a 30 minute form.

(6) *An estimate of the total public burden (in hours) associated with the collection:* There are an estimated 4,500 annual total burden hours associated with this collection.

If additional information is required contact: Lynn Murray, Department Clearance Officer, Policy and Planning Staff, Justice Management Division, Department of Justice, Two Constitution Square, Room 2E–502, 145 N Street, NE., Washington, DC 20530.

Dated: October 12, 2010.

**Lynn Murray,**

*Department Clearance Officer, PRA, U.S. Department of Justice.*

[FR Doc. 2010–26121 Filed 10–15–10; 8:45 am]

**BILLING CODE 4410–FY–P**

## DEPARTMENT OF JUSTICE

### Bureau of Alcohol, Tobacco, Firearms and Explosives

**[OMB Number 1140–0005]**

### Agency Information Collection Activities: Proposed Collection; Comments Requested

**ACTION:** Revision 60-day notice of information collection under review: Application and Permit for Importation of Firearms Ammunition and Implements of War.

The Department of Justice (DOJ), Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF), will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted for "sixty days" until December 17, 2010. This process is conducted in accordance with 5 CFR 1320.10.

If you have comments especially on the estimated public burden or associated response time, suggestions, or need a copy of the proposed information collection instrument with instructions or additional information, please contact Desiree Winger, Firearms and Explosives Imports Branch, 244 Needy Road, Martinsburg, West Virginia 25405.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

—Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

—Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

—Enhance the quality, utility, and clarity of the information to be collected; and

—Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

**Overview of This Information Collection**

(1) *Type of Information Collection:* Revision of a currently approved collection.

(2) *Title of the Form/Collection:* Application and Permit for Importation of Firearms Ammunition and Implements of War.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Form Number: ATF F 6, Part 1 (5330.3A) Bureau of Alcohol, Tobacco, Firearms and Explosives.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Individuals or households. Other: Business or other for-profit, Federal Government, State, Local or Tribal Government. The form is used to determine whether firearms, ammunition and implements of war are eligible for importation into the United States. It is also used to secure authorization to import such articles and serves as authorization to the U.S. Customs Service to allow these articles entry into the United States.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* It is estimated that 11,000 respondents will complete a 30 minute form.

(6) *An estimate of the total public burden (in hours) associated with the collection:* There are an estimated 5,500 annual total burden hours associated with this collection.

If additional information is required contact: Lynn Murray, Department Clearance Officer, Policy and Planning Staff, Justice Management Division, U.S. Department of Justice, Two Constitution Square, Suite 2E–502, 145 N Street, NE., Washington, DC 20530.

Dated: October 12, 2010.

**Lynn Murray,**

*Department Clearance Officer, PRA, U.S. Department of Justice.*

[FR Doc. 2010–26120 Filed 10–15–10; 8:45 am]

**BILLING CODE 4410–FY–P**

## DEPARTMENT OF JUSTICE

### Bureau of Alcohol, Tobacco, Firearms and Explosives

**[OMB Number 1140–0007]**

### Agency Information Collection Activities: Proposed Collection; Comments Requested

**ACTION:** 60-Day Notice of Information Collection Under Review: Release and Receipt of Imported Firearms, Ammunition and Implements of War.

The Department of Justice (DOJ), Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF), will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted for "sixty days" until December 17, 2010. This process is conducted in accordance with 5 CFR 1320.10.

If you have comments especially on the estimated public burden or associated response time, suggestions, or need a copy of the proposed information collection instrument with instructions or additional information, please contact Desiree Winger, Firearms and Explosives Import Branch, 244 Needy Road, Martinsburg, WV 25405.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

—Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

—Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

—Enhance the quality, utility, and clarity of the information to be collected; and

—Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

**Overview of This Information Collection**

(1) *Type of Information Collection:* Revision of a currently approved collection.

(2) *Title of the Form/Collection:* Release and Receipt of Imported Firearms, Ammunition and Implements of War.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Form Number: ATF F 6A (5330.3C). Bureau of Alcohol, Tobacco, Firearms and Explosives.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Individuals or households. Other: Business or other for-profit, not-for-profit institutions. The data provided by this information collection request is used by ATF to determine if articles imported meet the statutory and regulatory criteria for importation and if the articles shown on the permit application have been actually imported.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* It is estimated that 20,000 respondents will complete a 35 minute form.

(6) *An estimate of the total public burden (in hours) associated with the collection:* There are an estimated 11,667 annual total burden hours associated with this collection.

If additional information is required contact: Lynn Murray, Department Clearance Officer, Policy and Planning Staff, Justice Management Division, U.S. Department of Justice, Two Constitution Square, Room 2E–502, 145 N Street NE., Washington, DC 20530.

Dated: October 12, 2010.

**Lynn Murray,**

*Department Clearance Officer, PRA, U.S. Department of Justice.*

[FR Doc. 2010–26127 Filed 10–15–10; 8:45 am]

**BILLING CODE 4410–FY–P**

## DEPARTMENT OF JUSTICE

### Federal Bureau of Investigation

### Meeting of the CJIS Advisory Policy Board

**AGENCY:** Federal Bureau of Investigation (FBI).

**ACTION:** Meeting Notice.

**SUMMARY:** The purpose of this notice is to announce the meeting of the Criminal Justice Information Services (CJIS) Advisory Policy Board (APB). The CJIS APB is a federal advisory committee established pursuant to the Federal Advisory Committee Act (FACA). This meeting announcement is being published as required by Section 10 of the FACA.

The CJIS APB is responsible for reviewing policy issues and appropriate technical and operational issues related to the programs administered by the FBI's CJIS Division, and thereafter, making appropriate recommendations to the FBI Director. The programs administered by the CJIS Division are the Integrated Automated Fingerprint Identification System, Interstate Identification Index, Law Enforcement Online, National Crime Information Center, National Instant Criminal Background Check System, National Incident-Based Reporting System, Law Enforcement National Data Exchange, and Uniform Crime Reporting.

The meeting will be open to the public on a first-come, first-seated basis. Any member of the public wishing to file a written statement concerning the CJIS Division's programs or wishing to address this session should notify Senior CJIS Advisor Roy U. Weise at (304) 625–2730 at least 24 hours prior to the start of the session. The notification should contain the requestor's name, corporate designation, and consumer affiliation or government designation along with a short statement describing the topic to be addressed and the time needed for the presentation. A requestor will ordinarily be allowed no more than 15 minutes to present a topic.

**DATES AND TIMES:** The APB will meet in open session from 8:30 a.m. until 5 p.m., on December 8–9, 2010.

**ADDRESSES:** The meeting will take place at The New Orleans Marriott, 555 Canal Street, New Orleans, Louisiana 70130–2349, telephone (504) 581–1000.

**FOR FURTHER INFORMATION CONTACT:** Inquiries may be addressed to Ms. Joyce R. Wilkerson, Management and Program Analyst; Advisory Groups Management Unit, Law Enforcement Support Section; FBI CJIS Division; Module C3, 1000 Custer Hollow Road, Clarksburg, West Virginia 26306–0149; telephone (304) 625–5505, facsimile (304) 625–5090.

**Roy G. Weise,**

*Senior CJIS Advisor, Criminal Justice Information Services Division, Federal Bureau of Investigation.*

[FR Doc. 2010–26085 Filed 10–15–10; 8:45 am]

**BILLING CODE 4410–02–M**

## DEPARTMENT OF LABOR

### Office of Workers' Compensation Programs

### Division of Longshore and Harbor Workers' Compensation; Proposed Extension of Existing Collection; Comment Request

**ACTION:** Notice.

**SUMMARY:** The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, conducts a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) [44 U.S.C. 3506(c)(2)(A)] This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. Currently, the Office of Workers' Compensation (OWCP) is soliciting comments concerning the proposed collection: Certification of Funeral Expenses (LS–265). A copy of the proposed information collection request can be obtained by contacting the office listed below in the **ADDRESS** section of this Notice.

**DATES:** Written comments must be submitted to the office listed in the **ADDRESSES** section below on or before December 17, 2010.

**ADDRESSES:** Mr. Vincent Alvarez, U.S. Department of Labor, 200 Constitution Ave., NW., Room S–3201, Washington, DC 20210, telephone (202) 693–0372, fax (202) 693–1378, Email *Alvarez.Vincent@dol.gov*. Please use only one method of transmission for comments (mail, fax, or E-mail).

**SUPPLEMENTARY INFORMATION** *I. Background:* The Office of Workers' Compensation Programs (OWCP), administers the Longshore and Harbor Workers' Compensation Act. The Act provides benefits to workers injured in maritime employment on the navigable

waters of the United States or in an adjoining area customarily used by an employer in loading, unloading, repairing, or building a vessel. The Act provides that reasonable funeral expenses not to exceed $3,000 shall be paid in all compensable death cases. The LS–265 has been provided for use in submitting the funeral expenses for payment. This information collection is currently approved for use through February 28, 2011.

*II. Review Focus:* The Department of Labor is particularly interested in comments which:

* Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

* Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

* Enhance the quality, utility and clarity of the information to be collected; and

* 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.

*III. Current Actions:* The Department of Labor seeks the extension of approval of this information collection in order to carry out its responsibility to certify the amount of funeral expenses incurred in the case.

*Agency:* Office of Workers' Compensation Programs.

*Type of Review:* Extension.

*Title:* Certification of Funeral Expenses.

*OMB Number:* 1240–0040.

*Agency Number:* LS–265.

*Affected Public:* Business or other for-profit.

*Total Respondents:* 80.

*Total Annual Responses:* 80.

*Estimated Total Burden Hours:* 20.

*Estimated Time per Response:* 15 minutes.

*Frequency:* On occasion.

*Total Burden Cost (capital/startup):* $0.

*Total Burden Cost (operating/maintenance):* $37.60.

Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they will also become a matter of public record.

Dated: October 12, 2010.

**Vincent Alvarez,**

*Agency Clearance Officer, Office of Workers' Compensation Programs, U.S. Department of Labor.*

[FR Doc. 2010–26104 Filed 10–15–10; 8:45 am]

**BILLING CODE 4510–CF–P**

## DEPARTMENT OF LABOR

### Office of Workers' Compensation Programs

### Division of Federal Employees' Compensation; Proposed Extension of Existing Collection; Comment Request

**ACTION:** Notice.

**SUMMARY:** The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, conducts a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) [44 U.S.C. 3506(c)(2)(A)]. This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. Currently, the Office of Workers' Compensation Programs is soliciting comments concerning the proposed collection: Request for Information on Earnings, Dual Benefits, Dependents and Third Party Settlement (CA–1032). A copy of the proposed information collection request can be obtained by contacting the office listed below in the **ADDRESSES** section of this Notice.

**DATES:** Written comments must be submitted to the office listed in the addresses section below on or before December 17, 2010.

**ADDRESSES:** Mr. Vincent Alvarez, U.S. Department of Labor, 200 Constitution, Ave., NW., Room S–3201, Washington, DC 20210, telephone (202) 693–0372, fax (202) 693–1378, E-mail *Alvarez.Vincent@dol.gov*. Please use only one method of transmission for comments (mail, fax, or E-mail).

**SUPPLEMENTARY INFORMATION:** *I. Background:* The collection of this information is necessary under provisions of the Federal Employees' Compensation Act (FECA) which states: (1) Compensation must be adjusted to reflect a claimant's earnings while in receipt of benefits (5 U.S.C. 8106); (2) compensation is payable at the augmented rate of 75 percent only if the claimant has one or more dependents as defined by the FECA (5 U.S.C. 8110); (3) compensation may not be paid concurrently with certain benefits from other Federal Agencies, such as the Office of Personnel Management, Social Security, and the Veterans Administration (5 U.S.C. 8116); (4) compensation must be adjusted to reflect any settlement from a third party responsible for the injury for which the claimant is being paid compensation (5 U.S.C. 8132); (5) an individual convicted of any violation related to fraud in the application for, or receipt of, any compensation benefit, forfeits (as of the date of such conviction) any entitlement to such benefits, for any injury occurring on or before the date of conviction (5 U.S.C. 8146(a)); (6) no Federal compensation benefit can be paid to any individual for any period during which such individual is incarcerated for any felony offense (5 U.S.C. 8148(b)(1)). The information collected through Form CA–1032 is used to ensure that compensation being paid on the periodic roll is correct. This information collection is currently approved for use through February 28, 2011.

*II. Review Focus:* The Department of Labor is particularly interested in comments which:

* Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

* Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

* Enhance the quality, utility and clarity of the information to be collected; and

* 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.

*III. Current Actions:* The Department of Labor seeks extension of approval to collect this information collection in order to ensure that compensation being paid on the periodic roll is correct.

*Type of Review:* Extension.

*Agency:* Office of Workers' Compensation Programs.

*Title:* Request for Information on Earnings, Dual Benefits, Dependents and Third Party Settlement

*OMB Number:* 1240–0016.

*Agency Number:* CA–1032.

*Affected Public:* Individuals or household.

*Total Respondents:* 50,000.

*Total Annual Responses:* 50,000.

*Average Time per Response:* 20 minutes.

*Estimated Total Burden Hours:* 16,667.

*Frequency:* Annually.

*Total Burden Cost (capital/startup):* $0.

*Total Burden Cost (operating/maintenance):* $23,500.

Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they will also become a matter of public record.

Dated: October 12, 2010.

**Vincent Alvarez,**

*Agency Clearance Officer, Office of Workers' Compensation Programs, U.S. Department of Labor.*

[FR Doc. 2010–26105 Filed 10–15–10; 8:45 am]

**BILLING CODE 4510–CH–P**

## DEPARTMENT OF LABOR

### Office of Workers' Compensation Programs

### Division of Coal Mine Workers' Compensation; Proposed Extension of Existing Collection; Comment Request

**ACTION:** Notice.

**SUMMARY:** The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, conducts a pre-clearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) [44 U.S.C. 3506(c)(2)(A)]. This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. Currently, the Office of Workers' Compensation Programs is soliciting comments concerning the proposed collection: *Comparability of Current Work to Coal Mine Employment (CM–913).* A copy of the proposed information collection request can be obtained by contacting the office listed below in the addresses section of this Notice.

**DATES:** Written comments must be submitted to the office listed in the addresses section below on or before December 17, 2010.

**ADDRESSES:** Mr. Vincent Alvarez, U.S. Department of Labor, 200 Constitution Ave., NW., Room S–3201, Washington, DC 20210, telephone (202) 693–0372, fax (202) 693–1378, E-mail *Alvarez.Vincent@dol.gov.* Please use only one method of transmission for comments (mail, fax, or E-mail).

**SUPPLEMENTARY INFORMATION:** *I. Background:* The Black Lung Benefits Act of 1977, as amended, 30 U.S.C. 901 *et seq.,* provides for the payment of benefits to coal miners who are totally disabled by black lung disease arising out of coal mine employment, and their dependents and survivors. Once a miner has been identified as having performed non-coal mine work subsequent to coal mine employment, the miner or the miner's survivor is asked to complete a CM–913 to compare coal mine work to non-coal mine work. This employment information along with medical information is used to establish whether the miner is totally disabled due to black lung disease caused by coal mine employment. This information collection is currently approved for use through February 28, 2011.

*II. Review Focus:* The Department of Labor is particularly interested in comments which:

* Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

* Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

* Enhance the quality, utility and clarity of the information to be collected; and

* 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.

*III. Current Actions:* The Department of Labor seeks the approval for the extension of this currently-approved information collection in order to carry out its responsibility to administer the Black Lung Benefits Act.

*Agency:* Office of Workers' Compensation Programs.

*Type of Review:* Extension.

*Title:* Comparability of Current Work to Coal Mine Employment (CM–913).

*OMB Number:* 1240–0035.

*Agency Number:* CM–913.

*Affected Public:* Individuals or households.

*Total Respondents:* 1,650.

*Total Annual Responses:* 1,650.

*Average Time per Response:* 30 minutes.

*Estimated Total Burden Hours:* 825.

*Frequency:* On occasion.

*Total Burden Cost (capital/startup):* $0.

*Total Burden Cost (operating/maintenance):* $926.

Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they will also become a matter of public record.

Dated: October 12, 2010.

**Vincent Alvarez,**

*Agency Clearance Officer, Office of Workers' Compensation Programs, U.S. Department of Labor.*

[FR Doc. 2010–26106 Filed 10–15–10; 8:45 am]

**BILLING CODE 4510–CK–P**

## NATIONAL CREDIT UNION ADMINISTRATION

### Sunshine Act Meeting

**TIME AND DATE:** 10 a.m., Thursday, October 21, 2010.

**PLACE:** Board Room, 7th Floor, Room 7047, 1775 Duke Street, Alexandria, VA 22314–3428.

**STATUS:** Open.

**MATTERS TO BE CONSIDERED:**

1. NCUA Strategic Plan 2011–2016.
2. Final Rule—Parts 701 and 742 of NCUA's Rules and Regulations, Fixed Assets and Regulatory Flexibility Program.
3. Briefing—Merger Partner Registry.
4. Insurance Fund Report.

**RECESS:** 11 a.m.

**TIME AND DATE:** 11:15 a.m., Thursday, October 21, 2010.

**PLACE:** Board Room, 7th Floor, Room 7047, 1775 Duke Street, Alexandria, VA 22314–3428.

**STATUS:** Closed.

**MATTERS TO BE CONSIDERED:**

1. Insurance Appeals (2). Closed pursuant to some or all of the following: Exemptions (4) and (6).
2. Consideration of Supervisory Activities (5). Closed pursuant to some or all of the following: Exemptions (8), (9)(A)(ii) and 9(B).

**FOR FURTHER INFORMATION CONTACT:** Mary Rupp, Secretary of the Board, Telephone: 703–518–6304.

**Mary Rupp,**

*Board Secretary.*

[FR Doc. 2010–26289 Filed 10–14–10; 4:15 pm]

**BILLING CODE P**

## NATIONAL SCIENCE FOUNDATION

### Proposal Review Panel for Physics; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting.

*Name:* Michigan State University Site Visit in Physics (1208).

*Date and Time:* Tuesday, November 9, 2010; 8 a.m.–6:30 p.m.

Wednesday, November 10, 2010: 9 a.m.–3 p.m.

*Place:* Michigan State University, East Lansing, MI 48824.

*Type of Meeting:* Partially closed.

*Contact Person:* Dr. James Reidy, Program Director for Elementary Particle Physics, National Science Foundation, 4201 Wilson Blvd., Arlington, VA 22230. Telephone: (703) 292–7392.

*Purpose of Meeting:* To provide an evaluation concerning the proposal submitted to the National Science Foundation.

**Agenda**

*Tuesday, November 9, 2010*

Closed: 8 a.m.–9 a.m. Executive Session
Open: 9 a.m.–12 noon Presentations by Faculty
Closed: 12 noon–12:45 p.m. Lunch with Grad students
Closed: 12:45 p.m.–1:15 p.m. Executive Session
Open: 1:15 p.m.–4:15 p.m. Tour of facilities and presentations by Faculty
Closed: 4:15 p.m.–5:30 p.m. Budget presentations and discussions
Closed: 5:30 p.m.–6:30 p.m. Executive Session

*Wednesday, November 10, 2010*

Closed: 9 a.m.–9:30 a.m. Executive Session
Closed: 9:30 a.m.–11:45 a.m. Faculty responses to Panelist Questions
Closed: 11:45 a.m.–1 p.m. Lunch with Post Docs
Closed: 1 p.m.–2 p.m. Executive Session
Open: 2:30 p.m.–3 p.m. Close out and Adjourn

*Reason for Closing:* The proposal contains proprietary or confidential material including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c) and (6) of the Government in the Sunshine Act.

Dated: October 13, 2010.

**Susanne Bolton,**

*Committee Management Officer.*

[FR Doc. 2010–26148 Filed 10–15–10; 8:45 am]

**BILLING CODE 7555–01–P**

## NATIONAL SCIENCE FOUNDATION

### Proposal Review Panel for Physics; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting.

*Name:* University of Chicago Site Visit in Physics (1208).

*Date and Time:* Tuesday, November 2, 2010; 8 a.m.–7 p.m.

Wednesday, November 3, 2010: 9 a.m.–3 p.m.

*Place:* University of Chicago, Chicago, Illinois 60637.

*Type of Meeting:* Partially Closed.

*Contact Person:* Dr. James Reidy, Program Director for Elementary Particle Physics, National Science Foundation, 4201 Wilson Blvd., Arlington, VA 22230. Telephone: (703) 292–7392.

*Purpose of Meeting:* To provide an evaluation concerning the proposal submitted to the National Science Foundation.

**Agenda**

*Tuesday, November 2, 2010*

Closed: 8 a.m.–9 a.m. Executive Session
Open: 9 a.m.–12 noon Presentations by Faculty
Closed: 12:45 p.m.–1:15 p.m. Executive Session
Open: 1:15 p.m.–4:15 p.m. Tour of the facilities and presentations by Faculty
Closed: 4:30 p.m.–6:30 p.m. Budget discussions and Executive Session
Open: 6:30 p.m.–7 p.m. Panel Questions to Faculty

*Thursday, November 3, 2009*

Open: 9 a.m.–9:30 a.m. Presentation by Faculty
Closed: 9:30 a.m.–11:45 a.m. Executive Session; Faculty responses
Closed: 1 p.m.–2:30 p.m. Executive Session
Open: 2:30 p.m.–3 p.m. Close Out and Adjourn

*Reason for Closing:* The proposal contains proprietary or confidential material including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b (c) and (6) of the Government in the Sunshine Act.

Dated: October 13, 2010.

**Susanne Bolton,**

*Committee Management Officer.*

[FR Doc. 2010–26147 Filed 10–15–10; 8:45 am]

**BILLING CODE 7555–01–P**

## NATIONAL SCIENCE FOUNDATION

### National Science Board; Sunshine Act Meetings

The National Science Board's Task Force on Data Policies, Committee on Strategy and Budget, pursuant to NSF regulations (45 CFR Part 614), the National Science Foundation Act, as amended (42 U.S.C. 1862n–5), and the Government in the Sunshine Act (5 U.S.C. 552b), hereby gives notice in regard to the scheduling of a meeting for the transaction of National Science Board business and other matters specified, as follows:

*Date and Time:* October 25, 2010, 1 p.m. to 2 p.m.

*Subject Matter:* Review of outcomes from the August 2010 Meeting, and discussion of the Winter 2011 Workshop.

*Status:* Open.

*Location:* This meeting will be held by teleconference originating at the National Science Board Office, National Science Foundation, 4201Wilson Blvd., Arlington, VA 22230. A room will be available for the public to listen-in to this teleconference meeting. All visitors must contact the Board Office at least 24 hours prior to the meeting to arrange for a visitor's badge and to obtain the room number. Call 703–292–7000 or send an e-mail message to *nationalsciencebrd@nsf.gov* with your name and organizational affiliation to request the room number and your badge, which will be ready for pick-up at the visitor's desk the day of the meeting. All visitors must report to the NSF visitor desk located in the lobby at the 9th and N. Stuart Streets entrance to receive your visitor's badge on the day of the teleconference.

*Updates and Point of Contact:* Please refer to the National Science Board Web site *http://www.nsf.gov/nsb* for additional information and schedule updates (time, place, subject matter or status of meeting) may be found at *http://www.nsf.gov/nsb/notices/.* Point of contact for this meeting is: Blane Dahl, National Science Board Office, 4201Wilson Blvd., Arlington, VA 22230. *Telephone:* (703) 292–7000.

**Daniel A. Lauretano,**

*Counsel to the National Science Board.*

[FR Doc. 2010–26250 Filed 10–14–10; 4:15 pm]

**BILLING CODE 7555–01–P**

## NUCLEAR REGULATORY COMMISSION

**[Docket No. NRC–2010–0236]**

### Agency Information Collection Activities: Submission for the Office of Management and Budget (OMB) Review; Comment Request

**AGENCY:** Nuclear Regulatory Commission (NRC).

**ACTION:** Notice of the OMB review of information collection and solicitation of public comment.

**SUMMARY:** The NRC has recently submitted to OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35). The NRC hereby informs potential respondents that an agency may not conduct or sponsor, and that a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The NRC published a **Federal Register** Notice with a 60-day comment period on this information collection on July 9, 2010.

1. *Type of submission, new, revision, or extension:* Revision.

2. *The title of the information collection:* 10 CFR Part 19, Notices, Instructions, and Reports to Workers: Inspection and Investigations.

3. *Current OMB approval number:* 3150–0044.

4. *The form number if applicable:* N/A.

5. *How often the collection is required:* As necessary in order that adequate and timely reports of radiation exposure be made to individuals involved in NRC-licensed activities.

6. *Who will be required or asked to report:* Licensees authorized to receive, possess, use, or transfer material licensed by the NRC.

7. *An estimate of the number of annual responses:* 3,967 (123 responses + 3,844 recordkeepers).

8. *The estimated number of annual respondents:* 3,844.

9. *An estimate of the total number of hours needed annually to complete the requirement or request:* 31,795.

10. *Abstract:* Title 10 of the *Code of Federal Regulations,* Part 19, requires licensees to advise workers on an annual basis of any radiation exposure in excess of 1 mSv (100 mrem) they may have received as a result of NRC-licensed activities or when certain conditions are met. These conditions apply during termination of the worker's employment, at the request of the workers, former workers, or when the worker's employer (the NRC licensee) must report radiation exposure information on the worker to the NRC. Part 19 also establishes requirements for instructions by licensees to individuals participating in licensed activities and options available to these individuals in connection with Commission inspections of licensees to ascertain compliance with the provisions of the Atomic Energy Act of 1954, as amended. Title II of the Energy Reorganization Act of 1974, and regulations, orders and licenses there under regarding radiological working conditions.

The worker should be informed of the radiation dose he or she receives because: (a) That information is needed by both a new employer and the individual when the employee changes jobs in the nuclear industry; (b) the individual needs to know the radiation dose received as a result of the accident or incident (if this dose is in excess of the 10 CFR Part 20 limits) so that he or she can seek counseling about future work involving radiation, medical attention, or both, as desired; and (c) since long-term exposure to radiation may be an adverse health factor, the individual needs to know whether the accumulated dose is being controlled within NRC limits. The worker also needs to know about health risks from occupational exposure to radioactive materials or radiation, precautions or procedures to minimize exposure, worker responsibilities and options to report any licensee conditions which may lead to or cause a violation of Commission regulations, and individual radiation exposure reports which are available to him.

A copy of the final supporting statement may be viewed free of charge at the NRC Public Document Room, One White Flint North, 11555 Rockville Pike, Room O–1 F21, Rockville, Maryland 20852. OMB clearance requests are available at the NRC worldwide Web site: *http://www.nrc.gov/public-involve/doc-comment/omb/index.html.* The document will be available on the NRC home page site for 60 days after the signature date of this notice.

Comments and questions should be directed to the OMB reviewer listed below by November 17, 2010. Comments received after this date will be considered if it is practical to do so, but assurance of consideration cannot be given to comments received after this date.

Christine J. Kymn, Desk Officer, Office of Information and Regulatory Affairs (3150–0044), NEOB–10202, Office of Management and Budget, Washington, DC 20503.

Comments can also be e-mailed to *Christine.J.Kymn@omb.eop.gov* or submitted by telephone at (202) 395–4638.

The NRC Clearance Officer is Tremaine Donnell, (301) 415–6258.

Dated at Rockville, Maryland, October 8, 2010.

For the Nuclear Regulatory Commission.

**Tremaine Donnell,**

*NRC Clearance Officer, Office of Information Services.*

[FR Doc. 2010–26150 Filed 10–15–10; 8:45 am]

**BILLING CODE 7590–01–P**

## NUCLEAR REGULATORY COMMISSION

**[Docket No. NRC–2010–0322]**

### Agency Information Collection Activities: Proposed Collection; Comment Request

**AGENCY:** Nuclear Regulatory Commission (NRC).

**ACTION:** Notice of pending NRC action to submit an information collection request to the Office of Management and Budget (OMB) and solicitation of public comment.

**SUMMARY:** The NRC invites public comment about our intention to request the OMB's approval for renewal of an existing information collection that is summarized below. We are required to publish this notice in the **Federal Register** under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35).

Information pertaining to the requirement to be submitted:

1. *The title of the information collection:* 10 CFR Part 70, "Domestic Licensing of Special Nuclear Material".

2. *Current OMB approval number:* 3150–0009.

3. *How often the collection is required:* Requires reports are collected and evaluated on a continuing basis as events occur. Applications for new licenses and amendments may be submitted at any time. Generally, renewal applications are submitted every ten years and for major fuel cycle facilities updates of the safety demonstration section are submitted every two years. Nuclear material control and accounting information is submitted in accordance with specified instructions.

4. *Who is required or asked to report:* Applicants for and holders of specific NRC licenses to receive title to, own, acquire, deliver, receive, possess, use, or initially transfer special nuclear material.

5. *The number of annual respondents: 372.*

6. *The number of hours needed annually to complete the requirement or request:* 89,465 hours (81,785 reporting + 7,700 recordkeeping) or an average of 125 hours per response (81,765 reporting burden hours/655 responses) and an average of 13 hours per recordkeeper (7,700 recordkeeping burden hours/61 recordkeepers).

7. *Abstract:* 10 CFR Part 70 establishes requirements for licenses to won, acquire, receive, possess, use, and transfer special nuclear material. The information in the applications, reports, and records is used by NRC to make licensing and other regulatory determinations concerning the use of special nuclear material. The revised estimate of burden reflects the addition of requirements for documentation for termination or transfer of licensed activities, and modifying licenses.

Submit, by December 17, 2010, comments that address the following questions:

1. Is the proposed collection of information necessary for the NRC to properly perform its functions? Does the information have practical utility?

2. Is the burden estimate accurate?

3. Is there a way to enhance the quality, utility, and clarity of the information to be collected?

4. How can the burden of the information collection be minimized, including the use of automated collection techniques or other forms of information technology?

A copy of the draft supporting statement may be viewed free of charge at the NRC Public Document Room, One White Flint North, 11555 Rockville Pike, Room O–1 F21, Rockville, MD 20852. OMB clearance requests are available at the NRC worldwide Web site: *http://www.nrc.gov/public-involve/doc-comment/omb/index.html.* The document will be available on the NRC home page site for 60 days after the signature date of this notice. Comments submitted in writing or in electronic form will be made available for public inspection. 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. Comments submitted should reference Docket No. NRC–2010–0322. You may submit your comments by any of the following methods. Electronic comments: Go to *http://www.regulations.gov* and search for Docket No. NRC–2010–0322. Mail comments to NRC Clearance Officer, Tremaine Donnell (T–5 F53), U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001. Questions about the information collection requirements may be directed to the NRC Clearance Officer, Tremaine Donnell (T–5 F53), U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, by telephone at 301–415–6258, or by e-mail to *INFOCOLLECTS.Resource@NRC.GOV.*

Dated at Rockville, Maryland, October 8, 2010.

For the Nuclear Regulatory Commission.

**Tremaine Donnell,**

*NRC Clearance Officer, Office of Information Services.*

[FR Doc. 2010–26151 Filed 10–15–10; 8:45 am]

**BILLING CODE 7590–01–P**

## NUCLEAR REGULATORY COMMISSION

**[Docket No. 50–16; NRC–2010–0328**

## DTE Energy; Enrico Fermi Atomic Power Plant Unit 1, Exemption From Certain Security Requirements

### 1.0 Background

DTE Energy (DTE) is the licensee and holder of Facility Operating License No. DPR–9 issued for Enrico Fermi Atomic Power Plant, Unit 1 (Fermi 1), located in Monroe County, Michigan. Fermi 1 is a permanently shutdown nuclear reactor facility. The license provides, among other things, that the licensee is subject to the rules, regulations, and orders of the U.S. Nuclear Regulatory Commission (NRC or the Commission) now or hereafter in effect.

Fermi 1 was a fast breeder reactor power plant cooled by sodium and operated at essentially atmospheric pressure. In November 1972, the Power Reactor Development Company (PRDC), the licensee at that time, made the decision to decommission Fermi 1. The fuel and blanket subassemblies were shipped offsite in 1973. Most of the decommissioning of the Fermi 1 plant was completed in December 1975. The facility is permanently shut down and defueled and the licensee is no longer authorized to operate or place fuel in the reactor. The license for Fermi 1 expires in 2025.

Fuel for the Fermi 1 reactor was assigned to the project under an Atomic Energy Commission (AEC) lease agreement. At the time of decommissioning, consistent with the lease agreement, the AEC agreed to accept the fuel from Fermi 1 at its Savannah River Project (SRP) facility. The first shipment of fuel from the site was made on February 6, 1973. On May 15, 1973, the last shipment of fuel arrived at the SRP. Disposal of all the blanket subassemblies, which contained special nuclear material (SNM), was accomplished by shipment to the Idaho Chemical Processing Plant. A letter dated November 6, 1975, from the PRDC, documented the completed removal from the site of the fuel and blanket material containing SNM.

By letter dated November 26, 1996, the licensee requested that the NRC clarify the applicability of certain recently revised NRC regulations to Fermi 1, including 10 CFR 50.54(p), which addresses the safeguards contingency plan. In the NRC's response, dated June 25, 1997, the staff determined that the physical protection for Fermi 1 was adequate without the safeguards contingency plan based on the prior removal of the SNM from the Fermi 1 site and the non-operational status of the facility, but the NRC did not specifically grant an exemption from 10 CFR 50.54(p).

Fermi 1 is currently licensed to possess not more than 15 grams of uranium-235, uranium-233 or plutonium, or any combination thereof, with plutonium activity totaling no more than 2 curies. The licensee is permitted to possess this nominal quantity of SNM due to material that may remain in plant systems or be associated with radioactive apparatus or equipment. The 15 gram and 2 curie limit was considered a minimal quantity and was below the criteria requiring emergency planning, criticality monitoring, or material status reports per 10 CFR Part 70 and 10 CFR Part 74.

### 2.0 Action

Section 50.54(p)(1) of Title 10 of the *Code of Federal Regulations* states, "The licensee shall prepare and maintain safeguards contingency plan procedures in accordance with Appendix C of Part 73 of this chapter for affecting the actions and decisions contained in the Responsibility Matrix of the safeguards contingency plan."

Part 73 of Title 10 of the *Code of Federal Regulations,* "Physical Protection of Plant and Materials," provides, "This part prescribes requirements for the establishment and maintenance of a physical protection system which will have capabilities for the protection of special nuclear material at fixed sites and in transit and of plants in which special nuclear material is used." In Section 73.55, entitled "Requirements for physical protection of licensed activities in nuclear power reactors against radiological sabotage," paragraph (b)(1) states, "The licensee shall establish and maintain a physical protection program,

to include a security organization, which will have as its objective to provide high assurance that activities involving special nuclear material are not inimical to the common defense and security and do not constitute an unreasonable risk to the public health and safety."

The NRC revised 10 CFR 73.55, in part to include the preceding language, through the issuance of a final rule on March 27, 2009. The revised regulation stated that it was applicable to all Part 50 licensees. The NRC became aware that many Part 50 licensee's with facilities in decommissioning status did not recognize the applicability of this regulation to their facility. Accordingly, the NRC informed licensees with facilities in decommissioning status and other stakeholders that the requirements of 10 CFR 73.55 were applicable to all Part 50 licensees. By letter dated August 4, 2010, the NRC informed DTE of the applicability of the revised rule and that it would have to comply with the revised rule or request an exemption.

Subsequent discussions with the licensee indicated that it believed that the June 25, 1997, letter from the NRC had relieved DTE of the requirement to implement the security requirements of 10 CFR Parts 50 and 73 due to the removal of SNM from the site. Because the licensee reasonably and in good faith believed that the staff had relieved DTE from the SNM security requirements through the June 25, 1997, letter; the logic and conclusions of the June 25, 1997, letter still apply today; and the licensee's security programs meet the baseline requirements of the previous version of Section 73.55 and the requirements in subsequent security orders; the NRC staff is considering, upon its own initiative, the issuance of an exemption from the security requirements of 10 CFR 50.54(p) and 10 CFR Part 73 for Fermi 1 to clarify the record and avoid further confusion.

### 3.0 Discussion

Pursuant to 10 CFR 50.12, the Commission may, upon application by any interested person or upon its own initiative, grant exemptions from the requirements of 10 CFR Part 50, when (1) the exemptions are authorized by law, will not present an undue risk to public health or safety, and are consistent with the common defense and security; and (2) when special circumstances are present. Special circumstances are present when application of the regulation in the particular circumstances would not serve the underlying purpose of the rule and when compliance would result in costs significantly in excess of those incurred by others similarly situated. Also, pursuant to 10 CFR 73.5, "Specific exemptions," the Commission may grant exemptions from the regulations in this part as it determines are authorized by law and will not endanger life or property or the common defense and security, and are otherwise in the public interest.

The security requirements of 10 CFR Part 73, as applicable to a 10 CFR Part 50 licensed facility, presume that the purpose of the facility is to possess and utilize SNM. With the completion of the spent fuel transfer to the AEC in 1973, there is no longer any SNM located within the Fermi-1, 10 CFR Part 50 licensed site other than that contained in plant systems as residual contamination. With the removal of the fuel and blanket material containing SNM, the potential for radiological sabotage or diversion of SNM at the 10 CFR Part 50 licensed site was eliminated. Therefore, the continued application of the 10 CFR Part 73 requirements to the Fermi 1 facility would no longer be necessary to achieve the underlying purpose of the rule. Additionally, as has been noted at other decommissioning nuclear power facilities, with the removal of the spent nuclear fuel and blanket material from the site, the 10 CFR Part 50 licensed site would be comparable to a source and byproduct licensee that uses general industrial security (i.e. locks and barriers) to protect the public health and safety. The continued application of 10 CFR Part 73 security requirements would cause the licensee to expend significantly more funds for security requirements than other source and byproduct facilities. Therefore, compliance with 10 CFR Part 73 would result in costs significantly in excess of those incurred by others similarly situated. Based on the above, the NRC has determined that the lack of the fuel and blanket material containing SNM at the 10 CFR Part 50 licensed site constitutes special circumstances. The possession and responsibility for the security of the SNM was transferred to the AEC and is no longer the responsibility of the licensee. Therefore, protection of the SNM is no longer a requirement of the licensee's 10 CFR Part 50 license. With no SNM to protect, there is no need for a safeguards contingency plan or procedures, physical security plan, guard training and qualification plan, or cyber security plan for the Fermi-1, 10 CFR Part 50 licensed site.

### 4.0 Conclusion

Accordingly, the Commission has determined that, pursuant to 10 CFR 50.12(a), an exemption is authorized by law, will not present an undue risk to the public health and safety, and is consistent with the common defense and security based on the continued maintenance of appropriate security requirements for the SNM. Additionally, special circumstances are present based on the removal of the spent nuclear fuel and blanket material from the 10 CFR Part 50 licensed site. Therefore, the Commission hereby grants DTE an exemption from the requirements of 10 CFR 50.54(p) at Fermi 1.

Accordingly, the Commission has determined that, pursuant to 10 CFR 73.5, an exemption is authorized by law, will not endanger life or property or the common defense and security, and is otherwise in the public interest based on the security requirements for the spent fuel and blanket material containing SNM no longer being the responsibility of the licensee. Therefore, the Commission hereby grants DTE an exemption from the physical protection requirements of 10 CFR Part 73 at Fermi 1.

The Commission has determined that this licensing action meets the categorical exclusion provision in 10 CFR 51.22(c)(25), as this action is an exemption from the requirements of the commission's regulations and (i) there is no significant hazards consideration; (ii) there is no significant change in the types or significant increase in the amounts of any effluents that may be released offsite; (iii) there is no significant increase in individual or cumulative public or occupational radiation exposure; (iv) there is no significant construction impact; (iv) there is no significant increase in the potential for or consequences from radiological accidents; and (v) the requirements from which an exemption is sought involve safeguard plans. Therefore, this action does not require either an environmental assessment or an environmental impact statement.

These exemptions are effective immediately.

Dated at Rockville, Maryland, October 8, 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. 2010–26155 Filed 10–15–10; 8:45 am]

**BILLING CODE 7590–01–P**

## SECURITIES AND EXCHANGE COMMISSION

### Notice: Existing Collection; Comment Requested

*Upon Written Request, Copies Available From:* Securities and Exchange Commission, Office of Investor Education and Advocacy, Washington, DC 20549.

*Requested Change:*

Form 10–K; OMB Control No. 3235–0063; SEC File No. 270–48.

Form 20–F; OMB Control No. 3235–0288; SEC File No. 270–156.

Section 989G of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 [1] (the "Act") provides that Section 404(b) of the Sarbanes-Oxley Act [2] does not apply to any audit report prepared for an issuer that is neither an accelerated filer nor a large accelerated filer as defined in Rule 12b–2 [3] under the Securities Exchange Act.[4] Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520), the Securities and Exchange Commission (the "Commission") is soliciting comment on the changes to the collection of information necessitated by the Act. The Commission plans to submit this existing collection of information to the Office of Management and Budget for change and approval.

In a separate release, the Commission amended its rules in light of the Act, which amends Section 404 of the Sarbanes-Oxley Act.[5] The Commission had previously estimated the burden of complying with Section 404(b) of Sarbanes-Oxley assuming that all filers of Forms 10–K and 20–F would file an auditor's attestation report. The filers that were included in the estimate but are no longer subject to the 404 requirement are sometimes referred to as "non-accelerated filers."

Form 10–K sets forth the disclosure requirements for annual reports filed by issuers under the Securities Exchange Act. Form 20–F sets forth the disclosure requirements for annual reports and registration statements filed by foreign private issuers under the Securities Exchange Act, as well as many of the disclosure requirements for registration statements filed by foreign private issuers under the Securities Act.

Based on the number of non-accelerated filers that filed an annual report in 2009, we estimate that approximately 4,400 annual reports on Form 10–K and approximately 285 annual reports on Form 20–F are filed annually by non-accelerated filers. The current burden estimates for Form 10–K and Form 20–F attribute 0.5 burden hours per issuer for filing the auditor attestation report, including the burden attributed to the related disclosure in the annual report, and do not include any burden attributed to the audit work.[6] Consistent with the burden estimates for these forms, that estimate is then split 75% and 25% between internal staff and external professionals for Form 10–K, and 25% and 75% between internal staff and external professionals for Form 20–F. Both estimates assume an hourly rate of $400 for external professionals. Accordingly, we are reducing the aggregate burden estimate by 1,650 hours of internal staff time and $220,000 for external professional services for Form 10–K, and 36 hours of internal staff time and $42,750 for external professional services for Form 20–F.

The information collections requirements related to Forms 10–K and 20–F are mandatory. There is no mandatory retention period for the information disclosed, and the information disclosed is made publicly available on the EDGAR filing system. 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.

Written comments are requested on: (a) Whether the estimate changes properly reflect the amendments made by Congress to Section 404 of the Sarbanes-Oxley Act; (b) the accuracy of the Commission's estimate of the number of non-accelerated filers no longer subject to the burden of the collections of information; and (c) whether because of the statutory amendment that makes non-accelerated filers no longer subject to the requirement other estimates need to be changed. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

Please direct your written comments to Jeffrey Heslop, Acting Director/CIO, Securities and Exchange Commission, C/O Remi Pavlik-Simon, 6432 General Green Way, Alexandria, VA, 22312; or send an e-mail to: *PRA-Mailbox@sec.gov.*

[1] Public Law 111–203 (July 21, 2010).

[2] 15 U.S.C. 7262.

[3] 17 CFR 240.12b–2.

[4] 15 U.S.C. 78a *et seq.*

[5] [Cite to substantive release.]

[6] For further information on the determination of our estimates, *see* Release No. 33–8238 (June 5, 2003) [68 FR 36636].

Dated: October 13, 2010.

**Elizabeth M. Murphy,**

*Secretary.*

[FR Doc. 2010–26166 Filed 10–15–10; 8:45 am]

**BILLING CODE 8011–01–P**

## SECURITIES AND EXCHANGE COMMISSION

### Sunshine Act Meeting

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Public Law 94–409, that the Securities and Exchange Commission will hold a closed meeting on Thursday, October 21, 2010 at 2 p.m.

Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the Closed Meeting. Certain staff members who have an interest in the matters also may be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c)(3), (5), (7), 9(B) and (10) and 17 CFR 200.402(a)(3), (5), (7), 9(ii) and (10), permit consideration of the scheduled matters at the Closed Meeting.

Commissioner Casey, as duty officer, voted to consider the items listed for the Closed Meeting in a closed session.

The subject matter of the Closed Meeting scheduled for Thursday, October 21, 2010 will be:

Institution and settlement of injunctive actions; Institution and settlement of administrative proceedings; and Other matters relating to enforcement proceedings.

At times, changes in Commission priorities require alterations in the scheduling of meeting items.

For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact:

The Office of the Secretary at (202) 551–5400.

Dated: October 14, 2010.

**Elizabeth M. Murphy,**

*Secretary.*

[FR Doc. 2010–26280 Filed 10–14–10; 4:15 pm]

**BILLING CODE 8011–01–P**

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–63077; File No. SR–ISE–2010–97]**

## Self-Regulatory Organizations; International Securities Exchange, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Delta Hedge Exemptions

October 12, 2010.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on September 30, 2010, the International Securities Exchange, LLC (the "Exchange" or the "ISE") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I and II below, which items have been prepared by the Exchange. The Exchange has filed the proposal as a "non-controversial" proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act[3] and Rule 19b–4(f)(6) thereunder.[4] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to (i) expand the delta hedging exemption available for equity options positions limits, (ii) amend the reporting requirements applicable to members relying on the delta hedging exemption, and (iii) adopt a delta hedging exemption from certain index options position limits. The text of the proposed rule change is available on the Exchange's Web site *http://www.ise.com,* at the principal office of the Exchange, on the Commission's Web site at *http://www.sec.gov,* and at the Commission's Public Reference Room.

### II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in Sections A, B and C below, of the most significant aspects of such statements.

*A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

1. Purpose

I. Expansion of Delta-Based Equity Hedge Exemption

On December 14, 2007,[5] the Commission approved a proposed rule change establishing an exemption from equity options position and exercise limits for positions held by the Chicago Board Options Exchange ("CBOE") members, and certain of their affiliates, that are "delta neutral"[6] under a "permitted pricing model", subject to certain conditions ("Exemption"). ISE filed a rule filing to establish an exemption similar to CBOE's filing.[7] CBOE, and more recently, NASDAQ OMX PHLX ("PHLX"), expanded its exemption from equity options position and exercise limits, amended reporting requirements and adopted a delta hedging exemption from certain index options position limits.[8] ISE proposes to amend Rules 413 and 2006 to make similar amendments.[9]

The "options contract equivalent of the net delta" of a hedged equity option position is subject to the position limits under ISE Rule 412, subject to the availability of other exemptions.[10] Currently, the Exemption only is available for securities that directly underlie the applicable option position. This means that with respect to options on exchange-traded funds ("ETF options"), index options overlying the same index on which the ETF is based currently cannot be combined with the ETF options to calculate a net delta for purposes of the Exemption.

Many ETF options overlie exchange-traded funds that track the performance of an index. For example, options on Standard & Poor's Depositary Receipts ("SPY") track the performance of the S&P 500 Index. Market participants often hedge SPY options with options on the S&P 500 Index ("SPX options") or with other financial instruments based on the S&P 500 Index for risk management purposes. The Exchange believes that in order for eligible market participants to more fully benefit from the Exemption as it relates to ETF options, securities and other instruments that are based on the same underlying ETF or the same index on which the ETF is based should also be included in any determination of an ETF option position's net delta or whether the options position is hedged delta neutral.[11]

Accordingly, the Exchange proposes to expand the Exemption by amending ISE Rule 413 to permit equity option positions for which the underlying security is an ETF that is based on the same index as an index option to be combined with an index option position for calculation of the delta-based equity hedge exemption. The proposed rule would allow financial products such as securities index options, index futures, and options on index futures to be included along with the ETF in an equity option's net delta calculation. So for example, the proposed rule would allow SPY options to be hedged not only with SPY shares, but with S&P 500 options, S&P 500 futures, options on S&P 500 futures or any other instrument that tracks the performance of or is based on the S&P 500 index. This would be accomplished by including such positions with a related index option position in accordance with the Delta-Based Index Hedge Exemption rule proposed below.

Index options and equity options (*i.e.,* ETF options) that are eligible to be combined for computing a delta-based hedge exemption, along with all securities and/or other instruments that

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A).

[4] 17 CFR 240.19b–4(f)(6).

[5] *See* Securities Exchange Act Release No. 56970 (December 14, 2007), 72 FR 72428 (December 20, 2007) (SR–CBOE–2007–99). The exemption was extended to certain customers whose accounts are carried by a member. *See* Securities Exchange Act Release No. 60555 (August 21, 2009), 74 FR 43741 (August 27, 2009) (SR–CBOE–2009–039).

[6] The term "delta neutral" is defined in ISE Rule 413(a)(7)(A) as referring to an equity option position that is hedged, in accordance with a permitted pricing model, by a position in the underlying security or one or more instruments relating to the underlying security, for the purpose of offsetting the risk that the value of the option position will change with incremental changes in the price of the security underlying the option position.

[7] *See* Securities Exchange Act Release No. 57360 (February 20, 2008), 73 FR 11170 (February 29, 2008) (SR–ISE–2008–06).

[8] *See* Securities Exchange Act Release Nos. 62190 (May 27, 2010), 75 FR 31826 (June 4, 2010) (SR–CBOE–2010–021); and 62504 (July 15, 2010), 75 FR 42797 (July 22, 2010) (SR–PHLX–2010–93).

[9] This proposed rule filing is being done pursuant to an industry-wide initiative, under the auspices of the Intermarket Surveillance Group ("ISG") to establish comparable delta hedge exemption rules among exchanges.

[10] The term "options contract equivalent of the net delta" is defined in ISE Rule 413(a)(7)(B) as the net delta divided by the number of shares underlying the option contract. The term "net delta" is also defined in ISE Rule 413(a)(7(B) to mean, at any time, the number of shares (either long or short) required to offset the risk that the value of an equity option position will change with incremental changes in the price of the security underlying the option position, as determined in accordance with a permitted pricing model.

[11] However, this would not include baskets of securities for purposes of the Exemption.

are based on or track the performance of the same underlying security or index, will be grouped and the net delta and options contract equivalent of the net delta will be calculated for each respective option class based on offsets realized from the grouping as a whole.

The Exchange proposes to amend the definition of "net delta" in ISE Rule 413(a)(7)(B) to mean, at any time, the number of shares and/or other units of trade [12] (either long or short) required to offset the risk that the value of an equity option position will change with incremental changes in the price of the security underlying the option position, as determined in accordance with a permitted pricing model. The Exchange proposes to amend the definition of the "option contract equivalent of the net delta" in ISE Rule 413(a)(7)(B) to mean the net delta divided by the number of shares that equate to one option contract on a delta basis.

II. Reporting Requirements

ISE Rule 413(a)(7)(F) sets forth the reporting requirements applicable to Exchange members who rely on the Exemption. The Exchange proposes to amend ISE Rule 413(a)(7)(F) to exempt from the reporting requirements Exchange market-makers relying on the Exemption who use the Options Clearing Corporation ("OCC") pricing model, because market-maker positions and delta information can be accessed through the Exchange's market surveillance systems. This proposed exemption is consistent with similar exemptions from the reporting requirements under ISE Rule 2006(a)(13) applicable to broad-based (market) index options and narrow-based (industry) index options.

III. Delta-Based Index Hedge Exemption

Index options traded on the Exchange are subject to position and exercise limits, as provided under ISE Rules 2004 (Position Limits for Broad-Based Index Options), 2005 (Position Limits for Industry Index Options) and 2007 (Exercise Limits). Position limits are imposed, generally, to prevent the establishment of options positions that can be used or might create incentives to manipulate or disrupt the underlying market so as to benefit the holder of the options position.

Index options are often used by market participants such as institutional investors to hedge large portfolios. Exchange rules include hedge exemptions to allow certain positions in index options in excess of the applicable standard position limit if hedged with an Exchange-approved qualified portfolio. Under ISE Rule 2006, a qualified portfolio must be previously established and the options must be carried in an account with an Exchange member or if not carried by an Exchange member, the account must be carried by a member of a self-regulatory organization participating in the ISG. Securities used as a hedge pursuant to this provision may not be used to hedge other option positions.

The Exchange believes that any limit on the ability of market participants to use index options to hedge their portfolios exposes market participants to unnecessary risk on the unhedged portion of their portfolios. The Exchange proposes to adopt a delta-based exemption from index option position and exercise limits that are substantially similar to the delta-based equity hedge exemption under ISE Rule 413. A delta-based index hedge exemption would provide market participants the ability to accumulate an unlimited number of index options contracts provided that such contracts are properly delta hedged in accordance with the requirements of the exemption.

Proposed Exemption. The Exchange proposes to adopt an exemption from index options position and exercise limits [13] for positions held by Exchange members and certain of their affiliates that are "delta neutral" (as defined below) under a "permitted pricing model" (as defined below), subject to certain conditions ("Index Exemption").

The term "delta neutral" is defined in proposed ISE Rule 2006(c)(i) as referring to an index option position that is hedged, in accordance with a permitted pricing model, by a position in one or more correlated instruments for the purpose of offsetting the risk that the value of the option position will change with incremental changes in the value of the underlying index. Correlated instruments would be defined to mean securities and/or other instruments that track the performance of or are based on the same underlying index as the index underlying the option position. These definitions would allow financial products such as ETF options, index futures, options on index futures and ETFs that track the performance of or are based on the same underlying index to be included in an index option's net delta calculation.

Any index option position that is not delta neutral would be subject to position and exercise limits, subject to the availability of other exemptions. Only the "options contract equivalent of the net delta" of such position would be subject to the appropriate position limit.[14]

In addition, members could not use the same positions in correlated instruments in connection with more than one hedge exemption. Therefore, a position in correlated instruments used as part of a delta hedging strategy could not also serve as the basis for any other index hedge exemption.

Permitted Pricing Model. Under the proposed rule, the calculation of the delta for any index option position, and the determination of whether a particular index option position is hedged delta neutral, must be made using a permitted pricing model. A "permitted pricing model" is defined in proposed ISE Rule 2006(c)(iii) to have the same meaning as defined in ISE Rule 413(a)(7)(C), namely, the pricing model maintained and operated by OCC and the pricing models used by (i) a member or its affiliate subject to consolidated supervision by the SEC pursuant to Appendix E of SEC Rule 15c3–1; (ii) a financial holding company ("FHC") or a company treated as an FHC under the Bank Holding Company Act of 1956, or its affiliate subject to consolidated holding company group supervision; [15] (iii) an SEC registered

[12] "Other units of trade" would include, for example, options or futures contracts hedging the relevant option position. When determining whether an ETF option hedged with other instruments such as ETF or index options is delta neutral, the relative size of the ETF option when compared to the other product is taken into consideration. For example, SPX options are ten (10) times larger than SPY options thus 1 SPX delta is equivalent to .10 SPY deltas.

[13] ISE Rule 2007 establishes exercise limits for an index option at the same level as the index option's position limit under index options position limit rules in ISE Rules 2004 and 2005, therefore no changes are proposed to ISE Rule 2007.

[14] Under proposed ISE Rule 2006(c)(ii), the term "options contract equivalent of the net delta" is defined as the net delta divided by units of trade that equate to one option contract on a delta basis, and the term "net delta" is defined as, at any time, the number of shares and/or other units of trade (either long or short) required to offset the risk that the value of an index option position will change with incremental changes in the value of the underlying index, as determined in accordance with a permitted pricing model.

[15] The pricing model of an FHC or of an affiliate of an FHC would have to be consistent with: (i) The requirements of the Board of Governors of the Federal Reserve System, as amended from time to time, in connection with the calculation of risk-based adjustments to capital for market risk under capital requirements of the Board of Governors of the Federal Reserve System, provided that the member or affiliate of a member relying on this exemption in connection with the use of such model is an entity that is part of such company's consolidated supervised holding company group; or (ii) the standards published by the Basel Committee on Banking Supervision, as amended from time to time and as implemented by such company's principal regulator, in connection with the calculation of risk-based deductions or adjustments to or allowances for the market risk capital requirements of such principal regulator applicable to such company—where "principal regulator"

Continued

OTC derivatives dealer; [16] and (iv) a national bank.[17]

Aggregation of Accounts. Members and non-member affiliates relying on the Index Exemption would be required to ensure that the permitted pricing model is applied to all positions in correlated instruments hedging the relevant option position that are owned or controlled by the member, or its affiliates.

However, the net delta of an index option position held by an entity entitled to rely on the Index Exemption, or by a separate and distinct trading unit of such entity, may be calculated without regard to positions in correlated instruments held by an affiliated entity or by another trading unit within the same entity, provided that: (i) The entity demonstrates to the Exchange's satisfaction that no control relationship, as defined in ISE Rule 412(f), exists between such affiliates or trading units, and (ii) the entity has provided the Exchange written notice in advance that it intends to be considered separate and distinct from any affiliate, or, as applicable, which trading units within the entity are to be considered separate and distinct from each other for purposes of the Index Exemption.[18] Any member or non-member affiliate relying on the Index Exemption must designate, by prior written notice to the Exchange, each trading unit or entity whose options positions are required by Exchange rules to be aggregated with the options positions of such member or non-member affiliate relying on the Index Exemption for purposes of compliance with Exchange position or exercise limits.[19]

The Exchange previously issued a Regulatory Information Circular to provide guidance to members regarding the use of delta hedge exemption.[20]

Obligations of Members and Affiliates. Any member relying on the Index Exemption would be required to provide a written certification to the Exchange that it is using a permitted pricing model as defined in the rule for purposes of the Index Exemption.[21] In addition, by such reliance, such member would authorize any other person carrying for such member an account including, or with whom such member has entered into, a position in a correlated instrument hedging the relevant option position to provide to the Exchange or OCC such information regarding such account or position as the Exchange or OCC may request as part of the Exchange's confirmation or verification of the accuracy of any net delta calculation under this exemption.[22]

The index option positions of a non-member affiliate relying on the Index Exemption must be carried by a member with which it is affiliated.[23] A member carrying an account that includes an index option position for a non-member affiliate that intends to rely on the Index Exemption would be required to obtain from such non-member affiliate a written certification that it is using a permitted pricing model as defined in the rule for purposes of the Index Exemption.[24]

Reporting. Under proposed ISE Rule 2006(c)(v)(4), each member (other than an Exchange market-maker using the OCC Model) relying on the Index Exemption would be required to report, in accordance with Rule 415: [25] (i) All index option positions (including those that are delta neutral) that are reportable thereunder, and (ii) on its own behalf or on behalf of a designated aggregation unit pursuant to ISE Rule 2006(c)(iv) for each such account that holds an index option position subject to the Index Exemption in excess of the levels specified in ISE Rules 2004 and 2005 the net delta and the options contract equivalent of the net delta of such position.

Records. Under proposed ISE Rule 2006(c)(v)(5), each member relying on the Index Exemption would be required to (i) retain, and undertake reasonable efforts to ensure that any non-member affiliate of the member relying on the Index Exemption retains, a list of the options, securities and other instruments underlying each option position net delta calculation reported to the Exchange hereunder, and (ii) produce such information to the Exchange upon request.[26]

Reliance on Federal Oversight. As provided under proposed ISE Rule 2006(c)(iii), a permitted pricing model includes proprietary pricing models used by members and affiliates that have been approved by the SEC, the Fed or another Federal financial regulator. In adopting the proposed Index Exemption, the Exchange would be relying upon the rigorous approval processes and ongoing oversight of a Federal financial regulator. The Exchange notes that it would not be under any obligation to verify whether a member's or its affiliate's use of a proprietary pricing model is appropriate or yielding accurate results.

The Exchange will issue a regulatory circular upon publication of the notice of this filing regarding the proposal herein.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act [27] in general, and furthers the objectives of Section 6(b)(5) of the Act [28] in particular, in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general to protect investors and the public interest.

The Exchange believes that allowing correlated instruments to be included in

means a member of the Basel Committee on Banking Supervision that is the home country consolidated supervisor of such company—provided that the member or affiliate of a member relying on this exemption in connection with the use of such model is an entity that is part of such company's consolidated supervised holding company group. *See* ISE Rule 413(a)(7)(C)(3).

[16] The pricing model of an SEC registered OTC derivatives dealer would have to be consistent with the requirements of Appendix F to SEC Rule 15c3–1 and SEC Rule 15c3–4 under the Act, as amended from time to time, in connection with the calculation of risk-based deductions from capital for market risk thereunder. Only an OTC derivatives dealer and no other affiliated entity (including a member) would be able to rely on this part of the Exemption. *See* ISE Rule 413(a)(7)(C)(4).

[17] The pricing model of a national bank would have to be consistent with the requirements of the Office of the Comptroller of the Currency, as amended from time to time, in connection with the calculation of risk-based adjustments to capital for market risk under capital requirements of the Office of the Comptroller of the Currency. Only a national bank and no other affiliated entity (including a member) would be able to rely on this part of the Exemption. *See* ISE Rule 413(a)(7)(C)(5).

[18] *See* proposed ISE Rule 2006(c)(iv)(2)(B).

[19] *See* proposed ISE Rule 2006(c)(iv)(3).

[20] *See* Regulatory Information Circular 2008–04 dated March 5, 2008.

[21] *See* proposed ISE Rule 2006(c)(v)(1)(A).

[22] *See* proposed ISE Rule 2006(c)(v)(1)(B).

[23] *See* proposed ISE Rule 2006(c)(v)(2).

[24] In addition, the member would be required to obtain from such non-member affiliate a written statement confirming that such non-member affiliate: (a) Is relying on the Index Exemption; (b) will use only a permitted pricing model for purposes of calculating the net delta of its option positions for purposes of the Index Exemption; (c) will promptly notify the member if it ceases to rely on the Index Exemption; (d) authorizes the member to provide to the Exchange or the OCC such information regarding positions of the non-member affiliate as the Exchange or OCC may request as part of the Exchange's confirmation or verification of the accuracy of any net delta calculation under the Index Exemption; and (e) if the non-member affiliate is using the OCC Model, has duly executed and delivered to the Exchange such documents as the Exchange may require to be executed and delivered to the Exchange as a condition to reliance on the Exemption. *See* proposed ISE Rule 2006(c)(v)(3).

[25] ISE Rule 415 requires, among other things, that members report to the Exchange aggregate long or short positions of 200 or more options contracts of any single class of options traded on the Exchange.

[26] A member would be authorized to report position information of its non-member affiliate pursuant to the written statement required under proposed ISE Rule 2006(c)(v)(3)(B)(d).

[27] 15 U.S.C. 78f(b).

[28] 15 U.S.C. 78f(b)(5).

the calculation of an equity option's net delta would enable eligible market participants to more fully realize the benefit of the delta based equity hedge exemption. The proposed delta-based index hedge exemption would be substantially similar to the delta-based equity hedge exemption under ISE Rule 413. Also, the Commission has previously stated its support for recognizing options positions hedged on a delta neutral basis as properly exempted from position limits.[29]

*B. Self-Regulatory Organization's Statement on Burden on Competition*

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

No written comments were either solicited or received.

**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

Because the foregoing rule change does not: (1) Significantly affect the protection of investors or the public interest; (2) impose any significant burden on competition; and (3) become operative for 30 days after the date of this filing, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act[30] and Rule 19b–4(f)(6) thereunder.[31]

A proposed rule change filed under 19b–4(f)(6) normally may not become operative prior to 30 days after the date of filing.[32] However, Rule 19b–4(f)(6)(iii)[33] permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has requested that the Commission waive the 30-day operative delay. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest. The Commission notes that it has approved a substantially similar proposal filed by the Chicago Board Options Exchange, Incorporated,[34] and therefore believes that no significant purpose is served by a 30-day operative delay. For these reasons, the Commission designates the proposed rule change to be operative upon filing with the Commission.[35]

At any time within 60 days of the filing of such proposed rule change the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors or otherwise in furtherance of the purposes of the Act.

**IV. Solicitation of Comments**

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

*Electronic Comments*

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–ISE–2010–97 on the subject line.

*Paper Comments*

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–ISE–2010–97. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–ISE–2010–97 and should be submitted on or before November 8, 2010.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[36]

**Florence E. Harmon,**

*Deputy Secretary.*

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[29] *See* Securities Exchange Act Release No. 40594 (October 23, 1998), 63 FR 59362, 59380 (November 3, 1998) (adopting rules relating to OTC Derivatives Dealers).

[30] 15 U.S.C. 78s(b)(3)(A).

[31] 17 CFR 240.19b–4(f)(6).

[32] 17 CFR 240.19b–4(f)(6)(iii). In addition, Rule 19b–4(f)(6)(iii) requires that a self-regulatory organization submit to the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[33] *Id.*

[34] *See* Securities Exchange Act Release No. 62190 (May 27, 2010), 75 FR 31826 (June 4, 2010) (SR–CBOE–2010–21). *See also* Securities Exchange Act Release No. 62504 (July 15, 2010), 75 FR 42797 (July 22, 2010) (SR–PHLX–2010–93).

[35] For the purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[36] 17 CFR 200.30–3(a)(12).

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–63073, File No. SR–MSRB–2010–07]**

## Self-Regulatory Organizations; Municipal Securities Rulemaking Board; Order Granting Approval of Proposed Rule Change Relating to Rule G–37, on Political Contributions and Prohibitions on Municipal Securities Business

October 12, 2010.

**I. Introduction**

On August 25, 2010, the Municipal Securities Rulemaking Board ("MSRB"), filed with the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Exchange Act"),[1] and Rule 19b–4 thereunder,[2] a proposed rule change which consists of an interpretive notice regarding Rule G–37, on political contributions and prohibitions on municipal securities business. The proposed rule change was published for comment in the **Federal Register** on September 9, 2010.[3] The

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 62830 (September 2, 2010), 75 FR 54930 (the "Commission's Notice").

Commission received no comment letters about the proposed rule change. This order approves the proposed rule change.

## II. Description of the Proposed Rule Change

The proposed rule change consists of an interpretive notice regarding Rule G–37, on political contributions and prohibitions on municipal securities business.[4] Under Rule G–37, certain contributions to elected officials of municipal securities issuers made by brokers, dealers and municipal securities dealers ("dealers"), municipal finance professionals ("MFPs") associated with dealers, and political action committees ("PACs") controlled by dealers and their MFPs ("dealer-controlled PACs")[5] may result in prohibitions on dealers from engaging in municipal securities business with such issuers for a period of two years from the date of any triggering contributions.

Rule G–37 requires dealers to disclose certain contributions to issuer officials, state or local political parties, and bond ballot campaigns, as well as other information, on Form G–37 to allow public scrutiny of such contributions and the municipal securities business of a dealer. In addition, dealers and MFPs generally are prohibited from soliciting others (including affiliates of the dealer or any PACs) to make contributions to officials of issuers with which the dealer is engaging or seeking to engage in municipal securities business, or to political parties of a state or locality where the dealer is engaging or seeking to engage in municipal securities business. Dealers and MFPs are prohibited from circumventing Rule G–37 by direct or indirect actions through any other persons or means.[6]

Due to changes in the financial markets since the adoption of Rule G–37 and recent market turmoil, many dealers have become affiliated with a broad range of other entities in increasingly diverse organizational structures. Some of these affiliated entities (including but not limited to banks, bank holding companies, insurance companies and investment management companies) have formed or otherwise maintain relationships with PACs ("affiliated PACs") and other political organizations, many of which may make contributions to issuer officials. Such relationships raise questions regarding the extent to which affiliated PACs may effectively be controlled by dealers or their MFPs and thereby constitute dealer-controlled PACs whose contributions are subject to Rule G–37. Further, such relationships raise concerns regarding whether the contributions of such affiliated PACs, even if not viewed as dealer-controlled PACs, may be used by dealers or their MFPs to circumvent Rule G–37 as indirect contributions for the purpose of obtaining or retaining municipal securities business. As a result, the MSRB has filed the proposed rule change to provide additional guidance with regard to the potential for affiliated PACs to be viewed as dealer-controlled PACs. A more complete description of the proposal is contained in the Commission's Notice.

The MSRB has requested an effective date for the proposed rule change of sixty days after Commission approval of the proposed rule change.

## III. Discussion and Commission Findings

The Commission has carefully considered the proposed rule change and finds that the proposed rule change is consistent with the requirements of the Exchange Act and the rules and regulations thereunder applicable to the MSRB[7] and, in particular, the requirements of Section 15B(b)(2)(C) of the Exchange Act[8] and the rules and regulations thereunder. Section 15B(b)(2)(C) of the Exchange Act requires, among other things, that the MSRB's rules be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in municipal securities, to remove impediments to and perfect the mechanism of a free and open market in municipal securities, and, in general, to protect investors and the public interest.[9] The Commission believes that the proposed rule change is consistent with the Exchange Act because it will help to inhibit practices constituting real and perceived attempts to influence the awarding of municipal securities business through contributions made by or through dealer-affiliated PACs. The Commission also believes that the proposed rule change will facilitate dealer compliance with Rule G–37 and Rule G–27, on supervision. The proposal will become effective sixty days after Commission approval of the proposed rule change, as requested by the MSRB.

It is therefore ordered, pursuant to Section 19(b)(2) of the Exchange Act,[10] that the proposed rule change (SR–MSRB–2010–07), be, and it hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[11]

**Florence E. Harmon,**

*Deputy Secretary.*

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[4] Rule G–37 defines municipal securities business as: (i) The purchase of a primary offering of municipal securities from an issuer on other than a competitive bid basis; (ii) the offer or sale of a primary offering of municipal securities on behalf of an issuer; (iii) the provision of financial advisory or consultant services to or on behalf of an issuer with respect to a primary offering of municipal securities in which the dealer was chosen to provide such services on other than a competitive bid basis; or (iv) the provision of remarketing agent services to or on behalf of an issuer with respect to a primary offering of municipal securities in which the dealer was chosen to provide such services on other than a competitive bid basis.

[5] The MSRB has previously stated that the matter of control depends upon whether or not the dealer or the MFP has the ability to direct or cause the direction of the management or policies of the PAC (MSRB Question & Answer No. IV. 24—Dealer Controlled PAC).

[6] Rule G–37(d) provides that no broker, dealer or municipal securities dealer or any municipal finance professional shall, directly or indirectly, through or by any other person or means, do any act which would result in a violation of sections (b) or (c) of the rule. Section (b) relates to the ban on business and Section (c) relates to the prohibition on soliciting and coordinating contributions.

[7] In approving this proposed rule change, the Commission notes that it has considered the proposed rule's impact on efficiency, competition and capital formation. 15 U.S.C. 78c(f).

[8] 15 U.S.C. 78o–4(b)(2)(C).

[9] *Id.*

[10] 15 U.S.C. 78s(b)(2).

[11] 17 CFR 200.30–3(a)(12).

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–63076; File No. SR–NYSEArca–2010–79]**

## Self-Regulatory Organizations; NYSE Arca, Inc.; Order Granting Approval of a Proposed Rule Change To List and Trade Shares of Cambria Global Tactical ETF

October 12, 2010.

## I. Introduction

On August 23, 2010, NYSE Arca, Inc. ("NYSE Arca" or "Exchange") filed with the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] a proposed rule change to list and trade shares ("Shares") of the Cambria Global Tactical ETF ("Fund") under NYSE Arca Equities Rule 8.600. The proposed rule change was published for comment in the

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

**Federal Register** on September 8, 2010.[3] The Commission received no comments on the proposal. This order grants approval of the proposed rule change.

## II. Description of the Proposed Rule Change

The Exchange proposes to list and trade Shares of the Fund under NYSE Arca Equities Rule 8.600, which governs the listing of Managed Fund Shares.[4] The Shares will be offered by AdvisorShares Trust ("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.[5] The investment advisor to the Fund is AdvisorShares Investments, LLC ("Advisor"), and the day-to-day portfolio management of the Fund is provided by the sub-advisor to the Fund, Cambria Investment Management, Inc. ("Sub-Advisor").[6] The Exchange represents that the Shares will conform to the initial and continued listing criteria under NYSE Arca Equities Rule 8.600 and that the Fund will be in compliance with Rule 10A–3 under the Act,[7] as provided by NYSE Arca Equities Rule 5.3.

The Fund is a "fund of funds," which means that the Fund seeks to invest primarily in other exchange-traded funds listed and traded in the United States ("Underlying ETFs") and certain other exchange-traded products including, but not limited to, exchange-traded notes, exchange-traded currency trusts and closed-end funds. The Fund seeks to achieve its investment objective of preserving and growing capital from investments in the U.S. and foreign equity, fixed income, commodity and currency markets, independent of market direction, by producing absolute returns with reduced volatility and manageable risk and drawdowns. The Sub-Advisor will utilize a proprietary quantitative trend-following approach to actively manage the Fund's portfolio. No effort is made by the Sub-Advisor to forecast future market trends or direction; rather, the Fund seeks to capture profits in these trends when and where they develop. The strategy is diversified across markets and timeframes with strict risk control methods that are rules-based and systematic. Except for Underlying ETFs that may hold non-U.S. issues, the Fund will not otherwise invest in non-U.S. issues.

Additional information regarding the Fund, the Shares, the Fund's investment objective, strategies, methodology, and restrictions, the Advisor and Sub-Advisor, risks, fees and expenses, creations and redemptions of Shares, availability of information, trading rules and halts, and surveillance procedures, among other things, can be found in the Registration Statement and in the Notice, as applicable.[8]

## III. Discussion and Commission's Findings

After careful review, the Commission finds that the Exchange's proposal to list and trade the Shares is consistent with the Act and the rules and regulations thereunder applicable to a national securities exchange.[9] In particular, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act,[10] 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 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, which sets forth Congress's 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 Exchange will disseminate the Portfolio Indicative Value ("PIV") at least every 15 seconds during the Core Trading Session through one or more major market data vendors. In addition, the Fund will make available on its website on each business day before commencement of the Core Trading Session the Disclosed Portfolio that will form the basis for the Fund's calculation of the net asset value ("NAV").[11] A basket composition file, which includes the security names and share quantities required to be delivered in exchange for Fund shares, together with estimates and actual cash components, will be publicly disseminated daily prior to the opening of the NYSE via the National Securities Clearing Corporation. The Fund's website will also include additional quantitative information updated on a daily basis relating to trading volume, the prior business day's reported NAV, mid-point of the bid/ask spread at the time of calculation of such NAV (the "Bid/Ask Price"),[12] 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 trading 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 to list and trade the Shares 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 Advisor and Sub-Advisor to the Fund are not affiliated with a broker-dealer.[13] The

[3] *See* Securities Exchange Act Release No. 62788 (August 30, 2010), 75 FR 54676 ("Notice").

[4] *See* NYSE Arca Equities Rule 8.600.

[5] The Trust is registered under the Investment Company Act of 1940. On June 30, 2010, the Trust filed with the Commission a registration statement on Form N–1A (File Nos. 333–157876 and 811–22110) ("Registration Statement").

[6] The Exchange represents that neither the Advisor nor the Sub-Advisor is affiliated with a broker-dealer. See Commentary .06 to NYSE Arca Equities Rule 8.600.

[7] 17 CFR 240.10A–3.

[8] *See supra* notes 3 and 5.

[9] 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).

[10] 15 U.S.C. 78f(b)(5).

[11] On a daily basis, the Advisor will disclose for each portfolio security or other financial instrument of the Fund the following information: Ticker symbol (if applicable), name of security or financial instrument, number of shares or dollar value of financial instruments held in the portfolio, and percentage weighting of the security or financial instrument in the portfolio. The NAV of the Fund will normally be determined as of the close of the regular trading session on the New York Stock Exchange, Inc. ("NYSE") (ordinarily 4:00 p.m. Eastern Time) on each business day.

[12] 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.

[13] *See* Commentary .06 to NYSE Arca Equities Rule 8.600. The Commission notes that Commentary .06 to NYSE Arca Equities Rule 8.600 requires that any investment advisers to the Fund that are affiliated with a broker-dealer are required to implement a fire-wall with respect to such broker-dealer regarding access to information concerning the composition of the portfolio. Commentary .06 to NYSE Arca Equities Rule 8.600 also requires that any personnel who make

Continued

Commission also notes that the Exchange will obtain a representation from the Fund 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.[14] Additionally, if it becomes aware that the NAV or the Disclosed Portfolio is not disseminated 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. Further, if the PIV is not being disseminated as required, the Exchange may halt trading during the day in which the interruption 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.[15] Finally, 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 the portfolio.[16]

The Exchange has represented that the Shares are 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 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 or concurrently with the confirmation of a transaction; and (f) trading information.

(4) The Fund will be in compliance with Rule 10A–3 under the Act.[17]

(5) Except for Underlying ETFs that may hold non-U.S. issues, the Fund will not otherwise invest in non-U.S. issues.

In addition, the Commission notes that it has not received any comments regarding the proposed rule change.

For the forgoing reasons, the Commission believes that the Exchange's proposal to list and trade the Shares is consistent with the Act. This order is based on the Exchange's representations.

## IV. Conclusion

*It is therefore ordered,* pursuant to Section 19(b)(2) of the Act,[18] that the proposed rule change (SR–NYSEArca–2010–79) be, and it hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[19]

**Florence E. Harmon,**

*Deputy Secretary.*

[FR Doc. 2010–26132 Filed 10–15–10; 8:45 am]

**BILLING CODE 8011–01–P**

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## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–63071; File No. SR–Phlx–2010–139]**

## Self-Regulatory Organizations; NASDAQ OMX PHLX, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Floor Broker Responsibilities

October 8, 2010.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act") [1] and Rule 19b–4 thereunder,[2] notice is hereby given that, on October 5, 2010, NASDAQ OMX PHLX, Inc. ("Phlx" or the "Exchange") filed with the Securities and Exchange Commission (the "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend Exchange Rule 1063, Responsibility of Floor Brokers, and Option Floor Procedure Advice ("OFPA") C–2, Options Floor Broker Management System: to: (i) Require floor brokers to enter specific identifying information on their orders; and (ii) amend the current language applicable to the entry of clearing information by floor brokers.

The text of the proposed rule change is available on the Exchange's Web site at *http://www.nasdaqtrader.com/micro.aspx?id=PHLXRulefilings,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

### II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

*A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

1. Purpose

The purpose of the proposed rule change is to require floor brokers to enter certain identifying information on their orders to enhance the Exchange's audit trail to provide more specificity in identifying a market participant's executing order. The Exchange is proposing to require floor brokers [3] to

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decisions on the Fund's portfolio composition must be subject to procedures designed to prevent the use and dissemination of material non-public information regarding the portfolio.

[14] *See* NYSE Arca Equities Rule 8.600(d)(1)(B).

[15] *See* NYSE Arca Equities Rule 8.600(d)(2)(D). 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.

[16] *See* NYSE Arca Equities Rule 8.600(d)(2)(B)(ii).

[17] 17 CFR 240.10A–3.

[18] 15 U.S.C. 78s(b)(2).

[19] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] An Options Floor Broker ("Floor Broker") is an individual who is registered with the Exchange for the purpose, while on the Options Floor, of accepting and executing options orders received from members and member organizations. An Options Floor Broker shall not accept an order from any other source unless he is the nominee of a member organization qualified to transact business

enter certain alpha/numeric identifying information in addition to their own account number.

Currently, floor brokers enter their own alpha/numeric identification information,[4] assigned by the Exchange, on the Options Floor Broker Management System,[5] for each order they receive and represent in the trading crowd.[6] Similarly, Advice F–1 requires ROTs to enter their complete alpha/numeric identification assigned by the Exchange on the FBMS for each order they receive in the trading crowd. The Exchange is proposing to amend Exchange Rule 1063 and Option Floor Procedure Advice C–2 to require Floor Brokers to enter alpha/numeric identification for all orders entered on behalf of ROTs,[7] not just for orders they receive and represent themselves in a trading crowd.

Additionally, the Exchange is proposing to amend the timeframe within which floor brokers enter certain clearing information into the FBMS. Currently, a floor broker is required to contemporaneously upon receipt of an order and prior to the representation of such an order record the following specific information with respect to orders represented by a floor broker into FBMS: (i) The order type (*i.e.,* customer, firm, broker-dealer, professional); (ii) the option symbol; (iii) buy, sell, cross or cancel; (iv) call, put, complex (*i.e.,* spread, straddle), or contingency order as described in Rule 1066; (v) number of contracts; (vi) limit price or market order or, in the case of a complex order, net debit or credit, if applicable; (vii) whether the transaction is to open or close a position; and (viii) The Options Clearing Corporation ("OCC") clearing number of the broker-dealer that submitted the order (collectively, the "required information").[8]

In addition, floor brokers or their employees are required to enter clearing information onto the FBMS no later than five minutes after the execution of the trade. The clearing information, which is the contra-side clearing information, is not required to be entered pursuant to COATS.[9] Rather, this information facilitates the identification of the trade for clearing.[10] The Exchange proposes to amend the current language to state any additional information with respect to the order shall be inputted into the Exchange's systems contemporaneously upon receipt, which may occur after the representation and execution of the order.[11]

The Exchange believes this amendment to the time, from a five minute timer to a "upon receipt" requirement, is necessary to allow floor brokers to enter the requisite clearing information. Currently, certain types of trades that are handled in a trading crowd are being entered upon receipt and prior to the expiration of the five minute timer without incident. Other types of transactions which are received by a floor broker from an upstairs firm[12] which may involve Prime Brokerage[13] relationships may require additional time, beyond five minutes, because the clearing information may not be readily ascertainable. Likewise, complex orders with multiple legs can take longer than five minutes to input into the FBMS system simply because of the quantity of information that is required to be entered. The Exchange believes that upon receipt means as soon as that clearing information becomes available to a floor broker. That timeframe must be reasonable and will be monitored by the Exchange's surveillance staff to ensure such timing is not unreasonable.

The Exchange believes that this modification to the rules will prevent a large number of change orders from floor brokers who are concerned with meeting the current five minute timer and enter information which is later found out to be inaccurate and a change order is required. With the more reasonable timeframe, a floor broker may properly enter the information the first time. Also, the additional flexibility will allow floor brokers with complex orders to comply with Exchange rules. Today, even if a floor broker begins to enter the clearing information for a complex order immediately after the trade was executed, they may run afoul of the five minute timer simply because the information is too large in volume to physically input within five minutes. This amendment would alleviate these concerns. The Exchange does not anticipate a change in behavior for the remainder of the floor brokers who are currently able to enter the clearing information promptly upon execution and do so today.

The Exchange previously amended its rules to add the five minute timer because once the clearing information is reported crowd participants involved in the trade would receive a position update enabling them to know their respective positions on a real-time basis and to make appropriate informed and timely hedging transactional decisions. The Exchange believes that this language will continue to enable to allow Specialists and ROTs, in particular, to receive such position updates going forward. Additionally, FBMS technology provided to floor brokers offers them an efficient means to enter clearing information for trade participants contemporaneously upon

with the public in which event he may accept orders from public customers of the organization. *See* Exchange Rule 1060.

[4] This is an identifying letter that is assigned by the Exchange that follows the account number and identifies a Registered Options Trader ("ROT"). A Registered Options Trader may have more than one alpha/numeric.

[5] The Options Floor Broker Management System ("FBMS") is a component of the Exchange's system designed to enable Floor Brokers and/or their employees to enter, route and report transactions stemming from options orders received on the Exchange. The FBMS also is designed to establish an electronic audit trail for options orders represented and executed by Floor Brokers on the Exchange, such that the audit trial provides an accurate, time-sequenced record of electronic and other orders, quotations and transactions on the Exchange, beginning with the receipt of an order by the Exchange, and further documenting the life of the order through the process of execution, partial execution, or cancellation of that order.

[6] *See* Option Floor Procedure Advice F–1 titled Use of Identification Letters and Numbers. Specialists and ROTs are also required to comply with F–1 in addition to Floor Brokers.

[7] A ROT includes a Streaming Quote Trader ("SQT"), a Remote Streaming Quote Trader ("RSQT") and a Non-SQT, which by definition is neither a SQT or a RSQT. *See* Exchange Rule 1014 (b)(i) and (ii).

[8] The required information complies with the Consolidated Options Audit Trail System ("COATS") requirements. COATS effectively enhances intermarket options surveillance by enabling the options exchanges to reconstruct the market promptly to effectively surveil certain rules. Through its participation in the Intermarket Surveillance Group ("ISG"), the Exchange shares information and coordinates inquiries and investigations with other exchanges designed to address potential intermarket manipulation and trading abuses. The Exchange's participation in ISG helps it to satisfy the Exchange Act requirement that it have coordinated surveillance with markets on which security futures are traded and markets on which any security underlying security futures are traded to detect manipulation and insider trading. ISG is an industry organization formed in 1983 to coordinate intermarket surveillance among the SROs by cooperatively sharing regulatory information pursuant to a written agreement between the parties. The goal of the ISG's information sharing is to coordinate regulatory efforts to address potential intermarket trading abuses and manipulations.

[9] This COATS requirement is not to be confused with the requirement to submit the clearing information of the Broker-Dealer that submitted the order.

[10] Such clearing information includes the account number(s) of each contra-side participant to the floor broker's trade in the crowd and the number of contracts bought or sold. This information would be immediately reported to the clearing firm of each crowd participant involved in the trade.

[11] *See* Chicago Board Options Exchange, Inc. ("CBOE") Rule 6.24(a)(2) which contains similar language.

[12] An "upstairs firm" is a broker-dealer, not located on the trading floor that submits an order to a floor broker for execution. The floor brokers typically are not affiliated with the "upstairs firms".

[13] Prime Brokerage is a mechanism for centralized securities clearing at one facility which allows multiple execution arrangements. A customer who has a Prime Brokerage account may have accounts with multiple firms used for executing trades.

receipt. This technology was not previously available.

The Exchange proposes this amendment to both Exchange Rule 1063 as well as OFPA C–2, which is part of the minor rule plan.[14]

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act[15] in general, and furthers the objectives of Section 6(b)(5) of the Act[16] in particular, in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general to protect investors and the public interest, by requiring a floor broker to enter more specific information to identify trades. This proposal would enhance the Exchange's audit trail.

Further, the Exchange believes that amending the language concerning clearing information related to the contra-side of the trade to require the information to be entered into FBMS contemporaneously upon receipt on the Exchange is consistent with the language of other exchanges and still allows for the timely entry of information for clearing purposes.

*B. Self-Regulatory Organization's Statement on Burden on Competition*

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

No written comments were either solicited or received.

**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

Because the foregoing proposed rule change: (i) Does not significantly affect the protection of investors or the public interest; (ii) does not impose any significant burden on competition; and (iii) by its terms, does not become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, it has become effective pursuant to Section 19(b)(3)(A) of the Act[17] and Rule 19b–4(f)(6) thereunder.[18]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

**IV. Solicitation of Comments**

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

*Electronic Comments*

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–Phlx–2010–139 on the subject line.

*Paper Comments*

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–Phlx–2010–139. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–Phlx–2010–139 and should be submitted on or before November 8, 2010.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[19]

**Florence E. Harmon,**

*Deputy Secretary.*

[FR Doc. 2010–26130 Filed 10–15–10; 8:45 am]

**BILLING CODE 8011–01–P**

[14] The Exchange's minor rule plan consists of options floor procedure advices ("OFPAs" or "Advices") with preset fines, pursuant to Rule 19d–1(c) under the Act. 17 CFR 240.19d–1(c). Most OFPAs have corresponding options rules.

[15] 15 U.S.C. 78f(b).

[16] 15 U.S.C. 78f(b)(5).

[17] 15 U.S.C. 78s(b)(3)(A).

[18] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6)(iii) requires the self-regulatory organization to submit to the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[19] 17 CFR 200.30–3(a)(12).

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–63082; File No. SR–Phlx–2010–130]**

## Self-Regulatory Organizations; Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by NASDAQ OMX PHLX LLC Relating to PIXL Fees

October 13, 2010.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on September 29, 2010, NASDAQ OMX PHLX LLC ("Phlx" or the "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

**I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change**

The Exchange proposes to amend its Fee Schedule to add pricing applicable to members utilizing the Exchange's

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

price improvement mechanism known as Price Improvement XL or (PIXL℠).

While changes to the Fee Schedule pursuant to this proposal are effective upon filing, the Exchange has designated these changes to be operative upon the approval and effectiveness of SR–Phlx–2010–108.[3]

The text of the proposed rule change is available on the Exchange's Web site at *http://nasdaqtrader.com/micro.aspx?id=PHLXfilings,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

**II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change**

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

*A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

1. Purpose

The purpose of the proposed rule change is to assess fees for orders known as PIXL Orders[4] and Initiating Orders[5] according to the following categories: Customers, Directed Participants,[6] Specialists,[7] Streaming Quote Traders ("SQT"),[8] Remote Streaming Quote Traders ("RSQT"),[9] Firms and Broker-Dealers. All options traded on the Exchange are eligible for PIXL.

*Initiating Order Trades Against the PIXL Order*

The Exchange proposes to assess a fee of $0.05 per contract when an Initiating Order executes against a PIXL Order in the symbols listed in Section I, the Fees and Rebates for Adding and Removing Liquidity in Select Symbols[10] (known as "Select Symbols"), and the symbols defined in Section II[11] ("Section II Symbols"). The Exchange proposes to only assess the fees listed in Section II of the Fee Schedule for the PIXL Order when the PIXL Order trades against the Initiating Order in Section II Symbols and the Select Symbols. For example, a member or member organization would be assessed $0.00 for Customer transactions.

For the symbols assessed according to Section III[12] of the Fee Schedule, titled Sector Index Options Fees and U.S Dollar-Settled Foreign Currency ("WCO") Options Fees, the transaction fees described in Section III would apply to both the Initiating Order and the PIXL Order for all executions.

*PIXL Order Fees When the PIXL Order Does Not Trade Against the Initiating Order Select Symbols*

*Select Symbols: Section I*

With respect to executions in Select Symbols, where the PIXL Order is not trading against the Initiating Order, the PIXL Order would be assessed the Fee for Removing Liquidity when that order is executed against a resting contra-side order or quote that was present upon initial receipt of the PIXL Order. The resting contra-side order or quote would receive the Rebate for Adding Liquidity. Additionally, the PIXL Order would receive the Rebate for Adding Liquidity when that order is executed against contra-side order(s) that respond to the PIXL auction broadcast message, as well as when executed against contra-side quotes and unrelated orders on the PHLX book that arrived after the PIXL auction was initiated. The PIXL auction responders, contra-side order(s) and quote(s) would be assessed the Fee for Removing Liquidity.

For the symbols assessed according to Section III of the Fee Schedule, titled Sector Index Options Fees and U.S Dollar-Settled Foreign Currency ("WCO") Options Fees, the transaction fees described in Section III would apply to both the Initiating Order and the PIXL Order for all executions.

*Equity Options: Section II*

With respect to executions in Section II Equity Options,[13] the PIXL Order would be assessed the appropriate Equity Option Fee in Section II of the Fee Schedule. The contra-side order or quote would be assessed the appropriate Equity Option Fee listed on the Fee Schedule as well. All other Equity Options Fees in Section II would apply as appropriate, including but not limited to Payment for Order Flow.

Finally, the Exchange is proposing to relocate the Flex Equity Option Fees from Section IV, FLEX Equity Options, of the Fee Schedule to Section II, Equity Options, and consolidate those fee with other Equity Option Fees for the sake of clarity. Section IV will now contain the proposed PIXL fees and is proposed to be titled "PIXL Pricing."

While changes to the Fee Schedule pursuant to this proposal are effective upon filing, the Exchange has designated these changes to be operative upon the approval and effectiveness of SR–Phlx–2010–108.[14]

2. Statutory Basis

The Exchange believes that its proposal to amend its Fee Schedule is consistent with Section 6(b) of the Act[15] in general, and furthers the objectives of Section 6(b)(4) of the Act[16] in particular, in that it is an equitable allocation of reasonable fees and other charges among Exchange members. The Exchange believes that the fee proposal

[3] SR–Phlx–2010–108 is a proposal to adopt Rule 1080(n) to establish a price-improvement mechanism.

[4] "A member may electronically submit for execution an order it represents as agent on behalf of a public customer, broker-dealer, or any other entity ("PIXL Order") against principal interest or against any other order (except as provided in sub-paragraph (n)(i)(E) below) it represents as agent ("Initiating Order") provided it submits the PIXL order for electronic execution into the PIXL Auction ("Auction") pursuant to Rule 1080. *See* Exchange Rule 1080(n) as proposed in SR–Phlx–2010–108.

[5] *See* footnote 4.

[6] *See* Exchange Rule 1080(l), "* * * The term 'Directed Specialist, RSQT, or SQT' means a specialist, RSQT, or SQT that receives a Directed Order." A Directed Participant has a higher quoting requirement as compared with a specialist, SQT or RSQT who is not acting as a Directed Participant. *See* Exchange Rule 1014.

[7] A Specialist is an Exchange member who is registered as an options specialist pursuant to Rule 1020(a).

[8] A Streaming Quote Trader is defined in Exchange Rule 1014(b)(ii)(A) as an ROT who has received permission from the Exchange to generate and submit option quotations electronically through AUTOM in eligible options to which such SQT is assigned.

[9] A Remote Streaming Quote Trader is defined Exchange Rule in 1014(b)(ii)(B) as an ROT that is a member or member organization with no physical trading floor presence who has received permission from the Exchange to generate and submit option quotations electronically through AUTOM in eligible options to which such RSQT has been assigned.

[10] The Fees and Rebates for Adding and Removing Liquidity in Select Symbols are listed in Section I of the Fee Schedule.

[11] An equity option includes exchange-traded fund share ("ETF"), Holding Company Depositary Receipt ("HOLDR"), Russell 2000(R) Index (the "Full Value Russell Index" or "RUT"), options on the one-tenth value Russell 2000® Index (the "Reduced Value Russell Index" or "RMN"), options on the Nasdaq 100 Index traded under the symbol NDX ("NDX") and options on the one-tenth value of the Nasdaq 100 Index traded under the symbol MNX ("MNX").

[12] The symbols assessed fees according to Section III are BKX, FPX, HGX, OSX, SOX, UTY, and XAU ("Sector Index Options") and U.S. Dollar-Settled Foreign Currency Options ("WCOs").

[13] This includes all Symbols that are not specifically Select Symbols as listed in Section I of the Fee Schedule.

[14] SR–Phlx–2010–108 is a proposal to adopt Rule 1080(n) to establish a price-improvement mechanism.

[15] 15 U.S.C. 78f(b).

[16] 15 U.S.C. 78f(b)(4).

is both equitable and reasonable for the reasons listed hereafter.

The proposed fees are consistent with the equitable price differentials that exist today at all option exchanges. For example, the fees and rebates assessed by the Exchange are similar, and in some cases less than, the fees and rebates assessed by the Boston Options Exchange Group, LLC ("BOX")[17] and the International Securities Exchange ("ISE")[18] for orders executed in a price improvement mechanism. For example a BOX participant could be assessed total fees of $0.35 per contract as the price improvement period ("PIP") initiator and receive a rebate for their customer PIP order of $0.25 per contract (in this example the net fee charged the BOX participant would be $0.10), whereas the PIP responder could be assessed a fee of $0.50 per contract. This is a differential of $0.40 per contract between two BOX participants for participating in the PIP auction, which is equal to or less than the differentials that exist in the Exchange's proposal. With respect to ISE, the Exchange pays a rebate for certain PIXL executions, which is similar to the $0.15 rebate ISE pays for its price improvement mechanism.

The Exchange operates in a fiercely competitive market place in which Exchange members and member organizations are highly sophisticated and highly knowledgeable. As is the case, members and member organizations readily and swiftly direct order flow or post liquidity to competing venues if they deem fee levels at a particular options exchange to be excessive, unfair or unreasonable. The Exchange believes the proposal is an equitable allocation of fees and not unfairly discriminatory for the reasons stated above.

*B. Self-Regulatory Organization's Statement on Burden on Competition*

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others*

No written comments were either solicited or received.

[17] *See* Securities and Exchange Act Release No. 62632 (August 3, 2010), 75 FR 47869 (August 3, 2010) (SR–BX–2010–049).

[18] See the ISE schedule of fee as of August 2, 2010.

**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act.[19] At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

**IV. Solicitation of Comments**

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

*Electronic Comments*

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–Phlx–2010–130 on the subject line.

*Paper Comments*

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–Phlx–2010–130. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission,[20] all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–Phlx–2010–130 and should be submitted on or before November 8, 2010.

[19] 15 U.S.C. 78s(b)(3)(A)(ii).

[20] The text of the proposed rule change is available on the Commission's Web site at *http://www.sec.gov/rules/sro.shtml.*

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[21]

**Florence E. Harmon,**

*Deputy Secretary.*

[FR Doc. 2010–26175 Filed 10–15–10; 8:45 am]

**BILLING CODE 8011–01–P**

[21] 17 CFR 200.30–3(a)(12).

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–63085; File No. SR–BATS–2010–026]**

## Self-Regulatory Organizations; BATS Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change, as Modified by Amendment No. 1, Related to Fees for Use of BATS Exchange, Inc.

October 13, 2010.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] notice is hereby given that, on September 30, 2010, BATS Exchange, Inc. (the "Exchange" or "BATS") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II and III below, which Items have been prepared by the Exchange. On October 12, 2010, the Exchange filed Amendment No. 1, which modified the original filing.[3] BATS has designated the proposed rule change as one establishing or changing a member due, fee, or other charge imposed by the Exchange under Section 19(b)(3)(A)(ii) of the Act[4] and Rule 19b–4(f)(2) thereunder,[5] which renders the

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] In Amendment No. 1, the Exchange provided additional basis for the proposed rule change in the Statutory Basis section.

[4] 15 U.S.C. 78s(b)(3)(A)(ii).

[5] 17 CFR 240.19b–4(f)(2).

proposed rule change, as modified by Amendment No. 1, effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

**I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change**

The Exchange proposes to modify its fee schedule applicable to Members [6] of the Exchange pursuant to BATS Rules 15.1(a) and (c). While changes to the fee schedule pursuant to this proposal will be effective upon filing, the changes will become operative on October 1, 2010.

The text of the proposed rule change is available at the Exchange's Web site at *http://www.batstrading.com,* at the principal office of the Exchange, on the Commission's Web site at *http://www.sec.gov,* and at the Commission's Public Reference Room.

**II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change**

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant parts of such statements.

*A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

1. Purpose

The Exchange proposes to modify the "Options Pricing" section of its fee schedule to: (i) Adopt definitions of "Customer," "Firm," and "Market Maker" for purposes of routing pricing; (ii) modify its pricing for standard best execution routing; (iii) implement discounted pricing for Destination Specific Orders; and (iv) modify its pricing for Directed ISOs. In addition, the Exchange proposes to modify the fee schedule applicable to equities trading by changing the reference to the default best execution strategy.

*(i) Adoption of Definitions*

The Exchange proposes to distinguish pricing for routed orders that are executed at away options exchanges based on the clearing status of the order due to the fact that most other options exchanges to which orders are routed maintain such distinctions. Accordingly the Exchange proposes to adopt definitions of "Customer," "Firm," and "Market Maker" for purposes of its fee schedule. The proposed definitions state that each category applies to transactions identified by a Member for clearing in the applicable range (*i.e.,* Customer, Firm or Market Maker) at the Options Clearing Corporation ("OCC").

*(ii) Standard Best Execution Routing Pricing*

The Exchange currently charges $0.05 per contract for transactions executed at away markets pursuant to its best execution routing strategies, and passes through, in addition to that fee, all destination exchange fees charged to the Exchange for executing on away markets. The Exchange proposes to further simplify its pricing for best execution routing strategies by setting flat rates for transactions executed at away markets pursuant to any of its best execution routing strategies (*i.e.,* "CYCLE", "RECYCLE", "Parallel D" and "Parallel 2D"). As proposed, regardless of the best execution strategy selected, the charge for a Customer transaction executed away will be $0.30 per contract and the charge for a Firm or Market Maker transaction executed away will be $0.50 per contract.

*(iii) Discounted Pricing for Destination Specific Orders*

The Exchange proposes to adopt for its options platform a pricing model similar to a pricing model it offers to users of its equities platform. Specifically, the Exchange proposes to introduce discounted fees for use of its Destination Specific Order [7] routing strategies. The Exchange proposes to charge flat rates for Customer, Firm and Market Maker transactions executed at away markets pursuant to Destination Specific routing, which rates will vary depending on the venue at which transactions execute, as described in further detail below.

The Exchange proposes to charge for Destination Specific Orders that are executed at away options exchanges that are divided into three categories. The Exchange proposes to adopt pricing for two distinct categories of options exchanges with "Make/Take" pricing.[8] The first category of Make/Take pricing is proposed to apply to Destination Specific Orders executed at the International Stock Exchange ("ISE") or NASDAQ OMX PHLX ("PHLX") in issues for which Make/Take pricing applies. The fee for this first category of Make/Take markets is proposed as $0.20 per contract for Customer transactions and $0.50 per contract for Firm or Market Maker transactions. The second category of Make/Take pricing is proposed to apply to Destination Specific Orders executed at NYSE Arca Options ("NYSE Arca") in issues for which Make/Take pricing applies or the NASDAQ Options Market ("NOM"). The fee for the second category of Make/Take markets is proposed as $0.40 per contract for Customer transactions and $0.50 per contract for Firm or Market Maker transactions. Finally, the Exchange proposes to categorize options exchanges as "Classic" to the extent such options exchanges do not have a Make/Take pricing structure or do not apply Make/Take pricing to certain transactions. For executions that occur at Classic venues, including the American Stock Exchange ("AMEX"), Boston Options Exchange ("BOX") and Chicago Board Options Exchange ("CBOE") as well as the ISE, PHLX and NYSE Arca Options in non-Make/Take issues, the Exchange proposes to charge $0.05 per contract for Customer transactions and $0.50 per contract for Firm or Market Maker transactions.

The Exchange believes that the proposed Destination Specific Order pricing in most instances will result in lower execution fees at away venues in each category than if orders were routed directly by a Member to such venues. To the extent any anomalies exist or away options exchanges modify pricing such that the Destination Specific fee is not, in fact, a discount from pricing that the Member may pay directly, the Exchange believes that Members will benefit from the simplicity of the pricing structure.

*(iv) Directed ISO Pricing*

The Exchange currently charges $0.10 per contract for routed Directed ISOs executed at away markets,[9] and passes through, in addition to that fee, all destination exchange fees charged to the Exchange for executing on away markets. The Exchange proposes to further simplify its pricing for Directed ISOs by setting flat rates for Directed ISOs that bypass the Exchange's order book and execute at away venues. As proposed, the charge for a Customer Directed ISO transaction will be $0.50 per contract and the charge for a Firm

[6] A Member is any registered broker or dealer that has been admitted to membership in the Exchange.

[7] As defined in BATS Rule 21.1(d)(7).

[8] As proposed to be defined on the fee schedule, Make/Take pricing refers to executions at the identified Exchange under which "Post Liquidity" or "Maker" rebates ("Make") are credited by that exchange and "Take Liquidity" or "Taker" fees ("Take") are charged by that Exchange.

[9] As defined in BATS Rule 21.1(d)(12).

or Market Maker Directed ISO transaction will be $0.60 per contract.

*(v) Equities Best Execution Routing*

In the "Equities Pricing" portion of the fee schedule the Exchange currently reflects its default best execution routing strategy as "DRT + CYCLE". Effective October 1, 2010, the Exchange's default best execution routing strategy will be "DRT + Parallel D."[10] The Exchange proposes to modify the reference to the default strategy in light of this change.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder that are applicable to a national securities exchange, and, in particular, with the requirements of Section 6 of the Act.[11] Specifically, the Exchange believes that the proposed rule change is consistent with Section 6(b)(4) of the Act,[12] in that it provides for the equitable allocation of reasonable dues, fees and other charges among members and other persons using any facility or system which the Exchange operates or controls. As described below, the Exchange believes that its fees and credits are competitive with those charged by other venues and that the changes the Exchange has proposed will simplify the Exchange's pricing model.

The various routing fees proposed by this filing, including fees for destination specific orders and best execution routing strategies offered by the Exchange, are intended to attract order flow to BATS Options by offering competitive and easy to understand rates to Exchange Members, especially those representing order flow that clears in the Customer range at the OCC. Accordingly, some of the changes the Exchange has proposed will result in reduced fees that will benefit Members due to the obvious economic savings those Members will receive and the potential of increased available liquidity at the Exchange. In addition, the Exchange believes that the simplicity and certainty of its fee schedule will be a benefit to some Members. The Exchange notes that it does not currently operate any auctions through which orders are held and broadcast to its membership, nor does the Exchange engage in any payment for order flow practices. Rather, the Exchange is proposing to enhance its transparent market structure with an easy to understand and transparent pricing structure by further simplifying its routing fees. The Exchange believes that its proposed flat routing rates are, on average, better than or equal to the fees a market participant would pay if routing directly to certain market centers, especially with respect to Customer orders. The Exchange notes that it operates in a highly competitive market in which market participants can readily direct order flow to competing venues if they deem fee levels at a particular venue to be excessive. Also, although routing options are available to all Members, Members are not required to use the Exchange's routing services, but instead, the Exchange's routing services are completely optional. Members can manage their own routing to different options exchanges or can utilize a myriad of other routing solutions that are available to market participants.

*B. Self-Regulatory Organization's Statement on Burden on Competition*

The Exchange does not believe that the proposed rule change imposes any burden on competition.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

No written comments were solicited or received.

## III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing proposed rule change has been designated as a fee change pursuant to Section 19(b)(3)(A)(ii) of the Act[13] and Rule 19b–4(f)(2) thereunder,[14] because it establishes or changes a due, fee or other charge imposed on members by the Exchange. Accordingly, the proposal is effective upon filing with the Commission.

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

## IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

*Electronic Comments*

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–BATS–2010–026 on the subject line.

*Paper Comments*

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–BATS–2010–026. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–BATS–2010–026 and should be submitted on or before November 8, 2010.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[15]

**Florence E. Harmon,**

*Deputy Secretary.*

[FR Doc. 2010–26176 Filed 10–15–10; 8:45 am]

**BILLING CODE 8011–01–P**

[10] The Exchange's routing strategies are defined in BATS Rule 11.13

[11] 15 U.S.C. 78f(b).

[12] 15 U.S.C. 78f(b)(4).

[13] 15 U.S.C. 78s(b)(3)(A)(ii).

[14] 17 CFR 240.19b–4(f)(2).

[15] 17 CFR 200.30–3(a)(12).

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–63089; File No. SR–MSRB–2010–09]**

## Self-Regulatory Organizations; Municipal Securities Rulemaking Board; Notice of Filing of Proposed Rule Change Consisting of Fee Changes to Its Real-Time Transaction Price Service and Comprehensive Transaction Price Service, and Termination of Its T+1 Transaction Price Service

October 13, 2010.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("the Act")[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on September 30, 2010, the Municipal Securities Rulemaking Board ("Board" or "MSRB") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II and III below, which Items have been prepared by the MSRB. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The MSRB has filed with the Commission a proposed rule change relating to the MSRB's Real-time Transaction Reporting System ("RTRS"). The proposed rule change consists of fee changes to the MSRB's Real-Time Transaction Price Service and Comprehensive Transaction Price Service of RTRS and the consolidation into the Comprehensive Transaction Price Service of its existing T+1 Transaction Price Service. In addition, the proposed rule change would change the name of the Real-Time Transaction Price Service to the "MSRB Real-Time Transaction Data Subscription Service" and would change the name of the Comprehensive Transaction Price Service to the "MSRB Comprehensive Transaction Data Subscription Service." The MSRB proposes an effective date for this proposed rule change of January 1, 2011.

The text of the proposed rule change is available on the MSRB's Web site at *http://www.msrb.org/Rules-and-Interpretations/SEC-Filings/2010-Filings.aspx* and at the Commission's Public Reference Room.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

### II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the MSRB included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Board has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

*A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

1. Purpose

In January 2005, the MSRB commenced operation of RTRS, also known as the "Transaction Data Program," and its Real-Time Transaction Price Service providing a real-time stream of data representing municipal securities transaction reports made by brokers, dealers and municipal securities dealers ("dealers") to RTRS, with an annual subscription fee of $5,000.[3] The MSRB proposes to rename the Real-time Transaction Price Service as the "MSRB Real-Time Transaction Data Subscription Service" (the "Real-Time Service") and to increase the annual subscription fee for the Real-Time Service from $5,000 to $10,000 beginning on January 1, 2011.[4]

The Comprehensive Transaction Price Service currently consists of a T+5 Report of transaction data five business days after trade date and a T+20 Report of transaction data 20 business days after trade date. The MSRB proposes to rename the Comprehensive Transaction Price Service as the "MSRB Comprehensive Transaction Data Subscription Service" (the "Comprehensive Service") and to increase the subscription fee for the Comprehensive Service from $2,000 annually to $5,000 annually effective January 1, 2011.[5] Additionally, the MSRB proposes to consolidate the free T+1 Transaction Price Service into the Comprehensive Service and to terminate the separate T+1 Transaction Price Service as of December 31, 2010. As amended and consolidated, the Comprehensive Service will continue to be made available through electronic file download over the internet, and it will include three reports: Transaction data one business day after the trade (T+1), transaction data five business days after the trade (T+5), and transaction data twenty business days after the trade (T+20).

The MSRB continues to encourage information vendors—and various other entities that make securities data available to members of the securities industry and the public—to use the transaction data in their products and services and permits those parties to re-disseminate the data, either in its original form or with enhancements to address the specific needs of specific data users. To this end, subscribers may (i) use the data for their internal business purposes; (ii) re-disseminate the data to their customers, clients and system users; and/or (iii) re-disseminate the data in other products or services that they offer to their customers, clients and system users, subject to certain terms and limitations, including those relating to proprietary and intellectual property rights of third parties in information provided by such third parties that is made available through the subscription.

The purpose of the proposed rule change is to assess commercially reasonable fees for MSRB data services that will partially defray the costs and expenses of operating and administering MSRB market information programs. The MSRB has not increased the cost of the Real-Time Service since it was implemented approximately six years ago. Moreover, prior to January 2005, the MSRB offered, among other reports, two delayed transaction reports (the Inter-Dealer Report and the Combined Report) for $15,000 each. The proposed subscription fee for the Real-Time Service is less than either of these delayed transaction reports offered prior to January 2005. The MSRB has not increased the cost of the Comprehensive Service since November 2001, when it was introduced as the Daily Comprehensive Report.

The proposed rule change is needed to help bring the Board's revenues more closely in line with expenditures and to help ensure that subscription fees and revenues are reasonable. Currently, the Real-Time Service generates revenue of approximately $220,000 annually, and the Comprehensive Service generates revenue of approximately $48,000 annually. No revenue is generated by

[3] *See* Exchange Act Release No. 50820 (December 8, 2004).

[4] The MSRB could, in its discretion, waive the Real-Time Service subscription fee for not-for-profit organizations, academic institutions, or other entities or persons who desire the service for non-profit or research purposes.

[5] As with the Real-Time Service, the MSRB could, in its discretion, waive the Comprehensive Service subscription fee for not-for-profit organizations, academic institutions, or other entities or persons who desire the service for non-profit or research purposes.

the T+1 Transaction Price Service. Consequently, all three services generate less than $300,000 of revenue per year. The cost of operating MSRB market information programs has been increasing annually. Fee revenue obtained through these subscription services covers only a small portion of RTRS operating costs. Even with the proposed increases, the MSRB does not expect subscription fees to cover more than a relatively small percentage of program costs.

2. Statutory Basis

The MSRB believes that the proposed rule change is consistent with Section 15B(b)(2)(J) of the Act,[6] which requires, in pertinent part, that the MSRB's rules shall:

> Provide that each municipal securities broker and each municipal securities dealer shall pay to the Board such reasonable fees and charges as may be necessary or appropriate to defray the costs and expenses of operating and administering the Board. Such rules shall specify the amount of such fees and charges.

The proposed rule change provides for commercially reasonable fees to partially offset costs associated with operating RTRS and producing and disseminating transaction reports to subscribers.

*B. Self-Regulatory Organization's Statement on Burden on Competition*

The Board does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act since it would apply equally to all market participants that chose to subscribe to the services.

*C. Self-Regulatory Organization's Statement on Comments Received on the Proposed Rule Change by Members, Participants, or Others*

Written comments were neither solicited nor received on the proposed rule change.

**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve or disapprove such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

**IV. Solicitation of Comments**

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

*Electronic Comments*

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml);* or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–MSRB–2010–09 on the subject line.

*Paper Comments*

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–MSRB–2010–09. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the MSRB's offices. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–MSRB–2010–09 and should be submitted on or before November 8, 2010.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[7]

**Florence E. Harmon,**

*Deputy Secretary.*

[FR Doc. 2010–26182 Filed 10–15–10; 8:45 am]

**BILLING CODE 8011–01–P**

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–63086; File No. SR–MSRB–2010–03]**

## Self-Regulatory Organizations; Municipal Securities Rulemaking Board; Order Approving Proposed Rule Change Relating to Amendments to the Continuing Disclosure Service of the MSRB's Electronic Municipal Market Access System (EMMA®)

October 13, 2010.

**I. Introduction**

On May 20, 2010, the Municipal Securities Rulemaking Board (the "MSRB") filed with the Securities and Exchange Commission (the "Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Exchange Act") [1] and Rule 19b–4 thereunder,[2] a proposed rule change to amend the continuing disclosure service of the MSRB's Electronic Municipal Market Access system ("EMMA") to provide for the posting of credit rating information on the EMMA public Web site. The proposed rule change was published for comment in the **Federal Register** on June 2, 2010.[3] The Commission received two comment letters regarding the MSRB's proposed rule change.[4] The MSRB responded to these comment letters in a letter dated September 16, 2010.[5] This order approves the proposed rule change.

**II. Background and Description of Proposal**

The proposed rule change would amend the EMMA continuing disclosure service to provide for the posting of

[6] 15 U.S.C. 78o–4(b)(2)(J).

[7] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 62175 (May 26, 2010), 75 FR 30892.

[4] *See* letter from Deven Sharma, President, Standard & Poor's Ratings Services ("S&P"), to Elizabeth M. Murphy, Secretary, Commission, dated June 22, 2010 ("S&P Letter") and letter from Susan Gaffney, Director, Federal Liaison Center, Government Finance Officers Association ("GFOA"), to Elizabeth M. Murphy, Secretary, Commission, dated July 23, 2010 ("GFOA Letter").

[5] *See* letter from Ernesto A. Lanza, General Counsel, MSRB, to Elizabeth M. Murphy, Secretary, Commission, dated September 16, 2010 ("MSRB Letter").

credit rating information on the EMMA public Web site. If and to the extent that one or more Nationally Recognized Statistical Rating Organizations ("NRSRO") has agreed to provide credit rating and related information regarding municipal securities to the MSRB, at no charge, through an automated data feed for dissemination on the EMMA Web site, the EMMA Web site would display such credit rating and related information along with any documents and identifying information relating to the applicable municipal security otherwise displayed on the EMMA Web site. Currently, such other documents or information may include official statements, advance refunding documents, continuing disclosure documents, transaction price data, interest rate reset information, and identifying information relating to a specific municipal security.

Under the proposed rule change, credit rating and related information normally would be posted within 15 minutes of successful transmission to the MSRB during the hours of 8:30 a.m. to 6 p.m. Eastern time, and any such information successfully transmitted outside of the MSRB's normal business hours would be posted as soon as practicable. The MSRB stated that under the proposed rule change it shall have no obligation to supplement, modify or confirm credit rating and related information received by it through an NRSRO's automated data feed based on information available from any other source, including but not limited to any such information made publicly available by an NRSRO by any means other than its automated data feed.

In the MSRB Letter responding to comments, the MSRB requested that the proposal be approved with a revised effective date to be announced by the MSRB in a notice published on the MSRB Web site, which date shall be no later than one year after Commission approval of the proposal and shall be announced no later than five business days before the effective date. The MSRB stated that the revised effective date would provide additional time for any NRSRO that has not yet determined to participate in the EMMA ratings initiative to work with the MSRB to develop appropriate mechanisms to minimize potential threats to intellectual property rights and other commercial interests.[6] The MSRB stated that the additional three month period also would provide any such NRSRO with a further opportunity to provide the MSRB with access to its automated data feed for development and testing purposes with a view to potentially making such NRSRO's ratings information available for display upon launch of the EMMA ratings initiative should such NRSRO reconsider its participation in the EMMA ratings initiative prior to such launch.[7]

## III. Discussion of Comment Letters and Commission Findings

### *A. Discussion of Comment Letters*

The Commission received two comment letters on the proposed rule change filed by the MSRB; the MSRB responded to these comments. GFOA strongly supported the proposed rule change stating that "we believe that there is nothing more relevant than making credit ratings available in one location, where the public can access the information quickly, efficiently, and at no cost to them."[8] GFOA believed that all members of the public should have access to ratings information at the CUSIP level and that posting ratings information on EMMA at no charge to the public would create a "level playing field" for all investors and eliminate a two-tier system that unfairly allows institutional and sophisticated investors to more easily access information about a security than other investors.[9] While GFOA recognized that rating agencies "have every right to copyright their written analysis, rationale and other derivative products," GFOA also believed that the rating agencies "should not be able to withhold the basic conclusion of a rating from open distribution through the EMMA system."[10] GFOA stated that the proposed rule "simply serves to take what already is public information and directs it to one location," which would be "something that is a true benefit to investors and the public."[11] GFOA further stated that having the rating agencies provide ratings information directly to EMMA is a more efficient way of disseminating information to investors, noting that issuers may not be aware of rating changes at the moment they occur.[12] GFOA believed that the MSRB and the credit rating agencies currently have adequate technical expertise, portals and systems to send feeds to EMMA at little cost to the rating agencies or the MSRB.[13] Lastly, GFOA believed that the MSRB should have safeguards in place to ensure that a rating is assigned to the correct CUSIP and a procedure in place that would quickly identify and correct any inaccuracies and notify investors of an incorrect rating.[14]

S&P, an NRSRO, supported the MSRB's goal of encouraging transparency, but believed that the "[p]roposal's assumption that NRSROs may, or should, provide credit rating and related information regarding municipal securities to the MSRB, at no charge, is commercially untenable and does not appropriately account for the value of the NRSROs' intellectual property."[15] In addition, S&P believed that including credit rating and related information on the EMMA public Web site would offer only limited incremental value to investors in municipal securities given the extensive disclosure requirements to which NRSROs are already subject.[16]

S&P believed that the Commission's NRSRO requirements provide for an appropriate level of disclosure and expressed concern that the proposed rule change "does not specify the scope of the 'credit and related information' regarding municipal securities that the MSRB would expect to be provided by the NRSROs."[17] S&P expressed concern that to the extent the credit rating and related information expected to be provided by NRSROs pursuant to the proposed rule change would extend beyond the disclosure currently required by the Commission's NRSRO rules, S&P was concerned that such information may not be sufficiently tailored to meet the needs of retail investors.[18] S&P further stated that existing disclosure is sufficient to enable investors to access S&P's ratings and effectively evaluate the quality of their ratings relative to the credit ratings produced by other NRSROs.[19] S&P believed that the benefits of the proposed rule change to investors in municipal securities would not outweigh the burdens that it would impose on NRSROs that voluntarily provided such information.[20]

The MSRB responded to these comments by stating that it agreed with GFOA that the EMMA ratings initiative would provide substantial benefits to retail investors and would represent a significant increase in the level of investor protection provided by the MSRB's information systems and

[6] *See* MSRB Letter, at 7.

[7] *Id.*

[8] *See* GFOA Letter, at 1.

[9] *Id.*

[10] *Id.*

[11] *Id.*

[12] *See* GFOA Letter, at 2.

[13] *Id.*

[14] *Id.*

[15] *See* S&P Letter, at 1.

[16] *Id.*

[17] *See* S&P Letter, at 5.

[18] *Id.*

[19] *Id.*

[20] *Id.*

marketplace rules.[21] The MSRB stated that under the proposed rule change, each NRSRO ultimately determines the scope of the credit rating and related information to be provided through EMMA.[22] The EMMA Web site would display the same automated data feed provided to other subscribers to the NRSRO's information.[23] The MSRB indicated that "it is difficult to understand how displaying on the EMMA Web site information an NRSRO also makes available to other information services, which in turn make them available to their users, would result in such information being insufficiently tailored or otherwise problematic for the needs of retail investors."[24] The MSRB stated that S&P's reference to information required to be disclosed under the Commission's NRSRO rules correctly reflects that the purpose of such information is, at least in part, to allow market participants to evaluate the relative quality of the various NRSROs' credit ratings.[25] However, the MSRB noted that the display of ratings information on the EMMA Web site "serves an entirely different purpose—that is, to provide investors with access to material information about municipal securities from NRSROs, not to provide a means by which investors can determine which NRSRO does its job the best.[26] The MSRB further noted that the "material information that would be displayed to EMMA Web site users would be precisely the same as the information that each NRSRO has determined is appropriate to be included in its automated data feed, thus suggesting that this is precisely the information that NRSROs believe is relevant for investors to have."[27]

S&P expressed concern that "the [p]roposal does not adequately address how proprietary information that is provided to the MSRB would be protected" and noted that making its ratings information available on EMMA would lessen its ability to enforce its rights against end-users of the EMMA portal as against users of its own Web site.[28] GFOA stated that any "written communication about the rating to a public bond issuer creates a 'public record' of that issue that must be disclosed and is certainly material."[29] GFOA believed that "the proposed rule simply serves to take what already is public information and direct it to one location * * * something that is a true benefit to investors and the public."[30]

The MSRB responded to these comments by stating that a significant portion of the information that would be displayed through the EMMA ratings initiative is already available on the EMMA Web site in official statements and material event notices provided under Rule 15c2–12 under the Exchange Act[31] in connection with ratings changes.[32] The MSRB stated that it was "sensitive to the fact that such electronic display could raise concerns regarding intellectual property rights if appropriate measures are not instituted to limit the ability of EMMA Web site users to use data in a way that is inconsistent with such rights."[33] The MSRB plans to "display credit ratings at the individual security level and not in a fashion that would allow a user to view, copy or print credit ratings on a market-wide basis."[34]

According to the MSRB, the proposed rule change also would not provide for inclusion of credit ratings and related information obtained from NRSROs in its subscription products.[35] S&P expressed concerns that the MSRB could later amend the proposal to include such information in a subscription service.[36] In response, the MSRB stated that it has no current plans to do so and noted that any such amendment would be subject to the same rulemaking process as this proposal.[37] The MSRB also noted that any NRSRO choosing to participate in the ratings initiative could include appropriate limitations or conditions on its agreement to participate in regard to future redissemination of credit rating information through a subscription service.[38]

The MSRB stated that it has experience working with information vendors to protect their intellectual property rights and expressed a willingness to work with any NRSRO to provide it with the necessary comfort that the risk of misuse of its proprietary interests can be appropriately minimized.[39] Additionally, the MSRB expressed confidence that ratings information could be displayed through the EMMA Web site without creating a significant adverse effect on the financial interests of NRSROs.[40] The MSRB believed that the proposal "might in fact indirectly result in greater public interest in other products offered by the NRSROs."[41]

S&P believed that the proposal "fails to recognize NRSROs' legitimate commercial needs and does not appreciate the significant negative effect on revenue that the provision of proprietary information at no cost would have on NRSROs."[42] S&P also characterized the ratings initiative as "commercially untenable" without compensation from the MSRB.[43] The MSRB responded that each individual NRSRO must "make its own assessment of the advisability of providing its credit rating information to the MSRB for display on the EMMA Web site."[44] However, the MSRB noted its belief that displaying ratings on the EMMA Web site should not have any more appreciable negative effect on NRSROs than displaying such information on their own respective Web sites.[45] The MSRB stated that it if the proposal is approved by the Commission, the MSRB would proceed with such launch even if one or more of the NRSROs elects not to participate.[46] However, the MSRB "would be open to continuing a dialogue with any NRSRO that chooses not to participate in the initial launch of the EMMA ratings initiative so that, should such NRSRO choose later to determine to participate, the MSRB could more quickly incorporate such NRSRO's information alongside of credit rating information of any NRSROs that have participated since such launch."[47]

*B. Commission Findings*

The Commission has carefully reviewed the comment letters and the MSRB's response to the comment letters and finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to the MSRB.[48] In particular, the Commission finds that the proposed rule change is consistent with the requirements of Section 15B(b)(2)(C) of the Exchange Act,[49]

[21] *See* MSRB Letter, at 3.
[22] *Id.*
[23] *See* MSRB Letter, at 3–4.
[24] *See* MSRB Letter, at 4.
[25] *Id.*
[26] *Id.*
[27] *Id.*
[28] *See* S&P Letter, at 3.
[29] *See* GFOA Letter, at 1.
[30] *Id.*
[31] 15 U.S.C. 78s(b)(1).
[32] *See* MSRB Letter, at 5.
[33] *Id.*
[34] *Id.*
[35] *Id.*
[36] *See* S&P Letter, at 4.
[37] *See* MSRB Letter, at 5.
[38] *Id.*
[39] *See* MSRB Letter, at 6.
[40] *Id.*
[41] *Id.*
[42] *See* S&P Letter, at 4.
[43] *Id.*
[44] *See* MSRB Letter, at 7.
[45] *Id.*
[46] *Id.*
[47] *Id.*
[48] In approving this proposal, the Commission has considered the proposed rule's impact on efficiency, competition and capital formation. *See* 15 U.S.C. 78c(f).
[49] 15 U.S.C. 78*o*–3(b)(6).

which provides that MSRB's rules shall be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in municipal securities, to remove impediments to and perfect the mechanism of a free and open market in municipal securities, and, in general, to protect investors and the public interest.

In the Commission's view, the inclusion of credit rating and related information provided by NRSROs agreeing to provide such information for display on the EMMA Web site should serve to promote the statutory mandate of the MSRB to protect investors and the public interest. Although credit rating information is just one of many factors to consider in making an investment decision and in evaluating the credit worthiness and value of existing municipal securities holdings, the proposed rule change would make such information more easily accessible on an equal basis to all participants in the municipal securities market, including in particular retail investors in municipal securities who do not normally have access to information services customarily used by professional market participants. The proposal will become effective on a date to be announced by the MSRB in a notice published on the MSRB Web site, which date shall be no later than October 13, 2011 and shall be announced no later than five usiness days before the effective date.

## IV. Conclusion

*It is therefore ordered,* pursuant to Section 19(b)(2) of the Act,[50] that the proposed rule change (SR–MSRB–2010–03), be, and hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[51]

**Florence E. Harmon,**

*Deputy Secretary.*

[FR Doc. 2010–26177 Filed 10–15–10; 8:45 am]

**BILLING CODE 8011–01–P**

[50] 15 U.S.C. 78s(b)(2).

[51] 17 CFR 200.30–3(a)(12).

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–63088; File No. SR–MSRB–2010–11]**

## Self-Regulatory Organizations; Municipal Securities Rulemaking Board; Notice of Filing and Immediate Effectiveness of Amended and Restated Articles of Incorporation of Municipal Securities Rulemaking Board

October 13, 2010.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("the Act") [1] and Rule 19b–4 thereunder,[2] notice is hereby given that on October 1, 2010, the Municipal Securities Rulemaking Board ("Board" or "MSRB") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II and III below, which Items have been prepared by the MSRB. The MSRB has filed the proposal pursuant to Section 19(b)(3)(A)(iii) of the Act,[3] and Rule 19b–4(f)(3) thereunder,[4] which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The MSRB filed with the Commission a proposed rule change consisting of an Amended and Restated Articles of Incorporation.

The text of the proposed rule change is available on the MSRB's Web site at *http://www.msrb.org/msrb1/sec.asp,* at the MSRB's principal office, and at the Commission's Public Reference Room.

### II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the MSRB included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Board has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A)(iii).

[4] 17 CFR 240.19b–4(f)(3).

*A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

1. Purpose

The purpose of the proposed rule change is to make changes to the MSRB's Articles of Incorporation as are necessary and appropriate in order to comply with Section 15B of the Act, as amended by the Dodd-Frank Wall Street Reform and Consumer Protection Act [5] (the "Dodd-Frank Act"), and to reflect its expanded mission and rulemaking authority. On July 21, 2010, the Dodd-Frank Act, was signed into law by President Obama. This comprehensive financial reform legislation contains various provisions that affect the governance and mandate of the MSRB. The effective date of these provisions is October 1, 2010, which coincides with the first day of the MSRB's 2011 fiscal year. Regarding the jurisdiction of the MSRB, the Dodd-Frank Act, for the first time, provides the MSRB with rulemaking authority over municipal advisors. The proposed amendments to the Articles of Incorporation reflect the expanded jurisdiction of the MSRB and, therefore, delete specific references to brokers, dealers, and municipal securities dealers. Rather, the Articles of Incorporation refer generally to Section 15B of the Act, which is modified by the Dodd-Frank Act, effective October 1, 2010, and the obligations of the Board under the Act. Additionally, the Articles of Incorporation now provide that Board members elected for fiscal year 2011 will have two year terms and all other Board members will have three year terms to reflect the new, expanded composition of the Board and the terms of office for Board members. Finally, the changes to the Purpose section reflect the evolving role of the MSRB as a self-regulatory organization in providing education, outreach and market leadership regarding issues that impact the municipal securities market. The MSRB is a Virginia nonprofit, nonstock corporation, and the Amended and Restated Articles of Incorporation have been filed concurrently with the State Corporation Commission of the Commonwealth of Virginia.

2. Statutory Basis

The MSRB believes that the proposed rule change to its Articles of Incorporation are [sic] necessary and appropriate in order to comply with Section 15B of the Act, as amended by

[5] *See* Public L. 111–203, section 975, 124 Stat. 1376 (2010).

the Dodd-Frank Act, as more fully described above.

*B. Self-Regulatory Organization's Statement on Burden on Competition*

The MSRB does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act, since it solely concerns the administration of the MSRB.

*C. Self-Regulatory Organization's Statement on Comments Received on the Proposed Rule Change by Members, Participants, or Others*

Written comments were neither solicited nor received on the proposed rule change.

**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

The proposed rule change has become effective pursuant to Section 19(b)(3)(A)(iii) of the Act[6] and Rule 19b–4(f)(3)[7] thereunder, because it is concerned solely with the operation and administration of the MSRB. At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.[8]

**IV. Solicitation of Comments**

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

*Electronic Comments*

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml);* or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–MSRB–2010–11 on the subject line.

*Paper Comments*

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–MSRB–2010–11. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Web site (*http://www.sec.gov/rules/sro.shtml).* Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the MSRB's offices. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–MSRB–2010–11 and should be submitted on or before November 8, 2010.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[9]

**Florence E. Harmon,**

*Deputy Secretary.*

[FR Doc. 2010–26178 Filed 10–15–10; 8:45 am]

**BILLING CODE 8011–01–P**

[6] 15 U.S.C. 78s(b)(3)(A)(iii).

[7] 17 CFR 240.19b–4(f)(3).

[8] *See* Section 19(b)(3)(C) of the Act, 15 U.S.C. 78s(b)(3)(C).

[9] 17 CFR 200.30–3(a)(12).

## SOCIAL SECURITY ADMINISTRATION

**[Docket No. SSA–2010–0067]**

### Occupational Information Development Advisory Panel Meeting

**AGENCY:** Social Security Administration (SSA).

**ACTION:** Notice of upcoming panel teleconference meeting.

**DATES:** November 17, 2010, 10 a.m.–12 p.m. (EDT).

*Call-in number:* (866) 261–3182.

*Leader/Host:* Debra Tidwell-Peters.

**SUPPLEMENTARY INFORMATION:**

*Type of meeting:* The teleconference meeting is open to the public.

*Purpose:* This discretionary Panel, established under the Federal Advisory Committee Act of 1972, as amended, shall report to the Commissioner of Social Security. The Panel will provide independent advice and recommendations on plans and activities to replace the Dictionary of Occupational Titles used in our disability determination process. The Panel will advise the Agency on creating an occupational information system tailored specifically for our disability programs and adjudicative needs. The Panel's advice and recommendations will relate to our disability programs in the following areas: Medical and vocational analysis of disability claims; occupational analysis, including definitions, ratings and capture of physical and mental/cognitive demands of work and other occupational information critical to our disability programs; data collection; use of occupational information in our disability programs; and any other area(s) that would enable us to develop an occupational information system suited to our disability programs and improve the medical-vocational adjudication policies and processes.

*Agenda:* The Designated Federal Officer will post the meeting agenda on the Internet at *http://www.ssa.gov/oidap/meeting_information.htm* at least one week prior to the start date. You can also receive a copy electronically by e-mail or by fax, upon request. We will keep records of all proceedings and make them available for public inspection by appointment at the Panel's office.

*Contact Information:* Anyone requiring information regarding the Panel should contact the Panel staff by: Mail addressed to the Occupational Information Development Advisory Panel, Social Security Administration, 6401 Security Boulevard, Operations Building, 3–E–26, Baltimore, MD 21235, fax to (410) 597–0825, or E-mail to *OIDAP@ssa.gov.*

**Debra Tidwell-Peters,**

*Designated Federal Officer.*

[FR Doc. 2010–26128 Filed 10–15–10; 8:45 am]

**BILLING CODE 4191–02–P**

## DEPARTMENT OF STATE

**[Public Notice 7167]**

### Shipping Coordinating Committee; Notice of Committee Meeting

The Shipping Coordinating Committee (SHC) will conduct an open meeting at 10 a.m. on Monday November 8th, 2010, in Room 1422 of

the United States Coast Guard Headquarters Building, 2100 Second Street, SW., Washington, DC 20593–0001. The primary purpose of the meeting is to prepare for the ninety-seventh Session of the International Maritime Organization's (IMO) Legal Committee to be held at the IMO headquarters in London, United Kingdom, from November 15–19th, 2010.

The primary matters to be considered include:

—Report on the 2010 Diplomatic Conference adopting the 2010 Protocol to the International Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea, 1996
—Provision of financial security in cases of abandonment, personal injury to, or death of seafarers
—Fair treatment of seafarers in the event of a maritime accident
—Implementation of the International Convention on Civil Liability for Bunker Oil Pollution Damage, 2001
—Consideration of a proposal to amend the limits of liability of the 1996 Protocol to the Convention on Limitation of Liability for Maritime Claims
—Review of national legislation regarding piracy
—Matters arising from the 25th extraordinary and the 104th regular sessions of the IMO Council and the 26th regular session of the IMO Assembly
—Technical cooperation activitites related to maritime legislation
—Review of the status of conventions and other treaty instruments adopted as a result of the work of the Legal Committee
—Review of work programme outputs
—Review of the Guidelines on Work Methods and Organization of Work of the Legal Committee
—Any other business
—Consideration of the report of the Legal Committee on its ninety-seventh session

Members of the public may attend this meeting up to the seating capacity of the room. To facilitate the building security process, and to request reasonable accommodation, those who plan to attend should contact the meeting coordinator, Ms. Bronwyn G. Douglass, by e-mail at *bronwyn.douglass@uscg.mil,* by phone at (202) 372–3792, by fax at (202) 372–3972, or in writing at Commandant (CG–0941), U.S. Coast Guard, 2100 2nd Street, SW., Stop 7121, Washington, DC 20593–7121. Please note that due to security considerations, two valid, government issued photo identifications must be presented to gain entrance to the Headquarters building. The Headquarters building is accessible by taxi and privately owned conveyance (public transportation is not generally available). However, parking in the vicinity of the building is extremely limited. Additional information regarding this and other IMO SHC public meetings may be found at: *http://www.uscg.mil/imo*.

Dated: October 13, 2010.

**Jon Trent Warner,**

*Executive Secretary, Shipping Coordinating Committee, Department of State.*

[FR Doc. 2010–26184 Filed 10–15–10; 8:45 am]

**BILLING CODE 4710–09–P**

## DEPARTMENT OF TRANSPORTATION

### Federal Railroad Administration

**[Docket No. FRA–2010–0005–N–19]**

### Proposed Agency Information Collection Activities; Comment Request

**AGENCY:** Federal Railroad Administration (FRA), Department of Transportation.

**ACTION:** Notice and request for comments.

**SUMMARY:** In accordance with the Paperwork Reduction Act of 1995 and its implementing regulations, the Federal Railroad Administration (FRA) hereby announces that it is seeking approval of the following information collection activities. Before submitting these information collection requirements for clearance by the Office of Management and Budget (OMB), FRA is soliciting public comment on specific aspects of the activities identified below.

**DATES:** Comments must be received no later than December 17, 2010.

**ADDRESSES:** Submit written comments on any or all of the following proposed activities by mail to either: Mr. Robert Brogan, Office of Safety, Planning and Evaluation Division, RRS–21, Federal Railroad Administration, 1200 New Jersey Ave., SE., Mail Stop 17, Washington, DC 20590, or Ms. Kimberly Toone, Office of Information Technology, RAD–20, Federal Railroad Administration, 1200 New Jersey Ave., SE., Mail Stop 35, Washington, DC 20590. Commenters requesting FRA to acknowledge receipt of their respective comments must include a self-addressed stamped postcard stating, "Comments on OMB control number 2130–_____." Alternatively, comments may be transmitted via facsimile to (202) 493–6216 or (202) 493–6497, or via e-mail to Mr. Brogan at *Robert.Brogan@dot.gov,* or to Ms. Toone at *Kimberly.Toone@dot.gov*. Please refer to the assigned OMB control number or collection title in any correspondence submitted. FRA will summarize comments received in response to this notice in a subsequent notice and include them in its information collection submission to OMB for approval.

**FOR FURTHER INFORMATION CONTACT:** Mr. Robert Brogan, Office of Planning and Evaluation Division, RRS–21, Federal Railroad Administration, 1200 New Jersey Ave., SE., Mail Stop 17, Washington, DC 20590 (telephone: (202) 493–6292) or Ms. Kimberly Toone, Office of Information Technology, RAD–20, Federal Railroad Administration, 1200 New Jersey Ave., SE., Mail Stop 35, Washington, DC 20590 (telephone: (202) 493–6132). (These telephone numbers are not toll-free.)

**SUPPLEMENTARY INFORMATION:** The Paperwork Reduction Act of 1995 (PRA), Public Law 104–13, section 2, 109 Stat. 163 (1995) (codified as revised at 44 U.S.C. 3501–3520), and its implementing regulations, 5 CFR part 1320, require Federal agencies to provide 60 days' notice to the public for comment on information collection activities before seeking approval by OMB. 44 U.S.C. 3506(c)(2)(A); 5 CFR 1320.8(d)(1), 1320.10(e)(1), 1320.12(a). Specifically, FRA invites interested respondents to comment on the following summary of proposed information collection activities regarding (i) whether the information collection activities are necessary for FRA to properly execute its functions, including whether the activities will have practical utility; (ii) the accuracy of FRA's estimates of the burden of the information collection activities, including the validity of the methodology and assumptions used to determine the estimates; (iii) ways for FRA to enhance the quality, utility, and clarity of the information being collected; and (iv) ways for FRA to minimize the burden of information collection activities on the public by automated, electronic, mechanical, or other technological collection techniques or other forms of information technology (*e.g.,* permitting electronic submission of responses). *See* 44 U.S.C. 3506(c)(2)(A)(i)–(iv); 5 CFR 1320.8(d)(1)(i)–(iv). FRA believes that soliciting public comment will promote its efforts to reduce the administrative

and paperwork burdens associated with the collection of information mandated by Federal regulations. In summary, FRA reasons that comments received will advance three objectives: (i) Reduce reporting burdens; (ii) ensure that it organizes information collection requirements in a "user friendly" format to improve the use of such information; and (iii) accurately assess the resources expended to retrieve and produce information requested. *See* 44 U.S.C. 3501.

Below is a brief summary of current information collection activities that FRA will submit for clearance by OMB as required under the PRA:

*Title:* Safety Integration Plans.

*OMB Control Number:* 2130–0557.

*Abstract:* The Federal Railroad Administration (FRA) and the Surface Transportation Board (STB), working in conjunction with each other, have issued joint final rules establishing procedures for the development and implementation of safety integration plans ("SIPs" or "plans") by a Class I railroad proposing to engage in certain specified merger, consolidation, or acquisition of control transactions with another Class I railroad, or a Class II railroad with which it proposes to amalgamate operations. The scope of the transactions covered under the two rules is the same. FRA uses the information collected, notably the required SIPs, to maintain and promote a safe rail environment by ensuring that affected railroads (Class Is and some Class IIs) address critical safety issues unique to the amalgamation of large, complex railroad operations.

*Form Number(s):* N/A.

*Affected Public:* Railroads.

*Respondent Universe:* Class I Railroads.

*Frequency of Submission:* On occasion.

| CFR Section | Respondent universe | Total annual responses | Average time per response | Total annual burden hours | Total annual burden cost |
|---|---|---|---|---|---|
| 244.13—Safety Integration Plans: Amalgamation of Operations | 8 railroads | 1 plan | 340 hours | 340 | $24,016 |
| —SIP Development & Quarterly Meetings | | | | | |
| 244.17—Procedures | 8 railroads | 25 reports | 40 hours/2 hours | 88 | 5,632 |
| —Responses to FRA Inquiries Re: SIP data | 8 railroads | 6 responses | 8 hours | 48 | 3,072 |
| —Coordination in Implementing Approved SIP | 8 railroads | 25 phone calls | 10 minutes | 4 | 256 |
| —Request for Confidential Treatment | 8 railroads | 1 request | 16 hours | 16 | 2,512 |
| 244.19—Disposition | 8 railroads | 2 reports | 16 hours | 32 | 2,048 |
| —Comments on Proposed SIP Amendments | | | | | |

*Total Responses:* 60.

*Estimated Total Annual Burden:* 528 hours.

*Status:* Extension of a currently approved collection.

*Title:* Locomotive Crashworthiness.

*OMB Control Number:* 2130–0564.

*Abstract:* In a final rule published June 28, 2006, the Federal Railroad Administration (FRA) issued comprehensive standards for locomotive crashworthiness. These crashworthiness standards are intended to help protect locomotive cab occupants in the event of a locomotive collision. The collection of information is used by FRA to ensure that locomotive manufacturers and railroads meet minimum performance standards and design load requirements for newly manufactured and remanufactured locomotives in order to help protect locomotive cab occupants in the event that one of these covered locomotives collides with another locomotive, the rear of another train, a piece of on-track equipment, a shifted load on a freight car on an adjacent parallel track, or a highway vehicle at a rail-highway grade crossing.

*Form Number(s):* N/A.

*Affected Public:* Railroads.

*Respondent Universe:* 685 railroads/4 locomotive manufacturers.

*Frequency of Submission:* On occasion.

| CFR Section | Respondent universe | Total annual responses | Average time per response | Total annual burden hours |
|---|---|---|---|---|
| 229.207—Petition for FRA Approval of New Locomotive Crashworthiness Standards | 685 Railroads + 4 Loco. Manufacturers | 2 petitions | 1,050 hours | 2,100 |
| —Petition for FRA Approval of Substantive Change to FRA-Approved Crashworthiness Design Standard | 685 Railroads + 4 Loco. Manufacturers | 1 petition | 1,050 hours | 1,050 |
| —Petition for FRA Approval of Non-Substantive Change to FRA-Approved Crashworthiness Design Standard | 685 Railroads + 4 Loco. Manufacturers | 1 petitions | 400 hours | 400 |
| 229.209—Petition for FRA Approval of Alternative Locomotive Crashworthiness Design Standard | 685 Railroads + 4 Loco. Manufacturers | 1 petition | 2,550 hours | 2,550 |

| CFR Section | Respondent universe | Total annual responses | Average time per response | Total annual burden hours |
|---|---|---|---|---|
| 229.211—Comments on FRA Notice of Petitions Received by Agency<br>—Agency Request for Additional Information Concerning Petitions: Hearings | 4 Loco. Manuf./RR Association/Labor Organizations/ Public<br>685 Railroads/4 Loco. Manuf./ Other Interested Parties/Public | 10 comments<br>4 hearings (16 comments) | 16 hours<br>24 hours | 160<br>96 |
| 229.213—Locomotive Manufacturing Information: Retention of Required Info. | 685 Railroads | 1,000 records or stickers or badge plates | 6 minutes | 100 |
| 229.215—Retention of Records—Original Designs<br>—Retention of Records—Repairs and Modifications<br>—Inspection of Records | 4 Loco. Manuf.<br>685 Railroads<br>6 Loco. Manuf./Rebuilders | 24 loco. rcds.<br>6 records<br>10 records | 8 hours<br>4 hours<br>2 minutes | 192<br>24<br>.33 |

*Total Responses:* 1,059.

*Estimated Total Annual Burden:* 6,672 hours.

*Status:* Extension of a currently approved collection.

*Title:* Safety Appliance Concern Recommendation Report; Guidance Checklist Forms.

*OMB Control Number:* 2130–0565.

*Abstract:* In an ongoing effort to conduct more thorough and more effective inspections of railroad freight equipment and to further enhance safe rail operations, FRA has developed a safety concern recommendation report form, and a group of guidance checklist forms that facilitate railroad, rail car owner, and rail equipment manufacturer compliance with agency Railroad Safety Appliance Standards regulations. In lieu of completing an official inspection report (Form FRA F 6180.96), which takes subject railroad equipment out of service and disrupts rail operations, Form FRA F 6180.4a enables Federal and State safety inspectors to report to agency headquarters systemic or other safety concerns. FRA headquarters safety specialists can then contact railroads, car owners, and equipment manufacturers to address the reported issue(s) and institute necessary corrective action(s) in a timely fashion without unnecessarily having to take affected rail equipment out of service, unless deemed defective. Forms FRA F 6180.4(b)–(m) are used in conjunction with the Special Inspection of Safety Appliance Equipment form (Form FRA F 6180.4) to assist Federal Motive, Power, and Equipment (MP&E) field inspectors in ensuring that critical sections of 49 CFR part 231 (Railroad Safety Appliance Standards), pertaining to various types of freight equipment, are complied with through use of a check-off list. By simplifying their demanding work, check-off lists for 12 essential sections of Part 231 ensure that FRA MP&E field personnel completely and thoroughly inspect each type of freight car for compliance with its corresponding section in Part 231. The Guidance Checklist forms may later be used by state field inspectors as well. FRA believes that this collection of information will result in improved construction of newly designed freight cars and improved field inspections of all freight cars currently in use. This, in turn, will serve to reduce the number of accidents/incidents and corresponding injuries and fatalities that occur every year due to unsafe or defective equipment that was not promptly repaired/replaced.

*Form Number(s):* FRA F 6180.4(a)–(m).

*Affected Public:* Businesses.

*Reporting Burden:*

| Form No. | Respondent universe | Total annual responses | Average time per response (min) | Total annual burden hours |
|---|---|---|---|---|
| FRA F 6180.4a—MP& E Safety Concern and Recommendation Report. | 130 Fed'l & State Inspectors | 30 Forms | 60 | 30 |
| FRA F 6180.4b—Check List Sec. 231.1 | 130 Fed'l & State Inspectors | 10 Forms | 60 | 10 |
| FRA F 6180.4c—Check List Sec. 231.2 | 130 Fed'l & State Inspectors | 30 Forms | 60 | 30 |
| FRA F 6180.4d—Check List Sec. 231.3 | 130 Fed'l & State Inspectors | 3 Forms | 60 | 3 |
| FRA F 6180.4e—Check List Sec. 231.4 | 130 Fed'l & State Inspectors | 15 Forms | 60 | 15 |
| FRA F 6180.4f—Check List Sec. 231.5 | 130 Fed'l & State Inspectors | 5 Forms | 60 | 5 |
| FRA F 6180.4g—Check List Sec. 231.6 | 130 Fed'l & State Inspectors | 30 Forms | 60 | 30 |
| FRA F 6180.4h—Check List 231.7 | 130 Fed'l & State Inspectors | 3 Forms | 60 | 3 |
| FRA F 6180.4i—Check List Sec. 231.8 | 130 Fed'l & State Inspectors | 5 Forms | 60 | 5 |
| FRA F 6180.4j—Check List Sec. 231.9 | 130 Fed'l & State Inspectors | 5 Forms | 60 | 5 |
| FRA F 6180.4k—Check List Sec. 231.21 | 130 Fed'l & State Inspectors | 10 Forms | 60 | 10 |
| FRA F 6180.4l—Check List Sec. 231.27 | 130 Fed'l & State Inspectors | 10 Forms | 60 | 10 |
| FRA F 6180.4m—Check List Sec. 231.28 | 130 Fed'l & State Inspectors | 10 Forms | 60 | 10 |
| FRA F 6180.4n—Check List Sec. 231.138 | 130 Fed'l & State Inspectors | 5 Forms | 30 | 3 |
| FRA F 6180.4o—Check List Sec. 231.14 | 130 Fed'l & State Inspectors | 5 Forms | 30 | 3 |
| FRA F 6180.4p—Check List Sec. 231.29 | 130 Fed'l & State Inspectors | 5 Forms | 60 | 5 |
| FRA F 6180.4q—Check List Sec. 231.29 | 130 Fed'l & State Inspectors | 5 Forms | 60 | 5 |

*Respondent Universe:* Federal and State Safety Inspectors.

*Frequency of Submission:* On occasion.

*Total Responses:* 186 forms.

*Estimated Total Annual Burden:* 182 hours.

*Status:* Extension of a currently approved collection.

*Title:* Passenger Train Emergency Systems.

*OMB Control Number:* 2130–0576.

*Abstract:* The collection of information is due to passenger train emergency regulations set forth in 49 CFR 238 to further the safety of passenger train occupants through both enhancements and additions to FRA's existing requirements. The collection of information is used by FRA, railroad employees, rescue workers, and the public. Emergency responders use the information collected to be able to quickly find and understand how to operate passenger cars' emergency windows, doors, and roof hatches so that they can successfully perform their jobs and save lives. The information collected is used by train passengers to: (1) Recognize and immediately report potential emergencies to train crew members; (2) recognize hazards; (3) recognize and know how and when to operate appropriate emergency-related features and equipment, such as fire extinguishers, train doors, and emergency exits; and (4) recognize the potential special needs of fellow passengers, such as children, the elderly, and disabled, during an emergency; and (5) know how to quickly and safely evacuate the train in the event of an emergency, such as a collision, derailment, explosion, fire, or some other unanticipated occurrence. Luminescent or lighted emergency exit markings are used by train passengers and emergency responders to determine where the closest and most accessible emergency exit is located as well as how to operate the emergency exit mechanisms. Records of the inspection, maintenance, and repairs of emergency window and door exits and operational efficiency tests are used by FRA inspectors to monitor railroads' regulatory compliance with this Part.

*Form Number(s):* N/A.

*Affected Public:* Businesses.

*Reporting Burden:*

| 49 CFR 238 | Respondent universe | Total annual responses | Average time per response | Total annual burden hours |
|---|---|---|---|---|
| 238.113—Emergency Window Exits—Markings | 22 railroads | 662 window markings | 60 minutes/90 minutes/ 120 minutes | 964 |
| 238.114–Rescue Access Windows | 22 railroads | 1,092 access window markings | 45 minutes | 819 |
| 238.121—Emergency Communications—Marked Intercom Locations | 22 railroads | 116 marked intercom locations | 5 minutes | 10 |
| 238.123—Emergency Road Access—Markings and Instructions | 22 railroads | 232 marked roof access locations | 30 minutes | 116 |
| 238.303—Exterior Calendar Day Mechanical Inspection of Equip | 22 railroads | 150 required replacement markings | 20 minutes | 50 |
| —Rescue Access Exterior Markings/Signage/Instructions | 22 railroads | 150 records | 2 minutes | 5 |
| —Records of Non-Compliance | | | | |
| 238.305—Interior Calendar Day Mechanical Inspection of Cars. | | | | |
| —Written Notification to Train Crew of Non-compliant Car + Notice on Door | 22 railroads | 260 notifications + 260 notices | 1 minute | 9 |
| —Inoperative PA system and Notification to Crew | 22 railroads | 300 notifications | 1 minute | 5 |
| —Records of Non-complying Condition | 22 railroads | 300 records | 2 minutes | 10 |
| 238.307—Periodic Mechanical Inspection of Pass. Cars—Replacement Roof Access Markings | 22 railroads | 32 replacement markings | 20 minutes | 11 |

*Respondent Universe:* Businesses (railroads).

*Frequency of Submission:* On occasion.

*Total Responses:* 3,554.

*Estimated Total Annual Burden:* 1,999 hours.

*Status:* Extension of a currently approved collection.

Pursuant to 44 U.S.C. 3507(a) and 5 CFR 1320.5(b), 1320.8(b)(3)(vi), FRA informs all interested parties that it may not conduct or sponsor, and a respondent is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

**Authority:** 44 U.S.C. 3501–3520.

Issued in Washington, DC on October 13, 2010.

**Kimberly Coronel,**

*Director, Office of Financial Management, Federal Railroad Administration.*

[FR Doc. 2010–26158 Filed 10–15–10; 8:45 am]

**BILLING CODE 4910–06–P**

## DEPARTMENT OF TRANSPORTATION

### Maritime Administration

**[Docket No. 2010–0092]**

### Marine Transportation System National Advisory Council

**AGENCY:** Maritime Administration, DOT.

**ACTION:** Request for applications.

**SUMMARY:** The Maritime Administration seeks applications for membership on the Marine Transportation System National Advisory Council (MTSNAC). This Committee advises and makes recommendations on impediments that

hinder the effective use and expansion of America's Marine Highways; waterways and ports, and their intermodal, road, rail, and marine high connections; and guidelines for the development of a national freight policy from a marine transportation perspective to the Secretary of Transportation via the Maritime Administrator.

**DATES:** Completed application forms should reach us on or before November 17, 2010.

**ADDRESSES:** Interested candidates may request an application form and submit a completed application by one of the following methods: E-mail: *nac.marad@dot.gov,* subject line: MTSNAC Application Fax: 202–366–6988, ATTN: MTSNAC DFO, please provide name, mailing address and telephone and fax numbers to send application forms to. Mail: MARAD–MTSNAC Designated Federal Officer, Room W21–310, U.S. Department of Transportation, 1200 New Jersey Ave., SE., Washington, DC 20590, please provide name, mailing address and telephone and fax numbers to send application forms to: Internet: To download a PDF or MS-Word application form, visit MTSNAC Web site at *http://www.mtsnac.org.*

**FOR FURTHER INFORMATION CONTACT:** Mr. Richard Lolich, MTSNAC Designated Federal Officer, Maritime Administration, 1200 New Jersey Ave., SE., Room W21–310, Washington, DC 20590, *Richard.Lolich@dot.gov*, Phone: 202–366–0704, Fax: 202–366–6988.

**SUPPLEMENTARY INFORMATION:** The MTSNAC is an advisory committee established in accordance with the provisions of the Federal Advisory Committee Act (FACA) 5 U.S.C. App. 1 (Pub. L. 92–463) and the Energy Independence and Security Act of 2007 (Pub. L. 110–140). The MTSNAC advises, consults with, reports to, and makes recommendations to the Secretary on matters relating to the Marine Transportation System. Such matters may include, but are not limited to:

Impediments that hinder the effective use and expansion of America's Marine Highways, and the expanded use of the marine transportation system for freight and passengers; Waterways and ports, and their intermodal road, rail, and marine highway connections and actions required to meet current and future national transportation system integration needs; Strategy, policy, and goals to ensure an environmentally responsible and safe system that improves the global competitiveness and national security of the U.S.;

Guidelines for the development of a national freight policy from a marine transportation Perspective, and; such other matters, related to those above, that the Secretary or sponsor may charge the Committee with addressing. The full Committee normally meets at least two to three times per fiscal year. Subcommittee meetings and teleconferences are held more frequently, as needed. It may also meet for extraordinary purposes.

Twenty-eight (28) positions will be filled. Organizations and companies with experience inone or more of the following sectors of the marine transportation industry are encouraged to apply: Ports and Terminal Operators, Shippers, Vessel Operators, Non-Marine Transportation Providers, Metropolitan Planning Organizations and State DOTs, Shipbuilders, Labor and Workforce Development, and Academia.

Registered lobbyists are not eligible to serve on Federal Advisory Committees. Registered lobbyists are lobbyists required to comply with provisions contained in the Lobbying Disclosure Act of 1995 (Pub. L. 110–81, as amended).

Each member serves for a term of two years. Members may serve consecutive terms. All members serve at their own expense and receive no salary. While attending meetings or when otherwise engaged in committee business, members will be reimbursed for travel and per diem expenses as permitted under applicable Federal travel regulations.

If you are interested in applying to become a member of the Committee, send a completed application to Mr. Richard Lolich, Designated Federal Officer (DFO) of the Marine Transportation System National Advisory Council. Send the application in time for it to be received by the DFO on or before November 17, 2010.

Dated: October 12, 2010.

By Order of the Maritime Administrator.

**Christine Gurland,**

*Secretary, Maritime Administration.*

[FR Doc. 2010–26092 Filed 10–15–10; 8:45 am]

**BILLING CODE 4910–81–P**

## DEPARTMENT OF TRANSPORTATION

### Federal Railroad Administration

### Safety Advisory 2010–03

**AGENCY:** Federal Railroad Administration (FRA), Department of Transportation (DOT).

**ACTION:** Notice of Safety Advisory; staying alert and situational awareness.

**SUMMARY:** FRA is issuing Safety Advisory 2010–03 to remind railroads and their employees of the importance of situational awareness and the need to stay alert whenever the job that is being performed changes, particularly in main track territory. This safety advisory contains various recommendations to railroads to ensure that these issues are addressed by appropriate policies and procedures.

**FOR FURTHER INFORMATION CONTACT:** Ronald Hynes, Director, Office of Safety Compliance and Assurance, Office of Railroad Safety, FRA, 1200 New Jersey Avenue, SE., Washington, DC 20590, telephone (202) 493–6404; or Joseph St. Peter, Trial Attorney, Office of Chief Counsel, FRA, 1200 New Jersey Avenue, SE., Washington, DC 20590, telephone (202) 493–6052.

**SUPPLEMENTARY INFORMATION:** The overall safety of railroad operations has improved in recent years. However, a series of events over the past 24 months highlight the need to review current railroad procedures and practices. This safety advisory emphasizes the need for railroads to review and update their current procedures relating to situational awareness, alertness when working on or near main tracks, and job briefings whenever there is a change in situation.

**Recent Incidents**

The following is a discussion of the circumstances surrounding a recent fatal incident, and is based only on FRA's preliminary investigation. The accident is still under investigation by FRA and local authorities. The causes and contributing factors, if any, have not yet been established. Therefore, nothing in this safety advisory is intended to attribute a cause to the incident or place responsibility for the incident on the acts or omissions of any person or entity.

The fatal incident occurred on September 1, 2010, at approximately 6:50 a.m., in Coon Rapids, Minnesota, on the BNSF Railway's (BNSF) Twin Cities Division, Staples Subdivision, in double-main track territory. The incident occurred when a westbound BNSF track geometry train stopped on Main Track #1 just west of Egrett Boulevard, a public highway-rail grade crossing equipped with flashers and gates, to allow a BNSF roadmaster (track supervisor) to disembark from the geometry car. The roadmaster stepped off the rear (east) end of the geometry car on the field side of Main Track #1 and onto the highway-rail grade crossing. As the geometry train resumed movement west, the roadmaster walked

perpendicularly across the crossing, toward a BNSF vehicle parked on the opposite side of the crossing that was waiting to pick him up. As he did so, he stepped into the path of an oncoming passenger train traveling east on adjacent Main Track #2 at 79 mph, and was struck and killed. The roadmaster was a 53-year-old employee with 31 years of railroad service.

FRA is investigating a number of potential factors that may have been involved in this fatal event. FRA is determining whether any of these factors, or any other factors it may discover, worked to drastically change the roadmaster's job situation when he alighted from the geometry car, or provided a false sense of security regarding the conditions at the crossing. Some of these factors include:

(1) The potential distraction caused by the paperwork the roadmaster was holding.

(2) The location of the involved crossing in a "quiet zone." Consequently, the striking passenger train was not required to sound its horn at the grade crossing where the incident occurred.

(3) Whether the locomotive engineer of the passenger train was aware that he or she was passing maintenance-of-way equipment.[1]

(4) The view afforded the roadmaster of adjacent Main Track #2, to the west, as the geometry train departed in that direction.

(5) The location of the BNSF vehicle the roadmaster was walking toward.

(6) The affect of the active warnings displayed by the warning devices at Egrett Boulevard.

Subsequent to the incident discussed above, BNSF conducted an incident briefing with all of their employees, specifically reminding the employees that fouling track during work, or incidental fouling for crossing over a track, can never be taken as a routine matter. Additionally, the briefing addressed several existing BNSF operating rules mandating that employees be alert and attentive to their duties, be alert to potential train movements, and take proper precautions when fouling tracks, including incidental fouling when walking across tracks when protection has not been provided. FRA fully supports these rules and applauds BNSF for taking the initiative to remind all of its employees of the dangers inherent when fouling tracks. FRA believes the foremost obligation of each employee, with regard to his or her own personal safety, is individual awareness and accountability.

FRA notes that there have been other recent incidents in which railroad employees have been killed and injured after potentially becoming distracted or unaware of changing job situations. For instance:

(1) In 2008, an incident occurred when a two-person train crew, after reaching their destination, was instructed to secure their freight train at a location beyond their normal crew change point. The location was on double-main track on a bridge near a parking lot where a relief crew could reach the train. The conductor left the cab of the locomotive to tie hand brakes in order to secure the train, but appears to have done so without performing a job briefing with the engineer and without taking his hand-held radio. He crossed in front of the locomotive and walked across the bridge between the two tracks. An eastward train, approaching at 26 mph, observed the conductor in the foul, sounded its whistle, turned the locomotive's headlights to bright, and tried to stop. However, the eastward train struck and killed the conductor.

(2) In 2008, a track gang and a contractor were working together and walking track along the right-of-way on the Northeast Corridor. Periodically, the gang would request and receive "foul time" to do closer inspections. Sometime before the incident, the foul time was cancelled and acknowledged. Shortly thereafter, an Amtrak train passed into the area and struck three of the track workers and killed the contractor.

(3) In 2009, a four-person yard switching crew was pulling cars up a switching lead to make a shoving movement into a yard track while a road train was approaching in the same direction on the main track adjacent to the switching lead. The conductor riding the second locomotive of the yard switcher exited the cab and got off the train on the "live" side next to the main track, actually fouling the main track. He was subsequently struck and killed by the train operating on the main track.

The employees in the above-listed incidents were all familiar with operating and safety rules, yet in each case, the employees' situational awareness seems to have been degraded. FRA believes that employee alertness to changing job situations could have been heightened in these situations by the act of engaging in additional job briefings. As the railroad industry is well aware, a job briefing should take place at the beginning of a task and anytime the task changes. Railroad operating rules and certain Federal railroad safety regulations require that these job briefings take place. The job briefing can act, particularly when there is more than one person involved with the task, as a "time out," so to speak, for the affected employees to reinforce the need to exercise vigilance and awareness in the performance of their tasks.

FRA also wishes to reiterate concerns previously expressed to the railroad industry in a letter dated January 26, 2010. In the present era of "instant communications and technology and information 'overload,'" railroad employees need to maintain complete situational awareness and avoid distractions. Railroad employees should keep cell phones and other distracting devices turned off and focus their full attention on the task at hand. As the above examples indicate, even slight lapses in situational awareness can lead to tragedy.

*Recommended Action:* In light of the above discussion, and in an effort to maintain the safety of railroad employees on the Nation's rail system, FRA recommends that railroads:

(1) Develop processes that promote safety mentoring of fellow workers regardless of their titles or positions.

(2) Develop procedures that address the need for dialogue between coworkers when exiting equipment near tracks or moving equipment.

(3) Review their current process regarding job briefings and determine best practices that encourage constant communication about the activities at hand.

(4) Assess their current rules addressing personal safety and employee behavior when on or near tracks, with particular emphasis on main tracks.

(5) Review current rules pertaining to activities that could cause employees to become distracted, including rules pertaining to the use of electronic devices, with the view of strengthening and expanding them to include all employees when they are on or near tracks.

(6) Review current rules pertaining to sounding the locomotive horn, with the view of requiring the horn to be sounded when approaching and passing standing trains, especially at or near grade crossings, regardless of whether such crossings are located in quiet zones.

FRA encourages railroad industry members to take action consistent with the preceding recommendations and to take other actions to help ensure the safety of the Nation's railroad employees. FRA may modify this Safety

[1] BNSF has an operating rule that requires the horn to be sounded when approaching engineering department employees and their related equipment.

Advisory 2010–03, issue additional safety advisories, or take other appropriate actions necessary to ensure the highest level of safety on the Nation's railroads, including pursuing other corrective measures under its rail safety authority.

Issued in Washington, DC, on October 12, 2010.

**Jo Strang,**

*Associate Administrator for Railroad Safety/ Chief Safety Officer.*

[FR Doc. 2010–26089 Filed 10–15–10; 8:45 am]

**BILLING CODE 4910–06–P**

## DEPARTMENT OF THE TREASURY

### Office of Thrift Supervision

**[Docket ID: OTS–2010–0028]**

### Open Meeting of the OTS Minority Depository Institutions Advisory Committee

**AGENCY:** Department of the Treasury, Office of Thrift Supervision.

**ACTION:** Notice of meeting.

**SUMMARY:** The OTS Minority Depository Institutions Advisory Committee (MDIAC) will convene a meeting on Wednesday, November 3, 2010, in Conference Room 6A of the Office of Thrift Supervision, 1700 G Street, NW., Washington, DC, beginning at 9 a.m. Eastern Time. The meeting will be open to the public.

**DATES:** The meeting will be held on Wednesday, November 3, 2010, at 9 a.m. Eastern Time.

**ADDRESSES:** The meeting will be held at the Office of Thrift Supervision, 1700 G Street, NW., Washington, DC in Conference Room 6A. The public is invited to submit written statements to the MDIAC by any one of the following methods:

- *E-mail address: Commaffairs@ots.treas.gov;* or
- *Mail:* To Deirdre A. Foley, Designated Federal Official, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552 in triplicate.

The agency must receive statements no later than October 27, 2010.

**FOR FURTHER INFORMATION CONTACT:** Deirdre A. Foley, Designated Federal Official, (202) 906–5750, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552.

**SUPPLEMENTARY INFORMATION:** By this notice, the Office of Thrift Supervision is announcing that the OTS Minority Depository Institutions Advisory Committee will convene a meeting on Wednesday, November 3, 2010, in Conference Room 6A at the Office of Thrift Supervision, 1700 G Street, NW., Washington, DC, beginning at 9 a.m. Eastern Time. The meeting will be open to the public. Because the meeting will be held in a secured facility with limited space, members of the public who plan to attend the meeting, and members of the public who require auxiliary aid, must contact the Office of Community Affairs at 202–906–7891 by 5 p.m. Eastern Time on Wednesday, October 27, 2010, to inform OTS of their desire to attend the meeting and to provide the information that will be required to facilitate entry into the OTS building. To enter the building, attendees should provide a government issued ID (*e.g.,* driver's license, voter registration card, etc.) with their full name, date of birth, and address. The purpose of the meeting is to advise OTS on ways to meet the goals established by section 308 of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (FIRREA), Public Law 101–73, Title III, 103 Stat. 353, 12 U.S.C.A. § 1463 note. The goals of section 308 are to preserve the present number of minority institutions, preserve the minority character of minority-owned institutions in cases involving mergers or acquisitions, provide technical assistance, and encourage the creation of new minority institutions. The MDIAC will help OTS meet those goals by providing informed advice and recommendations regarding a range of issues involving minority depository institutions.

Dated: October 6, 2010.

By the Office of Thrift Supervision.

**Deirdre A. Foley,**

*Designated Federal Official.*

[FR Doc. 2010–25680 Filed 10–15–10; 8:45 am]

**BILLING CODE 6720–01–M**

Federal Register

**Monday,**
**October 18, 2010**

## Part II

# Department of the Interior

**Fish and Wildlife Service**

**50 CFR Part 17**

**Endangered and Threatened Wildlife and Plants; Revised Designation of Critical Habitat for Bull Trout in the Coterminous United States; Final Rule**

**DEPARTMENT OF THE INTERIOR**

**Fish and Wildlife Service**

**50 CFR Part 17**

**[Docket No. FWS–R1–ES–2009-0085]**
**[MO 92210-0-0009]**

**RIN 1018-AW88**

## Endangered and Threatened Wildlife and Plants; Revised Designation of Critical Habitat for Bull Trout in the Coterminous United States

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Final rule.

**SUMMARY:** We, the U.S. Fish and Wildlife Service, are revising critical habitat for the bull trout (*Salvelinus confluentus*) under the Endangered Species Act of 1973, as amended (Act). We are designating a total of 31,750.8 km (19,729.0 mi) of streams (which includes 1,213.2 km (754.0 mi) of marine shoreline) and are designating a total of 197,589.2 ha (488,251.7 ac) of reservoirs and lakes. The areas designated as critical habitat are located in the States of Washington, Oregon, Nevada, Idaho, and Montana.

**DATES:** This rule becomes effective on November 17, 2010.

**ADDRESSES:** This final rule and the associated final economic analysis, as well as comments and materials received, and supporting documentation we used in preparing this final rule, are available on the internet *http://www.regulations.gov* (see Docket No. FWS–R1–ES–2009-0085; at *http://www.fws.gov/pacific/bulltrout/*; and by appointment, during normal business hours, at the U.S. Fish and Wildlife Service, Idaho Fish and Wildlife Office, 1387 S. Vinnell Way, Boise, ID 83709; telephone 208–378–5293; facsimile 208–378–5262.

**FOR FURTHER INFORMATION CONTACT:** Brian Kelly, State Supervisor, U.S. Fish and Wildlife Service, Idaho Fish and Wildlife Office (see **ADDRESSES**). If you use a telecommunications device for the deaf (TDD), call the Federal Information Relay Service (FIRS) at 800-877-8339.

**SUPPLEMENTARY INFORMATION:**

### Background

It is our intent to discuss only those topics directly relevant to the development and designation of critical habitat for the bull trout in this final rule. For more information on bull trout biology and habitat, population abundance and trend, distribution, demographic features, habitat use and conditions, threats, and conservation measures, please refer to the Bull Trout 5-year Review Summary and Evaluation, completed April 25, 2008, available at *http://ecos.fws.gov/docs/five_year _review/doc1907.pdf*. For information on bull trout critical habitat, and information on the associated draft economic analysis for the proposed rule to designate revised critical habitat, refer to the proposed rule to designate critical habitat for the bull trout published in the **Federal Register** on January 14, 2010 (75 FR 2269).

*Description, Distribution, Habitat and Recovery*

Bull trout are members of the char subgroup of the family Salmonidae and are native to waters of western North America. Bull trout range throughout the Columbia River and Snake River basins, extending east to headwater streams in Montana and Idaho, into Canada, and in the Klamath River basin of south-central Oregon. Bull trout historically occurred in the Sacramento River basin, and were more widespread in general than they are now. The distribution of populations, however, is scattered and patchy (Goetz 1989, p. 4; Ziller 1992, p. 6; Rieman and McIntyre 1993, p. 3; Light *et al.* 1996, p. 44; Quigley and Arbelbide 1997, p. 1176).

Bull trout have more specific habitat requirements than most other salmonids (Rieman and McIntyre 1993, p. 4). Habitat components that particularly influence their distribution and abundance include water temperature, cover, channel form and stability, spawning and rearing substrate conditions, and migratory corridors (Fraley and Shepard 1989, p. 138; Goetz 1989, p. 19; Watson and Hillman 1997, p. 247). Large patches of these components are necessary to support robust populations. This rule identifies those physical or biological features essential to bull trout conservation.

Bull trout exhibit a variety of migratory and nonmigratory life histories. Stream-resident bull trout complete their entire life cycle in the tributary streams where they spawn and rear. Most bull trout are migratory, spawning in tributary streams where juvenile fish usually rear from 1 to 4 years before migrating to either a larger river (fluvial) or lake (adfluvial) where they spend their adult life, returning to the tributary stream to spawn (Fraley and Shepard 1989, p. 133). Resident and migratory forms may be found together, and either form can produce resident or migratory offspring (Rieman and McIntyre 1993, p. 2). Historically most bull trout populations may have included a migratory component, and any resident-only forms found today may often reflect a loss of the migratory component due to impacts such as habitat loss or migration barriers (Muhlfeld 2010, pers.comm.).

Bull trout, coastal cutthroat trout (*Oncorhynchus clarkii clarkii*), Pacific salmon (*Oncorhynchus* spp.), and other species that migrate from saltwater to freshwater to reproduce are commonly referred to as anadromous. However, bull trout, coastal cutthroat trout, and some other species that enter the marine environment are more properly termed amphidromous. Unlike strictly anadromous species, such as Pacific salmon, amphidromous species often return seasonally to fresh water as subadults, sometimes for several years, before returning to spawn (Wilson 1997, p. 5; Brenkman and Corbett, 2005, p. 1075). The amphidromous life history form of bull trout is unique to the Coastal–Puget Sound population (64 FR 58921, November 1, 1999). For additional information on the biology of this life form, see the June 25, 2004, proposed critical habitat designation for the Jarbidge River, Coastal–Puget Sound, and Saint Mary–Belly River populations of bull trout (69 FR 35767).

The decline of bull trout is primarily due to habitat degradation and fragmentation, blockage of migratory corridors, poor water quality, past fisheries management practices, impoundments, dams, water diversions, and the introduction of nonnative species (63 FR 31647, June 10, 1998; 64 FR 17112, April 8, 1999). Climate change may exacerbate some of these impacts. The bull trout 5–year review (Service 2008, p. 45) recommended that the recovery units identified in the 2002 draft recovery plan be updated based on assemblages of bull trout core areas (metapopulations, or interacting breeding populations) that retain genetic and ecological integrity and are significant to the distribution of bull trout throughout the conterminous United States. After consulting with biologists from States, Federal agencies, and Native American Tribes, and applying the best scientific information available, we identified six draft recovery units for bull trout in the conterminous United States. Please refer to the "Critical Habitat" section below for additional information on this topic.

*Previous Federal Actions*

On November 29, 2002, we proposed to designate critical habitat for the Klamath River and Columbia River bull trout populations (67 FR 71235). On October 6, 2004, we finalized the critical habitat designation for the Klamath

River and Columbia River bull trout populations (69 FR 59995). On June 25, 2004, we proposed to designate critical habitat for the Jarbidge River, Coastal–Puget Sound, and Saint Mary–Belly River bull trout populations (69 FR 35767). On September 26, 2005, we designated critical habitat for the Klamath River, Columbia River, Jarbidge River, Coastal–Puget Sound, and Saint Mary–Belly River populations of bull trout (70 FR 56212). Please refer to the above-mentioned rules for a detailed summary of previous Federal actions completed prior to publication of this final rule.

On January 5, 2006, a complaint was filed in Federal district court by the Alliance for the Wild Rockies, Inc., and Friends of the Wild Swan, alleging the U.S. Fish and Wildlife Service (Service) failed to designate adequate critical habitat, failed to rely on the best scientific and commercial data available, failed to consider the relevant factors that led to listing, and failed to properly assess the economic benefits and costs of critical habitat designation. Other allegations included inadequate analysis and unlawful use of exclusions under section 4(b)(2) of the Act. On March 23, 2009, the Service provided notice to the U.S. District Court for the District of Oregon that we would seek remand of the final critical habitat rule for bull trout based on the findings of an investigative report by the Department of the Interior's Inspector General (USDI 2008, pp. 10–38). On July 1, 2009, the Court granted our request for a voluntary remand of the 2005 final rule and directed a new proposed rule to be completed by December 31, 2009, with a final rule submitted to the **Federal Register** by September 30, 2010 (*Alliance for the Wild Rockies* v. *Allen*, 2009 U.S. Dist. LEXIS 63122 (D. Or., July 1, 2009)). On January 14, 2010, the Service published a proposed revised bull trout critical habitat rule (75 FR 2269). The comment period on the proposed rule was open for 60 days, ending March 15, 2010. On March 23, 2010, we reopened the comment period on the proposed rule for an additional 14 days, ending April 5, 2010 (75 FR 13715).

**Summary of Comments and Recommendations**

We requested written comments from the public on the proposed designation of critical habitat for the bull trout during two comment periods. The first comment period, associated with the publication of the proposed rule and announcement of availability of draft economic analysis (75 FR 2269, January 14, 2010), opened on January 14, 2010, and closed on March 15, 2010. We also reopened the comment period for an additional 15 days from March 23, 2010, to April 5, 2010 (75 FR 13715, March 23, 2010), to accommodate a request for a comment period extension. We also contacted appropriate Federal, State, tribal, and local agencies, scientific organizations, and other interested parties and invited them to comment on the proposed rule and the draft economic analysis. We held a public hearing in Boise, Idaho, on February 25, 2010, and held public meetings and open houses in Bend, Chiloquin, and LaGrande, Oregon; Post Falls, Idaho; Missoula, Montana; Elko, Nevada; and Wenatchee Washington. During the first comment period, we received a request for an additional public hearing from the Native Fish Society; however, section 4(b)(5)(E) of the Endangered Species Act of 1973, as amended (Act) (16 U.S.C. 1531 *et seq.*), only requires that one public hearing be held 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. Because of the court-ordered deadline, we were unable to hold an additional public hearing; however, we did conduct an additional open house and public information meeting in Vancouver, Washington, in response to the Native Fish Society's request.

We received several hundred comment letters and e-mails from individuals and organizations, and speaker testimony at the February 25, 2010, Boise, Idaho, public hearing. We also received comment letters from four peer reviewers, eight State agencies, several Native American Tribes, and seven Federal agencies, including the U.S. Navy.

We coordinated the proposed revision of critical habitat with federally recognized Tribes on a government-to-government basis in accordance with the President's memorandum of April 29, 1994, "Government-to-Government Relations with Native American Tribal Governments" (59 FR 22951); Executive Order 13175; and the relevant provision of the Departmental Manual of the Department of the Interior (512 DM 2). We contacted all Tribes potentially affected by the proposed designation and met with a number of these Tribes to discuss their ongoing or future management strategies for bull trout.

All substantive information provided during comment periods has either been incorporated directly into this final designation or addressed below. Comments we received were grouped into general issues specifically relating to the proposed critical habitat designation for the bull trout, and are addressed in the following summary and incorporated into the final rule as appropriate.

*Peer Review*

In accordance with our policy published in the **Federal Register** on July 1, 1994, (59 FR 34270), we solicited opinions from four knowledgeable individuals with scientific expertise that included familiarity with the species, the geographic region in which the species occurs, and conservation biology principles. We received responses from each of the peer reviewers we contacted. We reviewed all comments we received for substantive issues and new information regarding bull trout critical habitat. We have addressed peer reviewer comments in the following summary and have incorporated them into this final rule as appropriate.

The peer reviewers generally agreed we relied on the best scientific information available, accurately described the species and its habitat requirements (primary constituent elements (PCEs)), and accurately characterized the reasons for the species' decline and the threats to its habitat, and the peer reviewers generally concurred with our critical habitat selection criteria. Peer reviewer comments addressed several topics, including the importance of off-channel habitats and information on specific waterbodies, climate change, migratory corridors and connectivity, historical and contemporary range, disturbance processes, primary constituent elements, and threats.

*Comments from Peer Reviewers*

(1) *Comment:* The Service should discuss uncertainty in our knowledge of habitat use by bull trout and what habitat features are important to bull trout. Peer reviewers expressed concern about how new information (e.g., regarding bull trout occupancy, and habitat requirements and use) should be integrated into critical habitat protections. Because we do not know what type of disturbance will occur where, or how long those effects may last, there are uncertainties regarding future habitat viability (i.e., what is good habitat today might not be suitable in the future, and vice versa).

Some specific comments include the following. The term "migratory corridors" implies that fish do not occupy these areas for extended periods of time during their life history, but mainstem river habitats are critical for rearing and overwintering. Subadults stay for months and years in these areas

to grow to maturity. Bull trout depend critically on large patches of suitably cold habitat; cold habitat is necessary, but it also has to be very large as well. In addition to connectivity, this is a landscape characteristic that defines the species' local occurrence. In areas where anadromous fish are extirpated or endangered, bull trout have been affected through the loss of abundant prey in the form of parr and smolts, and by a severe reduction in marine-derived nutrients that adult anadromous fish formerly annually returned to interior basins. The PCEs do not address habitat requirements for fry-parr rearing, fry-parr overwintering, adult staging, and adult overwintering. PCE 6 needs to address cobble/boulder substrates with a few fines and abundant interstitial spaces as essential for overwintering bull trout juveniles and resident bull trout. The actual range of spawning temperature is wider and often noted in field observations, but less frequently published. Studies found that fish in cold water did not move outside of cold water to other spawning areas, but there is probably more variation than indicated in the proposed rule (75 FR 2278, January 14, 2010). The implication is that a wider range of habitats may be important for spawning. Finally, it appeared to reviewers that there was an arbitrary distinction drawn between foraging, migration, and overwintering (FMO) and spawning and rearing habitat. In addition, peer reviewers provided additional bull trout life-history information.

*Our Response:* The Service agrees there are many uncertainties in the identification and protection of essential bull trout habitat. Uncertainties include an incomplete understanding of important features, uncertainty of future disturbance effects, a lack of data to clearly distinguish between spawning and rearing and FMO habitats, and a lack of information on how the absence of or a reduction in anadromous fish abundance affects bull trout. The PCEs in this final rule represent our best current understanding of habitat requirements for bull trout. The PCEs were developed by working with a broad array of local experts to identify both occupied habitat that contains physical or biological features essential to bull trout conservation, and unoccupied habitat that is essential to conservation. We acknowledge that potential disturbances such as wildfire or invasive species introductions are difficult to predict, but may affect bull trout habitat. To address this concern, we designated critical habitat areas we believe will be sufficient to address variability in the habitat function of individual portions of these habitats over time, based on the best available scientific information. Should it become necessary, we can revise critical habitat to address more complete or additional information (if and when such information becomes available) relative to bull trout conservation.

We have revised the PCEs based on the peer review and other comments, and believe they address all life-history components and habitat needs for bull trout, including the need for large patches of suitably cold habitat. Given the wide range of circumstances and habitats to which PCEs may apply, they necessarily lack absolute specificity and detail. The sections on **Primary Constituent Elements**, **Effects of Critical Habitat Designation**, and *Application of the Jeopardy and Adverse Modification Standards*, below, provide additional context for how the PCEs will be interpreted and implemented.

We acknowledge an imprecise understanding of the distinction between spawning and rearing habitat and FMO habitat on a general and site-specific basis. This final rule acknowledges that bull trout typically spawn over a narrow time window of a couple weeks during periods of decreasing water temperatures, but clarifies that spawning ranges from August to November depending on local conditions (Swanberg 1997, p. 735). When we discuss migratory corridors in this rule, we generally refer to FMO habitat, which includes more than just habitat for migration at limited times of year. We agree that there is considerable uncertainty regarding the role FMO habitat plays in any particular area. We anticipate the need to include spatial and temporal considerations regarding the role of FMO habitat for particular areas during section 7 consultation, and modify those consultations accordingly.

We have a limited understanding of the effects that the loss of anadromous fish had on bull trout, although bull trout appear to continue to thrive in some areas where anadromous fish have been eliminated. However, bull trout populations may have been more robust where anadromous fish were historically also present, or present in greater numbers. For the purposes of this designation, we believe identifying essential habitats regardless of the historic or current presence of anadromous fish provides an opportunity to protect those essential habitats. We anticipate evaluating more closely the role anadromous fish may play in bull trout conservation during recovery planning.

(2) *Comment:* Climate change should be identified as an existing stressor that compounds other stressors, contributing to bull trout decline. Due to the complex interaction of climatic responses and the high degree of uncertainty associated with climate projections, there needs to be some type of criteria (e.g., maximum summer temperatures) in deciding to deemphasize some habitats. One peer reviewer commented the current analysis of climate impacts does not help in thinking about localized climate impacts; it provides a big picture view that is probably a lot more apocalyptic than might actually occur (for example, air may respond a lot more strongly to climate impacts than water temperatures). Maximum air and water temperatures are not always correlated, and changes to air temperatures may not reliably indicate changes to water temperature. Lower-elevation, warmer, marginal habitats should not necessarily be excluded from critical habitat because they still may serve as important migratory corridors during certain times of the year that could link isolated populations. Not including these habitats as critical habitat could result in further habitat fragmentation, population isolation, and associated threats (e.g., reduced genetic diversity.). The Service should address the extent to which such habitats are valued and may be accounted for in recovery planning.

*Our Response:* We are unable to predict the site-specific effects of climate change on bull trout habitat throughout the range of the species with certainty, but we did consider climate change as we developed the proposed rule (75 FR 2280, January 14, 2010). For areas that were marginal in terms of adequately providing PCEs for the bull trout, which we believe would be further degraded as a result of climate change, we chose not to identify those areas as critical habitat. However, this rationale was applied only in a few instances. We agree with the peer review comments that these warmer habitats can be essential to bull trout conservation because they facilitate connectivity among otherwise isolated headwater populations of bull trout. In the Klamath Basin, we are designating a larger amount of unoccupied habitat of this type specifically for this reason. In most cases, these areas can serve as migratory corridors in a few cooler months of the year with higher water flows. Also, providing cold-water habitat during low-flow summer months may never have been an important feature of this kind of habitat for bull trout.

(3) *Comment:* While the presence of nonnative invasive species is likely

detrimental to bull trout in most cases, areas with nonnative species present should not necessarily be excluded from critical habitat, as seems to be suggested under PCE 9. Nonnative species can serve as an important forage base where the native fish assemblage has been fractured. The Service should address more clearly how nonnative species impact our evaluation of whether habitats are essential.

*Our Response:* We agree with peer reviewer's comments and have revised PCE 9 to reflect the concern. We considered the impact of invasive species to evaluate areas that may have been marginal habitat to begin with. If these areas were additionally compromised because of robust populations of invasive species that would be difficult to control, we are not designating the area as critical habitat if bull trout populations were not reasonably recoverable and the area was not needed for recovery. In some cases bull trout occur in good habitat that is primarily impacted by invasive species. If these populations are essential to recovery and special management actions can be reasonably implemented to control invasive species, we are designating the area as critical habitat. More importantly, this PCE is included here as one key bull trout habitat protection element. So, for example, a Federal action that would introduce an invasive species such as brook trout in a watershed with bull trout critical habitat would be inconsistent with the recovery needs of the species in that area.

(4) *Comment:* The Service should ensure that confining the lateral extent of the critical habitat designation in streams to the bankfull elevation addresses habitat needs. The Service should also clarify what is meant by habitat complexity under PCE 4, and develop appropriate metrics that relate to habitat complexity. In some basins, off-channel habitats may be critical for providing low-velocity habitats for rearing small fish, and the accessibility of these habitats will change with flow. Many of the constituent elements identified for bull trout depend on watersheds as a whole, and other contributing tributaries, not just the reaches that bull trout use. Consequently, it may be difficult or impossible to conserve bull trout by limiting habitat protection and restoration only to the reaches that they use.

Peer reviewer comments related to threats included observations that roads can increase the likelihood of poaching; herbicides and pesticides cause additional agricultural effects; screening of diversions may reduce the impacts of irrigation; negative impacts of flow modifications associated with hydropower and flood control operations, and summer augmentation, may occur in downstream areas; and road crossings may create barriers in addition to barriers already in place from dams.

*Our Response:* Activities above the ordinary high water mark can, and often do, impact bull trout critical habitat. Off-channel habitats may be seasonally important for bull trout, and upland management practices such as road construction, use, and maintenance or timber harvest can affect aquatic habitat. Actions that occur upstream in a watershed above bull trout occurrence reaches can also adversely affect designated habitat if not properly conducted. We will implement this rule consistent with our understanding of these effects, and work closely and cooperatively with Federal agencies to ensure any such actions do not adversely modify designated critical habitat.

When we discuss bull trout habitat complexity, we refer to a diversity of pool, riffle, and run habitats in streams, and gravel, cobble, and boulder stream substrates with open interstitial spaces. We also refer to stream channels and their associated riparian habitat areas that collectively function to provide important features such as undercut stream banks, shade, overhanging cover, and large woody debris in streams and other waterbodies. Any Federal actions that would adversely modify these features would be inconsistent with this rule. Examples of these actions could include activities that introduce sediment into streams that clog interstitial spaces, discharge dredged or fill material into stream pool habitat, degrade stream banks, and reduce or remove large woody debris. Because of this habitat complexity across the range of the species, we determined and quantified the habitat needs of the bull trout and defined the PCEs to include the needs of the species across all types of waterbodies within the full range of the bull trout. We have presented additional information for Federal agencies in the sections on **Primary Constituent Elements** and *Section 7 Consultation*, below, to help them consider their future actions and ongoing actions where they have continuing discretionary involvement with regard to conserving the PCEs. With regard to the comment that it may be difficult or impossible to conserve bull trout by limiting habitat protection and restoration only to the reaches that they use, we do not limit the critical habitat designation to occupied habitat. We are designating approximately 1,323.7 km (822.5 mi) of streams and 6,758.8 ha (16,701.3 ac) of unoccupied habitat to address bull trout conservation needs in specific geographic areas.

(5) *Comment:* It is unclear where occupied habitats that are not proposed for designation are located, or where historical populations of bull trout once occurred. It is reasonably arguable that some critical habitat is more critical to the conservation needs of the species than other critical habitat.

*Our Response:* Section 3(5)(A) of the Act defines critical habitat, in part, as the specific areas within the geographical area occupied by the species at the time it is listed, on which are found those physical or biological features essential to the conservation of the species which may require special management considerations or protection. Based on this definition, the proposed rule identified a large majority of habitat that was known to be occupied by bull trout at the time of listing. It is uncertain how much habitat may have been historically occupied but is no longer occupied. We used the best scientific information available to include occupied habitat with the features essential to the conservation of the species, as well as unoccupied areas also essential to the conservation of the bull trout. All areas designated as critical habitat in this final rule are essential to the conservation of the species, based on the best available information.

(6) *Comment:* Peer reviewers questioned whether restoration activities in areas that are not designated as critical habitat could be counted as progress in terms of recovery, and whether all areas designated as critical habitat would have to be recovered before declaring overall bull trout recovery. One peer reviewer recommended that the final rule address how bull trout will be protected in reintroduction sites, such as the Clackamas River in Oregon, and how these areas may or may not be linked to the persistence of populations.

*Our Response:* These comments will be fully considered as we engage in the recovery planning process. Please see the *Relationship of Critical Habitat to Recovery Planning* section of this rule for more information regarding this effort.

(7) *Comment:* One peer reviewer stated that it wasn't clear whether areas outside of critical habitat are essential to conservation of bull trout, and that if not, biological consultations and

recovery planning and implementation should incorporate these considerations.

*Our Response:* This rule designates as critical habitat areas that we have determined to meet the definition of critical habitat under section 3(5)(A) of the Act, except for those areas we have identified and expressly excluded under section 4(b)(2) of the Act. A critical habitat designation does not signal that habitat outside the designated area is unimportant or may not be required for recovery of the species. Areas that support populations, but are outside the critical habitat designation, may continue to be subject to conservation actions we implement under section 7(a)(1) of the Act, and are subject to the regulatory protections afforded by the section 7(a)(2) jeopardy standard. Please see the **Effects of Critical Habitat Designation** section in the rule for further information.

(8) *Comment:* The Service should explain what has changed from 2005 to 2010 that enabled a determination that unoccupied habitats were essential for the conservation of bull trout in certain areas.

*Our Response:* As stated in the proposed rule (75 FR 2273, January 14, 2010), in the 2005 final rule we did not designate any unoccupied critical habitat because the Secretary concluded that it was not possible to make a determination that such lands were essential to the conservation of the species. In the proposed rule and this rule, we were able to identify several habitats not occupied at the time of listing that we believe are essential for restoring functioning migratory bull trout populations based on currently available scientific information. These areas often include lower main stem river environments that can provide seasonally important migration habitat for bull trout. This type of habitat is essential in areas where bull trout habitat and population loss over time necessitates reestablishing bull trout in currently unoccupied habitat areas to achieve recovery.

(9) *Comment:* More detailed and recent literature should be reviewed to support the habitat needs discussion. Updated citations and references that list research and other new information obtained since the original listing should be incorporated into the critical habitat rule.

*Our Response:* We agree, and have done so in this final rule.

*Comments from States*

Section 4(i) of the Act states, "the Secretary shall submit to the State agency a written justification for his failure to adopt regulations consistent with the agency's comments or petition." Comments we received from States regarding the proposal to designate revised critical habitat for the bull trout are addressed below. We received comments from the Nevada Division of Wildlife, Montana Fish Wildlife and Parks, Oregon Department of Fish and Wildlife, Washington Department of Fish and Wildlife, Washington Department of Natural Resources (WDNR), Idaho Department of Lands, Idaho Office of Species Conservation, and Idaho Department of Fish and Game related to biological information for specific waterbodies, critical habitat exclusions, and economics. These agencies provided additional information and made recommendations for revisions to the final critical habitat designation in several specific areas. Two agencies expressed specific support for the Service's approach to designating critical habitat.

(1) *Comment:* We received several comments from State resource agencies presenting site-specific biological information on areas that should or should not be considered essential habitat, and the underlying rationale for those recommendations.

*Our Response:* The information received from our State resource agency partners was very helpful, and enabled us to refine our understanding of habitat essential to the conservation of the species, and in the case of occupied habitat, habitat that contains physical or biological features that may require special management considerations or protections. We based the proposed rule on the best available information at that time; we requested technical input from a variety of partners, including the States, to help us refine the final critical habitat designation. The final rule has been adjusted, accordingly, including modifying boundaries of critical habitat units, based on our partners' site-specific biological expertise with the species.

(2) *Comment:* We received comments from some State agencies identifying concerns with the draft economic analysis, which included failure to consider costs related to bull trout recovery, failure to request economic information from the State prior to publication of the proposed rule, and costs to forest land management.

*Our Response:* These comments have been addressed below in the section of the final rule that responds to all comments we received on the draft economic analysis.

(3) *Comment:* Some commenters recommended that we exclude lands subject to State conservation planning efforts, or that we rely on existing habitat protections, such as State forest practice rules, rather than designating critical habitat in those areas.

*Our Response:* We disagree. It would be inappropriate to rely on other protections such as state forest practice rules or similar large-scale programs that have not been subject to review under the Act as an alternative to critical habitat designation, based on the uncertainty of protections that would be afforded to the physical or biological features essential to bull trout conservation. Uncertainty regarding future funding, and revisions and implementation of those plans is also a concern. However, some State conservation planning efforts related to finalized habitat conservation plans (HCPs) have resulted in our exclusion of areas from critical habitat designation under section 4(b)(2) of the Act. Please see the **Exclusions** section below for additional information.

(4) *Comment:* One State agency commented that the Service proposed a vast and over-reaching critical habitat designation without first acquiring the requisite site-specific information required by the Act. The State agency also commented that, without future refinement, the designation would lead to unnecessary regulation on otherwise lawful activities. The agency also expressed concern that the Service ignored information regarding the agency's position when forming the basis for the revised critical habitat designation.

*Our Response:* As required by section 4(b)(2) of the Act, we used the best scientific data available in determining areas that contain the features essential to the conservation of bull trout for the proposed rule. Data sources included research published in peer-reviewed journals and previous Service documents, including the final listing determination (64 FR 58909, November 1, 1999), the bull trout draft recovery plan (Service 2002), and the bull trout 5–year review (Service 2008). In the proposed rule, we requested comments or information from the public, other concerned government agencies, the scientific community, industry, and other interested parties, which included a specific request for information regarding areas essential to the conservation of the species. Because of the court-ordered deadline for delivery of a proposed rule to the **Federal Register**, our strategy was to work closely with our resource management partners after publication of the proposed rule, and use their biological expertise to help us refine the final critical habitat designation. This final

rule incorporates that information, as appropriate.

(5) *Comment:* One State agency commented that the designation of critical habitat for bull trout invites the potential for additional regulatory burdens to be placed on landowners, persons holding public land permits, and industries. The agency also commented that while the Service is already consulting on projects with a Federal nexus under section 7 of the Act, the bar is now arguably raised as reinitiation of consultation will be required to ensure permitted activities do not adversely modify critical habitat.

*Our Response:* The Service believes any additional regulatory burdens resulting from the designation of critical habitat in occupied areas will be minimal. The rationale for this determination is that the species was listed under the Act because of threats to habitat, and section 7 consultations are already required to address any habitat-related impacts associated with Federal actions. Although it is theoretically possible, we have been unable to identify any specific type of Federal action that could adversely modify critical habitat in occupied areas that would not also result in a jeopardy finding for the same action. Accordingly, we do not believe the regulatory bar has been raised in occupied areas. Designating critical habitat adds educational value in these areas by identifying habitats that should be prioritized for recovery actions as opportunities arise. While critical habitat may result in additional conservation requirements for Federal actions in unoccupied areas, we do not believe this would be a significant impact because these areas constitute only 4 percent of the total critical habitat area being designated in this final rule. Federal agencies will need to consider the adverse modification of critical habitat in future section 7 consultations, and may need to reinitiate consultation on existing actions where they have continued discretionary involvement or control if the activity may affect designated critical habitat. However, we anticipate the overall result of reinitiation will be minor because of the similarity between measures needed to avoid the destruction or adverse modification of critical habitat and measures needed to avoid jeopardizing the species. In addition, consultation tools such as streamlining and programmatic consultations are commonly implemented to minimize the administrative costs associated with consultation within the range of bull trout.

(6) *Comment:* Concern was expressed that if all unoccupied critical habitat had to be recolonized and recovered before bull trout could be delisted, the uncertainties and potential costs associated with this requirement would be high.

*Our Response:* One of the greatest conservation benefits of critical habitat is the designation of unoccupied habitat that is essential to the conservation of a listed species. For bull trout, unoccupied habitat plays an important role in restoring connectivity between currently isolated headwater populations via lower mainstem river habitats. The Service does not believe all designated unoccupied habitat would necessarily need to be recolonized and restored to declare recovery, and we would take into consideration the status of adjacent populations (e.g., their robustness in relation to threats). For example, nearby occupied habitats could currently be in an imperiled status, but by restoring bull trout in adjacent unoccupied habitat, the overall recovery potential in that area could be improved. We anticipate that the bull trout recovery planning process and our continued progress towards achieving recovery goals will provide more precision with regard to identifying the restoration needs of specific habitat areas.

(7) *Comment:* Two State agencies expressed support for the Service's approach to designating critical habitat, stating that: (1) The approach generally provides the breadth of habitat necessary to support bull trout in a fully recovered state and includes significant portions of aquatic habitat that are currently not occupied or disconnected due to anthropogenic (i.e., human-caused) factors; and (2) the approach contains those areas essential for the conservation of the bull trout.

*Our Response:* We appreciate this support from our partners, and the helpful site-specific information they presented in response to the request for information in the proposed rule.

(8) *Comment:* The Washington Department of Natural Resources presented information supportive of excluding lands covered under the final State HCP and the final Forest Practices HCPs. The Montana Department of Natural Resources presented information supportive of excluding streams and rivers intersecting forested Montana State Trust lands that would be covered under a draft HCP from the final bull trout critical habitat rule.

*Our Response:* Please refer to the discussion of the Forest Practices HCPs in our responses to Public Comments below and in the *Application of Section 4(b)(2) of the Act* section under **Exclusions** in this final rule. The WDNR State lands HCP is discussed under the *Application of Section 4(b)(2) of the Act* in this rule.

When considering HCPs, draft land-management plans, and draft conservation agreements, the Service can consider the certainty of implementation or the lack thereof, especially if there are no established procedures to ensure that the final instrument will produce the anticipated benefits. The Service believes that, in general, it is inappropriate exclude areas that are covered by draft conservation programs or plans, because their proposed conservation measures are subject to change. Without a high degree of assurance that conservation measures will be implemented and effective for a particular species and its habitat, we cannot complete a meaningful analysis under section 4(b)(2) of the Act.

*Federal Agency Comments*

Bureau of Land Management

(1) *Comment:* The Service should exclude Bureau of Land Management (BLM)-administered lands from critical habitat designation.

*Our Response:* The Secretary of the Interior may exclude an area from critical habitat designation under section 4(b)(2) of the Act after taking into consideration the economic impact, the impact on national security, and any other relevant impact if he determines the benefits of exclusion outweigh the benefits of specifying such area, unless he determines the exclusion would result in the extinction of the species concerned. The primary benefit of including an area within critical habitat designation is the protection provided by section 7(a)(2) of the Act that directs Federal agencies to ensure that their actions do not result in the destruction or adverse modification of critical habitat. The benefit of designating critical habitat is limited if the areas under consideration occur on private lands for which there may not be a Federal nexus to invoke the protections of section 7(a)(2) of the Act. Federal lands by default have a Federal nexus, and the intent of section 7 of the Act is to require Federal agencies to consult on any action authorized, funded, or carried out by such agency to ensure that the action will not jeopardize a listed species or destroy or adversely modify its critical habitat. In addition, section 7(a)(1) of the Act states, in part, "Federal agencies shall, in consultation with and with the assistance of the Secretary, utilize their authorities in furtherance of the purposes of this Act

by carrying out programs for the conservation of endangered and threatened species." Therefore, the benefits of inclusion of these areas are greater because they are Federal lands.

We requested specific information from the BLM describing: (1)Activities being conducted and planned that conserve bull trout or the physical or biological features identified in the proposed critical habitat rule; (2) the status of management plans, including the geographic area covered, date finalized, date implementation was initiated, timeline for future revisions, and the amount of critical habitat affected by the plan; (3) specific management measures that conserve the physical or biological features in the plan area; (4) conservation benefits associated with the plan; (5) information on plan implementation, including the level of certainty and uncertainty that exists with regard to conservation commitments and funding assurances continuing into the future; and (6) the plan's effectiveness related to biological goals and objectives, implementation progress, monitoring, adaptive management provisions, and schedule. We also requested specific examples of completed projects that have improved the status of bull trout within a particular plan area.

Although specific information was not presented, we did receive some information from the BLM on Areas of Critical Environment Concern (ACEC) Plans, the Wild and Scenic River Management (WSR) Plans for the Deschutes and Lower Crooked Rivers in Oregon, and the Willamette Basin Water Quality Restoration Plan (WBWQ) to support their request for the exclusion of BLM-administered lands from critical habitat designation. The BLM also resubmitted comments that were prepared for the Service's consideration for the 2005 bull trout final critical habitat rule; those comments summarize several management plans and guidance documents, such as agency memorandums, BLM Manual chapters, Land Health Standards, Pacific Anadromous Fish Strategy (PACFISH), Inland Fish Strategy (INFISH), National Fire Plan, Healthy Forests Restoration Act of 2003 (16 U.S.C. 6501 *et seq.*), Wilderness Study Areas, Interior Columbia River Basin Ecosystem Management Project, Road Density and Land Management recommendations, and Regional Executive/Line Manager Oversight/Communication roles. We have reviewed the information that was submitted in light of the October 3, 2008, Memorandum Opinion from the Department of the Interior's Office of the Solicitor "The Secretary's Authority to Exclude Areas from a Critical Habitat Designation under section 4(b)(2) of the Endangered Species Act" (DOI 2008), and the best available information. We were unable to confirm that the BLM's management plans and guidance documents provide a conservation benefit for bull trout comparable to critical habitat designation, or that designation of critical habitat on BLM lands would present a disproportionate economic or other relevant impact. The Secretary has elected not to exercise his discretion under section 4(b)(2) of the Act to exclude BLM-administered lands from this revised critical habitat designation. However, we are committed to working efficiently and proactively with the BLM to address their program administration needs, in light of the conservation needs of bull trout.

(2) *Comment:* The BLM commented, "The BLM does not agree and the guidance issued in the October 3, 2008, Solicitors Opinion does not support the conclusion that if something meets the Federal agency obligation under section 7(a)(1) it should automatically be precluded from exclusions under section 4(b)(2)."

*Our Response:* The proposed rule does not state that actions taken to comply with section 7(a)(1) of the Act preclude consideration of those actions for purposes of section 4(b)(2) of the Act; however, it does state that Federal land management plans, in and of themselves, are generally not an appropriate basis for excluding essential habitat. Federal agencies have an independent responsibility under section 7(a)(1) of the Act to use their programs in furtherance of the Act and to utilize their authorities to carry out programs for the conservation of endangered and threatened species. In areas where Federal land management agencies actively manage for bull trout and its habitat, conduct specific conservation actions for the species at a level comparable to critical habitat designation, provide assurances that a plan will remain in effect for a relevant period of time, and show that a disproportionate impact would result from the designation, exclusion under section 4(b)(2) of the Act may be appropriately considered by the Secretary.

(3) *Comment:* Conservation measures within the Northwest Forest Plan (NWFP), Aquatic Conservation Strategy (ACS), and PACFISH/INFISH are currently still in place and continue to be adequate to provide for the conservation of bull trout.

*Our Response:* We recognize the extensive planning and development that has been invested in these efforts, and commend the BLM's efforts to conserve federally listed species on their lands. However, as stated in the proposed rule (75 FR 2273), large-scale Federal land management plans such as the NWFP and its aquatic component (the ACS), and other plans such as PACFISH/INFISH, are in and of themselves generally not an appropriate basis for excluding essential habitat. These plans typically guide agency activities, and provide some level of conservation benefit in occupied bull trout habitat areas, but are fluid documents that may or may not be revised, based on resource availability, management emphasis, and changes in management direction to respond to changing agency priorities.

(4) *Comment:* The designation of critical habitat would not offer any additional protections to bull trout beyond those currently provided.

*Our Response:* We acknowledge in the proposed rule that since the primary threat to bull trout is habitat loss or degradation, the jeopardy analysis under section 7 of the Act for a project with a Federal nexus will most likely evaluate the effects of the action on the conservation or functionality of the habitat for bull trout. We also stated that, in many cases, the analysis of a project to address designated critical habitat would be comparable to the jeopardy analysis, and for many circumstances the outcome of the consultation to address critical habitat would not result in any significant additional project modifications or conservation measures (75 FR 2291, January 14, 2010). A possibility exists that a section 7(a)(2) consultation on a future BLM project would result in a determination that an action would result in the destruction or adverse modification of bull trout critical habitat. In accordance with our current policy, in cases where the Secretary determines the benefits of inclusion (designation) are equal to or outweigh the benefits of exclusion, he may not make an exclusion (USDOI 2008, p. 24).

(5) *Comment:* The designation of critical habitat would impose additional regulatory burdens that would increase the process and administrative costs, and this money would be more appropriately directed at implementing protection measures on the ground.

*Our Response:* The analyses that result from the consultation provisions under section 7(a)(2) of the Act constitute a regulatory benefit of critical habitat, and Federal agencies must consult with the Service on discretionary actions that may affect listed species. Federal agencies must

also analyze the effects of an action on critical habitat, which is a separate and different analysis from that of the effects to the species. We anticipate that, in some cases, this consultation would translate to the implementation of on-the-ground bull trout conservation measures. Avoiding the costs associated with the designation of critical habitat would be the principal benefit of excluding an area under section 4(b)(2) of the Act. We appreciate the BLM's concern that the designation of critical habitat may impose additional regulatory burdens and increase administrative costs; however, the BLM did not present any information characterizing the magnitude of that impact. In order to make a section 4(b)(2) exclusion or critical habitat designation determination, the Secretary must gather the available information about the economic and other relevant impacts that would result from his decision (DOI 2008, p. 15). We have no information available that would indicate that the regulatory and administrative burden that may result from the designation of critical habitat on BLM lands presents a disproportionate impact to the agency that outweighs the regulatory benefit of designating critical habitat on those lands.

(6) *Comment:* The conservation benefit of designating critical habitat would only be realized when the Service determines the action would destroy or adversely modify critical habitat and reasonable and prudent alternatives are issued, which is rare.

*Our Response:* We agree that adverse modification determinations are rare, because in the majority of section 7 consultations the Service is able to work in partnership with Federal agencies to identify ways to accomplish agency management objectives, comply with the Act, and conserve species and their habitats on managed lands. However, in some cases, we may determine a proposed Federal action would alter the physical or biological features of critical habitat to an extent that appreciably reduces its conservation function for bull trout. Under these circumstances, an adverse modification finding for the proposed action would be warranted. There may be additional conservation benefits to consultation on adverse effects that is not limited to adverse modification situations, because an agency may modify an action in advance to avoid any effects to critical habitat and avoid the need for consultation.

(7) *Comment:* Because any conservation benefits realized through the section 7(a)(2) process would already be occurring in areas occupied by bull trout, additional conservation benefit would only occur in areas designated as critical habitat where the species is not present.

*Our Response:* As stated in the proposed rule, when consulting under section 7(a)(2) of the Act, independent analyses are conducted for jeopardy to the species and adverse modification of critical habitat (75 FR 2291, January 14, 2010). In occupied bull trout habitat, any adverse modification determination would likely also result in a jeopardy determination for the same action. As such, project modifications that may be needed to minimize impacts to the species would coincidentally minimize impacts to critical habitat. Accordingly, in occupied critical habitat, it is unlikely, although possible, that an analysis would identify a difference between measures needed to avoid the destruction or adverse modification of critical habitat from measures needed to avoid jeopardizing the species. Alternatively, in unoccupied critical habitat, we would not conduct a jeopardy analysis. However, measures to avoid the destruction or adverse modification of critical habitat may be necessary to ensure that the affected critical habitat area can continue to serve its intended conservation role for the species, or retain the physical or biological features related to the ability of the area to periodically support the species (75 FR 2291, January 14, 2010).

U.S. Forest Service

(1) *Comment:* The U.S. Forest Service (USFS) believes excluding Federal lands continues to be a valid procedure. They recommended that we exclude from critical habitat designation all occupied bull trout habitat on all USFS-managed lands, as well as unoccupied habitat in the Northwest Forest Plan area, but the USFS acknowledged other factors are used by the Service to decide which lands and waters meet the criteria for critical habitat designation or exclusion.

*Our Response:* We have reviewed USFS request in light of the October 3, 2008, Memorandum Opinion from the Department of the Interior's Office of the Solicitor "The Secretary's Authority to Exclude Areas from a Critical Habitat Designation under section 4(b)(2) of the Endangered Species Act" (DOI 2008), and the best available information. We are unable to confirm that the USFS' management activities under the NWFP or other management plans provide a conservation benefit for bull trout comparable to critical habitat designation, or that designation of critical habitat on USFS lands would present a disproportionate economic or other relevant impact. In light of the foregoing, the Secretary has elected not to exercise his discretion under section 4(b)(2) of the Act to exclude USFS-managed lands from this revised critical habitat designation. However, we are committed to working efficiently and proactively with the USFS to address their program administration needs, in light of the conservation needs of bull trout.

(2) *Comment:* The guidance issued in the 2008 Solicitor M-Opinion does not support a conclusion that if something meets the Federal agency obligation under section 7(a)(1), it should automatically be precluded from exclusions under sections 4(b)(2) of the Act.

*Our Response:* See response to BLM comment (2) above.

(3) *Comment:* Conservation measures within the Northwest Forest Plan, Aquatic Conservation Strategy, and PACFISH/INFISH are currently still in place and continue to be adequate to provide for the conservation of bull trout.

*Our Response:* See response to BLM comment (3) above.

(4) *Comment:* Because any conservation benefits realized through actions that used the section 7(a)(2) process would already be occurring in areas occupied by bull trout, The USFS believes the additional conservation benefits of designation would occur only in areas designated as critical habitat that are not actually occupied by bull trout.

*Our Response:* See response to BLM comment (4) above.

(5) *Comment:* After the final rule, the USFS will need time to reinitiate and conclude interagency cooperation on many ongoing Federal actions involving critical habitat, and to initiate and conclude new consultations for actions in the process of being developed in occupied and unoccupied critical habitat areas. To facilitate this consultation workload, the USFS requested that the effective date of the final rule be delayed for 120 days (similar to the National Marine Fisheries Service's (NMFS) final rule designating critical habitat for listed anadromous fish populations).

*Our Response:* Although we appreciate the concern, we have no authorization under the court's remand order to delay the effective date of the rule. However, the Service is committed to working closely and efficiently with our Federal agency partners to meet both their management needs and the conservation needs of bull trout in designated critical habitat areas affected by their actions.

(6) *Comment:* Because critical habitat, by definition, includes those habitats essential to the conservation, and ultimately restoration, of the species, the USFS believes streams on Federal lands that meet critical habitat criteria should be explicitly designated by rule, rather than relying on other planning processes to "de-facto" cover these essential conditions. This helps clarify priority areas, internally and with partners, for habitat conservation and improvement-related efforts that will support recovery planning and implementation. The USFS expressed support for designation of critical habitat on National Forest System lands where bull trout can logically be expected to recover. The agency also supported the designation of critical habitat for all areas that are known to have existing populations of bull trout and the designation of tributaries that drain into known spawning habitats.

*Our Response:* We appreciate the comment, and are designating critical habitat on certain National Forest System lands.

(7) *Comment:* The six new recovery units seem too large to measure recovery should it take place, or be a reachable goal. The old set of 27 smaller recovery units made sense because they were at a scale that is realistic to manage and evaluate the effects of recovery actions.

*Our Response:* This comment is beyond the scope of the final rule. However, there may be a need to revise the existing draft recovery plan or consider alternative recovery unit boundaries to effectively manage and evaluate the effects of recovery actions in each critical habitat unit. We are conducting preliminary work to develop a revised draft recovery plan, with the goal of developing a final bull trout recovery plan in the future.

Bureau of Reclamation

(1) *Comment:* For existing dams, it is unclear how the current condition of the habitat with the dam in place can threaten the physical or biological features of the specific areas being designated as those areas, if occupied, can only be designated if the physical or biological features essential to the conservation of the species are found under the existing conditions (i.e., with the dams in place). The Bureau of Reclamation (BOR) recommended the following language for inclusion in the final rule: "While critical habitat is designated in streams and reservoirs where flows and volumes fluctuate due to water management activities, these are existing conditions that were found at the time of listing. The lateral extent described for those streams and reservoirs influenced by water management activities is considered the upper limit of the critical habitat designation and changes in flows and volumes are acceptable."

*Our Response:* To qualify as critical habitat, an occupied area need not contain all PCEs; one is sufficient. We acknowledge that the adverse modification standard would not require an action agency to create PCEs in occupied areas where such PCEs were wholly absent at the time the areas were designated as critical habitat. Moreover, not all adverse effects on PCEs that are present would rise to the level of adverse modification. We must be cautious, however, not to imply that fluctuating conditions would never constitute an adverse modification of designated habitat for the reason that "these are existing conditions that were found at the time of listing." This would be a flawed approach, for two reasons:

(1) The fact that an existing Federal project is not presently adversely modifying critical habitat does not mean that the same operations would not result in adverse modification under future circumstances. As the section 7 regulations make clear, analysis for jeopardy and adverse modification is heavily dependent on context, and relies on consideration, not only of the effects of the Federal action itself, but also the current baseline, the effects of interrelated and interdependent actions, and the cumulative effects of future non-Federal activities (50 C.F.R. §402.02). Thus, a stream that has adequate flows now, despite Federal diversions, might not have adequate flows in the future as a result of drought or non-Federal diversions. Even if the amount of the Federal diversion does not change, its effect on the PCEs could be more substantial if the context changes. Context plays a critical role in the adverse modification analysis, and it would be improper to prejudge the outcome of future consultations.

(2)Such an approach might lead to the erroneous conclusion that, if a designated area contains essential features, those features are already in a condition that is ideal for bull trout, and therefore any Federal action that maintains the status quo would not cause adverse modification. It is possible for an area to be less than ideal for bull trout, yet contain features that are essential to the species' conservation, because there is no better habitat available to serve an essential function such as migrating, spawning or rearing. An area designated for spawning habitat, for example, might have sufficient clean gravel to provide for some spawning, yet still be suffering some degradation as a result of sedimentation from roads. Depending on the context, a Federal action that causes such sedimentation to continue could constitute adverse modification.

Specifically, the lateral extent of critical habitat in lakes and reservoirs is defined by the perimeter of the waterbody as mapped on standard 1:24,000 scale topographic maps, and the Service assumes in many cases this is full pool level. Defining the lateral limits in reservoirs and lakes in this manner is consistent with the approach taken for streams. Within streams, the critical habitat designation includes the stream channels within the designated stream reaches with the lateral extent defined by the bankfull elevation on one bank to the bankfull elevation on the opposite bank. In cases where the bankfull elevation is not evident on either bank, the ordinary high-water line determines the lateral extent of critical habitat. Conditions at some lakes or reservoirs allow a range of flows to occur. However, a full range for one reservoir may operate from full pool to run-of-river (zero pool) annually, while another reservoir may operate from full pool with a built-in minimum conservation pool to address specific water quality requirements. Reservoir operational requirements related to bull trout critical habitat would be evaluated during the section 7 consultation process on a specific lake or reservoir basis. Accordingly, we are unable to include the statement in the final rule that was requested by the BOR, because the section 7 consultation process has not been concluded.

(2) *Comment:* Lake Cascade and Phillips Reservoir should not be designated as either occupied or unoccupied critical habitat, because they would at best minimally provide two or three PCEs on a seasonal basis and the abundance and spatial arrangement of the minimal PCEs provided would not rise to the level of providing the physical or biological features essential for conservation.

*Our Response:* We are designating stream segments and lakes or reservoirs that contain habitat seasonally to connect and to promote bull trout migratory life-history expression. Maintaining connectivity between bull trout local populations through the restoration and protection of main stem

rivers is a major emphasis for bull trout recovery. The designation of critical habitat in occupied habitat is based on whether lakes or reservoir contain one or more PCEs either seasonally or year-round. We identified two major habitat types (spawning and rearing, and FMO); both of these reservoirs were identified as FMO habitat in the proposed rule. We have determined that Phillips Reservoir is essential for the conservation of the species, because it provides FMO habitat seasonally, during the fall, winter and spring.

In a comment letter we received from the Oregon Department of Fish and Wildlife (ODFW) (March 10, 2010), they specifically recommended inclusion of Phillips Reservoir: "ODFW recommends extending critical habitat designations downstream to the confluence with the Snake River. Specifically we recommend including the mainstem Powder River from Phillips Reservoir downstream to the mouth including Phillips and Thief Valley Reservoirs. This designation would provide the opportunity for connectivity among local populations and full life history expression and to provide consistency with application of the seven guiding principles for bull trout conservation, as well as consistency with other designations in the state." We agree with their assessment. Inclusion of Phillips Reservoir is key to restoring connectivity between local bull trout populations, which is essential to maintaining a viable bull trout population in the Powder River core area.

However, based on the best available scientific information (including new site-specific biological information provided by the BOR), we are not designating Lake Cascade as critical habitat. We agree with the BOR that Lake Cascade lacks several of the essential habitat features, is not confirmed to be occupied by bull trout, and poses too many obstacles to be useful in bull trout conservation. Habitat connections essential for metapopulation dynamics and genetic interchange, which are important to maintaining a viable bull trout population, are lacking. Exotic species have also extensively colonized Lake Cascade, further complicating bull trout recovery (BOR 2010, pers. comm.).

(3) *Comment:* The BOR provided site-specific biological information on bull trout use in the Powder River, Malheur River, and Southwest Idaho River Basins Units, and made several recommendations for clarifications and revisions in the final rule.

*Our Response:* The Service received numerous comments from various Federal agencies including the BOR. The Service reviewed all site-specific comments, and we have revised the final critical habitat designation based on information contained in our files and new information received during the comment period, as appropriate. The final critical designation for the Powder River, Malheur River, and Southwest Idaho River Basins fully considered the information presented by the BOR.

Department of Energy, Bonneville Power Administration

(1) *Comment:* The Federal Columbia Power System (FCRPS) hydropower dams operating under the Service's and the National Oceanic and Atmospheric Administration's (NOAA) Biological Opinions for the FCRPS and Willamette River and within congressionally authorized operating ranges are part of the environmental baseline. Given the extensive management of operations of the FCRPS reservoirs consistent with bull trout and salmonid Biological Opinions, the Service should clarify that the FCRPS reservoirs are managed in a manner that is sufficiently protective to achieve the biological features essential to the conservation of bull trout.

*Our Response:* The Service will assess whether the current management of the FCRPS is sufficient to conserve bull trout with regard to the action described in the biological assessment after we participate in section 7 analyses with the appropriate action agencies involved. The purpose of critical habitat is to identify specific geographic areas that contain the physical or biological features essential for the conservation of an endangered or threatened species and that may require special management considerations or protection. Biological opinions are not conservation plans and do not have specific measures that address the long-term conservation needs of bull trout with regard to PCEs, but rather, they evaluate the effects of particular projects on listed species or its critical habitat. Biological opinions are the formal basis for disclosing NOAA's or the Service's opinion on whether the Federal action will result in jeopardy of a species or adverse modification of critical habitat, and are specific to a particular proposed Federal action. See *Section 7 Consultation*, below, for additional information.

(2) *Comment:* The Bonneville Power Administration (BPA) requested that the Service identify any likely instances where the current FCRPS operations under the Biological Opinions might be detrimental to bull trout critical habitat, and address any potential conflict between two or more listed species and the requirements of two regulatory agencies. The BPA also requested that the Service address whether the current FCRPS or Willamette operations may have to be substantially altered from operations that would otherwise be required under the relevant Biological Opinions. If alterations are identified, the Service should describe how those alterations have been considered in the economic analysis of the impacts of designation.

*Our Response:* It is possible that some future operational alterations may be undertaken as a result of bull trout critical habitat designation, although the specific extent to which project modification costs for the FCRPS or Willamette Project will increase as a result of this designation is unclear. We did not receive any specific data from BPA that would facilitate additional analysis; however, this potential concern is particularly complex because most of the proposed area on the Upper Willamettte River was designated as critical habitat in 2005. The Final Economic Analysis (FEA) applied the best available information and methods to estimate potential incremental impacts. Although section 4 of the Act establishes requirements for listing species and designating critical habitat, it does not address Federal agency requirements under section 7 of the Act, which addresses the need for Federal agencies to consult on the effects of their actions on listed species. Potential FCRPS operations will be analyzed for their effects on bull trout critical habitat once section 7 consultation is reinitiated.

(3) *Comment:* The bankfull width for streams and perimeter of the water as mapped on standard 1:24,000 scale topographic map definitions for the lateral boundaries of critical habitat could imply that any drawdown or lowering of those levels would adversely affect the designated critical habitat. Lake and reservoir drawdown is within the authorized range of FCRPS and other hydro projects and is required to meet Federal project purposes such as flood control, irrigation, power production, and at times to meet requirements under FCRPS biological opinions. These activities do not necessarily negatively affect bull trout, and in some circumstances, may actually benefit bull trout.

*Our Response:* Section 7 of Act requires that Federal agencies confer or consult with the Service on their actions; it is during such conference or consultation that the effects of the action on critical habitat will be analyzed. This designation does not

result in modifications of current biological opinions, but may result in the need for reinitiation of consultation in some cases. A determination regarding the beneficial, neutral, or detrimental nature of effects of a particular Federal action would be made during section 7 consultation for that specific activity.

U.S. Small Business Administration, Office of Advocacy

(1) *Comment:* The U.S. Small Business Administration's Office of Advocacy encouraged the Service to conduct outreach to county governments and other small municipal bodies to further examine the economic impact of the critical habitat designation to determine whether any reasonable alternatives exist that would accomplish conservation goals while providing needed regulatory relief to small entities. The Office indicated that, through these discussions, the Service may determine to exclude particular areas from critical habitat designation under section 4(b)(2) of the Act.

*Our Response:* As noted as in the final economic analysis (FEA), there are numerous baseline regulations in place for several fish species whose ranges overlap bull trout, including conservation protections for salmon and steelhead, that provide coincident protections for bull trout and its critical habitat. These protections apply to most of the lands currently occupied by bull trout (96 percent). Annualized incremental impacts to small entities considered represent 51 percent of total incremental impacts estimated in the rest of the FEA, and less than 0.6 percent of annual revenues for all activities. Given the history of regulation and baseline protections already in place, we do not believe county governments or small municipal bodies will experience any appreciable incremental economic impacts from this designation. Accordingly, no areas are being excluded from critical habitat designation based on economic impacts. Please refer to the section below that addresses comment responses to the economic analysis for further information in this regard.

Department of the Navy

(1) *Comment:* The U.S. Department of the Navy commented that national security impacts would occur if critical habit were to be designated in the Dabob Bay Range Complex (DBRC), Quinault Underwater Tracking Range (QUTR), and Crescent Harbor. The additional regulatory requirements imposed by the designation may delay, restrict, or prohibit the implementation of required training and testing in these areas. The Navy requested that the Service exclude the existing training areas and the proposed extensions of the DBRC and QUTR areas currently being evaluated in their Environmental Impact Statement from designation as critical habitat under section 4(b)(2) of the Act.

*Our Response:* Under section 4(b)(2) of the Act, we are required to consider whether there are lands owned or managed by the Department of Defense where a national security impact might exist if such areas are designated as critical habitat. Please see the *Application of Section 4(b)(2) of the Act* section below for more information regarding the analysis of the above Navy facilities.

National Park Service

(1) *Comment:* Crater Lake National Park, a unit of the National Park Service, indicated that designation of critical habitat in Annie Creek is appropriate based on historic records and the connectivity of Annie Creek with other stream networks known to contain bull trout. The Park supported returning the lower Sun Creek irrigation canal to a more natural alignment to increase connectivity and benefit recovery of the Sun Creek population. The Park noted that designation of critical habitat within the irrigation system should not preclude efforts to restore the natural Sun Creek channel.

*Our Response:* The Service has been working with Federal, State, and local partners to develop a plan for reconnecting Sun Creek with its historic (i.e., natural) connection with the Wood River. This connection would allow movement of bull trout between Sun Creek, the Wood River, and Annie Creek. These unoccupied areas that were identified in the proposed rule are essential for the conservation of bull trout in the Upper Klamath Lake critical habitat subunit, and are being designated as critical habitat.

*Comments from Native American Tribes*

(1) *Comment:* In response to the tribal coordination identified in the **Summary of Comments and Recommendations** section above, we received comments from several Tribes, including the Confederated Tribes of the Umatilla Indian Reservation, Puyallup Tribe of Nations, Confederated Tribes and Bands of the Yakama Nation, Jamestown S'Klallam Tribe, Quinault Indian Nation, Upper Skagit Indian Tribe, Lower Elwha Klallam Tribe, Shoshone-Paiute Tribes of the Duck Valley Indian Reservation, Confederated Tribes of the Warm Springs Reservation of Oregon, Swinomish Indian Tribal Community, Nisqually Indian Tribe, Coeur d'Alene Tribe, Nez Perce Tribe, Kalispel Tribe of Indians, Blackfeet Tribe, Muckleshoot Indian Tribe, and Burns Paiute Tribe. We also received a comment letter from the Northwest Indian Fisheries Commission. Most Tribes requested exclusion from critical habitat designation based on: (1) Secretarial Order 3206, which states, in part, that critical habitat shall not be designated in areas that may impact tribal trust resources, tribally-owned fee lands, or the exercise of tribal rights unless it is determined essential to conserve a listed species; (2) section 4(b)(2) of the Act; and (3) existing tribal resource management plans that are protective of bull trout. Other Tribes expressed support for the proposed critical habitat revision and did not request exclusion of their lands. One Tribe requested exclusion of their lands, except for the portion of tribal land that shares a boundary with nontribal interests.

*Our Response:* Federal agencies are obligated to consult with Tribes based on their unique relationship with the Federal government. We have evaluated the Tribes' past and ongoing efforts to conserve bull trout and have weighed the benefits of including or excluding tribal lands in the designation under section 4(b)(2) of the Act. We have also taken into consideration the requirements under Secretarial Order 3206; however, any exclusions have been considered only under section 4(b)(2) of the Act, as that is the only statutory authority that provides the Secretary the discretion to exclude areas from critical habitat designation. Please see the *Application of Section 4(b)(2) of the Act* section below for more information regarding this analysis.

*Public Comments*

(1) *Comment:* We received several comments comparing the 2010 proposed rule to the 2005 final rule. Most pointed out the irregularities in the rulemaking process identified in a December 2008 Interior Department Inspector General's report, and felt that science played a more prominent and effective role in the 2010 proposed rule. Other commenters indicated the more restricted designation in the 2005 final rule was more appropriate.

*Our Response:* This final rule fully considers the findings in the 2008 Inspector General's report, the language in the court's remand order, and comments we received from peer reviewers and others. This final critical habitat designation for bull trout is based on the best scientific information available, as required by section 4(b)(2) of the Act.

(2) *Comment:* We received many comments that presented biological information relevant to the designation of critical habitat, and site-specific information regarding particular waterbodies. Comments also addressed rangewide issues such as information on biological needs in general, PCEs, and the effects of specific types of actions on bull trout. Issues raised included the threats that contributed to listing bull trout under the Act.

*Our Response:* We appreciate the information submitted and issues raised. We will address specific issues, including information regarding particular waterbodies and specific threats, in our responses below. In general, past efforts to eradicate bull trout contributed to their decline and led to their protection under the Act. Since the bull trout is now protected under the Act, those eradication efforts can no longer legally occur, and habitat threats are currently the most serious threats. However, we address habitat threats in this final rule.

(3) *Comment:* We received comments on the threat of fine sediment impacts to bull trout stream habitat.

*Our Response:* Taking measures to limit the introduction of fine sediment in bull trout critical habitat is important. A PCE has been developed to address this specific concern, and there is a continuing need to evaluate and assess site-specific information to determine the effects of any particular Federal action on sediment delivery and bull trout critical habitat, using the best scientific information available.

(4) *Comment:* We received comments and information regarding the cold water requirements of bull trout.

*Our Response:* Bull trout require among the coldest water temperatures of any native salmonid in the Pacific Northwest, and we have developed a PCE to address this specific need.

(5) *Comment:* We received comments on reservoir operations and their effects on bull trout.

*Our Response:* In our proposed rule (75 FR 2291, January 14, 2010), we did not mean to imply that reservoir operations would have to be consistently at full pool to avoid adverse modification of critical habitat. Project-specific analyses would be the best tool to identify bull trout critical habitat protection needs with regard to the relevant PCEs in a particular area. We have included clarifying language in this rule to address the issue. See the response to Bureau of Reclamation comment (1) and the *Adverse Modification Standard* section below for additional information with regard to section 7 consultation considerations for bull trout critical habitat.

(6) *Comment:* We received a number of comments recommending the designation of the upper Clark River in Montana between Flint Creek and Warm Springs Creek, based on ongoing restoration efforts directed toward re-establishing a migratory corridor for bull trout and restoring adequate stream flow and temperature regimes. The restoration is anticipated to re-establish a migratory corridor and essential foraging and overwintering habitat for bull trout, and provide additional genetic diversity for bull trout populations that have been fragmented by the construction of Milltown dam for nearly a century.

*Our Response:* Bull trout are present in the upper reaches of Warm Springs Creek and Flint Creek, tributaries at the upstream extent of this section of the upper Clark Fork River. The likelihood of migratory bull trout occupancy in the upper Clark Fork River has increased as a result of the 2008 removal of Milltown dam. The condition of the physical or biological features essential to the conservation of the species has improved as a result of the dam removal and will continue to improve with the ongoing restoration activities in the Clark Fork River. This area provides an important migratory corridor and will provide for increased genetic exchange between migratory bull trout populations in the Clark Fork River, meets the definition of critical habitat, and meets the selection criteria for inclusion in critical habitat. Consequently, we agree with the commenters that this reach of the Clark Fork River is essential for the conservation of bull trout. The inclusion of this 100.8 km (62.7 mi) reach of the upper Clark Fork River increases the critical habitat designation for the Clark Fork River basin by less than 2 percent. We have long recognized the importance of this reach of the upper Clark Fork River as an historical migratory corridor for bull trout, which we have considered potentially occupied but undocumented bull trout habitat. This area was proposed as critical habitat in the November 29, 2002, proposed rule (67 FR 71331), and identified as Unit 2, Clark Fork River Basin, Subunit iv – Upper Clark Fork River. We did not include this area in the September 26, 2005, final critical habitat designation (70 FR 56212), because at that time we did not find the PCEs present and therefore this area did not meet our selection criteria. No unoccupied habitat was designated in the 2005 final rule. In preparing the January 14, 2010, reproposal (75 FR 2269), we re-examined the record, including the State of Montana's MFISH database, and found that hard documentation of bull trout occupancy of this reach over the last 20 years was lacking. However, the sampling was not comprehensive and we acknowledge that low levels of undocumented bull trout occupancy likely occur in this lengthy stream reach. The determination not to include this reach in the 2010 proposed rule was a difficult choice, based on a decision to not propose any critical habitat in Montana where occupation by bull trout could not be documented with fish survey records or other hard documentation. Due to the known presence of bull trout in the upper reaches of Warm Springs Creek at the upstream extent of this section of the upper Clark Fork River, at least a portion of which are thought potentially represent the migratory life history form, there is further circumstantial evidence that migratory bull trout may temporarily or seasonally occur in this reach of the upper Clark Fork River. Accordingly, section 7 consultation is conducted on Federal actions that may affect bull trout. The likelihood of bull trout occupancy has also increased since 2008, as a result of the removal of Milltown Dam, which removes a barrier to bull trout migration in this reach. Because of the removal of Milltown Dam and the ongoing and planned habitat restoration actions, we no longer believe that the PCEs in this reach of the Clark Fork River are limiting to occupancy by migratory bull trout, on at least a seasonal basis. Based on comments and data we received in response to our request for information in the January 14, 2010, reproposal (75 FR 2269), we now find PCEs present in this area and determine that this area does meet the selection criteria and is essential for the conservation of the species. Therefore, we are including it in our final designation.

(7) *Comment:* We received many comments from a variety of sources suggesting we consider designating critical habitat upstream of Big Falls on the mainstem Deschutes River in Oregon.

*Our Response:* Under section 3(5)(A) of the Act, specific areas outside the geographical area occupied by the species at the time it is listed in accordance with the provisions under section 4 of the Act can be designated as critical habitat, if such areas are essential to the conservation of the species. We are not designating bull trout critical habitat in the Deschutes River basin upstream of Big Falls on the mainstem Deschutes River. The lower Deschutes River bull trout populations

are some of the healthiest and most stable populations in Oregon, and the designation of unoccupied habitat in this area is not essential to the conservation of the species. However, we have initiated a feasibility assessment to evaluate the capability of the upper Deschutes River to support bull trout, and support recovery of bull trout populations in the upper basin to the extent practicable.

(8) *Comment:* We received several comments related to climate change. Most said that it is an important issue and bull trout may be disproportionately affected because they have the coldest water temperature requirements of any native salmonid in the Pacific Northwest. Some commenters deny that climate change is occurring, question the underlying science, and reject its consideration in this rule.

*Our Response:* The earth's climate has changed throughout history, and an overwhelming proportion of climate scientists worldwide agree change is continuing today. We acknowledge this is a complex issue, and there may be some uncertainty over all the causes and precise manifestations of change. Given these uncertainties, one objective of this final rule was to identify and protect those habitats that we believe will provide resiliency for bull trout use in the face of climate change. We will undoubtedly have to adapt management approaches as we learn more. We agree that bull trout management actions should stem the impacts of climate change where opportunities to do so exist. Bull trout may be among the species most sensitive to the effects of climate change, and protection of bull trout cold-water habitat would help protect the ecosystems upon which they and other species depend. Some of the least disturbed watersheds may serve this purpose.

(9) *Comment:* We received two requests for an additional public hearing near Portland, Oregon, to supplement the hearing that was conducted in Boise, Idaho, on February 25, 2010. We also received four requests for an extension of the comment period.

*Our Response:* Because of time constraints related to our court-ordered deadline for submittal of a final rule to the **Federal Register**, we were unable to conduct an additional public hearing. However, we did hold a public meeting near Portland, Oregon, during the public comment period, and reopened the comment period from March 23 through April 5, 2010, to provide additional opportunity for interested parties to provide information to the Service.

(10) *Comment:* We received several comments regarding connectivity of bull trout habitats to provide for migration between key habitat types. The comments either emphasized the need for connectivity to recover bull trout, or expressed concern that in some cases, connectivity could harm bull trout by allowing introgression of invasive species or disease.

*Our Response:* Bull trout are highly migratory, and connectivity among patches of occupied habitat is essential to their conservation. Accordingly, we are designating critical habitat to facilitate connectivity in this final rule. However, connectivity may be limited in scope and degree in areas where FMO habitat provides the necessary PCEs for only a few months of the year, and perhaps only in higher water flow years. Limited or sporadic historical connectivity is likely reflected in the high degree of genetic distinctness among bull trout populations in relatively close proximity to one another, which is greater than expected when compared to other species, such as salmon and steelhead. However, some degree of connectivity over time may allow refounding of populations that are either at risk of becoming extirpated or that have become extirpated. We agree that in some cases, restoring connectivity might be detrimental to bull trout, if it introduces nonnative predatory or competitive species into those habitats. We will evaluate these areas on a case-by-case basis using the best scientific information available, to ensure we maximize bull trout conservation potential.

(11) *Comment:* We received several comments regarding the extent of critical habitat, specific waterbodies that may or may not be essential, or areas that may or may not have the physical or biological features essential to bull trout conservation.

*Our Response:* As required by section 4(b)(2) of the Act, we used the best scientific data available in determining areas that contain the features essential to the conservation of bull trout. In occupied habitat, each of the areas we are designating either contains those physical or biological features essential to the conservation of the species, which may require special management considerations or protection, or in the case of unoccupied habitat, has been determined to be essential for the conservation of the species. This final rule applies the best scientific information available to identify those areas, including the extent of critical habitat needed to conserve the species.

(12) *Comment:* We received comments concerning the need for numerical ranges or standards for PCEs, and PCE interpretation.

*Our Response:* Due to the range of habitat required for bull trout across all types of waterbodies and across the range of the species, we have not identified narrow-range, specific-to-one-area PCEs for the bull trout, but rather have identified broader, more general PCEs that are required for all life-history needs and stages of the bull trout, and which apply throughout the range of the bull trout. Moreover, water quality and quantity and other habitat needs are often influenced by the type of habitat used by bull trout (e.g., spawning and rearing) and season of use (e.g., May or June migratory habitat). Additionally, wet or dry water years may significantly influence the quality of habitat potentially available to bull trout. We have included language in the **Primary Constituent Elements** section of this final rule that identifies the physical, hydrological, and biological conditions the PCEs have been designed to protect, to provide context for PCE interpretation and application.

(13) *Comment:* We received comments related to the role of critical habitat in recovery.

*Our Response:* Critical habitat designation can contribute to the overall recovery strategy for a species. However, it does not, by itself, achieve all recovery plan goals. In developing this final rule, we considered the conservation relationship between critical habitat and recovery planning. The designation of critical habitat can help prioritize recovery tasks and focus recovery efforts in areas essential for conservation. Habitat restoration actions may compete more successfully for Federal funding if they occur in areas designated as critical habitat for species listed under the Act. Please see the section below on *Relationship of Critical Habitat to Recovery Planning* for additional information.

(14) *Comment:* We received comments related to critical habitat and section 7 consultation requirements.

*Our Response:* Please see the section below on the **Effects of Critical Habitat Designation** for information related to section 7 consultation requirements.

(15) *Comment:* We received comments regarding the effects of specific actions on bull trout related to stream hydrograph, stream flow, and stream temperature requirements. There was also a concern that maintaining a naturally functioning hydrograph conflicts with protecting spring flows.

*Our Response:* PCE 7 is designed to address hydrologic functions that

conserve bull trout by identifying the importance of peak, high, low, and base flows that fall within historic and seasonal ranges, or if controlled, minimize flow departures from a natural hydrograph. However, we do not believe maintaining a naturally functioning hydrograph conflicts with protecting natural spring flows. To the contrary, the flexible and inclusive language of PCE 7 can encompass protecting the natural hydrograph associated with these discharges. Since some streams flood annually and others do not, different special management prescriptions may be appropriate, depending on particular circumstances. These special management needs would appropriately be considered during section 7 consultation, as discussed later in this final rule.

(16) *Comment:* We received several comments on the exclusion of specific areas from this designation, with some arguing for exclusion of specific habitats or broader categories of habitats, while others argued against the same.

*Our Response:* Please refer to the **Exclusions** section below for a detailed discussion of this issue.

(17) *Comment:* Some commenters specifically opposed the exclusion of the lands covered by the Washington State Forest Practices Habitat Conservation Plan (FPHCP) from critical habitat designation. One commenter and the State of Washington supported the exclusion of the FPHCP. Opponents of exclusion commented that the needs of anadromous salmon and steelhead, not bull trout, largely dictated the final forest practice rule set in the FPHCP, and that the forest practice rules are not sufficiently protective of headwater streams and near-surface ground waters, springs, and seeps in headwater catchments. They also stated that Washington's forest land is being converted to other uses at an alarming rate, and that failure to designate critical habitat on lands currently covered by the FPHCP would deprive habitats essential for bull trout recovery from protection. One commenter stated HCPs are not required to provide a net benefit to the species. One commenter stated the FPHCP does not protect bull trout from activities that cause or contribute to global warming and global climate change, and stated the HCP does not protect bull trout or its habitat from the widespread application of pesticides and herbicides that occur on forestlands. They were also concerned the implementation of the HCP is not advancing at an adequate level, and that the lack of progress has been the focal point of attention at the highest levels of the State agencies charged with overseeing its implementation. One commenter stated current economic conditions related to Washington State's budget and reduced Federal funding have resulted in future funding of the adaptive management plan being severely reduced or even unlikely, and that crucial monitoring and adaptive management studies have already been postponed or cancelled by the State.

Other commenters stated critical habitat designation does not provide any greater protection or enhancement of bull trout habitat for forest management activities on private and State lands in Washington beyond what is already provided by the FPHCP, and designating critical habitat would discourage similar partnerships and weaken stakeholder support for the existing plan. They also stated that the Service should concentrate resources on participation and technical support for the FPHCP adaptive management program, rather than expending them on administrative requirements.

*Our Response:* HCPs are considered one of the tools available that can help effect recovery. In order to obtain a permit under section 10 of the Act, an applicant must meet the issuance criteria identified at 50 CFR 17.32, which include minimizing and mitigating any incidental take of listed species to the maximum extent practicable while conducting their covered activities. One of the commenters noted that HCPs are not required to provide a net benefit; however many HCPs do provide a net benefit compared to the alternative of no HCP and no incidental take permit. The FPHCP rules and program as a whole require the maintenance and restoration of aquatic and riparian habitat. Among the multiple goals of the FPHCP is the goal to restore and maintain riparian habitat on non-Federal forest lands to support a harvestable supply of fish. The FPHCP was developed with an emphasis on salmonids, including bull trout, and focuses on providing needed flows, temperature, substrate, habitat, and connectivity by addressing habitat protection and natural processes and regimes, which benefits bull trout and other native species. The role of adaptive management in HCPs is often poorly understood. In some cases, adaptive management may specify the direction of change either through requiring additional measures or reducing measures. While the Service may at times rely on adaptive management in evaluating an HCP, in the FPHCP, we evaluated conservation measures that were already dictated by the forest practice rules enacted by the State of Washington and by the assurances that the conservation measures would occur. We have reviewed the funding budgeted by the State for adaptive management studies under the FPHCP, and believe that it is adequate for purposes of bull trout conservation. The Service anticipated some delays and implementation issues as a program this large is applied over time, and we continue to monitor the progress of this adaptive program. See the **Exclusions** section in this final rule for additional discussion and evaluation of the benefits of the FPHCP.

(18) *Comment:* We received several comments on the role of Federal lands, most of which requested that we include Federal lands in this designation rather than excluding them as was done in the 2005 final rule. One commenter suggested that designating critical habitat on Federal lands could empower third parties to litigate more effectively.

*Our Response:* Exclusion of Federal lands from the 2005 final rule was one of the primary reasons for litigation, and one of the primary inconsistencies found by the Inspector General in his 2008 report. As previously discussed, the Service agrees Federal lands should not be excluded from critical habitat designation based solely on large-scale land management plans. In addition, the Service believes by collectively implementing a proactive and collaborative approach to addressing the recovery needs of bull trout, the risk of litigation should be minimized.

(19) *Comment:* We received some comments expressing concern about the effects of wildfire on bull trout and the landscape, and that this designation may impact the ability to manage landscapes susceptible to fire.

*Our Response:* The Service will continue to facilitate implementation of ongoing or preventative fuel reduction projects through the Act's section 7 consultation requirements, and we have been doing so since bull trout was listed in 1998, and since critical habitat was designated in 2005. These cooperative efforts include annual meetings with action agencies and meetings conducted on a project specific basis.

(20) *Comment:* We received several comments from individual citizens, Native American tribes, States, environmental groups, and groups representing interests such as ranching, logging, and agriculture, which supported protection of bull trout habitat, and doing so in a manner sensitive to the needs of local residents and resource users.

*Our Response:* The Service agrees that protecting bull trout critical habitat will have multiple, wide-ranging benefits,

and commits to working with all interested parties to protect habitat in a way that respects the interests and needs of local residents and resource users.

(21) *Comment:* We received several comments discussing the relationship between bull trout and other species, including other anadromous fish; the impacts of bull trout on other species; and the impacts of other species on bull trout.

*Our Response:* Protecting ecosystems upon which bull trout depend may also conserve other native species that share those ecosystems. We believe efforts to conserve bull trout will generally be complementary to efforts to conserve other native species that coevolved with bull trout, including salmon, steelhead, and Klamath Basin suckers, because each species would have developed traits and behaviors allowing them to coexist. Anadromous fish likely provided a significant input of energy into the ecosystems upon which bull trout depend, but we do not fully understand how their reduction or loss affects bull trout populations. However, we believe the restoration of ecosystem components and the implementation of salmon recovery actions will also help recover bull trout populations.

(22) *Comment:* We received comments on threats posed by invasive species and concerns that further spread of invasive species may affect some bull trout populations. Commenters also stated that restoring each of the habitat components that favor bull trout may reduce the competitive effects in bull trout habitat where invasive species are already present.

*Our Response:* Invasive species include potential competitors such as brook trout and brown trout, which represent a threat to bull trout populations. In some cases, currently isolated populations could be threatened if restoring connectivity allows invasive species to access currently isolated habitats. The Service will consider and encourage management of bull trout populations to address this concern, and is working with Federal partners to better understand why bull trout and invasive competitors are able to coexist in certain areas and not in others. The results of this research will help to inform recovery actions with respect to the removal of nonnative species and bull trout recovery.

(23) *Comment:* Some commenters stated that the effects of livestock grazing can negatively impact bull trout habitat quality. Alternatively, other commenters believe grazing and habitat conservation can co-occur.

*Our Response:* The bull trout listing rule for the Klamath River and Columbia River Distinct Population Segment (63 FR 31647, June 10, 1998), and the Jarbidge River Distinct Population Segment (64 FR 17110, April 8, 1999) acknowledge that livestock grazing contributed to the decline in bull trout abundance and distribution. Depending on how it is managed, grazing in riparian areas can reduce cover, reduce streambank stability, increase stream temperatures, reduce fish prey, and change stream geometry by making channels wider and shallower. We do not believe livestock grazing and fish and fish habitat conservation are mutually exclusive in all cases, provided appropriate special management needs for particular areas are implemented.

(24) *Comment:* We received comments expressing concern about the potential effects of timber harvest and mining on bull trout habitat, and effects of critical habitat designation on those activities.

*Our Response:* The Service agrees that forestry and mining practices can impact bull trout habitat. We will continue to work cooperatively with land managers and operators to implement bull trout conservation measures in a manner consistent with the operators' needs to the maximum extent practicable.

(25) *Comment:* We received several comments regarding the public participation process for this rule. Some commenters expressed concern over the opportunity to comment, some expressed concern with the quality of maps provided in the proposed rule, some expressed frustration with having to navigate the Federal website to submit their comments, and others stated that compliance with the National Environmental Policy Act (NEPA) (42 U.S.C. 4321 *et seq.*) was required.

*Our Response:* Service outreach efforts began in late 2009 and continued in early 2010. We issued press releases, published legal notices in local newspapers, contacted and coordinated with Native American Tribes, met with State officials, and communicated through a variety of means to individuals with interest in commenting on the rule. The initial comment period was extended to accommodate further input from interested private individuals, State and Federal agencies, or others. One public hearing was conducted in Boise, Idaho, and several public meetings were conducted at centralized locations within areas affected by the critical habitat designation. With regard to NEPA, outside the jurisdiction of the U.S. Court of Appeals for the Tenth Circuit, we do not prepare environmental analyses as defined by NEPA in connection with designating critical habitat under the Act. We published a notice outlining our reasons for this determination in the **Federal Register** on October 25, 1983 (48 FR 49244). This position was upheld by the U.S. Court of Appeals for the Ninth Circuit (*Douglas County* v. *Babbitt*, 48 F.3d 1495 (Ninth Cir. 1995), cert. denied 516 U.S. 1042 (1966)). As suggested by commenters, the Service has published simplified maps in the **Federal Register** with this final rule, and has made more detailed maps available on its web site, *http://www.fws.gov/pacific/bulltrout/*, or by request from the Oregon Fish and Wildlife Field Office, 2600 S.E. 98th Ave, Suite 100, Portland, OR 97266, telephone 503-231-6179.

(26) *Comment:* We received several specific comments on road impacts to bull trout habitat.

*Our Response:* Roads and other activities above the ordinary high water mark or bankfull elevation of streams, and upstream in watersheds can directly or indirectly impact bull trout habitat in streams. The construction, use, and maintenance of roads may impact bull trout habitat in several ways; for example, roads can act as vectors for introducing sediment to streams and road culverts can block fish passage. To protect bull trout habitat, the Service will continue to evaluate impacts on a site-specific basis and develop appropriate avoidance, minimization, and mitigation measures during section 7 consultation on Federal actions.

(27) *Comment:* We received comments supporting the more prominent role science played in this designation when compared to the 2005 designation, and comments expressing concern over how science was used to identify essential habitat and PCEs. Concerns were also expressed regarding the differences between the 2005 designation and this designation, and the amount of critical habitat proposed in some areas.

*Our Response:* We believe the information we relied on to develop this final rule is consistent with accepted scientific standards. The rationale behind the differences between the 2005 final rule and the 2010 proposed rule are explained in the *Summary of Changes from the Previously Designated Critical Habitat* of the proposed rule (75 FR 2273, January 14, 2010), and are primarily associated with fewer section 4(b)(2) exclusions in this rule compared to the 2005 rule. Additional scientific information from peer reviewers, State

fish and wildlife agencies, and Federal agency biologists was used to identify areas with the physical or biological features essential to the conservation of bull trout and additional unoccupied areas essential to the conservation of bull trout in each of the critical habitat units.

(28) *Comment:* We received several comments regarding special management needs for bull trout, most of which addressed concerns over what may be required and how we would regulate management activities to conserve bull trout. We also received comments related to the impact of critical habitat designation on private lands.

*Our Response:* In occupied critical habitat areas, special management considerations or protection are required. In some cases, (e.g., Congressionally-designated Wilderness Areas), continued implementation of wilderness designation management measures may be necessary to ensure adequate protection of key spawning and rearing streams, but in other cases avoiding creation of fish passage impediments may be required. Broad prohibitions of any specific actions across the range of bull trout would be inappropriate because the effects of actions can vary widely throughout the range of the species, and the special management needs in those areas may vary accordingly. Although special management considerations and protections are not implicitly required in unoccupied critical habitat areas, we will work collaboratively with Federal agencies to identify ways to ensure unoccupied critical habitat can continue to serve its intended conservation purposes, in light of agency actions that may be proposed in those areas.

Designating critical habitat will help inform private landowners more specifically of the needs and opportunities for bull trout conservation. Private landowners can protect fish and wildlife habitat quickly and efficiently, and they often choose to do so, sometimes in cooperation with and with support from the Service and other government agencies. We agree with the need to work cooperatively with landowners to conserve bull trout.

(29) *Comment:* We received several comments advocating for and against designating unoccupied critical habitat, and comments questioning the regulatory effects of unoccupied habitat designation on Federal agency actions.

*Our Response:* The Service believes it is essential to designate unoccupied habitat in order to achieve bull trout recovery. In most cases, this includes lower elevation main stem river FMO habitats important for seasonal connectivity among existing upstream populations. We anticipate that many of these FMO habitats may only be important during certain times of year to support bull trout migration. With regard to the regulatory effect of designating unoccupied habitat, when consulting under section 7(a)(2) of the Act in designated critical habitat, independent analyses are conducted for jeopardy to the species and adverse modification of critical habitat (75 FR 2291, January 14, 2010). In unoccupied critical habitat, Federal agencies may need to implement measures to avoid the destruction or adverse modification of critical habitat to ensure the affected critical habitat area can continue to serve its intended conservation role for the species. Any management needs would be addressed on a case-by-case basis, relative to the specific Federal action under consultation.

(30) *Comment:* We received several comments suggesting that rather than designating critical habitat, we should rely on other protective measures to meet the need for bull trout conservation. Examples included measures that protect critical habitat designated for salmon and steelhead species, State forest practice rules, Federal land management protections, and other commitments to conserve fish habitat within the range of bull trout.

*Our Response:* The Service is aware that several other regulatory protections are currently in place in many parts of the range of bull trout, and we appreciate those efforts. We evaluated many of the protective measures suggested by commenters within the context of section 4(b)(2) of the Act, and do not believe any significant new regulatory requirements will result from designating bull trout critical habitat. Nonetheless, under section 7(a)(2) of the Act, Federal agencies are required to ensure that actions they fund, authorize, or carry out are not likely to destroy or adversely modify critical habitat. There may also be educational benefits associated with informing the public of those areas that are most important to bull trout conservation.

(31) *Comment:* We received several comments on the effects of water use on bull trout, and the regulatory effect the designation of critical habitat could have on water use. Most commenters were concerned that their ability to use water for irrigated agriculture might be impacted by this designation, and recommended that we carefully evaluate effects of water use on a site-specific basis, and work closely with irrigators and State agencies.

*Our Response:* Any water use effects to designated critical habitat from Federal actions will be addressed on a case-by-case basis through consultation with Federal agencies under section 7 of the Act. The Service intends to work cooperatively with Federal agencies, irrigators, and State agencies to ensure bull trout conservation needs are compatible with their program needs and interests to the maximum extent practicable. In our experience, working collaboratively to address bull trout stream flow requirements provides significant conservation benefits to bull trout. Special management needs in bull trout critical habitat areas would be addressed on a case-by-case basis, but are generally expected to be similar to existing measures that provide protection for this species.

(32) *Comment:* One commenter stated that, in the 2005 rule, the Service excluded a segment of the Clark Fork River in Montana from critical habitat because that segment was in a designated Superfund site, subject to cleanup under the Superfund statute, but the mainstem Coeur d'Alene River was proposed as critical habitat in this rule, even though it, like the Clark Fork, is a listed Superfund site. The commenter stated that the Service has never explained its inconsistent treatment of the Clark Fork River and the Coeur d'Alene River Superfund sites.

*Our Response:* We disagree that the 2005 final critical habitat rule excluded a segment of the Clark Fork River because the segment was in a Superfund site, subject to cleanup under the Superfund statute (42 U.S.C. 103, §§ 9601–9628). The 2005 final critical habitat rule states that the segment of the Clark Fork River in question was excluded because it did not have sufficient PCEs to support at least one of the species' essential biological activities, not because it was a Superfund site. In contrast, the mainstem Coeur d'Alene River is identified as a migratory corridor and provides the PCEs necessary for seasonal use (primarily spring and late fall) by migrating bull trout.

*Comments on the Draft Economic Analysis*

The Service published a draft economic analysis (DEA) concurrent with the proposed rule (75 FR 2269, January 14, 2010). Of the 1,111 public comments we received, 128 were on the DEA. We initially grouped these comments into two main categories: comments on the economic analysis, and comments on economic costs and benefits of critical habitat. We then

performed a separate analysis of all these comments, and further broke down subject matter into 34 separate responses. Comments from each of the 34 economic-related categories are summarized, below, with the Service's responses.

(1) *Comment:* One commenter was concerned that the baseline approach to the economic analysis has been rejected by courts.

*Our Response:* As stated in Chapter 2 of the final economic analysis (FEA), the U.S. Tenth Circuit Court of Appeals instructed the Service in 2001 to conduct a full analysis of all of the economic impacts of proposed critical habitat, regardless of whether those impacts are attributable co-extensively to other causes. Since that decision, however, courts in other cases have held that an incremental analysis of impacts stemming solely from the critical habitat rulemaking is proper. For example, in the March 2006 ruling that the August 2004 critical habitat rule for the Peirson's milk-vetch (*Astragalus magdalenae* var. *peirsonii*) (69 FR 47329, August 4, 2004) was arbitrary and capricious, the United States District Court for the Northern District of California stated, "That case also involved a challenge to the Service's baseline approach and the court held that the baseline approach was both consistent with the language and purpose of the Act and that it was a reasonable method for assessing the actual costs of a particular critical habitat designation. . . 'To find the true cost of a designation, the world with the designation must be compared to the world without it.'" More recently, in *Arizona Cattle Growers' Association* v. *Salazar*, No. 08-15810 (9th Cir. 2010) (Mexican spotted owl 2004 critical habitat designation), the Court of Appeals upheld the Service's use of the baseline approach in preparing the economic analysis and making the ultimate section 4(b)(2) decision. The Ninth Circuit disagreed with the Tenth Circuit's opinion requiring a co-extensive analysis. The Ninth Circuit thought it was more logical to use the impacts resulting from listing the species as a baseline and to limit consideration of areas for exclusion to those where there were impacts above those imposed by listing. It noted that considering costs imposed by the listing of the species made no sense because those listing costs would still be present if the area in question were excluded from critical habitat. Also, on May 27, 2010, the U.S. District Court ruling in *Otay Mesa Property* v. *USDOI* – CV 08-383(RMC)(D.D.C.) stated in part that "FWS has explained its preference for the baseline method and fully explained the analyses that underlie the critical habitat designation for the San Diego fairy shrimp. It need do no more."

In order to address the divergent opinions of the courts and provide the most complete information to decision-makers, the final economic analysis reports both (a) the baseline impacts of bull trout conservation from protections afforded the species absent critical habitat designation; and (b) the estimated incremental impacts precipitated specifically by the designation of critical habitat for the species. However, the data used in determining our regulatory flexibility analysis reflects only the incremental costs which may be attributable to the designation of critical habitat for the bull trout.

(2) *Comment:* One commenter stated that the economic analysis did not consider the potential for the curtailment of mining production and employment on the main stem and North Fork Coeur d'Alene River, or the upstream tributaries. The commenter also noted the potential for impacts to waste water treatment plants, storm water requirements, other point and nonpoint source discharges, and potential impacts to plans for a Superfund cleanup site located in the Coeur d'Alene basin, which include plans for bank stabilization, channel realignment, and dredging projects.

*Our Response:* The mainstem Coeur d'Alene River and North Fork Coeur d'Alene Rivers have been designated as critical habitat for bull trout since September 26, 2005 (70 FR 56212). This critical habitat revision extends the designation into several tributaries of the North Fork Coeur d'Alene and St. Joe Rivers, but does not revise existing critical habitat on the mainstem or North Fork. The commenter did not present any substantive economic information regarding potential impacts of extending the designation, and we have no data indicating that designating critical habitat in the tributaries would have any impacts on mining or other activities beyond those attributable to listing.

(3) *Comment:* Several commenters stated that the economic analysis should incorporate the recent ruling in the Ninth Circuit Court of Appeals, *Gifford Pinchot Task Force* v. *U.S. Fish and Wildlife Service,* 378 F.3d 1059 (9th Cir. 2004), amended by 387 F.3d 968 (9th Cir. 2004). Specifically, commenters point out that the court decided "the jeopardy standard should be applied with reference to whether the proposed action appreciably diminishes the likelihood of both the survival and recovery of a species. By contrast, the prohibition against destruction or adverse modification of critical habitat is triggered at a lower threshold—when sufficient critical habitat is lost so as to threaten a species' recovery even if there remains sufficient critical habitat for the species' survival." Commenters state much of the analysis is predicated on the idea that a project that would likely jeopardize bull trout would also likely adversely modify its critical habitat and vice versa. Commenters stated that because the jeopardy standard and the adverse modification standard are not synonymous, the DEA should not rely on the assumption that there will be few incremental costs in occupied areas.

*Our Response:* As stated in Chapter 2 of the FEA, incremental effects of critical habitat designation are determined using the Service's December 9, 2004, interim guidance on "Application of the 'Destruction or Adverse Modification' Standard Under section 7(a)(2) of the Endangered Species Act" and information from the Service regarding what potential consultations and project modifications may be imposed as a result of critical habitat designation over and above those associated with the listing of bull trout (Appendix E of the final economic analysis). Specifically, in *Gifford Pinchot Task Force* v. *United States Fish and Wildlife Service*, the Ninth Circuit invalidated the Service's regulation defining destruction or adverse modification of critical habitat, and the Service no longer relies on this regulatory definition when analyzing whether an action is likely to destroy or adversely modify critical habitat. In occupied critical habitat, it is unlikely that a section 7 consultation would identify a difference between measures needed to avoid the destruction or adverse modification of bull trout critical habitat from measures required to avoid jeopardizing the species. This conclusion is based on numerous regulatory protections and associated conservation activities that are already occurring in those areas for listed salmon and steelhead, as discussed in the FEA. Alternatively, in unoccupied critical habitat, a jeopardy analysis would not be conducted during section 7 consultation. However, measures to avoid destruction or adverse modification may be necessary to ensure unoccupied areas can continue to serve their intended conservation role for the species.

(4) *Comment:* Several Tribes submitted comments expressing concern about the potential economic impact of the designation on tribal lands. One Tribe requested the

economic analysis specifically address the economic impacts on the Tribe, the Reservation, and tribal trust resources, taking into account "the unique nature of Reservation economies," and stated "in particular, the analysis must fully analyze the Tribe's ability to use its water, including potential future uses and the effective reallocation of water rights priorities that may be caused by the designation and the cost to the Tribe of such."

*Our Response:* Under Secretarial Order 3206, we consult with affected Indian Tribes when considering the designation of critical habitat in an area that may impact tribal trust resources, tribally-owned fee lands, or the exercise of tribal rights. The Secretarial Order states that critical habitat shall not be designated in such areas unless it is determined essential to conserve a listed species, and that in designating critical habitat, the Services shall evaluate and document the extent to which the conservation needs of the listed species can be achieved by limiting the designation to other lands. To estimate the incremental costs of conservation efforts, the economic analysis focuses on activities in areas considered to be unoccupied by bull trout. Incremental costs are those efforts above and beyond the costs undertaken due to existing required or voluntary conservation efforts being undertaken due to other Federal, State, and local regulations or guidelines. In particular the analysis focuses on those areas that do not overlap with salmon critical habitat, since the primary constituent elements identified for salmon are similar to those identified for bull trout, and additional conservation measures in those areas would unlikely be necessary.

To the extent possible, potential impacts to tribal areas are considered in the FEA as part of the unit in which the tribal lands are located. For example, section 7 consultations that may have been undertaken with tribal entities have been included in calculations of administrative costs for applicable units. Information provided in public comments related to particular tribal concerns has been incorporated into Chapters 3 and 4 of the FEA.

(5) *Comment:* Several commenters stated the economic analysis fails to recognize the benefits that might derive from critical habitat designation. Other commenters state it is unclear why benefits have not been quantified. Several comments indicated the Service should have presented a cost-effectiveness analysis or a cost/benefit analysis. A few comment letters also state that by analyzing only the costs associated with the designation, the Service cannot meet the requirements of the Act, and that without analyzing benefits it is arbitrary for the Service to exclude areas from critical habitat designation on the basis of economic impacts.

*Our Response:* There are no areas proposed as critical habitat that are being excluded from designation on the basis of economic impacts. Chapter 6 of the DEA discusses the types of benefits that could result from designation of critical habitat for bull trout and explains methods that could be used to estimate benefits and the data that would be required to calculate such estimates. As discussed in Chapter 6 of the DEA, data are not currently available to estimate the incremental economic benefits that could result from designation of critical habitat for bull trout. The primary intended benefit of critical habitat is to support the conservation of endangered and threatened species. Thus, attempts to develop monetary estimates of the benefits of the bull trout critical habitat designation would focus on the public's willingness to pay to achieve the conservation benefits to the bull trout resulting from this designation. Quantification and monetization of species conservation benefits requires information on the incremental change in the probability of bull trout conservation that is expected to result from the designation. No readily available models or studies exist that provide such information. Even if this information existed, the published valuation literature does not support monetization of incremental changes in conservation probability for this species. Similarly, none of the alternative methods suggested (e.g., methods to evaluate losses from fish kills, the Service's Habitat Evaluation Procedures Model, fish market or restaurant value, and replacement cost) would overcome the fact that information is not available to predict the extent and timing of bull trout recovery that could result from designation of critical habitat. The Office of Management and Budget has acknowledged that it may not be feasible to monetize or quantify benefits because there may be a lack of credible, relevant studies, or because the agency faces resource constraints that would make benefit estimation infeasible (U.S. OMB, "Circular A-4," September 17, 2003, available at *http://www.whitehouse.gov/sites/default/files/omb/assets/omb/circulars/a004/a-4.pdf*).

(6) *Comment:* Several commenters suggested that economic benefits of a restored bull trout fishery have been estimated to be $215 million, based on an economic benefits section that was removed from the previous draft 2004 economic analysis.

*Our Response:* The Service removed the benefits analysis from the 2004 DEA because of concerns from the Office of Management and Budget (OMB) and the Department over the contingent valuation and benefits transfer methods used. A contingent valuation involves asking someone how much they would pay to continue a specific activity that is threatened by pollution or other factors. For example, one might ask an angler how much he or she would spend to continue fishing for bull trout in clean rivers. Some economists doubt the accuracy of such analyses because of their hypothetical nature and because respondents do not have to follow up their answers with actual payments. Therefore, they may tend to over-value the benefit. The 2004 DEA's discussion of the value of bull trout recreational fishing was a benefits-transfer analysis. A benefits-transfer analysis uses research conducted for one species or purpose to extrapolate results for another species or purpose. OMB's guidelines on the use of benefits transfer state that although benefit-transfer can provide a quick, low-cost approach for obtaining desired monetary values, the methods are often associated with uncertainties and potential biases of unknown magnitude. It should therefore be treated as a last resort option and not used without explicit justification (OMB Circular A-4). As such, these estimates are not included in the FEA. Chapter 6 of the DEA discusses the types of benefits that could result from designation of critical habitat for bull trout and explains methods that could be used to estimate benefits and the data that would be required to calculate such estimates. As discussed in Chapter 6 of the DEA, the Service believes that sufficient data are not currently available to enable us to estimate the incremental benefits that could result from designation of critical habitat for bull trout. Specifically, information is not available to predict the extent and timing of bull trout recovery that could result from designation of critical habitat.

General Comments on Economic Analysis

(1) *Comment:* Several commenters believed the DEA failed to consider the full extent of potential impacts that may occur as a result of the designation of critical habitat. Some commenters stated the DEA only addresses impacts to Federal agencies, and does not consider other impacts to private landowners or

the costs of recovery. Other commenters stated that the DEA did not consider additional impacts to activities such as flood control, including the increased risk of catastrophic flood; and fire management.

*Our Response:* Chapter 5 of the FEA estimates the costs associated with section 7 consultation for the bull trout, while Chapter 4 discusses potential incremental impacts (i.e., impacts that are not expected to occur absent critical habitat). The FEA quantifies potential impacts to private landowners, including timber companies, cattle ranchers, crop farmers, and mining companies, that may be affected by the designation. Exhibit 4-4 of the FEA outlines potential conservation measures, affected action agencies, and affected third parties.

The FEA considers impacts that are probable and reasonably foreseeable. While the FEA does not estimate impacts associated with damage resulting from catastrophic flood or fire events, this type of catastrophic event is largely unpredictable. Moreover, the analysis assumes the relevant agencies actively manage to prevent these events, and that these management actions will not be precluded by the designation. The analysis quantifies the potential costs to these agencies of implementing project modifications as well as undergoing section 7 consultation.

Specifically, administrative costs associated with considering possible impacts to fuels reduction and other fire management activities are considered in Chapter 5 of the FEA. As noted in Exhibits D-2 through D-4, more than 21 formal section 7 consultations, 38 informal consultations, and 12 technical assistance efforts are forecast annually related to forest management activities. In addition, forest management costs as quantified in Chapters 3 and 4 of the FEA include project modifications associated with fuel reduction projects, including biologist monitoring time for work occurring within buffer zones.

Administrative costs associated with flood control, bank stabilization, and other instream construction work, are included under "other activities" in Chapter 5 of the FEA. As noted in Appendix D, more than 325 section 7 actions are forecast for "other activities." Potential incremental project modifications associated with flood control activities are summarized in section 4.1 of the FEA.

(2) *Comment:* A number of commenters noted the proposed designation is likely to have a significant economic impact, citing a potential for $1 billion in impacts. Given the current state of the economy, other commenters expressed concern about impacts related to bull trout conservation placing additional stress on already economically vulnerable industries and areas. Several commenters stated that funds spent on bull trout protection efforts would be better used for other purposes.

*Our Response:* The Service acknowledges that the current economic situation creates conditions in which local and regional economies may be less able to absorb any additional regulatory burden. However, this analysis examines a 20–year timeframe, with expected impacts distributed across the entirety of this time period. Moreover, incremental impacts are expected to be relatively small, at approximately $5 to $7 million a year, distributed across 87 counties and four States. Finally, the bulk of these incremental impacts are likely to be borne by Federal and State agencies rather than private landowners. While the analysis also forecasts the potential for approximately $100 million in annualized baseline costs, these impacts are expected to occur regardless of critical habitat designation for bull trout.

(3) *Comment:* One comment suggested the DEA overstated incremental conservation costs associated with the proposed critical habitat and provided various examples to illustrate this. The comment states the range of annualized incremental costs should have been narrower, and that certain costs are inappropriately included as incremental conservation costs. The commenter further states mitigation costs for sediment controls should not be considered incremental since they would be incurred due to forest management practices already in place. Also, the comment states incremental costs above Condit Dam should not be included since this dam is scheduled for removal.

*Our Response:* As described in section 4 of the FEA, the analysis of incremental costs focuses on identifying costs that would be associated with unoccupied critical habitat designated in areas that do not overlap with salmon habitat. The range of incremental costs is due to various uncertainties underlying the expected types and costs of conservation measures. Where reliable information was available to narrow this range it was incorporated in the analysis. However, as discussed in the 2004 final economic analysis for the final Columbia and Klamath DPS critical habitat designation (69 FR 59995, October 6, 2004), in the case of costs associated with potential changes to irrigation withdrawals, the likelihood of these costs occurring is not known, leading us to estimate a wide range of impacts. Similarly, we estimated a range of incremental costs associated with forest management projects because the exact scope and type of projects were uncertain. Due to these uncertainties, the high-end scenario may overstate incremental impacts. While there is uncertainty in the estimates of incremental conservation costs presented in the DEA, the Service believes these estimates to be based on the best information currently available, and has made corrections as appropriate based on information provided in public comments.

As discussed in Chapter 3 of the FEA, forest management conservation costs associated with baseline regulations include the Idaho, Washington, and Oregon Forest Practices Acts, and many other Federal regulations. The methodology applied in the analysis was designed to separate out as incremental those costs that would not be incurred but for the critical habitat designation. Thus, based on historical consultation efforts and discussions with the U.S. Forest Service, forecast incremental forest management conservation costs are those costs associated with section 7 consultations that would not occur but for the designation of bull trout critical habitat in unoccupied areas.

We agree with the commenter that once the Condit Dam has been removed, there will not be incremental impacts associated with the area above the dam. As discussed in the FEA (section 4.2.2), incremental impacts in the Lower Columbia River Basin unit are expected to minimal. Once the Condit Dam is removed, projects will need to consider impacts to listed salmon species as well as bull trout.

(4) *Comment:* Several commenters indicated the DEA should not rely on the 2004 and 2005 economic analyses because the information is out of date and because national and regional economies have changed drastically since these analyses were published. Another commenter stated the DEA does not account for the drastic economic downturn in the Northwest, and provided information regarding how the timber industry has changed in the recent past. Also, this commenter indicates the use of the GDP deflator is not appropriate and the DEA should use a more up-to-date regional factor to convert costs to 2010.

*Our Response:* In developing the DEA, research was conducted to ensure that the conservation costs forecast in the earlier 2004 and 2005 economic analyses were applicable. Where more

recent relevant information was available, this was incorporated, as appropriate. The 2004 final economic analysis of the Columbia and Klamath populations critical habitat designation was reviewed by three independent technical advisors: Dr. Joel Hamilton, Emeritus Professor of Agricultural Economics and Statistics, University of Idaho; Dr. Lon Peters, president of Northwest Economic Research, Inc., a Portland-based firm that provides economic consulting services to electric utilities; and Dr. Roger Sedjo, senior fellow and the director of Resources for the Future's forest economics and policy program. Similarly, the 2005 economic analysis of the Coastal-Puget Sound, Jarbidge River, and Saint Mary-Belly River populations final critical habitat designation was peer reviewed by Dr. Peters and Dr. Hamilton, as well as by Dr. Bruce Lippke, Professor Emeritus School of Forest Resources, University of Washington. Feedback from these reviewers was incorporated into the 2004 and 2005 final economic analyses as appropriate. The information provided by the commenter regarding changes in the timber industry consisted of articles published in 1999 and 2000, prior to 2004 and 2005 when the original research for this FEA was conducted, and as such, we did not use this information to update the report.

No specific information was provided regarding how the economic downturn in the Northwest is different than the economic conditions in the rest of the country, or how this downturn should be factored in differently in the DEA for the bull trout. The commenter did not provide any regional conversion factor, as suggested, which we could evaluate. Given the large geographic scale of this designation and the types of potential impacts, we determined that the national GDP deflator was the most appropriate figure for use in inflating the conservation costs. We believe we have taken the correct approach by updating costs to current dollars since the previous reports by using the GDP deflator, which takes into account the current state of the national economy.

(5) *Comment:* Several comments indicated confusion about what conservation costs were included as baseline costs. In particular, one commenter is concerned that the DEA did not assess potential economic impacts stemming from State laws that limit activities in designated critical habitat areas. A comment indicated that the DEA did not take into account land and resource management plans (i.e., Land and Resource Management Plans (LRMP) and Resource Management Plans (RMP)) as part of the baseline regulatory conditions. While one commenter is concerned that the DEA did not take into account baseline impacts that could result from reinitiated consultation on the Washington Forest Practices Habitat Conservation Plan (FPHCP), another commenter indicated that costs associated with HCPs should not be included in the analysis. Another commenter notes that it is unclear whether costs associated with the bull trout critical habitat finalized in 2005 are included in the baseline. Various other commenters provided details on baseline conservation costs that were not included in the DEA. In particular, one commenter notes that they have incurred significant expenses providing protection to bull trout under the Idaho Forest Practices Act since 2004, which should have been included in baseline impacts.

*Our Response:* The State laws that may limit activities in designated critical habitat are discussed in section 3 of the FEA. The analysis considers State laws, LRMPs, and RMPs as part of the baseline regulatory environment. LRMPs and RMPs are generally developed under the Federal Land Policy and Management Act (43 U.S.C. 1701 *et seq.*) listed in Exhibit 3-4. As discussed in section 5.2.2, incremental administrative costs quantified in the FEA include administrative costs associated with reinitiated consultations, such as reinitiation of consultation on the FPHCP. However, incremental conservation costs associated with reinitiation of consultation for the FPHCP are not anticipated, and therefore none are quantified. As discussed in section 2.3.2 of the FEA, no specific plans to prepare new HCPs in response to this critical habitat designation were identified; therefore, no conservation costs associated with HCPs are included in FEA.

Text has been added to section 2 of the FEA to clarify that the analysis considers and estimates the impacts of the rule as proposed and as if the existing 2005 critical habitat designation did not exist. In other words, this analysis considers and estimates the impacts associated with designating areas as critical habitat versus not designating these areas. This analysis is intended to assist the Secretary in determining whether the benefits of excluding particular areas from the designation outweigh the benefits of including those areas in the designation. These particular areas also include those already designated as critical habitat under the 2005 designation and which are subject to re-examination by the Secretary.

The commenter is correct that the analysis does not fully account for nor include all baseline costs. Section 2.3 of the FEA discusses the Service's approach to conducting the economic analysis and notes that due to extensive overlap between the current proposed designation and the past bull trout critical habitat proposals, and due to the existence of two detailed economic analyses of those past proposals, the FEA focuses on incremental impacts expected to occur after we finalize this designation of critical habitat. Because baseline costs are not solely attributable to the proposed designation, they are considered in the FEA primarily for purposes of providing context, while the incremental impacts are considered to be of primary importance for decision-making purposes. As discussed in section 3.3.1 of the FEA, costs associated with not-before-analyzed occupied areas as well as unoccupied habitat that overlaps with salmon habitat are included in the baseline, but were not expressly quantified in the current FEA. Nonetheless, where additional relevant information on baseline costs not captured in the report was provided in the public comments, it has been added to the FEA.

(6) *Comment:* Several commenters were concerned about potential costs to property owners that could result from the uncertain nature of future regulation. One commenter was concerned that critical habitat designation will result in decreased property values. In particular this commenter states that with the Act's regulation in the background it is reasonable to expect reduced property values of $100 per acre or more. This commenter states that a loss of $100 per acre could reduce their property values by $80 million in Idaho. On the other hand, another commenter states that impacts related to stigma and regulatory uncertainty are unlikely. This commenter further suggests that critical habitat could increase property values, for example by increasing the likelihood of Federal or State subsidies for conservation projects, or by increasing interest in the property for purchase for conservation easements.

*Our Response:* Stigma and uncertainty impacts are discussed in section 2.3.2 of the FEA. While there is potential for uncertainty impacts associated with the designation of critical habitat for bull trout, as discussed in the FEA, information is not available to quantify these impacts. Thus, impacts related to uncertainty are not calculated in the FEA. The FEA does not predict or

quantify any impacts related to stigma that could result from the designation of critical habitat for the bull trout. As discussed in the FEA, public attitudes about the limits or restrictions that critical habitat may impose can cause real economic effects to property owners, regardless of whether such limits are actually imposed. However, as the public becomes aware of the true regulatory burden imposed by critical habitat, the impact of the designation on property values may decrease. The analysis considers the implications of public perceptions related to critical habitat on private property values within the proposed designation.

The FEA finds that the bull trout critical habitat designation is unlikely to cause property value losses because much of the property proposed for designation is already being managed in ways consistent with what would be required if adjacent streams were designated bull trout critical habitat. For example, as noted as in the FEA, there are numerous baseline regulations in place that provide protections for bull trout and its critical habitat including conservation protections for salmon and steelhead. In addition, most of the lands are currently occupied by bull trout (96 percent), and 87 percent of the proposed critical habitat was included in previous critical habitat proposals. Thus, given the history of regulation and baseline protections already in place, property value impacts resulting from this critical habitat designation are not considered reasonably foreseeable. The commenter did not provide supporting information for the estimate that critical habitat results in reduced property values of $100 per acre; thus the validity of this estimate cannot be evaluated.

(7) *Comment:* Several commenters noted the DEA did not provide estimates of impacts at a detailed geographic level. As a result, the commenters could not determine how the designation may affect specific stream segments and geographic areas (e.g., individual counties).

*Our Response:* The FEA presents impacts based on the 32 units outlined by the Service in the proposed rule. Because the analysis covered almost 37,000 river kilometers (km) (23,000 miles (mi)) and more than 200,000 hectares (ha) (500,000 acres (ac)), and followed a 20–year time horizon, project forecasts and other data were not available at a sufficiently specific level to project impacts by individual stream mile. To the extent possible, the FEA identifies costs to specific areas when information was available. Where potentially affected projects or sites were identified, the FEA attributes impacts associated with these projects to the relevant unit. For example, project modifications associated with facilities that form part of the Federal Columbia River Power System are attributed to the relevant units. Other impacts that are expected to fall on specific types of lands (e.g., lands managed by the U.S. Forest Service) are distributed across the designation based on river mile.

(8) *Comment:* Several commenters stated the DEA failed to consider impacts on economic activities occurring upstream or downstream of critical habitat areas.

*Our Response:* The DEA considers potential impacts to activities that may threaten the bull trout as identified by the Service. As discussed in section 2.3.2, the analysis considers indirect impacts to the extent it is possible to identify these types of impacts. Additional detail has been added to Chapters 3 and 4 of the FEA qualitatively discussing potential impacts on upstream and downstream activities. Since 96 percent of designated habitat is occupied by bull trout, any incremental effect of this regulation protecting bull trout habitat would likely be small. However, given data limitations and geographic scope, the DEA analysis does not answer the question of whether impacts to mining or other upstream operations are likely (i.e., the probability of such impacts), or define the expected magnitude of these impacts in any one area.

(9) *Comment:* A commenter states that the numbers in the 2009 report cannot be replicated from the results in the 2004 report.

*Our Response:* There are several important reasons why the results of the previous economic analyses are not directly transferable to the current FEA. In particular, to update conservation costs forecast in previous reports, we had to account for three major differences between the current and previous reports. First, the geographic distribution of the proposed designation and unit definitions are different. Second, the framework underlying the economic analysis has changed. Previous reports included co-extensive costs, whereas the current FEA distinguishes between baseline and incremental costs. Third, the timeframe covered by the current analysis has been expanded to 20 years. In order to assist readers in understanding how the previous results are allocated to the new critical habitat units, we have added an appendix to the FEA providing additional information on the connections between previous reports and the current one. With the addition of this appendix, we believe all of the relevant assumptions and information used to predict the baseline and incremental costs are available in the 2010 FEA and the 2004 and the 2005 final economic analyses of bull trout critical habitat.

(10) *Comment:* A commenter notes the source of the 3 and 7 percent discount rates applied in the previous economic analyses is not explained.

*Our Response:* Information has been added to Chapter 2 of the FEA to explain the source of the 3 and 7 percent discount rates applied in the analysis. To discount and annualize costs, guidance provided by the Office of Management and Budget (OMB) specifies the use of a real rate of 7 percent. In addition, OMB recommends conducting a sensitivity analysis using other discount rates such as 3 percent.

Economic Benefits Comments

(1) *Comment:* A commenter suggested the Service should have hired a renowned natural resource economist, such as Dr. John Loomis, to calculate the existence values of bull trout. This commenter also suggested the Service should have undertaken a willingness-to-pay study to quantify the benefits of recreational fishing.

*Our Response:* As discussed in section 6.1 of the FEA, the existing economics literature does not provide the data necessary to quantify the value the public would place on actions taken to enhance the probability of recovery of bull trout. The estimation of the existence value of bull trout would require primary research involving formal approval from the Office of Management and Budget under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), more than a year to conduct a survey and analyze the results, and significant resources in excess of those allocated to the preparation of the FEA. Similar efforts would be required to conduct a willingness-to-pay study to quantify the benefits of recreational fishing. Such primary research is beyond the scope of this economic analysis. Furthermore, biological models estimating the change in the likelihood of recovery that would result from the designation of critical habitat and information necessary for a credible estimate of willingness to pay are also not readily available. Thus, existing data do not allow for the quantification or monetization of the conservation value that is incremental to the designation of critical habitat.

(2) *Comment:* Commenters suggest that water originating from streams that may be designated as bull trout critical habitat has a value of at least $1.4 to

$1.5 billion based on a report by the U.S. Forest Service.

*Our Response:* This U.S. Forest Service report estimates the total volume of water available for use on all Forest Service lands, and applies marginal values for instream and offstream water uses. In order to utilize this information for the purposes of quantifying the benefits of the critical habitat designation for bull trout, additional information would be necessary. Specifically, to apply a marginal value of water to estimate benefits of critical habitat designation we would need quantified estimates of incremental changes in the amount and quality of clear cold water resulting from the designation. The impact of the designated bull trout critical habitat on water quality and quantity has not been modeled.

(3) *Comment:* Various commenters provided information about specific benefits that should have been included in the DEA. In particular, commenters suggested that the analysis should have included benefits such as the value of bull trout as subsistence for tribal members, the reduction in likelihood that other aquatic species will be added to the endangered species list, benefits from closing Forest Service roads, and benefits of mitigating for climate change impacts through efforts to protect bull trout critical habitat. Another commenter suggests the DEA should capture potential benefits such as lower costs to upgrade to municipal water treatment facilities to meet water quality standards. This commenter also indicated that the cost-savings associated with improved productivity, less absenteeism, and reduced public and private health care costs resulting from improved water quality should be predicted.

*Our Response:* Chapter 6 of the FEA describes the categories of economic benefit that may derive from the conservation of affected aquatic species and habitats, and discusses the research methods that economists employ to quantify these benefits. As noted in the FEA, additional information would be required in order to quantify these benefits as they relate to designation of bull trout critical habitat. The FEA (section 6.4.3) includes discussion of the potential for benefits related to improved water quality including benefits to other species, lower costs of water treatment, and human health benefits. Similarly, the report discusses the fact that managing activities in riparian areas such as road maintenance could lead to benefits associated with improved water quality. Finally, the FEA has been modified to include discussion of the potential for benefits such as improved subsistence fishing opportunities and mitigation for climate change.

(4) *Comment:* Several commenters indicate the DEA should have included estimates of benefits resulting from increased recreational fishing opportunities. In particular, a commenter states that a recovered bull trout fishery would result in 218,000 to 295,500 bull trout angling days per year within the Columbia River basin and 3,000 to 4,000 days per year in the Klamath River basin. The commenter also estimates potential recreational fishing benefits for Montana. Based on anglers spending $44 per day fishing and fishing 11.7 days per year, the commenter suggests benefits could total $9.8 million to $12.1 million in direct income, and $18 to $22 million after applying an economic multiplier.

In addition, various commenters provided information on the economic value of recreational fishing in the proposed critical habitat area. One comment provided an estimate of $69.8 million of travel-generated expenditures for fishing, hunting, and wildlife viewing in Deschutes County, Oregon (2009). Another commenter supplied information on the economic value of recreational fishing in the five States containing proposed bull trout critical habitat, which totals $2 billion based on the Service's 2006 National Survey of Fishing, Hunting, and Wildlife-Associated Recreation. Several commenters stated that recreational fishing in the State of Idaho results in economic benefits of $283 million.

*Our Response:* It appears that the estimates of angling days in the Columbia and Klamath river basins that would result from a recovered bull trout fishery cited in one comment may be based on a 2007 Defenders of Wildlife study titled, "Conservation Pays: How Protecting Endangered and Threatened Species Makes Good Business Sense." However, the source cited does not appear to support the estimated angler days. Therefore, we have not included information from this study in the FEA. Further, the Service determined that data needed to reasonably estimate the increase in the number of angling days that would result from the critical habitat designation are not available. There is insufficient biophysical information to support such an analysis for the areas proposed for critical habitat designation. The timing and extent to which the bull trout population would be expected to recover is unknown, both in total and at the critical habitat unit level. Further, the relationship of the designation of critical habitat to the recovery of the species is unknown.

As discussed in Chapter 6 of the FEA, additional information would be required to quantify benefits from increased recreational fishing opportunities, including: (1) Detailed forecasts of the timing and extent of expected bull trout population increases resulting from critical habitat designation; (2) any associated expected changes in fishing regulations, and (3) the responsiveness of anglers to a new target species. These data are not currently readily available.

To the extent that conservation efforts lead to increased open space, aesthetic benefits, or improved water quality, which in turn prompt an increase in visitation to the region (e.g., for recreation such as fishing, hiking, or wildlife-viewing), the economy and employment may benefit from increased regional spending, as discussed in Chapter 6 of the FEA. However, general estimates of travel-generated expenditures for fishing, hunting, and wildlife viewing are not applicable for estimating benefits that could result from designation of critical habitat for bull trout. In particular, these types of estimates are not specific to rivers or lakes included in the proposed critical habitat, nor are they specific to fishing for bull trout. As such, we have not incorporated these values provided by commenters into the FEA.

(5) *Comment:* Two comments suggested that a study of the tailwater fishery on the San Juan River in New Mexico could be used to estimate benefits on the Upper Deschutes River.

*Our Response:* These two comments refer to potential benefits associated with the Upper Deschutes River, which was not included in the proposed critical habitat, and as such was not considered in the economic analysis. Thus, we did not incorporate this information in the FEA.

(6) *Comment:* A commenter stated that recreational fishing opportunities are not dependent on changes to fishing regulations; thus, the analysis should be able to quantify benefits associated with recreational fishing. The commenter further noted fishing opportunities evaluated should not be limited to lethal harvest. This commenter also noted an error in the reported percentage of trout fishing days in Montana in 2006.

*Our Response:* Potential benefits related to increased bull trout fishing opportunities are discussed in section 6.3 of the FEA. As noted in the FEA, increased recreational fishing opportunities would most likely occur in the form of catch-and-release fishing, given the status of the species; however,

the analysis notes that current management approaches could be altered at some point to allow some anglers in some areas to harvest bull trout.

Additional information would be required to quantify these benefits, including: (1) Detailed forecasts of the timing and extent of expected bull trout population increases resulting from critical habitat designation; (2) any associated expected changes in fishing regulations; and (3) the responsiveness of anglers to a new target species. At this time, the Service is not able to forecast how critical habitat designation may affect the future population of bull trout in critical habitat areas. Further, specific changes, including timing, to fishing regulations are uncertain. Given the dearth of available information, the Service chose not to quantify the potential benefits associated with the increased recreational fishing.

Information on how fishing regulations might change (e.g., the likelihood that States would allow fishing for bull trout, as well as where and when) is considered an important factor in forecasting angler days that could result from a recovered bull trout fishery. Without this information, it would be difficult to predict how much recreational fishing would be allowed in critical habitat areas. For example, if fishing regulations were very restrictive, the increase in recreational fishing due to critical habitat could be very small.

The commenter is correct in noting that the reported percentage of trout fishing days in Montana in 2006 was a typographical error. This percentage has been revised in the FEA.

(7) *Comment:* Several commenters indicated the DEA should have included estimates of benefits resulting from increases in jobs that could result from implementation of restoration activities such as road reconstruction, culvert replacement, and fence building. Commenters state the analysis fails to recognize economic benefits that healthy native fisheries and increased spending at local businesses by the recreational fishing public can provide to regional economies. One commenter suggested that Federal expenditures to protect bull trout habitat contribute to the economy of northeastern Nevada.

*Our Response:* We agree some level of regional economic benefits could result from conservation efforts resulting from bull trout critical habitat designation, as discussed in section 6.3 of the FEA. To the extent conservation efforts lead to increased open space, aesthetic benefits, or improved water quality, which in turn prompt an increase in visitation to the region (e.g., for recreation such as fishing, hiking, or wildlife-viewing), the economy and employment may benefit from increased regional spending. However, based on the assessment of incremental costs related to the proposed rule, any incremental benefits related to the rule would be expected to be limited (i.e., with few incremental project modifications resulting from the designation, the scale of economic benefit is expected to be modest). As discussed in Chapter 6 of the FEA, the Service determined the data needed to reasonably estimate benefits resulting from a potential increase in recreational fishing that would result from the critical habitat designation are not available.

(8) *Comment:* Several commenters noted that the incremental impacts projected are relatively small in comparison to the potential benefits of the designation. The commenters pointed to potential benefits that may result from the designation such as improvements in water quality and revitalized fisheries.

*Our Response:* The Service agrees that incremental impacts (i.e., impacts that would not occur absent critical habitat) are expected to be relatively minor. As noted in Exhibit ES-2 of the FEA, potential incremental impacts are estimated at $56.3 to $80.9 million over the next 20 years (discounted at 7 percent). On an annualized basis, incremental impacts are estimated at approximately $5 to $7 million. These impacts are discussed in greater detail in Chapter 4 of the FEA.

The FEA acknowledges potential benefits may occur as the result of the designation; Chapter 6 discusses these benefits qualitatively. As discussed in section 2.3.3, the Service believes that the direct benefits of the proposed rule are best expressed in biological terms that can be weighed against the expected cost impacts of the rulemaking. A direct comparison of incremental impacts to potential benefits in dollar terms is not possible because of a lack of detailed understanding of the change in the probability of bull trout recovery likely to result from the designation.

Administrative Costs

(1) *Comment:* Several commenters provided additional information related to the number of forecast section 7 consultations and associated costs. One commenter stated the number of forecast consultations was too high because of changes in the Northwest economy and because regional and programmatic consultations covering multiple projects may be used. In addition, the commenter believes forecast consultations in unoccupied areas are "theoretical." A second commenter noted that they complete between 10 and 15 consultations a year, and that this number would increase if unoccupied areas were designated. Two commenters noted that costs of participating in section 7 consultation as a third party were greater than the estimates used in the DEA, while another commenter stated that the DEA's estimated costs of addressing adverse modification in a consultation were too high.

*Our Response:* The comments providing information related to the number and costs of consultation for specific entities were incorporated into the report in Chapter 5 of the FEA. In general, the DEA used a range of administrative costs developed from hours estimates based on a review of consultation records from several Service field offices. The portion of administrative costs attributed to considering critical habitat were based on the Service's estimate that, for every three hours spent considering jeopardy, an additional hour is spent considering adverse modification. This represents the best available information on relative proportion of time spent considering adverse modification in section 7 consultations.

To develop forecasts of future consultations, this analysis relies on section 7 consultation records provided by the Service. This record includes more than 4,000 section 7 consultations conducted for bull trout over the past 7 years. In many cases, the location of future projects, the type of section 7 consultation (i.e., programmatic, formal, informal, or technical assistance), and the associated level of administrative effort needed is not known. The historical rate of consultation is assumed to be a reasonable proxy for the frequency and type of future consultations because it is likely that similar types of projects and entities will occur in the future as in the past. While one commenter notes that shrinkage of the timber industry should reduce the number of forest management consultations, the number of forest management consultations actually increased over the last 4 years. Forest management consultations, in fact, consider a broad suite of activities, including recreation, road maintenance and transportation, and fire management, among other activities.

It is unclear how critical habitat would likely increase the rate of future programmatic consultations. Programmatic consultations are frequently used as a tool to reduce consultation workload, and are part of

the consultation records providing the basis for forecasts of future consultation activity in this analysis.

As noted in Exhibit 5-5 of the FEA, some units in occupied areas have estimated incremental administrative costs because of the incremental effort associated with considering adverse modification in consultations that would already be expected to occur. The distribution of costs between baseline and incremental is outlined in section 5 of the FEA.

Impacts to Small Entities

(1) *Comment:* One commenter expressed concerns about certain assumptions underlying the Initial Regulatory Flexibility Analysis (IRFA). In particular, the commenter noted that some consultations may involve more than one small entity (e.g., for consultations on grazing activities); that administrative costs are often not passed on to small entities by Federal and State agencies and may otherwise be subsidized; that the Small Business Administration (SBA) thresholds used are inflated; and that location of small entities participating in activities such as grazing and mining may not correlate with population as assumed in the DEA. Another commenter encouraged outreach with small entities that submitted comments during the public comment period, including addressing these comments in the Final Regulatory Flexibility Analysis (FRFA) prepared for the final rule.

*Our Response:* The Initial Regulatory Flexibility Analysis (IRFA) has been revised to a Final Regulatory Flexibility Analysis (FRFA). In addition to the information previously provided in the IRFA, the FRFA provides a summary of comments submitted by small entities in response to the proposed rule and DEA. The purpose of the FRFA is to assist the Service in determining the extent to which incremental impacts resulting from critical habitat designation may be borne by a substantial number of small entities. As discussed in section A.1, the FRFA developed two potential estimates of small entities that may be affected depending on the pattern of future consultations and the extent to which impacts are passed on to small entities. Given the breadth of the proposed designation, the number of counties potentially affected, and the more than 70,800 small businesses falling within these counties, primary data collection efforts on the location of each of these businesses and their individual revenues were not feasible and outside the scope of this analysis.

Scenario 1 is based on the estimated number of small entities falling within the designation. To derive this estimate, Appendix A of the FEA uses best available data on such factors as the size and annual sales of businesses in the area, as collected by Dun & Bradstreet. These data are available on a county-wide basis. Because counties may include areas that are not part of the critical habitat designation, the number of small entities within the county is scaled by the percentage of the county's population living within the proposed critical habitat boundaries. The commenter correctly points out that some industries may not correspond to population patterns. For example, agricultural, grazing, and mining operations may be located in more rural and less populated areas. Exhibit A-3 in the FEA provides a summary of all small entities located in the relevant counties, including 416 mining operations, 14,402 agricultural operations, and 1,468 grazing operations. If potential incremental impacts were benchmarked against all of these businesses, the estimated impact per small entity would be less than $700 per entity, representing less than 0.01 percent of revenues. Scenario 2 is based on the forecast number of consultations, assuming one small entity per consultation except in the case of agricultural operations. As the commenter points out, grazing consultations also may involve more than one small entity. This comment has been addressed in Exhibit A-1 of the FEA.

As stated in section A.1.1 and Exhibit A-1, the portion of administrative costs expected to be borne by Federal and State agencies is excluded from impacts considered in this section as well as any project modification costs likely to be borne by Federal agencies. For example, as noted in Exhibit A-1 of the FEA, impacts associated with Federal dam projects are excluded. In total, annualized incremental impacts to small entities considered in Appendix A are only 51 percent of total incremental impacts estimated in the rest of the report. While the commenter believes that the impacts are overstated, they still represent less than 0.6 percent of annual revenues under both scenarios and for all activities.

Finally, the small business size standards noted in Exhibit A-2 in the FEA are taken directly from the US Small Business Administration website (*http://www.sba.gov/idc/groups/public/documents/sba_homepage/serv_sstd_tablepdf.pdf*). The size standards are used to determine the number of businesses that may qualify as small entities under the RFA (see, for example, the "regulated small entities in county" column in Exhibit A-3 of the FEA). The Service recognizes that many small businesses may have revenues that fall well below this size standard. Therefore, Appendix A uses estimates based on revenue data provided by Risk Management Association to refine its revenue estimates (see Row [B] in Exhibit A-1 of the FEA).

Water Use

(1) *Comment:* Various comment letters expressed concern the designation could result in flow management changes which could impact agricultural operations. For example, several commenters state the DEA fails to take into account negative impacts that could result from changes in reservoir operations on the Boise, Payette, and Weiser Rivers, which could affect agriculture in this section of Idaho. Another commenter expressed concern about the economic impacts associated with a loss of irrigation water in Adams County, Idaho. One commenter states the DEA should analyze potential future reallocation of water rights priorities that may be caused by the designation, and any associated costs to the Blackfeet Tribe. On the other hand, a commenter states reductions in instream flows are unlikely and there is no reason to believe that this will occur on public and private lands.

*Our Response:* As discussed in section 4.1, the FEA forecasts potential incremental impacts resulting from modifications to irrigation diversions across the proposed critical habitat designation. As discussed in the 2004 final economic analysis for the Columbia and Klamath River DPS final critical habitat designation, the Service, USFS, and BLM have indicated that reductions in irrigation to protect bull trout critical habitat are unlikely. To date, there have not been any section 7 consultations with USFS or BLM where irrigation diversions have been altered to benefit bull trout or its critical habitat. Because of the large degree of uncertainty as to whether consultations regarding irrigation diversions would occur, what volume of water might be reallocated to instream flows, and what the primary use of the diverted water would be (e.g., crops or pasture irrigation), the FEA estimates a range of outcomes. The low end scenario assumes the Service would not recommend any changes to irrigation withdrawals, while the high end scenario assumes there could be project modification costs associated with 10 irrigation diversion projects over the 20–year timeframe of the analysis. This estimated range recognizes such

consultation outcomes are unlikely, but that if a limited number were to occur, the impacts on individual operators could be substantial.

(2) *Comment:* One commenter questioned the assumption that alternative water supplies would be available to replace irrigation water that could be reallocated as a result of bull trout critical habitat designation. The commenter further suggested it would be better to apply a value for lost farm income, assuming that replacement water would not be available. The commenter suggested lost farm income should be estimated using a value of $100 to $400 per acre depending on the type of crops being grown. Also, storage for irrigation could be curtailed under the worst case scenario, which could result in a direct economic impact of $50 million at $100 per acre, based on the more than 500,000 acre feet of water stored for diversions in the Boise and Payette river systems. Similarly, another commenter stated the DEA should estimate the impacts of withdrawn lands taken out of agricultural production. One commenter stated there is no extra water to attempt any change in the customary operations of their area. Finally, a commenter stated Idaho does not have instream flow rights laws under their State water law administration.

*Our Response:* As discussed in the 2004 final economic analysis for the Columbia and Klamath River DPS critical habitat designation, the high end scenario forecasted potential changes to instream flows that could result from bull trout critical habitat designation. The analysis estimated average annual loss in irrigation withdrawals of 2,656 acre-feet per year per consultation based on three biological opinions completed by NOAA Fisheries where instream flows in Washington were specified primarily to protect anadromous species. The analysis applied an upper-end estimate of water lease values from the Washington State Department of Ecology of $127 per acre-foot. Because of uncertainty about timing and location, the high end scenario assumed the consultations would all occur in the first year of the analysis and the costs are spread over all USFS lands within the proposed critical habitat. The portion of costs that are incremental was then calculated based on the portion of critical habitat unit that is considered unoccupied.

As discussed above, the $127 per acre foot is based on actual observed sales of water rights. While these values are based in part on purchases, they are reflective of the opportunity cost of foregone water use (e.g., the value of crop losses) and are consistent with other approaches to valuing water, such as a production function or farm budget approach. Accordingly, their use in the analysis is consistent with the case where the irrigator loses the use of the usual source of water and is unable to purchase water elsewhere (the irrigation-related increment to production is lost). The agriculture irrigation-related sections of the 2004 final economic analysis were reviewed by a technical advisor on agriculture and water resource economics, Dr. Joel Hamilton, Emeritus Professor of Agricultural Economics and Statistics at the University of Idaho. Dr. Hamilton reviewed the analytical methodology and the validity of the results, and opined that the value of $127 per acre-foot likely overestimates the impacts. Further, we note the use of this figure is consistent with the suggested range of $100 to $400 per acre for lost farm income, given that in the Pacific Northwest in 2008 roughly 2 acre-feet of water are applied to each acre irrigated based on the 2007 Census of Agriculture.

In addition, we note that in areas within the proposed critical habitat, water transactions to benefit endangered species have occurred. The report titled "Economics of Water Acquisition Projects" referenced by one of the commenters indicates that Oregon and Washington water trusts have recently brokered a number of annual water leases for the purpose of augmenting instream flows, and includes examples in the Deschutes River Basin. As discussed in this report "Agencies, politicians and current right holders seem to concur that if water is needed it should be purchased from willing sellers, rather than rely on government regulatory powers or taking provisions." This report also confirms that Oregon, Idaho, and Washington all allow water rights to be changed from irrigation to instream flow use.

Forecast impacts to irrigation do not include curtailing water storage in the Boise and Payette river systems. This is not considered a reasonably foreseeable outcome of the critical habitat designation. Given that there is no basis for assuming the 50,000 acre feet of stored water would be affected by the critical habitat designation, we determine the suggested direct economic impact of $50 million is not applicable.

(3) *Comment:* Several commenters were concerned about potential loss in tax revenues as well as ripple effects that could result from impacts of the designation on agricultural activities. Several comment letters suggested regional economic impacts could occur if irrigation for agriculture is affected by the critical habitat designation. In addition, numerous commenters provided information about the value of irrigated agriculture. One commenter indicated any reallocation of irrigation diversions would negatively impact the economy in Canyon County (Boise City and Treasure Valley), Idaho, and provided information on the value of agricultural receipts as $325 million in Canyon County. One commenter indicates the total value of irrigated agriculture is nearly $1 billion in Kittias, Yakima, and Benton Counties (WA). Another commenter was concerned 1 to 10 percent of the $1.261 billion direct income to farmers and ranchers in Yakima and Klickitat Counties of Washington State will be affected by this designation. Another commenter provided data on the estimated gross crop revenue of about $12 million within the boundaries of the Middle Valley Ditch Corp. in Idaho. One comment stated Black Canyon Irrigation District contributed about $60 million dollars from agriculture in Gem, Payette, and Canyon Counties in Idaho. Another commenter expressed concern that agriculture and related industries will be affected, which represent 30 percent of Payette County economy.

*Our Response:* Irrigated agriculture is an important industry in the vicinity of some bull trout critical habitat units. Chapter 1 of the FEA has been expanded to include some discussion of the socioeconomic background of the critical habitat areas, including the contribution of irrigated agriculture. As stated in section 2.3 of the FEA, the analysis focuses on incremental impacts expected to occur after the designation of critical habitat is finalized. The basis for assuming the entire value of irrigated agriculture in counties that contain critical habitat are at risk from the proposed designation of critical habitat does not appear to be warranted given the history of bull trout management. Similarly, commenters do not provide any justification for assuming that 1 percent or 10 percent of these values are at risk due to critical habitat.

Because of the large degree of uncertainty as to whether consultations regarding irrigation diversions may occur, what volume of water might be reallocated to instream flows, and what the primary use of the diverted water would be (e.g., crops or pasture irrigation), the FEA estimates a range of outcomes. The low end scenario assumes the Service would not recommend any changes to irrigation withdrawals, while the high end scenario assumes there could be project

modification costs associated with 10 irrigation diversion projects over the 20–year timeframe of the analysis. This estimated range recognizes that such consultation outcomes are unlikely, but that if a limited number were to occur, the impacts on individual operators could be substantial. Because of the large region across which these impacts are spread, however, significant regional impacts of these consultations are not anticipated even under the high end scenario. The analysis does not model the potential regional economic impacts associated with other baseline conservation efforts that may be undertaken, which may be much larger in scale. Because baseline costs are not solely attributable to the proposed designation, they are considered in the FEA primarily for purposes of providing context, while the incremental impacts are considered to be of primary importance for decision-making purposes.

(4) *Comment:* A commenter stated that costs for mitigation of projects in the Upper Willamette River Basin should not be considered incremental as these costs would be incurred whether or not bull trout critical habitat is designated in this area. The commenter further disagreed with the assumption in the DEA that one-third of the costs of project modifications undertaken by the Bonneville Power Administration (BPA) at the Upper Willamette project are related to bull trout.

*Our Response:* Estimated incremental costs in the Upper Willamette River Basin unit are dominated by project modification costs associated with the Willamette River Basin Flood Control Project, including fish passage (trap and haul operations and construction of a fish ladder), temperature control projects, and bull trout studies. The FEA includes discussion of the uncertainties underlying the estimation of incremental impacts in the Upper Willamette River critical habitat unit, recognizing that some or all of these actions are likely to occur even without critical habitat designation. The specific extent to which project modification costs for the Willamette Project will increase as a result of this designation is unclear; this distinction is particularly complex because most of the proposed area on the Upper Willamettte was designated as critical habitat in 2005. It is feasible that some of the planned future actions would not have been undertaken but for bull trout critical habitat designation. As such, section 4 of the analysis uses the best available information and methods to estimate potential incremental impacts.

(5) *Comment:* Several comment letters expressed concern the DEA does not appear to consider impacts to hydroelectric projects. In particular, one commenter expressed concern about impacts to the Flint Creek Hydroelectric project, which is in the final stages of licensing with the Federal Energy Regulatory Commission (FERC). This commenter stated the DEA does not mention impacts to the Flint Creek hydroelectric project, which the commenter maintained would be greater than the incremental annualized costs for the entire Clark Fork CHU. Other commenters expressed concern the critical habitat designation could increase the costs to hydropower users and their customers. One commenter stated the Energy Impact Analysis does not adequately address the impacts of the rule on energy production, distribution, or marketing.

*Our Response:* The FEA considers whether the proposed critical habitat would impact hydropower projects. As stated in Chapter 4 of the FEA, incremental conservation costs associated with hydropower projects are estimated to be $2.12 to $2.52 million (annualized at 7 percent). Detailed information regarding the potential impacts to these projects are provided in section 4.2.6 of the 2004 final economic analysis of the Columbia and Klamath DPS final critical habitat designations as well as section 3.4.1 of the 2005 final economic analysis of the Coastal-Puget Sound, Jarbidge River, and Saint Mary-Belly DPS final critical habitat designation. As appropriate, these impacts have been allocated to the new proposed critical habitat units. As noted in the FEA, substantial impacts to hydropower production are anticipated under the baseline for this analysis. The commenter is correct that the economic analysis does not forecast any incremental conservation costs associated with the Flint Creek Hydroelectric Project. In a letter dated March 26, 2010, from the Service to FERC, the Service concurred with the determination that the project is not likely to adversely affect bull trout or modify its proposed critical habitat. Additional conservation efforts are not expected to be undertaken as a result of bull trout critical habitat. Therefore, the only incremental impacts related to this project are administrative costs which have been accounted for in the forecast consultation efforts discussed in Chapter 5 of the FEA. The Energy Impact Analysis has been revised to more clearly identify incremental impacts of critical habitat designation for bull trout on energy production, distribution, and marketing. In addition, the Energy Impact Analysis now also recognizes the more substantial potential impacts on hydropower production expected under the baseline.

(6) *Comment:* Several comment letters expressed concern that the DEA does not appear to consider impacts to municipal water systems and users. In particular, a commenter expressed concern that the designation of Buck Creek will have significant cost impacts for the City of White Salmon municipal water system and its residents and small businesses. Another commenter was concerned about potential negative impacts on the potential loss of water to cities and industrial users from changes to reservoir operations on the Boise, Payette, and Weiser Rivers.

*Our Response:* In developing the DEA, we considered whether impacts to municipal water systems are likely to result from critical habitat designation for bull trout. Specifically, section 3.4 of the 2004 final economic analysis for the Columbia and Klamath DPS final critical habitat designation included discussion of the potential for consultations for bull trout involving water system improvements. Based on the section 7 consultation history, there have not been project modifications or formal consultations for this type of activity. As such, the 2004 economic analysis forecasted only informal consultations for water treatment system improvement, and no project modifications associated with bull trout or bull trout critical habitat were expected. Based on the findings of this previous analysis, and current research regarding newly proposed critical habitat areas, we determined incremental impacts to municipal water systems were not reasonably foreseeable; thus, conservation costs associated with this type of activity were not forecast in the FEA.

(7) *Comment:* One commenter was concerned that any changes to BOR's Klamath Project would have significant economic impacts, which was not addressed in the DEA.

*Our Response:* As discussed in responses to comments on the earlier economic analysis published in the **Federal Register** on September 26, 2005 (70 FR 56222), BOR staff were contacted and consulted on the likelihood of projects requiring section 7 consultation, as described in section 4.2.4 in the final economic analysis of the Columbia and Klamath DPS final critical habitat designation. When contacted, BOR staff in Klamath Falls stated no significant consultation activity concerning bull trout was anticipated. As a result, the analysis

assumes impacts resulting from designation of bull trout critical habitat are not reasonably foreseeable for a BOR project on Agency Lake Ranch. Further, as stated in the 2010 final economic analysis, because Unit 9 (Klamath River) is included in proposed critical habitat for the Lost River sucker and shortnose sucker, action agencies have been conferencing with the Service on federally funded activities in this area for the past 15 years. In most instances we do not anticipate we would ask for or require any modifications above or beyond those measures already in place for the protection of the two sucker species. We therefore do not expect any changes other than increased administrative costs to address bull trout critical habitat in that unit.

Other Economics-Related Comments

(1) *Comment:* Several commenters were concerned the critical habitat designation may limit the availability of grazing lands. For example, one commenter noted that, if timing restrictions were imposed on when allotments could be grazed, it could negatively impact the viability of their grazing lands. Other commenters stated the DEA failed to consider the potential costs of fencing grazing allotments, noting that fencing on permitted allotments would cost $4,000 per acre with additional costs related to weed control, fence repairs, livestock water installations, and maintenance costs.

*Our Response:* The FEA considers potential impacts to grazing activities on lands managed by the BLM and the USFS. Specifically, it estimates the potential costs of monitoring, fencing, and off-stream watering requirements, and then forecasts the number of grazing projects per year that are likely to be asked to undertake these requirements, both under the baseline and incrementally due to critical habitat. For BLM lands, the analysis forecasts that three grazing projects per year will undertake these project modifications across the designation. For USFS lands, the analysis forecasts that two grazing projects per year will undertake project modifications. Estimated costs per grazing consultation are based on a review of the suggested project modifications in past bull trout section 7 consultations, and on information obtained from BLM and USFS representatives on the likelihood that future consultations will be similar in scope and cost.

We recognize that restricting the timing of grazing activities would effectively reduce the allowable grazing levels on Federal lands, and have the potential to impact associated private land values. However, in most cases the FEA does not anticipate timing restrictions on grazing activities or limits on allowable grazing levels as a result of critical habitat for bull trout.

(2) *Comment:* One commenter stated the project modification costs associated with the Blue Bridge pipeline project are overstated because they assume pipeline crossings will be through streams rather than employing directional boring to avoid conservation costs associated with critical habitat.

*Our Response:* As discussed section 4.2.2 of the FEA, the Blue Bridge pipeline is expected to cross several streams in the proposed critical habitat; however, specific future project modifications associated with that project are currently unknown. The FEA incorporates assumptions from the 2005 final economic analysis for the Coastal-Puget Sound, Jarbidge River, and Saint Mary-Belly DPS final critical habitat designation that conservation activities associated with pipelines include techniques to avoid or minimize impacts to water quality, including directional drilling.

**Summary of Changes from the 2005 Rule**

This final rule differs from the September 26, 2005, final critical habitat designation for bull trout (70 FR 56212) in the following ways:

(1) In the 2005 final rule, we designated approximately 6,161 km (3,828 mi) of streams and 57,9578 ha (143,218 ac) of lakes in Idaho, Montana, Oregon, and Washington; and 1,585 km (985 mi) of shoreline paralleling marine habitat in Washington as critical habitat (70 FR 56212). No critical habitat was designated in the Jarbidge River basin (70 FR 56249-56251). In this rule, we are designating 31,750.8 km (19,729.0 mi) of streams (which includes 1,213.2 km (754.0 mi) of marine shoreline in the Olympic Peninsula and Puget Sound, and which includes 245.2 km (152.4 mi) of streams in the Jarbidge River basin), and are designating a total of 197,589.2 ha (488,251.7 ac) of reservoirs and lakes.

(2) In the 2005 final rule, we did not designate any unoccupied critical habitat because the Secretary concluded that it was not possible to make a determination that such lands were essential to the conservation of the species (70 FR 56232, September 26, 2005). In this rule, we are designating 1,323.7 km (822.5 mi) of streams and 6,758.8 ha (16,701.3 ac) of reservoirs and lakes (4.2 percent of the total designation) that are outside the geographical area occupied by the species at the time it was listed that have been determined to be essential for the conservation of the species.

(3) A small proportion of critical habitat designated in the 2005 final rule is not designated as critical habitat in this revision. These areas include streams and lakes determined either not to include bull trout or any of their PCEs, or not to be essential to their conservation. For example, Sycan Marsh in the Klamath River basin no longer holds enough water to support bull trout, so we are designating the stream channels through the marsh as critical habitat, allowing connectivity among populations, instead of the entire marsh. Critical habitat included in this rule that was not designated in the 2005 final rule include streams and lakes since determined to be occupied by bull trout, and areas that provide one or more PCEs and are essential to bull trout conservation. For example, the mainstem Columbia River and the lower portions of connecting tributaries such as the John Day River have been found to be more important for FMO habitat for bull trout than was previously understood. All areas known to contain the most important bull trout habitat and PCEs, or that may be unoccupied but essential to their conservation, are designated in this rule.

(4) In the 2005 rule, a variety of areas were exempted from critical habitat designation under section 4(a)(3) of the Act or excluded from designation as critical habitat under section 4(b)(2) of the Act (70 FR 56232). These areas included lands subject to Federal management plans (such as PACFISH, INFISH, Northwest Forest Plan, and Federal Columbia River Power System). Federal agencies have an independent responsibility under section 7(a)(1) of the Act to use their programs in furtherance of the Act and to utilize their authorities to carry out programs for the conservation of endangered and threatened species. We consider the development and implementation of land management plans by Federal agencies to be consistent with this statutory obligation under section 7(a)(1) of the Act. Owners of non-Federal lands, by contrast, are not obliged to undertake such conservation programs, so to the

extent that excluding such lands under section 4(b)(2) provides an incentive to conserve listed species, exclusion may benefit the species to a degree that exclusion of Federal lands would not. Therefore, Federal land management plans, in and of themselves, are generally not an appropriate basis for excluding essential habitat. In areas where Federal land management agencies actively manage for bull trout and its habitat, conduct specific conservation actions for the species at a level comparable to critical habitat designation, provide assurances that a plan will remain in effect for a relevant period of time, and show that a disproportionate impact would result from the designation, exclusion under section 4(b)(2) of the Act may be appropriately considered by the Secretary. In the 2010 proposed rule (75 FR 2269, January 14, 2010), we requested comments and specific information regarding any conservation actions that Federal land management agencies have or are currently implementing on their lands, and we took this information into account when conducting our exclusion analysis. (Please see in particular *Federal Agency Comments*, Bureau of Land Management and U.S. Forest Service comment 1, above.)

The primary benefit of including an area within critical habitat designation is the protection provided by section 7(a)(2) of the Act that directs Federal agencies to ensure that their actions do not result in the destruction or adverse modification of critical habitat. The benefit of designating critical habitat is limited if the areas under consideration occur on private lands for which there may not be a Federal nexus to invoke the protections of section 7(a)(2) of the Act. However, Federal lands, by default, have a Federal nexus, and the intent of section 7 of the Act is to require Federal agencies to consult on any action authorized, funded, or carried out by such agency to ensure that the action will not jeopardize a listed species or destroy or adversely modify its critical habitat. In addition, section 7(a)(1) of the Act states, in part, "Federal agencies shall, in consultation with and with the assistance of the Secretary, utilize their authorities in furtherance of the purposes of this Act by carrying out programs for the conservation of endangered and threatened species." Therefore, the benefits of inclusion of these areas are greater because they are Federal lands. We were unable to determine that the Federal management plans and guidance documents provide a conservation benefit for bull trout comparable to critical habitat designation, or that designation of critical habitat on Federal lands would present a disproportionate economic or other relevant impact. These plans typically guide agency activities, and provide some level of conservation benefit in occupied bull trout habitat areas, but are fluid documents that may or may not be revised, based on resource availability, management emphasis, and changes in management direction to respond to changing agency priorities. The Secretary has elected not to exercise his discretion under section 4(b)(2) of the Act to exclude Federal lands from this revised critical habitat designation. However, we are committed to working efficiently and proactively with our federal partners to address their program administration needs, in light of the conservation needs of bull trout.

(5) Two economic analyses related to previous bull trout critical habitat proposed rules were prepared in 2004 and 2005, which followed a co-extensive analytical approach, consistent with recent court rulings. Those analyses considered conservation and protection activities for bull trout, without distinguishing between impacts associated with listing the species and those associated with the designation of critical habitat. The economic analysis prepared for this rule does not follow the coextensive analytical approach, and differentiates between baseline and incremental economic impacts. Under this approach, because of the conservation measures already in place for salmon, steelhead, the Klamath suckers, and other protected fish species, our analysis indicates that the incremental economic impact in areas occupied by bull trout will be small, and the most significant incremental effect will be in those areas not currently occupied (less than four percent of the areas being proposed as critical habitat). The majority of forecast incremental costs are associated with unoccupied critical habitat in the Upper Willamette River Basin and are associated with conservation efforts undertaken at flood control facilities. The discussion under *Exclusions Based on Economic Impacts* (below) provides additional information in this regard.

Copies of the previous proposed and final bull trout critical habitat rules and a map showing the relationship of the 2005 final rule and this final rule are available on the Idaho Fish and Wildlife Office web site at *http://www.fws.gov/pacific/bulltrout*.

**Summary of Changes from the Proposed Rule**

We are designating a total of 31,750.8 km (19,729.0 mi) of streams (which includes 1,213.2 km (754.0 mi) of marine shoreline. We are also designating a total of 197,589.2 ha (488,251.7 ac) of reservoirs and lakes. We received many site-specific comments related to essential habitat areas, completed our analysis of habitats to be excluded under section 4(b)(2) of the Act, applied our criteria for identifying critical habitat across the range of the bull trout to refine the designation in this final rule, and completed the final economic analysis (FEA). These changes from the proposed rule are identified below:

(1) We refined our understanding of which areas contain the physical or biological features essential to the conservation of the species based on comments from peer reviewers, States, Tribes, Federal agencies, and the public. This improved information is reflected in this final designation, and is characterized as many small adjustments to waterbody segments based on site-specific information received during the public comment period. In some cases, proposed critical habitat areas were expanded and in other cases, proposed critical habitat areas were reduced, based on comments and information received in response to the proposed rule, and our evaluation of this new information, which led us to refine our designation. In some cases we extended the designation upstream into some tributary streams that we determined were essential for the conservation of the bull trout, because they contained the PCEs and meet our selection criteria for inclusion in critical habitat. Each of the areas affected by a critical habitat boundary expansion is essential to the conservation of the species and consistent with the criteria outlined in the **Critical Habitat** *Methods* section below. In other cases, we did not designate some streams that were proposed as critical habitat, based on site specific biological information that

these areas did not contain the PCEs and did not meet the selection criteria for inclusion in critical habitat. Our response to *Public Comment* (6) provides an example of one such area. Documentation reflecting the outcome of that analysis for each area is available at *http://www.fws.gov/pacific/bulltrout/.*

(2) We finalized our exclusion analysis under section 4(b)(2) of the Act. Approximately 3,094.9 km (1,923.1 mi) of streams, which includes 348 km (216.3 mi) of marine shoreline, and 7,849.3 ha (19,395.8 ac) of reservoirs and lakes were excluded from the final critical habitat designation based on this analysis. This represents approximately 13 percent of streams and 8.5 percent of reservoirs and lakes that are being excluded from what was proposed. See the **Exclusions** section, below, for more information.

(3) We revised certain language, including the PCEs, to respond to peer review comments and to clarify our intent.

(4) We updated the references cited in light of new information received in response to the proposed rule.

(5) We finalized our economic analysis based on comments received in response to the proposed rule. The Secretary did not exert his discretion under section 4(b)(2) of the Act to exclude any particular areas from the designation on the basis of economic impacts.

(6) During the mapping process, there was an inadvertent error made in Unit 20 (Powder River), in which one of the GIS layers was omitted from the map for that unit. As a result, Phillips Reservoir was not shown on the map published in the proposed revision to bull trout critical habitat (75 FR 2270, January 14, 2010). However, the impounded streams within the reservoir boundary were shown, and the proposed rule stated that "the lateral extent of critical habitat in lakes is defined by the perimeter of the waterbody as mapped on standard 1:24,000 scale topographic maps" (75 FR 2283). We also received several comment letters recommending that the reservoir be either excluded or designated as critical habitat, including comments from the Bureau of Reclamation that requested a better definition of the "bank of Phillips Reservoir". These comments drew our attention to the mapping error, but affirm the assumption that commenters understood the reservoir was intended to be proposed as critical habitat. We are correcting this mapping error and omission in this final rule, and designating Phillips Reservoir as critical habitat.

**Critical Habitat**

*Background*

Critical habitat is defined in section 3 of the Act as:

(1) The specific areas within the geographical area occupied by the 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 the species at the time it is listed, upon a determination 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 pursuant to the Act are no longer necessary. Such methods and procedures include, but are not limited to, all activities associated with scientific resources management such as research, census, law enforcement, habitat acquisition and maintenance, propagation, live trapping, and transplantation, and, in the extraordinary case where population pressures within a given ecosystem cannot be otherwise relieved, may include regulated taking.

Critical habitat receives protection under section 7 of the Act through the prohibition against Federal agencies carrying out, funding, or authorizing the destruction or adverse modification of critical habitat. In this rule, critical habitat is defined as the bed and banks of waterbodies, but actions that may destroy critical habitat could occur on lands adjacent to waterbodies, and, therefore, would be subject to regulation under this rule. 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, the 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 and 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 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. When the best available scientific data do not demonstrate that the conservation needs of the species require such additional areas, we will not designate critical habitat in areas outside the geographical area occupied by the species at the time of listing. An area currently occupied by the species but that was not occupied at the time of listing may, however, be essential to the conservation of the species and may be included in the critical habitat designation.

Section 4 of the Act requires that we designate critical habitat on the basis of the best scientific 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. Substantive comments received in response to proposed critical habitat designations are also considered.

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 habitat outside the designated area is unimportant or may not be required for recovery of the species.

*Relationship of Critical Habitat to Recovery Planning*

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, HCPs, or other species conservation planning efforts if new information available at the time of these planning efforts calls for a different outcome.

In developing this final rule, we considered the conservation relationship between critical habitat and recovery planning. Although recovery plans formulate the recovery strategy for a species, they are not regulatory documents, and there are no specific protections, prohibitions, or requirements afforded a species based solely on a recovery plan. Furthermore, although critical habitat designation can contribute to the overall recovery strategy for a species, it does not, by itself, achieve recovery plan goals.

In its 5–year review (Service 2008, p. 45), the Service recommended, in part, that recovery units from the 2002 draft recovery plan be updated for bull trout throughout their range (Service 2002), based on assemblages of bull trout core areas (metapopulations or interacting breeding populations) that retain genetic and ecological integrity and are significant to the distribution of bull trout throughout the coterminous United States. To complete the recovery unit update, we consulted with biologists from States, Federal agencies, and Native American Tribes, using the best scientific information available. Factors considered in determining the geographic arrangement of the updated recovery units included ensuring (1) resiliency of the species by protecting large areas of high quality habitat; (2) redundancy by protecting multiple populations; and (3) representation by protecting diverse genetic and life-history aspects of bull trout populations distributed throughout the range of the listed entity (Tear *et al.* 2005, p. 841).

Bull trout are listed under the Act as threatened throughout the coterminous United States, primarily due to habitat threats. The Service concluded in its 5–year review (Service 2008, p. 9) that the number of distinct population segments (DPSs) should be reevaluated, and that consideration should be given to reclassifying bull trout into separate DPSs. Six draft recovery units (RUs) were subsequently identified. Each of the six RUs was evaluated, and confirmed to be needed to ensure a resilient, redundant, and representative distribution of bull trout populations throughout the range of the listed entity. To accomplish these goals, protection of large areas of high-quality habitat, multiple populations, and diverse genetic and life-history aspects will be required.

The six draft RUs identified for bull trout in the coterminous United States include: Mid-Columbia recovery unit; Saint Mary recovery unit; Columbia Headwaters recovery unit; Coastal recovery unit; Klamath recovery unit; and Upper Snake recovery unit (Figure 1). Conserving each RU is essential to conserving the listed entity as a whole. These six new biologically based RUs will be proposed to replace the 27 recovery units previously identified in the bull trout draft recovery plan (Service 2002, Chapter 1, p. 3), and comments will be solicited once the draft recovery plan is ready for public participation and comment.

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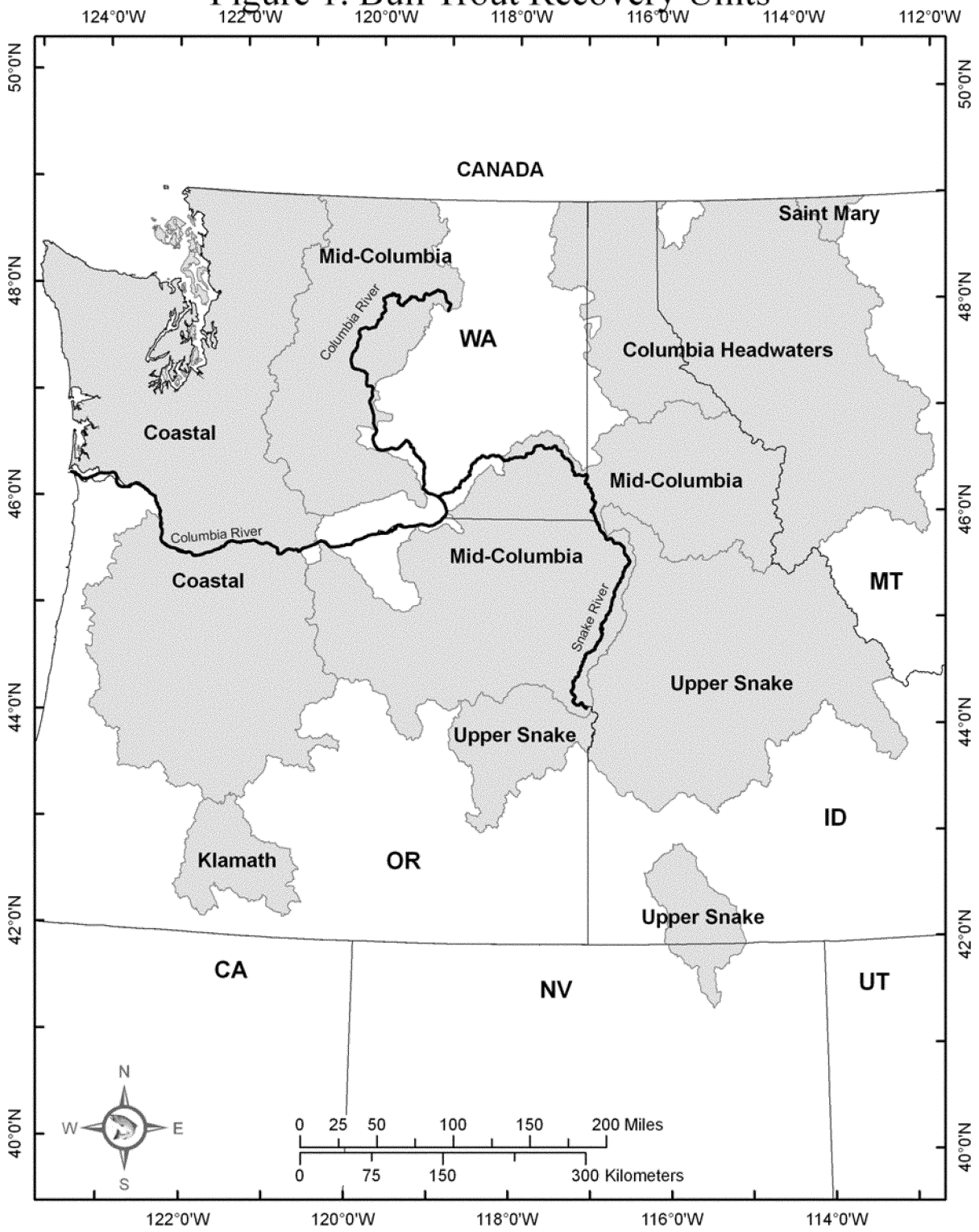
Figure 1. Bull Trout Recovery Units

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*Methods*

As required by section 4(b)(2) of the Act, we used the best scientific data available in determining areas that contain the features essential to the conservation of the bull trout. Data sources included research published in peer-reviewed articles and previous Service documents on the species. Additionally, we utilized regional Geographic Information System (GIS) shape files for area calculations and mapping.

**Primary Constituent Elements**

In accordance with section 3(5)(A)(i) of the Act and regulations at 50 CFR 424.12(b), in determining which areas occupied at the time of listing to propose as critical habitat, we consider the physical or biological features

essential to the conservation of the species and that may require special management considerations or protection. These features are the PCEs laid out in the appropriate quantity and spatial arrangement for conservation of the species. These include, but are not limited to:

(1) Space for individual and population growth and for normal behavior;

(2) Food, water, air, light, minerals, or other nutritional or physiological requirements;

(3) Cover or shelter;

(4) Sites for breeding, reproduction, or rearing (or development) of offspring; and

(5) Habitats that are protected from disturbance or are representative of the historical, geographical, and ecological distributions of a species.

A detailed discussion of each of these five life-history needs of the bull trout follows.

Space for Individual and Population Growth and for Normal Behavior

Bull trout exhibit a number of life-history strategies. Stream-resident bull trout complete their entire life cycle in the tributary streams where they spawn and rear. Migratory bull trout spawn in tributary streams. Juvenile fish from migratory populations usually rear from 1 to 4 years in natal streams before migrating (typically downstream) to either a larger river (fluvial form) or lake (adfluvial form) where they spend their adult life, returning to the tributary stream to spawn (Fraley and Shepard 1989, p. 133). These migratory forms occur in areas where conditions allow for movement from upper watershed spawning streams to larger waters that contain greater foraging opportunities (Dunham and Rieman 1999, p. 646). Resident and migratory forms may be found together, and either form can produce resident or migratory offspring (Rieman and McIntyre 1993, p. 2). Where ocean environments are accessible, bull trout may also migrate to and from salt water (amphidromy).

The ability to migrate is important to the persistence of bull trout local populations (Rieman and McIntyre 1993, p. 2; Gilpin 1997, p. 4; Rieman and Clayton 1997, p. 6; Rieman *et al.* 1997, p. 1121). Bull trout of a variety of life stages rely on foraging, migration, and overwintering (FMO) habitat to complete extensive and important parts of their life cycle (Homel and Budy 2008, p. 875; Monnot *et al.* 2008, pp. 235-237). Juvenile and adult resident bull trout inhabit the spawning and rearing areas year round. Some adult migratory forms inhabit spawning and rearing habitat after spawning into the early winter and can arrive in early summer to hold prior to spawning (Mulhfeld *et al* 2005, p. 801; Kellyringel and DeLaVergne 2010, p. 16), and subadults or alternate year migratory spawning adults may inhabit mid to lower river migratory corridors year round. Habitat complexity including deep pools and cover appear to be important habitat components in areas of both spawning and rearing and migration (Monnet *et al.* 2008, pp. 235-237; Al-Chokhachy *et al.* 2010, pp. 469–472).

Migratory bull trout become much larger than resident fish, benefiting from the more productive waters of larger streams, lakes, and marine habitats, consequently leading to increased reproductive potential. Stream-resident populations are associated with headwater streams in mountainous regions where year-round cold water and velocity or other movement barriers are common. Typically, these streams are smaller and have higher gradients than those occupied by adfluvial and fluvial populations. In these headwater streams, resident bull trout are associated with deep pools and instream cover, and stream-resident individuals are typically small (McPhail and Baxter 1996, p. 12; Mullan *et al.* 1992, p. K-413). The use of migration habitat by bull trout can also increase potential for dispersion, facilitating gene flow among local populations (interbreeding groups) when individuals from different local populations interbreed, stray, or return to nonnatal streams. Importantly, local populations that have been extirpated by catastrophic events may become reestablished because of movements by bull trout through migration habitat (Rieman and McIntyre 1993, p. 7; MBTSG 1998, p. 45).

Lakes and reservoirs also figure prominently in meeting the life-cycle requirements of bull trout. For adfluvial (migrating between lakes and rivers or streams) bull trout populations, lakes and reservoirs provide an important component of the core FMO habitat and are integral to maintaining the adfluvial life-history strategy that is commonly exhibited by bull trout. When juvenile bull trout emigrate to a lake or reservoir from spawning and rearing streams, they enter a more productive lentic (still or slow-moving water) environment that allows them to achieve rapid growth and energy storage.

Some reservoirs may have adversely affected bull trout, while others have provided benefits, and some may cause both benefits and impacts. For example, the basin of Hungry Horse Reservoir has functioned adequately for 50 years as a surrogate home for stranded Flathead Lake bull trout trapped upstream of the dam when it was completed. While this is an artificial impoundment, the habitat the reservoir provides and the presence of an enhanced prey base of native minnows, suckers, and whitefish within the reservoir sustain a large adfluvial bull trout population. Additionally, while barriers to migration are often viewed as a negative consequence of dams, the connectivity barrier at Hungry Horse Dam has served an important, albeit unintended, function in restricting the proliferation of nonnative *Salvelinus* species (including brook trout (*Salvelinus fontinalis*) and lake trout (*Salvelinus namaycush*)) upstream above the dam. Reservoir fluctuations may or may not harm bull trout populations at Hungry Horse Reservoir; site-specific information would best inform a determination of such effects. Instream flow analyses downstream of Hungry Horse Reservoir, which have used site-specific habitat suitability criteria, have shown that amount and duration of important bull trout habitats were greatly reduced following the installation of Hungry Horse Dam in 1952 (Miller *et al.* 2003, p. 60; Muhlfeld *et al.* 2010, p. 40).

Marine nearshore habitats have similar importance for the amphidromous (migrating between marine waters and river or streams) bull trout populations. These marine habitats and the associated nonnatal river systems used by amphidromous bull trout are integral to maintaining this life-history strategy. Similar to lakes and reservoirs, these areas provide highly productive foraging habitat as well as stable overwintering habitat.

Food, Water, Air, Light, Minerals, or Other Nutritional or Physiological Requirements

Bull trout are opportunistic feeders that prey upon other organisms. Prey selection is primarily a function of size and life-history strategy. Resident and juvenile migratory bull trout prey on terrestrial and aquatic insects, macro-zooplankton, and small fish (Donald and Alger 1993, p. 244; McPhail and Baxter 1996, p. 15). Adult migratory bull trout feed almost exclusively on other fish (Rieman and McIntyre 1993, p. 3). Habitat must provide the necessary aquatic and adjacent terrestrial conditions to harbor and maintain prey species in sufficient quantity and diversity to meet the physiological requirements necessary to maintain bull trout populations. Therefore, an abundant food base, including a broad array of terrestrial organisms of riparian origin, aquatic macroinvertebrates, and/

or forage fish, supports individual and population growth and allows for normal bull trout behavior.

Cover or Shelter

At all life stages, bull trout require complex forms of cover, including large woody debris, undercut banks, boulders, and pools (Fraley and Shepard 1989, pp. 137–138; Watson and Hillman 1997, p. 249). Many of these habitat features are dependent on watershed conditions as a whole (Howell 2010, pers.com). Juveniles and adults frequently inhabit side channels, stream margins, and pools with suitable cover (Sexauer and James 1997, p. 368). McPhail and Baxter (1996, p. 11) reported newly emerged fry are secretive and hide in gravel along stream edges and side channels. They also reported juveniles are found mainly in pools but also in riffles and runs, maintain focal sites near the bottom, and are strongly associated with instream cover, particularly overhead cover such as woody debris or riparian vegetation. Undercut banks and coarse substrates provide cover and overwinter habitat for juvenile bull trout (peer review comments, R. Thurow 2010, p. 1). All life-history stages of bull trout have been observed overwintering in deep beaver ponds or pools containing large woody debris (Jakober 1995, p. 90). Adult bull trout migrating to spawning areas have been recorded as staying 2 to 4 weeks at the mouths of spawning tributaries in deeper holes or near logs or cover debris (Fraley and Shepard 1989, p. 137). Bull trout may also use lotic (swift-flowing water) and in some cases saltwater environments seasonally for reasons that include use as cover. In conclusion, riparian vegetation; large wood; variable stream channel morphology including deep pools, side-channels, undercut banks and substrates; and in some cases access to downstream environments provide cover and shelter, which support individual and population growth and allow for normal bull trout behavior.

Sites for Breeding, Reproduction, or Rearing (or Development) of Offspring

Bull trout have more specific habitat requirements than most other salmonids (Rieman and McIntyre 1993, p. 4). Habitat components that particularly influence their distribution and abundance include water temperature, cover, channel form, spawning and rearing substrate conditions, and migration habitat (Fraley and Shepard 1989, p. 138; Goetz 1989, p. 19; Watson and Hillman 1997, p. 247).

Relatively cold water temperatures are characteristic of bull trout habitat. Water temperatures above 15 °Celsius (C) (59 °Fahrenheit (F)), while not lethal, are believed to limit bull trout juvenile distribution (Fraley and Shepard 1989, p. 138). Although adults have been observed in large rivers throughout the Columbia River basin in water temperatures up to 20 °C (68 °F), steady and substantial declines in abundance have been documented in stream reaches where water temperature ranged from 15 to 20 °C (59 to 68 °F) Gamett (2002, pp. 30–32) .

Watson and Hillman (1997, p. 248) concluded watersheds must have specific physical characteristics to provide the necessary habitat requirements for bull trout spawning and rearing, and that these characteristics are not ubiquitous throughout the watersheds in which bull trout occur. The preferred spawning habitat of bull trout consists of low-gradient stream reaches with loose, clean gravel (Fraley and Shepard 1989, p. 133). Bull trout typically spawn in a narrow time window of a couple weeks during periods of decreasing water temperatures, but spawning ranges from August to November depending on local conditions (Swanberg 1997, p. 735). However, migratory forms are known to begin spawning migrations as early as April and to move upstream as much as 250 km (155 mi) to spawning areas (Fraley and Shepard 1989 p. 138; Swanberg 1997, p. 735).

Fraley and Shepard (1989, p. 137) reported the initiation of spawning by bull trout in the Flathead River system appeared to be related to water temperature, with spawning generally initiated when water temperatures dropped below 10 °C (50 °F). Goetz (1989, pp. 22–32) reported a spawning temperature range from 4 to 10 °C (39 to 50 °F), but the range could be wider in some areas (Howell *et al.* 2010, p. 102). Selection of spawning habitat by bull trout is also influenced across multiple spatial scales by hyporheic flow (Baxter and Hauer 2000, p. 1476), defined as a mixing of shallow groundwater and surface water beneath and lateral to a stream bed. Hyporheic flow is influenced by geomorphic complexity of the streambed and recognized to be important for surface water/groundwater interaction. Spawning areas are often associated with cold-water springs, glacial and snow melt, or groundwater upwelling (Rieman *et al.* 1997, p. 1121; Baxter *et al.* 1999, p. 137). Fraley and Shepard (1989, p. 137) also found groundwater influence and proximity to cover are important factors influencing spawning site selection. They reported the combination of relatively specific requirements resulted in a restricted spawning distribution in relation to available stream habitat. While bull trout are critically dependent on large, cold-water habitats, individuals can range widely through stream networks and use habitat that may have limited amounts of cold-water refuge (Dunham 2010, pers.com).

Depending on water temperature, egg incubation is normally 100 to 145 days (Pratt 1992, p. 5). Water temperatures of 1.2 to 5.4 °C (34.2 to 41.7 °F) have been reported for incubation, with an optimum (best embryo survivorship) temperature reported to be from 2 to 4 °C (36 to 39 °F) (Fraley and Shepard 1989, p. 138; McPhail and Baxter 1996, p. 10). Juveniles remain in the substrate after hatching. The time from egg deposition to emergence of fry can exceed 200 days. During the relatively long incubation period in the gravel, bull trout eggs and embryos are especially vulnerable to fine sediments (i.e., fine silt to coarse sand) and water quality degradation (Fraley and Shepard 1989, p. 141). Increases in fine sediment appear to reduce egg survival and emergence (Pratt 1992, p. 6) by restricting intragravel circulation and/or causing entombment of newly hatched alevins (young salmon that have the yolk sac still attached). Juveniles are likely also affected by reduced interstitial habitat and cover. High juvenile densities have been reported in areas characterized by a diverse cobble substrate and a low percentage of fine sediments (Shepard *et al.* 1984, p. 6). Habitats with cold water temperature and appropriately-sized stream substrate with a low level of fine sediments are necessary factors for successful egg incubation and juvenile rearing that supports individual and population growth (Watson and Hillman 1997, pp. 238–246; WFPB 1997, pp. 98, F-25). Because the size and amounts of fines acceptable to bull trout will likely vary from system to system, providing specific examples of local criteria as we did in the proposed rule may be misleading; therefore, for this final rule we have removed the examples we provided in the proposed rule.

Habitats Protected from Disturbance or Representative of the Historical, Geographical, and Ecological Distributions of the Species

Other threats to water quality in bull trout critical habitat include suspended sediment and environmental contaminants. Suspended sediment, made up of the smallest fine materials, may vary in size depending on stream flow and channel type (MacDonald and

Wissmar 1991, pp. 98–99). Suspended sediments and the resulting turbidity of the water can impact salmonids (including bull trout) and their prey (e.g., macro invertebrates or other fish). High levels of suspended sediments can affect swimming, feeding, or gill function by reducing visibility and ability to pursue prey, and by interrupting proper physiological gill function.

Water diversion and reservoir development can reduce stream flow, reduce the amount of water available in a stream channel, change water quality, and alter groundwater regimes. These changes may collectively impact habitat and passage for bull trout, and can cause increases in water temperatures.

Alterations to natural habitat conditions may also increase nonnative species predation and competition, which can significantly affect bull trout populations. Nonnative species have been introduced in many watersheds currently occupied by bull trout. Depending on local conditions, bull trout recovery may be either reduced or precluded by the presence of nonnative (and competitive) species. Some nonnative fish species that prey on bull trout include lake trout, walleye (*Sander vitreum*), northern pike (*Esox lucius*), smallmouth bass (*Micropterus dolomieu*), and brown trout (*Salmo trutta*). Brown trout or other introduced salmonids, such as rainbow trout (*Onchorynchus mykiss*), as well as smallmouth bass, northern pike, walleye, and other species, also compete with bull trout for limited resources. Brook trout commonly hybridize with bull trout and are better adapted to compete with bull trout when they occur together, particularly in degraded habitat (Ratliff and Howell 1992, p. 16; Leary *et al.* 1993, p. 857). Brook trout and bull trout hybrids are not uncommon where they are sympatric, and it usually is a cross of a female bull trout and a male brook trout, which is more costly, genetically speaking, to the bull trout population (DeHaan *et al.* 2009, p. 6; Kanda *et al.* 2002, p. 776). Presence of brook trout and lake trout frequently lead to declines in abundance and distribution of bull trout (MBTSG 1998, pp.46–47; Donald and Alger 1993, p. 245; Fredenberg 2002, p. 150).

The stability of stream channels and stream flows may be important habitat characteristics for bull trout (Rieman and McIntyre 1993, p. 5). Bull trout may select spawning locations to reduce risk of scour especially in rain dominated areas with higher probability of peak flows during incubation. Complex channel types including presence of side channels, stream margins, and cover near spawning sites, including pools are important to maintain in these types of spawning reaches (Shellberg 2002, p. 80). Side channels, stream margins, and pools with suitable cover for bull trout are sensitive to activities that directly or indirectly affect stream channel stability and alter natural flow patterns. For example, altered stream flow in the fall may disrupt bull trout during the spawning period, and channel instability may decrease survival of eggs and young juveniles in the gravel during winter through spring (Fraley and Shepard 1989, p. 141; Pratt 1992, p. 6; Pratt and Huston 1993, p. 70). In areas west of the Cascade Range, it is common to have peak flows from rainstorms during the incubation period in the fall (Shellberg 2002, p. 36). East of the Cascade Range, it is not as common to have peak flows until spring snows melt. Also, bull trout use all parts of a waterbody at various times, including foraging in shallow water areas at night; unstable stream flows from impoundments, for example, may impact these behaviors (peer review comments, C. Muhlfeld 2010, attachment p. 22). Streams with a natural hydrograph (those with normal discharge variations over time as a response to seasonal precipitation), permanent water, and an absence of nonnative species are representative of the highest quality habitat of the species.

We are designating bull trout critical habitat of two primary use types: (1) Spawning and rearing, and (2) foraging, migration, and overwintering (FMO). Each area being designated as occupied critical habitat contains one or more of those physical or biological features essential to the conservation of the species, which may require special management considerations or protection, which are the PCEs for the bull trout. Each area being designated as unoccupied habitat has been determined to be essential for the conservation of the species. The justification document developed to support the proposed rule identifies all waterbody segments as either SR or FMO habitat. This document is available at our website at *http://www.fws.gov/pacific/bulltrout*, or upon request from the Idaho Fish and Wildlife Office (see **ADDRESSES** above). Due to a lack of sufficiently detailed data and uncertainty over precise dividing lines between these two habitat types, we do not identify the specific PCEs present for each waterbody segment. Factors such as time of year, seasonal precipitation, drought conditions, and other phenomena can influence the essential physical or biological features present at any particular location at any particular time given the variability of habitats used by bull trout. In addition, attributes such as stream flow and substrate size and composition are influenced by stream order and gradient. Accordingly, we are unable to define a conclusive upper and lower range of conditions for specific PCEs, given this complexity. However, future section 7(a)(2) consultations on specific Federal actions will help identify the PCEs relevant to a specific waterbody, and provide information to Federal agencies regarding special management considerations or protections that may be appropriate at that location.

Based on the above biological needs of the species, and keeping in mind the need to identify PCEs with sufficient generality to apply to the wide range of bull trout and diversity of its habitat, we derived nine specific PCEs required for bull trout from the biological needs of the species as described or referred to in the *Background* section of this final rule and the following information. The nine PCEs relate to: (1) Water quality; (2) migration habitat; (3) food availability; (4) instream habitat; (5) water temperature; (6) substrate characteristics; (7) stream flow; (8) water quantity; and (9) nonnative species.

*Primary Constituent Elements for Bull Trout*

Based on the needs described above and our current knowledge of the life history, biology, and ecology of the species and the characteristics of the habitat necessary to sustain the essential bull trout life-history functions, we have determined that the following PCEs are essential for the conservation of bull trout and may require special management considerations or protection.

(1) Springs, seeps, groundwater sources, and subsurface water connectivity (hyporheic flows) to contribute to water quality and quantity and provide thermal refugia.

(2) Migration habitats with minimal physical, biological, or water quality impediments between spawning, rearing, overwintering, and freshwater and marine foraging habitats, including but not limited to permanent, partial, intermittent, or seasonal barriers.

(3) An abundant food base, including terrestrial organisms of riparian origin, aquatic macroinvertebrates, and forage fish.

(4) Complex river, stream, lake, reservoir, and marine shoreline aquatic environments, and processes that

establish and maintain these aquatic environments, with features such as large wood, side channels, pools, undercut banks and unembedded substrates, to provide a variety of depths, gradients, velocities, and structure.

(5) Water temperatures ranging from 2 to 15 °C (36 to 59 °F), with adequate thermal refugia available for temperatures that exceed the upper end of this range. Specific temperatures within this range will depend on bull trout life-history stage and form; geography; elevation; diurnal and seasonal variation; shading, such as that provided by riparian habitat; streamflow; and local groundwater influence.

(6) In spawning and rearing areas, substrate of sufficient amount, size, and composition to ensure success of egg and embryo overwinter survival, fry emergence, and young-of-the-year and juvenile survival. A minimal amount of fine sediment, generally ranging in size from silt to coarse sand, embedded in larger substrates, is characteristic of these conditions. The size and amounts of fine sediment suitable to bull trout will likely vary from system to system.

(7) A natural hydrograph, including peak, high, low, and base flows within historic and seasonal ranges or, if flows are controlled, minimal flow departure from a natural hydrograph.

(8) Sufficient water quality and quantity such that normal reproduction, growth, and survival are not inhibited.

(9) Sufficiently low levels of occurrence of nonnnative predatory (e.g., lake trout, walleye, northern pike, smallmouth bass); interbreeding (e.g., brook trout); or competing (e.g., brown trout) species that, if present, are adequately temporally and spatially isolated from bull trout.

*Criteria Used To Identify Critical Habitat*

As required by section 4(b) of the Act, we used the best scientific and commercial data available in determining areas that contain the physical or biological features essential to the conservation of bull trout that may require special management considerations or protection, and areas outside of the geographical area occupied at the time of listing that are essential for bull trout conservation (see *Previous Federal Actions* section). The steps we followed in identifying critical habitat were:

(1) We determined in accordance with section 3(5)(A)(i) of the Act and regulations at 50 CFR 424.12, the physical or biological habitat features essential to the conservation of the species, as explained in the previous section. We reviewed the best available scientific information pertaining to the habitat requirements of this species, including consulting with biologists from partner agencies and entities including Federal, State, tribal, and private biologists, as well as experts from other scientific disciplines such as hydrology and forestry, resource users, and other stakeholders with an interest in bull trout and the habitats they depend on for survival. We also reviewed available information concerning bull trout habitat use and preferences; habitat conditions; threats; limiting factors; population demographics; and known locations, distribution, and abundance of bull trout.

(2) We then identified the geographical areas occupied by bull trout at the time of listing and areas not occupied that may be essential for the conservation of bull trout. We used information gathered during the bull trout recovery planning process and the bull trout draft recovery plan (Service 2002), and supplemented that information with recent information developed by State agencies, Tribes, the USFS, and other entities. This information was used to update bull trout status and distribution information for purposes of the proposed critical habitat designation. For areas where we had data gaps, we solicited expert opinions from knowledgeable fisheries biologists in the local area. Material reviewed included data in reports submitted during section 7 consultations, reports from biologists holding section 10(a)(1)(A) recovery permits, research published in peer-reviewed scientific journals, academic theses, State and Federal government agency reports, and regional GIS overlays.

(3) We identified specific areas within each of the six new draft recovery units described above that contain the physical or biological features essential to bull trout conservation, considering distribution, abundance, trend, and connectivity needs. The objective was to ensure the areas proposed for designation as critical habitat would effectively achieve the principles we believe are important for recovery: (a) Conserve the opportunity for diverse life-history expression; (b) conserve the opportunity for genetic diversity; (c) ensure bull trout are distributed across representative habitats; (d) ensure sufficient connectivity among populations; (e) ensure sufficient habitat to support population viability (e.g., abundance, trend indices); (f) address threats (see *Special Management Considerations or Protection* below), including climate change (described later in this section); and (g) ensure sufficient redundancy in conserving population units. These recovery principles take into account the threats and physical or biological needs of the species throughout its range, and focus on the rangewide recovery needs.

Some areas that contained the physical or biological features did not meet one or more of the seven recovery principles because they did not contain the physical or biological features in an appropriate quantity and spatial arrangement. Accordingly, the areas with such features were determined not to be essential to bull trout conservation. For example, some areas may have contained spawning habitat (PCEs 5 and 6), but were disconnected from known populations and were not known to support viable bull trout populations. A few areas (e.g., the entire Lucky Peak core area in the lower Boise River drainage in southwest Idaho) were not included because of limited habitat quantity, marginal habitat quality, low bull trout density, or only sporadic presence of bull trout recorded.

Global climate change threatens bull trout throughout its range in the coterminous United States. Downscaled regional climate models for the Columbia River basin predict a general air temperature warming of 1.0 to 2.5 °C (1.8 to 4.5 °F) or more by 2050 (Reiman *et al.* 2007, p. 1552). This predicted temperature trend may have important effects on the regional distribution and local extent of habitats available to salmonids (Rieman *et al.* 2007, p. 1552), although the relationship between changes in air temperature and water temperature are not well understood. The optimal temperatures for bull trout appear to be substantially lower than those for other salmonids (Selong and McMahon 2001), p. 1031; Rieman *et al.* 2007, p. 1553). Coldwater fish do not physically adapt well to thermal increases (McCullough *et al.* 2009, pp. 96–101). Instead, they are more likely to change their behavior, alter the timing of certain behaviors, experience increased physical and biochemical stress, and exhibit reduced growth and survival (McCullough *et al.* 2009, pp. 98–100). Bull trout spawning and initial rearing areas are currently largely constrained by low fall and winter water temperatures, and define the spatial structuring of local populations or habitat patches across larger river basins; habitat patches represent networks of thermally suitable habitat that may lie in adjacent watersheds and are disconnected (or fragmented) by intervening stream segments of

seasonally unsuitable habitat or by actual physical barriers (Rieman *et al.* 2007, p. 1553). With a warming climate, thermally suitable bull trout spawning and rearing areas are predicted to shrink during warm seasons, in some cases very dramatically, becoming even more isolated from one another under moderate climate change scenarios (Rieman *et al.* 2007, pp. 1558–1562; Porter and Nelitz 2009, pp. 5–7).

Climate change will likely interact with other stressors, such as habitat loss and fragmentation (Rieman *et al.* 2007, pp. 1558–1560; Porter and Nelitz 2009, p. 3); invasions of nonnative fish (Rahel *et al.* 2008, pp. 552–553); diseases and parasites (McCullough *et al.* 2009, p. 104); predators and competitors (McMahon *et al.* 2007, pp. 1313–1323; Rahel *et al.* 2008, pp. 552–553); and flow alteration (McCullough *et al.* 2009, pp. 106–108), rendering some current spawning, rearing, and migratory habitats marginal or wholly unsuitable. For example, introduced congeneric populations of brook trout are widely distributed throughout the range of bull trout. McMahon *et al.* (2007, p. 1320) demonstrated the presence of brook trout has a marked negative effect on bull trout, an effect that is magnified at higher water temperatures (16–20 °C (60–68 °F)). Changes and complex interactions are difficult to predict at a spatial scale relevant to bull trout conservation efforts, and key gaps exist in our understanding of whether bull trout (and other coldwater fishes) can behaviorally adapt to climate change.

We considered effects of climate change on bull trout by first applying best professional judgment to screen core areas to assess those that might be most vulnerable to climate change effects. These were highlighted in our 2008 update of status and threats information in the core area template documents (Service 2008, p. 15). For example, in many locations we prioritized cold water spring habitats for conservation because they may be among the most resistant habitats to climate change effects. In other locations we deemphasized protection of some already low-elevation, warmer, marginal bull trout habitats, anticipating that they would become even less valuable for the future conservation of bull trout. Over a period of decades, climate change may directly threaten the integrity of the essential physical or biological features described in PCEs 1, 2, 3, 5, 7, 8 and 9. Protecting bull trout strongholds and cold water refugia from disturbance and ensuring connectivity among populations were important considerations in addressing this potential impact.

Over 30 years of research into wildlife population sizes required for long-term viability (avoiding extinction) suggests that a minimum number of 5,000 individuals (rather than 50 or 500) may be needed in light of rapidly changing environmental conditions, such as accelerated climate change (Traill *et al.* 2009, p. 3). Although the minimum number of individuals may vary depending on the species involved, for bull trout, we have included additional unoccupied habitats in those areas where occupied habitats currently support far less than this number of individuals, so there are adequate PCEs for those small populations to recover.

Each of the areas being designated as occupied critical habitat (a) satisfies the above recovery principles; (b) is within the geographic range occupied by the species at the time of listing, or was unoccupied at the time of listing, but we have determined to be essential to the conservation of the species; and (c) contains the physical or biological features essential to the conservation of the species that may require special management considerations or protection.

(4) In selecting areas to designate as critical habitat, we considered factors specific to each river system, such as size (i.e., stream order), gradient, channel morphology, connectivity to other aquatic habitats, and habitat complexity and diversity, as well as rangewide recovery considerations. We took into account the fact that bull trout habitat preference ranges from small headwater streams used largely for spawning and rearing, to downstream mainstem portions of river networks used for rearing, foraging, migration, or overwintering.

To help determine which specific areas contained the physical or biological features essential to bull trout conservation, we considered the species' status in each recovery unit by evaluating whether: (a) Bull trout are rare and exposed to threats, such that recovery needs include removing threats from essentially all existing occurrences and restoring bull trout to portions of their historic range; or (b) bull trout are declining and exposed to threats, such that recovery needs include stopping the decline and eliminating threats across key portions of their range, such as currently occupied strongholds.

NatureServe is a nonprofit conservation organization whose mission is to provide science-based recommendations for conservation actions. NatureServe has identified a suite of factors related to rarity, trends, and threats to assess the extinction or extirpation risk of species and ecosystems, and has developed a computer spread-sheet tool that allows 10 conservation status factors to be entered and then ranked for different populations. The protocol for assigning a conservation status rank is based on scoring an element against these 10 conservation status factors, which are grouped into three categories based on the characteristic of the factor: rarity (six factors), trends (two factors), and threats (two factors) (Master *et al.* 2007, pp. 6–11). We have concluded that the NatureServe protocol provides a rational framework for assessing bull trout status and threats. By applying the NatureServe status assessment ranking tool, which considers factors such as population size, amount of habitat, and type and degree of threat using data through 2007, we were able to estimate the relative status and threats within each of the 118 bull trout core areas or watersheds and each of the 6 draft recovery units.

This critical habitat designation focuses on areas containing the physical or biological features essential to the conservation of local populations and spawning and rearing streams of highest conservation value. Factors taken into account at the smaller, local population scale included the largest areas or populations, most highly connected populations, and areas with the highest conservation potential (i.e., the quantity and quality of physical or biological features present). At the larger core area scale, the designation also focuses on areas having the highest conservation value by applying the factors that were applied at the local population scale. At both the local population and core area scales, the designation emphasizes essential FMO habitats of highest conservation value, such as habitats that connect local populations and core areas and provide required space for life-history functions. In some areas, we have determined that specific areas outside the geographical area occupied by bull trout at the time of listing are essential for the conservation of the species, and we are designating them as critical habitat. In those areas, bull trout habitat and population loss over time necessitates reestablishing bull trout in currently unoccupied habitat areas to achieve recovery.

Based on the considerations described above, we designate a greater proportion of occupied habitat, as well as additional unoccupied habitat, for protection in areas where bull trout demonstrate less resiliency, redundancy, and representation, and less critical habitat elsewhere. For example, in the Klamath Basin Recovery Unit where threats to bull trout are

greatest, we are designating all habitat known to be occupied at the time of listing that contains the physical or biological features essential to the conservation of the species and that may require special management considerations or protection, and we are also designating a substantial proportion of unoccupied habitat outside of the geographical area occupied by the species at the time of listing that has been determined to be essential for bull trout conservation. Our primary consideration for designating critical habitat for occupied areas was to protect species strongholds for spawning and rearing and FMO habitats. Our primary consideration for designating most of unoccupied areas we are including in this designation was to restore connectivity among populations by protecting FMO habitats.

We are designating habitat in 32 critical habitat units (CHUs) within the geographical area occupied by the species at the time of listing. These units have an appropriate quantity and spatial arrangement of physical or biological features present that supports bull trout metapopulations, life processes, and overall species conservation. Twenty-nine of the units contain all of the physical or biological features identified in this final rule and support multiple life-history requirements. Three of the mainstem river units in the Columbia and Snake River basins contain most of the physical or biological features necessary to support the bull trout's particular use of that habitat, other than those associated with PCEs 5 and 6, which relate to breeding habitat. Lakes and reservoirs within these units also contain most of the physical or biological features necessary to support bull trout, other than those associated with PCEs 1, 4, and 6. Marine nearshore habitats within the Olympic Peninsula and Puget Sound critical habitat units contain only a subset of the identified physical or biological features for bull trout (PCEs 2, 3, 5, and 8). However, these habitats are important to conserving a diverse life-history expression and representative habitats.

When determining critical habitat boundaries within this final rule, we made every effort to avoid including developed areas such as lands covered by buildings, pavement, and other structures because such lands lack physical or biological features for bull trout. The scale of the maps we prepared under the parameters for publication within the Code of Federal Regulations may not reflect the exclusion of such developed lands. Any such lands 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 designated as critical habitat. Therefore, a Federal action involving these lands would not trigger section 7 consultation with respect to critical habitat and the requirement of no adverse modification unless the specific action would affect the physical and biological features in the adjacent critical habitat.

*Special Management Considerations or Protection*

When designating critical habitat, we assess whether the specific areas within the geographic area occupied by the species at the time of listing contain the features that are essential to the conservation of the species and may require special management needs or protection. Accordingly, in identifying critical habitat in occupied areas, we assess whether the PCEs within the areas determined to be occupied at the time of listing may require any special management considerations or protection. Although the determination that special management may be required is not a prerequisite to designating critical habitat in areas essential to the conservation of the species that were unoccupied at the time of listing, all areas we are designating as critical habitat require some level of management to address current and future threats to bull trout, to maintain or enhance the physical or biological features essential to its conservation, and to ensure the recovery of the species.

The primary land and water management activities impacting the physical or biological features essential to the conservation of bull trout that may require special management considerations within the critical habitat units include timber harvest and road building (forest management practices), agriculture and agricultural diversions, livestock grazing, dams, mining, and nonnative species (Beschta *et al.* 1987, p. 194; Chamberlin *et al.* 1991, p. 194; Furniss *et al.* 1991, p. 297; Meehan 1991, pp. 6–10; Nehlsen *et al.* 1991, p. 4; Sedell and Everest 1991, p. 6; Craig and Wissmar 1993, p. 18; Frissell 1993, p. 350; Henjum *et al.* 1994, p. 6; McIntosh *et al.* 1994, p. 37; Wissmar *et al.* 1994, p. 28; MBTSG 1995a, p. i; MBTSG 1994b, p. i; MBTSG 1995c, p. i; MBTSG 1995d, p. 1; MBTSG 1995e, p. 1; USDA and USDI 1995, p. 8; 1997, pp. 132–144; Light *et al.* 1996, p. 6; MBTSG 1996a, p. ii; MBTSG 1996b, p. 1; MBTSG 1996c, p. i; MBTSG 1996d, p. i; MBTSG 1996e, p. i; MBTSG 1996f, p. 1; MBTSG 1996g, p. 7; MBTSG 1996h, p. 7). Urbanization and residential development may also impact the physical or biological features and require special management considerations or protection.

Timber harvest and road building in or close to riparian areas can immediately reduce stream shading and cover, channel stability, and large woody debris recruitment and increase sedimentation and peak stream flows (Chamberlin *et al.* 1991, p. 180; Ripley *et al.* 2005, p. 2436). These activities can, in turn, lead to increased stream temperatures, bank erosion, and decreased long-term stream productivity. The effects of road construction and associated maintenance account for a majority of sediment loads to streams in forested areas; in addition, stream crossings also can impede fish passage (Shepard *et al.* 1984, p. 1; Cederholm and Reid 1987, p. 392; Furniss *et al.* 1991, p. 301). Sedimentation affects streams by reducing pool depth, altering substrate composition, reducing interstitial space, and causing braiding of channels (Rieman and McIntyre 1993, p. 6), which reduce carrying capacity. Sedimentation negatively affects bull trout embryo survival and juvenile bull trout rearing densities (Shepard *et al.* 1984, p. 6; Pratt 1992, p. 6). An assessment of the interior Columbia Basin ecosystem revealed that increasing road densities were associated with declines in four nonanadromous salmonid species (bull trout, Yellowstone cutthroat trout (*Oncorhyncus clarkii bouvieri*), westslope cutthroat trout (*O. c. lewisi*), and redband trout (*O. mykiss* spp.)) within the Columbia River basin, likely through a variety of factors associated with roads. Bull trout were less likely to use highly roaded basins for spawning and rearing and, if present in such areas, were likely to be at lower population levels (Quigley and Arbelbide 1997, p. 1183). These activities can directly and immediately threaten the integrity of the essential physical or biological features described in PCEs 1 through 6. Special management considerations or protection that may be needed include the implementation of best management practices specifically designed to reduce these impacts in streams with bull trout, particularly in spawning and rearing habitat. Such best management practices could require measures to ensure that road stream crossings do not impede fish migration or occur in or near spawning/rearing areas, or increase road surface drainage into streams.

Agricultural practices and associated activities adjacent to streams and in upland portions of watersheds also can

affect the physical or biological features essential to bull trout conservation. Irrigation withdrawals, including diversions, can dewater spawning and rearing streams, impede fish passage and migration, and cause entrainment. Discharging pollutants such as nutrients, agricultural chemicals, animal waste, and sediment into spawning and rearing waters is also detrimental (Spence *et al.* 1996, p. 128). Agricultural practices regularly include stream channelization and diking, large woody debris and riparian vegetation removal, and bank armoring (Spence *et al.* 1996, p. 127). Improper livestock grazing can promote streambank erosion and sedimentation and limit the growth of riparian vegetation important for temperature control, streambank stability, fish cover, and detrital input (Platts 1991, pp. 397–399). In addition, grazing often results in increased organic nutrient input in streams (Platts 1991, p. 423). These activities can directly and immediately threaten the integrity of the essential physical or biological features described in PCEs 1 through 8. Special management could include best management practices specifically designed to reduce these types of impacts in streams with bull trout, such as fencing livestock from stream sides, moving animal feeding operations away from surface waters, using riparian buffer strips near crop fields, minimizing water withdrawal from streams, avoiding stream channel and spring head alteration, and avoiding stream dewatering.

Dams constructed without fish passage or with poorly designed fish passage features create barriers to migratory bull trout, precluding access to suitable spawning, rearing, and migration habitats. Dams disrupt the connectivity within and between watersheds essential for maintaining aquatic ecosystem function (Naiman *et al.* 1992, p. 127; Spence *et al.* 1996, p. 141) and bull trout subpopulation interaction (Rieman and McIntyre 1993, p. 15). Natural recolonization of historically occupied sites can be precluded by migration barriers (e.g., McCloud Dam in California, or impassable culverts under roads). Also, fluctuation of reservoir levels may affect bull trout populations, although these effects are best determined on a case-specific basis. These activities can directly and immediately threaten the integrity of the essential physical or biological features described in PCEs 2 through 7 and 9. Special management considerations that may be needed include the implementation of best management practices, such as providing fish passage, specifically designed to reduce these impacts in streams with bull trout.

Mining can degrade aquatic systems by generating sediment and heavy metals pollution, altering water pH levels, and changing stream channels and flow (Martin and Platts 1981, p. 2). These activities can directly and immediately threaten the integrity of the essential physical or biological features described in PCEs 1, 6, 7, and 8, even if they occur some distance upstream from critical habitat. Special management could require best management practices specifically designed to reduce these impacts in streams with bull trout, such as avoiding surface water impacts from mining activities and neutralizing toxic materials.

Introductions of nonnative invasive species by the Federal government, State fish and game departments, and unauthorized private parties across the range of bull trout have resulted in predation, declines in abundance, local extirpations, and hybridization of bull trout (Bond 1992, p. 3; Howell and Buchanan 1992, p. viii; Donald and Alger 1993, p. 245; Leary *et al.* 1993, p. 857; Pratt and Huston 1993, p. 75; MBTSG 1995b, p. 10; MBTSG 1995d, p. 21; Platts *et al.* 1995, p. 9; MBTSG 1996g, p. 7; Palmisano and Kaczynski, in litt.1997, p. 29). Nonnative species may exacerbate stresses on bull trout from habitat degradation, fragmentation, isolation, and species interactions (Rieman and McIntyre 1993, p. 3). These activities can over time directly threaten the integrity of the essential physical or biological features described in PCE 9. Special management needs and considerations could require the implementation of best management practices specifically designed to reduce these impacts in streams with bull trout, such as avoiding future introductions, eradicating or controlling introduced species, and managing habitat to favor bull trout over other species.

Urbanization and residential development in watersheds has led to decreased habitat complexity (uniform stream channels and simple nonfunctional riparian areas); impediments and blockages to fish passage; increased surface runoff (more frequent and severe flooding); and decreased water quality and quantity (Spence *et al.* 1996, pp. 130–134). In nearshore marine areas, urbanization and residential development has led to significant loss or physical alteration of intertidal and shoreline habitats, as well as to the contamination of many estuarine and nearshore areas (PSWQAT 2000, p. 47; BMSL *et al.* 2001, ch. 10, pp. 1–27 ; Fresh *et al.* 2004, p. 1). Activities associated with urbanization and residential development can incrementally threaten the integrity of the essential physical or biological features described in PCEs 1 through 5, 7, and 8. Special management could require best management practices specifically designed to reduce these impacts in streams with bull trout, such as setting back developments from riparian areas; minimizing water runoff from urban areas directly to streams; minimizing hard surfaces such as pavement; and minimizing impacts related to fertilizer application.

**Final Critical Habitat Designation**

We are designating 32 critical habitat units (CHUs) in 6 recovery units as critical habitat for bull trout. Each CHU is comprised of a number of specific streams or reservoir/lake areas, which are identified as subunits in this final rule.

In freshwater areas, critical habitat includes the stream channels within the designated stream reaches and a lateral extent as defined by the bankfull elevation on one bank to the bankfull elevation on the opposite bank. If bankfull elevation is not evident on either bank, the ordinary high-water line determines the lateral extent of critical habitat. The lateral extent of critical habitat in lakes may initially be defined by the perimeter of the waterbody as mapped on standard 1:24,000 scale topographic maps. In marine nearshore areas, the inshore extent of critical habitat is the mean higher high-water (MHHW) line, including the uppermost reach of the saltwater wedge within tidally influenced, freshwater heads of estuaries. Critical habitat extends offshore to the depth of 10 meters (m) (33 feet (ft)) relative to the mean low low-water (MLLW) line. The Service expects the effects of this rule designating bull trout critical habitat to also extend to any action that may adversely affect the habitat, potentially including activities on lands adjacent to or upstream of designated stream bed and banks, as discussed elsewhere in this rule.

The critical habitat areas we describe below constitute our best assessment at this time of areas that meet the definition of critical habitat for bull trout.

The 32 units we designate as critical habitat are:

A. Coastal Recovery Unit
(1) Olympic Peninsula
(2) Puget Sound
(3) Lower Columbia River Basins
(4) Upper Willamette River
(5) Hood River

(6) Lower Deschutes River
(7) Odell Lake
(8) Mainstem Lower Columbia River
B. Klamath Recovery Unit
(9) Klamath River Basin
C. Mid-Columbia Recovery Unit
(10) Upper Columbia River Basins
(11) Yakima River
(12) John Day River
(13) Umatilla River
(14) Walla Walla River Basin
(15) Lower Snake River Basins
(16) Grande Ronde River
(17) Imnaha River
(18) Sheep and Granite Creeks
(19) Hells Canyon Complex
(20) Powder River Basin
(21) Clearwater River
(22) Mainstem Upper Columbia River
(23) Mainstem Snake River
D. Upper Snake Recovery Unit
(24) Malheur River Basin
(25) Jarbidge River
(26) Southwest Idaho River Basins
(27) Salmon River Basin
(28) Little Lost River
E. Columbia Headwaters Recovery Unit
(29) Coeur d'Alene River Basin
(30) Kootenai River Basin
(31) Clark Fork River Basin
F. Saint Mary Recovery Unit
(32) Saint Mary River Basin

A total of 31,750.8 km (19,729.0 mi) of stream (including 1,213.2 km (754.0 mi) of marine shoreline) (Table 1), and 197,589.3 ha (488,251.7 ac) of reservoirs and lakes (Table 2) are designated as bull trout critical habitat. A total of 1,323.7 km (822.5 mi; 4.2 percent) of streams, reservoirs, and lakes were unoccupied at the time of listing, with the remainder occupied. A total of 15,281.1 4 km (9,495.2 mi; 48.1 percent) of stream and marine shoreline habitat is used for spawning and rearing (all in streams), with the remainder—plus all reservoirs and lakes—used for FMO. Tables 3 and 4 present total stream shoreline length and reservoirs and lakes designated in each State. Table 5 presents the ownership for all stream shoreline designated as critical habitat.

TABLE 1.—STREAM/SHORELINE DISTANCE DESIGNATED AS BULL TROUT CRITICAL HABITAT BY CRITICAL HABITAT UNIT

| Critical habitat unit | Kilometers | Miles |
|---|---|---|
| 1. Olympic Peninsula | 748.7 | 465.2 |
| 1. Olympic Peninsula (Marine) | 529.2 | 328.8 |
| 2. Puget Sound | 1,840.2 | 1,143.5 |
| 2. Puget Sound (Marine) | 684.0 | 425.0 |
| 3. Lower Columbia River Basins | 119.3 | 74.2 |
| 4. Upper Willamette River | 312.4 | 194.1 |
| 5. Hood River | 128.1 | 79.6 |
| 6. Lower Deschutes River | 232.8 | 144.7 |
| 7. Odell Lake | 27.4 | 17.0 |
| 8. Mainstem Lower Columbia River | 340.4 | 211.5 |
| 9. Klamath River Basin | 445.2 | 276.6 |
| 10. Upper Columbia River Basins | 931.8 | 579.0 |
| 11. Yakima River | 896.9 | 557.3 |
| 12. John Day River | 1,089.6 | 677.0 |
| 13. Umatilla River | 163.0 | 101.3 |
| 14. Walla Walla River Basin | 383.7 | 238.4 |
| 15. Lower Snake River Basins | 270.8 | 168.3 |
| 16. Grande Ronde River | 1,057.9 | 657.4 |
| 17. Imnaha River | 285.7 | 177.5 |
| 18. Sheep and Granite Creeks | 47.9 | 29.7 |
| 19. Hells Canyon Complex | 377.5 | 234.6 |
| 20. Powder River Basin | 296.5 | 184.2 |
| 21. Clearwater River | 2,702.1 | 1,679.0 |
| 22. Mainstem Upper Columbia River | 520.1 | 323.2 |
| 23. Mainstem Snake River | 451.7 | 280.6 |
| 24. Malheur River Basin | 272.3 | 169.2 |
| 25. Jarbidge River | 245.2 | 152.4 |
| 26. Southwest Idaho River Basins | 2,150.0 | 1,335.9 |
| 27. Salmon River Basin | 7,376.5 | 4,583.5 |
| 28. Little Lost River | 89.2 | 55.4 |
| 29. Coeur d'Alene River Basin | 821.5 | 510.5 |
| 30. Kootenai River Basin | 522.5 | 324.7 |
| 31. Clark Fork River Basin | 5,356.0 | 3,328.1 |
| 32. Saint Mary River Basin | 34.7 | 21.6 |
| Total | 31,750 | 19,729 |

TABLE 2.—AREA OF RESERVOIRS OR LAKES DESIGNATED AS BULL TROUT CRITICAL HABITAT BY CRITICAL HABITAT UNIT

| Critical habitat unit | Hectares | Acres |
|---|---|---|
| 1. Olympic Peninsula | 3,064.2 | 7,571.8 |
| 2. Puget Sound | 16,260.9 | 40,181.5 |
| 3. Lower Columbia River Basins | 0.0 | 0.0 |
| 4. Upper Willamette River | 3,601.5 | 8,899.5 |
| 5. Hood River | 36.9 | 91.1 |
| 6. Lower Deschutes River | 1,224.9 | 3,026.8 |
| 7. Odell Lake | 1,387.1 | 3,427.6 |
| 9. Klamath River Basin | 3,775.5 | 9,329.4 |
| 10. Upper Columbia River Basins | 1,033.2 | 2,553.1 |
| 11. Yakima River | 6,285.2 | 15,530.9 |
| 16. Grande Ronde River | 605.2 | 1,495.5 |

TABLE 2.—AREA OF RESERVOIRS OR LAKES DESIGNATED AS BULL TROUT CRITICAL HABITAT BY CRITICAL HABITAT UNIT—Continued

| Critical habitat unit | Hectares | Acres |
|---|---|---|
| 20. Power River Basin | 897.0 | 2,216.5 |
| 21. Clearwater River | 6,721.9 | 16,610.1 |
| 24. Malheur River Basin | 715.9 | 1,768.9 |
| 26. Southwest Idaho River Basins | 4,310.5 | 10,651.5 |
| 27. Salmon River Basin | 1,683.8 | 4,160.6 |
| 29. Coeur d'Alene River Basin | 12,606.9 | 31,152.1 |
| 30. Kootenai River Basin | 12,089.2 | 29,873.0 |
| 31. Clark Fork River Basin | 119,620.1 | 295,586.6 |
| 32. Saint Mary River Basin | 1,669.3 | 4,125.0 |
| Total | 197,589.2 | 488,251.7 |

TABLE 3.—STREAM/SHORELINE DISTANCE DESIGNATED AS BULL TROUT CRITICAL HABITAT BY STATE

| State | Kilometers | Miles |
|---|---|---|
| Idaho | 14,116.5 | 8,771.6 |
| Montana | 4,918.9 | 3,056.5 |
| Nevada | 115.6 | 71.8 |
| Oregon | 4,563.9 | 2,835.9 |
| Oregon/Idaho | 173.3 | 107.7 |
| Washington | 6,104.8 | 3,793.3 |
| Washington Marine | 1,213.2 | 753.8 |
| Washington/Idaho | 59.9 | 37.2 |
| Washington/Oregon | 484.8 | 301.3 |
| Total | 31,750.8 | 19,729.0 |

TABLE 4.—AREA OF RESERVOIRS OR LAKES DESIGNATED AS BULL TROUT CRITICAL HABITAT BY STATE

| State | Hectares | Acres |
|---|---|---|
| Idaho | 68,884.9 | 170,217.5 |
| Montana | 89,626.4 | 221,470.7 |
| Oregon | 12,244.0 | 30,255.5 |
| Washington | 26,834.0 | 66,308.1 |
| Total | 197,589.2 | 488,251.7 |

TABLE 5.—STREAM/SHORELINE DISTANCE DESIGNATED AS BULL TROUT CRITICAL HABITAT BY OWNERSHIP

| Ownership | Kilometers | Miles |
|---|---|---|
| Federal | 20,217.3 | 12,562.4 |
| Federal/Private | 176.0 | 109.4 |
| Federal/State | 4.4 | 2.8 |
| State | 556.5 | 345.8 |
| State/Private | 0.4 | 0.2 |
| Tribal | 226.0 | 140.4 |
| Tribal/Private | 28.1 | 17.4 |
| Private | 10,542.1 | 6,550.5 |
| Total | 31,750.8 | 19,729.0 |

We present a description of all critical habitat designated in each of 32 units below, organized by recovery unit. The areas being designated as critical habitat satisfy each of the above *Criteria Used to Identify Critical Habitat* considerations, and will conserve the opportunity for diverse life-history expression and genetic diversity; ensure that bull trout are distributed across representative habitats; ensure sufficient connectivity among populations; ensure sufficient habitat to support population viability; address threats; and ensure sufficient redundancy in conserving population units. The characteristics of each critical habitat unit, subunit, and, in some cases, waterbody segment that establish why a specific area is essential to the conservation of bull trout are identified in the justification document (Service 2010). Examples of attributes that were considered include habitat use (FMO, spawning and rearing), occupancy data, geographic limits, accessibility, PCE presence, presence or absence of barriers, genetic analysis (used in metapopulation context), population data, habitat condition, and presence of other anadromous salmonids. Maps depicting the units and subunits appear in the **Regulation Promulgation** section below. For a more detailed textual and graphic description of all units and subunits, please see our website at *http://www.fws.gov/pacific/bulltrout*, or contact the Idaho Fish and Wildlife Office (see **ADDRESSES** above).

Coastal Recovery Unit

Unit 1: Olympic Peninsula Unit

The Olympic Peninsula CHU is located in northwestern Washington. Bull trout populations inhabiting the Olympic Peninsula comprise the coastal component of the Coastal–Puget Sound population. The unit includes approximately 748.7 km (465.2 mi) of stream, 3,064.2 ha (7,571.8 ac) of lake surface area, and 529.2 km (328.8 mi) of marine shoreline designated as critical habitat. This CHU is bordered by Hood Canal to the east, Strait of Juan de Fuca to the north, the Pacific Ocean to the west, and the Lower Columbia River Basins and Puget Sound CHUs to the south. It extends across portions of Grays Harbor, Clallam, Mason, Pacific, and Jefferson Counties. All of the major river basins initiate from the Olympic Mountains. The Olympic Peninsula CHU is divided into 10 critical habitat subunits. Although delta areas and small islands are difficult to map and may not be specifically identified by name, included within the critical habitat proposal are delta areas where streams form sloughs and braids and the nearshore of small islands found within the designated marine areas. The State of Washington has assigned most streams a stream catalog number. Typically, if an unnamed stream or stream with no official U.S. Geological Survey name is designated as critical habitat, the stream catalog number is provided for reference. In those cases where tributary streams do not have a catalog number, they are referred to as "unnamed" or a locally accepted name is used. The subunits within this unit provide spawning, rearing, foraging, migratory, and overwintering habitat. For a detailed description of this unit and subunits, for justification of why this CHU, included CHSUs, or in some cases individual waterbodies are designated as critical habitat, and for documentation of occupancy by bull trout, see Service (2010), or *http://www.fws.gov/pacific/bulltrout.*

Unit 2: Puget Sound Unit

The Puget Sound CHU includes approximately 1,840.2 km (1,143.5 mi) of streams; 16,260.9 ha (40,181.5 ac) of lake surface area; and 684.0 km (442.5 mi) of marine shoreline designated as critical habitat. The CHU is bordered by the Cascade Range to the east, Puget Sound to the west, Lower Columbia River Basins and Olympic Peninsula CHUs to the south, and the U.S.–Canada border to the north. The CHU extends across Whatcom, Skagit, Snohomish, King, Pierce, Thurston, and Island Counties in Washington. The major river basins initiate from the Cascade Range and flow west, discharging into Puget Sound, with the exception of the Chilliwack River system, which flows northwest into British Columbia, discharging into the Fraser River. The Puget Sound CHU is divided into 13 CHSUs. The subunits within this unit provide spawning, rearing, foraging, migratory, connecting, and overwintering habitat. For a detailed description of this unit and subunits, for justification of why this CHU, included CHSUs, or in some cases individual waterbodies are designated as critical habitat, and for documentation of occupancy by bull trout, see Service (2010), or *http://www.fws.gov/pacific/bulltrout.*

Unit 3: Lower Columbia River Basins Unit

The Lower Columbia River Basins CHU consists of portions of the Lewis, White Salmon, and Klickitat Rivers and associated tributaries in southwestern and south-central Washington. The CHU extends across Clark, Cowlitz, Klickitat, Skamania, and Yakima Counties. Approximately 119.3 km (74.2 mi) of stream are designated as critical habitat. The subunits within this unit provide spawning, rearing, foraging, migratory, connecting, and overwintering habitat. For a detailed description of this unit and subunits, for justification of why this CHU, included CHSUs, or in some cases individual waterbodies are designated as critical habitat, and for documentation of occupancy by bull trout, see Service (2010), or *http://www.fws.gov/pacific/bulltrout.*

Unit 4: Upper Willamette River Unit

The Upper Willamette River CHU includes 312.4 km (194.1 mi) of streams and 3,601.5 ha (8,899.5 ac) of lake surface area in designated critical habitat in the McKenzie River and Middle Fork Willamette River subbasins of western Oregon. This unit is located primarily within Lane County, but also extends into Linn County.

There are three known bull trout local populations in the McKenzie River subbasin and one bull trout local population in the Middle Fork Willamette River subbasin. With the exception of a short reach of the mainstem Willamette River and the mainstem Middle Fork Willamette River (including reservoirs) below Hills Creek Dam, segments designated as critical habitat are occupied by bull trout. This unit provides spawning, rearing, foraging, migratory, connecting, and overwintering habitat. For a detailed description of this unit, for justification of why this CHU, included CHSUs, or in some cases individual waterbodies are designated as critical habitat, and for documentation of occupancy by bull trout, see Service (2010), or *http://www.fws.gov/pacific/bulltrout.*

Unit 5: Hood River Unit

The Hood River CHU includes the mainstem Hood River and three major tributaries: Clear Branch Hood River, West Fork Hood River, and East Fork Hood River. A total of 128.1 km (79.6 mi) of stream and 36.9 ha (91.1 ac) of lake surface is designated as critical habitat. Portions of the mainstem Columbia River utilized as FMO by Hood River bull trout are discussed in the Lower Mainstem Columbia River section of this document.

The Hood River CHU, located on the western slopes of the Cascades Mountains in northwest Oregon, lies entirely within Hood River County, Oregon. There are two local populations: (1) Clear Branch Hood River above Clear Branch Dam, and (2) Hood River and tributaries below Clear Branch Dam. This unit provides spawning and rearing habitat. For a detailed description of this unit, for justification of why this CHU, included CHSUs, or in some cases individual waterbodies are designated as critical habitat, and for documentation of occupancy by bull trout, see Service (2010), or *http://www.fws.gov/pacific/bulltrout.*

Unit 6: Lower Deschutes River Unit

The Lower Deschutes River CHU is located in Wasco, Sherman, Jefferson, Deschutes, and Crook Counties in central Oregon. There are five known local population in the lower Deschutes River basin: (1) Warm Springs River; (2) Shitike Creek; (3) Whitewater River; (4) Jefferson Creek–Candle Creek Complex; and (5) Jack Creek–Canyon Creek–Heising Spring Complex.

Approximately 232.8 km (144.7 mi) of streams and 1,224.9 ha (3,026.8 ac) of lake and reservoir surface area in the lower Deschutes River basin are designated as critical habitat. A portion of the reaches occur on the Confederated Tribes of Warm Springs lands. This unit provides spawning, rearing, foraging, migratory, connecting, and overwintering habitat. For a detailed description of this unit, for justification of why this CHU, included CHSUs, or in some cases individual waterbodies are designated as critical habitat, and for documentation of occupancy by bull trout, see Service (2010), or *http://www.fws.gov/pacific/bulltrout.*

Unit 7: Odell Lake Unit

The Odell Lake CHU lies entirely within the Deschutes National Forest in Deschutes and Klamath Counties, Oregon. Total critical habitat in this unit includes 27.4 km (17.0 mi) of streams and 1,387.1 ha (3,427.6 ac) of lake surface area. The single Odell Lake bull trout population has been isolated from the Deschutes River population by a lava flow that impounded Odell Creek and formed Davis Lake approximately 5,500 years ago. Odell Lake is the only remaining natural adfluvial population of bull trout in Oregon. This unit provides spawning and rearing habitat. For a detailed description of this unit, for justification of why this CHU, included CHSUs, or in some cases individual waterbodies are designated as critical habitat, and for documentation of occupancy by bull trout, see Service (2010), or *http://www.fws.gov/pacific/bulltrout.*

Unit 8: Mainstem Lower Columbia River Unit

The Mainstem Lower Columbia River CHU extends from the mouth of the Columbia River to John Day Dam and is located in the States of Oregon and Washington. It includes Clatsop, Columbia, Multnomah, Hood River, Wasco, and Sherman Counties in Oregon, and Pacific, Wahkiakum, Cowlitz, Clark, Skamania, and Klickitat Counties in Washington. A total of 340.4 km (211.5 mi) of stream are being designated as critical habitat. This unit provides connecting habitat. For a detailed description of this unit, for justification of why this CHU, included CHSUs, or in some cases individual waterbodies are designated as critical habitat, and for documentation of occupancy by bull trout, see Service (2010), or *http://www.fws.gov/pacific/bulltrout.*

Klamath Recovery Unit

Unit 9: Klamath River Basin Unit

The Klamath River Basin CHU is located in south-central Oregon and includes three CHSUs: (1) Upper Klamath Lake CHSU; (2) Sycan River CHSU; and (3) Upper Sprague River CHSU. It includes portions of Klamath and Lake Counties in Oregon. Total designated critical habitat in this unit includes 445.2 km (276.6 mi) of streams and 3,775.5 ha (9,329.4 ac) of lake surface area. The subunits within this unit provide spawning, rearing, foraging, migratory, connecting, and overwintering habitat. For a detailed description of this unit and subunits, for justification of why this CHU, included CHSUs, or in some cases individual waterbodies are designated as critical habitat, and for documentation of occupancy by bull trout, see Service (2010), or *http://www.fws.gov/pacific/bulltrout.*

Mid-Columbia Recovery Unit

Unit 10: Upper Columbia River Basins Unit

The Upper Columbia River Basins CHU includes portions of the three CHSUs in central and north-central Washington on the east slopes of the Cascade Range and east of the Columbia River between Wenatchee, Washington, and the Okanogan River drainage. The CHU includes portions of Chelan and Okanogan Counties in Washington. A total of 931.8 km (579.0 mi) of streams and 1,033.2 ha (2,553.1 ac) of lake surface area in this CHU are designated as critical habitat. The subunits within this unit provide spawning, rearing, foraging, migratory, connecting, and overwintering habitat. For a detailed description of this unit and subunits, for justification of why this CHU, included CHSUs, or in some cases individual waterbodies are designated as critical habitat, and for documentation of occupancy by bull trout, see Service (2010), or *http://www.fws.gov/pacific/bulltrout.*

Unit 11: Yakima River Unit

The Yakima River CHU supports adfluvial, fluvial, and resident life-history forms of bull trout. This CHU includes the mainstem Yakima River and tributaries from its confluence with the Columbia River upstream to the uppermost point of bull trout distribution. The Yakima River CHU is located on the eastern slopes of the Cascade Range in south-central Washington and encompasses the entire Yakima River basin located between the Klickitat and Wenatchee basins. The Yakima River basin is one of the largest basins in the State of Washington; it drains southeast into the Columbia River near the town of Richland, Washington. The basin occupies most of Yakima and Kittitas Counties, about half of Benton County, and a small portion of Klickitat County. This CHU does not contain any subunits because it supports one core area. A total of 896.9 km (557.3 mi) of stream habitat and 6,285.2 ha (15,530.9 ac) of lake and reservoir surface area in this CHU are designated as critical habitat. One of the largest populations of bull trout (South Fork Tieton River population) in central Washington is located above the Tieton Dam and supports the core area. This unit provides spawning, rearing, foraging, migratory, connecting, and overwintering habitat. For a detailed description of this unit, for justification of why this CHU is designated as critical habitat, and for documentation of occupancy by bull trout, see Service (2010), or *http://www.fws.gov/pacific/bulltrout.*

Unit 12: John Day River Unit

The John Day River CHU in the John Day River basin in eastern Oregon includes portions of the mainstem John Day River, North Fork John Day River, Middle Fork John Day River, and their tributary streams within Wheeler, Grant, and Umatilla Counties in Oregon. A total of 1,089.6 km (677.0 mi) of streams are designated as critical habitat.

The subunits within this unit provide spawning, rearing, foraging, migratory, and overwintering habitat. For a detailed description of this unit and subunits, for justification of why this CHU, included CHSUs, or in some cases individual waterbodies are designated as critical habitat, and for documentation of occupancy by bull trout, see Service (2010), or *http://www.fws.gov/pacific/bulltrout.*

Unit 13: Umatilla River Unit

The Umatilla River CHU is located in northeastern Oregon in Umatilla and Union Counties. There are two local populations in this unit: one in the North Fork Umatilla River and one in North Fork Meacham Creek. Bull trout in this basin are primarily fluvial migrants that overwinter in middle and lower sections of the mainstem Umatilla River.

Approximately 163.0 km (101.3 mi) of stream are designated as critical habitat for bull trout in the Umatilla River basin. This unit provides spawning, rearing, foraging, migratory, connecting, and overwintering habitat. For a detailed description of this unit, for justification of why this CHU, included CHSUs, or in some cases individual waterbodies are designated as critical habitat, and for documentation of occupancy by bull trout, see Service (2010), or *http://www.fws.gov/pacific/bulltrout.*

Unit 14: Walla Walla River Basin Unit

The Walla Walla River Basin CHU straddles the Oregon–Washington State line in the eastern part of both States and includes two CHSUs. The unit includes 383.7 km (238.4 mi) of stream, extending across portions of Umatilla and Wallowa Counties in Oregon and Walla Walla and Columbia Counties in Washington. There are five known bull trout local populations in this unit: two in the Walla Walla River basin and three in the Touchet River basin. The

subunits within this unit provide spawning, rearing, foraging, migratory, connecting, and overwintering habitat. For a detailed description of this unit and subunits, for justification of why this CHU, included CHSUs, or in some cases individual waterbodies are designated as critical habitat, and for documentation of occupancy by bull trout, see Service (2010), or *http://www.fws.gov/pacific/bulltrout.*

Unit 15: Lower Snake River Basins Unit

The Lower Snake River Basins CHU is located in southeast Washington and contains two CHSUs: (1) Tucannon River basin CHSU located in Columbia and Garfield Counties and (2) Asotin Creek basin CHSU within Garfield and Asotin Counties. Approximately 270.8 km (168.3 mi) of stream are designated as critical habitat for bull trout within this unit. The subunits within this unit provide spawning, rearing, foraging, migratory, connecting, and overwintering habitat. For a detailed description of this unit and subunits, for justification of why this CHU, included CHSUs, or in some cases individual waterbodies are designated as critical habitat, and for documentation of occupancy by bull trout, see Service (2010), or *http://www.fws.gov/pacific/bulltrout.*

Unit 16: Grande Ronde River Unit

The Grande Ronde River CHU is located in northeast Oregon and southeast Washington and includes the Grande Ronde core area and the Little Minam core area. The Grande Ronde River CHU is located in Union, Wallowa, and Umatilla Counties in Oregon, and about one-third of Asotin County and small portions of Columbia and Garfield Counties in Washington.

This CHU includes 1,057.9 km (657.4 mi) of streams and 605.2 ha (1,495.5 ac) of lakes and reservoirs designated as critical habitat. This unit provides spawning, rearing, foraging, migratory, connecting, and overwintering habitat. For a detailed description of this unit, for justification of why this CHU, included CHSUs, or in some cases individual waterbodies are designated as critical habitat, and for documentation of occupancy by bull trout, see Service (2010), or *http://www.fws.gov/pacific/bulltrout.*

Unit 17: Imnaha River Unit

The Imnaha River CHU extends across Wallowa, Baker, and Union Counties in northeastern Oregon. The CHU contains approximately 285.7 km (177.5 mi) of river designated as critical habitat and four local populations: (1) Mainstem Imnaha River; (2) Big Sheep Creek and tributary streams (Big Sheep Creek is considered to be one local population above and below the Wallowa Valley Irrigation Canal); (3) Little Sheep Creek and tributary streams; and (4) McCully Creek, which could be considered one or two local populations depending on whether Big Sheep Creek above and below the diversion are separated. This unit provides spawning, rearing, foraging, migratory, connecting, and overwintering habitat. For a detailed description of this unit, for justification of why this CHU, included CHSUs, or in some cases individual waterbodies are designated as critical habitat, and for documentation of occupancy by bull trout, see Service (2010), or *http://www.fws.gov/pacific/bulltrout.*

Unit 18: Sheep and Granite Creeks Unit

This CHU is located within Adams and Idaho Counties in Idaho, approximately 21.0 km (13.0 mi) east of Riggins, Idaho. In the Sheep and Granite Creeks CHU, 47.9 km (29.7 mi) of streams are designated as critical habitat. This unit provides spawning, rearing, foraging, migratory, and overwintering habitat. For a detailed description of this unit, for justification of why this CHU, included CHSUs, or in some cases individual waterbodies are designated as critical habitat, and for documentation of occupancy by bull trout, see Service (2010), or *http://www.fws.gov/pacific/bulltrout.*

Unit 19: Hells Canyon Complex Unit

The Hells Canyon Complex is located in Adams County, Idaho, and Baker County, Oregon. This CHU contains 377.5 km (234.6 mi) of streams designated as critical habitat. The subunits within this unit provide spawning, rearing, foraging, migratory, connecting, and overwintering habitat. For a detailed description of this unit and subunits, for justification of why this CHU, included CHSUs, or in some cases individual waterbodies are designated as critical habitat, and for documentation of occupancy by bull trout, see Service (2010), or *http://www.fws.gov/pacific/bulltrout.*

Unit 20: Powder River Basin Unit

The Powder River Basin CHU includes approximately 296.5 km (184.2 mi) of stream designated as critical habitat and 897.0 ha (2,216.5 ac) of reservoir, and is located within Baker, Union, and Wallowa Counties in northeastern Oregon. This unit is thought to contain 10 local populations of bull trout and 1 potential local population. Several unoccupied sections of the Powder River mainstem have been included to provide connectivity and recovery opportunities for local populations. This unit provides spawning, rearing, foraging, migratory, connecting, and overwintering habitat. For a detailed description of this unit, for justification of why this CHU, included CHSUs, or in some cases individual waterbodies are designated as critical habitat, and for documentation of occupancy by bull trout, see Service (2010), or *http://www.fws.gov/pacific/bulltrout.*

Unit 21: Clearwater River Unit

The Clearwater River CHU is located east of Lewiston, Idaho, and extends from the Snake River confluence at Lewiston on the west to headwaters in the Bitterroot Mountains along the Idaho–Montana border on the east in Nez Perce, Latah, Lewis, Clearwater, Idaho, and Shoshone Counties. In the Clearwater River CHU, 2,702.1 km (1,679.0 mi) of streams and 6,721.9 ha (16,610.1 ac) of lake and reservoir surface area are designated as critical habitat. The subunits within this unit provide spawning, rearing, foraging, migratory, connecting, and overwintering habitat. For a detailed description of this unit and subunits, for justification of why this CHU, included CHSUs, or in some cases individual waterbodies are designated as critical habitat, and for documentation of occupancy by bull trout, see Service (2010), or *http://www.fws.gov/pacific/bulltrout.*

Unit 22: Mainstem Upper Columbia River Unit

The Mainstem Upper Columbia River CHU includes the Columbia River from John Day Dam upstream 520.1 km (323.2 mi) to Chief Joseph Dam. The Mainstem Upper Columbia River CHU supports FMO habitat for fluvial bull trout; several accounts exist of bull trout in the Columbia River between the Yakima and John Day rivers. The Mainstem Upper Columbia River CHU provides connectivity to the Mainstem Lower Columbia River CHU and 13 additional CHUs (Clearwater River, Powder River Basin, Imnaha River, Grande Ronde River, Walla Walla River Basin, Umatilla River, John Day River, Yakima River, Mainstem Snake River, Lower Snake River Basins, Hells Canyon Complex, Sheep and Granite Creeks, and Upper Columbia River Basins). The Mainstem Upper Columbia River CHU is located in north-central, central, and south-central Washington and north-central and northeast Oregon. This CHU is within Klickitat, Franklin, Benton, Grant, Yakima, Kittitas, Chelan, Douglas, and Okanogan Counties in Washington and Sherman, Gilliam,

Morrow, and Umatilla Counties in Oregon. For a detailed description of this unit and subunits, justification of why this CHU, included CHSUs or in some cases individual waterbodies are designated as critical habitat, and for documentation of occupancy by bull trout, see Service (2010), or *http://www.fws.gov/pacific/bulltrout.*

Unit 23: Mainstem Snake River Unit

The Mainstem Snake River CHU is located from the confluence with the Columbia River upstream to the head of Brownlee Reservoir. The Snake River is the largest tributary to the Columbia River and forms the border between Washington and Idaho from Clarkston/Lewiston upstream to Oregon. The Snake River also forms the boundary between Idaho and Oregon, and at that point upstream to the upper limit of Brownlee Reservoir forms this CHU. The Snake River is within Franklin, Walla Walla, Columbia, Whitman, and Asotin Counties in Washington; Wallowa, Whitman, Baker, and Malheur Counties in Oregon; and Nez Perce, Idaho, Adams, and Washington Counties in Idaho.

The Mainstem Snake River CHU includes 451.7 km (280.6 mi) of streams designated as critical habitat. This unit provides foraging, migratory, connecting, and overwintering habitat. For a detailed description of this unit, for justification of why this CHU, included CHSUs, or in some cases individual waterbodies are designated as critical habitat, and for documentation of occupancy by bull trout, see Service (2010), or *http://www.fws.gov/pacific/bulltrout.*

Upper Snake Recovery Unit

Unit 24: Malheur River Basin Unit

The Malheur River Basin CHU is in eastern Oregon within Grant, Baker, Harney, and Malheur Counties. A total of 272.3 km (169.2 mi) of streams and 715.9 ha (1,768.9 ac) of reservoir surface area are designated as critical habitat. This unit provides spawning, rearing, foraging, migratory, connecting, and overwintering habitat. For a detailed description of this unit, for justification of why this CHU, included CHSUs, or in some cases individual waterbodies are designated as critical habitat, and for documentation of occupancy by bull trout, see Service (2010), or *http://www.fws.gov/pacific/bulltrout.*

Unit 25: Jarbidge River Unit

The Jarbidge River CHU encompasses the Jarbidge and Bruneau River basins, which drain into the Snake River within C.J. Strike Reservoir upstream of Grand View, Idaho. The Jarbidge River CHU is located approximately 70 miles north of Elko within Owyhee County in southwestern Idaho and Elko County in northeastern Nevada.

The Jarbidge River CHU includes 245.2 km (152.4 mi) of streams designated as critical habitat. The Jarbidge River CHU contains six local populations of resident and migratory bull trout and provides spawning, rearing, foraging, migratory, connecting, and overwintering habitat. For a detailed description of this unit, for justification of why this CHU, included CHSUs, or in some cases individual waterbodies are designated as critical habitat, and for documentation of occupancy by bull trout, see Service (2010), or *http://www.fws.gov/pacific/bulltrout.*

Unit 26: Southwest Idaho River Basins Unit

The Southwest Idaho River Basins CHU is located in southwest Idaho in the following counties: Adams, Boise, Camas, Canyon, Elmore, Gem, Valley, and Washington. This unit includes eight CHSUs: Anderson Ranch, Arrowrock Reservoir, South Fork Payette River, Deadwood River, Middle Fork Payette River, North Fork Payette River, Squaw Creek, and Weiser River. The Southwest Idaho River Basins CHU includes approximately 2,150.0 km (1,335.9 mi) of streams and 4,310.5 ha (10,651.5 ac) of lake and reservoir surface area designated as critical habitat. The subunits within this unit provide spawning, rearing, foraging, migratory, connecting, and overwintering habitat. For a detailed description of this unit and subunits, for justification of why this CHU, included CHSUs, or in some cases individual waterbodies are designated as critical habitat, and for documentation of occupancy by bull trout, see Service (2010), or *http://www.fws.gov/pacific/bulltrout.*

Unit 27: Salmon River Basin Unit

The Salmon River basin extends across central Idaho from the Snake River to the Montana–Idaho border. The Salmon River Basin CHU extends across portions of Adams, Blaine, Custer, Idaho, Lemhi, Nez Perce, and Valley Counties in Idaho. There are 10 CHSUs: Little-Lower Salmon River, Opal Lake, Lake Creek, South Fork Salmon River, Middle Salmon–Panther River, Middle Fork Salmon River, Middle Salmon Chamberlain River, Upper Salmon River, Lemhi River, and Pahsimeroi River. The Salmon River Basin CHU includes 7,376.5 km (4,583.5 mi) of streams and 1,683.8 ha (4,160.6 ac) of lakes and reservoirs designated as critical habitat. The subunits within this unit provide spawning, rearing, foraging, migratory, connecting, and overwintering habitat. For a detailed description of this unit and subunits, for justification of why this CHU, included CHSUs, or in some cases individual waterbodies are designated as critical habitat, and for documentation of occupancy by bull trout, see Service (2010), or *http://www.fws.gov/pacific/bulltrout.*

Unit 28: Little Lost River Unit

Located within Butte, Custer, and Lemhi Counties in east-central Idaho, near the town of Arco, Idaho, designated critical habitat in the Little Lost River CHU includes 89.2 km (55.4 mi) of streams. This unit provides spawning, rearing, foraging, migratory, connecting, and overwintering habitat. For a detailed description of this unit, for justification of why this CHU, included CHSUs, or in some cases individual waterbodies are designated as critical habitat, and for documentation of occupancy by bull trout, see Service (2010), or *http://www.fws.gov/pacific/bulltrout.*

Columbia Headwaters Recovery Unit

Unit 29: Coeur d'Alene River Basin Unit

Located in Kootenai, Shoshone, Benewah, Bonner, and Latah Counties in Idaho, the Coeur d'Alene River Basin CHU includes the entire Coeur d'Alene Lake basin in northern Idaho. A total of 821.5 km (510.5 mi) of streams and 12,606.9 ha (31,152.1 ac) of lake surface area are designated as critical habitat. There are no subunits within the Coeur d'Alene River Basin CHU. This unit provides spawning, rearing, foraging, migratory, connecting, and overwintering habitat. For a detailed description of this unit, for justification of why this CHU is designated as critical habitat, and for documentation of occupancy by bull trout, see Service (2010), or *http://www.fws.gov/pacific/bulltrout.*

Unit 30: Kootenai River Basin Unit

The Kootenai River Basin CHU is located in the northwestern corner of Montana and the northeastern tip of the Idaho panhandle and includes the Kootenai River watershed upstream and downstream of Libby Dam. The Kootenai River flows in a horseshoe configuration, entering the United States from British Columbia, Canada, and then traversing across northwest Montana and the northern Idaho panhandle before returning to British Columbia from Idaho where it eventually joins the upper Columbia River drainage. The Kootenai River

Basin CHU includes two CHSUs: the downstream Kootenai River CHSU in Boundary County, Idaho, and Lincoln County, Montana, and the upstream Lake Koocanusa CHSU in Lincoln County, Montana. The entire Kootenai River Basin CHU includes 522.5 km (324.7 mi) of streams and 12,089.2 ha (29,873.0 ac) of lake and reservoir surface area designated as critical habitat. The subunits within this unit provide spawning, rearing, foraging, migratory, connecting, and overwintering habitat. For a detailed description of this unit and subunits, for justification of why this CHU, included CHSUs, or in some cases individual waterbodies are designated as critical habitat, and for documentation of occupancy by bull trout, see Service (2010), or *http://www.fws.gov/pacific/bulltrout.*

Unit 31: Clark Fork River Basin Unit

The Clark Fork River Basin CHU includes the northeastern corner of Washington (Pend Oreille County), the panhandle portion of northern Idaho (Boundary, Bonner, and Kootenai Counties), and most of western Montana (Lincoln, Flathead, Sanders, Lake, Mineral, Missoula, Powell, Lewis and Clark, Ravalli, Granite, and Deer Lodge Counties). This unit includes 12 CHSUs, organized primarily on the basis of major watersheds: Lake Pend Oreille, Pend Oreille River, and lower Priest River (Lake Pend Oreille); Priest Lakes and Upper Priest River (Priest Lakes); Lower Clark Fork River; Middle Clark Fork River; Upper Clark Fork River; Flathead Lake, Flathead River, and Headwater Lakes (Flathead); Swan River and Lakes (Swan); Hungry Horse Reservoir, South Fork Flathead River, and Headwater Lakes (South Fork Flathead); Bitterroot River; Blackfoot River; Clearwater River and Lakes; and Rock Creek. The Clark Fork River Basin CHU includes 5,356.0 km (3,328.1 mi) of streams and 119,620.1 ha (295,586.6 ac) of lakes and reservoirs designated as critical habitat. The subunits within this unit provide spawning, rearing, foraging, migratory, connecting, and overwintering habitat. For a detailed description of this unit and subunits, for justification of why this CHU, included CHSUs, or in some cases individual waterbodies are designated as critical habitat, and for documentation of occupancy by bull trout, see Service (2010), or *http://www.fws.gov/pacific/bulltrout.*

Saint Mary Recovery Unit

Unit 32: Saint Mary River Basin Unit

The entire U.S. portion of the Saint Mary River drainage, which forms the Saint Mary River Basin CHU, is located in Glacier County, Montana. The total stream distance designated as critical habitat is 34.7 km (21.6 mi), and the lakes have a surface area of 1,669.3 ha (4,125 ac).

This unit provides spawning, rearing, foraging, migratory, connecting, and overwintering habitat. For a detailed description of this unit, for justification of why this CHU, included CHSUs, or in some cases individual waterbodies are designated as critical habitat, and for documentation of occupancy by bull trout, see Service (2010), or *http://www.fws.gov/pacific/bulltrout.*

**Effects of Critical Habitat Designation**

*Section 7 Consultation*

Section 7(a)(2) of the Act requires Federal agencies, including the Service, to ensure that actions they fund, authorize, or carry out are not likely to destroy or adversely modify critical habitat. Decisions by the court of appeals for the Fifth and Ninth Circuits have invalidated our definition of destruction or adverse modification (50 CFR 402.02) (see *Gifford Pinchot Task Force v. U.S. Fish and Wildlife Service,* 378 F.3d 1059 (9th Cir. 2004) and *Sierra Club v. U.S. Fish and Wildlife Service et al.,* 245 F.3d 434, 442 (5th Cir. 2001)), and we do not rely on this regulatory definition when analyzing whether an action is likely to destroy or adversely modify critical habitat. Under the statutory provisions of the Act, we determine destruction or adverse modification on the basis of whether, with implementation of the proposed Federal action, the affected critical habitat would remain functional (or retain those physical or biological features 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 the species or to destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency (action agency) must enter into consultation with us. As a result of this consultation, we document compliance with the requirements of section 7(a)(2) through our issuance of:

(1) A concurrence letter for Federal actions that may affect, but are not likely to adversely affect, listed species or critical habitat; or

(2) A biological opinion for Federal actions that may affect, and are likely to adversely affect, listed species or critical habitat. As described below in the *Application of the Jeopardy and Adverse Modification Standards* section, "likely to adversely effect" does not have the same meaning as "adverse modification."

When we issue a biological opinion concluding that a project is likely to jeopardize the continued existence of a listed species or destroy or adversely modify critical habitat, we also provide reasonable and prudent alternatives to the project, if any are identifiable. We define reasonable and prudent alternatives at 50 CFR 402.02 as alternative actions identified during consultation that:

(1) Can be implemented in a manner consistent with the intended purpose of the action;

(2) Can be implemented consistent with the scope of the Federal agency's legal authority and jurisdiction;

(3) Are economically and technologically feasible; and

(4) Would, in the Director's opinion, avoid jeopardizing the continued existence of the listed species or destroying or adversely modifying critical habitat.

Reasonable and prudent alternatives can vary from slight project modifications to extensive redesign or relocation of the project. Costs associated with implementing a reasonable and prudent alternative are similarly variable.

Regulations at 50 CFR 402.16 require Federal agencies to reinitiate consultation on previously reviewed actions in instances where we have listed a new species or subsequently designated critical habitat that may be affected and the Federal agency has retained discretionary involvement or control over the action (or the agency's discretionary involvement or control is authorized by law). Consequently, Federal agencies may sometimes need to request reinitiation of consultation with us on actions for which formal consultation has been completed, if those actions with discretionary involvement or control may affect subsequently listed species or designated critical habitat.

Federal activities that may affect the bull trout 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 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 consultations.

*Application of the Jeopardy and Adverse Modification Standards*

Jeopardy Standard

Currently, the Service applies an analytical framework for bull trout jeopardy analyses that relies heavily on the importance of known core area 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 the bull trout 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 bull trout, the factors responsible for that condition, and what is necessary for this species to survive and recover. An emphasis is also placed on characterizing the condition of the bull trout in the area affected by the proposed Federal action and the role of affected populations in the survival and recovery of the bull trout. 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. Core areas form the building blocks that provide for conservation of the bull trout's evolutionary legacy as represented by major genetic groups. The jeopardy analysis also considers any conservation measures that may be proposed by a Federal action agency to minimize or compensate for adverse project effects to the bull trout or to promote its recovery. If a proposed Federal action is incompatible with the viability of the affected core area population(s), inclusive of associated habitat conditions, a jeopardy finding may be warranted, because of the relationship of each core area population to the survival and recovery of the species as a whole.

*Adverse Modification Standard*

The analytical framework described in the Director's December 9, 2004, memorandum is used to complete section 7(a)(2) analysis for Federal actions affecting bull trout critical habitat. The key factor related to the adverse modification determination is whether, with implementation of the proposed Federal action, the affected critical habitat would 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 bull trout. As discussed above, the role of critical habitat is to support the life-history needs of the species and provide for its conservation. Generally, the conservation role of bull trout critical habitat units is to support viable core area populations.

Since the primary threat to bull trout is habitat loss or degradation, the jeopardy analysis under section 7 of the Act for a project with a Federal nexus will most likely evaluate the effects of the action on the conservation or functionality of the habitat for the bull trout. Because of this, we believe that in many cases the analysis of the project to address designated critical habitat will be comparable. As such, we do not anticipate, for many circumstances, that the outcome of the consultation to address critical habitat will result in any significant additional project modifications or measures.

When consulting under section 7(a)(2) in designated critical habitat, independent analyses are conducted for jeopardy to the species and adverse modification of critical habitat. In occupied bull trout habitat, any adverse modification determination would likely also result in a jeopardy determination for the same action. As such, project modifications that may be needed to minimize impacts to the species would coincidentally minimize impacts to critical habitat. Accordingly, in occupied critical habitat it is unlikely that an analysis would identify a difference between measures needed to avoid the destruction or adverse modification of critical habitat from measures needed to avoid jeopardizing the species. Alternatively, in unoccupied critical habitat, we would not conduct a jeopardy analysis; however, measures to avoid the destruction or adverse modification may be necessary to ensure that the affected critical habitat area can continue to serve its intended conservation role for the species, or retain the physical and biological features related to the ability of the area to support the species.

The adverse modification analysis focuses on the rangewide status of critical habitat, the factors responsible for that condition, and what is necessary for critical habitat to provide the necessary conservation value to the bull trout. An emphasis is placed on characterizing the functional condition of critical habitat PCEs in the area affected by the proposed Federal action. This analysis then addresses how the critical habitat PCEs will be affected, and in turn, how this will influence the conservation role of critical habitat units in support of viable core area populations. 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 adverse modification determination at the rangewide scale. If a proposed Federal action would alter the physical or biological features of critical habitat to an extent that appreciably reduces the conservation function of one or more critical habitat units for the bull trout, a finding of adverse modification of the entire designated critical habitat for the proposed action may be warranted. The intended purpose of critical habitat to support viable core areas establishes a sensitive scale for relating effects of an action on CHUs or subunits to the conservation function of the entire designated critical habitat.

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 PCEs and therefore result in consultation for the bull trout include, but are not limited to:

(1) Detrimental alteration of the minimum flow or the natural flow regime of any of the designated stream segments and water bodies. Possible actions would include construction, operations, and maintenance of groundwater pumping, water impoundment, water diversion, hydropower generation facilities and structures, and operational changes in flow and reservoir pool elevation that increase water temperature, reduce flow, increase predation, or alter migration habitat. We note that such

flow alterations resulting from actions affecting tributaries of the designated stream reaches or water bodies may also destroy or adversely modify critical habitat.

(2) Alterations to the designated stream segments and water bodies, as well as alterations to non-designated areas that could directly or indirectly cause significant and detrimental effects to bull trout critical habitat. Possible actions include vegetation manipulation, timber harvest, road construction and maintenance, construction and operations of impoundments, prescribed fire, livestock grazing, off-road vehicle use, power line or pipeline construction and repair, mining, and development. Riparian vegetation profoundly influences instream habitat conditions by providing shade, organic matter, root strength, bank stability, and large woody debris inputs to streams. These characteristics influence water temperature, structure and physical attributes (useable habitat space, depth, width, channel roughness, cover complexity), migration habitat, and food supply.

(3) Detrimental altering of the channel morphology of any of the designated stream segments. Possible actions would include channelization, impoundment, road and bridge construction and maintenance, deprivation of substrate source, destruction and alteration of aquatic or riparian vegetation, reduction of available floodplain, removal of gravel or floodplain terrace materials, excessive sedimentation from mining, livestock grazing, road construction, timber harvest, off-road vehicle use, and other watershed and floodplain disturbances. We note that such actions in the upper watershed (beyond the riparian area) may also destroy or adversely modify critical habitat. For example, timber harvest activities and associated road construction in upland areas can lead to changes in channel morphology by altering sediment production, debris loading, and peak flows.

(4) Detrimental alterations to the water chemistry in any of the designated stream segments. Possible actions would include release of chemical or biological pollutants into the surface water or connected groundwater at a point source or by dispersed release (nonpoint).

(5) Proposed activities that are likely to result in the introduction, spread, or augmentation of nonnative species in any of the designated stream segments. Possible actions would include fish stocking, use of live bait fish, aquaculture, improper construction and operation of canals, inter-basin water transfers, and dam and reservoir management that favors nonnative fish.

(6) Proposed activities that are likely to create significant instream barriers to bull trout movement. Possible actions would include water diversions, water impoundments, and hydropower generation where effective fish passage facilities, mechanisms, or procedures are not provided.

We consider all 32 CHUs to contain features or areas essential to the conservation of the bull trout. All units are within the geographic range of the species, and portions of all units were occupied by the species at the time of listing (based on observations made within the last 20 years), and are likely to be used by the bull trout for foraging, migrating, overwintering, spawning, or rearing. Federal agencies (such as USFS, BLM, and BOR) already consult with us on activities in areas currently occupied by the bull trout, if the species may be affected by the action, to ensure their actions do not jeopardize the continued existence of the bull trout. These agencies may need to request reinitiation on some of their ongoing or previously planned activities if the agency has continued discretionary involvement or control over any part of the activity, and if the activity may affect designated critical habitat. The need to reinitiate consultation will be determined by the action agency, informed by the criteria outlined in 50 CFR 402.16. This determination will be made by the action agency, in cooperation with the Service, on a unit-by-unit basis. The process to reinitiate consultation is described in "Consultation Handbook: Procedures for Conducting Consultation and Conference Activities under Section 7 of the Endangered Species Act." (Service, 1998). However, we anticipate the burden of reinitiation, if needed, will be minor because of the aforementioned similarity between measures needed to avoid the destruction or adverse modification of critical habitat and measures needed to avoid jeopardizing the species. Further, we do not anticipate the action agencies will often need to amend their ongoing or previously planned projects or plans for projects because of the similarity between the measures taken to avoid adverse modification of critical habitat and the measures taken to avoid jeopardizing the species. If substantive changes are determined to be needed, the action agencies will amend their projects or existing plans for projects. However, after consultation is reinitiated, per section 7(d) of the Act, the action agencies will not make any irreversible or irretrievable commitment of resources that would have the effect of foreclosing the formulation or implementation of any reasonable and prudent alternative measures that would not violate section 7(a)(2). New plans and major revisions to existing plans will reflect the new critical habitat designations contained within this rule. In addition, consultation streamlining tools such as programmatic consultations are commonly implemented to minimize the administrative costs associated with consultation within the range of the bull trout. We expect these tools will continue be used for any reinitiations of consultation for bull trout critical habitat, thereby minimizing any additional administrative costs associated with designating the critical habitat.

**Exemptions**

*Application of Section 4(a)(3) of the Act*

The Sikes Act Improvement Act of 1997 (Sikes Act) (16 U.S.C. 670a) required each military installation that includes land and water suitable for the conservation and management of natural resources to complete an integrated natural resources management plan (INRMP) by November 17, 2001. An INRMP integrates implementation of the military mission of the installation with stewardship of the natural resources found on the base. Each INRMP includes:

- An assessment of the ecological needs on the installation, including the need to provide for the conservation of listed species;
- A statement of goals and priorities;
- A detailed description of management actions to be implemented to provide for these ecological needs; and
- A monitoring and adaptive management plan.

Among other things, each INRMP must, to the extent appropriate and applicable, provide for fish and wildlife management; fish and wildlife habitat enhancement or modification; wetland protection, enhancement, and restoration where necessary to support fish and wildlife; and enforcement of applicable natural resource laws.

The National Defense Authorization Act for Fiscal Year 2004 (Pub. L. 108-136) amended the Act to limit areas eligible for designation as critical habitat. Specifically, section 4(a)(3)(B)(i) of the Act (16 U.S.C. 1533(a)(3)(B)(i)) now provides: "The Secretary shall not designate as critical habitat any lands or other geographical areas owned or

controlled by the Department of Defense, or designated for its use, that are subject to an integrated natural resources management plan prepared under section 101 of the Sikes Act (16 U.S.C. 670a), if the Secretary determines in writing that such plan provides a benefit to the species for which critical habitat is proposed for designation."

We consult with the military on the development and implementation of INRMPs for installations with federally listed species. INRMPs developed by military installations located within the proposed critical habitat areas were analyzed for exemption under the authority of section 4(a)(3)(B) of the Act. Each of the Department of Defense (DOD) installations identified below has been conducting surveys and habitat management to benefit the bull trout, and reporting the results of their efforts to the Service. Cooperation between the DOD installations and the Service on specific conservation measures is ongoing.

*Approved Integrated Natural Resources Management Plans*

We have examined the INRMPs for each of these military installations to determine whether they provide benefits to bull trout.

Bayview Acoustic Research Detachment Naval Surface Warfare Center

The Bayview Acoustic Research Detachment (ARD) Naval Surface Warfare Center, Bayview, Idaho, has an approved INRMP. This property includes approximately 9.0 ha (22.0 ac) of developed land on the shore of Lake Pend Oreille and 7.0 ha (17.3 ac) of lake area. There are no tributary streams within this area utilized by bull trout for spawning or early life rearing, but the lake area does contain important FMO habitat for bull trout.

Bayview ARD's INRMP outlines protection and management strategies for natural resources on the center, including fish species and their habitats. The plan benefits bull trout through the protection of spawning habitat for kokanee salmon, a primary food source for bull trout. The Bayview ARD property in Scenic Bay hosts from 40 to 70 percent of the kokanee spawning activity in Lake Pend Oreille, depending on the year. The INRMP includes measures to minimize impacts to kokanee habitat by limiting facility boat traffic during spawning periods (November and December) and implementing sediment control measures. Furthermore, interpretive signs have been placed throughout the property to educate employees and the public regarding various aspects of the regions natural resources, endangered or threatened species (including bull trout), and geological history. The INRMP requires the natural resources manager to provide ARD INRMP awareness training to facilitate INRMP implementation.

Based on the above considerations and in accordance with section 4(a)(3)(B)(i) of the Act, we have determined that the identified lands are subject to the approved Bayview ARD INRMP and that conservation efforts identified in the INRMP will provide a benefit to bull trout occurring in habitats within or adjacent to Bayview ARD. Therefore, lands within this installation are exempt from critical habitat designation under section 4(a)(3) of the Act. We are not including approximately 7.0 ha (17.3 ac) of habitat in this final critical habitat designation because of this exemption.

Naval Radio Station Jim Creek

Naval Radio Station Jim Creek in western Washington has an approved INRMP. The Naval Radio Station Jim Creek occurs in the Jim Creek watershed. This installation includes approximately 1 km (0.7 mi) of stream habitat. The lower reaches of Jim Creek provide foraging habitat for subadult and adult bull trout. The Naval Radio Station Jim Creek INRMP provides benefits to bull trout through the (1) restoration of riparian buffers along Jim Creek, (2) protection of Jim Creek from erosion and sedimentation, and (3) protection of Jim Creek from entry of contaminants and herbicides during antenna field vegetation management. We will continue to work cooperatively with the Department of the Navy to assist Naval Radio Station Jim Creek in implementing and refining the programmatic recommendations contained in this plan that provide benefits to bull trout.

Based on the above considerations and in accordance with section 4(a)(3)(B)(i) of the Act, we have determined that the identified lands are subject to the Naval Radio Station Jim Creek INRMP and that conservation efforts identified in the INRMP will provide a benefit to bull trout occurring in habitats within or adjacent to Naval Radio Station Jim Creek. Therefore, lands within this installation are exempt from critical habitat designation under section 4(a)(3) of the Act. We are not including approximately 1 km (0.7 mi) of habitat in this final critical habitat designation because of this exemption.

Naval Station Everett

Naval Station Everett in western Washington has an approved INRMP. The Naval Station Everett property includes land on or near the shores of Puget Sound that contain important foraging and migration habitat for amphidromous bull trout. This installation includes approximately 8 km (5 mi) of marine nearshore habitat. The Naval Station Everett's INRMP benefits bull trout by providing (1) protection of nearshore marine waters adjacent to the station from oil spills around the berthing naval vessels; (2) bioswales to prevent the release of toxins, contaminants, and oils generated on station from reaching the water column through storm drains; and (3) timing restrictions on all proposed routine construction or repair activities that will take place below the mean higher high water line; and (4) the restoration of riparian habitat on Navy lands located along the Middle Fork Quilceda Creek.

Based on the above considerations and in accordance with section 4(a)(3)(B)(i) of the Act, we have determined that the identified lands are subject to the Naval Station Everett INRMP and that conservation efforts identified in the INRMP will provide a benefit to bull trout occurring in habitats within or adjacent to Naval Station Everett. Therefore, lands within this installation are exempt from critical habitat designation under section 4(a)(3) of the Act. We are not including approximately 8 km (5 mi) of habitat in this final critical habitat designation because of this exemption.

Naval Air Station Whidbey Island

Naval Air Station Whidbey Island in western Washington has an approved INRMP. The Naval Station Whidbey Island property includes land on or near the shores of Puget Sound that contain important foraging and migration habitat for amphidromous bull trout. This installation includes approximately 16 km (10 mi) of marine nearshore habitat. Naval Aviation Station Whidbey Island's INRMP benefits bull trout through (1) monitoring and managing livestock grazing to avoid or minimize impacts to nearshore habitat used by bull trout, (2) managing road building and maintenance to prevent erosion and sedimentation of nearshore habitat used by bull trout , (3) assuring proper disposal of hazardous materials, and (4) implementation of its Integrated Pest Management Plan's best management practices to protect aquatic habitats used by bull trout.

Based on the above considerations and in accordance with section 4(a)(3)(B)(i) of the Act, we have determined that the identified lands are

subject to the Naval Air Station Whidbey Island INRMP and that conservation efforts identified in the INRMP will provide a benefit to bull trout occurring in habitats within or adjacent to Naval Air Station Whidbey Island. Therefore, lands within this installation are exempt from critical habitat designation under section 4(a)(3) of the Act. We are not including approximately 16 km (10 mi) of habitat in this final critical habitat designation because of this exemption.

U.S. Army Fort Lewis Installation

The U.S. Army Fort Lewis Installation (Fort Lewis) located in western Washington has an approved INRMP. Fort Lewis borders the Nisqually River and Puget Sound, where the mainstem Nisqually River and Puget Sound nearshore bordering this property contain important foraging and migration habitat for amphidromous bull trout. This installation includes approximately 24 km (15 mi) of stream and 3.5 km (2 mi) of marine nearshore habitat. The INRMP for Fort Lewis identifies two key objectives for bull trout and salmon: (1) Protect key habitat characteristics, and (2) Enhance riparian and in-stream habitat. Strategies to achieve these benefits to bull trout include (1) protecting and enhancing wetlands and other aquatic habitats–all wetlands are protected with 90 meter (300 foot) wide riparian buffers to maintain cold water temperatures, to prevent sediment from entering the streams, and to provide for woody debris which creates habitat complexity; (2) controlling invasive plant species that often diminish water quality and impact native plants and animals; (3) restoring riparian habitat in-stream habitats and controlling non-native and invasive vegetation to improve bull trout foraging habitat; (4) reconnecting side channels and floodplains to maintain areas for refugia and juvenile rearing and to supplement adult holding capacity; and (5) decommissioning roads to minimize erosion and sediment delivery and replacing undersized culverts to eliminate fish passage barriers.

Based on the above considerations and in accordance with section 4(a)(3)(B)(i) of the Act, we have determined that the identified lands are subject to the Fort Lewis INRMP and that conservation efforts identified in the INRMP will provide a benefit to bull trout occurring in habitats within or adjacent to Fort Lewis. Therefore, lands within this installation are exempt from critical habitat designation under section 4(a)(3) of the Act. We are not including approximately 27.5 km (17 mi) of habitat in this final critical habitat designation because of this exemption.

Summary

Habitat features essential to bull trout conservation are present within or immediately adjacent to each of these DOD installations, and each installation has an approved INRMP. Activities occurring on these installations are being conducted in a manner that provides a benefit to bull trout.

Based on the above considerations, and in accordance with section 4(a)(3)(B)(i) of the Act, we have determined that the identified lands are subject to the Bayview Acoustic Research Detachment Naval Surface Warfare Center, Naval Radio Station Jim Creek, Naval Air Station Whidbey Island, Naval Station Everett, and Fort Lewis INRMPs, and that conservation efforts identified in the INRMPs will provide a benefit to bull trout occurring in habitats within or adjacent to these facilities. Therefore, lands within these installations are exempt from critical habitat designation under section 4(a)(3) of the Act. As a result, we are not including a total of approximately 7.0 ha (17.3 ac) and 52.5 km (32.7 mi) of habitat in these DOD installations in this final critical habitat designation because of these exemptions.

**Exclusions**

*Application of Section 4(b)(2) of the Act*

Section 4(b)(2) of the Act states that the Secretary must designate and revise critical habitat on the basis of the best available scientific data after taking into consideration the economic impact, national security impact, and any other relevant impact of specifying any particular area as critical habitat. The Secretary may exclude an area from critical habitat if he determines the benefits of such exclusion outweigh the benefits of specifying such area as part of the critical habitat, unless he determines, based on the best scientific data available, that the failure to designate such area as critical habitat will result in the extinction of the species. In making that determination, the legislative history is clear that the Secretary has broad discretion regarding which factor(s) to use and how much weight to give to any factor.

Under section 4(b)(2) of the Act, we may exclude an area from designated critical habitat based on economic impacts, impacts on national security, or any other relevant impacts. In considering whether to exclude a particular area from the designation, we must identify the benefits of including the area in the designation, identify the benefits of excluding the area from the designation, and determine whether the benefits of exclusion outweigh the benefits of inclusion. If based on this analysis, the Secretary makes this determination, then he can exercise his discretion to exclude the area only if such exclusion would not result in the extinction of the species.

When considering the benefits of inclusion for an area, we consider the additional regulatory benefits under section 7 of the Act that area would receive from the protection from adverse modification or destruction as a result of actions with a Federal nexus, the educational benefits of mapping essential habitat for recovery of the listed species, and any benefits that may result from a designation due to State or Federal laws that may apply to critical habitat.

When considering the benefits of exclusion, we consider, among other things, whether exclusion of a specific area is likely to result in conservation; the continuation, strengthening, or encouragement of partnerships; or implementation of a management plan that provides equal to or more conservation that a critical habitat designation would provide.

In the case of bull trout, the benefits of critical habitat include public awareness of bull trout presence and the importance of habitat protection, and in cases where a Federal nexus exists, increased habitat protection for bull trout due to the protection from adverse modification or destruction of critical habitat.

In evaluating the existence of a conservation plan when considering the benefits of exclusion, we consider a variety of factors, including but not limited to, whether the plan is finalized; how it provides for the conservation of the essential physical and biological features; whether there is a reasonable expectation that the conservation management strategies and actions contained in a management plan will be implemented into the future; whether the conservation strategies in the plan are likely to be effective; and whether the plan contains a monitoring program or adaptive management to ensure that the conservation measures are effective and can be adapted in the future in response to new information.

After evaluating the benefits of inclusion and the benefits of exclusion, the two sides are carefully weighed to determine whether the benefits of exclusion outweigh those of inclusion. If they do, we then determine whether exclusion of the particular area would result in extinction of the species. If

exclusion of an area from critical habitat will result in extinction, it will not be excluded from the designation.

Based on the information provided by entities seeking exclusion, as well as any additional public comments we received, we evaluated whether certain lands in the proposed critical habitat were appropriate for exclusion from this final designation. We considered the areas discussed below for exclusion under section 4(b)(2) of the Act, and present our detailed analysis below. For those areas in which the Secretary has exercised his discretion to exclude, we believe that:

(1) Their value for conservation will be preserved for the foreseeable future by existing protective actions, or

(2) The benefits of excluding the particular area outweigh the benefits of their inclusion, based on the "other relevant factor" provisions of section 4(b)(2) of the Act.

A total of 3,094.9 km (1,923.1 mi) of streams and marine shoreline (8.5 percent of the area proposed as critical habitat) and 7,849.3 ha (19,395.8 ac) of reservoirs and lakes (3.6 percent of the area proposed as critical habitat) have been excluded from designation as critical habitat. Of the total length of stream habitat excluded, 348 km (216.3 mi) is marine shoreline. Tables 8 and 9 reflect the total stream shoreline and reservoir and lake surface areas excluded in each State, and Tables 10 and 11 presents the ownership or other plan information for these areas. Maps showing excluded habitats are available upon request by contacting the Idaho Fish and Wildlife Office; see the **ADDRESSES** section.

TABLE 6.—STREAM/SHORELINE DISTANCE EXCLUDED FROM BULL TROUT CRITICAL HABITAT BY CRITICAL HABITAT UNIT

| Critical habitat unit | Kilometers | Miles |
|---|---|---|
| 1. Olympic Peninsula | 553.5 | 343.9 |
| 1. Olympic Peninsula (Marine) | 144.6 | 89.9 |
| 2. Puget Sound | 876.9 | 544.9 |
| 2. Puget Sound (Marine) | 203.4 | 126.4 |
| 3. Lower Columbia River Basins | 155.6 | 96.7 |
| 6. Lower Deschutes River | 230.4 | 143.2 |
| 8. Mainstem Lower Columbia River | 1.7 | 1.1 |
| 10. Upper Columbia River Basins | 119.7 | 74.4 |
| 11. Yakima River | 288.7 | 179.4 |
| 12. John Day River | 28.5 | 17.7 |
| 13. Umatilla River | 48.7 | 30.3 |
| 14. Walla Walla River Basin | 69.0 | 42.9 |
| 15. Lower Snake River Basins | 13.4 | 8.3 |
| 16. Grande Ronde River | 1.0 | 0.6 |
| 22. Mainstem Upper Columbia River | 2.5 | 1.6 |
| 30. Kootenai River Basin | 66.2 | 41.1 |
| 31. Clark Fork River Basin | 209.0 | 129.9 |
| 32. Saint Mary River Basin | 82.1 | 51.0 |
| Total | 3,094.9 | 1,923.1 |

TABLE 7.—AREA OF RESERVOIRS OR LAKES EXCLUDED FROM BULL TROUT CRITICAL HABITAT BY CRITICAL HABITAT UNIT

| Critical habitat unit | Hectares | Acres |
|---|---|---|
| 2. Puget Sound | 1,629.5 | 4,026.6 |
| 3. Lower Columbia River Basins | 4,856.1 | 11,999.7 |
| 6. Lower Deschutes River | 445.3 | 1,100.4 |
| 31. Clark Fork River Basin | 32.2 | 79.7 |
| 32. Saint Mary River Basin | 886.1 | 2,189.5 |
| Total | 7,849.3 | 19,395.8 |

TABLE 8.—STREAM/SHORELINE DISTANCE EXCLUDED FROM BULL TROUT CRITICAL HABITAT BY STATE

| State | Kilometers | Miles |
|---|---|---|
| Montana | 271.4 | 168.6 |
| Oregon | 307.6 | 191.1 |
| Washington | 2,163.7 | 1,344.5 |
| Washington Marine | 348.0 | 216.2 |
| Washington/Oregon | 4.2 | 2.6 |
| Total | 3,094.9 | 1,923.1 |

TABLE 9.—AREA OF RESERVOIRS OR LAKES EXCLUDED FROM BULL TROUT CRITICAL HABITAT BY STATE

| State | Hectares | Acres |
|---|---|---|
| Montana | 918.3 | 2,269.2 |
| Oregon | 445.3 | 1,100.4 |
| Washington | 6,485.6 | 16,026.3 |
| Total | 7,849.3 | 19,395.8 |

TABLE 10.—STREAM/SHORELINE DISTANCE EXCLUDED FROM BULL TROUT CRITICAL HABITAT BASED ON TRIBAL OWNERSHIP OR OTHER PLAN

| Ownership | Kilometers | Miles |
|---|---|---|
| Lewis River Hydro Conservation Easements. | 7.0 | 4.3 |
| DOD – Dabob Bay Naval | 23.9 | 14.8 |
| HCP – Cedar River (City of Seattle) | 25.8 | 16.0 |
| HCP – WA Forest Practices Lands | 1,608.3 | 999.4 |
| HCP – Green Diamond (Simpson) | 104.2 | 64.7 |
| HCP – Plum Creek Central Cascades (WA) | 15.8 | 9.8 |
| HCP – Plum Creek Native Fish (MT) | 181.6 | 112.8 |
| HCP–Stimson | 7.7 | 4.8 |
| HCP – WDNR Lands | 230.9 | 149.5 |
| Tribal – Blackfeet | 82.1 | 51.0 |
| Tribal – Hoh | 4.0 | 2.5 |
| Tribal – Jamestown S'Klallam | 2.0 | 1.2 |
| Tribal – Lower Elwha | 4.6 | 2.8 |
| Tribal – Lummi | 56.7 | 35.3 |
| Tribal – Muckleshoot | 9.3 | 5.8 |
| Tribal – Nooksack | 8.3 | 5.1 |
| Tribal – Puyallup | 33.0 | 20.5 |
| Tribal – Quileute | 4.0 | 2.5 |
| Tribal – Quinault | 153.7 | 95.5 |
| Tribal – Skokomish | 26.2 | 16.3 |
| Tribal – Stillaguamish | 1.8 | 1.1 |
| Tribal – Swinomish | 45.2 | 28.1 |
| Tribal – Tulalip | 27.8 | 17.3 |
| Tribal – Umatilla | 62.6 | 38.9 |
| Tribal – Warm Springs | 260.5 | 161.9 |
| Tribal – Yakama | 107.9 | 67.1 |
| Total | 3,094.9 | 1,923.1 |

TABLE 11.—AREA OF RESERVOIRS OR LAKES EXCLUDED FROM BULL TROUT CRITICAL HABITAT BY TRIBAL OWNERSHIP OR OTHER PLAN

| Ownership | Hectares | Acres |
|---|---|---|
| HCP – Cedar River (City of Seattle) | 796.5 | 1,968.2 |
| HCP – WA Forest Practices Lands | 5,689.1 | 14,058.1 |
| HCP – Plum Creek Native Fish | 32.2 | 79.7 |
| Tribal – Blackfeet | 886.1 | 2,189.5 |
| Tribal – Warm Springs | 445.3 | 1,100.4 |
| Total | 7,849.3 | 19,395.8 |

*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 where a national security impact might exist. The Navy conducts essential open water training and testing within the marine waters of Hood Canal fiord within: (1) the Dabob Bay Range Complex (DBRC) (which includes (a) the Dabob Bay Military Operating Area, (b) DBRC Connecting Waters, and (c) DBRC Southern Extension), and (2) the marine waters of the Washington Coast within the Quinault Underwater Tracking Range (QUTR) and its proposed surf zone corridors. These areas encompass important marine nearshore habitat used by amphidromous bull trout for foraging and migration.

The DBRC and QUTR are part of the Navy's larger Keyport Range Complex (NUWC), and are primarily used for providing test and evaluation services critical to undersea warfare. NUWC Keyport testing and training activities to support military readiness requires precision underwater tracking capabilities, underwater range sites offering diverse environments, and varied water depths to meet the Navy's mission of test and evaluation of underwater systems. Because these activities are conducted in open marine waters rather than on DOD installations, they are not included in the Navy's INRMP, and thus may not be exempted from critical habitat designation. The Navy has requested exclusion from critical habitat designation of these areas in the current revision of critical habitat for the bull trout. Previously, portions of these ranges have been designated as critical habitat for the bull trout and other species, by both NOAA Fisheries and the Service. Biological assessments evaluating the operational effects on endangered species have been reviewed and approved by NOAA Fisheries and the Service. These biological assessments, and associated environmental assessments, addressed bull trout and their interactions with military range operations.

Of particular concern to the Service are the proposed surf zone access corridors in the DBRC and QUTR, which lead to the open water parts of these testing ranges, and which are areas that we proposed as critical habitat for bull trout. Accordingly, the proposed surf zone corridors were the focus of our section 4(b)(2) analysis in the DBRC Southern Extension and QUTR. The analysis for these surf zone corridors follows.

(1) Benefits of Inclusion

Habitat containing features essential to bull trout conservation occurs within or immediately adjacent to these marine water training and testing grounds. The primary benefit of designating critical

habitat in each of the areas of interest to the Navy would be that Federal agencies would need to consult with us under section 7 of the Act to ensure that any proposed action would not destroy or adversely modify critical habitat. An additional benefit of including lands in critical habitat is that designation of critical habitat serves to educate landowners, State and local governments, and the public regarding the potential conservation value of an area. This helps focus and promote conservation efforts by other parties by clearly delineating areas of high conservation value for bull trout. Because the critical habitat process includes multiple public comment periods, opportunities for public hearings, and announcements through local venues, the designation of critical habitat provides numerous occasions for public education and involvement. Through these outreach opportunities, landowners, State agencies, and local governments can become more aware of the plight of listed species and conservation actions needed to aid in species recovery. Through the critical habitat process, State agencies and local governments may become more aware of areas that could be conserved under State law, local ordinances, or specific management plans.

Additionally, bull trout critical habitat was designated in the DBRC Southern Extension area in the 2005 critical habitat rule, and the Navy has already consulted with us on their proposed actions in this area. The anadromous life history form of bull trout is now rare in Hood Canal, which is part of the access to this testing range and is important in order to address potential impacts to nearshore habitat to ensure future recovery. Shoreline areas provide subadult rearing and adult foraging habitat. Including this area in the critical habitat designation will ensure that proposed Federal actions by the Navy and other entities (such as activities permitted by the U.S. Army Corps of Engineers or Federally funded State park projects) would not result in the destruction or adverse modification of critical habitat. Since we have already consulted with the Navy on the DBRC Southern Extension, we know that designation of critical habitat has had minimal, if any, impact to their operations in that area.

The Navy has also consulted with us on one of the three proposed surf zone corridors associated with the QUTR, and it was determined that effects of their actions were not likely to adversely affect bull trout critical habitat. We would anticipate similar determinations for the other two proposed surf zone corridors, based on the temporary nature of surf zone operations. In addition, the Navy informed us that although a preferred alternative has been identified, a final decision on the selection of one of three alternative sites for the surf zone portion of the QUTR will not be confirmed until later this year. The Navy expressed concern regarding the possible need to conduct emergency cable maintenance in the preferred surf zone corridor area. If the selected area overlaps critical habitat and adverse effects may occur, the Service can conduct emergency consultation under section 7 of the Act.

By retaining these areas as critical habitat, the designation may educate the public regarding their potential conservation value, and contribute to conservation efforts by other parties. Each of the three surf zone corridor locations in the QUTR was designated as critical habitat for the southern distinct population segment of the North American green sturgeon (*Acipenser medirostris*) on October 9, 2009 (74 FR 52300) by NOAA Fisheries. Also, the DBRC Southern Extension was designated as critical habitat for the Hood Canal summer run chum salmon and Chinook salmon by NOAA Fisheries (70 FR 37160, June 28, 2005). This means that the Navy would need to consult on those species in any case, so the retention of bull trout critical habitat in the same area should have little, if any, additional impact. If we were to exclude this area for national security reasons, that would be inconsistent with the NOAA Fisheries designation of critical habitat for the green sturgeon, chum salmon, and Chinook salmon in these areas. Critical habitat designation is needed so we can evaluate potential impacts of all Federal actions in these nearshore areas, which are essential for recovery. Exclusion of the area for the Navy would preclude our ability to do so.

(2) Benefits of Exclusion

The Navy states that analysis of past and present NUWC Keyport activities have not shown impacts to water quality, water quantity, or food availability, but believe that designation of critical habitat for bull trout may unnecessarily restrict or prohibit their activities. Restrictions on the access, use, or enhancement of capabilities and capacities of these ranges would limit or curtail both testing and mission-critical Fleet Support functions performed by NUWC Keyport for undersea warfare. Designating critical habitat on these open water training and testing areas may impact their role in supporting ongoing military exercises and operations that occur at these locations. The military activities occurring at these sites are currently being conducted in a manner that minimizes impacts to bull trout habitat. In addition, nearshore areas adjacent to Navy installations and those areas designated as marine security areas or restricted zones provide some additional conservation benefits, as recreational and commercial vessels are prohibited from entering, mooring, anchoring, or fishing in these areas. The Navy already consults with us on their actions occurring in the open water training and testing areas that may have potential impacts to bull trout and its habitat under section 7 requirements.

(3) Determination of Whether Benefits of Exclusion Outweigh the Benefits of Inclusion

*Dabob Bay Military Operating Area and Connecting Waters*

The benefits of designating critical habitat in the Dabob Bay Military Operating Area and Connecting Waters appear to be limited. In contrast, these areas are important to Navy operations and support national security by ensuring the Navy can maintain a high level of military readiness. Accordingly, we have determined that the national security benefit of excluding areas within or adjacent to the open water training and testing areas of the Military Operating Area and Connecting Waters of the DBRC outweighs the benefit of designating these areas as critical habitat. In addition, because these marine waters are occupied by bull trout, the Navy has a statutory duty under section 7 of the Act to ensure that its activities do not jeopardize the continued existence of the bull trout. In accordance with section 4(b)(2) of the Act, we have also determined that the exclusion of these marine waters will not lead to the extinction of the bull trout.

*Dabob Bay Range Complex Southern Extension and Quinault Underwater Tracking Range*

We have determined the benefits of exclusion do not outweigh the benefits of inclusion of nearshore habitat within or adjacent to the DBRC Southern Extension and QUTR surf zone corridors. Shoreline areas provide important subadult rearing and adult foraging habitat, are essential habitat for the anadromous life history form of bull trout, and thus they are essential to the recovery of the bull trout. We have already consulted with the Navy on both the DBRC Southern Extension and the preferred action area in the QUTR surf zone, as a result of the 2005 critical

habitat designation for bull trout. The designation has had minimal impact to their operations in those areas. On the other hand, there is a benefit to retaining these areas in the critical habitat designation, so that the Navy will continue to consult with us on proposed actions in these areas, to ensure that such actions would not result in the destruction or adverse modification of critical habitat. The inclusion of areas encompassing the proposed surf zone corridors will ensure continued cooperation and consultation between the Navy and the Service in those areas associated with the DBRC Southern Extension and the QUTR.

In addition, there are other possible Federal actions conducted by other entities that may occur within or adjacent to the DBRC Southern Extension that could impact important bull trout habitat. Therefore, we find that the benefits of excluding the DBRC Southern Extension and QUTR surf zones do not outweigh the benefits of inclusion, and these areas are not excluded from critical habitat designation. Critical habitat designation is needed so we can evaluate potential impacts of all Federal actions in these nearshore areas, which are essential for recovery. Exclusion of these areas for the Navy would preclude our ability to do so.

*Exclusions Based on Other Relevant Factors*

Under section 4(b)(2) of the Act, we consider any other relevant impacts, in addition to economic impacts and impacts to national security. We consider a number of factors including whether the landowners have developed any HCPs or other management plans for the area, 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.

Habitat Conservation Plans

We consider a current plan (HCPs as well as other types) to provide adequate management or protection for bull trout and its habitat if it meets the following criteria:

(1) The plan is complete and provides the same or better level of protection from adverse modification or destruction than that provided through a consultation under section 7 of the Act;

(2) There is a reasonable expectation that the conservation management strategies and actions will be implemented for the foreseeable future and effective, based on past practices, written guidance, or regulations; and

(3) The plan provides adaptive management and conservation strategies and measures consistent with currently accepted principles of conservation biology.

Section 10(a)(1)(B) of the Act authorizes us to issue to non-Federal entities a permit for the incidental take of endangered and threatened species. This permit allows a non-Federal landowner to proceed with an activity that is legal in all other respects, but that results in the incidental taking of a listed species (i.e., take that is incidental to, and not the purpose of, the carrying out of an otherwise lawful activity). The Act specifies that an application for an incidental take permit must be accompanied by a habitat conservation plan (HCP), and specifies the content of such a plan. The purpose of conservation agreements is to describe and ensure that the effects of the permitted action on covered species are adequately minimized and mitigated, and that the action does not appreciably reduce the survival and recovery of the species. In our assessment of conservation agreements associated with this final rulemaking, the analysis required for these types of exclusions involves careful consideration of the benefits of designation versus the benefits of exclusion. The benefits of designation typically arise from additional section 7 protections, as well as enhanced public awareness once specific areas are identified as critical habitat. The benefits of exclusion generally relate to relieving regulatory burdens on existing conservation partners, maintaining good working relationships with them, and encouraging the development of new partnerships.

During the comment period, we received comments from five landowners or managers with HCPs that include bull trout as covered species. These HCPs include the Washington Department of Natural Resources (WDNR), Green Diamond Resources Company, City of Seattle Cedar River Watershed, Plum Creek/Stimson Lumber Company Native Fish, Plum Creek Central Cascades, and Washington State Forest Practices HCPs. These permittees commented that they perceive the designation of critical habitat as imposing a regulatory burden. They also view the exclusion from critical habitat designation as removing that burden and strengthening the ongoing relationship with the Service. All six permittees indicated they would consider exclusion as a benefit to our ongoing relationship. Our summary analysis of the benefits of designation versus the benefits of exclusion for these six HCPs is provided below. The specific section 4(b)(2) analysis for each of the HCPs is described in detail in the "*Compilation of HCP Exclusion Analyses for the Designation of Bull Trout Critical Habitat (Including Exclusion Analysis for Certain Areas Managed Under the Lewis River Hydroelectric Projects*)," available at *http://www.fws.gov/pacific/bulltrout/*.

The Chelan County Washington Public Utility District also requested exclusion from bull trout critical habitat designation for their Mid-Columbia HCP. However, since bull trout was not a covered species in this HCP, and the actions conducted under the HCP did not address the PCEs for bull trout, we determined that the HCP did not meet the basic criteria for consideration for exclusion.

*WDNR HCP*

The WDNR HCP, was permitted under section 10(a)(1)(B) of the Act in 1997, and covers about 650,000 ha (1,600,000 ac) of State forest trust lands within the range of the northern spotted owl in the State of Washington. The majority of the HCP (approximately 530,000 ha (1,300,000 ac)) occurs west of the Cascade Crest and includes the Olympic Peninsula and Southwest Washington. The remainder of the HCP occurs on the east side of the Cascade Mountains within the range of the northern spotted owl. The HCP covers activities primarily associated with commercial forest management. It is an "all-species" HCP west of the Cascade Crest, and includes bull trout and other salmonids as covered species. The aquatic conservation strategy for the west side planning units has two objectives: (1) To maintain or restore salmonid freshwater habitat on WDNR managed lands; and (2) to contribute to the conservation of other aquatic and riparian obligate species. The HCP Implementation Procedures for the Riparian Forest Restoration Strategy detail site-specific methods for riparian management to address the appropriate volume and density of instream large woody debris, a high degree of stream shading, the ability to intercept harmful sediments, stream bank stability, reduction of excessive windthrow, and the ability to contribute detrital nutrients. Timber harvest is avoided that could increase the frequency or severity of slope failure or would alter the natural input of large woody debris, gravel, or fine sediment

to streams. Comprehensive road management provides for fish passage, minimizes hydrologic disruption, and reduces delivery of fine sediments, while allowing large woody debris to be transported downstream.

The WDNR HCP is providing conservation benefits to bull trout that contribute to recovery, based on its landscape conservation strategy specifically designed for multiple species. Although the primary benefits to bull trout occur from the riparian strategy, the other aspects of the landscape conservation strategy provide contributions to bull trout as well. The spotted owl and marbled murrelet strategies, in conjunction with the range of forest types across the landscape, contribute to bull trout habitat primarily through improved watershed conditions. Other provisions of the HCP also contribute to recovery of bull trout, including protecting unstable hillslopes, properly managing forest roads, managing forests to minimize rain-on-snow floods, and protecting wetlands.

The HCP protects surface and subsurface water connectivity through a variety of diverse mechanisms. Mineral springs receive specific protection to address band-tailed pigeons, but these same protections would benefit bull trout. Other springs or seeps that result in perennial or intermittent channels or wetlands may be addressed through those conservation provisions. The HCP addresses wetlands and hydrological integrity and connectivity, which includes provisions for both forested and nonforested wetlands. Wetland prescriptions throughout the HCP area are designed to protect water quality and hydrologic integrity and connectivity, including hyporheic flow (flow involving a mixing of shallow groundwater and surface water). Roads are designed to avoid disrupting surface and ground-water flows by minimizing ground-water interception and returning water to the forest floor immediately through proper construction standards, thus minimizing infrastructure impacts on basin hydrology. Road management is designed to disconnect ditches and road intercepts from the stream system to reduce delivery of sediment, but also to slow the delivery of storm-related run-off and reduce the contribution to peak flows.

Standards are also in place to ensure water quality and quantity adequate to provide for a barrier-free environment for bull trout, and roads are managed in a manner to avoid creating migratory barriers. In addition, any existing road barriers will be addressed through remediation. The HCP maintains the natural hydrology and riparian functions of large wood input, shade, bank stability, detrital inputs, and the natural functions of flood plains and unstable slopes. The HCP addresses the need for complex habitat by prescribing riparian buffers along streams and wetlands that contribute to large woody debris recruitment and maintain stream bank integrity. It addresses sediment by ensuring that the stream system is not disrupted by the road network, and that ditch and road run-off is disconnected from the stream system.

Fish-bearing streams receive site-potential (100–year index) buffers that generally average 46 to 49 m (150 to 160 ft), and non-fish-bearing streams wider than 0.6 m (2 ft) receive 30 m (100 ft) buffers. Small headwater streams (less than 0.6 m (2 ft) in width) are often addressed through unstable slopes and features identification, or alternatively through the development of a strategy focused on these stream types. Although the stream-buffering prescriptions are based on slightly different features within the Olympic Experimental State Forest, they generally resemble the west side prescriptions, which are designed to provide equivalent protection of instream habitat for bull trout, by supporting large wood and other riparian functional processes.

The HCP includes provisions to manage forest cover in the rain-on-snow subbasins to reduce the frequency of major storm flows that are capable of shifting instream habitat structure. The HCP has also been designed to substantially reduce the amount of coarse and fine sediments transported downstream that could further simplify and degrade habitat conditions. The WDNR recognized stream temperature increases can be related to and caused by interruption of hydrology, riparian removal, increased sedimentation, and simplification of habitat; the HCP addressed this concern. The riparian buffers on streams and wetlands are designed to provide natural levels of shade to avoid increasing sunlight that could result in stream warming. In addition, road and wetland prescriptions are designed to maintain natural hydrological regime so that streams are not abnormally dry during periods of the year when this could exacerbate warming problems. Stream buffers and road standards also address sediment delivery, which will in turn avoid artificial filling of pools that could lead to increased stream warming.

Reducing road-generated fine sediment is a major focus of the HCP, and considerable focus is placed on road maintenance, repair, and improved construction standards. In addition, road remediation of existing road-related problems is a major component. The WDNR has already decommissioned many stream-side roads and addressed a number of road segments with a high-level of concern regarding aquatic impacts. The HCP is designed to keep slope failures at natural levels, which serves to reduce the delivery of fine sediments, but recognizes the contribution of these processes to supplying gravel needed for aquatic substrates. Once material has been delivered to the stream, large woody debris and other channel features sort substrate by particle size. Therefore, the HCP addresses bank stability and large wood recruitment that should help store fine sediment and provide for suitable substrates for bull trout spawning. The HCP is also designed to maintain floodplains and wetlands in a manner that retains the functions of the hyporheic zone and off-channel habitats, and protect water quality and quantity, which should assist native fish in maintaining a competitive advantage over nonnative species.

*Green Diamond HCP*

In October 2000, Simpson Timber Company (now Green Diamond) completed an HCP (formerly referred to as the Simpson Timber HCP and currently referred to as the Green Diamond HCP), and the Service issued an incidental take permit for forestry operations on over 105,625 ha (261,000 ac) of the company's Washington timberlands located on or adjacent to the Olympic Peninsula in Mason, Thurston, and Grays Harbor Counties. The HCP covers the land owned by Green Diamond along the lower reaches of the North Fork and South Fork Skokomish Rivers, the upper South Fork Skokomish River, West Fork Satsop River, and Canyon River. The plan addresses five species listed under the Act, including bull trout, and 46 other non-listed species.

The HCP is designed to conserve riparian forests, improve water quality, prevent management-related hill-slope instability, and address hydrological maturity of small sub-basins. The HCP prescriptions for riparian and wetland areas focus on the following functions: recruitment of woody debris to streams and the forest floor, shade and control of stream-side air temperature, stream-bank stability, detrital inputs, capture and storage of sediment and organic matter on the floodplain, maintenance and augmentation of nutrient dynamics and processing, groundwater discharge, base-flow support in streams, and flood amelioration. HCP actions are also expected to maintain the thermal regime

of streams within the range of normal variation and contribute to the maintenance of complex stream channels, appropriate substrates, a natural hydrologic regime, ground-water sources and subsurface connectivity, migratory corridors, and an abundant food base.

The HCP road program is addressing legacy, current, and future roads. Prescriptions and standards address the chronic production and movement of fine sediment, and the catastrophic failure of road fills and sidecast that generate and propagate hillslope and channel failures. Unstable slope prescriptions require identification of these areas and avoidance of management activities that could trigger mass-wasting processes (slope failure). Road prescriptions are intended to avoid disrupting surface and ground-water flows, and specific road remediation is being directed at restoring wetlands. Roads are also being managed so they do not contribute to the formation of barriers, and existing road-related barriers are being corrected. Road management is designed to disconnect ditches (and ground water intercepted by roads) from the stream system to reduce delivery of sediment, and also to slow the delivery of storm-related run-off and reduce the contribution to peak flows. Ditch water and road run-off is delivered in a diffuse manner to the forest floor.

In subbasins within the rain-on-snow zone, prescriptions address the maintenance of sufficient mature forest canopy to reduce the frequency of major storm flows that are capable of shifting instream habitat structure. Road-related prescriptions also address diffusing water to reduce the potential for roads to accelerate the delivery of water and exacerbate peak flow problems.

The HCP protects surface and subsurface water connectivity through a variety of diverse mechanisms. Springs and seeps that form perennial or intermittent channels are addressed through conservation provisions, and all perennial streams are protected with riparian buffers. Intermittent streams also receive protection in a manner that optimizes their functional needs. The HCP addresses wetlands and hydrological integrity, and connectivity for both forested and nonforested wetlands. In addition, all riverine unstable-slope-associated wetlands are buffered, and protection is provided for depressional wetlands, stable-slope wetlands, and wetlands on flat terrain. Wetland prescriptions (and prescriptions for management of wetland complexes) throughout the HCP area are designed to protect water quality and hydrologic integrity and connectivity.

The Green Diamond HCP includes measures to ensure that water quality and quantity conditions in the water column maintain a barrier-free environment for bull trout. The HCP maintains the natural hydrology and riparian functions of large wood input, shade, bank stability, and detrital inputs by providing buffers along streams and wetlands. The HCP is also designed to substantially reduce the amount of coarse and fine sediments transported downstream that could further simplify and degrade habitat conditions.

Stream temperature is being addressed in a number of ways, including establishing buffers to provide shade, implementing road-management practices that avoid sedimentation, and maintaining natural hydrologic regimes that contribute cool water to streams. Stream and wetland buffers are designed to provide natural levels of shade, and to avoid increasing sunlight, which could result in stream warming. Road and wetland prescriptions are designed to maintain natural hydrological regime to ensure streams are not abnormally dry during periods of the year when warming problems could be exacerbated. Stream buffers and road standards also address sediment delivery, which in turn will avoid artificial filling of pools, which could lead to increased stream warming.

The HCP addresses the need for natural substrates in a wide variety of ways. As described above, reducing road-generated, fine sediment is a major focus, and considerable attention is placed on road maintenance, repair, and improved construction standards. In addition, road remediation of existing road-related problems is a major component. The HCP addresses bank stability and large wood recruitment, which will help store fine sediment and provide for suitable substrates for bull trout spawning. The HCP's provisions to manage forest cover in the rain-on-snow subbasins will reduce the frequency of major storm flows that are capable of shifting instream habitat structure that contributes to sorting and development of suitable substrates, and it also is expected to substantially reduce the amount of coarse and fine sediments transported downstream. The HCP is designed to protect the natural hydrograph, address sediment and stream temperature, and maintain floodplains and wetlands in a manner that retains the functions of the hyporheic zone and off-channel habitats. HCP prescriptions that protect the natural environment will assist native fish in maintaining a competitive advantage over nonnative species.

Some examples of conservation actions conducted under the Green Diamond HCP include the placement of large woody debris in streams to increase habitat complexity, and the abandonment of 154 km (96 mi) of legacy logging roads that do not meet current construction standards. Road abandonment included restoring pre-construction hydrology, thereby decreasing the opportunity for sediment delivery to adjacent streams. Silvicultural treatments have also been applied over 486 ha (1,200 ac) of riparian forest to improve aquatic habitat in adjacent streams.

*City of Seattle Cedar River Watershed HCP*

In April 2000, the Cedar River Watershed HCP was completed and an incidental take permit was issued to the City of Seattle for water withdrawal and water supply activities affecting flows in the lower Cedar River and reservoir levels in Chester Morse Lake. The plan provides for forestry restoration activities including riparian thinning, road abandonment, and timber stand improvement on over 36,872 ha (91,000 ac) in the upper Cedar River Watershed in King County. The HCP is designed to provide adequate flows in the lower Cedar River for fish spawning and rearing, to manage water levels in Chester Morse Lake and Masonry Dam Reservoir to benefit instream flows in the lower river and maintain bull trout spawning access to lake tributaries, and to manage the upper Cedar River as an ecological reserve.

The HCP's watershed mitigation management and conservation strategies provide comprehensive long-term protection for the watershed ecosystem, and include commitments not to harvest timber for commercial purposes; placement of forest outside limited development areas in a reserve status; measures to protect and restore stream, riparian, and upland forest habitats; removal of a large part (approximately 40 percent) of the existing road network; protective guidelines for watershed operations designed to minimize and mitigate impacts of those operations; and specific measures to protect species of greatest concern and their habitats, including bull trout. Several research actions are directed at understanding how all life stages of bull trout use Chester Morse Lake and Masonry Pool and how adult bull trout use tributaries to the lake for spawning. The HCP covers 83 species of fish and wildlife, including bull trout and six other species listed under the Act.

The HCP covers over 36,872 ha (91,000 ac) of City of Seattle-owned land in the upper Cedar River Watershed and the City's water withdrawal activities on the lower Cedar River. Seattle owns over 99 percent of the lands in the upper Cedar River watershed, which are managed as an ecological reserve to protect water quality and preserve the remaining old growth timber. Other timber lands in the watershed are actively managed to accelerate the development of old growth characteristics, mainly though riparian and upland thinning. Roads are being decommissioned (removed) at the rate of approximately 16 km (10 mi) per year to reduce erosion rates into the lake and its tributaries and to minimize disturbance and fragmentation in the upper watershed. This activity will maintain a natural hydrological regime so that streams are not abnormally dry during periods of the year when this could exacerbate warming. Twenty culverts that block fish passage are being replaced in the upper watershed.

The HCP includes provisions to manage almost the entire watershed as an ecological reserve, maintaining forest cover where it currently exists and allowing for only ecological thinning to occur in selected locations in the watershed. This "no commercial harvest" approach ensures that all springs, seeps, surface waters, groundwater sources, and subsurface waters function in a natural state that maintains water connectivity and contributes to water quality and quantity. This prescription is also expected to protect shade levels to avoid increasing sunlight, which can result in stream warming. Because only limited ecological thinning will occur, no loss of riparian shading is expected under the HCP other than that resulting from natural causes (wind throw, fire, etc.). All fish blockages identified on HCP lands have been or will be corrected, ensuring migratory corridors with minimal physical, biological, or water quality impediments between spawning, rearing, overwintering, and foraging habitats. Removal of fish blockages will also provide for more naturally maintained stream characteristics, including bedload movement, sediment transport, and passage of moderately-sized woody debris. The ecological reserve created under the HCP maintains the natural hydrology and riparian functions of large wood input, shade, bank stability, and detrital inputs, as well as natural functions of flood plains and unstable slopes.

The HCP addresses the need for complex habitat by eliminating commercial timber harvest in the watershed; outside of selected ecological thinning in some riparian areas and upland forest, no harvest of trees is allowed under the HCP. Ecological thinning in some riparian areas has the advantage of accelerating the growth of the remaining riparian trees and increasing the amount of large woody debris in the stream. Because only limited ecological thinning will occur, no loss of riparian shading is expected under the HCP other than that resulting from natural causes (wind throw, fire, etc.). Stream temperature will be maintained through a number of measures, including no commercial harvest in the watershed, road-management practices that avoid sedimentation, and maintenance of natural hydrologic regimes that contribute cool water to streams.

Reducing the influences and scope of roads in the upper Cedar River Watershed is a major focus of the HCP, since most harmful sediments that impact aquatic habitats are due to poor road construction and maintenance. Logging roads in the watershed have impaired bull trout habitat by contributing coarse and fine sediments to the stream network, so considerable focus has been placed on road maintenance, road repair, improved road construction standards, fish barrier removal, and road abandonment. Twenty identified fish passage barriers are being replaced, or are scheduled to be replaced, which will restore fish access to additional habitat, and provide for more naturally maintained stream characteristics, including bedload movement, sediment transport, and passage of moderately-sized woody debris. Road management is designed to disconnect ditches (and ground water intercepted by roads) from the stream system to reduce delivery of sediment, and also to slow the delivery of storm-related run-off and reduce the contribution to peak flows. Road abandonment is designed to put-to-bed many roads that would otherwise contribute sediment to streams via runoff or mass failure. Approximately 378 km (236 mi) of roads, or 38 percent of the watershed road network, will be decommissioned at a rate of approximately 16 km (10 mi) of roads per year. Approximately 200 km (125 mi) of road have been decommissioned within the Cedar River Municipal Watershed since 1989 (*http://www.seattle.gov/util/About_SPU/Water_System/Habitat_Conservation_Plan/ManagingtheWatershed/RoadImprovementsDecommissioning/Metrics/SPU02_015774.asp*).

The streams in the upper Cedar River watershed are free-flowing water courses that currently provide high-quality habitat for bull trout. The goal is to protect the quality and quantity of this habitat and take steps to improve and restore other habitat. The HCP includes provisions to manage almost the entire watershed as an ecological reserve maintaining forest cover where it currently exists and allowing for only ecological thinning to occur in selected locations in the watershed. The HCP is expected to maintain floodplains and wetlands in a manner that retains the functions of the hyporheic zone and off-channel habitats. Conservation measures in the HCP should result in more naturally maintained stream hydraulics, including bedload movement, sediment transport, and passage of small and large woody debris.

Water quality and quantity are addressed through a variety of mechanisms. In addition to protecting the natural hydrograph and addressing sediment and temperature, no chemical applications in the watershed are allowed in order to maintain the quality of the public drinking water supply. Provisions of the HCP that protect the natural environment should assist native fish in maintaining a competitive advantage when that is possible. The fact that this is a closed watershed, not open to the public, and will remain so under the HCP, will help considerably to ensure nonnative species are not introduced into the site.

*Plum Creek/Stimson Lumber Company Native Fish HCPs*

Plum Creek Timber Company initiated an effort in 1997 to develop a conservation strategy for native salmonids (including bull trout), occurring on 647,511 ha (1.6 million ac) of Plum Creek's Timberlands in Montana, Idaho, and Washington. The stated purpose of the Plum Creek Native Fish Habitat Conservation Plan (NFHCP) was to help conserve native salmonids and their ecosystems, while allowing Plum Creek to continue to conduct commercial timber harvest within a framework of long-term regulatory certainty and flexibility. The Stimson Lumber NFHCP was created when the Stimson Lumber Company acquired certain lands previously owned by Plum Creek and assumed all of the Plum Creek NFHCP commitments. The Plum Creek NFHCP covers approximately 566,572 ha (1.4 million ac) within the range of the Columbia River basin. The Stimpson portion of what was originally the Plum Creek NFHCP covers approximately 11,487 ha (28,535 ac).

Because of similarities in their conservation measures, the HCPs are being analyzed together for purposes of our section 4(b)(2) analysis. Both HCPs are designed to maintain the thermal regime of streams within the range of normal variation, maintain a high level of water quality, and contribute to the maintenance of complex stream channels, appropriate substrates, a natural hydrologic regime, ground-water sources and subsurface connectivity, migratory corridors, and an abundant food base. The HCPs are is designed to benefit the aquatic environment by providing a gradual improvement in the cold and clean water as well as complex and connected habitat necessary for protection and restoration of bull trout.

The HCPs protect surface and subsurface water connectivity through a variety of diverse mechanisms. Springs and seeps that form perennial or intermittent channels are addressed through conservation provisions; all perennial streams are protected with riparian buffers, and intermittent streams receive protection to optimize their functional needs. The HCPs address wetlands and hydrological integrity and connectivity, including forested and nonforested wetlands. Wetland prescriptions (and prescriptions for management of wetland complexes) throughout the HCP areas protect water quality and hydrologic integrity and connectivity. Roads are designed to avoid disrupting surface and ground-water flows, and road remediation is specifically directed at wetlands. Reducing road-generated, fine sediment is a major focus of the HCPs, and considerable focus is placed on road maintenance, repair, and improved construction standards. In addition, road remediation of existing road-related problems is a major component. Road management is designed to disconnect ditches (and ground water intercepted by roads) from the stream system to reduce delivery of sediment, and to slow the delivery of storm-related run-off, thereby reducing road contributions to peak flows.

The HCPs include measures to ensure that water quality and quantity conditions in the water column do not present a barrier to bull trout, and maintain the natural hydrology and riparian functions of large wood input, shade, bank stability, detrital inputs, as well as natural functions of flood plains and unstable slopes. They address the need for complex habitat by providing buffers along streams and wetlands; these buffers are expected to contribute to large woody debris recruitment and maintain stream bank integrity. They also address sediment, which has the potential to simplify and degrade instream habitat conditions by focusing on addressing mass-wasting and erosional processes. Both HCPs include provisions to manage forest cover to reduce the frequency of major storm flows, to substantially reduce the amount of coarse and fine sediments transported downstream that could further simplify (remove necessary elements) and degrade habitat conditions.

Stream temperature is addressed through a number of avenues including buffers that provide shade, road-management practices that avoid sedimentation, riparian and grazing management, and maintenance of natural hydrologic regimes that contribute cool water to streams. The buffers on streams and wetlands are expected to provide natural levels of shade to avoid increasing sunlight, which could result in stream warming. Further, road and wetland prescriptions are expected to maintain the natural hydrological regime so that streams are not abnormally dry during periods of the year when this could exacerbate warming problems. Stream buffers and road standards also address sediment delivery, which will in turn avoid artificial filling of pools, which could lead to increased stream warming. The HCPs are designed to maintain floodplains and wetlands in a manner that retains the functions of the hyporheic zone and off-channel habitats. Water quality and quantity are addressed through a variety of mechanisms, including protecting the natural hydrograph and addressing sediment and temperature. Provisions of the HCPs that protect the natural environment should assist native fish in maintaining a competitive advantage when that is possible.

The NFHCPs impose more stringent harvest requirements in riparian areas than prescribed under State law. They also provides for a greater number of drainage features on roads, particularly near stream crossings (which reduces sediment delivery to streams), and require increased road abandonment to offset the construction of new roads. The Thompson River restoration project is evaluating alternatives for removing reed canary grass and reestablishing riparian forest to provide shade and improve water temperature. The NFHCPs include site-specific management plans to protect native fish assemblages, and include long-term adaptive management studies to address road best management practices effectiveness, large woody debris recruitment, stream temperature, and grazing. These adaptive management studies are currently underway.

*Plum Creek Timber Central Cascades HCP*

In June of 1996, the Service issued an incidental take permit to Plum Creek Timber Company in association with the Central Cascades HCP. This HCP addressed vertebrate species on over 68,798 ha (170,000 ac) of forest land in the Central Cascades, much of it located in what is generally known as the I-90 corridor. The HCP spans the Cascade crest, and covered lands occur in both King and Kittitas Counties. Currently, the HCP addresses fewer than 36,423 ha (90,000 ac) as a result of land exchanges and conservation sales. The HCP addresses multiple species through a combination of landscape-level forest commitments, special-site protections, and other conservation measures. Bull trout is one of the covered species and is addressed through a combination of riparian and wetland buffers; management restrictions; watershed analysis; protection of inner gorges, springs, and seeps; avoidance of unstable slopes; and road management. It includes lands within the Green River Watershed as well as lands within the upper Yakima and Naches drainages.

The HCP protects surface and subsurface water connectivity through a variety of diverse mechanisms. Springs and seeps that form perennial or intermittent channels are addressed through conservation provisions, and all perennial streams are protected with riparian buffers. Intermittent streams may also be buffered through provisions associated with inner gorge prescriptions or as a result of watershed analysis. The HCP addresses wetlands and hydrological integrity and connectivity, including both forested and nonforested wetlands, and wetland, seep, and spring prescriptions protect water quality, hydrologic integrity, and connectivity. The HCP includes measures to ensure that water quality and quantity conditions in the water column do not present a barrier to bull trout. Considerable focus is placed on road maintenance, repair, and improved construction standards, and remediation of existing road-related problems is a major component of the HCP. Roads are located to avoid disrupting surface and ground-water flows, and equipment exclusions around wetlands help protect hydrology. Road management is designed to disconnect ditches (and ground water intercepted by roads) from the stream system to reduce delivery of sediment, and to slow the delivery of storm-related run-off and reduce the contribution to peak flows.

The HCP maintains the natural hydrology and riparian functions of large wood input, shade, bank stability, detrital inputs, as well as natural functions of flood plains and unstable slopes. It addresses the need for complex habitat by providing buffers along streams and wetlands that contribute to large woody debris recruitment and maintain stream bank integrity. Adequate stream temperatures are addressed in a number of ways, including the use of buffers that provide shade, road-management practices that avoid sedimentation, and maintenance of natural hydrologic regimes that contribute cool water to streams.

The buffers on streams and wetlands are designed to provide adequate shade and to avoid increasing sunlight exposure, which could result in stream warming. Stream buffers and road standards also address sediment delivery to avoid artificial filling of pools, which could lead to increased stream warming. The HCP addresses bank stability and large wood recruitment which should help store fine sediment and provide for suitable substrates for bull trout spawning. It also includes provisions to manage forest cover in the rain-on-snow subbasins to maintain normal storm flows, and is designed to maintain floodplains and wetlands in a manner that retains the functions of the hyporheic zone and off-channel habitats. Water quality and quantity are addressed through a variety of mechanisms, including protecting the natural hydrograph and addressing sediment and temperature needs. HCP provisions that protect the natural environment should assist native fish in maintaining a competitive advantage over nonnative species.

*Washington Forest Practices HCP*

In 2001, the Washington Forest Practices Board adopted new permanent forest practice rules to address impacts to aquatic species, including bull trout, on all private forest lands not covered under an existing HCP, and WDNR State lands east of the Cascade Crest. These rules became effective in 2001, and cover a wide variety of forest practices, including: (1) A new, more functional, classification of rivers and streams on non-Federal and non-tribal forestland; (2) improved plans for properly designing, maintaining, and upgrading existing and new forest roads; (3) additional protections for unstable slopes; and (4) greater protections for riparian areas intended to restore or maintain properly functioning aquatic and riparian habitat conditions. The Washington State Legislature and U.S. Congress supported the collaboration with significant funding for the research, monitoring, and adaptive management needs identified in the Forests and Fish Report (WDNR 1999). In 2006, an incidental take permit was issued under section 10(a)(1)(B) of the Act based on the Washington Forest Practices Rules (Rules), which established requirements under the Washington Forest Practices HCP.

The Rules contain prescriptions designed to improve and maintain properly functioning aquatic and riparian habitat on non-Federal, non-tribal forest lands throughout the State. The Rules allow for a substitution of its prescriptions with those of another habitat conservation plan. The 3.7 million ha (9.1 million ac) regulated by the Washington Forest Practices HCP include a mixture of large industrial ownerships and small nonindustrial ownerships. These lands are most prevalent at lower elevations, while Federal forest lands are more prevalent at higher elevations. Nonindustrial forest lands are common along the urban-growth margin.

The Rules protect surface and subsurface water connectivity important for bull trout habitat through the requirements to provide no harvest buffers around sensitive sites (springs, seeps, and tributary junctions of streams without fish), and to limit harvest in other areas. These prescriptions contribute to maintaining surface and subsurface water sources and connectivity important for water quality and quantity. The requirements in the Rules to replace or upgrade all fish-blocking culverts and sub-standard roads by 2016 are designed to ensure that migratory corridors are accessible to bull trout. As of December 1, 2008, approximately 44 percent of known fish passage barriers (2,871 of 6,505) have been corrected under the HCP, opening 2,317 km (1,448 mi) of fish habitat (*http://www.dnr.wa.gov/Publications/fp_hcp_annrep09_ch09.pdf*). The riparian-buffer requirements protect the quality of these migratory corridors by maintaining stream temperatures and other stream functions important for bull trout foraging, migration, overwintering, and spawning habitat.

Through the requirements for riparian management buffers, sensitive-site protections, and road and culverts improvements, the Rules protect the other aquatic and riparian habitats and organisms that occur in these areas. Since the Rules are designed to benefit bull trout, salmon, and virtually all other native fish species associated with stream and river habitats, they will also protect the bull trout food base.

Timber harvest is limited within the bankfull width or channel migration zone of perennial waters, to maintain stream geomorphology, as well as stream-adjacent large wood, side channels, pools, and undercut banks. In addition, the riparian management strategies mentioned above will maintain intact, complex stream channels important for bull trout. The riparian buffers are designed to maintain cool stream temperatures, canopy cover, recruitment of large wood, bank stability, nutrient cycling, detritus inputs, and to provide sediment filtering. No-harvest buffers are generally applied along fish-bearing streams and, at a minimum, half of the non-fish-bearing, perennial streams. Adjacent to these buffers, timber harvest is limited within riparian areas, depending on site conditions. Sensitive sites, such as seeps and springs, are also protected with buffers. In western Washington, the riparian strategy is designed to move riparian areas towards conditions equivalent to the stand conditions of mature 140 year-old riparian forests. In eastern Washington, riparian management is intended to provide stand conditions that vary over time within a range that meets functional conditions and maintains general forest health.

The Rules address the need for natural substrates in a wide variety of ways; reduced road-generated fine sediment, road maintenance, road repair, and improved construction standards are major focus areas. Unstable slopes are identified and harvesting and road building are restricted on areas with a potential for mass-wasting. These requirements protect against management-caused debris flows that would otherwise increase sediment loading into streams. Road maintenance, repair, and improved construction standards are designed to minimize or divert road-induced sediment and artificial water flows away from streams. The Rules also include provisions to minimize the negative effects of timber harvest in rain-on-snow areas by limiting clear-cut harvest sizes. Other protections are associated with "green-up requirements" in which young stands must reach a certain size before adjacent stands of timber can be harvested.

Water quality and quantity are addressed through a variety of protective requirements. In addition to protecting the natural hydrograph, stream temperatures, and other riparian and aquatic habitat elements, the requirements for roads and culverts minimize sediment delivery to streams, thereby minimizing effects to water

quality. The Rules address forestry activities over a substantial amount of relatively contiguous ownership, and are expected to protect the relevant bull trout PCEs in all of the streams subject to their requirements.

Weighing and Balancing Exclusions Under Section 4(b)(2) of the Act

Based on the best available information, we have determined that each HCP permittee is in compliance with the terms and conditions of their respective incidental take permit issued under section 10(a)(1)(B) of the Act. Specific information on HCP implementation and the progress made with regard to bull trout conservation is available at *http://www.fws.gov/pacific/bulltrout/*. We have combined the section 4(b)(2) balancing analysis for the above HCPs, given the similarities in scope of covered activities, partnerships, and benefits. More detailed section 4(b)(2) analyses of each excluded HCP are part of the decisional record, see the "*Compilation of HCP Exclusion Analyses for the Designation of Bull Trout Critical Habitat (Including Exclusion Analysis for Certain Areas Managed Under the Lewis River Hydroelectric Projects*)", posted at *http://www.fws.gov/pacific/bulltrout/*.

(1) Benefits of Inclusion of the WDNR, Green Diamond, City of Seattle Cedar River Watershed, Plum Creek/Stimson Lumber Company Native Fish, Plum Creek Central Cascades, and Washington State Forest Practices HCPs.

*Regulatory Benefits*

The consultation provisions under section 7(a) (2) of the Act constitute the regulatory benefits of critical habitat. As discussed above, Federal agencies must consult with us on actions that may affect critical habitat and must avoid destroying or adversely modifying critical habitat. Prior to our designation of critical habitat, Federal agencies consult with us on actions that may affect a listed species and must refrain from undertaking actions that are likely to jeopardize the continued existence of the species. Thus, the analysis of effects to critical habitat is a separate and different analysis from that of the effects to the species. The difference in outcomes of these two analyses represents the regulatory benefit of critical habitat. For some species, and in some locations, the outcome of these analyses will be similar, because effects on habitat will often result in effects on the species. However, the regulatory standard is different: the jeopardy analysis looks at the action's impact on survival and recovery of the species, while the adverse modification analysis looks at the action's effects on the designated habitat's contribution to the species' conservation. This will, in some instances, lead to different results and different regulatory requirements.

Once an agency determines that consultation under section 7 of the Act is necessary, the process may conclude informally when we concur in writing that the proposed Federal action is not likely to adversely affect critical habitat. However, if we determine through informal consultation that adverse effects are likely to occur, then we would initiate formal consultation, which would conclude when we issue a biological opinion on whether the proposed Federal action is likely to result in destruction or adverse modification of critical habitat. A biological opinion that concludes in a determination of no destruction or adverse modification may contain discretionary conservation recommendations to minimize adverse effects to critical habitat, but it would not contain any mandatory reasonable and prudent measures or terms and conditions. In addition, we suggest reasonable and prudent alternatives to the proposed Federal action only when our biological opinion results in a destruction or adverse modification conclusion.

In providing the framework for the consultation process, the previous section applies to all the following discussions of benefits of inclusion or exclusion of critical habitat. The process of designating critical habitat as described in the Act requires, in part, that the Service identify those lands on which are found the physical and biological features essential to the conservation of the species which may require special management considerations or protection. In identifying those lands, the Service must consider the recovery needs of the species. Furthermore, once critical habitat has been designated, Federal agencies must consult with the Service under section 7(a)(2) of the Act to ensure that their actions will not adversely modify designated critical habitat or jeopardize the continued existence of the species. As noted in the Ninth Circuit's Gifford Pinchot decision (referenced earlier), the Court ruled that the jeopardy and adverse modification standards are distinct, and that adverse modification evaluations require consideration of impacts to the recovery of species. Thus, through the section 7(a)(2) consultation process, critical habitat designations provide recovery benefits to species by ensuring that Federal actions will not destroy or adversely modify designated critical habitat.

For example, if a federally-funded road project or hydroelectric project were to be proposed for development on HCP lands that contained designated critical habitat, a consultation would need to be conducted to ensure the designated critical habitat was not destroyed or adversely modified to the point of appreciably diminishing its habitat features essential to bull trout recovery. Designation of critical habitat may facilitate regulatory agencies taking additional protective measures where critical habitat is designated (for example, revising operations at hydroelectric projects). For example, Washington State law requires consideration of additional rules and areas for protection upon designation of critical habitat.

The identification of habitat necessary for the conservation of the species is beneficial because it can assist in the recovery planning for a species. However, the designation of critical habitat does not require that any management or recovery actions take place on the lands included in the designation. Even in cases where consultation has been initiated under section 7(a)(2) of the Act, the end result of consultation is to avoid jeopardy to the species and adverse modification of its critical habitat, but not specifically to manage remaining lands or institute recovery actions on remaining lands. Conversely, management plans institute intentional, proactive actions over the lands they encompass to remove or reduce known threats to a species or its habitat and, therefore, implement recovery actions.

We believe that in some cases, the conservation benefits to a species and its habitat that may be achieved through the designation of critical habitat are less than those that could be achieved through the implementation of a management plan that includes specific provisions based on enhancement or recovery as the management standard. Consequently, the implementation of any HCP or management plan that considers enhancement or recovery as the management standard will often provide as much or more benefit than a section 7(a)(2) consultation under the Act using the standards required by the Ninth Circuit in the Gifford Pinchot decision. There may be some regulatory benefit that results from designating critical habitat in the areas covered by the above HCPs because of section 7 consultation requirements, or potentially protections under other State or local laws that may be triggered because of the designation. However, we

believe the management goals of the above HCPs go beyond any protections that would be provided through section 7 consultation or other State or local regulatory requirements.

*Educational Benefits*

One benefit of including lands in critical habitat is that the designation of critical habitat serves to educate landowners, State and local governments, and the public regarding the potential conservation value of an area. This helps focus and promote conservation efforts by other parties by identifying areas of high conservation value for bull trout. Because the rulemaking process associated with critical habitat designation includes several opportunities for public comment, it also provides for public education. Through these outreach opportunities, land owners, State agencies, and local governments can become more aware of the status of and threats to listed species, and the conservation actions needed for recovery. Designation of critical habitat would inform State agencies and local governments about areas that could be conserved under State laws or local ordinances, such as the Washington State Growth Management Act or Washington State Shoreline Management Act, which encourage the protection of "critical areas" including fish and wildlife habitat conservation areas.

(2) Benefits of Exclusion of the WDNR, Green Diamond, City of Seattle Cedar River Watershed, Plum Creek/Stimson Lumber Company Native Fish, Plum Creek Central Cascades, and Washington State Forest Practices HCPs.

*Maintaining and Establishing Conservation Partnerships*

Non-Federal landowners are motivated to work with the Service collaboratively to develop voluntary HCPs because of the regulatory certainty provided by an incidental take permit under section 10(a)(1)(B) of the Act, including assurances under the No Surprises Policy (63 FR 8859; February 23, 1998). The No Surprises Policy sets forth a clear commitment to incidental take permittees that, to the extent consistent with the Act and other Federal laws, the government will honor its agreements under an approved HCP where the permittee is implementing the HCP's terms and conditions in good faith. Although the HCP process can be complex and time-consuming, the perceived benefit to landowners in undertaking this extensive process is the resulting regulatory certainty, which translates into real savings for private landowners in terms of opportunity costs, as well as direct savings and avoided costs. A failure to exclude HCP lands where the species under consideration for critical habitat is a covered species could be viewed as the Service retreating from its previous position on the adequacy of the conservation measures in the HCP, undermining the Service's credibility in future interactions with potential partners. Designation of critical habitat within the boundaries of already approved HCPs may also be viewed as a disincentive by other entities currently developing HCPs or contemplating them in the future, because it implies potential additional regulation after agreement on conservation measures needed for the species has been made. In discussions with the Service, HCP permittees have indicated they view critical habitat designation as an unnecessary additional intrusion on their property, and an erosion of the regulatory certainty provided by their incidental take permit and the No Surprises Policy. The No Surprises Policy sets forth a clear commitment by the Service, that to the extent consistent with the requirements of the Act and other Federal laws, the government will honor its agreements under an approved HCP for which the permittee is in good faith implementing the HCP's terms and conditions. Because the Service would be required to reinitiate section 7 consultation with itself if critical habitat is designated on our action of issuing a section 10(a)(1)(B) permit, the permittees are concerned that the Service could use this as an excuse to request new conservation measures for the bull trout, even though we have existing agreements already in place.

Although parties whose actions may take listed species may still desire incidental take permits to avoid liability under section 9 of the Act, failure to exclude HCP lands from critical habitat could reduce the conservation value of the HCP program in several ways. First, parties may be less willing to participate in large, regional HCPs, preferring instead to address any possible take on a project-by-project basis. Second, in any given HCP, applicants may reduce the amount of protection to which they are willing to agree, in effect holding some additional protective measures "in reserve" for use in any future discussions to address critical habitat. Third, without the incentive of exclusion from critical habitat, some potential applicants, particularly (1) those whose actions may, but are not certain, to take listed species, and (2) those against whom enforcement for any take that does occur may be difficult, may decide not to seek an incidental take permit at all. The failure to exclude qualified HCP lands from critical habitat designations could decrease the program's efficacy and have profound effects on our ability to establish and maintain important conservation partnerships with stakeholders.

Excluding qualified HCP lands from critical habitat provides permittees with the greatest possible certainty, thereby helping foster the cooperation necessary to allow the HCP program to achieve the greatest possible conservation benefit. Thus, excluding the lands covered by the above HCPs improves the Service's ability to enter into new partnerships. Permittees who trust and benefit from the HCP process discuss the benefits with others who may become future HCP participants, such as States, counties, local jurisdictions, conservation organizations, and private landowners. New HCPs will result in implementation of conservation actions that we would be unable to accomplish otherwise.

*Avoidance of Administrative Costs*

To the extent designation would provide any additional protection of bull trout habitat, the costs associated with that protection would be avoided by exclusion. Excluding waterbodies covered under these large-scale HCPs from the critical habitat designation relieves landowners, communities, and counties from any additional regulatory burden and costs associated with the preparation of section 7 documents related to critical habitat. While the costs of providing these additional documents to the Service is minor, there may be resulting delays that generate perceived or very real costs to private landowners in the form of opportunity costs, as well as direct costs.

*Conservation Planning Efficiencies*

Large-scale HCPs can address habitat conservation on a very broad scale, addressing entire ecosystems and a wide variety of the species in them, whether listed or not. In our experience, large-scale HCPs provide more comprehensive, and therefore more effective, protection to listed species as well as to species that might otherwise require listing in the future. Large-scale HCPs in effect become regional conservation plans consistent with the recovery objectives for listed species that are covered within the plan area.

The above HCPs provide substantial measures to protect or improve the current state of the ecosystem as a whole, which may contribute to the

conservation of a number of species, including bull trout. These HCPs also include streams and habitats outside of the critical habitat designation that contribute to bull trout recovery, including habitats potentially suitable for future occupancy by bull trout and other species.

*Meeting Science Needs for Recovery Purposes*

HCPs can provide other important conservation benefits, including the development of important biological information needed to guide conservation efforts and assist in species conservation outside the HCP planning area. Each of the above HCPs have some component of adaptive management to address uncertainties in achieving their agreed-upon conservation objectives for aquatic habitats, including uncertainties that may be associated with climate change. The adaptive management strategy helps to ensure management will continue to be consistent with agreed-upon bull trout conservation objectives. In addition, in the cases of the City of Seattle Cedar River Watershed HCP and the Washington State Forest Practices HCP, there are specific research elements directed towards bull trout and its habitat. Although the designation will not affect this research, it is highly unlikely this research would have been achieved through a critical habitat designation.

(3) Benefits of Exclusion Outweigh the Benefits of Inclusion for the WDNR, Green Diamond, City of Seattle Cedar River Watershed, Plum Creek/Stimson Lumber Company Native Fish, Plum Creek Central Cascades, and Washington State Forest Practices HCPs

Based on the above considerations, and consistent with the direction provided in section 4(b)(2) of the Act, the Service and, subsequently, the Secretary, have concluded that the benefits of excluding streams and waterbodies associated with the WDNR, Green Diamond, City of Seattle Cedar River Watershed, Plum Creek/Stimson Lumber Company Native Fish, Plum Creek Central Cascades, and Washington State Forest Practices HCPs as critical habitat for the bull trout outweigh the benefits of including these streams and waterbodies as critical habitat. This conclusion is based on the following:

It is probable that any Federal action that would be likely to destroy or adversely modify critical habitat within an area covered by the above HCPs would also jeopardize the continued existence of the species, because of the specific way in which jeopardy and adverse modification are analyzed for bull trout. Since the primary threat to bull trout is habitat loss or degradation, the jeopardy analysis under section 7 of the Act for a project with a Federal nexus will most likely evaluate the effects of the action on the conservation or functionality of the habitat for the bull trout. Because of this, we believe that in many cases the analysis of the project to address designated critical habitat will be comparable. As such, we do not anticipate, for many circumstances, that the outcome of the consultation to address critical habitat will result in any significant additional project modifications or measures. Thus, potentially detrimental actions would be avoided as a result of a jeopardy analysis resulting from the bull trout's status as threatened under the Act, and not solely or specifically because of critical habitat designation. The benefit of informing the public of the importance of these areas to bull trout conservation would for the most part be redundant with the outreach conducted during the NEPA process for the subject HCPs. Therefore, we assign relatively little weight to the benefits of designating these HCP areas as critical habitat.

In contrast, the benefits of encouraging continued and future participation in HCPs, and fostering cooperative conservation through HCP participation are crucial to the long-term effectiveness of the endangered species program. Therefore, for the above HCPs, we assign greater weight to these benefits of exclusion. To the extent there are regulatory benefits of including these areas, there would also be associated costs that could be avoided through exclusion. However, since we expect the regulatory benefits to be low, we are giving greater weight to the avoidance of those associated costs.

Based on the above analysis, we have determined that the benefits of designating critical habitat in streams and other waterbodies covered by these HCPs are relatively small, compared to the benefits of exclusion. The benefits of exclusion therefore outweigh the benefits of inclusion. Because we anticipate little if any conservation benefit to the bull trout will be foregone as a result of excluding these lands, the exclusion of these HCPs will not result in the extinction of the bull trout. The Secretary therefore exercises his discretion under section 4(b)(2) of the Act to exclude these areas from the designation. The specific section 4(b)(2) analysis for each of the above HCPs is described in further detail in the "*Compilation of HCP Exclusion Analyses for the Designation of Bull Trout Critical Habitat (Including Exclusion Analysis for Certain Areas Managed Under the Lewis River Hydroelectric Projects*)." This document is available at *http://www.fws.gov/pacific/bulltrout/.*

Other Managed Areas Considered for Exclusion

We have also determined that specific waterbodies associated with the Lewis River Hydroelectric Projects also warrant exclusion based on our section 4(b)(2) analysis below. These include several waterbodies protected or managed under the Settlement Agreement for the Federal Energy Regulatory Commission (FERC) relicensing of the Yale, Merwin, Swift No. 1 and Swift No. 2 hydroelectric projects, which was signed on November 30, 2004. This final rule provides a summary of the information considered with regard to this section 4(b)(2) analysis. A more detailed analysis is provided in the "*Compilation of HCP Exclusion Analyses for the Designation of Bull Trout Critical Habitat (Including Exclusion Analysis for Certain Areas Managed Under the Lewis River Hydroelectric Projects*)" document, which is available on the bull trout website at *http://www.fws.gov/pacific/bulltrout.*

*Lewis River Hydroelectric Projects Conservation Easements and Swift Bypass Reach*

There are four projects and three dams that impound over 48.3 km (30 mi) of river habitat on the Lewis River in Washington, located in portions of Clark, Cowlitz, and Skamania Counties. Bull trout are present in all of the reservoirs; the upper two reservoirs have the most significant populations and also support spawning populations. A settlement agreement (Agreement) for the relicensing of the Yale, Merwin, Swift No. 1, and Swift No. 2 hydroelectric projects was signed on November 30, 2004, and FERC issued a license (License) on June 26, 2008. The Agreement and License incorporate conservation measures to minimize or compensate for the effects of the projects on listed species, including bull trout. Conservation measures for bull trout include: (1) Two perpetual conservation covenants, one on lands controlled by PacifiCorp utilities, in the Cougar/Panamaker Creek area, and another on PacifiCorp's and Cowlitz County Public Utility District's (PUD) lands along the Swift Creek arm of Swift Creek Reservoir; (2) upstream and downstream fish passage improvements at all reservoirs; (3) increased flows and

salmon spawning enhancements in the bypass reach; (4) limiting factors analysis for bull trout to determine additional enhancement measures; (5) public information program to protect bull trout; and (6) monitoring and evaluation efforts for bull trout conservation measures. This agreement will also restore anadromous salmon to the upper Lewis River system, including the bypass reach, restoring a significant part of the historic forage base for bull trout.

The Agreement protects surface and subsurface water connectivity through a variety of diverse mechanisms. Springs and seeps that result in perennial or intermittent channels and all perennial streams are protected with riparian buffers. The terrestrial wildlife management plan places special emphasis on stream side riparian zones. The goal is to exceed the standards in the Washington State Forest Practices. The Agreement addresses all wetlands and hydrological integrity and connectivity within the project boundaries and provides for protection of any wetlands that are acquired. Wetland protections (and water level management) are designed to follow the Washington Department of Fish and Wildlife Guidelines. Road prescriptions are designed to avoid disrupting surface and ground-water flows, and there are several specific road remediation efforts directed at existing wetlands within the project boundaries. The Agreement contains measures to improve bull trout access to aquatic habitat, but will not provide a barrier-free environment without human intervention in the near term. The enhanced flows under the license in the Swift bypass reach allow bull trout to access important FMO habitat, and may play an important future role in the collection and transport of adult bull trout to areas upstream of Swift Dam. In addition, roads covered by the Settlement Agreement will be managed in a manner that does not contribute to the formation of barriers, while remediation will address existing barriers.

The Agreement maintains the natural hydrology and riparian functions of large woody input, shade, bank stability, and detritus inputs, as well as natural functions of flood plains and unstable slopes on the streams that are tributary to the reservoirs. The reservoirs themselves do not include riparian origin material to any significant degree, but the development of a self-sustaining kokanee population in the two upper reservoirs has probably increased the available prey base for bull trout. The reintroduction of anadromous salmonids into the basin above Merwin Dam will provide a much larger and broader food base for bull trout, and is expected to increase the aquatic productivity in the tributary streams by reestablishing natural, marine-derived nutrient components. In the Swift bypass reach, the recent construction of spawning channels for reintroduced salmon will also increase the potential forage base for bull trout.

The Agreement and conservation easements address the need for complex habitat by providing buffers and protecting Cougar Creek. Annual surveys are conducted to ensure there are no negative impacts to habitat, and to provide for habitat restoration if negative impacts are found. The Agreement also addresses sediment introduction, which has the potential to simplify and degrade instream habitat conditions by closing and removing culverts, and addresses road surface erosion in the Cougar and Panamaker Creek drainages. Stream temperature is addressed through a number of avenues including a 300-meter (1,000-foot) no-touch buffer along Cougar Creek and a 130-meter (400-foot) no-touch buffer along Panamaker Creek. Higher standard buffers along other streams and wetlands are designed to provide natural levels of shade to avoid increasing sunlight, which could result in stream warming within the project boundaries. Instream temperature regulation is feasible with hydroelectric projects through the use of turbine intakes with features that allow for water intake below the thermocline. The Merwin project has a deep intake, and as a result, the Lewis River downstream of the project typically runs much cooler than it would as an unregulated stream. Yale and Swift are also fairly deep intakes, although the water discharging from the tailrace of the Yale project may be warmer than the receiving water, and may be a challenge with regard to capturing bull trout to assist with their upstream and downstream movement. This problem has not been fully analyzed, and will be one factor addressed during testing of alternative bull trout passage facilities at the Yale and Swift projects.

In addition, the bypass reach between Swift No.1 and the head of Yale Reservoir will gain a permanent instream flow of up to 100 cubic feet per second as part of the Agreement. This should decrease the temperature of the bypass water during the summer months, but may increase the temperature during the fall and early winter over the background temperature.

The Agreement addresses the need for natural substrates by reducing road-generated, fine sediment on project-owned roads. Additionally, it provides for gravel augmentation to mitigate for the blockage of natural bedload movement by the project dams and reservoirs, and addresses bank stability and large wood recruitment, which should help store fine sediment and provide for suitable substrates for bull trout spawning by providing a fund for enhancement and protection measure.

In the Swift bypass reach, flows have been significantly increased under the licensee's 401 Certification issued by the Washington State Department of Ecology to enhance bull trout use in this FMO habitat. Provisions of the Agreement that protect the natural environment should assist bull trout in maintaining a competitive advantage over nonnative species. The reintroduction of the historic assemblage of salmon may create competition for spawning space between bull trout and coho salmon; however, in natural environments, the two species have been observed spawning in the same areas, but generally tend to use habitat with slightly different parameters such as water temperature, gradient, substrate, and cover.

(1) Benefits of Inclusion

Designation of critical habitat for bull trout on lands managed under Lewis River Hydroelectric Projects Conservation Easements would provide protection from the destruction or adverse modification of designated critical habitat under section 7 of the Act. However, without designation, a certain amount of habitat protection would be provided through the jeopardy standard. Based on our review of previous section 7(a)(2) consultations for bull trout using this standard, there is little to indicate that critical habitat designation would generate additional habitat protections beyond those already provided. Under section 7(b)(3) of the Act, the Secretary suggests reasonable and prudent alternatives to proposed Federal actions only in cases where the action would destroy or adversely modify critical habitat. Determinations of destruction or adverse modification of critical habitat would be rare, since they are made within the context of an entire critical habitat designation.

Designating critical habitat can educate the public and management agencies about the distribution of areas containing the physical or biological features essential to the conservation of a species. In areas lacking a bull trout-specific management plan, designation can guide projects to avoid impacts to listed species and can help focus

recovery efforts. However, we believe little additional informational benefit will be gained by including Swift and Cougar Creeks and the Swift bypass reach in designated critical habitat for bull trout. PacifiCorp is implementing conservation recommendations that were provided in our 2002 biological opinion, which includes posting interpretive signs to educate anglers on identifying and conserving native char, and techniques for catch and release to minimize incidental hooking mortality of bull trout. Although educational benefits associated with critical habitat designation can be an important component for the conservation of bull trout, we believe it is redundant with what is already being achieved through the implementation of measures under PacifiCorp's conservation easement.

(2) Benefits of Exclusion

The complex process of negotiating relicensing for the Lewis River hydroelectric projects has been ongoing for nine years. We have established valuable working relationships with PacifiCorp, Cowlitz County Public Utilities District (PUD), and the other participants during these negotiations. By excluding lands included in the two conservation easements from designated critical habitat, we will be better able to: (1) Maintain and enhance our ability to work with PacifiCorp, Cowlitz County PUD, other relicensing applicants, and FERC; and, (2) provide encouragement to other jurisdictions, private landowners, and other entities to continue to see the benefit of working cooperatively with us. Negotiating conservation measures under conditions of mutual trust can result in greater conservation benefits to the species than would result from designating Swift and Cougar Creeks, and the bypass reach, as critical habitat.

(3) Benefits of Exclusion Outweigh the Benefits of Inclusion

Based on the above considerations and consistent with the direction provided in section 4(b)(2) of the Act, the Service has determined that the benefits of excluding the waterbodies adjacent to lands managed under Lewis River Hydroelectric Projects Conservation Easements outweigh the benefits of including them as critical habitat. This conclusion is based on the following consideration. It is possible, although unlikely, that a Federal action could be proposed that would be likely to destroy or adversely modify critical habitat within the area subject to the Lewis River Conservation Easement and bypass reach. However, if such a project were to be proposed, any action that would be likely to destroy or adversely modify critical habitat would likely also jeopardize the continued existence of the species, because of the specific way in which jeopardy and adverse modification are analyzed for bull trout. Since the primary threat to bull trout is habitat loss or degradation, the jeopardy analysis under section 7 of the Act for a project with a Federal nexus will most likely evaluate the effects of the action on the conservation or functionality of the habitat for the bull trout. Because of this, we believe that in many cases the analysis of the project to address designated critical habitat will be comparable. As such, we do not anticipate, for many circumstances, that the outcome of the consultation to address critical habitat will result in any significant additional project modifications or measures. Accordingly, potentially detrimental actions would be avoided as a result of the jeopardy analysis. In addition, for the reasons discussed above, we believe the educational benefit of informing the public of the importance of this area to bull trout conservation would be limited because of previous and ongoing efforts. Therefore, we assign relatively little weight to the benefits of designating this area as critical habitat.

In contrast, the benefits of encouraging participation in conservation partnerships and fostering cooperative conservation are crucial to the long-term effectiveness of the endangered species program. Therefore, we assign greater weight to these benefits of exclusion. To the extent that there are regulatory benefits of designating the area as critical habitat, there would be some associated costs that could be avoided by excluding the area from designation. However, as we expect the regulatory benefits to be low, we likewise give weight to avoidance of those associated costs.

Based on our analysis, we have determined that the benefits of inclusion of the areas covered by these conservation easements are outweighed by the benefits of exclusion. Because we anticipate that little if any conservation benefit to the bull trout will be foregone as a result of excluding these lands, and the exclusion will not result in the extinction of the bull trout, the Secretary exercises his discretion under section 4(b)(2) to exclude these areas from the designation.

*Tribal Lands–Exclusions Under Section 4(b)(2) of the Act*

In accordance with the President's memorandum of April 29, 1994, "Government-to-Government Relations with Native American Tribal Governments" (59 FR 22951); Executive Order 13175; and the relevant provision of the Departmental Manual of the Department of the Interior (512 DM 2), we coordinate with federally-recognized Tribes on a government-to-government basis. Further, Secretarial Order 3206, "American Indian Tribal Rights, Federal-Tribal Trust Responsibilities, and the Endangered Species Act" (1997) states that (1) critical habitat shall not be designated in areas that may impact tribal trust resources, may impact tribally-owned fee lands, or are used to exercise tribal rights unless it is determined essential to conserve a listed species; and (2) in designating critical habitat, the Service shall evaluate and document the extent to which the conservation needs of the listed species can be achieved by limiting the designation to other lands. Habitat on tribal lands was determined to be essential to the conservation of bull trout due to its location within the matrix of habitat available for bull trout. Because the bull trout is largely a migratory species with complex migration patterns, connectivity among and within its habitats is essential for long-term persistence and recovery of the species. Many stream reaches or nearshore habitat on or adjacent to tribal lands were determined to be an important component of migratory habitat necessary to maintain connectivity between spawning and rearing habitats and FMO habitats. In other cases, it was determined that streams or stream reaches themselves represent an important component of spawning and rearing habitat for bull trout local populations or are important in maintaining overall connectivity within local populations or both.

The longstanding and distinctive relationship between Federal and tribal governments is defined by treaties, statutes, executive orders, judicial decisions, and agreements, which differentiate tribal governments from the other entities that deal with, or are affected by, the Federal government. This relationship has given rise to a special Federal trust responsibility involving the legal responsibilities and obligations of the United States toward Indian Tribes and the application of fiduciary standards of due care with respect to Indian lands, tribal trust resources, and the exercise of tribal rights. Accordingly, we are obligated to consult with Tribes based on their unique relationship with the Federal government. In addition, we evaluate Tribes' past and ongoing efforts for species conservation and the benefits of including or excluding tribal lands in

the designation under section 4(b)(2) of the Act. We contacted all Tribes potentially affected by the proposed designations and met with a number of these Tribes to discuss their ongoing or future management strategies for bull trout. We subsequently received letters describing ongoing tribal management, conservation plans, and conservation efforts.

We received written responses from the Kalispell, Nez-Perce, Coeur d'Alene, Burns-Paiute, and Shoshone-Paiute Tribes supporting the critical habitat revision and the designation of tribal lands. Based on these responses, the Secretary determined not to exercise his discretion to exclude these tribal lands from the designation. In addition, the Confederated Tribe of the Colville indicated that they did not believe that any of the designated critical habitat affected tribal lands, nor do they believe they have water suitable for bull trout on their tribal lands. We received a comment from the Nisqually Tribe requesting the exclusion of their lands; however, we determined that critical habitat was not proposed on their lands, and therefore consideration of exclusion was not necessary.

Although we did not hear from the Confederated Salish and Kootenai Tribes during the comment period for the proposed rule, we are aware of the Confederated Salish and Kootenai Tribes' resource management plan, which addresses bull trout conservation in the Jocko River watershed. Given previous meetings with the Tribes, and their support of designated critical habitat within the Jocko River watershed, we have retained critical habitat on the Confederated Salish and Kootenai tribal lands (Service 2002, pers.comm.). In total, 5 Tribes requested that their lands be designated as critical habitat, which was accommodated; 6 potentially affected Tribes were either found to not have lands associated with designated habitat or did not respond to our inquiries; and 17 Tribes requested exclusion of their lands based on management plans that conserve bull trout.

We considered exclusions under section 4(b)(2) of the Act for those tribal lands where a commitment exists to conserve bull trout or a conservation program that provides aquatic resource protection and restoration through collaborative efforts on the reservation and other trust lands, and where the Tribes indicated that inclusion would impair their relationship with the Service. Tribes meeting these criteria included the Confederated Tribes of Warm Springs (CTWS), Blackfeet Nation, Confederated Tribes of the Umatilla Indian Reservation (CTUIR), and the Confederated Tribes and Bands of the Yakama Nation. Because of the relative similarities of the conservation management of these Tribes, the weighing and balancing analysis required under section 4(b)(2) of the Act was consolidated, as summarized in the following paragraphs.

We also considered exclusions under section 4(b)(2) of the Act for the treaty Tribes of Western Washington, and Tribes that are members of the Northwest Indian Fisheries Commission that have co-management responsibility over salmon resources with Washington State. These Tribes have also had a significant role in the development of habitat conservation plans, local watershed plans, and other habitat plans, and have implemented numerous habitat restoration and research projects designed to protect or improve habitat for listed species. These Tribes include the Swinomish Tribe, Quinault Indian Nation, Muckleshoot Tribe, Jamestown S'Klallam Tribe, Hoh Tribe, Lower Elwha-Klallam, Quileute Tribe, Lummi Nation, Nooksack Tribe, Puyallup Tribe, Stillaguamish Tribe, Tulalip Tribes, and Skokomish Tribe. Because of the relative similarities of the conservation management of these Tribes, the weighing and balancing analysis required under section 4(b)(2) of the Act was also consolidated, as summarized in the following paragraphs.

*Confederated Tribes of Warm Springs Reservation of Oregon (CTWS)*

The CTWS has a long history of carrying out proactive conservation actions and maintaining stewardship and conservation of the species and habitats on its lands, and it is also an active co-manager of species and habitats over extensive areas outside of the Warm Springs Reservation. These proactive voluntary conservation efforts are necessary to prevent bull trout extirpation and promote the recovery of the bull trout on CTWS lands. This is especially important in areas where the bull trout has been extirpated and its recovery requires access and permission for reintroduction efforts. For example, bull trout have been extirpated from some rivers within the Coastal Recovery Unit, and repopulation is not likely without the CTWS's cooperation.

The CTWS's management plans and ordinances provide guidelines for land uses and actions that affect the CTWS resources and serve as the basis for tribal management decisions. Bull trout benefit from these voluntary management actions by CTWS. The CTWS has an existing broad regulatory framework that protects bull trout habitat through many different mechanisms. These include their integrated resource management plan and its implementing ordinances on forestlands, water quality, and aquatic resources and their streamside management plan.

We believe that the CTWS' resource management strategy is largely compatible with bull trout conservation. The CTWS has cooperated with Federal and State agencies, and private organizations, to implement voluntary proactive conservation activities on their lands that have resulted in tangible conservation benefits for bull trout. These actions include removal of the headworks dam on Shitke Creek to facilitate movement of bull trout, changes to fishing regulations (the establishment of size and bag limits and no fishing areas) to be more protective of bull trout, reduced road densities, and the fencing of kilometers (miles) of bull trout spawning and rearing habitat. In addition, the CTWS monitors over 30 km (20 mi) of bull trout spawning habitat annually and completes habitat restoration projects throughout both their tribal and individual lands located within the boundaries of the Warm Springs Indian Reservation, off-reservation lands owned in fee, and off-reservation lands held in trust by the Tribe.

The CTWS has a record of action and commitment that will continue regarding the conservation of bull trout and the habitats upon which they depend. We expect this cooperation and bull trout conservation to continue.

*Confederated Tribes of the Umatilla Indian Reservation (CTUIR)*

The CTUIR has a long history of carrying out proactive conservation actions on their lands, including work towards restoring flows in the Umatilla River. These proactive voluntary conservation efforts are necessary to prevent bull trout extirpation and promote recovery of bull trout on the CTUIR lands. This is especially important in the Umatilla River basin where bull trout are at very low numbers and recovery depends on the CTUIR's cooperation. The CTUIR approved a Forest Management Plan in March 2010, that regulates forestry activities on allotted trust, tribal trust, and tribal fee forest lands on the reservation and identifies protective measures for listed species. A management plan has also been developed by the CTUIR for the Rainwater Wildlife Area. Both plans provide a conservation benefit to bull trout and provide assurances that they

will be implemented and that the conservation effort will be effective.

The CTUIR has an existing broad regulatory framework that protects bull trout habitat through many different mechanisms. These include the March 2010 Forest Management Plan and statutes under the CTUIR's Fish and Wildlife Code, Land Development Code and Water Code.

Finally, the CTUIR has a long-track record of engaging in resource management, partnerships with resource agencies, and specific actions benefiting bull trout and other fish species. They are actively involved in many fish passage, instream, riparian, upland, and flow restoration projects in the Umatilla and Walla Walla river basins. In addition, the CTUIR conducts monitoring, evaluation, and research on stream habitats and aquatic species. Their efforts include being a core partnership member in the development of the Umatilla and Willow and Walla Walla subbasin plans, restoring 27 km (17 mi) of habitat in Meacham creek for spawning and rearing habitat, and being an implementing partner for the Columbia River Anadromous Fish Restoration Plan of the Umatilla, Nez Perce, Warm Springs, and Yakama Tribes. This plan emphasizes strategies and principles that rely on natural production and healthy river systems, subbasin-level return goals for salmon, and the watershed restoration actions that must be undertaken to achieve them.

Tribal lands are currently being managed on a voluntary basis in cooperation with the Service and others to conserve bull trout and achieve important conservation goals. CTUIR cooperation is especially necessary because recovery of bull trout in the Umatilla and Touchet river basins depends on the cooperation of the CTUIR. The Tribe has a record of action and commitment that will continue regarding the conservation of bull trout and the habitats upon which they depend. The CTUIR, through their forest Management Plan and their Tribal Codes, and by affirmative bull trout and watershed protection and restoration projects, has a comprehensive scheme in place protecting and enhancing fish habitat. We expect this cooperation and bull trout conservation to continue. We believe that the bull trout benefits from the CTUIR's voluntary management actions.

*The Confederated Tribes and Bands of the Yakama Nation (Yakama Nation)*

The current Yakama Nation Tribal Forest Management Plan (FMP) describes best management practices (BMPs) including measures for road building and riparian management intended to minimize sediment delivery, preserve riparian shading, and maintain cool stream temperatures. The FMP provides similar conservation benefit to salmonids (including bull trout) through these BMPs as the Washington State Forest Practice Rules, which are implemented as part of a Statewide HCP (discussed earlier). Compliance with FMP measures is enforced through technical review of proposed timber sales or other activity by a Tribal Inter-Disciplinary Team.

Tribal Fisheries Program staff are currently working with Tribal Wildlife staff to produce a supplement to the FMP that provides specific additional BMPs for protection of spotted owls, bull trout, and other listed or sensitive species. Tribal staff have committed to ongoing coordination with the Service in the development of the final supplements and their inclusion into final recovery planning. The supplemental BMPs will enhance the effectiveness of protection and conservation efforts for bull trout, in a manner similar to a species management plan.

Lastly, the Yakama Nation is implementing fish habitat protection and restoration actions in the Klickitat and Yakima (including Ahtanum Creek basins), and on other nonreservation lands in the Wenatchee, Entiat, and Methow basins. These actions, while not specific to bull trout, will have beneficial effects for bull trout. Although restoration actions generally do not affect bull trout habitat in spawning and rearing areas, they could improve the migration corridor in the mainstems of these rivers for sub-adult rearing and adult migration.

The Yakama Nation does not support an exclusion of reservation boundary waters that are not wholly within the management jurisdiction and authority of the Yakama Nation. Specifically, the Tribe believes that maintaining the bull trout critical habitat designation in lower Ahtanum Creek and the Yakima River where it borders the reservation would increase the likelihood that water and land use practices on the far bank or upstream of the reservation would be compatible with bull trout protection. Consistent with the Tribe's preferences, and because these areas are not wholly within the management jurisdiction and authority of the Yakama Nation, these areas have not been excluded.

*The Yakama Nation, CTUIR, CTWS and the Columbia River Inter-Tribal Fish Commission*

In 2005, the Northwest Power and Conservation Council (Council) completed one of the largest, locally-led watershed planning efforts of its kind in the United States, an effort that resulted in separate plans for 58 tributary watersheds or mainstem segments of the Columbia River. These subbasin plans were developed collaboratively by State and Federal fish and wildlife agencies, Indian Tribes (through the Columbia River Inter-Tribal Fish Commission), local planning groups, fish recovery boards, and Canadian entities where the plans address transboundary rivers. The planning effort was guided by the Council and funded by the Bonneville Power Administration. The Columbia River Inter-Tribal Fish Commission (CRITFC) is the fishery coordinating agency of four Columbia River treaty Tribes: the Nez Perce Tribe, the Confederated Tribes of the Warm Springs Reservation, the Confederated Tribes of the Umatilla Indian Reservation, and the Confederated Tribes and Bands of the Yakama Indian Nation. The four Columbia River treaty Tribes that make up CRIFTC are co-managers of the Columbia River basin fishery, in the States of Oregon, Washington, and Idaho, and have responsibilities for conservation and management of habitat, and harvest and hatchery decisions. As a result of their involvement, the Tribes play a significant role in sub-basin planning and implementation.

Sub-basin plans identify priority restoration and protection strategies for habitat and fish and wildlife populations in U.S. portion of the Columbia River system. Many of the subbasin plans identify bull trout as a focal species with specific conservation measures. The plans guide the future implementation of the Council's Columbia River Basin Fish and Wildlife Program, which directs more than $140 million per year of Bonneville Power Administration (BPA) electricity revenues to protect, mitigate, and enhance fish and wildlife affected by hydropower dams. Sub-basin plans provide this guidance by providing the context in which proposed projects are reviewed for funding through the Council's program.

Sub-basin plans also integrate strategies and actions funded by others, thus ensuring that each plan serves the Council's purposes under the Northwest Power Act and also accounts for Endangered Species Act and Clean Water Act requirements, and other laws

governing natural resource management, as fully as possible. These plans can be found at the following website: *http://www.nwcouncil.org/fw/subbasinplanning/Default.htm.*

*Blackfeet Nation*

The Blackfeet Nation has worked closely and cooperatively with the Service on bull trout issues with the goal of developing and implementing the Blackfeet Nation Bull Trout Management Plan. A draft plan was completed in November 2007, and was recently finalized and adopted by the Blackfeet Tribal Business Council by Resolution No. 111-2010.

Through this Bull Trout Management Plan, the Blackfeet Nation has demonstrated a commitment to conservation, protection, and enhancement of the fishery resource on the Blackfeet Reservation. In addition, the Blackfeet Nation has supported and participated in Service studies to gather data for assessing effects of the Milk River Irrigation System on bull trout within the Saint Mary River drainage. The Nation changed angling regulations on their Reservation to maximize bull trout protection soon after the species was listed. The Nation gradually eliminated permits for a tribal gill net fishery in Saint Mary Lake that was affecting bull trout. The Blackfeet Nation has also supported the bull trout recovery planning process. In order to further implement recovery planning on tribal lands, they were recently awarded a Tribal Wildlife Grant and hired their first Tribal fisheries biologist.

In addition to its cooperation with the Service, the Blackfeet Nation has actively taken other steps to protect bull trout habitat including enacting an Aquatic Lands Protection Ordinance in 1993, which is intended to protect Reservation streambeds and riparian habitat. The policy of the Blackfeet Nation as stated in Section 2 of the Aquatic Lands Protection Ordinance is that all waters and aquatic lands on the Reservation are to be protected and preserved, and that the degradation of Reservation waters and aquatic lands be prevented or minimized through the reasonable regulation of such resources. Permits are required for any construction activities within any aquatic lands or areas affecting aquatic or riparian lands, and such construction is strictly regulated through such permits. The Blackfeet Nation has also established water quality standards for all Reservation streams, including the relevant bull trout streams, under authority of the Clean Water Act (CWA). The Blackfeet Nation's application for status or treatment as a State under section 518 of the CWA, which is a prerequisite to implementation of the water quality standards, is currently pending before the Environmental Protection Agency.

Blackfeet lands are being managed in cooperation with the Service and others to conserve bull trout and achieve important conservation goals. The Tribe has a record of action and commitment that will continue through their Management Plan and their Tribal Codes and Ordinances, and by affirmative bull trout and watershed protection and restoration projects. The Blackfeet Nation has demonstrated a commitment to conservation, protection, and enhancement of the bull trout resource on the Blackfeet Reservation and the habitats upon which they depend. We expect this cooperation and bull trout conservation to continue. We believe that the bull trout benefits from the Blackfeet Nation's management actions.

(1) Benefits of Inclusion

Habitat essential to bull trout conservation exists within the previously identified tribal lands. The principal benefit of any designated critical habitat is that Federal activities will require section 7 consultations to ensure that adequate protection is provided to avoid adverse modification or destruction of critical habitat. This would provide an additional benefit beyond that provided under the jeopardy standard. In evaluating project effects on critical habitat, the Service must be satisfied that the PCEs and, therefore, the essential features of the critical habitat likely will not be altered or destroyed by proposed activities to the extent that the conservation of the affected species would be appreciably reduced. If critical habitat were designated in areas of unoccupied habitat or currently occupied areas subsequently become unoccupied, different outcomes or requirements are also likely because effects to unoccupied areas of critical habitat are not likely to trigger the need for a jeopardy analysis.

*In Sierra Club v. Fish and Wildlife Service*, 245 F.3d 434 (5th Cir. 2001), the Fifth Circuit Court of Appeals stated that the identification of habitat essential to the conservation of the species can provide informational benefits to the public, State and local governments, scientific organizations, and Federal agencies. The court also noted that critical habitat designation may focus and heighten public awareness of the plight of listed species and their habitats. Designation of critical habitat may contribute to conservation efforts by other parties by delineating areas of high conservation value for the bull trout. While we believe this educational outcome is important for bull trout conservation, we believe it has already been achieved to some extent through the existing management, education, and public outreach efforts carried out by the Tribes. A final designation of critical habitat on the aforementioned tribal lands would simply affirm the recognized conservation value of these lands, which is already widely accepted by conservationists, public agencies, and most of the public.

We believe that a critical habitat designation for the bull trout on previously identified tribal lands would provide a relatively low level of additional benefit. Any regulatory conservation benefits would accrue through the benefit associated with additional section 7 consultation associated with critical habitat. Based on a review of past consultations and consideration of the likely future activities in this specific area, minimal Federal activity is expected to occur on previously identified tribal lands that would trigger section 7 consultations.

(2) Benefits of Exclusion

Proactive voluntary conservation efforts are necessary to prevent bull trout extirpation and promote the recovery of the bull trout on lands of the CTWS, Blackfeet Nation, CTUIR, and the Yakama Nation. This is especially important in areas where the bull trout has been extirpated and its recovery requires access and permission for reintroduction efforts. For example, bull trout have been extirpated from some rivers in the Coastal Recovery Unit, and repopulation is not likely without the CTWS' cooperation. The aforementioned Tribes have a long history of carrying out proactive conservation actions on their lands. Their management plans provide guidelines for land uses that affect tribal resources and serve as the basis for tribal management decisions. We believe that the bull trout will benefit from the Tribes' voluntary management actions due to their long-standing and broad application to tribal management decisions. Additional benefits of excluding Indian lands from designation include: (1) The maintenance of effective, long-term working relationships to promote the conservation of bull trout while streamlining the consultation process; (2) the allowance for continued, meaningful collaboration and cooperation in scientific work to learn more about the life history, habitat

requirements, and conservation needs of the species; (3) to the extent designation would provide any additional protection and conservation of bull trout and its habitat that might otherwise not accrue to bull trout that depend on tribal streams, the costs associated with that protection would be avoided; and (4) exclusion would reduce administrative costs of section 7 consultation (as discussed previously, these costs are unlikely to lead to additional actual protection for bull trout habitat). We believe that fish, wildlife, and other natural resources on tribal lands may be better managed under tribal authorities, policies, and programs than through Federal regulation where tribal management addresses the conservation needs of listed species. Based on this philosophy, we believe that, in many cases, designation of tribal lands as critical habitat may provide little additional benefit to bull trout. In addition, such designation may be viewed by Tribes as unwarranted and an unwanted intrusion into tribal self-governance, thus compromising the government-to government relationship essential to achieving our mutual goals of managing for healthy ecosystems upon which the viability of endangered and threatened species populations depend.

The Tribes have cooperated with us to implement proactive conservation measures. They have cooperated with Federal and State agencies, and private organizations, to implement voluntary conservation activities on their lands and in their respective river basins, which have resulted in tangible conservation benefits. Where consistent with the discretion provided by the Act, we believe it is necessary to implement policies that provide positive incentives to voluntarily conserve natural resources and that remove or reduce disincentives to conservation. Thus, we believe it is essential for the recovery of bull trout to build on continued conservation activities with these Tribes, to provide positive incentives implementing voluntary conservation activities, and to respect tribal concerns about incurring incidental regulatory or economic impacts.

We believe that excluding these tribal lands from critical habitat will help maintain and improve our relationship by recognizing their positive contribution to bull trout conservation. It will also reduce the cost and logistical burden of regulatory oversight. We believe this recognition will provide other landowners with a positive incentive to undertake voluntary conservation activities on their lands, especially where there is no regulatory requirement to implement such actions. Few additional benefits would be provided by including these tribal lands in this critical habitat designation beyond what will be achieved through the implementation of their existing conservation plans.

(3) Benefits of Exclusion Outweigh Benefits of Inclusion

Based on the above considerations and consistent with the direction provided in section 4(b)(2) of the Act, the Service has determined that the benefits of excluding the above tribal lands outweigh the benefits of including them as critical habitat. This conclusion is based on the following factors. It is possible, although unlikely, that Federal actions will be proposed that would be likely to destroy or adversely modify the habitat proposed as critical within the area governed by the above Tribes. If such a project were proposed, due to the specific way in which jeopardy and adverse modification are analyzed for bull trout, discussed in detail earlier in this document, it would likely also jeopardize the continued existence of the species. Few additional benefits are provided by including these tribal lands in this critical habitat designation beyond what will be achieved through the implementation of the existing tribal management or conservation plans. In addition, we expect that the benefit of informing the public of the importance of this area to bull trout conservation would be low.

We do not believe that inclusion of tribal lands and waters will significantly improve habitat protections for bull trout beyond what is already provided for in the Tribes' own protective policies and practices, discussed below.

In response to the proposed rule (75 FR 2270; January 14, 2010), the Tribes have provided information detailing how they are already working to address the habitat needs of bull trout on their lands as well as in the larger ecosystem through conservation plans and that they are fully aware of the conservation value of their lands. There are several benefits to excluding tribal lands. The longstanding and distinctive relationship between the Federal and tribal governments is defined by treaties, statutes, executive orders, judicial decisions, and agreements, which differentiate tribal governments from the other entities that deal with, or are affected by, the Federal government. This relationship has given rise to a special Federal trust responsibility involving the legal responsibilities and obligations of the United States toward Indian Tribes and the application of fiduciary standards of due care with respect to Indian lands, tribal trust resources, and the exercise of tribal rights. Under these authorities, Indian lands are recognized as unique and have been retained by Indian Tribes or have been set aside for tribal use. These lands are managed by Indian Tribes in accordance with tribal goals and objectives within the framework of applicable treaties and laws.

The Tribes have stated in letters and meetings that designation of Indian lands as critical habitat will undermine long-term working relationships and reduce the capacity of Tribes to participate at current levels in the many and varied forums across four States addressing ecosystem management and conservation of fisheries resources. The benefits of excluding Indian lands from designation include the combination of: (1) The maintenance of effective, long-term working relationships to promote species conservation on an ecosystem-wide basis; (2) continued meaningful collaboration and cooperation in scientific work to learn more about the conservation needs of the species on an ecosystem-wide basis; and (3) recognition and continuation of the conservation benefits to bull trout from the Tribes' existing conservation programs.

Tribal lands are currently being managed on a voluntary basis in cooperation with the Service and others to conserve bull trout and achieve important conservation goals. We believe the bull trout benefits from the Tribes' voluntary management actions due to their long-standing and broad application to tribal management decisions. Tribal cooperation and support is required to continue cooperative scientific efforts, to promote the recovery of bull trout, and to implement proactive conservation actions. This need for the tribal cooperation is especially acute because, in some cases, populations exist only on areas of tribal management or only on tribal lands. Future conservation efforts in these areas require the continued cooperation and support of the Tribes. Exclusion of tribal lands from the critical habitat designation will help us maintain and improve our partnership with these Tribes by formally recognizing their positive contributions to bull trout recovery, and by streamlining or reducing unnecessary regulatory oversight.

Given the cooperative relationship between these Tribes and the Service, and all of the conservation benefits taken together, we believe the additional regulatory and educational benefits of including the tribal lands as critical habitat are relatively small. The

designation of critical habitat can serve to educate the public regarding the potential conservation value of an area, but this goal is already being accomplished through the identification of these areas in the tribal management plans and through their outreach efforts.

Because of the ongoing relationship between the Service and the Tribes through a variety of forums, we find the benefits of these coordination efforts to be greater than the benefits of applying the Act's section 7 consultations for critical habitat to Federal activities on tribal lands. Based upon our consultations with the Tribes identified above, we believe that designation of Indian lands as critical habitat would adversely impact our working relationship and the benefits resulting from this relationship.

In contrast, although the benefits of encouraging participation in tribal management plans, and, more broadly, helping to foster cooperative conservation are indirect, enthusiastic tribal participation and an atmosphere of cooperation are crucial to the long-term effectiveness of the endangered species program. Also, we have concluded that the Tribes' voluntary conservation efforts will provide tangible conservation benefits that will reduce the likelihood of extinction and increase the likelihood for bull trout recovery. Therefore, we assign great weight to these benefits of exclusion. To the extent that there are regulatory benefits of including tribal lands in critical habitat, there would be associated costs that could be avoided by excluding the area from designation. As we expect the regulatory benefits to be low, we likewise give weight to avoidance of those associated costs, as well as the additional transaction costs related to section 7 compliance.

Therefore, we have determined that the benefits of inclusion for the Tribes mentioned above are small, while the benefits of exclusion are more significant. Consequently, we conclude the benefits of exclusion outweigh the benefits of inclusion. We have reviewed the overall effect of the exclusion of the CTWS, Blackfeet Nation, CTUIR, and Yakama tribal lands for bull trout and their essential habitat. We have determined that the benefits of excluding these areas outweigh the benefits of including them in this critical habitat designation. Designation of critical habitat in these areas would most likely have a negative effect on the recovery and conservation of bull trout. Because we anticipate that little if any conservation benefit to the bull trout will be foregone as a result of the removal of these tribal streams from critical habitat designation, these exclusions will not lead to the species' extinction. Therefore, on the basis of our weighing and balancing above, the Secretary is exercising his discretion under section 4(b)(2) of the Act to exclude tribal lands (identified in Table 10) from critical habitat designation for bull trout. This decision is also consistent with the June 5, 1997, Secretarial Order "In accordance with the President's *Federal - Tribal Trust Responsibilities, and the Endangered Species Act*" (Secretarial Order 3206), and the November 6, 2000, Executive Order "*Consultation and Coordination With Indian Tribal Governments*" (Executive Order 13175).

The areas under management by the above Tribes that we are excluding from critical habitat are those waterbodies within reservation boundaries, and waterbodies that are adjacent to: (1) Lands held in trust by the United States for the benefit of any Indian Tribe; (2) lands held in trust by the United States for any Indian Tribe or individual subject to restrictions by the United States against alienation; (3) fee lands, either within or outside the reservation boundaries, owned by the tribal government; and (4) fee lands within the reservation boundaries owned by individual Indians. We have determined that these exclusions, together with the other exclusions described in this rule, will not result in extinction of the species.

Affected Treaty Tribes in Western Washington

The Treaty Tribes in Western Washington have a long-standing commitment to the protection and restoration of the fisheries resources throughout the Tribe's usual and accustomed fishing areas. Tribes affected by the bull trout critical habitat designation include: the Swinomish Tribe, Quinault Indian Nation, Muckleshoot Tribe, Jamestown S'Klallam Tribe, Hoh Tribe, Lower Elwha-Klallam, Quileute Tribe, Lummi Nation, Nooksack Tribe, Puyallup Tribe, Stillaguamish Tribe, Tulalip Tribes, and Skokomish Tribe Reservations and tribal lands within the Puget Sound–Coastal population.

The ruling in *U.S.* v. *Washington*, 384 F. Supp. 312 (W.D. Wash. 1974)), (the Boldt Decision) re-affirmed the rights reserved by the Tribes in the original treaties and established the Tribes as co-managers of the salmon resource with the State. Subsequent Federal court rulings have upheld tribal shellfish harvest rights and the tribal environmental right to protection and restoration of salmon habitat. The identified Tribes have been involved co-managers of salmonid fisheries prior to the Boldt decision and were recognized as self-regulatory by Washington State in 1998. They have aggressively pursued aquatic habitat restoration grants throughout their watersheds and independent streams and have been a key player in developing restoration, management and recovery plans for all salmonid species, including the bull trout. The State relies on tribal information and effort to keep salmonid information up to date. Most of the Tribes have a strong marine program, as well. They are active in several State and Federal committees regarding salmonid protection and management, as well as water quality.

The western Washington Indian Tribes have treaty-reserved fishing rights in the marine waters within Puget Sound and off the Washington Coast. Tribal governments share co-management authority and responsibility for marine resources in their usual and accustomed fishing areas with the State of Washington or the Federal government, depending on the specific resource and area identified. Conservation goals and standards for fishery resources management are established through government-to-government consultations between the co-managers and with the other State or Federal agencies as appropriate. The salmon and steelhead fisheries are managed cooperatively in a unique government-to-government relationship between the State of Washington and the Tribes. While their co-management activities do not currently involve bull trout directly, actions undertaken on behalf of this partnership do in fact benefit bull trout. As such, this co-management process provides specific protection to tribal trust resources and bull trout.

The State and Tribes in 1992 produced the Salmon Stock Inventory (SaSI), a critical document for wild fish recovery. The SaSI definitively identified the status of each wild stock, including bull trout, in categories ranging from extinct to healthy, and provided a system to monitor their status. As habitat recovery efforts by the State, Tribes and citizen groups shift into implementation, the SaSI, currently being updated, will help ensure restoration efforts are working. The State and Tribes also worked collaboratively with NOAA Fisheries and the Service to develop the Puget Sound Shared Strategy. The Puget Sound Shared Strategy focuses on the Puget Sound basin, including its marine waters and individual watersheds. It also focuses on groups of Puget Sound

fish that have genetic, ecological, and life histories that distinguish them from other groups within their species. Puget Sound Tribes are co-managers of Puget Sound Basin fisheries in Washington, and share responsibilities for habitat, harvest, and hatchery decisions with Washington Department of Fish and Wildlife, and with NOAA Fisheries for listed species.

Puget Sound Tribes played a significant role in the development of the Puget Sound Salmon Recovery Plan for listed salmonids, including bull trout. The development of this plan was guided by the regional recovery strategy, called the Shared Strategy for Puget Sound. Individual Tribes played a critical role in the development of the individual watershed chapters of the recovery plan, and continue to play a critical role within local watershed planning groups in the implementation of these individual watershed plans. These plans assist in targeting salmonid habitats in greatest need of restoration or protection within the individual watersheds. These plans can be found at the following website: *http://www.sharedsalmonstrategy.org/plan/index.htm*.

The initial goal-setting process of the Shared Strategy focused on Puget Sound species listed under the Act: Puget Sound Chinook salmon, Hood Canal summer chum, and bull trout. The Shared Strategy not only works to promote the recovery of these species, it will also promote and protect the continued health of thriving stocks to avoid further listings under the Act. As these examples demonstrate, co-management is an ongoing, evolving process. Its guiding principle is that much more can be done to strengthen, preserve, and restore salmonid and steelhead resources by working together in a cooperative manner.

The Treaty Tribes of Western Washington have a long history of working with their partners to carryout proactive conservation and to maintain stewardship and conserve species. In addition, the following discussion identifies specific types of actions and conservation management that many of the Western Washington Treaty Tribes have undertaken.

*Swinomish Tribe*

The Swinomish Tribe has a management plan that addresses surface water resources of the Swinomish Reservation, including marine tidelands, an artificial marine channel, estuarine wetlands, small streams, and freshwater wetlands. The management plan is based on existing knowledge and ongoing studies, active conservation practices, ordinances, and current management plans. It will be updated with new information obtained from ongoing surveys, habitat assessments, and other planning processes. The plan consists of regulation and implementation of updated tribal laws to protect habitat, control development, reduce pollution within the boundaries of the Reservation, restore habitat, and remove fish passage barriers to contribute proactively to species recovery.

*Quinalt Nation*

The Quinault Indian Nation and the Bureau of Indian Affairs (BIA) developed a forest management plan (FMP) for the entire Quinault Indian Reservation. The FMP covers all forestland (about 70,000 ha (173,000 ac)) under tribal and BIA timber management, including individual Indian-owned trust and tribally owned land. Included in the area of the FMP are the lower Quinault River, the tributaries of the lower Quinault River, the lower Queets River, the Salmon River (including the Middle and South Fork Salmon Rivers), portions of the Raft River, and portions of the Moclips River. The FMP is a 10–year plan covering the period from October 2002 through September 2012. The FMP is being implemented by the Quinault Department of Natural Resources and the BIA Taholah Field Office. Although some adverse effects to the bull trout are expected during implementation of the plan, it is expected to provide for long-term bull trout conservation needs.

*Skokomish Tribe*

The Skokomish Tribe has provided aquatic resource protection and restoration through a number of collaborative efforts on their reservation and other trust lands. The Tribe has been working regularly with landowners, local governments, and others to implement and fund voluntary efforts that provide conservation benefits to salmonids, including bull trout. These cooperative efforts include a variety of investigative assessments, restoration and enhancement projects, property acquisitions, and floodplain and river reach analysis.

*Muckleshoot Tribe*

The Muckleshoot Tribe has demonstrated a commitment to conservation, protection, and enhancement of fish resources both on and off the Muckleshoot Reservation. For example, the Tribe has designated all areas of the White River within its reservation, from "bluff to bluff," as a conservation zone. The Tribe has also been a leading participant in gathering data for Lake Washington and preparing a Lake Washington Recovery Plan.

*Jamestown S'Klallam Tribe*

The Jamestown S'Klallam Tribe has a record and reputation as a participant and leader in the planning and implementation of salmonid habitat protection and restoration efforts. The Tribe is dedicated to coordinating with NOAA Fisheries, the Service, and the State of Washington in the spirit of co-management, and is also involved in active consultation and in multiple programs to protect listed salmonid species.

*Hoh Tribe*

The Hoh Tribe has a forest management plan that demonstrates a commitment to protect bull trout habitat on or adjacent to its reservation. This plan designates major portions of the floodplain and riparian zones adjacent to streams on the current reservation landscape for conservancy, and is filed with the BIA.

(1) Benefits of Inclusion

The principal benefit of any designated critical habitat is that Federal activities will require section 7 consultations to ensure that adequate protection is provided to avoid adverse modification or destruction of critical habitat. This would provide an additional benefit beyond that provided under the jeopardy standard. In evaluating project effects on critical habitat, the Service must be satisfied that the PCEs and, therefore, the essential features of the critical habitat likely will not be altered or destroyed by proposed activities to the extent that the conservation of the affected species would be appreciably reduced. If critical habitat were designated in areas of unoccupied habitat or currently occupied areas subsequently become unoccupied, different outcomes or requirements are also likely since effects to unoccupied areas of critical habitat are not likely to trigger the need for a jeopardy analysis.

In *Sierra Club v. Fish and Wildlife Service*, 245 F.3d 434 (5th Cir. 2001), the Fifth Circuit Court of Appeals stated that the identification of habitat essential to the conservation of the species can provide informational benefits to the public, State and local governments, scientific organizations, and Federal agencies. The court also noted that critical habitat designation may focus and heighten public awareness of the plight of listed species and their habitats. Designation of critical habitat may contribute to

conservation efforts by other parties by delineating areas of high conservation value for the bull trout.

(2) Benefits of Exclusion

The benefits of excluding Indian lands from designation include: (1) The maintenance of effective, long-term working relationships to promote the conservation of bull trout while streamlining the consultation process; (2) the allowance for continued meaningful collaboration and cooperation in scientific work to learn more about the life history, habitat requirements, and conservation needs of the species; (3) to the extent designation would provide any additional protection and conservation of bull trout and its habitat that might otherwise not accrue to bull trout that depend on tribal streams, the costs associated with that protection would be avoided; and (4) exclusion would reduce administrative costs of section 7 consultation (as discussed previously, these costs are unlikely to lead to additional actual protection for bull trout habitat). We believe that fish, wildlife, and other natural resources on tribal lands may be better managed under tribal authorities, policies, and programs than through Federal regulation where tribal management addresses the conservation needs of listed species. Based on this philosophy, we believe that, in many cases, designation of tribal lands as critical habitat may provide little additional benefit to threatened and endangered species. In addition, such designation may be viewed by Tribes as unwarranted and an unwanted intrusion into tribal self-governance, thus compromising the government-to-government relationship essential to achieving our mutual goals of managing for healthy ecosystems upon which the viability of endangered and threatened species populations depend.

We believe that excluding these tribal lands from critical habitat will help maintain and improve our partnership relationship by recognizing the Tribes' positive contribution to bull trout conservation. It will also reduce the cost and logistical burden of regulatory oversight. We believe this recognition will provide other landowners with a positive incentive to undertake voluntary conservation activities on their lands, especially where there is no regulatory requirement to implement such actions. Tribal cooperation and support is required to prevent extirpations and extinction and promote the recovery of the bull trout due to the need to implement proactive conservation actions. Future conservation efforts will require the cooperation of these Tribes. Exclusion of their lands from this critical habitat designation will help us maintain and improve our partnership with them by formally recognizing the positive contributions these Tribes have made to bull trout recovery, and by streamlining or reducing unnecessary regulatory oversight. The Tribes have cooperated with us to implement proactive conservation measures. They have cooperated with Federal and State agencies, and private organizations, to implement voluntary conservation activities on their lands that have resulted in tangible conservation benefits. Where consistent with the discretion provided by the Act, we believe it is necessary to implement policies that provide positive incentives to voluntarily conserve natural resources and that remove or reduce disincentives to conservation. Thus, we believe it is essential for the recovery of bull trout to build on continued conservation activities with these Tribes, to provide positive incentives implementing voluntary conservation activities, and to respect tribal concerns about incurring incidental regulatory or economic impacts.

(3) Benefits of Exclusion Outweigh benefits of Inclusion

Based on the above considerations and consistent with the direction provided in section 4(b)(2) of the Act, the Service has determined that the benefits of excluding the above tribal lands outweigh the benefits of including them as critical habitat. This conclusion is based on the following factors. It is possible, although unlikely, that a Federal action could be proposed that was likely to destroy or adversely modify critical habitat within areas subject to tribal management. If such a project were to be proposed, any action that would be likely to destroy or adversely modify critical habitat would likely also jeopardize the continued existence of the species because of the specific way in which jeopardy and adverse modification are analyzed for bull trout. In addition, for the reasons discussed above, we believe the educational benefit of informing the public of the importance of this area to bull trout conservation would be limited because of previous and ongoing efforts. Therefore, we assign relatively little weight to the benefits of designating this area as critical habitat.

Because of the very small size of most of the Treaty Tribes of Western Washington reservation lands, we do not believe that inclusion of tribal lands and waters will significantly improve habitat protections for bull trout beyond what is already provided for in the Tribes' own protective policies and practices, discussed below.

In response to the proposed rule (75 FR 2270; January 14, 2010), the Tribes have demonstrated how they are already working to address the habitat needs of the species on these lands as well as in the larger ecosystem through conservation plans, and that they are fully aware of the conservation value of their lands. There are several benefits to excluding tribal lands. The longstanding and distinctive relationship between the Federal and tribal governments is defined by treaties, statutes, executive orders, judicial decisions, and agreements, which differentiate tribal governments from the other entities that deal with, or are affected by, the Federal government. This relationship has given rise to a special Federal trust responsibility involving the legal responsibilities and obligations of the United States toward Indian Tribes and the application of fiduciary standards of due care with respect to Indian lands, tribal trust resources, and the exercise of tribal rights. Under these authorities, Indian lands are recognized as unique and have been retained by Indian Tribes or have been set aside for tribal use. These lands are managed by Indian Tribes in accordance with tribal goals and objectives within the framework of applicable treaties and laws. In addition to the distinctive trust relationship, for the area that overlaps salmon and steelhead in the Northwest, there is a unique partnership between the Federal government and Indian Tribes regarding salmon management. The Treaty Tribes of Western Washington are regarded as ''co-managers'' of the salmon resource, along with Federal and State managers. This co-management relationship evolved as a result of numerous court decisions clarifying the Tribes' treaty right to take fish in their usual and accustomed places. While their co-management activities do not currently involve bull trout directly, actions undertaken on behalf of this partnership do in fact benefit bull trout. As such, this co-management process provides specific protection to tribal trust resources and bull trout.

Tribes have played a significant role in the development of habitat conservation plans, local watershed plans, or other habitat plans and have conducted numerous habitat restoration and research projects designed to protect or improve habitat for listed species. Additionally, the Tribes have stated in letters and at meetings that designation of Indian lands as critical habitat will undermine long-term,

working relationships and reduce the capacity of Tribes to participate at current levels in the many and varied forums across four States addressing ecosystem management and conservation of fisheries resources. The benefits of excluding Indian lands from designation include the combination of: (1) The furtherance of established national policies, our Federal trust obligations, and our deference to the Tribes in management of natural resources on their lands; (2) the maintenance of effective, long-term working relationships to promote species conservation on an ecosystem-wide basis; (3) the allowance for continued meaningful collaboration and cooperation in scientific work to learn more about the conservation needs of the species on an ecosystem-wide basis; (4) recognition and continuation of, the conservation benefits to bull trout from the Tribes' existing conservation programs; and (5) respect for tribal sovereignty over management of natural resources on Indian lands through established tribal natural resource programs.

We believe that the current co-manager process, along with the individual Tribe's efforts to conserve and manage bull trout habitat, is beneficial for the conservation of the bull trout and its critical habitat. Because these processes provide for coordinated, ongoing, focused action through a variety of forums, we find the benefits of this process to be greater than the benefits of applying the Act's section 7 consultation for critical habitat to Federal activities on Indian lands. We also believe that maintenance of our current relationship consistent with existing policies is an important benefit to continuation of our tribal trust responsibilities and relationship. Based upon our consultation with the Tribes identified above, we believe that designation of Indian lands as critical habitat would adversely impact our working relationship and the benefits resulting from this relationship.

In contrast, although the benefits of encouraging participation in tribal management plans, and, more broadly, helping to foster cooperative conservation are indirect, enthusiastic tribal participation and an atmosphere of cooperation are crucial to the long-term effectiveness of the endangered species program. Also, we have concluded that the Tribes' voluntary conservation efforts will provide tangible conservation benefits that will reduce the likelihood of extinction and increase the likelihood for bull trout recovery. Therefore, we assign great weight to these benefits of exclusion. To the extent that there are regulatory benefits of including tribal lands in critical habitat, there would be associated costs that could be avoided by excluding the area from designation. As we expect the regulatory benefits to be low, we likewise give weight to avoidance of those associated costs, as well as the additional transaction costs related to section 7 compliance.

Therefore, we have determined that the benefits of inclusion for the Tribes mentioned above are small, while the benefits of exclusion are more significant. Consequently, we conclude the benefits of exclusion outweigh the benefits of inclusion. We have reviewed the overall effect of the exclusion of the above-mentioned tribal lands for bull trout and their essential habitat. We have determined that the benefits of excluding these areas outweigh the benefits of including them in this critical habitat designation. Designation of critical habitat in these areas would most likely have a negative effect on the recovery and conservation of bull trout. Because we anticipate little if any conservation benefit to the bull trout will be foregone as a result of the removal of these tribal streams from critical habitat designation, these exclusions will not lead to the species' extinction. Therefore, on the basis of our weighing and balancing above, the Secretary is exercising his discretion under section 4(b)(2) of the Act to exclude tribal lands (identified in Table 12) from critical habitat designation for bull trout. This decision is also consistent with the June 5, 1997, Secretarial Order "*American Indian Tribal Rights, Federal - Tribal Trust Responsibilities and the Endangered Species Act*"(Secretarial Order 3206), and the November 6, 2000, Executive Order "*Consultation and Coordination With Indian Tribal Governments*", (Executive Order 13175).

The areas under management by the above Tribes that we are excluding from critical habitat are those waterbodies within reservation boundaries, and waterbodies that are adjacent to: (1) Lands held in trust by the United States for the benefit of any Indian Tribe; (2) lands held in trust by the United States for any Indian Tribe or individual subject to restrictions by the United States against alienation; (3) fee lands, either within or outside the reservation boundaries, owned by the tribal government; and (4) fee lands within the reservation boundaries owned by individual Indians. We have determined that these exclusions, together with the other exclusions described in this rule, will not result in extinction of the species.

TABLE 12.—TRIBAL NATION, CRITICAL HABITAT UNIT, AND STREAM/WATERBODY AFFECTED BY SECTION 4(B)(2) OF THE ACT EXCLUSION

| Tribal Nation | Critical Habitat Unit | Stream/waterbody name |
|---|---|---|
| Confederated Tribes of Warm Springs | Deschutes River Basin, Lower Mainstem Columbia and John Day River Basin | Deschutes River, Shitike Creek, Jefferson Creek, Warm Springs River, Whitewater River, Metolius River (and small tributaries), John Day River, portion of Lake Billy Chinook, Upper Mainstem John Day River, Middle Fork John Day River, Columbia River |
| Blackfeet Nation | Saint Mary River Basin | Saint Mary River |
| Yakama Nation | Yakama and Lower Columbia River Basins | Yakima River, Ahtanum Creek, South Fork Ahtanum Creek, West Fork Klikitat River, Little Muddy Creek, Crawford Creek, Clearwater Creek, Trappers Creek, Fish Lake Stream, Unnamed tributary that meets Fish Lake Stream, and Two Lakes Stream |
| Hoh Tribe | Olympic Peninsula | Hoh River and Pacific Coast nearshore |
| Jamestown S'Klallam Tribe | Olympic Peninsula | Dungeness River |

TABLE 12.—TRIBAL NATION, CRITICAL HABITAT UNIT, AND STREAM/WATERBODY AFFECTED BY SECTION 4(B)(2) OF THE ACT EXCLUSION—Continued

| Tribal Nation | Critical Habitat Unit | Stream/waterbody name |
|---|---|---|
| Lower Elwha Klallam Tribe | Olympic Peninsula | Elwha River and Strait of Juan De Fuca nearshore |
| Quileute Tribe | Olympic Peninsula | Pacific Coast nearshore |
| Skokomish Tribe | Olympic Peninsula | Skokomish River, Nalley Slough, Skobob Creek, and Hood Canal nearshore |
| Lummi Nation | Puget Sound | Nooksack River and Puget Sound nearshore |
| Muckleshoot Tribe | Puget Sound | White River |
| Nooksack Tribe | Puget Sound | Nooksack River, Fishtrap Creek, Anderson Creek, and Smith Creek |
| Puyallup Tribe | Puget Sound | Puyallup River and Puget Sound nearshore |
| Stillaguamish Tribe | Puget Sound | Stillaguamish River and Pilchuck Creek |
| Swinomish Tribe | Puget Sound | Swinomish Channel and Puget Sound nearshore |
| Tulalip Tribes | Puget Sound | Puget Sound nearshore |
| Quinault Tribe | Olympic Peninsula | Quinault River, lower Quinault River tributaries, Lower Queets River, the Salmon River (including the Middle and South Fork Salmon Rivers), portions of the Raft River, and portions of the Moclips River. |
| Confederated Tribes of the Umatilla | Umatilla River, Walla Walla Basin, Columbia Mainstem | Umatilla River Basin, Walla Walla Basin, Columbia Mainstem |

*Identification of Specific Geographic Areas Excluded Under Section 4(b)(2) of the Act*

Publishing the geospatial coordinates for each portion of a particular waterbody excluded under section 4(b)(2) of the Act would be cost-prohibitive, given the wide range of the species and the number of waterbodies affected. However, each area excluded is described by narrative in the *Application of Section 4(b)(2) of the Act* section. We have also correlated each applicable exclusion with its relevant critical habitat unit map in this final rule. Information to aid in identifying the geographic extent of each waterbody excluded under section 4(b)(2) of the Act is available at *http://www.fws.gov/pacific/bulltrout/.*

*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 (DEA), which we made available for public review concurrent with the proposed rule on January 14, 2010 (75 FR 2270). We accepted comments on the DEA until March 15, 2010. We then reopened the comments period on the proposal from March 23, 2010, to April 5, 2010 (75 FR 13715, March 23, 2010). Following the close of the comment period, a final analysis of the potential economic effects of the designation was developed taking into consideration the public comments and any new information.

The intent of the final economic analysis (FEA) is to quantify the economic impacts of all potential conservation efforts for the bull trout. 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 FEA 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 FEA 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. Decisionmakers can use this information to assess whether the effects of the designation might unduly burden a particular group or economic sector. Finally, the FEA looks retrospectively at costs that have been incurred since 1998, when we listed the bull trout as threatened under the Act, 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 FEA quantifies economic impacts of bull trout conservation efforts associated with the following categories of activity: water management, activities that impact water quality, dredging activities and other impacts (e.g., bridge replacement, management plans, and natural gas pipelines). We have considered whether this designation would result in a disproportionate or significant economic effect to any potentially affected entities. Based on our FEA, we have determined that the incremental economic effects associated with the revised designation of critical habitat for the bull trout will not have a significant effect, and therefore, we are not excluding any areas based on economic impacts. A copy of the FEA with supporting documents may be obtained by contacting the Idaho Fish and Wildlife Field Office (see **ADDRESSES**) or for downloading from the Internet at *http://www.regulations.gov.*

**Required Determinations**

*Regulatory Planning and Review—Executive Order 12866*

Executive Order 12866 requires Federal agencies to submit proposed and final significant rules to the Office of Management and Budget (OMB) prior to publication in the FR. The Executive Order defines a rule as significant if it meets one of 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) Whetherthe 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.

If the rule meets criteria (1) above it is called an "economically significant" rule and additional requirements apply. It has been determined that this rule is "significant" but not "economically significant." It was submitted to OMB for review prior to promulgation.

*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 (small businesses, small organizations, and small government jurisdictions). However, no regulatory flexibility analysis is required if the head of an agency certifies the rule will not have a significant economic impact on a substantial number of small entities. The SBREFA amended the RFA to require Federal agencies to provide a certification statement of the factual basis for certifying that the rule will not have a significant economic impact on a substantial number of small entities. In this final rule, we are certifying that the critical habitat designation for the bull trout 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. 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 revised critical habitat designation for bull trout would significantly affect a substantial number of small entities, we considered the number of small entities affected within particular types of economic activities (e.g., dams, agriculture and agricultural diversions, grazing, development, forest management, roads, and mining). 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.

Under the Act, 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 the bull trout. 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 *Adverse Modification Standard* section).

In our final economic analysis of the critical habitat designation, we evaluated the potential economic effects on small business entities resulting from implementation of conservation actions related to the designation of critical habitat for the bull trout. This analysis estimated prospective economic impacts due to the implementation of bull trout conservation efforts in eight categories (dams, agriculture and agricultural diversions, grazing, development, forest management, roads, mining, and "other"). The following is a summary of information contained in the final economic analysis.

To estimate the number of businesses, the economic analysis presumes business locations are distributed geographically in the same pattern that the human population is distributed (i.e., more densely populated areas will contain proportionally more business than less populated areas). To derive an estimate of the number of small entities falling within the designation, data on factors such as the size and annual sales of businesses in the area as collected by Dun & Bradstreet were reviewed. These data are available on a county-wide basis. Because counties may include

areas that are not part of the critical habitat designation, the number of small entities within the county was scaled by the percentage of the county's population living within the critical habitat boundaries. Of the potentially affected entities, 97 percent are classified as likely to be "small."

The number of potentially affected small entities was considered under two different scenarios to provide for uncertainty regarding the number of small entities affected. Under Scenario 1, the estimated number of small entities within areas affected by the designation (N=23,800) assumes that incremental impacts are distributed evenly across all entities in each affected industry. Under this scenario, a small entity may bear costs up to $4,050, representing between <0.01 and 0.03 percent of average revenues, depending on the industry. Scenario 2 assumed costs of each anticipated future consultation are borne by a distinct small business within areas affected by the designation (N=728). Under this scenario, each small entity may bear costs of between $455 and $17,000, representing between 0.01 and 0.56 percent of average annual revenues, depending on the industry. Total annualized impacts to small entities are estimated to be $3.6 million, or approximately 51 percent of the total incremental impacts anticipated as a result of this rule.

In summary, we have 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 business entities. Therefore, we are certifying that the designation of critical habitat for the bull trout will not have a significant economic impact on a substantial number of small entities.

*Energy Supply, Distribution, or Use—Executive Order 13211*

Under Executive Order 13211 (E.O. 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use), Federal agencies must 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 the bull trout conservation activities within critical habitat are not expected. As such, the designation of critical habitat is not expected to significantly affect energy supplies, distribution, or use. Therefore, this action is not a significant energy action, and no Statement of Energy Effects is required.

*Unfunded Mandates Reform Act (2 U.S.C. 1501 et seq.)*

In accordance with the Unfunded Mandates Reform Act (2 U.S.C. 1501 *et seq.*), we make the following findings:

(1) This rule will not produce a Federal mandate. In general, a Federal mandate is a provision in legislation, statute, or regulation that would impose an enforceable duty upon State, local, or tribal governments, or the private sector, and includes both "Federal intergovernmental mandates" and "Federal private sector mandates." These terms are defined in 2 U.S.C. 658(5)–(7). "Federal intergovernmental mandate" includes a regulation that "would impose an enforceable duty upon State, local, or [T]ribal governments," with two exceptions. It excludes "a condition of Federal assistance." It also excludes "a duty arising from participation in a voluntary Federal program," unless the regulation "relates to a then-existing Federal program under which $500,000,000 or more is provided annually to State, local, and tribal governments under entitlement authority," if the provision would "increase the stringency of conditions of assistance" or "place caps upon, or otherwise decrease, the Federal Government's responsibility to provide funding," and the State, local, or tribal governments "lack authority" to adjust accordingly. At the time of enactment, these entitlement programs were: Medicaid; Aid to Families with Dependent Children work programs; Child Nutrition; Food Stamps; Social Services Block Grants; Vocational Rehabilitation State Grants; Foster Care, Adoption Assistance, and Independent Living; Family Support Welfare Services; and Child Support Enforcement. "Federal private sector mandate" includes a regulation that "would impose an enforceable duty upon the private sector, except (i) a condition of Federal assistance, or (ii) a duty arising from participation in a voluntary Federal program."

The designation of critical habitat does not impose a legally binding duty on non-Federal Government entities or private parties. Under the Act, the only regulatory effect is that Federal agencies must ensure that their actions do not destroy or adversely modify critical habitat under section 7 of the Act. While non-Federal entities that receive Federal funding, assistance, or permits, or that otherwise require approval or authorization from a Federal agency for an action, may be indirectly impacted by the designation of critical habitat, the legally binding duty to avoid destruction or adverse modification of critical habitat rests squarely on the Federal agency. Furthermore, to the extent that non-Federal entities are indirectly impacted because they receive Federal assistance or participate in a voluntary Federal aid program, the Unfunded Mandates Reform Act would not apply, nor would critical habitat shift the costs of the large entitlement programs listed above onto State governments.

(2) We do not believe that this rule will significantly or uniquely affect small governments, because it will not produce a Federal mandate of $100 million or greater in any year; that is, it is not a significant regulatory action under the Unfunded Mandates Reform Act. The designation of critical habitat imposes no obligations on State or local governments. By definition, Federal agencies are not considered small entities, although the activities they fund or permit may be proposed or carried out by small entities. As such, a Small Government Agency Plan is not required.

*Takings—Executive Order 12630*

In accordance with E.O. 12630 (Government Actions and Interference with Constitutionally Protected Private Property Rights), we have analyzed the potential takings implications of designating revised critical habitat for the bull trout in a takings implications assessment. Critical habitat designation does not affect landowner actions that do not require Federal funding or permits, nor does it preclude development of habitat conservation programs or issuance of incidental take permits to permit actions that do require Federal funding or permits to go forward. The takings implications assessment concludes that this designation of critical habitat for the bull trout 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 and Department of Commerce policy, we requested information from,

and coordinated development of this critical habitat designation with, appropriate State resource agencies in Oregon. We received comments from the State of Oregon and the Oregon Department of Fish and Wildlife, which have been addressed in the **Summary of Comments and Recommendations** section of the rule. The designation of critical habitat in areas currently occupied by the bull trout may impose nominal additional regulatory restrictions to those currently in place and, therefore, may have little incremental impact on State and local governments and their activities. The designation may have some benefit to these governments, in that the areas that contain the physical or biological features essential to the conservation of the species are more clearly defined, and the PCEs of the habitat necessary to the conservation of the species are specifically identified. This information does not alter where and what federally sponsored activities may occur. However, it may assist local governments in long-range planning (rather than having them wait for case-by-case section 7 consultations to occur).

*Civil Justice Reform—Executive Order 12988*

In accordance with E.O. 12988 (Civil Justice Reform), the regulation meets the applicable standards set forth in sections 3(a) and 3(b)(2) of the Order. We are designating critical habitat in accordance with the provisions of the Act. This final rule uses standard property descriptions and identifies the physical or biological features essential to the conservation of the subspecies within the designated areas to assist the public in understanding the habitat needs of the bull trout.

*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 U.S. 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 U.S. Court of Appeals for the Ninth Circuit (Douglas County v. Babbitt, 48 F.3d 1495 (9th Cir. 1995), cert. denied 516 U.S. 1042 (1996).

*Government-to-Government Relationship With Tribes*

In accordance with the President's memorandum of April 29, 1994, Government-to-Government Relations with Native American Tribal Governments (59 FR 22951), E.O. 13175, and the Department of the Interior's manual at 512 DM 2, we readily acknowledge our responsibility to communicate meaningfully with recognized Federal Tribes on a government-to-government basis. In accordance with Secretarial Order 3206 of June 5, 1997, American Indian Tribal Rights, Federal-Tribal Trust Responsibilities, and the Endangered Species Act, we readily acknowledge our responsibilities to work directly with Tribes in developing programs for healthy ecosystems, to acknowledge that tribal lands are not subject to the same controls as Federal public lands, to remain sensitive to Indian culture, and to make information available to Tribes. There are tribal lands that were occupied by the species at the time of listing, and remain occupied by the species, that contain the features essential for the conservation of bull trout. However, as discussed in the Tribal Lands–Exclusions Under Section 4(b)(2) of the Act section, we have determined that maintaining our important conservation partnership with the Tribes toward the continued implementation of their tribal management and conservation plans provides greater conservation benefit than would the designation of critical habitat on waters within or adjacent to tribal lands. Table 12 identifies the waters within or adjacent to tribal lands that were excluded from critical habitat designation under section 4(b)(2) of the Act.

**References Cited**

A complete list of all references cited is available on the Internet at *http://www.regulations.gov* and upon request from the Idaho Fish and Wildlife Office (see **ADDRESSES**).

**Authors**

The primary authors of this rulemaking are the staff members of the Idaho Fish and Wildlife Office.

**List of Subjects in 50 CFR Part 17**

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, Transportation.

Regulation Promulgation

■ Accordingly, we amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, as set forth below:

## PART 17–[AMENDED]

■ 1. The authority citation for part 17 continues to read as follows:

**Authority:** 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500; unless otherwise noted.

■ 2. Amend § 17.95(e) by revising critical habitat for "Bull Trout (*Salvelinus confluentus*)" to read as follows:

**§ 17.95 Critical habitat—fish and wildlife.**

* * * * *

(e) Fishes.

* * * * *

Bull Trout (*Salvelinus confluentus*)

(1) *Locations of critical habitat.* Critical habitat units are depicted in the following States and counties on the maps and as described below:

| State | Counties |
|---|---|
| (i) Idaho | Adams, Benewah, Blaine, Boise, Bonner, Boundary, Butte, Camas, Custer, Elmore, Gem, Idaho, Kootenai, Lemhi, Lewis, Nez Perce, Owyhee, Shoshone, Valley, Washington |
| (ii) Montana | Deer Lodge, Flathead, Glacier, Granite, Lake, Lewis and Clark, Lincoln, Mineral, Missoula, Powell, Ravalli, Sanders |
| (iii) Nevada | Elko |

| State | Counties |
|---|---|
| (iv) Oregon | Baker, Clatsop, Columbia, Deschutes, Gilliam, Grant, Harney, Hood River, Jefferson, Klamath, Lake, Lane, Linn, Malheur, Morrow, Multnomah, Sherman, Umatilla, Union, Wallowa, Wasco, Wheeler |
| (v) Washington | Asotin, Benton, Chelan, Clallam, Clark, Columbia, Cowlitz, Garfield, Grant, Grays Harbor, Island, Jefferson, King, Kittitas, Klickitat, Mason, Okanogan, Pend Oreille, Pierce, Skagit, Skamania, Snohomish, Stevens, Thurston, Wahkiakum, Walla Walla, Whatcom, Whitman, Yakima |

(2) *Topographic features included in the critical habitat designation.* Critical habitat includes the stream channels within the designated stream reaches; designated lakes and reservoirs; and inshore portions of marine nearshore areas, including tidally influenced freshwater heads of estuaries indicated on the maps beginning with paragraph (e)(7) of this entry.

(i) Critical habitat includes the stream channels within the designated stream reaches and a lateral extent as defined by the bankfull elevation on one bank to the bankfull elevation on the opposite bank. Bankfull elevation is the level at which water begins to leave the channel and move into the floodplain and is reached at a discharge that generally has a recurrence interval of 1 to 2 years on the annual flood series. If bankfull elevation is not evident on either bank, the ordinary high-water line must be used to determine the lateral extent of critical habitat. The lateral extent of designated lakes is defined by the perimeter of the waterbody as mapped on standard 1:24,000 scale topographic maps.

(ii) Critical habitat includes the inshore extent of critical habitat for marine nearshore areas (the mean higher high-water (MHHW) line), including the uppermost reach of the saltwater wedge within tidally influenced freshwater heads of estuaries. The MHHW line refers to the average of all the higher high-water heights of the two daily tidal levels. Adjacent shoreline riparian areas, bluffs, and uplands are not designated as critical habitat. However, it should be recognized that the quality of marine habitat along shorelines is intrinsically related to the character of these adjacent features, and human activities that occur outside of the MHHW line can have major effects on the physical and biological features of the marine environment. The offshore extent of critical habitat for marine nearshore areas is based on the extent of the photic zone, which is the layer of water in which organisms are exposed to light. Critical habitat extends offshore to the depth of 10 meters (m) (33 feet (ft)) relative to the mean low low-water (MLLW) line (average of all the lower low-water heights of the two daily tidal levels). This equates to the average depth of the photic zone and is consistent with the offshore extent of the nearshore habitat identified by the national Oceanic and Atmospheric Administration in the National Tidal Datum 1983 through 2001. This area between the MHHW line and minus 10 m MLLW line is considered the habitat most consistently used by bull trout in marine waters based on known use, forage fish availability, and ongoing migration studies and captures geological and ecological processes important to maintaining these habitats. This area contains essential foraging habitat and migration corridors such as estuaries, bays, inlets, shallow subtidal areas, and intertidal flats.

(3) *The primary constituent elements (PCEs) of critical habitat.* Within the critical habitat, the PCEs for bull trout are those habitat components that are essential for the primary biological needs of foraging, reproducing, rearing of young, dispersal, genetic exchange, or sheltering. The PCEs are as follows:

(i) Springs, seeps, groundwater sources, and subsurface water connectivity (hyporheic flows) to contribute to water quality and quantity and provide thermal refugia.

(ii) Migration habitats with minimal physical, biological, or water quality impediments between spawning, rearing, overwintering, and freshwater and marine foraging habitats, including but not limited to permanent, partial, intermittent, or seasonal barriers.

(iii) An abundant food base, including terrestrial organisms of riparian origin, aquatic macroinvertebrates, and forage fish.

(iv) Complex river, stream, lake, reservoir, and marine shoreline aquatic environments, and processes that establish and maintain these aquatic environments, with features such as large wood, side channels, pools, undercut banks and unembedded substrates, to provide a variety of depths, gradients, velocities, and structure.

(v) Water temperatures ranging from 2 to 15 degrees Celsius (°C) (36 to 59 degrees Fahrenheit (°F)), with adequate thermal refugia available for temperatures that exceed the upper end of this range. Specific temperatures within this range will depend on bull trout life-history stage and form; geography; elevation; diurnal and seasonal variation; shading, such as that provided by riparian habitat; streamflow; and local groundwater influence.

(vi) In spawning and rearing areas, substrate of sufficient amount, size, and composition to ensure success of egg and embryo overwinter survival, fry emergence, and young-of-the-year and juvenile survival. A minimal amount of fine sediment, generally ranging in size from silt to coarse sand, embedded in larger substrates, is characteristic of these conditions. The size and amounts of fine sediment suitable to bull trout will likely vary from system to system.

(vii) A natural hydrograph, including peak, high, low, and base flows within historic and seasonal ranges or, if flows are controlled, minimal flow departure from a natural hydrograph.

(viii) Sufficient water quality and quantity such that normal reproduction, growth, and survival are not inhibited.

(ix) Sufficiently low levels of occurrence of nonnative predatory (e.g., lake trout, walleye, northern pike, smallmouth bass); interbreeding (e.g., brook trout); or competing (e.g., brown trout) species that, if present, are adequately temporally and spatially isolated from bull trout.

(4) Critical habitat does not include manmade structures (including, but not limited to, buildings, aqueducts, docks, seawalls, pipelines, roads, runways, or other structures or paved areas) and the land or waterway on which they are located that exist within the legal boundaries on the effective date of this rule.

(5) *Exclusions.* Each excluded area is identified in the relevant Critical Habitat Unit text below, as identified in paragraphs (e)(8) through (e)(41) of this entry. Critical habitat does not include:

(i) Waters adjacent to non-Federal lands covered by the following legally operative incidental take permits for habitat conservation plans (HCPs) issued under section 10(a)(1)(B) of the Endangered Species Act of 1973, as amended (Act), in which bull trout is a covered species on or before the publication of this final rule: Cedar River Watershed HCP, Green Diamond HCP, Washington Department of Natural

Resources HCP, Washington Forest Practices HCP, Plum Creek Central Cascades HCP, Plum Creek Native Fish HCP, and Stimpson Native Fish HCP;

(ii) Waters within or adjacent to lands subject to certain tribal management plans; or

(iii) Waters where impacts to national security have been identified.

(6) *Critical habitat map units.* Data layers defining map units were created using U.S. Geological Survey (USGS) Hydrologic Unit Code map (HUCs) at a scale of 1:250,000 down to the 4th level cataloging unit. In some cases, 5th and 6th level HUCs were also used and some finer scale watersheds developed using USGS 10-meter Digital Elevation Model and 1:24,000 scale hydrography layers. The marine boundaries for the Puget Sound and Olympic Peninsula critical habitat unit were based on Washington Department of Natural Resources 1:24,000 scale county boundaries and HUCs.

(7) *Note:* Index map for critical habitat units for the bull trout follows:

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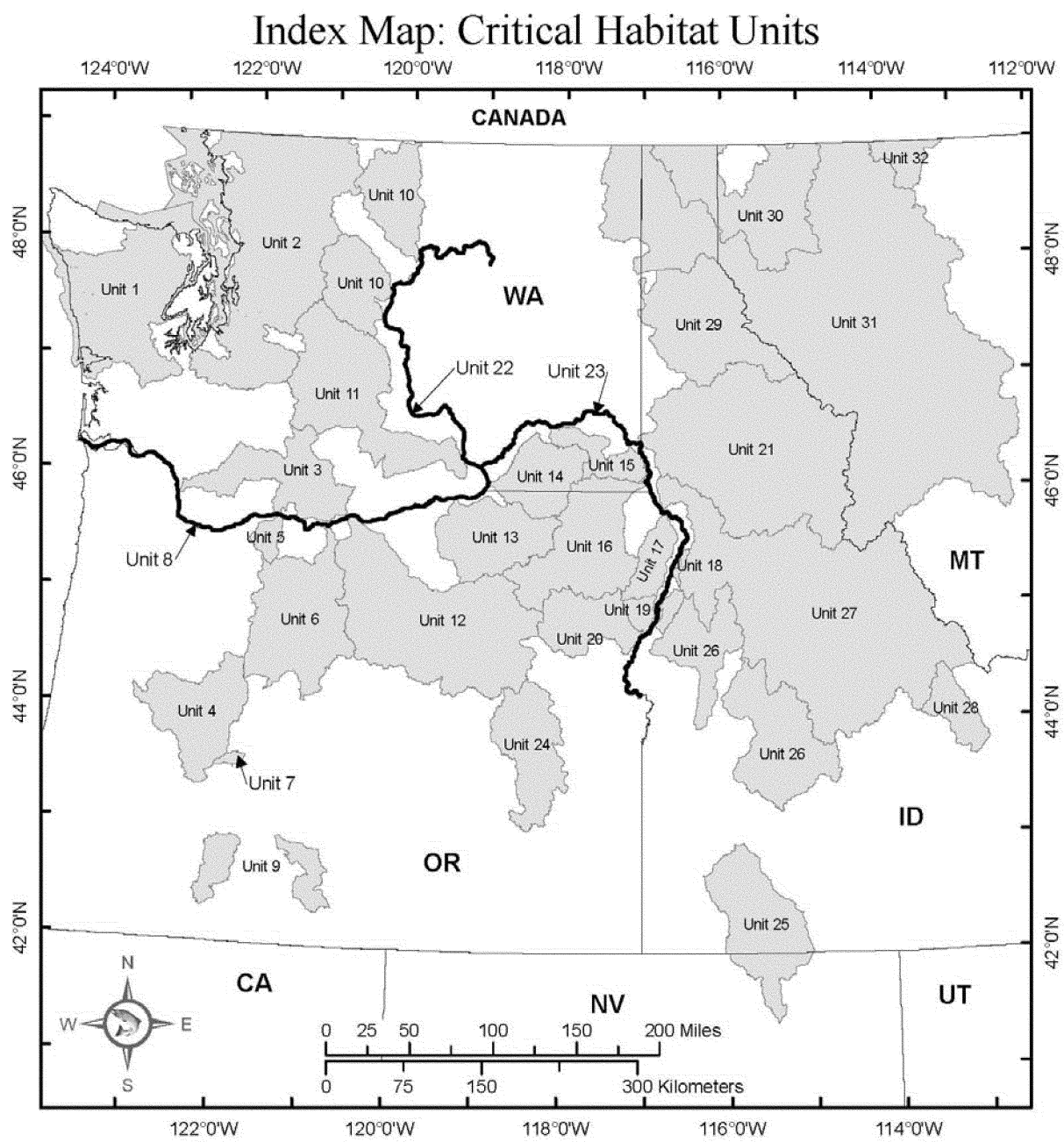


| | | | | | |
|---|---|---|---|---|---|
| 1 | Olympic Peninsula | 11 | Yakima River | 22 | Mainstem Upper Columbia River |
| 2 | Puget Sound | 12 | John Day River | 23 | Mainstem Snake River |
| 3 | Lower Columbia River Basins | 13 | Umatilla River | 24 | Malheur River Basin |
| 4 | Upper Willamette River | 14 | Walla Walla River Basin | 25 | Jarbidge River |
| 5 | Hood River | 15 | Lower Snake River Basins | 26 | Southwest Idaho River Basins |
| 6 | Lower Deschutes River | 16 | Grande Ronde River | 27 | Salmon River Basin |
| 7 | Odell Lake | 17 | Imnaha River | 28 | Little Lost River |
| 8 | Mainstem Lower Columbia River | 18 | Sheep / Granite Creeks | 29 | Coeur d'Alene River Basin |
| 9 | Klamath River Basin | 19 | Hells Canyon Complex | 30 | Kootenai River Basin |
| 10 | Upper Columbia River Basins | 20 | Powder River Basin | 31 | Clark Fork River Basin |
| | | 21 | Clearwater River | 32 | Saint Mary River Basin |

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(8) Unit 1: Olympic Peninsula

(i) This unit consists of 748.7 km (465.2 mi) of streams, 529.2 km (328.8 mi) of marine shoreline, and 3,064 ha (7,572 ac) of lakes and reservoirs. The unit is located in northwestern Washington.

(ii) Individual waterbodies in the unit are bounded by the following coordinates:

| Waterbody Name | Stream Begin Point or Lake Center Latitude | Stream Begin Point or Lake Center Longitude | Stream End Point Latitude | Stream End Point Longitude |
|---|---|---|---|---|
| Alta Creek | 47.685 | -123.737 | 47.698 | -123.756 |
| Big Creek | 47.566 | -123.681 | 47.518 | -123.774 |
| Bob Creek | 47.696 | -123.853 | 47.689 | -123.856 |
| Boulder Creek | 47.979 | -123.613 | 47.983 | -123.601 |
| Brown Creek | 47.455 | -123.260 | 47.411 | -123.319 |
| Buckinghorse Creek | 47.739 | -123.485 | 47.746 | -123.483 |
| Cameron Creek | 47.916 | -123.243 | 47.912 | -123.255 |
| Canyon Creek | 47.954 | -123.247 | 48.025 | -123.137 |
| Cat Creek | 47.946 | -123.644 | 47.973 | -123.593 |
| Cedar Creek | 47.440 | -123.405 | 47.443 | -123.403 |
| Cedar Creek | 47.717 | -124.336 | 47.712 | -124.416 |
| Chehalis River | 46.819 | -123.253 | 46.966 | -123.547 |
| Church Creek | 47.460 | -123.457 | 47.461 | -123.451 |
| Clearwater River | 47.628 | -124.276 | 47.628 | -124.276 |
| Clide Creek | 47.888 | -123.799 | 47.871 | -123.798 |
| Cook Creek | 47.358 | -123.997 | 47.368 | -124.032 |
| Copalis River | 47.137 | -124.159 | 47.138 | -124.154 |
| Cougar Creek | 47.862 | -123.860 | 47.867 | -123.854 |
| Delabarre Creek | 47.726 | -123.529 | 47.735 | -123.527 |
| Dungeness River | 47.941 | -123.093 | 48.152 | -123.128 |
| East Twin Creek | 47.841 | -123.988 | 47.833 | -123.991 |
| Elk Creek | 47.510 | -123.345 | 47.515 | -123.331 |
| Elwha River | 47.771 | -123.582 | 48.147 | -123.566 |
| Ennis Creek | 48.053 | -123.412 | 48.117 | -123.405 |
| Fire Creek | 47.601 | -123.523 | 47.598 | -123.526 |
| Fitzhenry Creek | 47.964 | -123.589 | 47.967 | -123.589 |
| Godkin Creek | 47.752 | -123.452 | 47.760 | -123.465 |
| Gold Creek | 47.941 | -123.083 | 47.941 | -123.093 |
| Goldie River | 47.760 | -123.522 | 47.840 | -123.470 |
| Goodman Creek | 47.834 | -124.339 | 47.825 | -124.513 |
| Graves Creek | 47.569 | -123.563 | 47.574 | -123.572 |
| Gray Wolf River | 47.916 | -123.243 | 47.977 | -123.112 |
| Grays Harbor Marine | 46.926 | -124.180 | 46.906 | -124.139 |
| Griff Creek | 48.016 | -123.593 | 48.023 | -123.595 |
| Haggerty Creek | 47.952 | -123.575 | 47.956 | -123.576 |
| Harlow Creek | 47.700 | -123.877 | 47.685 | -123.889 |
| Hayes River | 47.803 | -123.430 | 47.808 | -123.454 |
| Hee Haw Creek | 47.701 | -123.663 | 47.737 | -123.691 |
| Hee Hee Creek | 47.709 | -123.734 | 47.712 | -123.739 |
| Hoh Creek | 47.883 | -123.751 | 47.877 | -123.754 |
| Hoh River | 47.737 | -124.366 | 47.880 | -123.729 |
| Hood Canal Marine | 47.434 | -122.842 | 47.684 | -122.802 |
| Hughes Creek | 48.026 | -123.599 | 48.025 | -123.595 |
| Humptulips River | 47.048 | -124.046 | 47.231 | -123.977 |
| Hurd Creek | 48.124 | -123.144 | 48.118 | -123.143 |
| Hurricane Creek | 47.976 | -123.587 | 47.975 | -123.594 |
| Idaho Creek | 47.947 | -123.538 | 47.945 | -123.544 |
| Ignar Creek | 47.637 | -123.430 | 47.639 | -123.433 |
| Irely Creek | 47.565 | -123.677 | 47.565 | -123.680 |
| Irely Lake | 47.565 | -123.674 | | |
| Joe Creek | 47.217 | -124.154 | 47.206 | -124.204 |
| Kalaloch Creek | 47.637 | -124.361 | 47.607 | -124.375 |
| Lake Cushman | 47.470 | -123.255 | | |
| Lebar Creek | 47.427 | -123.320 | 47.417 | -123.330 |
| Leitha Creek | 47.762 | -123.452 | 47.769 | -123.460 |
| Lillian River | 47.944 | -123.500 | 47.931 | -123.528 |
| Little River | 48.061 | -123.519 | 48.063 | -123.578 |
| Long Creek | 47.926 | -123.558 | 47.951 | -123.561 |
| Lost River | 47.859 | -123.458 | 47.862 | -123.468 |
| Madison Creek | 48.044 | -123.580 | 48.042 | -123.591 |
| Matheny Creek | 47.543 | -123.837 | 47.576 | -124.115 |
| Matriotti Creek | 48.133 | -123.161 | 48.136 | -123.141 |
| McCartney Creek | 47.879 | -123.466 | 47.878 | -123.471 |
| McTaggert Creek | 47.409 | -123.240 | 47.363 | -123.235 |
| Moclips River | 47.260 | -124.124 | 47.248 | -124.220 |
| Morse Creek | 48.063 | -123.347 | 48.117 | -123.351 |
| Mosquito Creek | 47.786 | -124.383 | 47.798 | -124.482 |
| Mount Tom Creek | 47.819 | -123.821 | 47.868 | -123.888 |
| Nalley Slough | 47.334 | -123.132 | 47.328 | -123.131 |
| Nolan Creek | 47.743 | -124.202 | 47.751 | -124.344 |

| Waterbody Name | Stream Begin Point or Lake Center Latitude | Stream Begin Point or Lake Center Longitude | Stream End Point Latitude | Stream End Point Longitude |
|---|---|---|---|---|
| Noname Creek | 47.629 | -123.456 | 47.626 | -123.452 |
| North Fork Quinault River | 47.582 | -123.645 | 47.638 | -123.646 |
| North Fork Skokomish River | 47.355 | -123.235 | 47.506 | -123.318 |
| OGS Creek | 47.879 | -123.768 | 47.878 | -123.769 |
| O'Neil Creek | 47.610 | -123.464 | 47.616 | -123.472 |
| Owl Creek | 47.780 | -124.039 | 47.805 | -124.079 |
| Pacific Coast Marine | 48.003 | -124.680 | 46.926 | -124.180 |
| Paradise Creek | 47.699 | -123.801 | 47.694 | -123.813 |
| Pine Creek | 47.442 | -123.430 | 47.446 | -123.417 |
| Prescott Creek | 47.904 | -123.487 | 47.903 | -123.491 |
| Purdy Creek | 47.302 | -123.182 | 47.307 | -123.161 |
| Pyrites Creek | 47.644 | -123.436 | 47.639 | -123.433 |
| Queets River | 47.541 | -124.335 | 47.735 | -123.696 |
| Quinault Lake | 47.475 | -123.869 | | |
| Quinault River | 47.391 | -124.045 | 47.533 | -123.744 |
| Raft River | 47.449 | -124.220 | 47.458 | -124.326 |
| Richert Spring | 47.321 | -123.219 | 47.320 | -123.225 |
| Rustler Creek | 47.629 | -123.569 | 47.617 | -123.617 |
| Salmon River | 47.524 | -124.041 | 47.556 | -124.220 |
| Sams River | 47.604 | -123.853 | 47.624 | -124.013 |
| Satsop River | 47.015 | -123.510 | 47.023 | -123.509 |
| Sege Creek | 47.988 | -123.597 | 47.987 | -123.604 |
| Siebert Creek | 48.049 | -123.293 | 48.121 | -123.290 |
| Skobob Creek | 47.327 | -123.175 | 47.328 | -123.132 |
| Skokomish River | 47.315 | -123.238 | 47.315 | -123.229 |
| Slate Creek | 47.529 | -123.320 | 47.521 | -123.336 |
| Slate Creek | 47.749 | -123.498 | 47.744 | -123.491 |
| Slide Creek | 47.883 | -123.736 | 47.875 | -123.748 |
| Snider Creek | 47.846 | -123.971 | 47.842 | -123.968 |
| South Fork Hoh River | 47.764 | -123.786 | 47.777 | -123.908 |
| South Fork Skokomish River | 47.315 | -123.247 | 47.425 | -123.354 |
| Steamboat Creek | 47.688 | -124.350 | 47.678 | -124.404 |
| Stony Creek | 47.871 | -123.464 | 47.871 | -123.469 |
| Strait of Juan de Fuca Marine | 48.103 | -122.885 | 48.217 | -124.102 |
| Taft Creek | 47.866 | -123.967 | 47.858 | -123.942 |
| Tshletshy Creek | 47.606 | -123.741 | 47.666 | -123.925 |
| Twin Creek | 47.832 | -123.995 | 47.831 | -123.988 |
| Unnamed trib. (#0100) | 47.340 | -123.246 | 47.335 | -123.242 |
| Unnamed trib. (#0509) | 47.844 | -123.939 | 47.830 | -123.982 |
| Unnamed trib. (#0527) | 47.874 | -123.821 | 47.868 | -123.817 |
| Unnamed trib. (#0542) | 47.887 | -123.719 | 47.883 | -123.719 |
| Valley Creek | 48.123 | -123.438 | 48.107 | -123.452 |
| Vance Creek | 47.327 | -123.299 | 47.327 | -123.299 |
| Vance Creek Remenant Channel | 47.315 | -123.257 | 47.315 | -123.238 |
| West Fork Satsop River | 47.360 | -123.566 | 47.035 | -123.526 |
| Windfall Creek | 47.914 | -123.492 | 47.912 | -123.495 |
| Winfield Creek | 47.783 | -124.144 | 47.810 | -124.233 |
| Wishkah River | 47.257 | -123.715 | 47.257 | -123.715 |
| Wolf Creek | 47.974 | -123.586 | 47.974 | -123.593 |
| Wynoochee River | 47.160 | -123.650 | 47.360 | -123.637 |

(iii) Waterbodies associated with the following tribal lands, habitat conservation plans (HCPs), or U.S. Navy training areas totaling 553.9 km (343.9 mi) of streams and 144.6 km (89.9 mi) of marine shoreline have been excluded from critical habitat designation under section 4(b)(2) of the Act in this unit:

(A) Waterbodies within or adjacent to the open water training and testing areas of the Dabob Bay Military Operating Area and areas within the Connecting Waters of the Dabob Bay Range Complex, including marine habitats associated with the Hood Canal Critical Habitat Subunit (CHSU);

(B) Waterbodies within the geographic area covered by the Washington State Forest Practices Habitat Conservation Plan (HCP), including portions of the Chehalis River/Grays Harbor, Dungeness River, Elwha River, Hoh River, Queets River, Quinualt River, Skokomish River Pacific Coast, Strait of Juan De Fuca, and Hood Canal Marine CHSUs;

(C) Waterbodies within the geographic area covered by the Green Diamond HCP, including portions of the Chehalis River/Grays Harbor and Skokomish CHSUs;

(D) Waterbodies within the geographic area covered by the Washington Department of Natural Resources HCP, including portions of Chehalis River/Grays Harbor, Dungeness River, Elwha River, Hoh River, Queets River, Skokomish River, Pacific Coast, Strait of Juan De Fuca, and Hood Canal Marine CHSUs; and

(E) Waterbodies within the areas under management by the Hoh Tribe, including portions of Hoh River and Pacific Coast CHSUs; Jamestown

S'Klallam Tribe, including portions of Dungeness River CHSU; Lower Elwha Tribe, including portions of Elwha River and Strait of Juan de Fuca CHSUs; Quileute Tribe, including portions of Pacific Coast CHSU; Quinault Tribe, including portions of Quinault River, Queets River, and Pacific Coast CHSUs; and Skokomish Tribe, including portions of Skokomish River and Hood Canal Marine CHSUs, within reservation boundaries, and waterbodies that are adjacent to:

(*1*) Lands held in trust by the United States for their benefit;

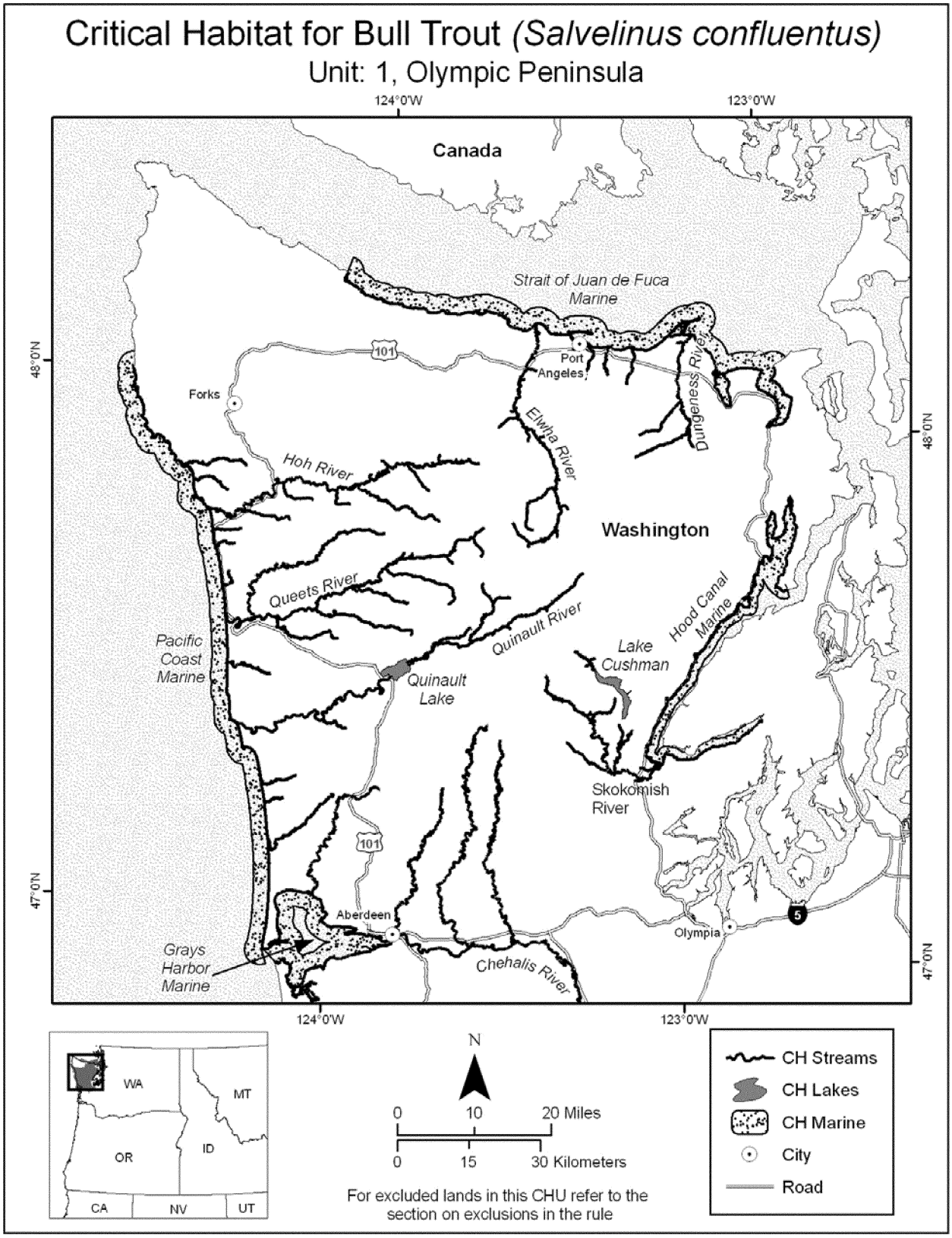
(*2*) Lands held in trust by the United States for any Indian Tribe or individual subject to restrictions by the United States against alienation;

(*3*) Fee lands, either within or outside the reservation boundaries, owned by the tribal government; and

(*4*) Fee lands within the reservation boundaries owned by individual Indians.

(iv) Map of Unit 1, Olympic Peninsula follows:

**BILLING CODE 4310–55–S**




BILLING CODE 4310–55–C

(9) Unit 2: Puget Sound

(i) This unit consists of 1,840.2 km (1,143.5 mi) of streams, 684.0 km (425.0 mi) of marine shoreline, and 16,260.9 ha (40,181.5 ac) of lakes and reservoirs. The unit is located in northwestern Washington.

(ii) Individual waterbodies in the unit are bounded by the following coordinates:

| Waterbody Name | Stream Begin Point or Lake Center Latitude | Stream Begin Point or Lake Center Longitude | Stream End Point Latitude | Stream End Point Longitude |
|---|---|---|---|---|
| Alder Creek | 48.549 | -121.955 | 48.519 | -121.956 |
| Aldrich Creek (#0423) | 48.916 | -122.042 | 48.921 | -122.051 |
| Alma Creek | 48.590 | -121.356 | 48.600 | -121.363 |
| Anderson Creek | 48.797 | -122.325 | 48.869 | -122.318 |
| Arrow Creek | 48.407 | -121.390 | 48.423 | -121.396 |
| Bacon Creek | 48.681 | -121.464 | 48.585 | -121.395 |
| Baker Lake | 48.708 | -121.642 | | |
| Baker River | 48.548 | -121.741 | 48.741 | -121.563 |
| Bald Eagle Creek | 48.796 | -121.449 | 48.800 | -121.465 |
| Bear Creek | 48.966 | -121.383 | 48.965 | -121.388 |
| Bear Creek | 48.898 | -122.105 | 48.893 | -122.145 |
| Bear Creek (#0353) | 48.788 | -122.123 | 48.783 | -122.140 |
| Bear Lake Outlet (#0317) | 48.610 | -121.912 | 48.607 | -121.912 |
| Beaver Creek | 48.086 | -121.516 | 48.077 | -121.527 |
| Beckler River | 47.865 | -121.311 | 47.715 | -121.340 |
| Bedal Creek | 48.047 | -121.351 | 48.080 | -121.395 |
| Bell Creek | 48.684 | -121.899 | 48.681 | -121.900 |
| Bender Creek | 48.063 | -121.591 | 48.071 | -121.590 |
| Bertrand Creek | 48.999 | -122.521 | 48.912 | -122.535 |
| Big Beaver Creek | 48.841 | -121.211 | 48.775 | -121.066 |
| Big Creek | 48.343 | -121.440 | 48.345 | -121.451 |
| Big Four Creek | 48.071 | -121.524 | 48.070 | -121.512 |
| Bitter Creek | 47.841 | -121.503 | 47.840 | -121.508 |
| Black Creek | 48.247 | -121.414 | 48.259 | -121.402 |
| Black Oak Creek | 48.185 | -121.454 | 48.177 | -121.450 |
| Blackjack Creek | 48.051 | -121.626 | 48.062 | -121.631 |
| Boardman Creek | 48.040 | -121.675 | 48.070 | -121.681 |
| Boulder Creek | 48.512 | -121.364 | 48.518 | -121.364 |
| Boulder Creek | 47.354 | -121.707 | 47.371 | -121.688 |
| Boulder Creek | 48.937 | -122.021 | 48.925 | -122.037 |
| Boulder River | 48.245 | -121.828 | 48.282 | -121.787 |
| Boyd Creek | 48.903 | -121.863 | 48.897 | -121.866 |
| Brooks Creek | 48.289 | -121.908 | 48.277 | -121.911 |
| Brush Creek | 48.909 | -121.423 | 48.913 | -121.424 |
| Buck Creek | 48.353 | -121.268 | 48.265 | -121.340 |
| Buck Creek | 48.047 | -121.472 | 48.045 | -121.481 |
| Buck Creek | 47.023 | -121.557 | 47.029 | -121.555 |
| Cabin Creek | 47.363 | -121.695 | 47.367 | -121.684 |
| Camp Creek | 48.150 | -121.280 | 48.159 | -121.292 |
| Canyon Creek | 48.775 | -120.778 | 48.707 | -120.918 |
| Canyon Creek | 48.220 | -121.081 | 48.211 | -121.088 |
| Canyon Creek | 48.158 | -121.817 | 48.097 | -121.970 |
| Canyon Creek | 48.932 | -121.951 | 48.906 | -121.989 |
| Canyon Creek (Canyon Lake Creek) | 48.840 | -122.111 | 48.832 | -122.144 |
| Carbon River | 46.960 | -121.793 | 47.130 | -122.233 |
| Cascade Creek | 48.903 | -121.839 | 48.904 | -121.839 |
| Cascade River | 48.463 | -121.164 | 48.524 | -121.430 |
| Cavanaugh Creek | 48.645 | -122.110 | 48.647 | -122.121 |
| Cedar River | 47.313 | -121.521 | 47.409 | -121.723 |
| Chainup Creek | 48.905 | -121.843 | 48.908 | -121.840 |
| Chenuis Creek | 46.994 | -121.842 | 46.992 | -121.843 |
| Chester Morse Lake | 47.389 | -121.694 | | |
| Chilliwack River | 48.878 | -121.487 | 49.000 | -121.411 |
| Chocwick Creek | 48.055 | -121.384 | 48.074 | -121.400 |
| Cinnamon Creek | 48.867 | -120.887 | 48.891 | -120.916 |
| Clearwater Creek | 48.805 | -121.989 | 48.771 | -122.047 |
| Clearwater River | 47.079 | -121.782 | 47.146 | -121.834 |
| Coal Creek | 48.096 | -121.535 | 48.085 | -121.541 |
| Coal Creek | 48.892 | -122.164 | 48.881 | -122.153 |
| Coal Creek (Upper) | 48.838 | -121.903 | 48.838 | -121.906 |
| Cook Slough | 48.198 | -122.218 | 48.198 | -122.234 |
| Corkindale Creek | 48.518 | -121.483 | 48.505 | -121.486 |
| Cornell Creek | 48.886 | -121.960 | 48.899 | -121.969 |
| Cripple Creek | 47.048 | -121.693 | 47.040 | -121.701 |
| Crystal Creek | 48.183 | -121.361 | 48.181 | -121.364 |
| Crystal Creek | 48.791 | -121.510 | 48.787 | -121.503 |
| Crystal Creek | 46.925 | -121.540 | 46.928 | -121.538 |
| Cumberland Creek | 48.505 | -121.985 | 48.518 | -121.994 |
| Dan Creek | 48.265 | -121.540 | 48.298 | -121.551 |
| Davis Creek | 48.879 | -121.931 | 48.882 | -121.931 |

| Waterbody Name | Stream Begin Point or Lake Center Latitude | Stream Begin Point or Lake Center Longitude | Stream End Point Latitude | Stream End Point Longitude |
|---|---|---|---|---|
| Day Creek | 48.444 | -122.007 | 48.519 | -122.067 |
| Deadhorse Creek | 48.900 | -121.836 | 48.904 | -121.838 |
| Deep Creek | 48.868 | -121.911 | 48.869 | -121.908 |
| Deer Creek | 48.718 | -121.116 | 48.721 | -121.105 |
| Deer Creek | 48.096 | -121.558 | 48.084 | -121.556 |
| Deer Creek | 48.365 | -121.795 | 48.268 | -121.933 |
| Deer Creek | 46.836 | -121.965 | 46.873 | -121.974 |
| Deer Creek | 48.602 | -122.093 | 48.610 | -122.095 |
| Deerhorn Creek | 48.906 | -121.857 | 48.903 | -121.858 |
| Depot Creek | 48.986 | -121.293 | 48.997 | -121.324 |
| Devils Creek | 48.819 | -121.002 | 48.824 | -121.032 |
| Diablo Lake | 48.708 | -121.105 | | |
| Diobsud Creek | 48.576 | -121.433 | 48.559 | -121.412 |
| Discovery Creek | 46.900 | -121.571 | 46.896 | -121.580 |
| Ditch Creek | 48.903 | -121.851 | 48.902 | -121.849 |
| Doe Creek | 47.011 | -121.547 | 47.028 | -121.553 |
| Downey Creek | 48.330 | -121.149 | 48.258 | -121.225 |
| Dusty Creek | 48.139 | -121.040 | 48.177 | -121.019 |
| Duwamish River | 47.474 | -122.252 | 47.514 | -122.304 |
| Duwamish Waterway | 47.514 | -122.304 | 47.585 | -122.360 |
| East Duwamish Waterway | 47.590 | -122.344 | 47.567 | -122.347 |
| East Fork Bacon Creek | 48.713 | -121.417 | 48.661 | -121.434 |
| East Fork Foss River | 47.649 | -121.277 | 47.653 | -121.294 |
| Eastern Shoreline Guemes Island | 48.529 | -122.573 | 48.589 | -122.646 |
| Eastern Shoreline Puget Sound (North) | 48.511 | -122.606 | 48.561 | -122.493 |
| Eastern Shoreline Puget Sound (South) | 47.970 | -122.232 | 48.449 | -122.551 |
| Eastern Shoreline Whidbey Island | 47.905 | -122.388 | 48.369 | -122.666 |
| Eastern Shorline Lummi Island | 48.717 | -122.719 | 48.640 | -122.609 |
| Easy Creek | 48.881 | -121.456 | 48.889 | -121.459 |
| Ebey Slough | 47.941 | -122.170 | 48.042 | -122.215 |
| Edfro Creek | 48.663 | -122.117 | 48.661 | -122.127 |
| Elbow Creek / Lake Doreen Outlet (#0331) | 48.707 | -121.915 | 48.685 | -121.911 |
| Elliott Creek | 48.027 | -121.367 | 48.057 | -121.416 |
| Elwell Creek | 47.809 | -121.849 | 47.838 | -121.853 |
| Excelsior Creek | 47.870 | -121.487 | 47.864 | -121.492 |
| Falls Creek | 48.137 | -121.432 | 48.148 | -121.437 |
| Falls Creek | 46.992 | -121.874 | 46.999 | -121.889 |
| Falls Creek | 48.824 | -121.906 | 48.834 | -121.902 |
| Finney Creek | 48.465 | -121.688 | 48.524 | -121.847 |
| Fire Creek | 48.154 | -121.232 | 48.153 | -121.245 |
| Fisher Creek | 48.563 | -120.912 | 48.603 | -121.050 |
| Fishtrap Creek | 48.999 | -122.411 | 48.912 | -122.523 |
| Fobes Creek | 48.622 | -122.119 | 48.622 | -122.112 |
| Foss River | 47.653 | -121.294 | 47.705 | -121.307 |
| Fossil Creek | 48.904 | -121.850 | 48.908 | -121.850 |
| Fourteenmile Creek | 48.126 | -121.229 | 48.140 | -121.222 |
| Freezeout Creek | 48.950 | -120.932 | 48.956 | -120.970 |
| French Creek | 48.255 | -121.783 | 48.282 | -121.757 |
| Fryingpan Creek | 46.873 | -121.623 | 46.895 | -121.592 |
| Galbraith Creek | 48.755 | -122.021 | 48.759 | -122.019 |
| Gallop Creek | 48.882 | -121.947 | 48.894 | -121.944 |
| Gedney Island | 48.005 | -122.305 | 48.005 | -122.305 |
| Gilligan Creek | 48.473 | -122.126 | 48.488 | -122.140 |
| Glacier Creek | 48.131 | -121.168 | 48.130 | -121.204 |
| Glacier Creek | 47.987 | -121.369 | 47.986 | -121.393 |
| Glacier Creek | 48.812 | -121.890 | 48.892 | -121.939 |
| Goat Creek | 48.334 | -121.161 | 48.328 | -121.157 |
| Goat Island | 48.360 | -122.531 | 48.360 | -122.531 |
| Goblin Creek | 47.923 | -121.312 | 47.919 | -121.309 |
| Goodell Creek | 48.711 | -121.291 | 48.726 | -121.305 |
| Gordon Creek | 48.088 | -121.657 | 48.071 | -121.673 |
| Gorge Lake | 48.706 | -121.175 | | |
| Grandy Creek | 48.562 | -121.811 | 48.518 | -121.881 |
| Granite Creek | 48.648 | -120.857 | 48.707 | -120.918 |
| Green Creek | 48.732 | -121.936 | 48.738 | -121.938 |
| Green River | 47.275 | -122.108 | 47.474 | -122.252 |
| Greenwater River | 47.093 | -121.458 | 47.158 | -121.660 |
| Hat Slough | 48.197 | -122.362 | 48.208 | -122.323 |
| Hazzard Creek | 47.081 | -121.690 | 47.078 | -121.681 |
| Hedrick Creek | 48.890 | -121.981 | 48.899 | -121.971 |

| Waterbody Name | Stream Begin Point or Lake Center Latitude | Stream Begin Point or Lake Center Longitude | Stream End Point Latitude | Stream End Point Longitude |
|---|---|---|---|---|
| Higgins Creek | 48.318 | -121.755 | 48.362 | -121.807 |
| Hope Island | 48.399 | -122.561 | 48.399 | -122.561 |
| Horse Creek | 48.322 | -121.258 | 48.313 | -121.286 |
| Howard Creek | 48.619 | -121.966 | 48.609 | -121.966 |
| Huckleberry Creek | 46.989 | -121.624 | 47.079 | -121.586 |
| Hutchinson Creek | 48.732 | -122.103 | 48.707 | -122.179 |
| Ika Island | 48.363 | -122.499 | 48.363 | -122.499 |
| Illabot Creek | 48.389 | -121.319 | 48.496 | -121.531 |
| Index Creek | 47.760 | -121.497 | 47.766 | -121.481 |
| Indian Creek | 48.935 | -121.395 | 48.947 | -121.398 |
| Ipsut Creek | 46.972 | -121.831 | 46.979 | -121.833 |
| Jackman Creek | 48.529 | -121.697 | 48.523 | -121.722 |
| Jim Creek | 48.223 | -121.950 | 48.185 | -122.078 |
| Jones Creek | 48.542 | -122.051 | 48.524 | -122.053 |
| Jordan Creek | 48.515 | -121.419 | 48.522 | -121.422 |
| June Creek | 46.995 | -121.905 | 46.995 | -121.917 |
| Kapowsin Creek | 46.991 | -122.195 | 47.032 | -122.205 |
| Kendall Creek | 48.922 | -122.145 | 48.887 | -122.149 |
| Kindy Creek | 48.432 | -121.208 | 48.463 | -121.208 |
| Klickitat Creek | 46.906 | -121.551 | 46.908 | -121.550 |
| Lake Creek | 48.769 | -121.550 | 48.762 | -121.546 |
| Lake Shannon | 48.587 | -121.723 | | |
| Lake Union | 47.642 | -122.331 | | |
| Lake Washington | 47.619 | -122.245 | | |
| Lewis Creek | 47.820 | -121.509 | 47.824 | -121.525 |
| Lightning Creek | 48.907 | -120.983 | 48.933 | -120.986 |
| Lime Creek | 48.218 | -121.278 | 48.252 | -121.293 |
| Lindsay Creek | 47.347 | -121.660 | 47.351 | -121.661 |
| Little Beaver Creek | 48.878 | -121.323 | 48.914 | -121.075 |
| Little Chilliwack River | 48.962 | -121.478 | 48.992 | -121.409 |
| Little Creek | 48.876 | -121.937 | 48.884 | -121.934 |
| Little Deer Creek | 48.439 | -121.950 | 48.387 | -121.870 |
| Little Fork Little Chilliwack River | 48.954 | -121.442 | 48.980 | -121.428 |
| Lodi Creek | 46.948 | -121.699 | 46.960 | -121.706 |
| Long Creek | 48.080 | -121.686 | 48.074 | -121.691 |
| Loomis Creek | 48.670 | -121.827 | 48.661 | -121.814 |
| Mallardy Creek | 48.055 | -121.656 | 48.070 | -121.655 |
| Maple Creek | 48.926 | -122.077 | 48.912 | -122.079 |
| Marble Creek | 48.542 | -121.252 | 48.531 | -121.282 |
| Martin Creek | 48.092 | -121.403 | 48.101 | -121.396 |
| Masonry Pool | 47.410 | -121.737 | | |
| McAllister Creek | 48.587 | -121.156 | 48.623 | -121.057 |
| McCoy Creek | 47.831 | -121.827 | 47.848 | -121.825 |
| McDonald Creek (#0435) | 48.911 | -122.019 | 48.921 | -122.016 |
| McGinnis Creek | 48.613 | -121.961 | 48.610 | -121.960 |
| McMillan Creek | 48.810 | -121.212 | 48.815 | -121.193 |
| Merry Brook Creek | 48.087 | -121.388 | 48.089 | -121.392 |
| Middle Fork Nooksack River | 48.725 | -121.899 | 48.834 | -122.155 |
| Milk Creek | 48.178 | -121.152 | 48.221 | -121.163 |
| Mill Creek | 48.496 | -121.870 | 48.512 | -121.888 |
| Miller River | 47.675 | -121.389 | 47.719 | -121.394 |
| Miners Creek | 48.190 | -121.023 | 48.187 | -121.031 |
| Money Creek | 47.707 | -121.443 | 47.729 | -121.426 |
| Monument Creek (#0324) | 48.647 | -121.828 | 48.652 | -121.835 |
| Moose Creek | 48.255 | -121.710 | 48.277 | -121.700 |
| Mowich River | 46.911 | -121.996 | 46.925 | -121.950 |
| Newhalem Creek | 48.663 | -121.253 | 48.671 | -121.255 |
| Niesson Creek | 46.884 | -122.031 | 46.912 | -122.046 |
| Nisqually River | 46.834 | -122.324 | 47.101 | -122.692 |
| Nookachamps Creek | 48.348 | -122.203 | 48.471 | -122.297 |
| Nooksack River | 48.778 | -122.583 | 48.939 | -122.420 |
| Nooksack River (Slater Slough) | 48.784 | -122.588 | 48.789 | -122.604 |
| North Fork Canyon Creek | 48.774 | -120.798 | 48.768 | -120.793 |
| North Fork Canyon Creek | 48.165 | -121.818 | 48.158 | -121.817 |
| North Fork Cedar River | 47.316 | -121.507 | 47.313 | -121.521 |
| North Fork Nooksack River | 48.835 | -122.154 | 48.920 | -122.055 |
| North Fork Sauk River | 48.096 | -121.370 | 48.097 | -121.389 |
| North Fork Skagit River | 48.387 | -122.367 | 48.364 | -122.473 |
| North Fork Skykomish River | 47.823 | -121.530 | 47.887 | -121.448 |
| North Fork Stillaguamish River | 48.279 | -121.817 | 48.283 | -121.770 |

| Waterbody Name | Stream Begin Point or Lake Center Latitude | Stream Begin Point or Lake Center Longitude | Stream End Point Latitude | Stream End Point Longitude |
|---|---|---|---|---|
| North Fork Tolt River | 47.718 | -121.779 | 47.696 | -121.821 |
| North Mowich River | 46.916 | -121.878 | 46.915 | -121.895 |
| North Puyallup River | 46.845 | -121.878 | 46.864 | -121.951 |
| O'Toole Creek | 48.498 | -121.915 | 48.514 | -121.917 |
| Otter Creek | 48.424 | -121.374 | 48.420 | -121.374 |
| Owl Creek | 48.161 | -121.288 | 48.163 | -121.301 |
| Palmer Creek | 48.043 | -121.469 | 48.045 | -121.483 |
| Panther Creek | 48.631 | -120.978 | 48.708 | -120.976 |
| Parallel Creek | 46.911 | -121.549 | 46.909 | -121.560 |
| Park Creek | 48.740 | -121.682 | 48.727 | -121.659 |
| Pass Creek | 48.815 | -121.463 | 48.811 | -121.458 |
| Peat Bog Creek (#0352) | 48.780 | -122.118 | 48.790 | -122.122 |
| Perry Creek | 48.075 | -121.488 | 48.063 | -121.515 |
| Pierce Creek | 48.766 | -121.073 | 48.772 | -121.066 |
| Pilchuck Creek | 48.303 | -122.158 | 48.208 | -122.226 |
| Pilchuck River | 47.995 | -121.746 | 47.904 | -122.091 |
| Plumbago Creek | 48.606 | -122.101 | 48.612 | -122.097 |
| Poch Creek | 46.987 | -121.955 | 46.991 | -121.954 |
| Portage Island | 48.694 | -122.614 | 48.694 | -122.614 |
| Porter Creek | 48.795 | -122.115 | 48.799 | -122.127 |
| Powerhouse Creek | 48.908 | -121.815 | 48.911 | -121.818 |
| Pressentin Creek | 48.504 | -121.844 | 48.518 | -121.852 |
| Proctor Creek | 47.821 | -121.648 | 47.835 | -121.646 |
| Pugh Creek | 48.165 | -121.333 | 48.172 | -121.339 |
| Pumice Creek | 48.141 | -121.150 | 48.148 | -121.236 |
| Puyallup River | 46.864 | -121.951 | 47.268 | -122.426 |
| Racehorse Creek | 48.884 | -122.130 | 48.888 | -122.146 |
| Rack Creek | 47.388 | -121.731 | 47.392 | -121.722 |
| Ranger Creek | 46.988 | -121.849 | 46.995 | -121.854 |
| Rankin Creek | 48.733 | -121.908 | 48.733 | -121.920 |
| Rapid River | 47.821 | -121.233 | 47.803 | -121.293 |
| Rex River | 47.347 | -121.645 | 47.371 | -121.688 |
| Ridley Creek | 48.720 | -121.865 | 48.725 | -121.899 |
| Rocky Creek | 48.510 | -121.502 | 48.500 | -121.495 |
| Rocky Creek | 48.819 | -121.996 | 48.809 | -121.997 |
| Roland Creek | 48.770 | -120.998 | 48.769 | -121.024 |
| Rollins Creek | 48.293 | -121.852 | 48.281 | -121.836 |
| Ross Lake | 48.869 | -121.054 | | |
| Ruby Creek | 48.718 | -121.001 | 48.707 | -120.918 |
| Salmon Creek | 47.911 | -121.482 | 47.888 | -121.453 |
| Samish River | 48.548 | -122.457 | 48.548 | -122.457 |
| Sauk River | 48.095 | -121.390 | 48.482 | -121.605 |
| Saxson Creek | 48.689 | -122.156 | 48.689 | -122.163 |
| Schweitzer Creek | 48.065 | -121.688 | 48.074 | -121.699 |
| Segelsen Creek | 48.299 | -121.707 | 48.280 | -121.715 |
| Seventysix Gulch | 47.974 | -121.384 | 47.986 | -121.393 |
| Seymour Creek | 48.755 | -122.009 | 48.758 | -122.010 |
| Shaw Creek | 46.901 | -121.568 | 46.893 | -121.580 |
| Ship Canal (Chittendon Locks) | 47.660 | -122.379 | | |
| Shotgun Creek | 47.380 | -121.708 | 47.384 | -121.706 |
| Sibley Creek | 48.511 | -121.255 | 48.511 | -121.262 |
| Silesia Creek | 48.910 | -121.485 | 48.999 | -121.613 |
| Silver Creek | 48.981 | -121.190 | 48.970 | -121.104 |
| Silver Creek | 47.938 | -121.439 | 47.897 | -121.436 |
| Silver Creek | 47.000 | -121.530 | 46.997 | -121.524 |
| Silver Gulch | 48.075 | -121.564 | 48.078 | -121.570 |
| Silver Springs | 46.994 | -121.533 | 46.997 | -121.533 |
| Sister Creek | 48.746 | -121.974 | 48.755 | -121.988 |
| Skagit River | 48.471 | -121.608 | 48.712 | -121.138 |
| Skookum Creek | 48.686 | -122.106 | 48.670 | -122.142 |
| Skykomish River | 47.813 | -121.579 | 47.855 | -121.954 |
| Slate Creek | 48.752 | -120.786 | 48.756 | -120.796 |
| Small Creek | 48.158 | -120.978 | 48.162 | -121.006 |
| Smith Creek | 48.841 | -122.262 | 48.859 | -122.309 |
| Snohomish River | 47.830 | -122.046 | 48.016 | -122.151 |
| Snoqualmie River | 47.541 | -121.837 | 47.830 | -122.046 |
| Snowslide Gulch | 47.858 | -121.509 | 47.858 | -121.503 |
| Son of Gallop | 48.889 | -121.943 | 48.884 | -121.940 |
| Sonny Boy Creek | 48.427 | -121.172 | 48.462 | -121.197 |
| South Fork Canyon Creek | 48.154 | -121.785 | 48.158 | -121.817 |

| Waterbody Name | Stream Begin Point or Lake Center Latitude | Stream Begin Point or Lake Center Longitude | Stream End Point Latitude | Stream End Point Longitude |
|---|---|---|---|---|
| South Fork Cascade River | 48.391 | -121.109 | 48.463 | -121.164 |
| South Fork Cedar River | 47.305 | -121.513 | 47.313 | -121.521 |
| South Fork Nooksack River | 48.616 | -122.103 | 48.809 | -122.203 |
| South Fork Salmon Creek | 47.903 | -121.486 | 47.906 | -121.476 |
| South Fork Sauk River | 47.986 | -121.393 | 48.097 | -121.389 |
| South Fork Skagit River | 48.296 | -122.364 | 48.367 | -122.358 |
| South Fork Skagit River (Brandstedt Slough) | 48.311 | -122.357 | 48.311 | -122.357 |
| South Fork Skagit River (Crooked Slough) | 48.306 | -122.369 | 48.307 | -122.373 |
| South Fork Skagit River (Deepwater Slough) | 48.327 | -122.355 | 48.306 | -122.383 |
| South Fork Skagit River (Freshwater Slough) | 48.338 | -122.349 | 48.321 | -122.377 |
| South Fork Skagit River (Old River) | 48.308 | -122.365 | 48.308 | -122.365 |
| South Fork Skagit River (Steamboat Slough) | 48.324 | -122.348 | 48.296 | -122.364 |
| South Fork Skagit River (Tom Moore Slough) | 48.296 | -122.364 | 48.324 | -122.348 |
| South Fork Skagit River (Unnamed off Deepwater Slough) | 48.317 | -122.369 | 48.307 | -122.389 |
| South Fork Skykomish River | 47.705 | -121.307 | 47.813 | -121.579 |
| South Fork Stillaguamish River | 48.030 | -121.483 | 48.204 | -122.127 |
| South Fork Tolt River | 47.693 | -121.694 | 47.696 | -121.821 |
| South Mowich River | 46.877 | -121.855 | 46.915 | -121.895 |
| South Pass | 48.225 | -122.386 | 48.238 | -122.378 |
| South Prairie Creek | 47.093 | -121.952 | 47.098 | -122.156 |
| South Puyallup River | 46.808 | -121.892 | 46.864 | -121.951 |
| South Slough | 48.193 | -122.256 | 48.194 | -122.254 |
| Southeastern Shoreline Vashon Island | 47.331 | -122.493 | 47.348 | -122.451 |
| Squire Creek | 48.194 | -121.638 | 48.279 | -121.685 |
| St.Andrews Creek | 46.834 | -121.918 | 46.837 | -121.921 |
| Steamboat Slough | 47.984 | -122.169 | 48.033 | -122.204 |
| Stetattle Creek | 48.727 | -121.155 | 48.717 | -121.150 |
| Stillaguamish River | 48.193 | -122.167 | 48.238 | -122.378 |
| Straight Creek | 48.254 | -121.398 | 48.272 | -121.398 |
| Suiattle River | 48.162 | -121.006 | 48.306 | -121.428 |
| Sulphide Creek | 48.789 | -121.553 | 48.777 | -121.533 |
| Sulphur Creek | 48.279 | -121.086 | 48.247 | -121.193 |
| Sulphur Creek | 48.659 | -121.711 | 48.648 | -121.699 |
| Sultan River | 47.870 | -121.829 | 47.872 | -121.826 |
| Sunrise Creek | 46.967 | -121.540 | 46.971 | -121.540 |
| Swift Creek | 48.747 | -121.659 | 48.734 | -121.659 |
| Swift Creek | 46.873 | -121.954 | 46.870 | -121.964 |
| Swinomish Channel | 48.440 | -122.499 | 48.441 | -122.504 |
| Tenas Creek | 48.335 | -121.422 | 48.324 | -121.440 |
| Thompson Creek | 48.891 | -121.880 | 48.879 | -121.915 |
| Three Fools Creek | 48.897 | -120.849 | 48.890 | -120.974 |
| Three Lakes Outlet (#0319) | 48.626 | -121.888 | 48.625 | -121.884 |
| Thunder Creek | 48.563 | -121.027 | 48.678 | -121.078 |
| Tolmie Creek | 46.984 | -121.944 | 46.990 | -121.944 |
| Tolt River | 47.696 | -121.821 | 47.640 | -121.927 |
| Troublesome Creek | 47.925 | -121.363 | 47.897 | -121.404 |
| Trout Creek | 47.833 | -121.434 | 47.864 | -121.488 |
| Tye River | 47.717 | -121.229 | 47.705 | -121.307 |
| Union Slough | 47.984 | -122.167 | 48.034 | -122.191 |
| Unnamed trib. (#0194) | 47.073 | -121.693 | 47.072 | -121.683 |
| Unnamed trib. (#0217) | 46.992 | -121.705 | 46.992 | -121.708 |
| Unnamed trib. (#0219) | 46.990 | -121.706 | 46.987 | -121.704 |
| Unnamed trib. (#0226) | 46.962 | -121.711 | 46.961 | -121.713 |
| Unnamed trib. (#0234) | 46.961 | -121.711 | 46.965 | -121.714 |
| Unnamed trib. (#0241) | 48.293 | -121.785 | 48.284 | -121.781 |
| Unnamed trib. (#0242) | 48.294 | -121.772 | 48.286 | -121.772 |
| Unnamed trib. (#0243) | 48.295 | -121.759 | 48.286 | -121.772 |
| Unnamed trib. (#0265) | 48.746 | -122.094 | 48.743 | -122.109 |
| Unnamed trib. (#0284) | 48.650 | -122.116 | 48.649 | -122.121 |
| Unnamed trib. (#0290) | 48.633 | -122.121 | 48.635 | -122.117 |
| Unnamed trib. (#0291) | 48.630 | -122.121 | 48.636 | -122.116 |
| Unnamed trib. (#0315) | 48.606 | -121.953 | 48.608 | -121.954 |
| Unnamed trib. (#0316) | 48.608 | -121.930 | 48.605 | -121.930 |
| Unnamed trib. (#0320) | 48.620 | -121.861 | 48.625 | -121.882 |
| Unnamed trib. (#0321) | 48.632 | -121.872 | 48.629 | -121.880 |
| Unnamed trib. (#0323) | 48.656 | -121.862 | 48.655 | -121.862 |
| Unnamed trib. (#0332) | 48.684 | -121.921 | 48.690 | -121.927 |
| Unnamed trib. (#0336) | 46.976 | -121.547 | 46.976 | -121.542 |
| Unnamed trib. (#0347) | 48.821 | -122.121 | 48.828 | -122.141 |
| Unnamed trib. (#0349) | 48.812 | -122.125 | 48.815 | -122.129 |

| Waterbody Name | Stream Begin Point or Lake Center Latitude | Stream Begin Point or Lake Center Longitude | Stream End Point Latitude | Stream End Point Longitude |
|---|---|---|---|---|
| Unnamed trib. (#0364) | 46.904 | -121.567 | 46.904 | -121.561 |
| Unnamed trib. (#0364) | 48.131 | -121.909 | 48.123 | -121.903 |
| Unnamed trib. (#0365) | 48.133 | -121.884 | 48.124 | -121.889 |
| Unnamed trib. (#0367) | 48.763 | -122.040 | 48.765 | -122.036 |
| Unnamed trib. (#0371) | 48.755 | -122.017 | 48.757 | -122.016 |
| Unnamed trib. (#0374) | 48.761 | -121.986 | 48.756 | -121.994 |
| Unnamed trib. (#0425) | 48.934 | -122.036 | 48.927 | -122.031 |
| Unnamed trib. (#0439) | 47.325 | -121.535 | 47.325 | -121.532 |
| Unnamed trib. (#0476) | 48.845 | -121.896 | 48.844 | -121.902 |
| Unnamed trib. (#0565) | 46.960 | -121.793 | 46.959 | -121.792 |
| Unnamed trib. (#1119) | 48.185 | -121.433 | 48.181 | -121.430 |
| Unnamed trib. (LB1) upstream of Crystal Ck | 46.925 | -121.544 | 46.923 | -121.546 |
| Unnamed trib. (LB2) upstream of Crystal Ck | 46.923 | -121.543 | 46.921 | -121.546 |
| Unnamed trib. (RB) upstream of Crystal Creek | 46.920 | -121.543 | 46.918 | -121.542 |
| Unnamed trib. downstream Boulder Ck | 48.929 | -122.040 | 48.926 | -122.046 |
| Unnamed trib. downstream Wanlick Ck | 48.641 | -121.878 | 48.640 | -121.883 |
| Unnamed trib. upstream Chenius Ck | 46.992 | -121.843 | 46.990 | -121.839 |
| Unnamed trib. upstream of (#0214) | 46.997 | -121.700 | 46.991 | -121.704 |
| Unnamed trib. upstream Wallace Ck | 48.742 | -121.947 | 48.739 | -121.936 |
| Van Horn Creek | 46.977 | -121.718 | 46.976 | -121.719 |
| Viola Creek | 47.043 | -121.712 | 47.052 | -121.695 |
| Vista Creek | 48.180 | -121.057 | 48.194 | -121.047 |
| Wallace Creek | 48.748 | -121.943 | 48.745 | -121.951 |
| Wallace River | 47.874 | -121.649 | 47.859 | -121.795 |
| Wanlick Creek | 48.644 | -121.877 | 48.663 | -121.799 |
| Warm Creek | 48.761 | -121.972 | 48.755 | -121.979 |
| Weden Creek | 47.986 | -121.444 | 48.003 | -121.439 |
| Wells Creek | 48.890 | -121.791 | 48.905 | -121.809 |
| West Cady Creek | 47.898 | -121.307 | 47.899 | -121.319 |
| West Cornell Creek | 48.878 | -121.969 | 48.888 | -121.961 |
| West Fork Foss River | 47.627 | -121.311 | 47.653 | -121.294 |
| West Fork White River | 46.941 | -121.708 | 47.125 | -121.619 |
| West Pass | 48.238 | -122.378 | 48.246 | -122.394 |
| West Slide Creek (#0422) | 48.912 | -122.063 | 48.917 | -122.067 |
| White Chuck River | 48.070 | -121.151 | 48.181 | -121.424 |
| White Creek | 48.403 | -121.538 | 48.397 | -121.553 |
| White River | 46.893 | -121.601 | 47.274 | -122.217 |
| Wildcat Creek | 48.895 | -122.006 | 48.909 | -122.001 |
| Wiseman Creek | 48.516 | -122.130 | 48.506 | -122.135 |
| Wright Creek | 46.878 | -121.615 | 46.877 | -121.615 |
| Wrong Creek | 47.024 | -121.710 | 47.049 | -121.694 |

(iii) Waterbodies associated with the following tribal lands or habitat conservation plans (HCPs) totaling 876.9 km (544.9 mi) of streams, 203.4 km (126.4 mi) of marine shoreline, and 1,629.5 ha (4,026.6 ac) of lakes and reservoirs have been excluded from critical habitat designation under section 4(b)(2) of the Act in this unit:

(A) Waterbodies within the geographic area covered by the Washington State Forest Practices Habitat Conservation Plan (HCP) , including portions of Lower Green River, Lower Nisqually, Lower Skagit River, Nooksack River, Puyallup River, Samish River, Snohomish & Skykomish Rivers, Stillaguamish River, and Puget Sound Marine CHSUs;

(B) Waterbodies within the geographic area covered by the Washington Department of Natural Resources HCP, including portions of Lower Green River, Lower Skagit River, Nooksack River, Puyallup River, Samish River, Snohomish and Skykomish Rivers, Stillaguamish River, and Puget Sound Marine CHSUs; and

(C) Waterbodies within the areas under management by the Muckleshoot Tribe, including portions of the Puyallup River CHSU; Swinomish Tribe, including portions of the Puget Sound Marine CHSU; Lummi Nation, including portions of Nooksack River and Puget Sound Marine CHSUs; Nooksack Tribe, including portions of Nooksack River CHSU; Tulalip Tribes, including portions of Puget Sound Marine CHSU; Puyallup Tribe, including portions of Puyallup River and Puget Sound Marine CHSUs; and Stillaguamish Tribe, including portions of Stillaguamish River CHSU, within reservation boundaries, and waterbodies that are adjacent to:

(*1*) Lands held in trust by the United States for their benefit;

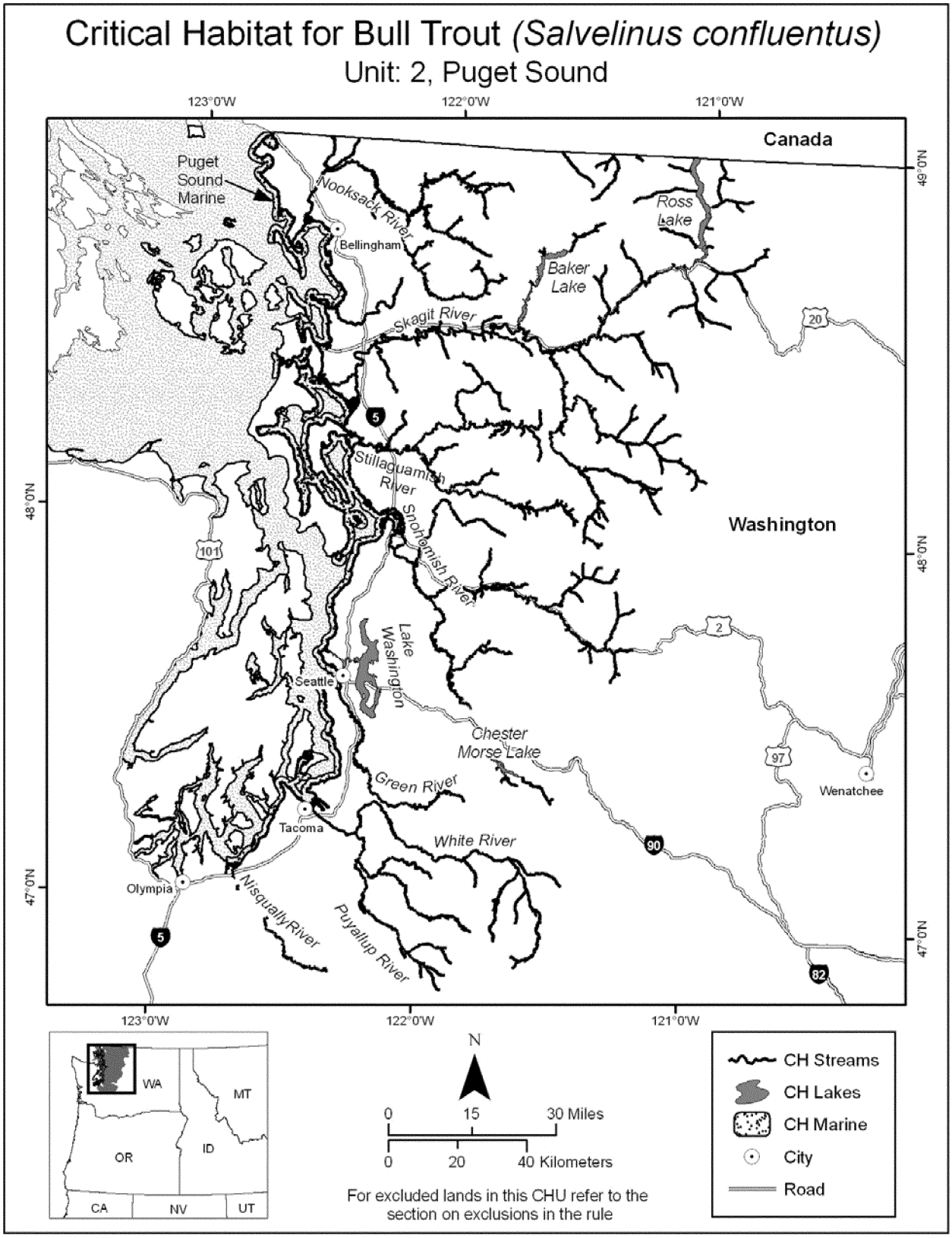
(*2*) Lands held in trust by the United States for any Indian Tribe or individual subject to restrictions by the United States against alienation;

(*3*) Fee lands, either within or outside the reservation boundaries, owned by the tribal government; and

(*4*) Fee lands within the reservation boundaries owned by individual Indians.

(iv) Map of Unit 2, Puget Sound follows:

BILLING CODE 4310–55–S




BILLING CODE 4310–55–C

(10) Unit 3: Lower Columbia River Basins

(i) This unit consists of 119.3 km (74.2 mi) of streams. The unit is located in southwestern Washington.

(ii) Individual waterbodies in the unit are bounded by the following coordinates:

| Waterbody Name | Stream Begin Point or Lake Center Latitude | Stream Begin Point or Lake Center Longitude | Stream End Point Latitude | Stream End Point Longitude |
|---|---|---|---|---|
| Buck Creek | 45.865 | -121.579 | 45.781 | -121.515 |
| Clearwater Creek | 46.278 | -121.331 | 46.276 | -121.328 |
| Cougar Creek | 46.071 | -122.268 | 46.055 | -122.293 |
| Drift Creek | 46.023 | -122.090 | 46.008 | -122.078 |
| Fish Lake Stream | 46.341 | -121.370 | 46.275 | -121.313 |
| Klickitat River | 46.255 | -121.240 | 45.691 | -121.295 |
| Lake Merwin | 45.977 | -122.466 | | |
| Lewis River | 45.957 | -122.556 | 46.066 | -122.020 |
| Little Muddy Creek | 46.278 | -121.353 | 46.276 | -121.328 |
| Muddy River | 46.069 | -122.007 | 46.168 | -122.034 |
| Phelps Creek | 45.892 | -121.566 | 45.881 | -121.518 |
| Pine Creek | 46.142 | -122.096 | 46.071 | -122.017 |
| Rush Creek | 46.055 | -121.916 | 46.075 | -121.938 |
| Swift Creek | 46.084 | -122.200 | 46.086 | -122.204 |
| Swift Reservoir | 46.056 | -122.114 | | |
| Trappers Creek | 46.289 | -121.363 | 46.276 | -121.336 |
| Two Lakes Stream | 46.340 | -121.385 | 46.341 | -121.370 |
| Unnamed trib. - off Fish Lake Stream | 46.323 | -121.438 | 46.331 | -121.360 |
| Unnamed trib. ('P10') | 46.123 | -122.088 | 46.120 | -122.077 |
| Unnamed trib. ('P7') | 46.099 | -122.069 | 46.092 | -122.059 |
| Unnamed trib. ('P8') | 46.104 | -122.064 | 46.140 | -122.082 |
| West Fork Klickitat River | 46.276 | -121.328 | 46.242 | -121.247 |
| White Salmon River | 45.897 | -121.504 | 45.722 | -121.523 |
| Yale Lake | 46.012 | -122.312 | | |

(iii) Waterbodies associated with the following tribal lands and habitat conservation plans (HCPs) totaling 155.6 km (96.7 mi) of streams and 4,856.1 ha (11,999.7 ac) of lakes and reservoirs have been excluded from critical habitat designation under section 4(b)(2) of the Act in this unit:

(A) Waterbodies within the geographic area covered by the Washington State Forest Practices Habitat Conservation Plan (HCP) , including portions of Klickitat River, Lewis River, and White Salmon River CHSUs;

(B) Waterbodies within the geographic area covered by the Washington Department of Natural Resources HCP, including portions of Klickitat River, Lewis River, and White Salmon River CHSUs; and

(C) Waterbodies within the geographic area covered by the PacifiCorp Lewis River Hydropower Project Conservation Easement, including portions of Lewis River CHSU.

(D) Waterbodies within the areas under management by the Yakama Nation including the Klickitat River CHSU, within reservation boundaries, and waterbodies that are adjacent to:

(*1*) Lands held in trust by the United States for their benefit;

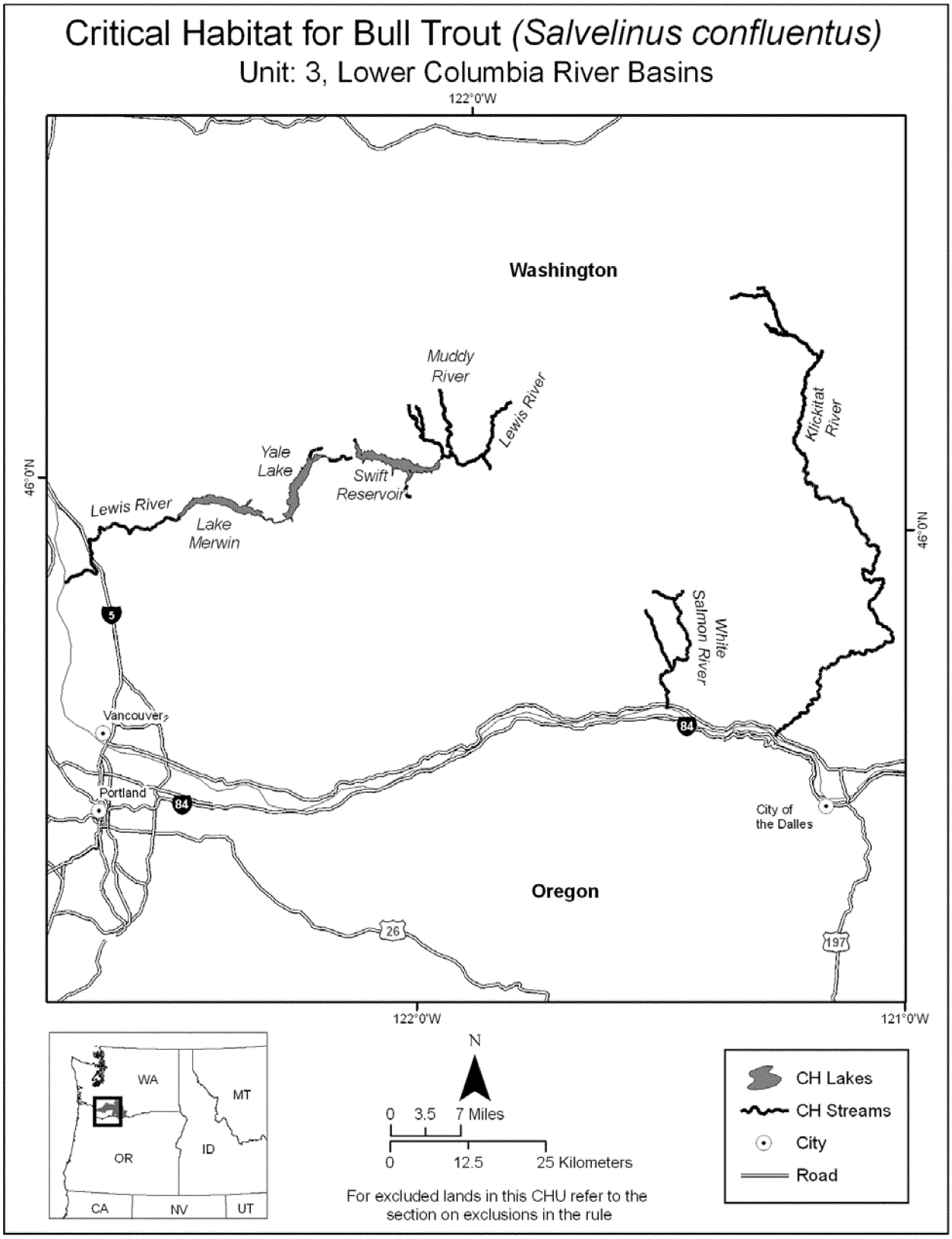
(*2*) Lands held in trust by the United States for any Indian Tribe or individual subject to restrictions by the United States against alienation;

(*3*) Fee lands, either within or outside the reservation boundaries, owned by the tribal government; and

(*4*) Fee lands within the reservation boundaries owned by individual Indians.

(iv) Map of Unit 3, Lower Columbia River Basins follows:

BILLING CODE 4310–55–S




BILLING CODE 4310–55–C

(11) Unit 4: Upper Willamette River

(i) This unit consists of 312.4 km (194.1 mi) of streams and 3,601.5 ha (8,899.5 ac) of lakes and reservoirs. The unit is located in northwestern Oregon.

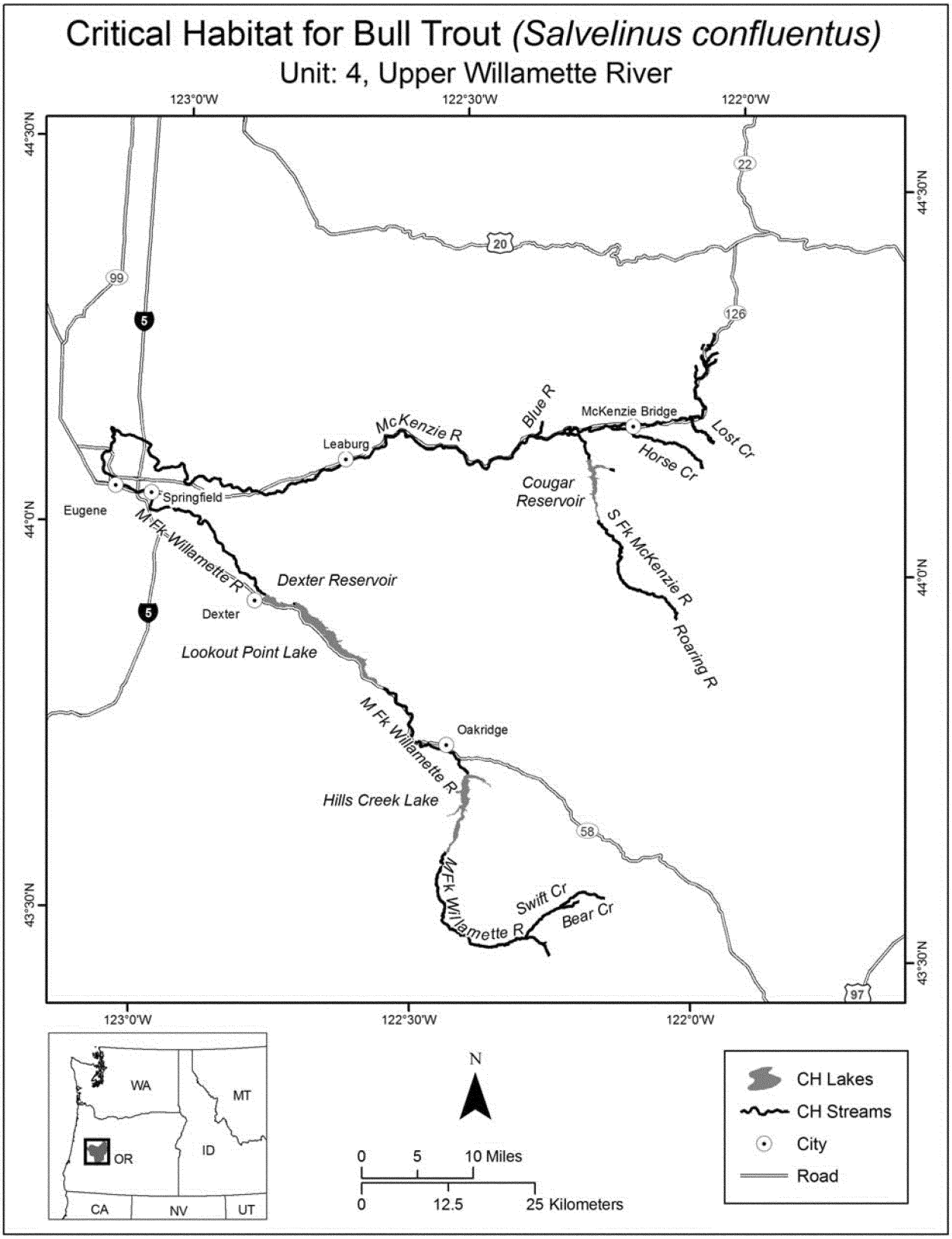
(ii) Individual waterbodies in the unit are bounded by the following coordinates:

| Waterbody Name | Stream Begin Point or Lake Center Latitude | Stream Begin Point or Lake Center Longitude | Stream End Point Latitude | Stream End Point Longitude |
|---|---|---|---|---|
| Anderson Creek | 44.258 | -122.043 | 44.278 | -122.022 |
| Bear Creek | 43.554 | -122.209 | 43.544 | -122.244 |
| Blue River | 44.172 | -122.329 | 44.153 | -122.344 |
| Carmen-Smith Spawning Channel | 44.273 | -122.051 | 44.271 | -122.052 |
| Cougar Reservoir | 44.100 | -122.230 | | |
| Deer Creek | 44.259 | -122.063 | 44.241 | -122.058 |
| Dexter Reservoir | 43.915 | -122.789 | | |
| East Fork Horse Creek | 44.170 | -122.175 | 44.176 | -122.179 |
| East Fork South Fork McKenzie River | 44.117 | -122.204 | 44.116 | -122.195 |
| Hills Creek Lake | 43.671 | -122.427 | | |
| Horse Creek | 44.125 | -122.037 | 44.170 | -122.175 |
| Indigo Creek | 43.497 | -122.262 | 43.495 | -122.268 |
| Lookout Point Lake | 43.872 | -122.682 | | |
| Lost Creek | 44.161 | -122.018 | 44.189 | -122.067 |
| McKenzie River | 44.190 | -122.079 | 44.285 | -122.042 |
| Middle Fork Willamette River | 43.481 | -122.255 | 44.022 | -123.018 |
| Olallie Creek | 44.257 | -122.042 | 44.269 | -122.025 |
| Roaring River | 43.928 | -122.066 | 43.955 | -122.092 |
| Smith River | 44.279 | -122.051 | 44.287 | -122.049 |
| South Fork McKenzie River | 43.955 | -122.092 | 44.159 | -122.296 |
| Sweetwater Creek | 44.283 | -122.035 | 44.279 | -122.046 |
| Swift Creek | 43.560 | -122.163 | 43.502 | -122.300 |
| Trail Bridge Reservoir | 44.277 | -122.048 | | |
| West Fork Horse Creek | 44.170 | -122.175 | 44.172 | -122.207 |
| White Branch | 44.160 | -122.019 | 44.167 | -122.030 |
| Willamette River | 44.022 | -123.018 | 44.125 | -123.107 |

(iii) No waterbodies are excluded from critical habitat designation in this unit.

(iv) Map of Unit 4, Upper Willamette River follows:

BILLING CODE 4310–55–S




BILLING CODE 4310–55–C

(12) Unit 5: Hood River Basin

(i) This unit consists of 128.1 km (79.6 mi) of streams and 36.9 ha (91.1 ac) of lakes and reservoirs. The unit is located in northcentral Oregon.

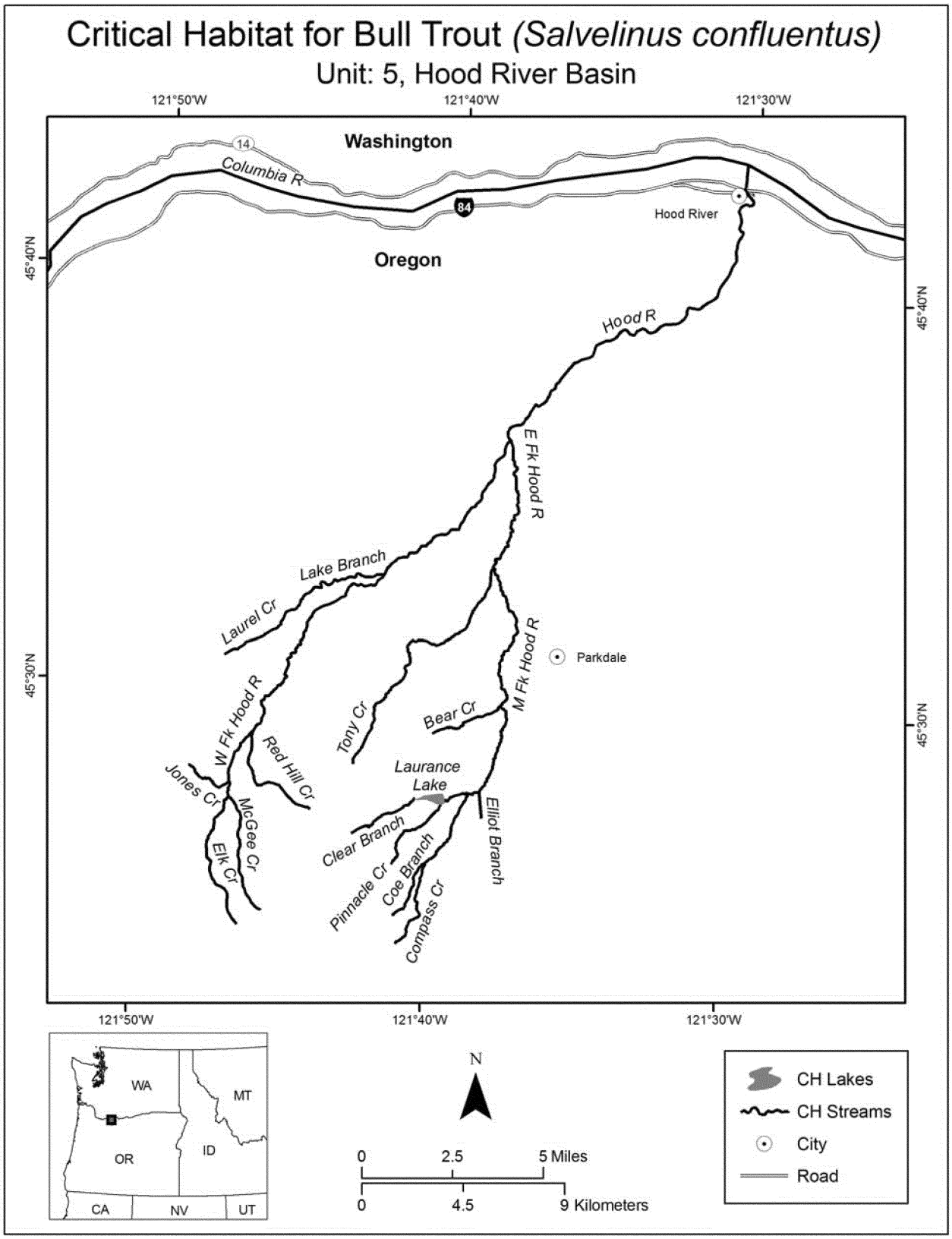
(ii) Individual waterbodies in the unit are bounded by the following coordinates:

| Waterbody Name | Stream Begin Point or Lake Center Latitude | Stream Begin Point or Lake Center Longitude | Stream End Point Latitude | Stream End Point Longitude |
|---|---|---|---|---|
| Bear Creek | 45.499 | -121.630 | 45.486 | -121.668 |
| Clear Branch | 45.444 | -121.711 | 45.463 | -121.646 |
| Coe Branch | 45.413 | -121.685 | 45.463 | -121.646 |
| Compass Creek | 45.401 | -121.683 | 45.434 | -121.668 |
| East Fork Hood River | 45.575 | -121.627 | 45.605 | -121.633 |
| Elk Creek | 45.405 | -121.773 | 45.456 | -121.782 |
| Elliot Branch | 45.464 | -121.640 | 45.453 | -121.638 |
| Hood River | 45.605 | -121.633 | 45.720 | -121.507 |
| Jones Creek | 45.462 | -121.782 | 45.468 | -121.806 |
| Lake Branch | 45.539 | -121.743 | 45.549 | -121.700 |
| Laurance Lake | 45.460 | -121.665 | | |
| Laurel Creek | 45.513 | -121.789 | 45.539 | -121.743 |
| McGee Creek | 45.456 | -121.782 | 45.411 | -121.760 |
| Middle Fork Hood River | 45.463 | -121.646 | 45.575 | -121.627 |
| Pinnacle Creek | 45.433 | -121.687 | 45.458 | -121.661 |
| Red Hill Creek | 45.453 | -121.735 | 45.483 | -121.770 |
| Tony Creek | 45.553 | -121.639 | 45.472 | -121.712 |
| Unnamed - Off Clear Branch | 45.448 | -121.701 | 45.447 | -121.702 |
| West Fork Hood River | 45.456 | -121.782 | 45.605 | -121.633 |

(iii) No waterbodies are excluded from critical habitat designation in this unit.

(iv) Map of Unit 5, Hood River Basin follows:

BILLING CODE 4310–55–S




BILLING CODE 4310–55–C

(13) Unit 6: Lower Deschutes River Basin

(i) This unit consists of 232.8 km (139.7 mi) of streams and 1,224.9 ha (3,026.8 ac) of lakes and reservoirs. The unit is located in northcentral Oregon.

(ii) Individual waterbodies in the unit are bounded by the following coordinates:

| Waterbody Name | Stream Begin Point or Lake Center Latitude | Stream Begin Point or Lake Center Longitude | Stream End Point Latitude | Stream End Point Longitude |
|---|---|---|---|---|
| Abbot Creek | 44.544 | -121.671 | 44.570 | -121.621 |
| Blue Lake | 44.413 | -121.769 | | |
| Brush Creek | 44.543 | -121.707 | 44.504 | -121.659 |
| Bunch Grass Creek | 44.993 | -121.647 | 44.987 | -121.644 |
| Candle Creek | 44.583 | -121.678 | 44.576 | -121.619 |
| Canyon Creek | 44.502 | -121.742 | 44.501 | -121.643 |
| Crooked River | 44.393 | -121.193 | 44.501 | -121.286 |
| Deschutes River | 44.373 | -121.292 | 45.639 | -120.915 |
| Heising Spring | 44.491 | -121.652 | 44.493 | -121.649 |
| Jack Creek | 44.472 | -121.727 | 44.493 | -121.648 |
| Jefferson Creek | 44.625 | -121.691 | 44.577 | -121.620 |
| Lake Billy Chinook | 44.568 | -121.308 | | |
| Lake Billy Chinook | 44.593 | -121.370 | | |
| Lake Creek | 44.426 | -121.727 | 44.436 | -121.703 |
| Link Creek | 44.415 | -121.766 | 44.419 | -121.756 |
| Metolius River | 44.434 | -121.638 | 44.619 | -121.469 |
| Middle Fork Lake Creek | 44.436 | -121.703 | 44.453 | -121.643 |
| Roaring Creek | 44.527 | -121.709 | 44.508 | -121.687 |
| Shitike Creek | 44.748 | -121.682 | 44.762 | -121.228 |
| South Fork Lake Creek | 44.435 | -121.705 | 44.442 | -121.662 |
| Spring Creek | 44.457 | -121.644 | 44.451 | -121.651 |
| Street Creek | 44.590 | -121.506 | 44.599 | -121.454 |
| Suttle Lake | 44.422 | -121.741 | | |
| Trout Creek | 44.803 | -121.069 | 44.821 | -121.089 |
| Unnamed - Off Canyon Creek | 44.527 | -121.679 | 44.504 | -121.658 |
| Unnamed - Off Jack Creek | 44.476 | -121.725 | 44.476 | -121.723 |
| Unnamed - Off Jack Creek | 44.477 | -121.724 | 44.476 | -121.723 |
| Unnamed - Off Jack Creek | 44.477 | -121.724 | 44.477 | -121.724 |
| Unnamed - Off Jefferson Creek | 44.634 | -121.699 | 44.625 | -121.691 |
| Unnamed - Off Roaring Creek | 44.522 | -121.700 | 44.516 | -121.700 |
| Unnamed - Off Roaring Creek | 44.522 | -121.700 | 44.521 | -121.700 |
| Unnamed - Off Roaring Creek | 44.516 | -121.712 | 44.516 | -121.700 |
| Warm Springs River 1 | 44.941 | -121.431 | 44.941 | -121.431 |
| Warm Springs River 2 | 44.969 | -121.585 | 44.969 | -121.585 |
| Whitewater River | 44.704 | -121.728 | 44.670 | -121.546 |
| Whychus Creek | 44.460 | -121.336 | 44.417 | -121.389 |

(iii) Waterbodies associated with the following tribal lands totaling 230.4 km (143.2 mi) of streams and 445.3 ha (1,100.4 ac) of lakes and reservoirs have been excluded from critical habitat designation under section 4(b)(2) of the Act in this unit. These are waterbodies within the areas under management by the Confederated Tribes of the Warm Springs Reservation within reservation boundaries, and waterbodies that are adjacent to:

(A) Lands held in trust by the United States for their benefit;

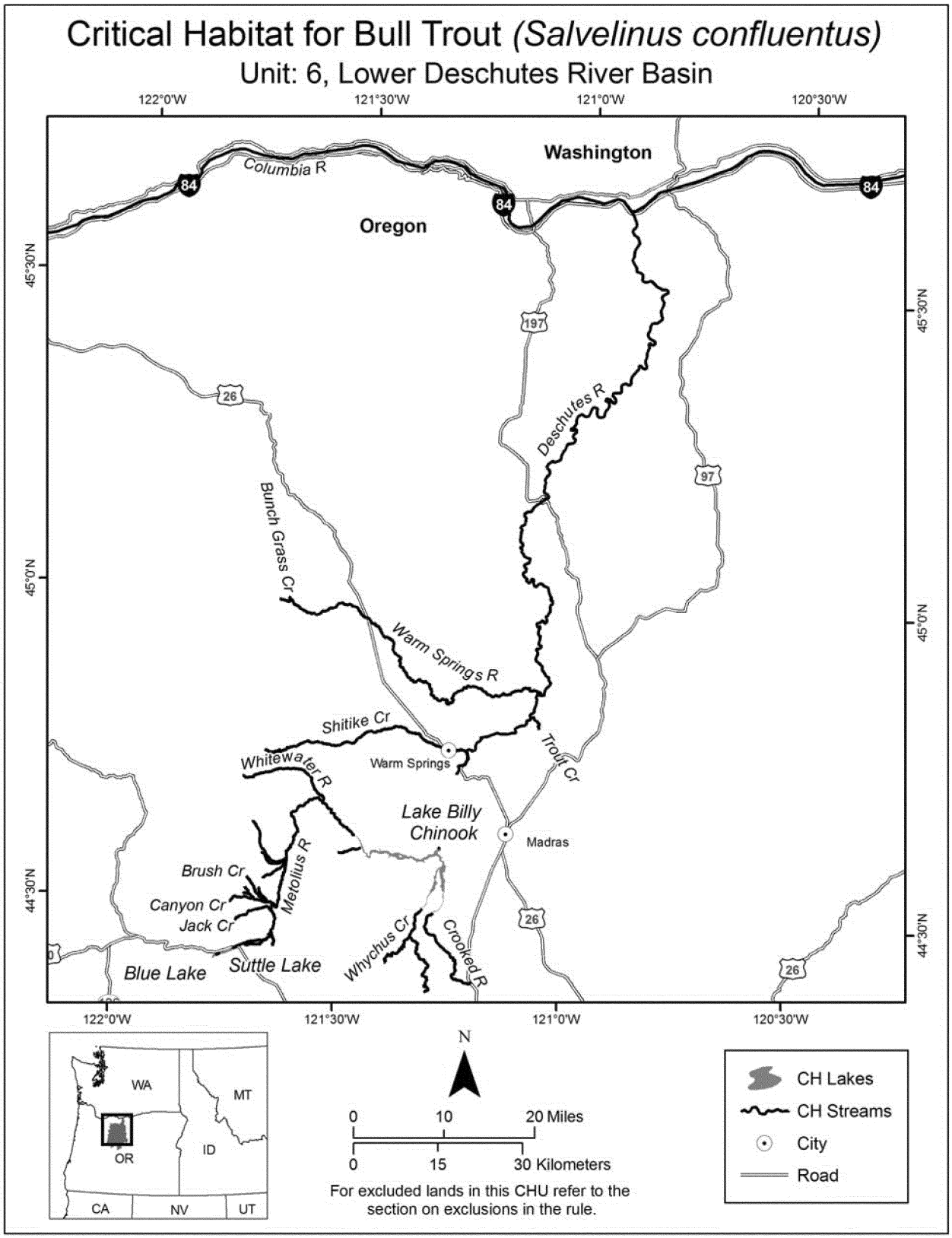
(B) Lands held in trust by the United States for any Indian Tribe or individual subject to restrictions by the United States against alienation;

(C) Fee lands, either within or outside the reservation boundaries, owned by the tribal government; and

(D) Fee lands within the reservation boundaries owned by individual Indians.

(iv) Map of Unit 6, Lower Deschutes River Basin follows:

BILLING CODE 4310–55–S




BILLING CODE 4310–55–C

(14) Unit 7: Odell Lake

(i) This unit consists of 27.4 km (17.0 mi) of streams and 1,387.1 ha (3,427.6 ac) of lakes and reservoirs. The unit is located in northcentral Oregon.

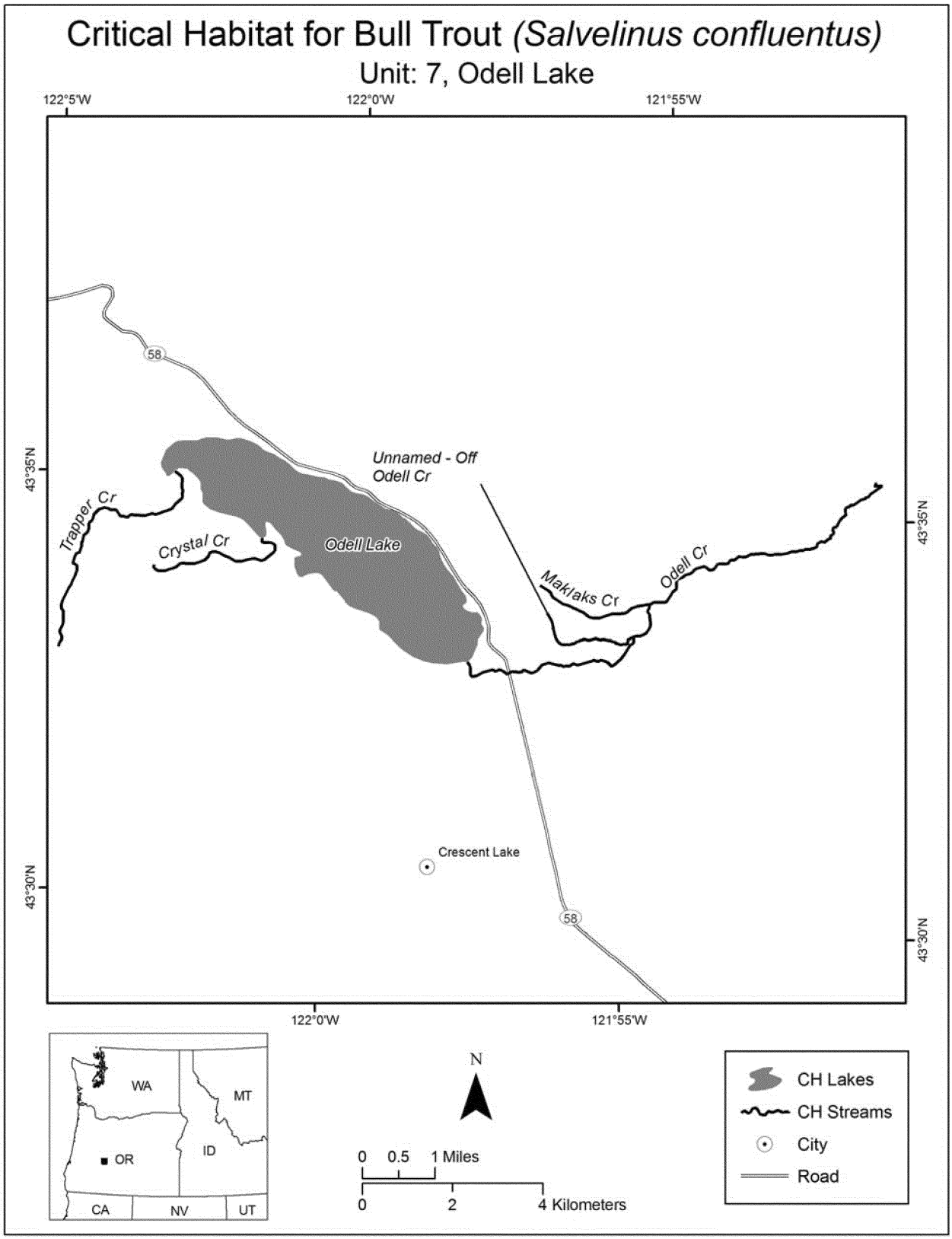
(ii) Individual waterbodies in the unit are bounded by the following coordinates:

| Waterbody Name | Stream Begin Point or Lake Center Latitude | Stream Begin Point or Lake Center Longitude | Stream End Point Latitude | Stream End Point Longitude |
|---|---|---|---|---|
| Crystal Creek | 43.566 | -122.052 | 43.572 | -122.022 |
| Maklaks Creek | 43.566 | -121.945 | 43.564 | -121.915 |
| Odell Creek | 43.550 | -121.964 | 43.591 | -121.855 |
| Odell Lake | 43.572 | -122.001 | | |
| Trapper Creek | 43.548 | -122.076 | 43.585 | -122.048 |
| Unnamed - Off Odell Creek | 43.557 | -121.919 | 43.561 | -121.943 |

(iii) No waterbodies are excluded from critical habitat designation in this unit.

(iv) Map of Unit 7, Odell Lake follows:

BILLING CODE 4310–55–S




BILLING CODE 4310–55–C

(15) Unit 8: Mainstem Lower Columbia River

(i) This unit consists of 340.4 km (211.5 mi) of streams. The unit is located along the border between Oregon and Washington.

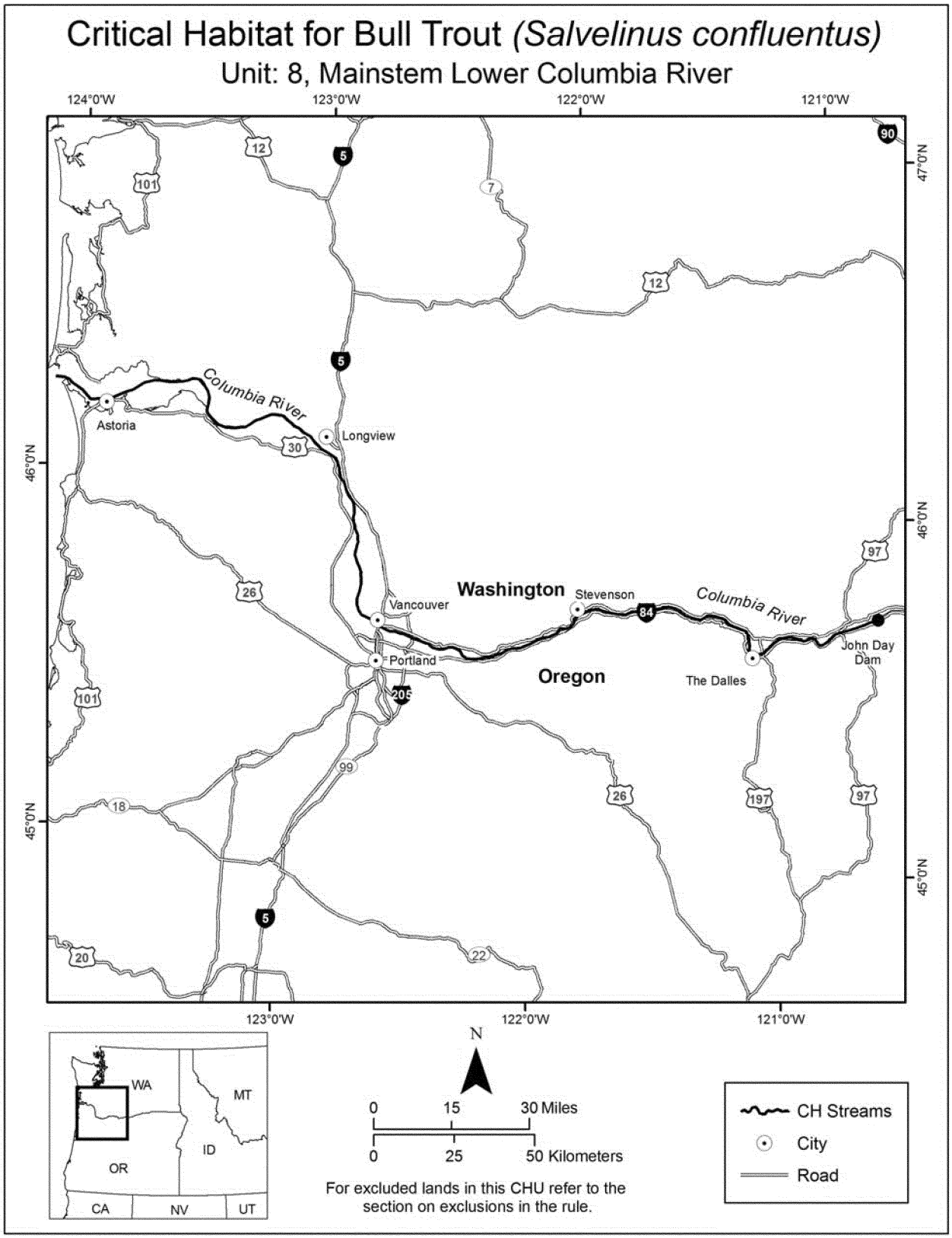
(ii) Individual waterbodies in the unit are bounded by the following coordinates:

| Waterbody Name | Stream Begin Point or Lake Center Latitude | Stream Begin Point or Lake Center Longitude | Stream End Point Latitude | Stream End Point Longitude |
|---|---|---|---|---|
| Columbia River | 45.645 | -121.933 | 45.800 | -122.787 |

(iii) Waterbodies associated with the following habitat conservation plan (HCP) totaling 1.7 km (1.1 mi) of streams have been excluded from critical habitat designation under section 4(b)(2) of the Act in this unit. These are waterbodies within the geographic area covered by the Washington State Forest Practices Habitat Conservation Plan (HCP).

(iv) Map of Unit 8, Mainstem Lower Columbia River follows:

BILLING CODE 4310–55–S




BILLING CODE 4310–55–C

(16) Unit 9: Klamath River Basin

(i) This unit consists of 445.2 km (276.6 mi) of streams and 3,775.5 ha (9,329.4 ac) of lakes and reservoirs. The unit is located in southwestern Oregon.

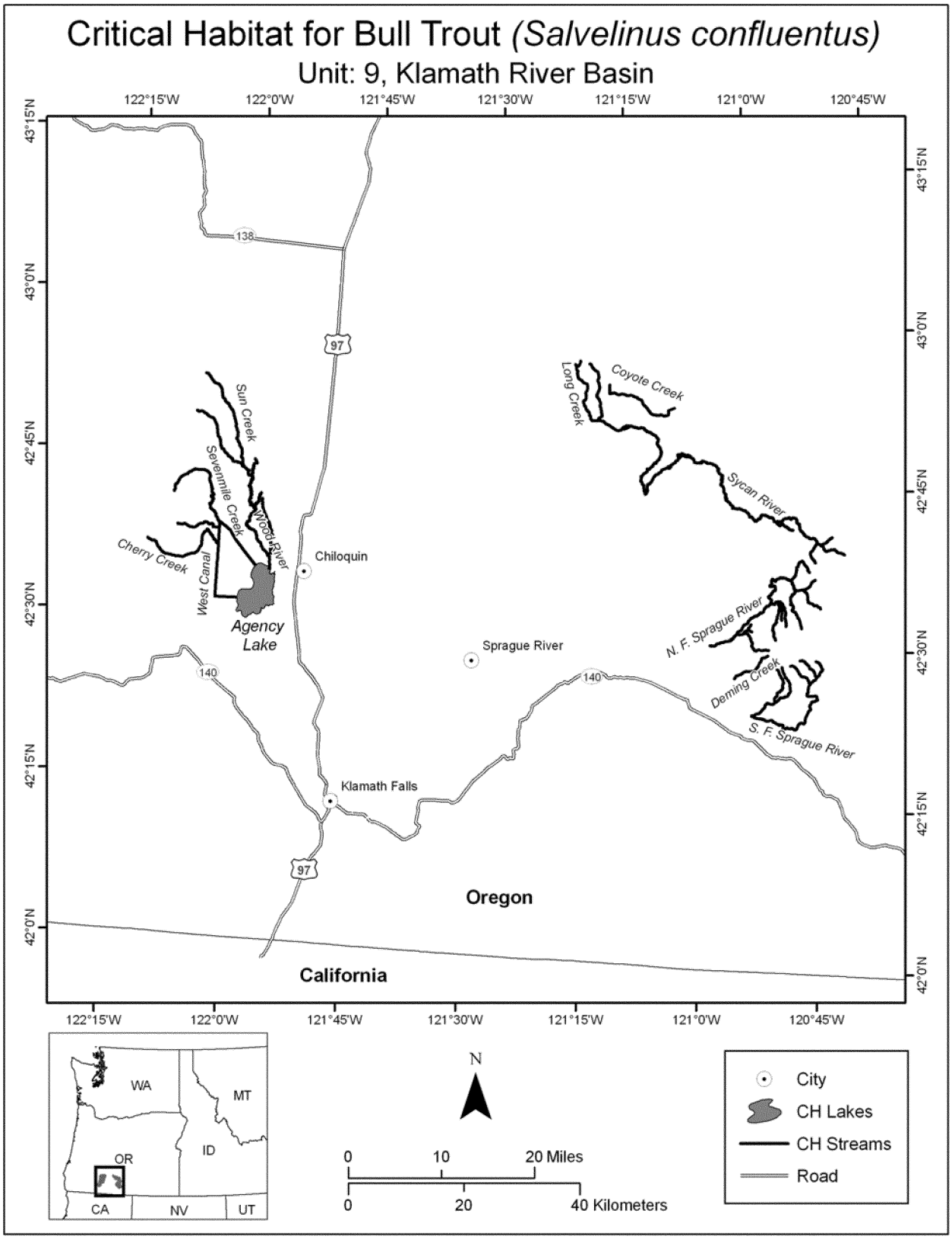
(ii) Individual waterbodies in the unit are bounded by the following coordinates:

| Waterbody Name | Stream Begin Point or Lake Center Latitude | Stream Begin Point or Lake Center Longitude | Stream End Point Latitude | Stream End Point Longitude |
|---|---|---|---|---|
| Agency Lake | 42.541 | -121.964 | | |
| Annie Creek | 42.721 | -121.990 | 42.817 | -122.113 |
| Boulder Creek | 42.660 | -120.784 | 42.673 | -120.762 |
| Boulder Creek | 42.517 | -120.952 | 42.494 | -120.885 |
| Brownsworth Creek | 42.392 | -120.914 | 42.469 | -120.855 |
| Calahan Creek | 42.838 | -121.267 | 42.924 | -121.292 |
| Camp Creek | 42.445 | -120.795 | 42.471 | -120.838 |
| Cherry Creek | 42.615 | -122.201 | 42.631 | -122.074 |
| Corral Creek | 42.455 | -120.783 | 42.480 | -120.819 |
| Coyote Creek | 42.862 | -121.109 | 42.893 | -121.247 |
| Crane Creek | 42.638 | -122.052 | 42.642 | -122.065 |
| Crooked Creek | 42.598 | -121.946 | 42.686 | -121.965 |
| Dead Cow Creek | 42.590 | -120.837 | 42.562 | -120.781 |
| Deming Creek | 42.448 | -120.954 | 42.486 | -120.886 |
| Dixon Creek | 42.518 | -120.938 | 42.532 | -120.925 |
| Fort Creek | 42.695 | -121.968 | 42.672 | -121.980 |
| Fourmile Creek | 42.612 | -122.051 | 42.633 | -122.077 |
| Gearhart Creek | 42.566 | -120.887 | 42.510 | -120.872 |
| Gold Creek | 42.590 | -120.819 | 42.606 | -120.795 |
| Hole Creek | 42.567 | -120.870 | 42.541 | -120.861 |
| Leonard Creek | 42.413 | -120.868 | 42.465 | -120.865 |
| Long Creek | 42.726 | -121.160 | 42.831 | -121.200 |
| North Fork Sprague River | 42.497 | -121.009 | 42.557 | -120.840 |
| Nottin Creek | 42.570 | -120.871 | 42.532 | -120.851 |
| Rifle Creek | 42.694 | -120.881 | 42.682 | -120.846 |
| School Creek | 42.604 | -120.847 | 42.618 | -120.808 |
| Sevenmile Canal | 42.582 | -121.971 | 42.646 | -122.052 |
| Sevenmile Creek | 42.646 | -122.052 | 42.690 | -122.151 |
| South Fork Sprague River | 42.392 | -120.914 | 42.481 | -120.785 |
| South Fork Sycan River | 42.663 | -120.794 | 42.633 | -120.796 |
| Sun Creek | 42.734 | -122.009 | 42.876 | -122.100 |
| Sycan River | 42.647 | -120.735 | 42.784 | -121.095 |
| Threemile Creek | 42.642 | -122.065 | 42.640 | -122.139 |
| Unnamed - Off Dixon Creek | 42.523 | -120.931 | 42.521 | -120.922 |
| Unnamed - Off Long Creek | 42.873 | -121.299 | 42.870 | -121.296 |
| West Canal | 42.646 | -122.052 | 42.531 | -122.005 |
| Wood River | 42.577 | -121.941 | 42.747 | -121.985 |

(iii) No waterbodies are excluded from critical habitat designation in this unit.

(iv) Map of Unit 9, Klamath River Basin follows:

BILLING CODE 4310–55–S




BILLING CODE 4310–55–C

(17) Unit 10: Upper Columbia River Basins

(i) This unit consists of 931.8 km (579.0 mi) of streams and 1,033.2 ha (2,553.1 ac) of lakes and reservoirs. The unit is located in northcentral Washington.

(ii) Individual waterbodies in the unit are bounded by the following coordinates:

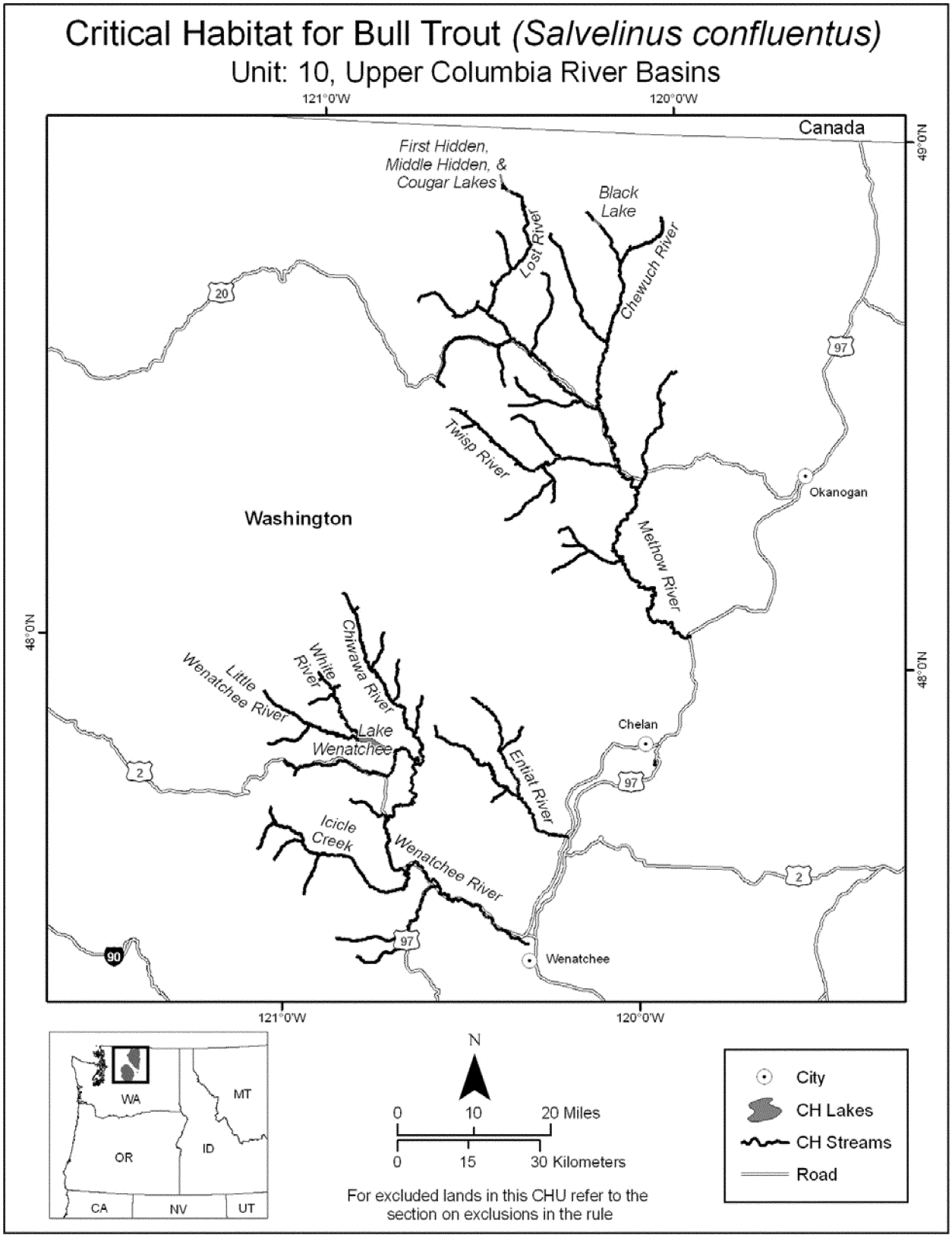
| Waterbody Name | Stream Begin Point or Lake Center Latitude | Stream Begin Point or Lake Center Longitude | Stream End Point Latitude | Stream End Point Longitude |
|---|---|---|---|---|
| Alder Creek | 47.845 | -120.666 | 47.919 | -120.647 |
| Alpine Creek | 48.084 | -120.864 | 48.083 | -120.866 |
| Andrews Creek | 48.782 | -120.108 | 48.787 | -120.113 |
| Beaver Creek | 48.327 | -120.066 | 48.492 | -119.993 |
| Black Lake | 48.829 | -120.208 | | |
| Blue Buck Creek | 48.486 | -120.005 | 48.553 | -119.963 |
| Buck Creek | 48.104 | -120.878 | 48.106 | -120.886 |
| Buttermilk Creek | 48.363 | -120.339 | 48.340 | -120.303 |
| Canyon Creek | 47.907 | -120.895 | 47.891 | -120.965 |
| Cedar Creek | 48.589 | -120.471 | 48.566 | -120.475 |
| Chelan River | 47.803 | -119.980 | 47.812 | -119.985 |
| Chewuch River | 48.476 | -120.183 | 48.844 | -120.023 |
| Chikamin Creek | 47.904 | -120.731 | 47.985 | -120.718 |
| Chiwaukum Creek | 47.679 | -120.728 | 47.715 | -120.839 |
| Chiwawa River | 47.788 | -120.660 | 48.104 | -120.878 |
| Cougar Lake | 48.881 | -120.466 | | |
| Crater Creek | 48.214 | -120.209 | 48.215 | -120.270 |
| Diamond Creek | 48.849 | -120.422 | 48.855 | -120.416 |
| Drake Creek | 48.781 | -120.396 | 48.787 | -120.389 |
| Early Winters Creek | 48.601 | -120.438 | 48.503 | -120.625 |
| East Fork Buttermilk Creek | 48.340 | -120.303 | 48.296 | -120.308 |
| Eightmile Creek | 48.604 | -120.163 | 48.804 | -120.338 |
| Entiat River | 47.660 | -120.218 | 47.920 | -120.507 |
| Eureka Creek | 48.700 | -120.492 | 48.709 | -120.506 |
| First Hidden Lake | 48.899 | -120.487 | | |
| Foggy Dew Creek | 48.204 | -120.190 | 48.161 | -120.297 |
| French Creek | 47.628 | -120.963 | 47.593 | -121.042 |
| Goat Creek | 48.574 | -120.379 | 48.730 | -120.360 |
| Gold Creek | 48.188 | -120.095 | 48.185 | -120.116 |
| Henry Creek | 47.768 | -120.991 | 47.754 | -120.996 |
| Huckleberry Creek | 48.569 | -120.473 | 48.511 | -120.450 |
| Icicle Creek | 47.550 | -120.679 | 47.558 | -120.672 |
| Ingalls Creek | 47.463 | -120.661 | 47.448 | -120.859 |
| Jack Creek | 47.608 | -120.900 | 47.529 | -120.952 |
| James Creek | 48.077 | -120.858 | 48.075 | -120.861 |
| Lake Creek | 48.750 | -120.137 | 48.848 | -120.239 |
| Lake Wenatchee | 47.823 | -120.778 | | |
| Leland Creek | 47.662 | -121.041 | 47.612 | -121.089 |
| Lightning Creek | 48.451 | -119.999 | 48.453 | -119.996 |
| Little Bridge Creek | 48.379 | -120.286 | 48.449 | -120.432 |
| Little Wenatchee River | 47.827 | -120.819 | 47.913 | -121.094 |
| Lost River | 48.650 | -120.512 | 48.896 | -120.486 |
| Mad River | 47.736 | -120.363 | 47.864 | -120.608 |
| Methow River | 48.050 | -119.894 | 48.651 | -120.513 |
| Middle Hidden Lake | 48.908 | -120.489 | | |
| Mill Creek | 47.777 | -121.011 | 47.772 | -121.021 |
| Monument Creek | 48.732 | -120.449 | 48.803 | -120.495 |
| Napeequa River | 47.921 | -120.897 | 47.931 | -120.879 |
| Nason Creek | 47.809 | -120.716 | 47.784 | -121.028 |
| Negro Creek | 47.444 | -120.662 | 47.418 | -120.797 |
| North Creek | 48.454 | -120.563 | 48.462 | -120.559 |
| North Fork Gold Creek | 48.185 | -120.116 | 48.238 | -120.283 |
| North Fork Wolf Creek | 48.485 | -120.347 | 48.530 | -120.424 |
| Panther Creek | 47.941 | -120.929 | 47.938 | -120.943 |
| Peshastin Creek | 47.558 | -120.574 | 47.444 | -120.662 |
| Phelps Creek | 48.070 | -120.853 | 48.080 | -120.839 |
| Ptarmigan Creek | 48.891 | -120.482 | 48.885 | -120.483 |
| Rainy Creek | 47.852 | -120.955 | 47.816 | -121.075 |
| Rattlesnake Creek | 48.648 | -120.566 | 48.651 | -120.571 |
| Reynolds Creek | 48.406 | -120.479 | 48.404 | -120.490 |
| Robinson Creek | 48.659 | -120.538 | 48.673 | -120.539 |
| Rock Creek | 47.963 | -120.796 | 48.037 | -120.763 |
| South Creek | 48.438 | -120.529 | 48.428 | -120.568 |
| Stormy Creek | 47.822 | -120.422 | 47.867 | -120.360 |
| Tillicum Creek | 47.747 | -120.394 | 47.723 | -120.439 |
| Trout Creek | 48.640 | -120.599 | 48.664 | -120.711 |
| Twisp River | 48.369 | -120.119 | 48.464 | -120.606 |
| Unnamed stream | 47.592 | -120.661 | 47.590 | -120.663 |
| Unnamed stream | 47.578 | -120.666 | 47.575 | -120.670 |
| Unnamed stream | 47.834 | -120.875 | 47.838 | -120.900 |

| Waterbody Name | Stream Begin Point or Lake Center Latitude | Stream Begin Point or Lake Center Longitude | Stream End Point Latitude | Stream End Point Longitude |
|---|---|---|---|---|
| Unnamed stream | 47.837 | -120.878 | 47.835 | -120.885 |
| W. Fork Buttermilk Creek | 48.340 | -120.303 | 48.259 | -120.437 |
| War Creek | 48.361 | -120.396 | 48.362 | -120.411 |
| Wenatchee River | 47.456 | -120.317 | 47.808 | -120.728 |
| West Fork Methow River | 48.648 | -120.512 | 48.641 | -120.609 |
| White River | 47.834 | -120.816 | 47.953 | -120.940 |
| Wolf Creek | 48.491 | -120.232 | 48.476 | -120.441 |

(iii) Waterbodies associated with the following habitat conservation plan (HCP) totaling 119.7 km (74.4 mi) of streams have been excluded from critical habitat designation under section 4(b)(2) of the Act in this unit. These are waterbodies within the geographic area covered by the Washington State Forest Practices Habitat Conservation Plan (HCP) , including portions of Entiat River, Methow River, and Wenatchee River CHSUs.

(iv) Map of Unit 10, Upper Columbia River Basins follows:

**BILLING CODE 4310–55–S**




BILLING CODE 4310–55–C

(18) Unit 11: Yakima River

(i) This unit consists of 896.9 km (557.3 mi) of streams and 6,285.2 ha (15,530.9 ac) of lakes and reservoirs. The unit is located in central Washington.

(ii) Individual waterbodies in the unit are bounded by the following coordinates:

| Waterbody Name | Stream Begin Point or Lake Center Latitude | Stream Begin Point or Lake Center Longitude | Stream End Point Latitude | Stream End Point Longitude |
|---|---|---|---|---|
| Ahtanum Creek | 46.529 | -120.473 | 46.523 | -120.855 |
| American River | 46.976 | -121.158 | 46.901 | -121.416 |
| Bear Creek | 46.538 | -121.261 | 46.540 | -121.282 |
| Box Canyon Creek | 47.360 | -121.244 | 47.377 | -121.259 |
| Bumping Lake | 46.851 | -121.328 | | |
| Bumping River | 46.831 | -121.378 | 46.868 | -121.300 |
| Camp Creek | 46.571 | -121.243 | 46.579 | -121.266 |
| Cle Elum Lake | 47.290 | -121.103 | | |
| Cle Elum River | 47.177 | -120.991 | 47.589 | -121.162 |
| Clear Lake | 46.629 | -121.281 | | |
| Cold Creek | 47.368 | -121.394 | 47.352 | -121.455 |
| Cooper Lake | 47.426 | -121.176 | | |
| Cooper River | 47.390 | -121.099 | 47.455 | -121.214 |
| Cowiche Creek | 46.628 | -120.569 | 46.647 | -120.682 |
| Crow Creek | 47.015 | -121.134 | 47.017 | -121.318 |
| Deep Creek | 46.844 | -121.317 | 46.804 | -121.322 |
| DeRoux Creek | 47.419 | -120.941 | 47.442 | -120.980 |
| Dog Creek | 46.787 | -121.169 | 46.793 | -121.178 |
| Easton Lake | 47.248 | -121.195 | | |
| Fall Creek | 46.586 | -121.038 | 46.595 | -121.060 |
| Fortune Creek | 47.477 | -121.047 | 47.469 | -120.965 |
| Gold Creek | 47.475 | -121.318 | 47.390 | -121.384 |
| Grey Creek | 46.591 | -121.223 | 46.594 | -121.226 |
| Hindoo Creek | 46.785 | -121.164 | 46.781 | -121.183 |
| Hyas Lake | 47.567 | -121.121 | | |
| Indian Creek | 46.696 | -121.301 | 46.641 | -121.250 |
| Jack Creek | 47.319 | -120.856 | 47.334 | -120.744 |
| Jungle Creek | 47.333 | -120.856 | 47.333 | -120.925 |
| Kachess Lake | 47.316 | -121.228 | | |
| Kachess River | 47.251 | -121.201 | 47.429 | -121.223 |
| Keechelus Lake | 47.349 | -121.368 | | |
| Kettle Creek | 46.941 | -121.328 | 46.916 | -121.342 |
| Little Naches River | 46.989 | -121.095 | 47.089 | -121.282 |
| Little Rattlesnake Creek | 46.814 | -120.949 | 46.801 | -120.948 |
| Little Wildcat Creek | 46.731 | -121.236 | 46.687 | -121.267 |
| Middle Fork Ahtanum Creek | 46.518 | -121.015 | 46.506 | -121.180 |
| Middle Fork Teanaway River | 47.257 | -120.898 | 47.419 | -120.994 |
| Mineral Creek | 47.420 | -121.241 | 47.422 | -121.246 |
| Naches River | 46.630 | -120.515 | 46.989 | -121.095 |
| North Fork Ahtanum Creek | 46.523 | -120.855 | 46.538 | -121.212 |
| North Fork Little Naches River | 47.089 | -121.282 | 47.094 | -121.392 |
| North Fork Rattlesnake Creek | 46.810 | -121.068 | 46.841 | -121.170 |
| North Fork Taneaum Creek | 47.112 | -120.933 | 47.109 | -121.145 |
| North Fork Teanaway River | 47.251 | -120.878 | 47.454 | -120.966 |
| North Fork Tieton River | 46.508 | -121.436 | 46.628 | -121.271 |
| Oak Creek | 46.724 | -120.813 | 46.735 | -120.924 |
| Pileup Creek | 47.045 | -121.183 | 47.090 | -121.124 |
| Quartz Creek | 47.017 | -121.135 | 47.082 | -121.109 |
| Rattlesnake Creek | 46.820 | -120.930 | 46.759 | -121.316 |
| Reynolds Creek | 46.619 | -120.882 | 46.601 | -121.068 |
| Rimrock Lake | 46.639 | -121.180 | | |
| Rock Creek | 46.585 | -121.025 | 46.588 | -121.079 |
| Shellneck Creek | 46.531 | -121.159 | 46.515 | -121.188 |
| Short And Dirty Creek | 46.617 | -121.150 | 46.616 | -121.149 |
| South Fork Ahtanum Creek | 46.523 | -120.855 | 46.454 | -121.119 |
| South Fork Cowiche Creek | 46.647 | -120.682 | 46.566 | -121.124 |
| South Fork Little Naches River | 47.066 | -121.227 | 47.020 | -121.392 |
| South Fork Taneaum Creek | 47.112 | -120.933 | 47.091 | -121.030 |
| South Fork Tieton River | 46.627 | -121.133 | 46.496 | -121.315 |
| Spruce Creek | 46.590 | -121.219 | 46.586 | -121.212 |
| Stafford Creek | 47.347 | -120.849 | 47.398 | -120.802 |
| Swauk Creek | 47.123 | -120.738 | 47.158 | -120.739 |
| Taneaum Creek | 47.092 | -120.709 | 47.112 | -120.933 |
| Teanaway River | 47.167 | -120.835 | 47.257 | -120.898 |
| Tieton River | 46.746 | -120.787 | 46.656 | -121.130 |
| Timber Creek | 46.913 | -121.386 | 46.907 | -121.382 |
| Union Creek | 46.932 | -121.358 | 46.937 | -121.362 |
| Unnamed stream | 46.545 | -121.388 | 46.550 | -121.403 |
| Waptus Lake | 47.503 | -121.178 | | |
| Waptus River | 47.419 | -121.088 | 47.540 | -121.241 |

| Waterbody Name | Stream Begin Point or Lake Center Latitude | Stream Begin Point or Lake Center Longitude | Stream End Point Latitude | Stream End Point Longitude |
|---|---|---|---|---|
| Yakima River | 46.254 | -119.228 | 47.322 | -121.340 |

(iii) Waterbodies associated with the following tribal lands or habitat conservation plans (HCPs) totaling 288.7 km (179.4 mi) of streams have been excluded from critical habitat designation under section 4(b)(2) of the Act in this unit:

(A) Waterbodies within the geographic area covered by the Washington State Forest Practices Habitat Conservation Plan (HCP) , including portions of the Yakima River Critical Habitat Unit (CHU);

(B) Waterbodies within the geographic area covered by the Plum Creek Central Cascades HCP, including portions of the Yakima River CHU; and

(C) Waterbodies within the areas under management by the Yakama Tribe, including portions of Yakama River CHU and Klickitat River CHSU, within reservation boundaries, and waterbodies that are adjacent to:

(*1*) Lands held in trust by the United States for their benefit;

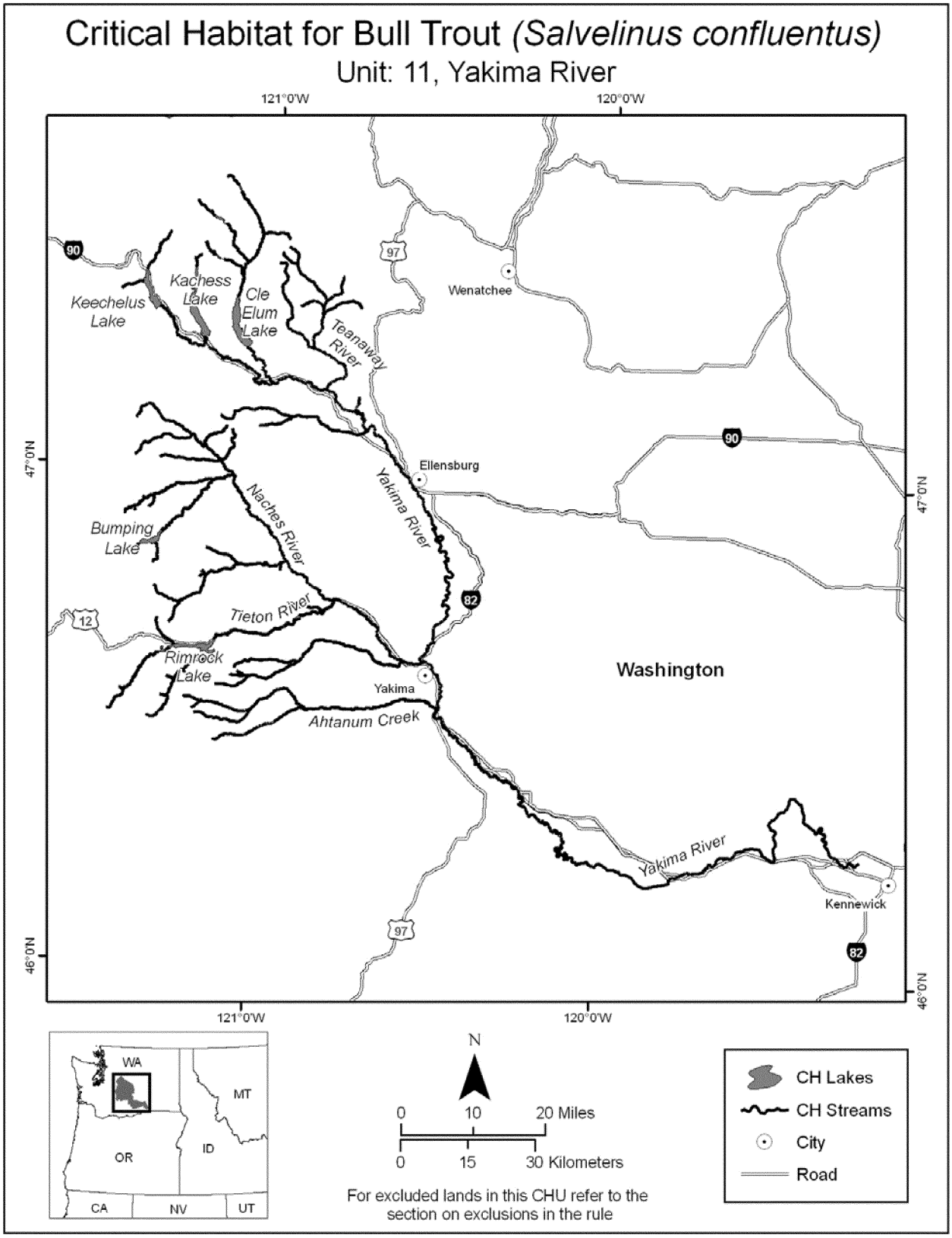
(*2*) Lands held in trust by the United States for any Indian Tribe or individual subject to restrictions by the United States against alienation;

(*3*) Fee lands, either within or outside the reservation boundaries, owned by the tribal government; and

(*4*) Fee lands within the reservation boundaries owned by individual Indians.

(iv) Map of Unit 11, Yakima River follows:

BILLING CODE 4310–55–S




BILLING CODE 4310–55–C

(19) Unit 12: John Day River Basin

(i) This unit consists of 1,089.6 km (677.0 mi) of streams. The unit is located in northcentral Oregon.

(ii) Individual waterbodies in the unit are bounded by the following coordinates:

| Waterbody Name | Stream Begin Point or Lake Center Latitude | Stream Begin Point or Lake Center Longitude | Stream End Point Latitude | Stream End Point Longitude |
|---|---|---|---|---|
| Baldy Creek | 44.850 | -118.305 | 44.910 | -118.318 |
| Big Creek | 44.976 | -118.651 | 44.960 | -118.683 |
| Big Creek | 44.765 | -118.686 | 44.766 | -118.874 |
| Boulder Creek | 44.840 | -118.333 | 44.819 | -118.415 |
| Boundary Creek | 44.811 | -118.343 | 44.787 | -118.375 |
| Bull Run Creek | 44.768 | -118.291 | 44.808 | -118.425 |
| Butte Creek | 44.585 | -118.644 | 44.642 | -118.652 |
| Call Creek | 44.286 | -118.507 | 44.320 | -118.557 |
| Clear Creek | 44.749 | -118.546 | 44.821 | -118.450 |
| Clear Creek | 44.447 | -118.431 | 44.593 | -118.508 |
| Crane Creek | 44.868 | -118.330 | 44.894 | -118.478 |
| Crawfish Creek | 44.931 | -118.234 | 44.915 | -118.298 |
| Cunningham Creek | 44.911 | -118.267 | 44.920 | -118.235 |
| Deadwood Creek | 44.750 | -118.719 | 44.768 | -118.793 |
| Deardorff Creek | 44.383 | -118.423 | 44.395 | -118.577 |
| Deep Creek | 44.815 | -118.306 | 44.780 | -118.348 |
| Desolation Creek | 44.820 | -118.689 | 44.998 | -118.936 |
| Dry Creek | 44.729 | -118.531 | 44.750 | -118.500 |
| Granite Boulder Creek | 44.726 | -118.611 | 44.647 | -118.665 |
| Granite Creek | 44.857 | -118.343 | 44.866 | -118.562 |
| Indian Creek | 44.295 | -118.736 | 44.443 | -118.800 |
| John Day River | 44.250 | -118.527 | 45.737 | -120.652 |
| Lightning Creek | 44.718 | -118.494 | 44.765 | -118.497 |
| Middle Fork John Day River | 44.593 | -118.508 | 44.917 | -119.301 |
| North Fork John Day River | 44.866 | -118.239 | 44.755 | -119.639 |
| North Reynolds Creek | 44.430 | -118.425 | 44.423 | -118.517 |
| Onion Creek | 44.889 | -118.339 | 44.913 | -118.401 |
| Rail Creek | 44.297 | -118.490 | 44.349 | -118.575 |
| Reynolds Creek | 44.405 | -118.440 | 44.414 | -118.596 |
| Roberts Creek | 44.276 | -118.575 | 44.348 | -118.575 |
| Salmon Creek | 44.717 | -118.542 | 44.725 | -118.503 |
| South Fork Desolation Creek | 44.719 | -118.623 | 44.820 | -118.689 |
| South Trail Creek | 44.953 | -118.274 | 44.937 | -118.390 |
| Trail Creek | 44.937 | -118.390 | 44.915 | -118.406 |
| Vinegar Creek | 44.707 | -118.550 | 44.601 | -118.536 |
| West Fork Clear Creek | 44.733 | -118.584 | 44.749 | -118.546 |
| West Fork Meadow Brook | 44.969 | -118.966 | 44.997 | -118.945 |
| Winom Creek | 45.050 | -118.611 | 44.976 | -118.671 |

(iii) Waterbodies associated with the following tribal lands totaling 28.5 km (17.7 mi) of streams have been excluded from critical habitat designation under section 4(b)(2) of the Act in this unit. These are waterbodies within the areas under management by the Confederated Tribes of the Warm Springs Reservation, within reservation boundaries, and waterbodies that are adjacent to:

(A) Lands held in trust by the United States for their benefit;

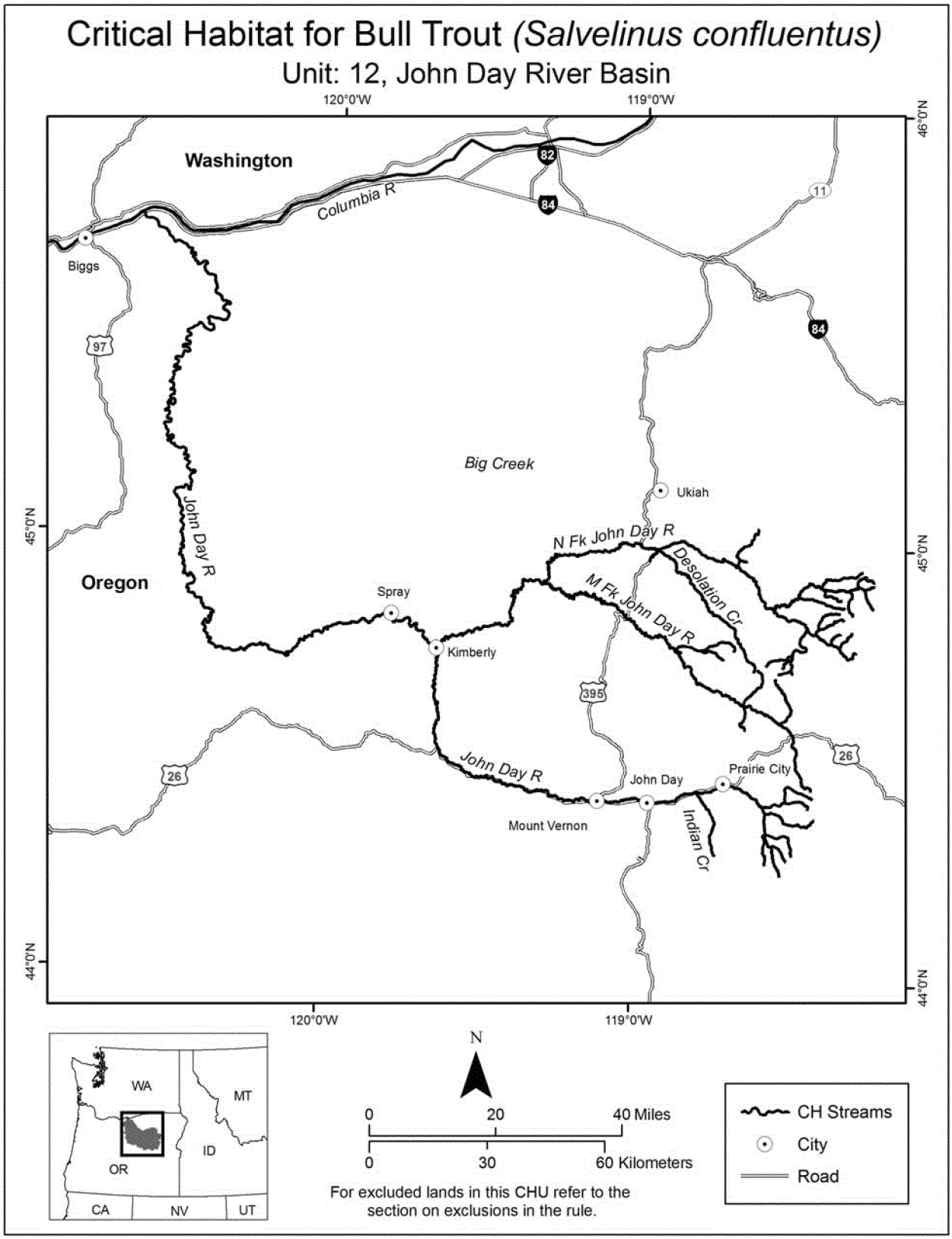
(B) Lands held in trust by the United States for any Indian Tribe or individual subject to restrictions by the United States against alienation;

(C) Fee lands, either within or outside the reservation boundaries, owned by the tribal government; and

(D) Fee lands within the reservation boundaries owned by individual Indians.

(iv) Map of Unit 12, John Day River Basin follows:

BILLING CODE 4310–55–S




BILLING CODE 4310–55–C

(20) Unit 13: Umatilla River Basin

(i) This unit consists of 163.0 km (101.3 mi) of streams. The unit is located in northeastern Oregon.

(ii) Individual waterbodies in the unit are bounded by the following coordinates:

| Waterbody Name | Stream Begin Point or Lake Center Latitude | Stream Begin Point or Lake Center Longitude | Stream End Point Latitude | Stream End Point Longitude |
|---|---|---|---|---|
| Coyote Creek | 45.745 | -118.137 | 45.732 | -118.139 |
| Meacham Creek | 45.486 | -118.275 | 45.702 | -118.360 |
| North Fork Meacham Creek | 45.584 | -118.164 | 45.527 | -118.291 |
| North Fork Umatilla River | 45.705 | -118.034 | 45.726 | -118.189 |
| Pot Creek | 45.523 | -118.163 | 45.554 | -118.201 |
| Ryan Creek | 45.694 | -118.309 | 45.723 | -118.315 |
| Umatilla River | 45.726 | -118.189 | 45.923 | -119.357 |
| Woodward Creek | 45.750 | -118.076 | 45.736 | -118.080 |

(iii) Waterbodies associated with the following tribal lands totaling 48.7 km (30.3 mi) of streams have been excluded from critical habitat designation under section 4(b)(2) of the Act in this unit. These are waterbodies within the areas under management by the Confederated Tribes of the Umatilla, and waterbodies that are adjacent to:

(A) Lands held in trust by the United States for their benefit;

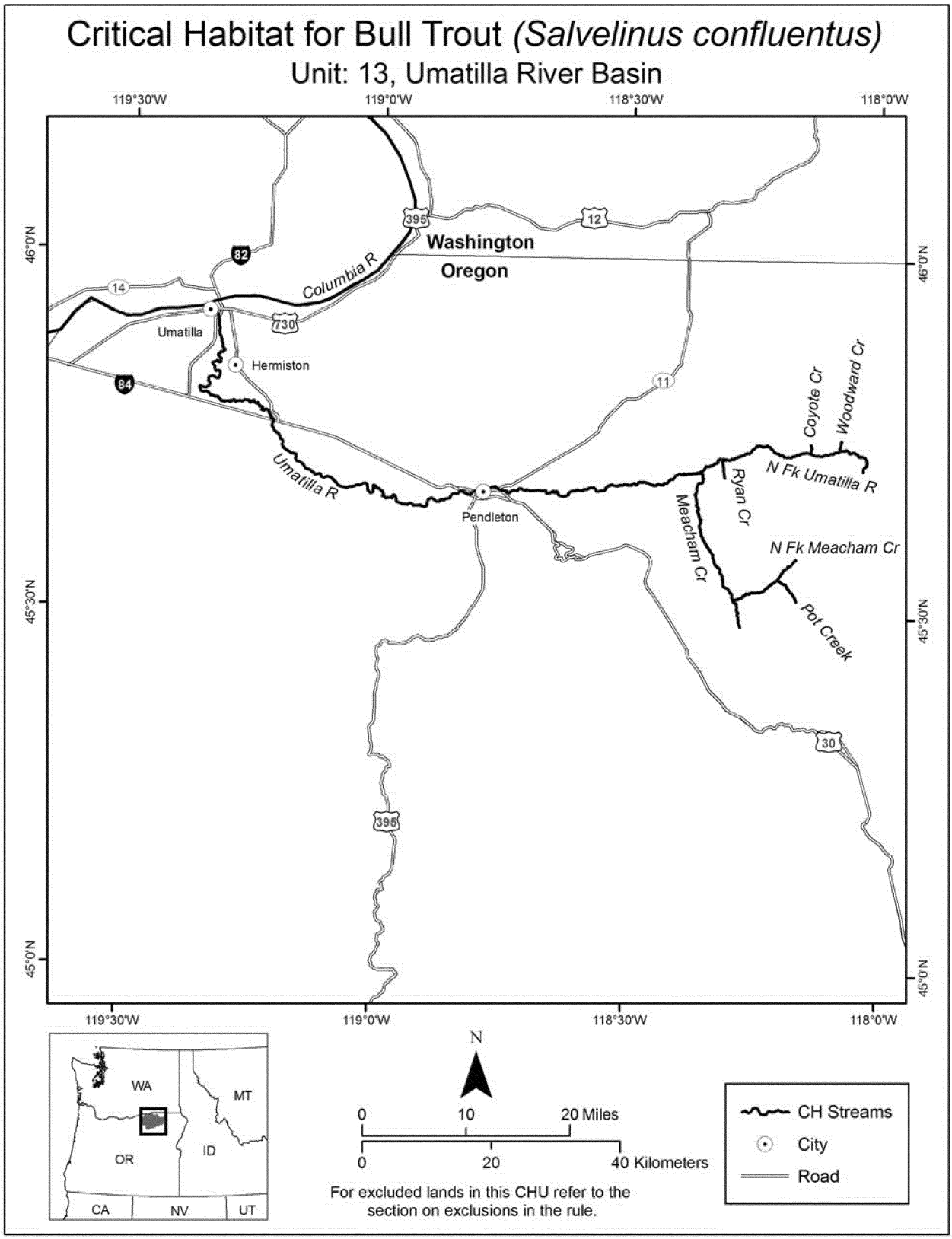
(B) Lands held in trust by the United States for any Indian Tribe or individual subject to restrictions by the United States against alienation;

(C) Fee lands, either within or outside the reservation boundaries, owned by the tribal government; and

(D) Fee lands within the reservation boundaries owned by individual Indians.

(iv) Map of Unit 13, Umatilla River Basin follows:

BILLING CODE 4310–55–S




BILLING CODE 4310–55–C

(21) Unit 14: Walla Walla River Basin

(i) This unit consists of 383.7 km (238.4 mi) of streams. The unit is located in southwestern Washington and northeastern Oregon.

(ii) Individual waterbodies in the unit are bounded by the following coordinates:

| Waterbody Name | Stream Begin Point or Lake Center Latitude | Stream Begin Point or Lake Center Longitude | Stream End Point Latitude | Stream End Point Longitude |
|---|---|---|---|---|
| Blue Creek | 46.061 | -118.155 | 46.063 | -118.108 |
| Bull Creek | 46.027 | -117.939 | 46.028 | -117.948 |
| Burnt Fork | 46.087 | -117.942 | 46.105 | -117.986 |
| Burnt Fork Creek | 46.040 | -117.946 | 46.032 | -117.953 |
| Corral Creek | 46.093 | -117.847 | 46.090 | -117.844 |
| Couse Creek | 45.910 | -118.371 | 45.848 | -118.327 |
| Deadman Creek | 46.032 | -117.956 | 46.049 | -117.951 |
| Green Fly Canyon | 46.142 | -117.876 | 46.142 | -117.872 |
| Green Fork Creek | 46.033 | -117.940 | 46.029 | -117.949 |
| Griffin Fork | 46.117 | -117.965 | 46.121 | -117.975 |
| Henry Canyon | 45.988 | -118.091 | 45.931 | -118.078 |
| Husky Spring Creek | 45.889 | -117.952 | 45.884 | -117.978 |
| Lewis Creek | 46.156 | -117.772 | 46.191 | -117.825 |
| Low Creek | 45.973 | -118.010 | 45.993 | -118.036 |
| Mill Creek | 46.021 | -117.945 | 46.039 | -118.479 |
| North Fork Mill Creek | 46.035 | -117.994 | 46.021 | -117.997 |
| North Fork Touchet River | 46.093 | -117.865 | 46.301 | -117.960 |
| North Fork Walla Walla River | 45.889 | -118.087 | 45.898 | -118.308 |
| Paradise Creek | 46.000 | -117.991 | 46.004 | -118.018 |
| Reser Creek | 45.887 | -118.001 | 45.876 | -117.986 |
| Skiphorton Creek | 45.874 | -118.027 | 45.852 | -118.025 |
| South Fork Touchet River | 46.105 | -117.986 | 46.301 | -117.960 |
| South Fork Walla Walla River | 45.938 | -117.969 | 45.898 | -118.308 |
| Spangler Creek | 46.099 | -117.803 | 46.149 | -117.807 |
| Touchet River | 46.301 | -117.960 | 46.034 | -118.683 |
| Walla Walla River | 45.898 | -118.308 | 46.062 | -118.940 |
| Wolf Fork Touchet River | 46.075 | -117.904 | 46.274 | -117.896 |
| Yellowhawk Creek | 46.076 | -118.273 | 46.017 | -118.401 |

(iii) Waterbodies associated with the following tribal lands or habitat conservation plans (HCPs) totaling 69.0 km (42.0 mi) of streams have been excluded from critical habitat designation under section 4(b)(2) of the Act in this unit:

(A) Waterbodies within the geographic area covered by the Washington State Forest Practices Habitat Conservation Plan (HCP) , including portions of Touchet River and Walla Walla River CHSUs; and

(B) Waterbodies within the areas under management by the Confederated Tribes of the Umatilla, including portions of the Touchet River CHSU, within reservation boundaries, and waterbodies that are adjacent to:

(*1*) Lands held in trust by the United States for their benefit;

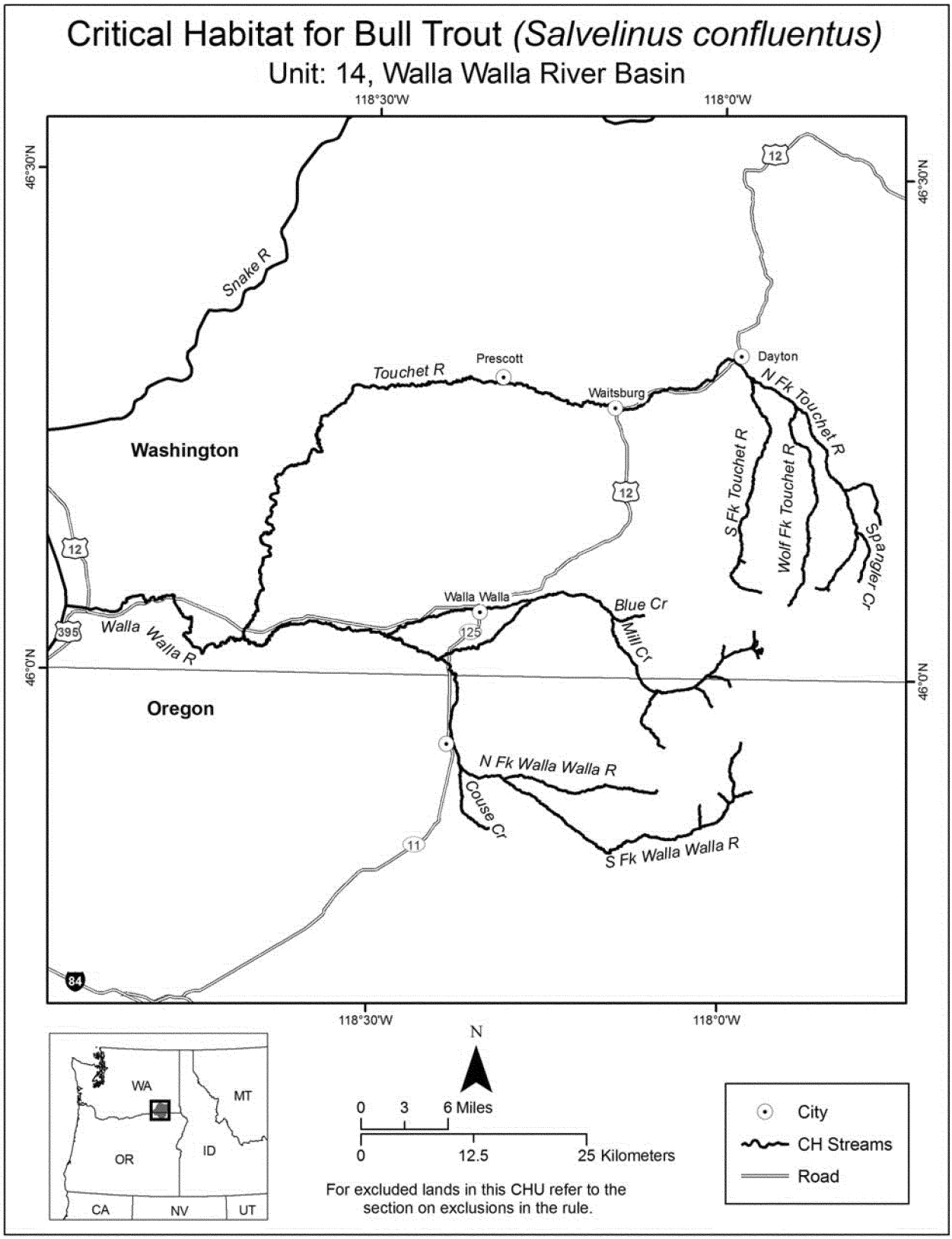
(*2*) Lands held in trust by the United States for any Indian Tribe or individual subject to restrictions by the United States against alienation;

(*3*) Fee lands, either within or outside the reservation boundaries, owned by the tribal government; and

(*4*) Fee lands within the reservation boundaries owned by individual Indians.

(iv) Map of Unit 14, Walla Walla River Basin follows:

BILLING CODE 4310–55–S




BILLING CODE 4310–55–C

(22) Unit 15: Lower Snake River Basins

(i) This unit consists of 270.8 km (168.3 mi) of streams. The unit is located in southeastern Washington.

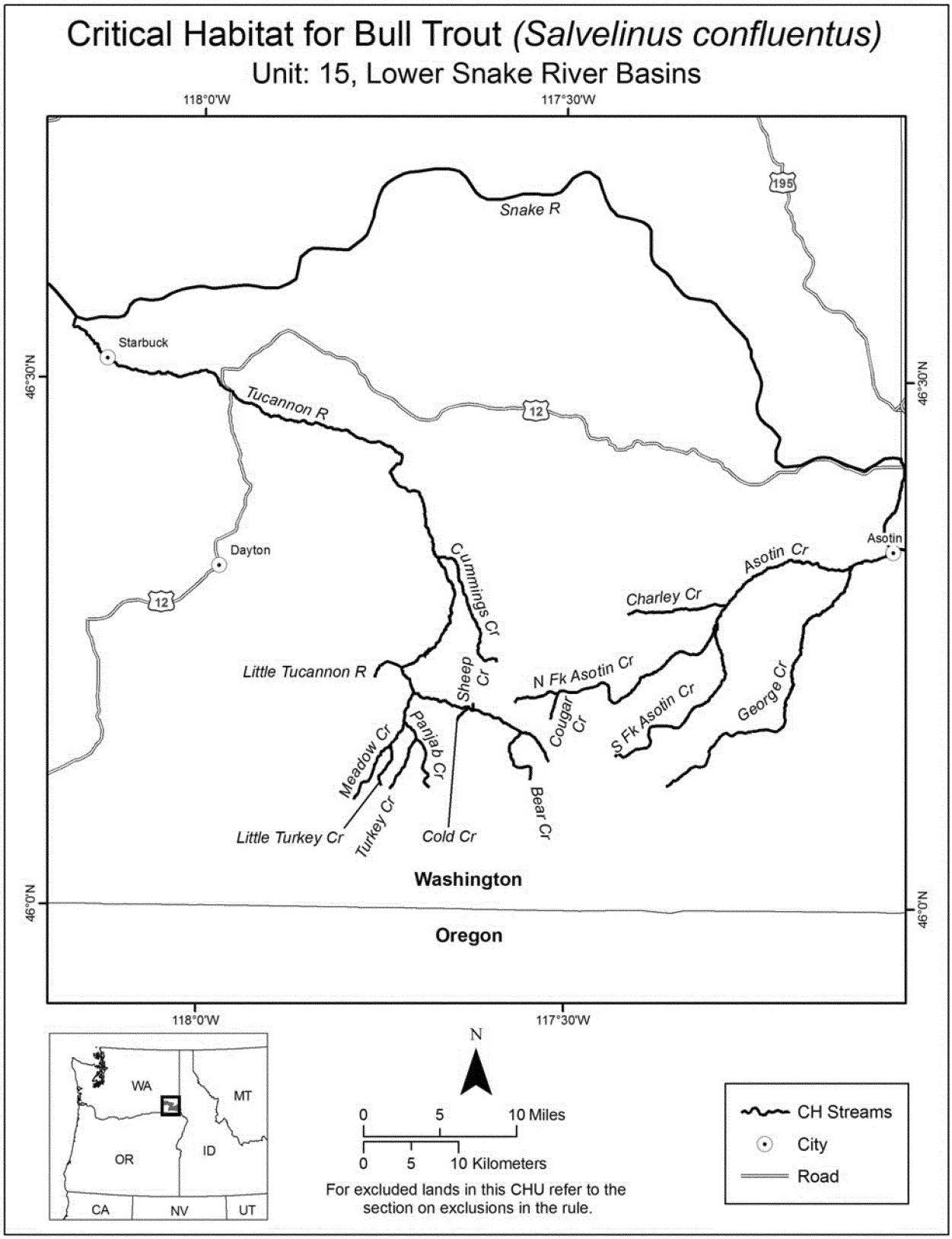
(ii) Individual waterbodies in the unit are bounded by the following coordinates:

| Waterbody Name | Stream Begin Point or Lake Center Latitude | Stream Begin Point or Lake Center Longitude | Stream End Point Latitude | Stream End Point Longitude |
|---|---|---|---|---|
| Asotin Creek | 46.345 | -117.054 | 46.272 | -117.292 |
| Bear Creek | 46.168 | -117.560 | 46.122 | -117.546 |
| Charley Creek | 46.289 | -117.279 | 46.279 | -117.414 |
| Cold Creek | 46.191 | -117.631 | 46.178 | -117.647 |
| Cougar Creek | 46.205 | -117.509 | 46.180 | -117.519 |
| Cummings Creek | 46.333 | -117.675 | 46.234 | -117.594 |
| George Creek | 46.326 | -117.106 | 46.117 | -117.361 |
| Hixon Creek | 46.246 | -117.684 | 46.239 | -117.690 |
| Little Tucannon River | 46.228 | -117.722 | 46.218 | -117.759 |
| Little Turkey Creek | 46.155 | -117.737 | 46.116 | -117.750 |
| Meadow Creek | 46.176 | -117.719 | 46.102 | -117.786 |
| North Fork Asotin Creek | 46.272 | -117.292 | 46.196 | -117.569 |
| Panjab Creek | 46.205 | -117.706 | 46.115 | -117.683 |
| Sheep Creek | 46.188 | -117.625 | 46.195 | -117.624 |
| South Fork Asotin Creek | 46.272 | -117.292 | 46.145 | -117.431 |
| Tucannon River | 46.557 | -118.175 | 46.139 | -117.521 |
| Turkey Creek | 46.161 | -117.703 | 46.113 | -117.739 |

(iii) Waterbodies associated with the following habitat conservation plans (HCPs) totaling 13.4 km (8.3 mi) of streams have been excluded from critical habitat designation under section 4(b)(2) of the Act in this unit. These are waterbodies within the geographic area covered by the Washington State Forest Practices Habitat Conservation Plan (HCP), including portions of Asotin Creek and Tucannon River CHSUs.

(iv) Map of Unit 15, Lower Snake River Basins follows:

BILLING CODE 4310–55–S




BILLING CODE 4310–55–C

(23) Unit 16: Grande Ronde River Basin

(i) This unit consists of 1,057.9 km (657.4 mi) of streams and 605.2 ha (1,495.5 ac) of lakes and reservoirs. The unit is located in northeastern Oregon and southwestern Washington.

(ii) Individual waterbodies in the unit are bounded by the following coordinates:

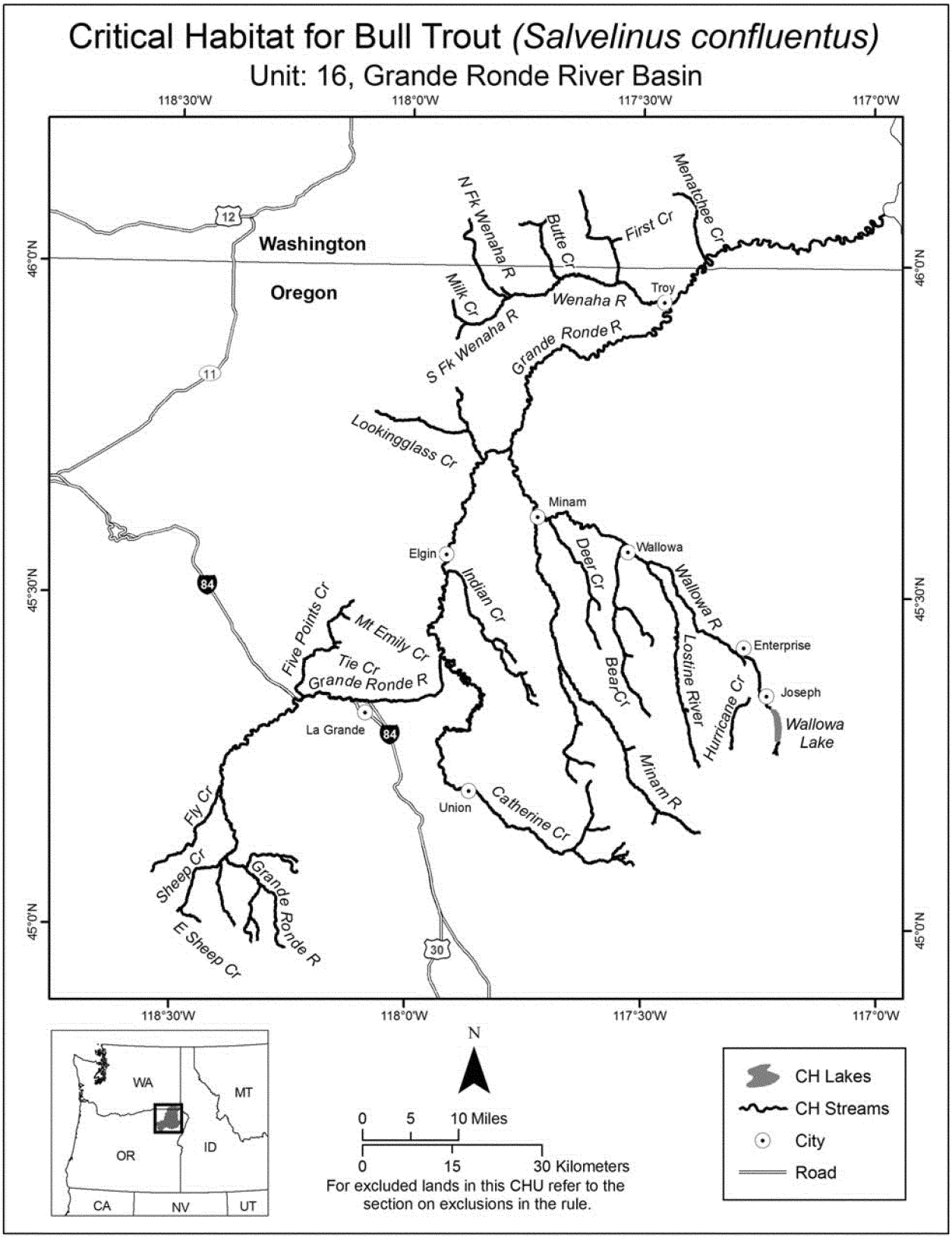
| Waterbody Name | Stream Begin Point or Lake Center Latitude | Stream Begin Point or Lake Center Longitude | Stream End Point Latitude | Stream End Point Longitude |
|---|---|---|---|---|
| Bear Creek | 45.322 | -117.481 | 45.584 | -117.541 |
| Beaver Creek | 45.968 | -117.808 | 45.955 | -117.786 |
| Boulder Creek | 45.310 | -117.625 | 45.312 | -117.633 |
| Butte Creek | 46.064 | -117.723 | 45.982 | -117.679 |
| Camp Creek | 45.387 | -117.745 | 45.387 | -117.758 |
| Catherine Creek | 45.120 | -117.647 | 45.408 | -117.931 |
| Chicken Creek | 45.024 | -118.386 | 45.095 | -118.395 |
| Clear Creek | 44.976 | -118.327 | 45.063 | -118.310 |
| Collins Creek | 45.097 | -117.514 | 45.105 | -117.543 |
| Crooked Creek | 46.046 | -117.625 | 45.977 | -117.552 |
| Deer Creek | 45.423 | -117.588 | 45.620 | -117.700 |
| Dobbin Creek | 45.221 | -117.640 | 45.259 | -117.654 |
| East Fork Butte Creek | 46.064 | -117.723 | 46.074 | -117.710 |
| East Fork Elk Creek | 45.161 | -117.469 | 45.166 | -117.470 |
| East Fork Indian Creek | 45.353 | -117.725 | 45.368 | -117.749 |
| East Fork Wallowa River | 45.265 | -117.210 | 45.274 | -117.212 |
| East Sheep Creek | 45.003 | -118.435 | 45.026 | -118.475 |
| Elk Creek | 45.160 | -117.476 | 45.178 | -117.460 |
| Fiddlers Hell Creek | 45.431 | -118.144 | 45.428 | -118.160 |
| First Creek | 46.043 | -117.547 | 46.035 | -117.571 |
| Five Points Creek | 45.481 | -118.144 | 45.346 | -118.222 |
| Fly Creek | 45.121 | -118.466 | 45.210 | -118.395 |
| Goat Creek | 45.413 | -117.518 | 45.418 | -117.538 |
| Grande Ronde River | 44.967 | -118.255 | 46.080 | -116.979 |
| Hurricane Creek | 45.274 | -117.312 | 45.420 | -117.302 |
| Indian Creek | 45.337 | -117.722 | 45.534 | -117.920 |
| Indiana Creek | 45.000 | -118.362 | 45.024 | -118.386 |
| Lake Creek | 45.331 | -117.398 | 45.332 | -117.410 |
| Limber Jim Creek | 45.085 | -118.230 | 45.089 | -118.344 |
| Little Bear Creek | 45.428 | -117.480 | 45.485 | -117.555 |
| Little Fly Creek | 45.109 | -118.476 | 45.121 | -118.466 |
| Little Lookingglass Creek | 45.817 | -117.902 | 45.750 | -117.875 |
| Little Minam River | 45.246 | -117.600 | 45.401 | -117.672 |
| Lookingglass Creek | 45.779 | -118.079 | 45.707 | -117.842 |
| Lookout Creek | 45.078 | -118.541 | 45.109 | -118.476 |
| Lostine River | 45.245 | -117.375 | 45.552 | -117.490 |
| Marion Creek | 45.097 | -118.229 | 45.105 | -118.267 |
| Menatchee Creek | 46.110 | -117.439 | 46.007 | -117.365 |
| Middle Fork Catherine Creek | 45.154 | -117.565 | 45.152 | -117.617 |
| Middle Fork Five Points Creek | 45.492 | -118.116 | 45.481 | -118.144 |
| Milk Creek | 45.948 | -117.913 | 45.913 | -117.883 |
| Minam River | 45.147 | -117.372 | 45.621 | -117.721 |
| Mt Emily Creek | 45.465 | -118.125 | 45.473 | -118.147 |
| North Fork Catherine Creek | 45.225 | -117.605 | 45.120 | -117.647 |
| North Fork Indian Creek | 45.402 | -117.769 | 45.433 | -117.820 |
| North Fork Wenaha River | 46.066 | -117.878 | 46.066 | -117.878 |
| North Minam River | 45.276 | -117.512 | 45.273 | -117.537 |
| Pole Creek | 45.131 | -117.531 | 45.107 | -117.560 |
| Sage Creek | 45.481 | -117.594 | 45.500 | -117.607 |
| Sand Pass Creek | 45.120 | -117.526 | 45.108 | -117.552 |
| Sheep Creek | 45.019 | -118.485 | 45.105 | -118.382 |
| Silver Creek | 45.394 | -117.422 | 45.396 | -117.428 |
| South Fork Catherine Creek | 45.110 | -117.533 | 45.120 | -117.647 |
| South Fork Wenaha River | 45.890 | -117.906 | 45.951 | -117.795 |
| Summer Creek | 45.771 | -117.983 | 45.766 | -117.983 |
| Third Creek | 46.089 | -117.628 | 46.046 | -117.625 |
| Tie Creek | 45.421 | -118.149 | 45.423 | -118.159 |
| Trout Creek | 46.089 | -117.628 | 46.116 | -117.641 |
| Unnamed - Off Clear Creek | 44.977 | -118.314 | 45.013 | -118.330 |
| Wallowa Lake | 45.310 | -117.210 | | |
| Wallowa River | 45.274 | -117.212 | 45.726 | -117.785 |
| Wenaha River | 45.951 | -117.795 | 45.945 | -117.451 |
| West Fork Butte Creek | 46.063 | -117.772 | 46.063 | -117.723 |
| West Fork Wallowa River | 45.267 | -117.216 | 45.274 | -117.212 |

(iii) Waterbodies associated with the following habitat conservation plans (HCPs) totaling 1.0 km (0.6 mi) of streams have been excluded from critical habitat designation under section 4(b)(2) of the Act in this unit. These are waterbodies within the geographic area covered by the Washington State Forest Practices

Habitat Conservation Plan (HCP), including portions of the Grand Ronde River CHSU.

(iv) Map of Unit 16, Grand Ronde River Basin follows:

BILLING CODE 4310–55–S



BILLING CODE 4310–55–C

(24) Unit 17: Imnaha River Basin

(i) This unit consists of 285.7 km (177.5 mi) of streams. The unit is located in northeastern Oregon.

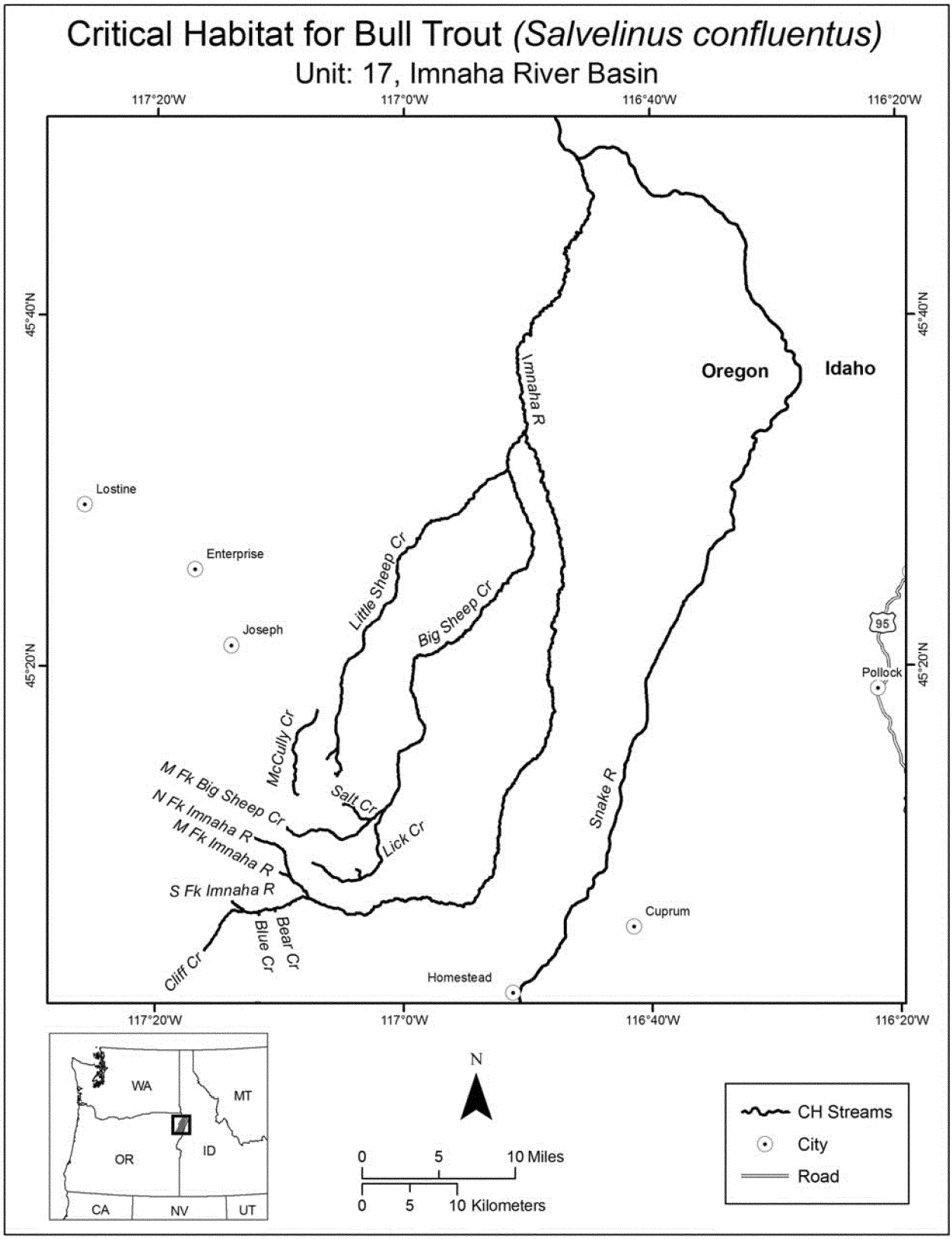
(ii) Individual waterbodies in the unit are bounded by the following coordinates:

| Waterbody Name | Stream Begin Point or Lake Center Latitude | Stream Begin Point or Lake Center Longitude | Stream End Point Latitude | Stream End Point Longitude |
|---|---|---|---|---|
| Bear Creek | 45.100 | -117.173 | 45.104 | -117.172 |
| Big Sheep Creek | 45.178 | -117.120 | 45.557 | -116.835 |
| Blue Creek | 45.097 | -117.194 | 45.101 | -117.195 |
| Cabin Creek | 45.229 | -117.090 | 45.232 | -117.089 |
| Cliff Creek | 45.063 | -117.269 | 45.102 | -117.215 |
| Imnaha River | 45.113 | -117.126 | 45.817 | -116.765 |
| Lick Creek | 45.147 | -117.124 | 45.198 | -117.025 |
| Little Sheep Creek | 45.232 | -117.094 | 45.520 | -116.860 |
| McCully Creek | 45.211 | -117.141 | 45.293 | -117.116 |
| Middle Fork Big Sheep Creek | 45.181 | -117.158 | 45.178 | -117.120 |
| Middle Fork Imnaha River | 45.139 | -117.167 | 45.133 | -117.152 |
| North Fork Imnaha River | 45.171 | -117.201 | 45.113 | -117.126 |
| Redmont Creek | 45.245 | -117.104 | 45.256 | -117.089 |
| Salt Creek | 45.202 | -117.083 | 45.188 | -117.044 |
| Soldier Creek | 45.107 | -117.155 | 45.109 | -117.152 |
| South Fork Imnaha River | 45.111 | -117.231 | 45.113 | -117.126 |
| Unnamed - Off Lick Creek | 45.141 | -117.065 | 45.133 | -117.057 |

(iii) No waterbodies are excluded from critical habitat designation in this unit.

(iv) Map of Unit 17, Imnaha River Basin follows:

BILLING CODE 4310–55–S




BILLING CODE 4310–55–C

(25) Unit 18: Sheep / Granite Creeks

(i) This unit consists of 47.9 km (29.7 mi) of streams. The unit is located in west-central Idaho.

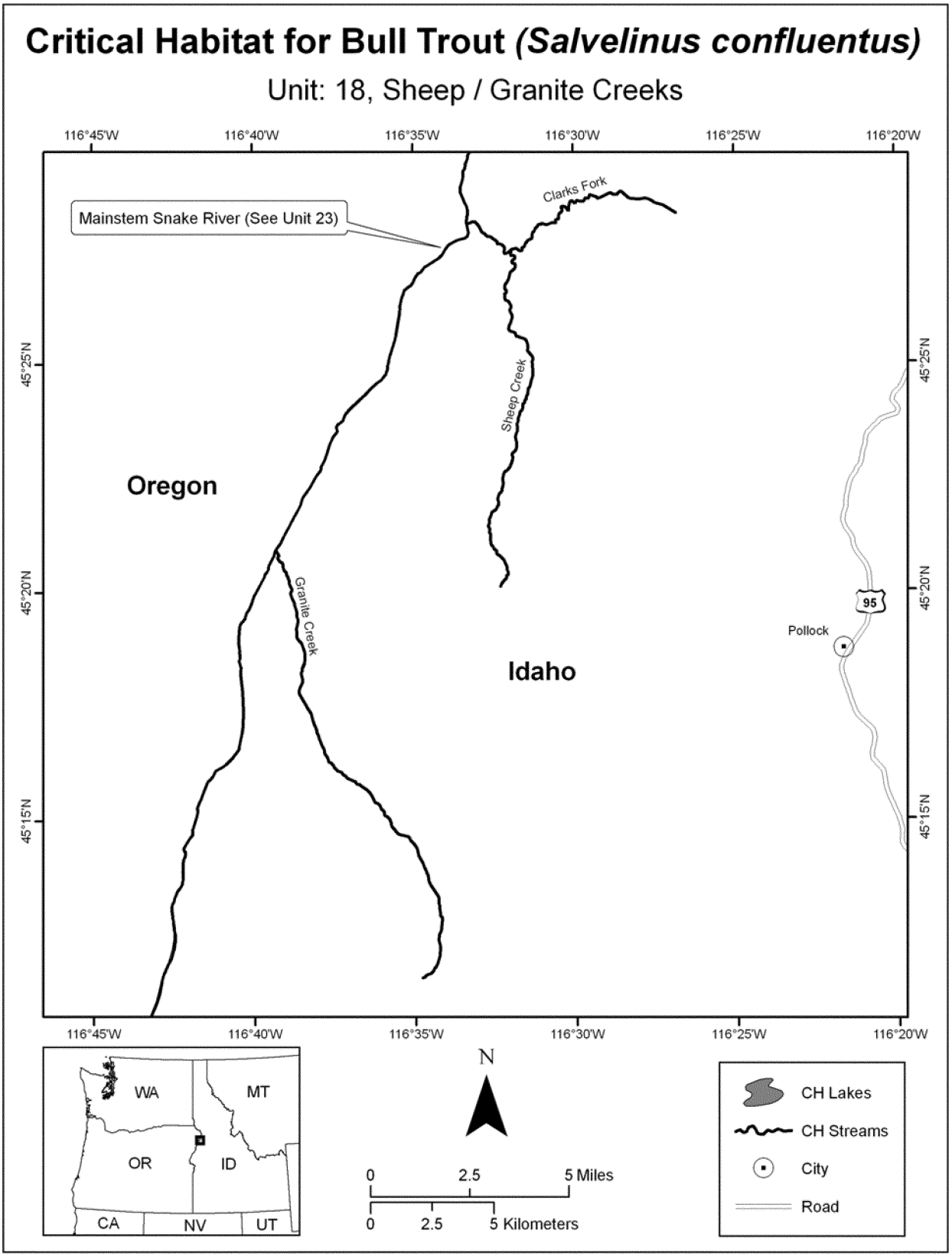
(ii) Individual waterbodies in the unit are bounded by the following coordinates:

| Waterbody Name | Stream Begin Point or Lake Center Latitude | Stream Begin Point or Lake Center Longitude | Stream End Point Latitude | Stream End Point Longitude |
|---|---|---|---|---|
| Clarks Fork | 45.458 | -116.533 | 45.471 | -116.447 |
| Granite Creek | 45.192 | -116.580 | 45.349 | -116.655 |
| Sheep Creek | 45.405 | -116.524 | 45.468 | -116.555 |

(iii) No waterbodies are excluded from critical habitat designation in this unit.

(iv) Map of Unit 18, Sheep/Granite Creeks follows:

BILLING CODE 4310–55–S




BILLING CODE 4310–55–C

(26) Unit 19: Hell's Canyon Complex

(i) This unit consists of 377.5 km (234.6 mi) of streams. The unit is located in northeastern Oregon and west-central Idaho.

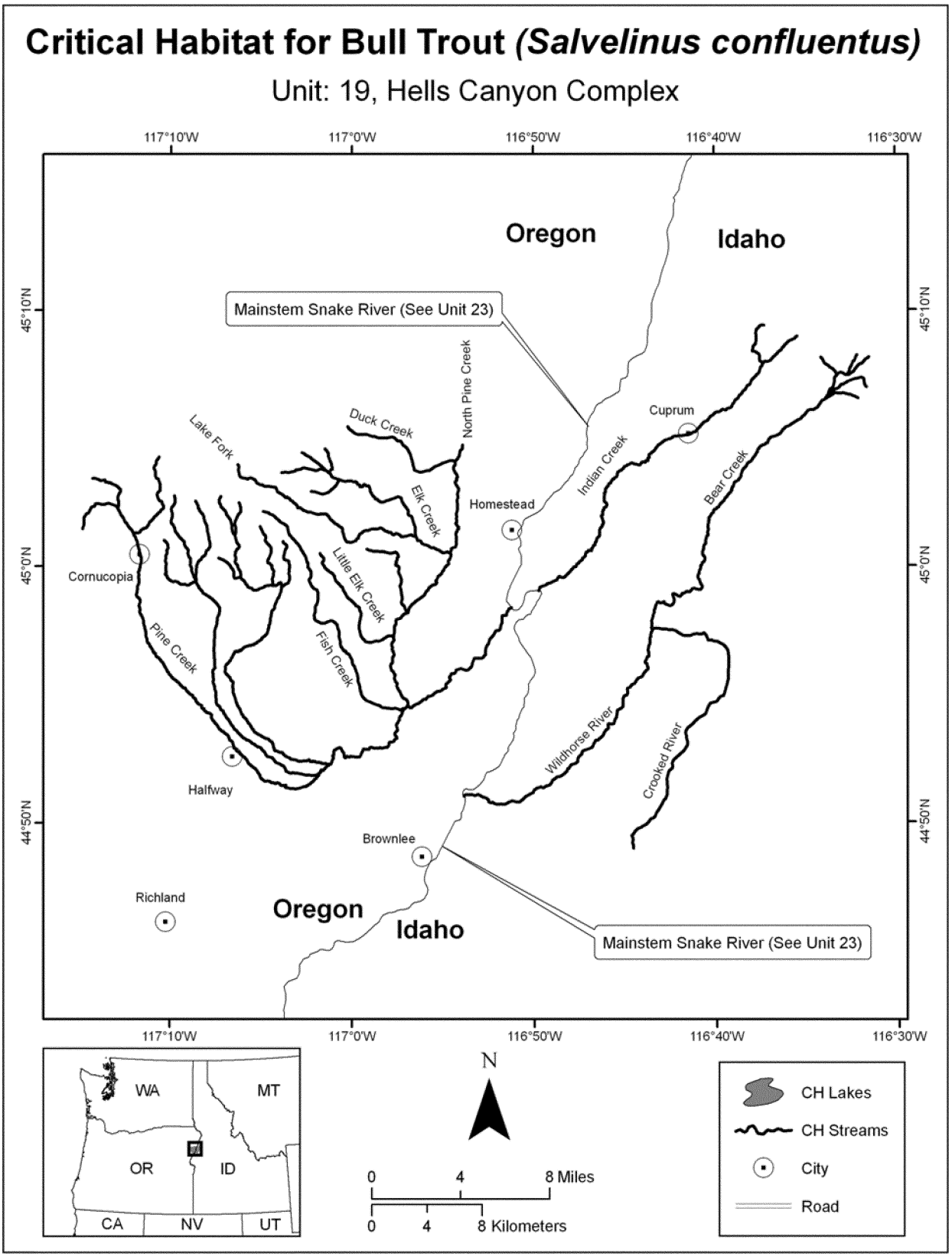
(ii) Individual waterbodies in the unit are bounded by the following coordinates:

| Waterbody Name | Stream Begin Point or Lake Center Latitude | Stream Begin Point or Lake Center Longitude | Stream End Point Latitude | Stream End Point Longitude |
|---|---|---|---|---|
| Aspen Creek | 45.057 | -117.012 | 45.049 | -117.038 |
| Bear Creek | 44.959 | -116.725 | 45.136 | -116.525 |
| Big Elk Creek | 45.063 | -117.024 | 45.061 | -117.065 |
| Cabin Creek | 45.061 | -117.021 | 45.077 | -117.025 |
| Camp Creek | 45.132 | -116.623 | 45.157 | -116.621 |
| Clear Creek | 44.866 | -117.030 | 45.043 | -117.144 |
| Crooked River | 44.959 | -116.725 | 44.817 | -116.743 |
| Duck Creek | 45.069 | -116.906 | 45.091 | -117.004 |
| East Fork Of East Pine Creek | 45.021 | -117.107 | 45.042 | -117.104 |
| East Fork Pine Creek | 45.022 | -117.201 | 45.071 | -117.177 |
| East Pine Creek | 44.872 | -117.021 | 45.046 | -117.120 |
| Elk Creek | 45.009 | -116.910 | 45.074 | -117.046 |
| Fall Creek | 44.970 | -116.949 | 45.012 | -116.986 |
| Fish Creek | 44.908 | -116.953 | 45.036 | -117.082 |
| Indian Creek | 44.984 | -116.829 | 45.150 | -116.591 |
| Lake Fork | 45.020 | -116.942 | 45.067 | -117.105 |
| Little Elk Creek | 44.954 | -116.962 | 45.009 | -117.029 |
| Meadow Creek | 44.990 | -117.143 | 45.017 | -117.172 |
| Mickey Creek | 45.109 | -116.565 | 45.109 | -116.535 |
| Middle Fork Pine Creek | 45.039 | -117.216 | 45.057 | -117.238 |
| North Pine Creek | 44.910 | -116.949 | 45.079 | -116.898 |
| Okanogan Creek | 44.987 | -117.065 | 45.017 | -117.063 |
| Pine Creek | 44.973 | -116.854 | 45.039 | -117.216 |
| Trail Creek | 44.991 | -117.143 | 45.046 | -117.163 |
| Trinity Creek | 44.988 | -117.072 | 45.026 | -117.084 |
| Unnamed - Off East Pine Creek | 44.993 | -117.102 | 45.006 | -117.122 |
| Unnamed - trib To Bear Creek | 45.124 | -116.545 | 45.137 | -116.536 |
| Unnamed - Trib To Bear Creek | 45.124 | -116.554 | 45.136 | -116.569 |
| Wesley Creek | 45.112 | -116.562 | 45.116 | -116.527 |
| West Fork Pine Creek | 45.039 | -117.216 | 45.025 | -117.247 |
| Wildhorse River | 44.851 | -116.897 | 44.959 | -116.725 |

(iii) No waterbodies are excluded from critical habitat designation in this unit.

(iv) Map of Unit 19, Hell's Canyon Complex follows:

BILLING CODE 4310–55–S




BILLING CODE 4310–55–C

(27) Unit 20: Powder River Basin

(i) This unit consists of 296.5 km (184.2 mi) of streams and 897.0 ha (2,216.5 ac) of lakes and reservoirs. The unit is located in northeastern Oregon.

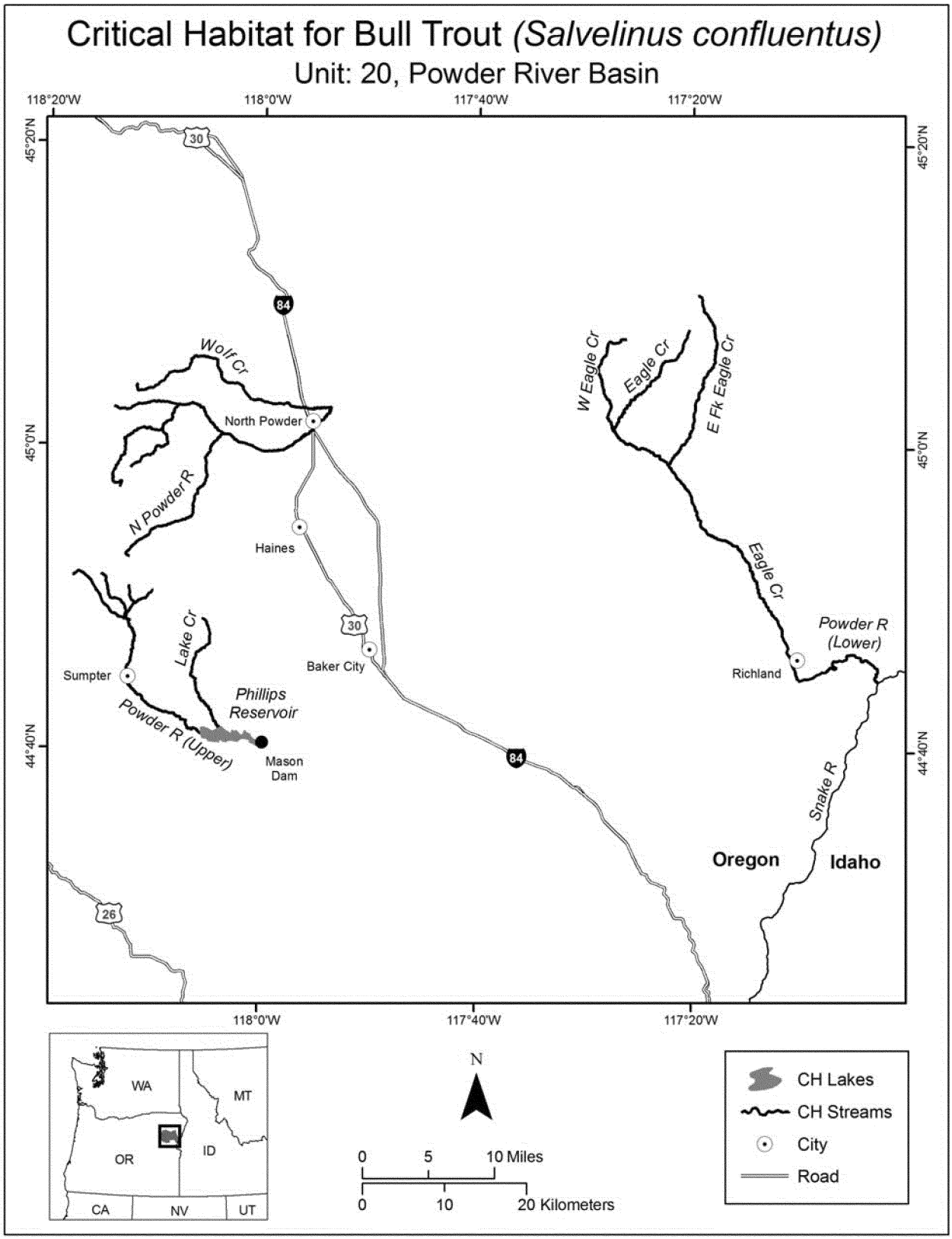
(ii) Individual waterbodies in the unit are bounded by the following coordinates:

| Waterbody Name | Stream Begin Point or Lake Center Latitude | Stream Begin Point or Lake Center Longitude | Stream End Point Latitude | Stream End Point Longitude |
|---|---|---|---|---|
| Anthony Creek | 45.013 | -118.060 | 44.953 | -118.221 |
| Cracker Creek | 44.741 | -118.206 | 44.846 | -118.205 |
| Deer Creek | 44.684 | -118.060 | 44.749 | -118.108 |
| Eagle Creek | 44.746 | -117.170 | 45.132 | -117.339 |
| East Fork Eagle Creek | 44.983 | -117.371 | 45.170 | -117.325 |
| Fruit Creek | 44.809 | -118.212 | 44.858 | -118.248 |
| Indian Creek | 45.019 | -118.155 | 44.975 | -118.205 |
| Lake Creek | 44.749 | -118.108 | 44.810 | -118.092 |
| Little Cracker Creek | 44.826 | -118.197 | 44.840 | -118.167 |
| North Fork Anthony Creek | 45.045 | -118.131 | 45.042 | -118.232 |
| North Powder River | 44.878 | -118.204 | 45.038 | -117.896 |
| Phillips Reservoir | 44.681 | -118.052 | | |
| Powder River (Lower) | 44.743 | -117.047 | 44.746 | -117.170 |
| Powder River (Middle) | 45.044 | -117.894 | 45.038 | -117.896 |
| Powder River (Upper) | 44.684 | -118.060 | 44.741 | -118.206 |
| Silver Creek | 44.809 | -118.208 | 44.857 | -118.292 |
| West Eagle Creek | 45.019 | -117.454 | 45.121 | -117.437 |
| Wolf Creek | 45.044 | -117.894 | 45.067 | -118.194 |

(iii) No waterbodies are excluded from critical habitat designation in this unit.

(iv) Map of Unit 20, Powder River Basin follows:

BILLING CODE 4310–55–S




BILLING CODE 4310–55–C

(28) Unit 21: Clearwater River

(i) This unit consists of 2,702.1 km (1,679.0 mi) of streams and 6,721.9 ha (16,610.1 ac) of lakes and reservoirs. The unit is located in northcentral Idaho.

(ii) Individual waterbodies in the unit are bounded by the following coordinates:

| Waterbody Name | Stream Begin Point or Lake Center Latitude | Stream Begin Point or Lake Center Longitude | Stream End Point Latitude | Stream End Point Longitude |
|---|---|---|---|---|
| Adair Creek | 47.097 | -115.853 | 47.083 | -115.806 |
| American River | 45.808 | -115.475 | 45.945 | -115.450 |
| Baldy Creek | 45.908 | -115.630 | 45.961 | -115.721 |
| Baston Creek | 45.760 | -115.235 | 45.731 | -115.223 |
| Bear Creek | 46.019 | -114.845 | 46.108 | -114.509 |
| Bear Creek | 46.711 | -114.963 | 46.750 | -114.922 |
| Bear Creek | 45.863 | -115.618 | 45.878 | -115.595 |
| Beaver Creek | 46.506 | -114.627 | 46.553 | -114.504 |
| Beaver Creek | 46.842 | -115.621 | 46.758 | -115.678 |
| Beaver Creek | 45.896 | -115.631 | 45.943 | -115.569 |
| Big Flat Creek | 46.402 | -114.494 | 46.313 | -114.441 |
| Bill Creek | 46.631 | -115.271 | 46.637 | -115.187 |
| Bostonian Creek | 46.962 | -115.114 | 46.996 | -115.137 |
| Boulder Creek | 46.615 | -114.671 | 46.678 | -114.749 |
| Boundary Creek | 46.972 | -115.108 | 46.981 | -115.077 |
| Breakfast Creek | 46.883 | -115.940 | 46.875 | -115.995 |
| Bridge Creek | 45.779 | -115.210 | 45.814 | -115.164 |
| Brushy Fork | 46.578 | -114.612 | 46.616 | -114.455 |
| Brushy Fork Creek | 46.002 | -114.699 | 45.988 | -114.583 |
| Buck Creek | 47.021 | -115.555 | 47.049 | -115.543 |
| Burnt Knob Creek | 45.715 | -114.899 | 45.697 | -114.946 |
| Burnt Strip Creek | 45.826 | -114.618 | 45.817 | -114.626 |
| Butte Creek (North Fork Clearwater) | 47.045 | -115.720 | 47.031 | -115.751 |
| Canyon Creek | 45.888 | -114.614 | 45.882 | -114.409 |
| Canyon Creek | 47.000 | -115.651 | 47.017 | -115.499 |
| Cayuse Creek | 45.705 | -114.615 | 45.740 | -114.608 |
| Cayuse Creek | 46.712 | -115.021 | 46.612 | -114.793 |
| Cedar Creek | 46.249 | -114.709 | 46.330 | -114.706 |
| Chamberlain Creek | 46.929 | -115.143 | 46.924 | -115.171 |
| Clearwater River | 46.428 | -117.040 | 46.146 | -115.981 |
| Collins Creek | 46.862 | -115.434 | 46.982 | -115.453 |
| Colt Creek | 46.433 | -114.540 | 46.419 | -114.636 |
| Colt Killed Creek | 46.508 | -114.682 | 46.428 | -114.415 |
| Cooperation Creek | 46.452 | -114.870 | 46.440 | -114.817 |
| Corral Creek | 46.483 | -115.241 | 46.534 | -115.207 |
| Crooked Fork | 46.508 | -114.682 | 46.704 | -114.709 |
| Crooked River | 45.824 | -115.530 | 45.695 | -115.549 |
| Cub Creek | 46.034 | -114.757 | 46.031 | -114.618 |
| Dawson Creek | 45.730 | -115.391 | 45.743 | -115.426 |
| Deep Creek | 45.707 | -114.719 | 45.708 | -114.516 |
| Ditch Creek | 45.747 | -115.298 | 45.794 | -115.293 |
| Doe Creek | 46.499 | -114.863 | 46.554 | -114.921 |
| Dworshak Reservoir | 46.660 | -116.120 | | |
| Eagle Creek | 45.908 | -114.854 | 45.794 | -114.891 |
| East Fork American River | 45.864 | -115.425 | 45.919 | -115.363 |
| East Fork Crooked River | 45.695 | -115.549 | 45.656 | -115.564 |
| East Fork Fishing Creek | 46.556 | -114.855 | 46.561 | -114.837 |
| East Fork Legendary Bear Creek | 46.562 | -114.736 | 46.535 | -114.766 |
| East Fork Meadow Creek | 45.880 | -115.104 | 45.829 | -115.028 |
| East Fork Moose Creek | 46.165 | -114.898 | 46.270 | -114.680 |
| East Fork O'Hara Creek | 45.998 | -115.524 | 45.939 | -115.541 |
| Elk Creek | 45.818 | -115.459 | 45.841 | -115.435 |
| Fish Creek | 46.333 | -115.346 | 46.373 | -115.597 |
| Fish Lake | 46.817 | -114.912 | | |
| Fish Lake (Lochsa) | 46.333 | -115.052 | | |
| Fish Lake Creek | 46.331 | -115.057 | 46.407 | -115.001 |
| Fishing Creek | 46.492 | -114.858 | 46.571 | -114.860 |
| Flat Creek | 45.722 | -114.858 | 45.651 | -114.848 |
| Flint Creek | 45.891 | -115.428 | 45.913 | -115.424 |
| Floodwood Creek | 46.888 | -115.954 | 46.974 | -115.913 |
| Foehl Creek | 46.970 | -115.676 | 46.990 | -115.743 |
| Fourth of July Creek | 46.665 | -115.377 | 46.564 | -115.260 |
| Fox Creek | 46.605 | -114.755 | 46.630 | -114.696 |
| French Creek | 45.597 | -114.592 | 45.603 | -114.572 |
| Fro Creek | 46.479 | -115.222 | 46.467 | -115.209 |
| Frost Creek | 46.918 | -115.349 | 46.926 | -115.380 |
| Gabe Creek | 45.697 | -114.671 | 45.710 | -114.666 |
| Gedney Creek | 46.056 | -115.314 | 46.135 | -115.249 |
| Glover Creek | 46.916 | -116.013 | 46.980 | -116.095 |
| Gold Pan Creek | 45.667 | -114.722 | 45.665 | -114.737 |

| Waterbody Name | Stream Begin Point or Lake Center Latitude | Stream Begin Point or Lake Center Longitude | Stream End Point Latitude | Stream End Point Longitude |
|---|---|---|---|---|
| Goose Creek | 46.852 | -115.013 | 46.906 | -114.953 |
| Gospel Creek | 45.703 | -115.891 | 45.677 | -115.891 |
| Graves Creek | 46.986 | -115.101 | 47.006 | -115.079 |
| Hagen Creek | 45.649 | -115.818 | 45.630 | -115.809 |
| Haskell Creek | 46.596 | -114.604 | 46.632 | -114.583 |
| Hells Half Acre Creek | 45.692 | -114.718 | 45.689 | -114.705 |
| Hopeful Creek | 46.671 | -114.681 | 46.724 | -114.654 |
| Hungery Creek | 46.356 | -115.398 | 46.400 | -115.569 |
| Indian Creek | 45.792 | -114.765 | 45.792 | -114.575 |
| Indian Grave Creek | 46.452 | -115.077 | 46.490 | -115.143 |
| Isabella Creek | 46.849 | -115.631 | 46.913 | -115.539 |
| Jack Creek | 45.778 | -114.692 | 45.788 | -114.683 |
| Johnagan Creek | 46.510 | -115.367 | 46.543 | -115.354 |
| Johnny Creek | 46.613 | -115.435 | 46.614 | -115.372 |
| Johns Creek | 45.824 | -115.890 | 45.683 | -115.755 |
| Jungle Creek | 47.076 | -115.804 | 47.110 | -115.796 |
| Kelly Creek | 46.716 | -115.258 | 46.730 | -114.861 |
| Kid Lake Creek | 46.747 | -114.806 | 46.768 | -114.805 |
| Kim Creek | 45.679 | -114.720 | 45.682 | -114.734 |
| Kirks Fork American River | 45.822 | -115.411 | 45.829 | -115.390 |
| Lake Creek | 46.869 | -115.079 | 46.819 | -114.905 |
| Lazy Creek | 45.679 | -114.546 | 45.668 | -114.555 |
| Legendary Bear Creek | 46.511 | -114.762 | 46.535 | -114.766 |
| Lick Creek | 45.923 | -115.469 | 45.969 | -115.487 |
| Little Clearwater River | 45.754 | -114.776 | 45.738 | -114.946 |
| Little Elk Creek | 45.841 | -115.435 | 45.868 | -115.449 |
| Little Lost Lake Creek | 47.089 | -115.893 | 47.073 | -115.936 |
| Little Moose Creek | 46.733 | -115.078 | 46.783 | -114.906 |
| Little Moose Creek | 45.716 | -115.368 | 45.709 | -115.400 |
| Little North Fork Clearwater River | 46.887 | -115.878 | 47.101 | -115.963 |
| Little Weitas Creek | 46.506 | -115.392 | 46.479 | -115.389 |
| Liz Creek | 46.482 | -115.290 | 46.436 | -115.306 |
| Lochsa River | 46.140 | -115.600 | 46.508 | -114.682 |
| Long Creek | 46.872 | -115.076 | 46.950 | -115.025 |
| Lost Lake Creek | 47.095 | -115.901 | 47.087 | -115.937 |
| Lund Creek | 47.068 | -115.884 | 47.050 | -115.913 |
| Lynx Creek | 45.849 | -114.938 | 45.817 | -114.952 |
| Magruder Creek | 45.745 | -114.761 | 45.717 | -114.780 |
| Marten Creek | 46.099 | -115.053 | 45.963 | -115.046 |
| Maud Creek | 46.497 | -114.515 | 46.474 | -114.411 |
| Meadow Creek | 46.910 | -115.233 | 46.905 | -115.117 |
| Meadow Creek | 46.046 | -115.296 | 45.698 | -115.218 |
| Melton Creek | 45.725 | -115.996 | 45.724 | -115.979 |
| Middle Fork Clearwater River | 46.146 | -115.981 | 46.140 | -115.600 |
| Middle Fork Kelly Creek | 46.730 | -114.861 | 46.747 | -114.806 |
| Middle Fork Red River | 45.659 | -115.413 | 45.631 | -115.472 |
| Mill Creek | 45.830 | -115.932 | 45.725 | -115.996 |
| Mink Creek | 46.601 | -114.895 | 46.628 | -114.894 |
| Mist Creek | 45.567 | -114.629 | 45.555 | -114.626 |
| Montana Creek | 47.045 | -115.701 | 47.089 | -115.676 |
| Moores Creek | 45.676 | -115.838 | 45.614 | -115.880 |
| Moores Lake Creek | 45.677 | -115.891 | 45.659 | -115.870 |
| Moose Butte Creek | 45.710 | -115.353 | 45.692 | -115.417 |
| Moose Creek | 46.122 | -114.935 | 46.165 | -114.898 |
| Moose Creek | 46.721 | -115.087 | 46.752 | -115.185 |
| Mule Creek | 45.925 | -115.635 | 45.932 | -115.631 |
| Newsome Creek | 45.828 | -115.616 | 46.004 | -115.679 |
| Niagra Gulch | 46.967 | -115.137 | 46.973 | -115.159 |
| North Fork Clearwater River | 46.503 | -116.332 | 46.999 | -115.113 |
| North Fork Kelly Creek | 46.730 | -114.861 | 46.801 | -114.874 |
| North Fork Moose Creek | 46.165 | -114.898 | 46.274 | -114.924 |
| North Fork Spruce Creek | 46.606 | -114.393 | 46.616 | -114.352 |
| O'Hara Creek | 46.086 | -115.518 | 45.998 | -115.524 |
| Open Creek | 45.676 | -115.838 | 45.683 | -115.823 |
| Orogrande Creek | 46.631 | -115.507 | 46.564 | -115.623 |
| Osier Creek | 46.744 | -115.074 | 46.837 | -115.065 |
| Otterson Creek | 45.776 | -115.220 | 45.820 | -115.234 |
| Parachute Creek | 46.528 | -114.762 | 46.530 | -114.757 |
| Paradise Creek | 46.022 | -114.729 | 46.039 | -114.527 |
| Pete Creek | 45.703 | -114.580 | 45.715 | -114.564 |

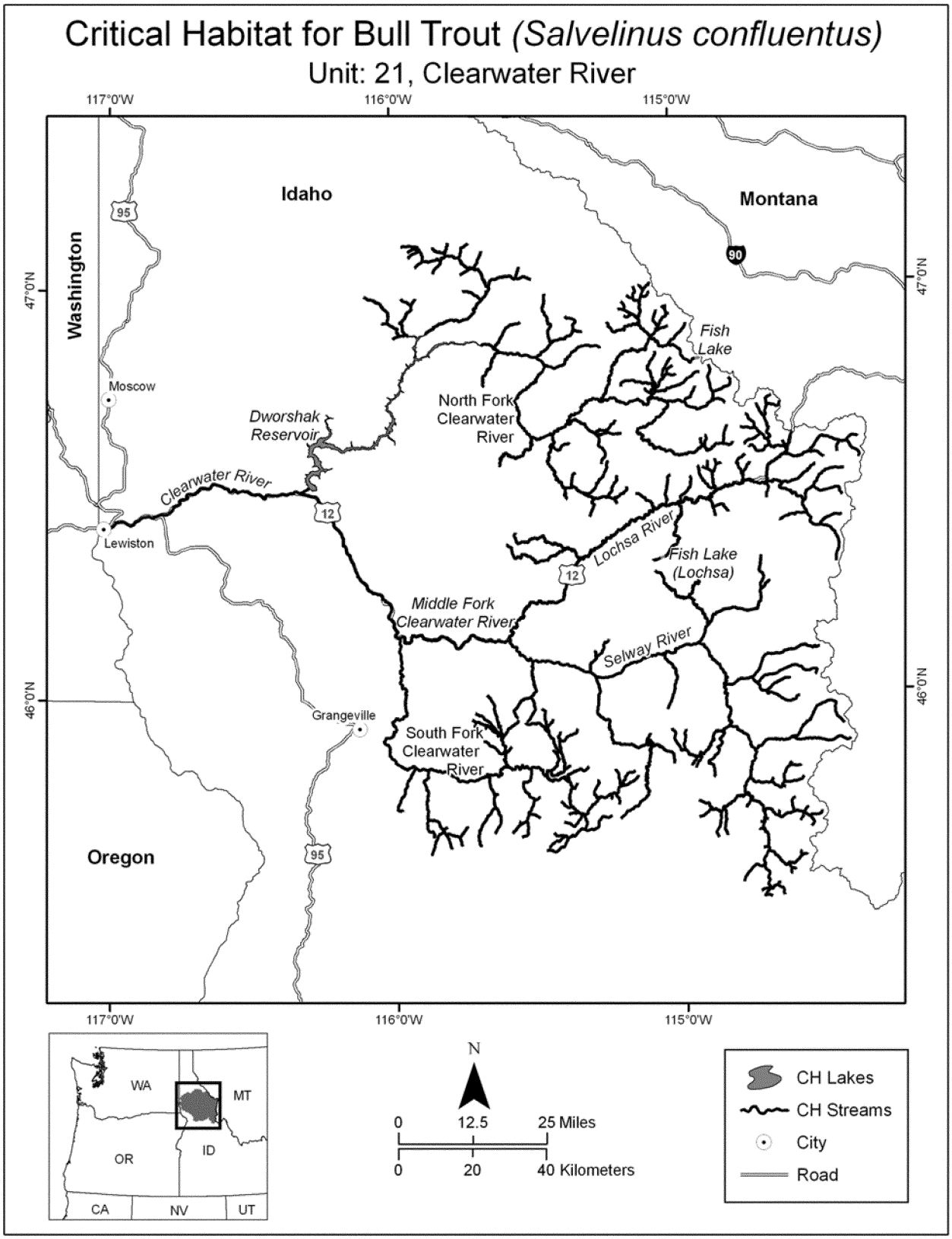
| Waterbody Name | Stream Begin Point or Lake Center Latitude | Stream Begin Point or Lake Center Longitude | Stream End Point Latitude | Stream End Point Longitude |
|---|---|---|---|---|
| Pilot Creek | 45.907 | -115.630 | 45.944 | -115.732 |
| Placer Creek | 46.938 | -115.168 | 46.959 | -115.179 |
| Pollock Creek | 46.780 | -115.023 | 46.780 | -114.990 |
| Postoffice Creek | 46.466 | -114.986 | 46.529 | -114.950 |
| Quartz Creek | 46.806 | -115.456 | 46.846 | -115.259 |
| Rawhide Creek | 46.898 | -115.047 | 46.938 | -115.056 |
| Red Horse Creek | 45.794 | -115.401 | 45.827 | -115.327 |
| Red River | 45.808 | -115.475 | 45.803 | -115.155 |
| Relief Creek | 45.748 | -115.520 | 45.754 | -115.498 |
| Rhoda Creek | 46.234 | -114.961 | 46.239 | -115.009 |
| Roaring Creek | 46.886 | -115.356 | 46.918 | -115.349 |
| Rock Creek | 46.598 | -114.609 | 46.612 | -114.620 |
| Rocky Run | 47.069 | -115.819 | 47.035 | -115.848 |
| Ruby Creek | 46.733 | -115.079 | 46.745 | -115.105 |
| Running Creek | 45.919 | -114.832 | 45.916 | -115.033 |
| Rutledge Creek | 47.073 | -115.755 | 47.108 | -115.723 |
| Saddle Gulch | 45.770 | -114.654 | 45.766 | -114.641 |
| Salamander Creek | 45.711 | -114.866 | 45.648 | -114.879 |
| Sawmill Creek | 45.908 | -115.635 | 45.904 | -115.647 |
| Schofield Creek | 45.777 | -114.646 | 45.819 | -114.586 |
| Schwar Creek | 45.882 | -115.117 | 45.905 | -115.109 |
| Selway River | 46.140 | -115.600 | 45.500 | -114.698 |
| Shoot Creek | 46.606 | -114.415 | 46.580 | -114.426 |
| Short Creek | 46.886 | -115.058 | 46.898 | -115.014 |
| Shot Creek | 46.639 | -115.281 | 46.666 | -115.207 |
| Shotgun Creek | 46.601 | -114.665 | 46.600 | -114.738 |
| Siegel Creek | 45.773 | -115.388 | 45.787 | -115.368 |
| Silver Creek | 46.607 | -114.831 | 46.653 | -114.814 |
| Silver Creek | 45.716 | -115.540 | 45.703 | -115.501 |
| Sixmile Creek | 45.764 | -115.660 | 45.763 | -115.646 |
| Skull Creek | 46.827 | -115.486 | 46.888 | -115.321 |
| Slate Creek | 46.928 | -115.009 | 46.927 | -115.019 |
| Slow Gulch Creek | 45.694 | -114.561 | 45.679 | -114.546 |
| Soda Creek | 45.756 | -115.257 | 45.746 | -115.252 |
| South Fork Clearwater River | 46.146 | -115.981 | 45.808 | -115.475 |
| South Fork Kelly Creek | 46.712 | -114.863 | 46.707 | -114.818 |
| South Fork Red River | 45.711 | -115.345 | 45.623 | -115.480 |
| South Fork Running Creek | 45.845 | -114.945 | 45.823 | -114.966 |
| South Fork Spruce Creek | 46.606 | -114.393 | 46.565 | -114.353 |
| South Fork Surprise Creek | 45.527 | -114.680 | 45.503 | -114.655 |
| Spring Creek | 46.546 | -114.886 | 46.552 | -114.903 |
| Spruce Creek | 46.616 | -114.455 | 46.606 | -114.393 |
| Stoney Creek | 46.884 | -115.970 | 46.915 | -116.033 |
| Storm Creek | 46.463 | -114.549 | 46.541 | -114.403 |
| Storm Creek | 45.578 | -114.641 | 45.611 | -114.591 |
| Stripe Creek | 45.523 | -114.704 | 45.513 | -114.736 |
| Sugar Creek | 46.771 | -115.035 | 46.820 | -115.006 |
| Surprise Creek | 45.521 | -114.702 | 45.532 | -114.667 |
| Swamp Creek | 46.745 | -115.068 | 46.799 | -115.002 |
| Swet Creek | 45.580 | -114.720 | 45.537 | -114.795 |
| Taylor Creek | 45.659 | -115.783 | 45.637 | -115.774 |
| Tenmile Creek | 45.806 | -115.684 | 45.639 | -115.713 |
| Three Lakes Creek | 45.623 | -114.709 | 45.618 | -114.724 |
| Tom Creek | 45.862 | -114.987 | 45.912 | -114.985 |
| Trapper Creek | 45.674 | -115.345 | 45.705 | -115.248 |
| Twin Creek | 46.582 | -114.528 | 46.570 | -114.475 |
| Twin Lakes Creek | 45.664 | -115.828 | 45.649 | -115.818 |
| Unnamed - Off Hopeful Creek | 46.708 | -114.625 | 46.699 | -114.669 |
| Unnamed - Off Long Creek | 46.947 | -115.036 | 46.939 | -115.024 |
| Unnamed - Off West Fork Crooked River | 45.695 | -115.574 | 45.690 | -115.563 |
| Unnamed 1 - Off Pilot Creek | 45.923 | -115.688 | 45.930 | -115.677 |
| Unnamed 2 - Off Pilot Creek | 45.938 | -115.717 | 45.927 | -115.723 |
| Vance Creek | 45.703 | -114.580 | 45.683 | -114.593 |
| Vanderbilt Gulch | 46.916 | -115.120 | 46.940 | -115.191 |
| W.Fk. American River | 45.913 | -115.466 | 45.935 | -115.545 |
| W.Fk. Fishing Creek | 46.537 | -114.868 | 46.567 | -114.885 |
| W.Fk. Gedney Creek | 46.094 | -115.294 | 46.110 | -115.295 |
| W.Fk. O'Hara Creek | 45.998 | -115.524 | 45.949 | -115.570 |
| Walton Creek | 46.508 | -114.682 | 46.472 | -114.681 |
| Warm Springs Creek | 46.473 | -114.888 | 46.430 | -114.864 |

| Waterbody Name | Stream Begin Point or Lake Center Latitude | Stream Begin Point or Lake Center Longitude | Stream End Point Latitude | Stream End Point Longitude |
|---|---|---|---|---|
| Weasel Creek | 46.601 | -114.905 | 46.623 | -114.906 |
| Weir Creek | 46.457 | -115.035 | 46.534 | -115.018 |
| Weitas Creek | 46.636 | -115.434 | 46.508 | -115.174 |
| West Fork Crooked River | 45.695 | -115.549 | 45.666 | -115.597 |
| West Fork Floodwood Creek | 46.957 | -115.928 | 46.973 | -115.964 |
| West Fork Legendary Bear Creek | 46.535 | -114.766 | 46.580 | -114.752 |
| West Fork Newsome Creek | 45.865 | -115.618 | 45.892 | -115.695 |
| West Fork Red River | 45.653 | -115.402 | 45.667 | -115.453 |
| White Cap Creek | 45.860 | -114.745 | 45.919 | -114.431 |
| Wilkerson Creek | 45.612 | -114.707 | 45.563 | -114.615 |
| Williams Creek | 45.731 | -115.656 | 45.667 | -115.658 |
| Williams Lake Creek | 46.644 | -114.717 | 46.647 | -114.768 |
| Windy Creek | 46.494 | -115.328 | 46.570 | -115.236 |
| Wiseboy Creek | 45.642 | -115.712 | 45.637 | -115.704 |
| Wounded Doe Creek | 46.239 | -115.009 | 46.300 | -115.080 |

(iii) No waterbodies are excluded from critical habitat designation in this unit.

(iv) Map of Unit 21, Clearwater River follows:

BILLING CODE 4310–55–S




BILLING CODE 4310–55–C

(29) Unit 22: Mainstem Upper Columbia River

(i) This unit consists of 520.1 km (323.2 mi) of streams. The unit is located in central Washington.

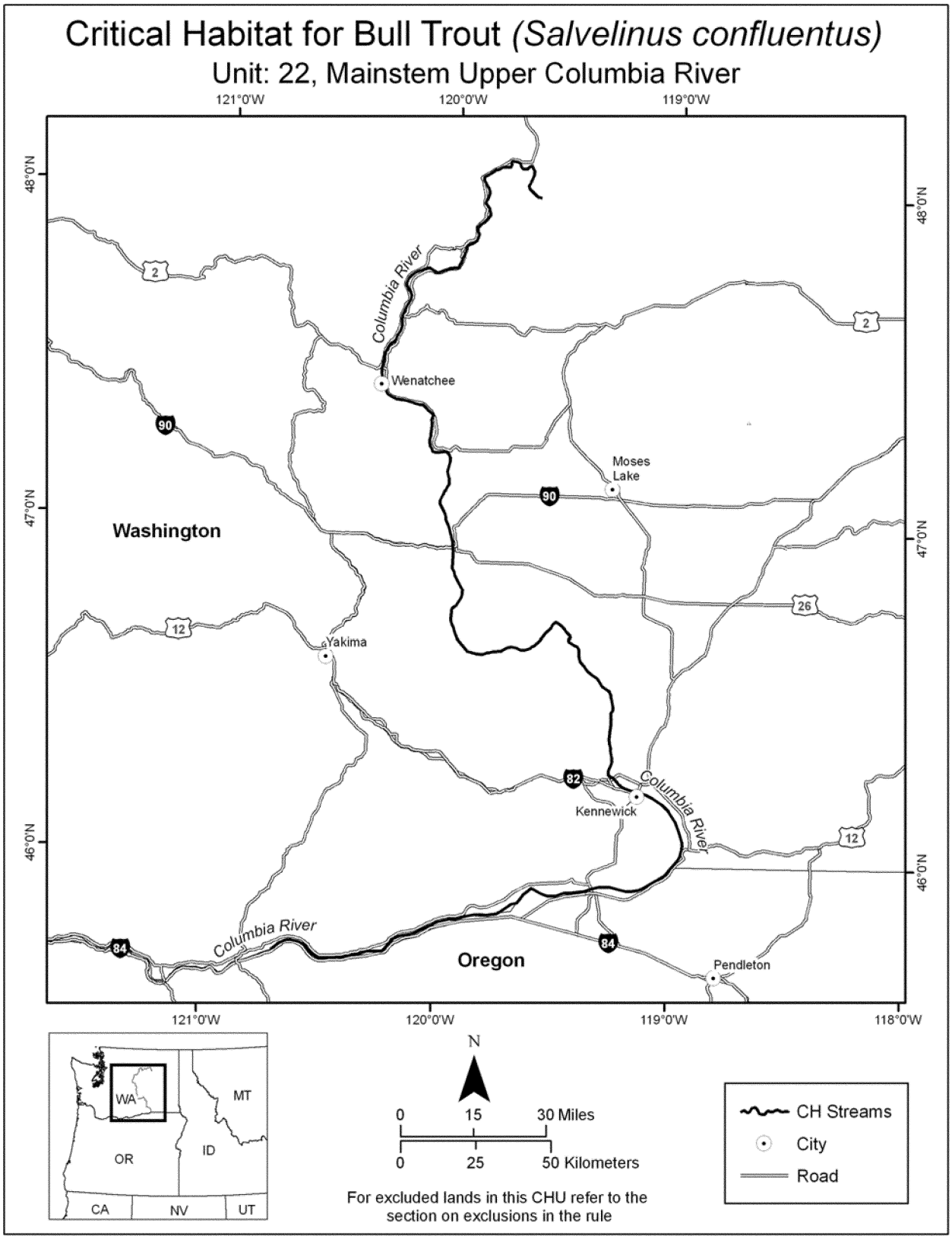
(ii) Individual waterbodies in the unit are bounded by the following coordinates:

| Waterbody Name | Stream Begin Point or Lake Center Latitude | Stream Begin Point or Lake Center Longitude | Stream End Point Latitude | Stream End Point Longitude |
|---|---|---|---|---|
| Columbia River | 45.715 | -120.693 | 47.997 | -119.633 |

(iii) Waterbodies associated with the following habitat conservation plans (HCPs) totaling 2.5 km (1.6 mi) of streams have been excluded from critical habitat designation under section 4(b)(2) of the Act in this unit. These are waterbodies within the geographic area covered by the Washington State Forest Practices Habitat Conservation Plan (HCP).

(iv) Map of Unit 22, Mainstem Upper Columbia River follows:

**BILLING CODE 4310–55–S**




BILLING CODE 4310–55–C

(30) Unit 23: Mainstem Snake River

(i) This unit consists of 451.7 km (280.6 mi) of streams. The unit is located in southeastern Washington, northeastern Oregon, and west-central Idaho.

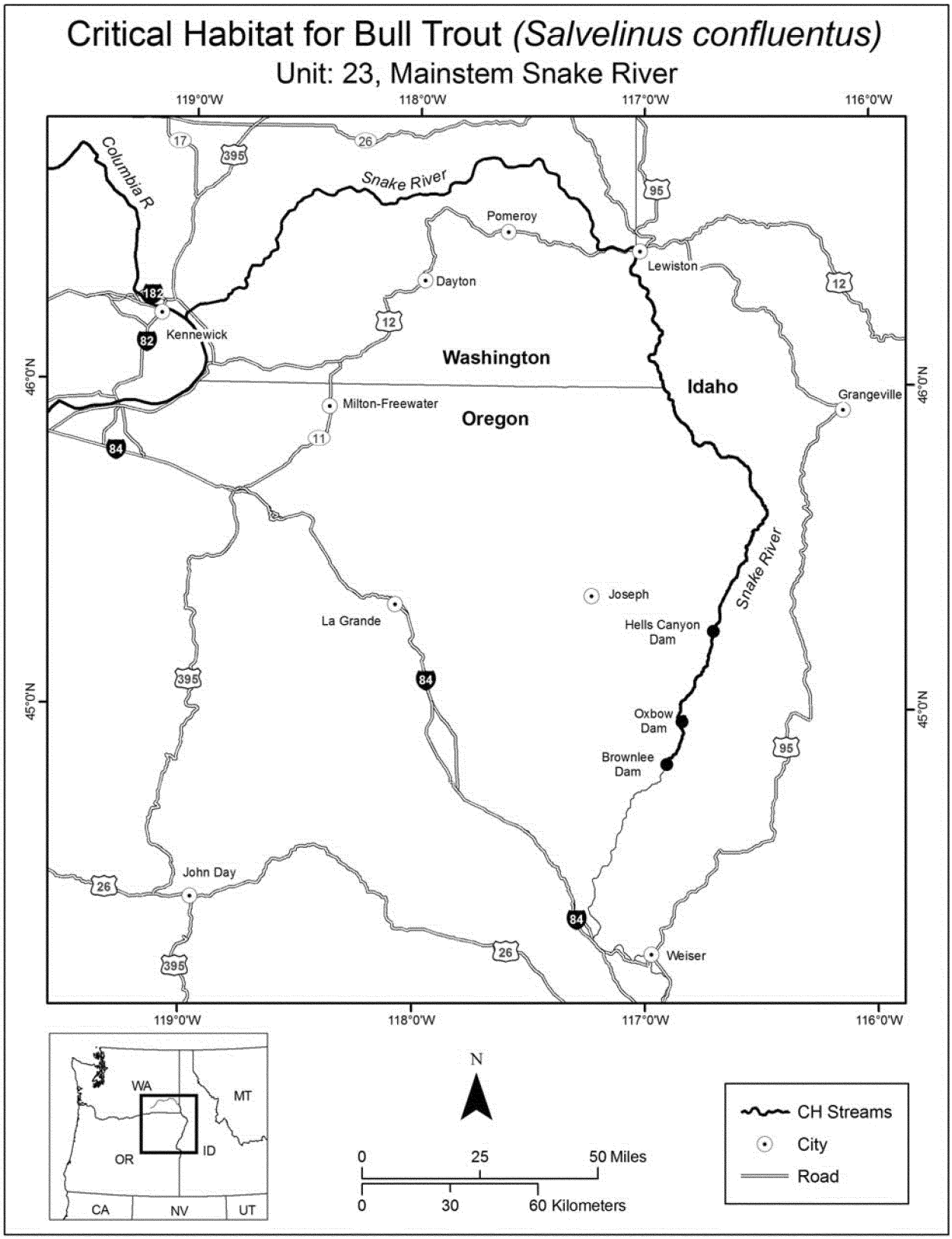
(ii) Individual waterbodies in the unit are bounded by the following coordinates:

| Waterbody Name | Stream Begin Point or Lake Center Latitude | Stream Begin Point or Lake Center Longitude | Stream End Point Latitude | Stream End Point Longitude |
|---|---|---|---|---|
| Snake River | 46.188 | -119.031 | 44.836 | -116.901 |

(iii) No waterbodies are excluded from critical habitat designation in this unit.

(iv) Map of Unit 23, Mainstem Snake River follows:

**BILLING CODE 4310–55–S**




BILLING CODE 4310–55–C

(31) Unit 24: Malheur River Basin

(i) This unit consists of 272.3 km (169.2 mi) of streams and 715.9 ha (1,768.9 ac) of lakes and reservoirs. The unit is located in eastern Oregon.

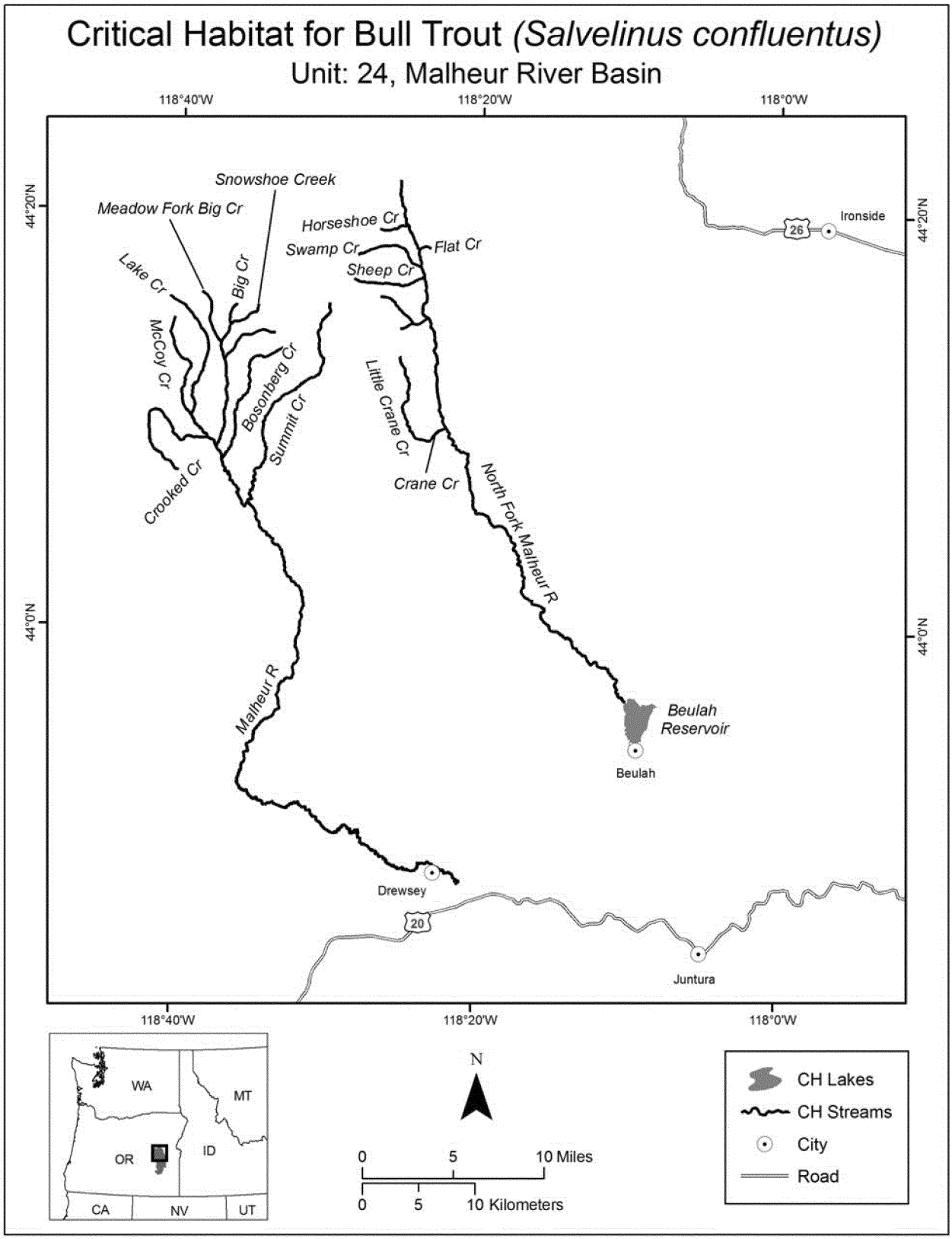
(ii) Individual waterbodies in the unit are bounded by the following coordinates:

| Waterbody Name | Stream Begin Point or Lake Center Latitude | Stream Begin Point or Lake Center Longitude | Stream End Point Latitude | Stream End Point Longitude |
|---|---|---|---|---|
| Beulah Reservoir | 43.931 | -118.154 | | |
| Big Creek | 44.259 | -118.604 | 44.145 | -118.625 |
| Bosonberg Creek | 44.224 | -118.553 | 44.135 | -118.619 |
| Corral Basin Creek | 44.236 | -118.562 | 44.214 | -118.618 |
| Crane Creek | 44.151 | -118.387 | 44.162 | -118.371 |
| Crooked Creek | 44.125 | -118.666 | 44.151 | -118.635 |
| Elk Creek | 44.245 | -118.409 | 44.250 | -118.392 |
| Flat Creek | 44.305 | -118.390 | 44.304 | -118.403 |
| Horseshoe Creek | 44.320 | -118.448 | 44.323 | -118.416 |
| Lake Creek | 44.265 | -118.679 | 44.145 | -118.625 |
| Little Crane Creek | 44.219 | -118.423 | 44.151 | -118.387 |
| Malheur River | 44.145 | -118.625 | 43.797 | -118.350 |
| McCoy Creek | 44.248 | -118.674 | 44.169 | -118.654 |
| Meadow Fork Big Creek | 44.268 | -118.644 | 44.227 | -118.622 |
| North Fork Elk Creek | 44.266 | -118.446 | 44.245 | -118.409 |
| North Fork Malheur River | 44.360 | -118.425 | 43.945 | -118.168 |
| Sheep Creek | 44.281 | -118.476 | 44.281 | -118.397 |
| Snowshoe Creek | 44.259 | -118.581 | 44.242 | -118.612 |
| South Fork Elk Creek | 44.241 | -118.423 | 44.245 | -118.409 |
| Summit Creek | 44.261 | -118.502 | 44.099 | -118.588 |
| Swamp Creek | 44.299 | -118.471 | 44.291 | -118.401 |

(iii) No waterbodies are excluded from critical habitat designation in this unit.

(iv) Map of Unit 24, Malheur River Basin follows:

**BILLING CODE 4310–55–S**




BILLING CODE 4310–55–C

(32) Unit 25: Jarbidge River

(i) This unit consists of 245.2 km (152.4 mi) of streams. The unit is located in northeastern Nevada and southwestern Idaho.

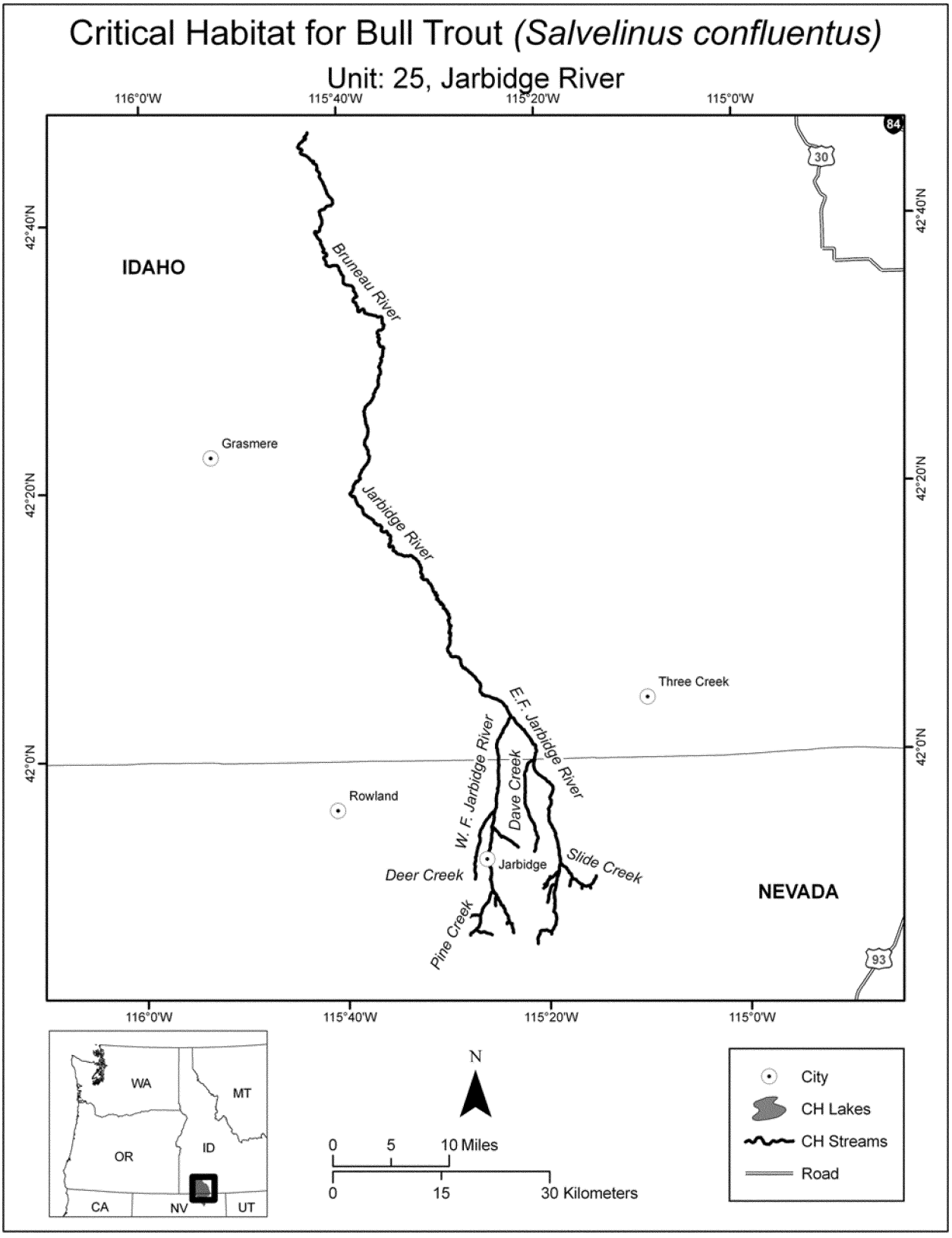
(ii) Individual waterbodies in the unit are bounded by the following coordinates:

| Waterbody Name | Stream Begin Point or Lake Center Latitude | Stream Begin Point or Lake Center Longitude | Stream End Point Latitude | Stream End Point Longitude |
|---|---|---|---|---|
| Bruneau River | 42.780 | -115.715 | 42.329 | -115.652 |
| Cougar Creek | 41.840 | -115.320 | 41.818 | -115.335 |
| Dave Creek | 41.882 | -115.356 | 41.995 | -115.353 |
| Deer Creek | 41.848 | -115.455 | 41.933 | -115.420 |
| East Fork Jarbidge River | 41.778 | -115.330 | 42.049 | -115.391 |
| Fall Creek | 41.856 | -115.315 | 41.835 | -115.342 |
| Fox Creek | 41.827 | -115.420 | 41.815 | -115.422 |
| Gods Pocket Creek | 41.847 | -115.293 | 41.838 | -115.298 |
| Jack Creek | 41.887 | -115.383 | 41.912 | -115.425 |
| Jarbidge River | 42.049 | -115.391 | 42.329 | -115.652 |
| Jenny Creek | 41.901 | -115.410 | 41.900 | -115.410 |
| Pine Creek | 41.779 | -115.464 | 41.833 | -115.425 |
| Sawmill Creek | 41.794 | -115.399 | 41.792 | -115.404 |
| Slide Creek | 41.867 | -115.312 | 41.850 | -115.254 |
| Unnamed E Trib Off Pine Creek | 41.779 | -115.429 | 41.786 | -115.455 |
| Unnamed Headwater Trib Off E Fk Jarbidge River | 41.767 | -115.352 | 41.782 | -115.330 |
| Unnamed Lower Trib Off Fall Creek | 41.849 | -115.327 | 41.850 | -115.331 |
| Unnamed Lower Trib Off Slide Creek | 41.839 | -115.277 | 41.834 | -115.278 |
| Unnamed Upper Trib Off Fall Creek | 41.843 | -115.335 | 41.840 | -115.340 |
| Unnamed Upper Trib Off Slide Creek | 41.838 | -115.264 | 41.834 | -115.263 |
| Unnamed W Trib Off Pine Creek | 41.802 | -115.465 | 41.803 | -115.447 |
| Unnamed W Trib Off West Fork Jarbidge River | 41.781 | -115.393 | 41.792 | -115.397 |
| West Fork Jarbidge River | 41.792 | -115.395 | 42.049 | -115.391 |

(iii) No waterbodies are excluded from critical habitat designation in this unit.

(iv) Map of Unit 25, Jarbidge River follows:

**BILLING CODE 4310–55–S**




BILLING CODE 4310–55–C

(33) Unit 26: Southwest Idaho Basins – East Half

(i) The entire Southwest Idaho Basins unit consists of 2,150 km (1,335.9 mi) of streams and 4,310.5 ha (10,651.5 ac) of lakes and reservoirs. The unit is located in southwestern Idaho.

(ii) Individual waterbodies in the unit are bounded by the following coordinates:

| Waterbody Name | Stream Begin Point or Lake Center Latitude | Stream Begin Point or Lake Center Longitude | Stream End Point Latitude | Stream End Point Longitude |
|---|---|---|---|---|
| Alta Creek | 43.701 | -115.248 | 43.701 | -115.243 |
| Anderson Creek | 44.605 | -116.187 | 44.527 | -116.243 |
| Anderson Ranch Reservoir | 43.415 | -115.348 | | |
| Antelope Creek | 44.400 | -116.169 | 44.375 | -116.198 |
| Arrowrock Reservoir | 43.599 | -115.840 | | |
| Bald Mountain Creek | 43.756 | -115.277 | 43.818 | -115.267 |
| Ballentyne Creek | 43.983 | -115.143 | 44.011 | -115.233 |
| Banner Creek | 43.998 | -115.543 | 44.037 | -115.522 |
| Baron Creek | 44.093 | -115.028 | 44.137 | -115.149 |
| Basin Creek | 44.377 | -115.702 | 44.341 | -115.659 |
| Bass Creek | 43.741 | -115.003 | 43.791 | -114.975 |
| Bear Creek | 43.702 | -115.007 | 43.727 | -114.901 |
| Bear Creek | 44.017 | -115.406 | 43.938 | -115.457 |
| Bear River | 43.987 | -115.341 | 43.892 | -115.489 |
| Beaver Creek | 44.318 | -115.692 | 44.317 | -115.685 |
| Big Peak Creek | 43.658 | -114.795 | 43.628 | -114.730 |
| Big Silver Creek | 43.989 | -115.328 | 43.989 | -115.256 |
| Big Smoky Creek | 43.792 | -114.756 | 43.604 | -114.916 |
| Big Water Gulch | 43.665 | -115.043 | 43.604 | -115.108 |
| Bitter Creek | 44.421 | -115.678 | 44.406 | -115.618 |
| Black Warrior Creek | 43.945 | -115.190 | 43.818 | -115.291 |
| Blind Canyon | 43.768 | -114.724 | 43.769 | -114.720 |
| Bluff Creek | 43.697 | -114.686 | 43.700 | -114.755 |
| Boardman Creek | 43.525 | -115.019 | 43.612 | -114.940 |
| Boiler Grade Creek | 43.720 | -115.262 | 43.730 | -115.263 |
| Boise River | 43.713 | -115.636 | 43.645 | -115.749 |
| Buck Creek | 43.747 | -115.326 | 43.803 | -115.397 |
| Bull Creek | 44.491 | -115.615 | 44.422 | -115.813 |
| Burnt Log Creek | 43.646 | -115.017 | 43.643 | -114.970 |
| Canyon Creek | 44.303 | -115.231 | 44.172 | -115.244 |
| Carrie Creek | 43.590 | -114.691 | 43.552 | -114.759 |
| Chapman Creek | 44.097 | -115.290 | 44.136 | -115.314 |
| Clear Creek | 44.228 | -115.409 | 44.248 | -115.395 |
| Corbus Creek | 43.737 | -115.165 | 43.747 | -115.190 |
| Cow Creek | 44.021 | -115.296 | 43.991 | -115.255 |
| Crooked River | 44.027 | -115.338 | 43.853 | -115.537 |
| Cub Creek | 43.979 | -115.353 | 43.980 | -115.402 |
| Daisy Creek | 44.269 | -115.748 | 44.260 | -115.694 |
| Deadwood Creek | 43.532 | -115.015 | 43.585 | -115.008 |
| Deadwood Reservoir | 44.309 | -115.663 | | |
| Deadwood River | 44.547 | -115.561 | 44.342 | -115.658 |
| Deadwood River | 44.293 | -115.646 | 44.079 | -115.658 |
| Decker Creek | 43.718 | -115.047 | 43.769 | -115.145 |
| Deer Creek | 44.347 | -115.549 | 44.396 | -115.616 |
| Devils Creek | 43.642 | -115.564 | 43.685 | -115.592 |
| Dewey Creek | 44.772 | -116.276 | 44.807 | -116.278 |
| Disappointment Creek | 44.830 | -116.707 | 44.825 | -116.658 |
| Dog Creek | 43.529 | -115.302 | 43.529 | -115.302 |
| East Fork Big Peak Creek | 43.628 | -114.730 | 43.630 | -114.699 |
| East Fork Deadwood River | 44.494 | -115.571 | 44.492 | -115.575 |
| East Fork Eightmile Creek | 44.200 | -115.355 | 44.133 | -115.407 |
| East Fork Elk Creek | 43.742 | -115.231 | 43.709 | -115.254 |
| East Fork Roaring River | 43.687 | -115.438 | 43.694 | -115.465 |
| East Fork Sheep Creek | 43.674 | -115.486 | 43.684 | -115.548 |
| East Fork Skeleton Creek | 43.685 | -115.019 | 43.658 | -114.999 |
| East Fork Warm Springs Creek | 44.317 | -115.538 | 44.294 | -115.622 |
| East Fork Weiser River | 44.729 | -116.279 | 44.846 | -116.380 |
| East Fork Yuba River | 43.747 | -115.155 | 43.723 | -115.153 |
| Eightmile Creek | 44.251 | -115.400 | 44.118 | -115.413 |
| Elk Creek | 43.751 | -115.307 | 43.678 | -115.265 |
| Emma Creek | 43.791 | -114.835 | 43.735 | -114.906 |
| Feather River | 43.678 | -115.265 | 43.687 | -115.286 |
| Flytrip Creek | 43.928 | -115.019 | 43.939 | -114.974 |
| French Creek | 43.741 | -115.627 | 43.741 | -115.638 |
| Garney Creek | 44.091 | -115.609 | 44.094 | -115.611 |
| Gates Creek | 44.348 | -115.328 | 44.292 | -115.306 |
| Goat Creek | 43.729 | -115.007 | 43.715 | -114.980 |
| Goat Creek | 44.393 | -115.680 | 44.398 | -115.619 |
| Grouse Creek | 43.731 | -115.079 | 43.710 | -115.077 |
| Grouse Creek | 44.835 | -116.708 | 44.826 | -116.657 |

| Waterbody Name | Stream Begin Point or Lake Center Latitude | Stream Begin Point or Lake Center Longitude | Stream End Point Latitude | Stream End Point Longitude |
|---|---|---|---|---|
| Habit Creek | 44.349 | -115.713 | 44.330 | -115.673 |
| Hornet Creek | 44.797 | -116.733 | 44.838 | -116.635 |
| Horseshoe Creek | 44.062 | -115.317 | 44.053 | -115.317 |
| Hungarian Creek | 43.818 | -115.539 | 43.841 | -115.603 |
| Johnson Creek | 43.844 | -114.971 | 43.774 | -114.929 |
| Johnson Creek | 43.947 | -115.130 | 43.940 | -115.285 |
| Lightning Creek | 44.233 | -115.766 | 44.193 | -115.937 |
| Little Bear Creek | 43.746 | -114.975 | 43.779 | -114.936 |
| Little Queens River | 43.930 | -115.144 | 43.843 | -115.185 |
| Little Rattlesnake Creek | 43.589 | -115.700 | 43.617 | -115.607 |
| Little Silver Creek | 44.001 | -115.326 | 43.997 | -115.289 |
| Little Smoky Creek | 43.585 | -114.680 | 43.608 | -114.872 |
| Little Weiser River | 44.637 | -116.175 | 44.506 | -116.308 |
| Lodgepole Creek | 43.888 | -115.295 | 43.930 | -115.315 |
| Loggy Creek | 43.763 | -114.788 | 43.800 | -114.790 |
| Long Creek | 44.153 | -115.533 | 44.129 | -115.579 |
| Long Fork Silver Creek | 44.411 | -115.680 | 44.382 | -115.761 |
| Louise Creek | 43.964 | -115.392 | 43.968 | -115.425 |
| Mattingly Creek | 43.853 | -115.036 | 43.846 | -115.049 |
| McLeod Creek | 44.022 | -115.163 | 44.057 | -115.208 |
| McPhearson Creek | 44.038 | -115.159 | 44.066 | -115.199 |
| Meadow Creek | 43.764 | -115.617 | 43.765 | -115.622 |
| Middle Fork Boise River | 43.946 | -115.033 | 43.713 | -115.636 |
| Middle Fork Payette River | 44.551 | -115.765 | 44.103 | -116.000 |
| Middle Fork Roaring River | 43.624 | -115.466 | 43.688 | -115.452 |
| Middle Fork Warm Springs Creek | 44.351 | -115.565 | 44.326 | -115.599 |
| No Man Creek | 44.247 | -115.591 | 44.247 | -115.630 |
| North Creek | 44.818 | -116.721 | 44.814 | -116.693 |
| North Fork Baron Creek | 44.145 | -115.078 | 44.131 | -115.102 |
| North Fork Big Smoky Creek | 43.723 | -114.789 | 43.748 | -114.802 |
| North Fork Boise River | 44.094 | -115.225 | 43.713 | -115.636 |
| North Fork Canyon Creek | 44.260 | -115.199 | 44.250 | -115.215 |
| North Fork Deer Creek | 44.452 | -115.545 | 44.408 | -115.554 |
| North Fork Gold Fork River | 44.756 | -115.801 | 44.674 | -115.897 |
| North Fork Ross Fork | 43.852 | -114.976 | 43.796 | -114.989 |
| North Fork Whitehawk Creek | 44.291 | -115.539 | 44.277 | -115.585 |
| Olive Creek | 44.787 | -116.694 | 44.836 | -116.628 |
| Onion Creek | 44.234 | -115.776 | 44.214 | -115.825 |
| Oxtail Creek | 44.439 | -115.639 | 44.459 | -115.668 |
| Packsaddle Creek | 44.223 | -115.698 | 44.224 | -115.744 |
| Parks Creek | 43.629 | -115.337 | 43.582 | -115.342 |
| Peace Creek | 44.356 | -115.734 | 44.341 | -115.792 |
| Pikes Fork | 44.048 | -115.441 | 43.971 | -115.562 |
| Placer Creek | 44.806 | -116.738 | 44.808 | -116.680 |
| Poison Creek | 44.491 | -116.163 | 44.478 | -116.186 |
| Pole Creek | 44.494 | -116.203 | 44.471 | -116.219 |
| Queens River | 43.959 | -115.119 | 43.821 | -115.208 |
| Rabbit Creek | 43.797 | -115.613 | 43.821 | -115.690 |
| Rainbow Creek | 43.630 | -115.341 | 43.630 | -115.361 |
| Rattlesnake Creek | 43.622 | -115.526 | 43.561 | -115.740 |
| Renwick Creek | 44.397 | -116.140 | 44.367 | -116.196 |
| Right Creek | 43.855 | -115.187 | 43.867 | -115.194 |
| Roaring River | 43.647 | -115.480 | 43.790 | -115.440 |
| Rock Creek | 43.894 | -115.045 | 43.939 | -115.081 |
| Rockey Creek | 43.969 | -115.424 | 44.011 | -115.397 |
| Ross Fork | 43.796 | -114.989 | 43.774 | -114.929 |
| Royal Gorge | 43.751 | -114.725 | 43.750 | -114.723 |
| Russel Gulch | 43.577 | -115.559 | 43.591 | -115.596 |
| Salt Creek | 43.607 | -114.872 | 43.539 | -114.860 |
| Sawmill Creek | 43.709 | -115.095 | 43.761 | -115.121 |
| Scenic Creek | 43.901 | -115.145 | 43.921 | -115.179 |
| Scotch Creek | 43.687 | -115.438 | 43.690 | -115.432 |
| Scott Creek | 43.891 | -115.153 | 43.883 | -115.181 |
| Scott Creek | 44.191 | -115.762 | 44.223 | -115.648 |
| Second Fork Squaw Creek | 44.404 | -116.192 | 44.367 | -116.196 |
| Sheep Creek | 43.617 | -115.511 | 43.697 | -115.662 |
| Sheep Creek | 44.504 | -116.175 | 44.542 | -116.222 |
| Silver Creek | 44.408 | -115.750 | 44.304 | -115.865 |
| Sixteen-to-one Creek | 44.467 | -115.755 | 44.470 | -115.718 |
| Skeleton Creek | 43.694 | -114.987 | 43.589 | -115.022 |

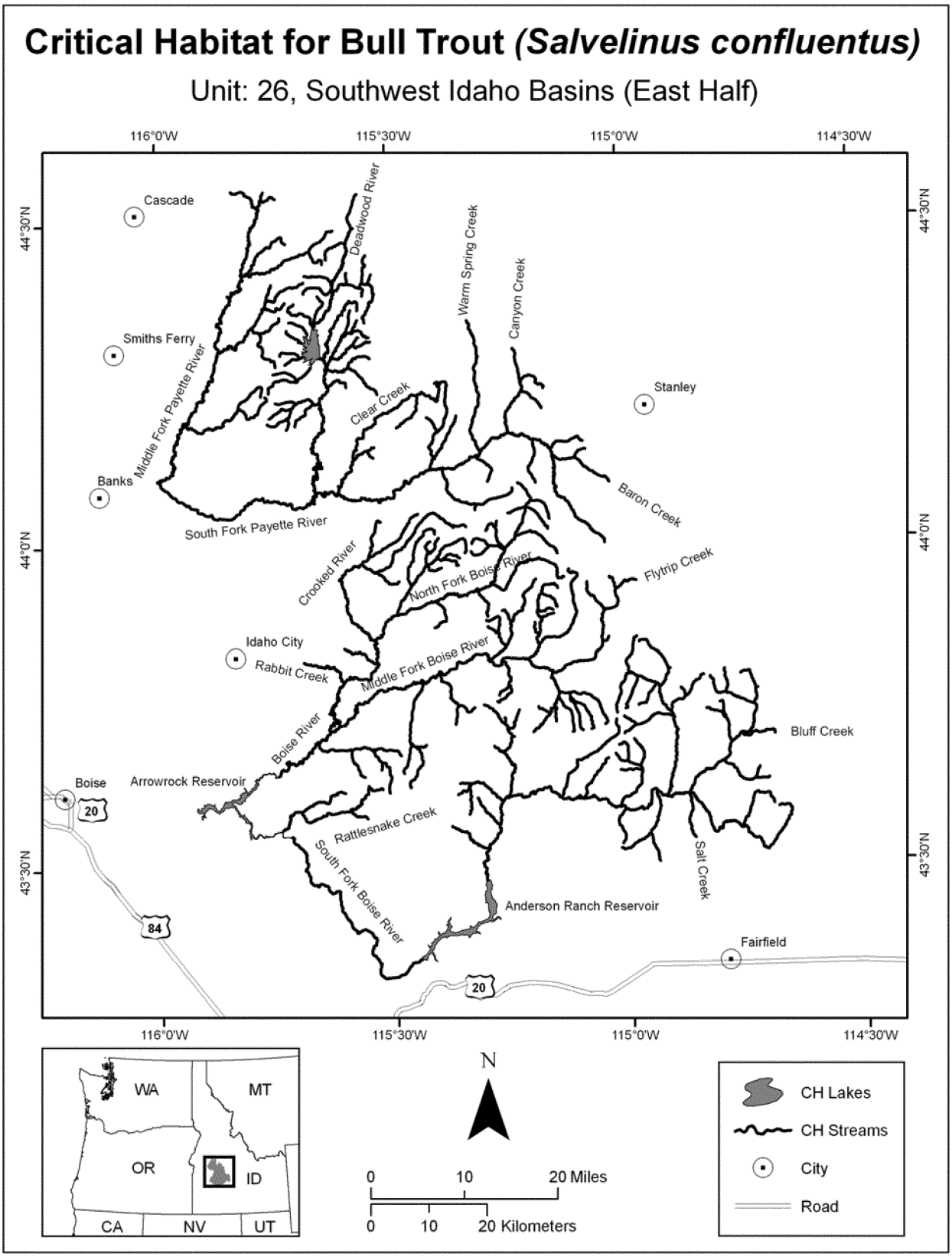
| Waterbody Name | Stream Begin Point or Lake Center Latitude | Stream Begin Point or Lake Center Longitude | Stream End Point Latitude | Stream End Point Longitude |
|---|---|---|---|---|
| Smith Creek | 44.200 | -115.758 | 44.214 | -115.710 |
| Smokey Dome Canyon | 43.503 | -114.938 | 43.547 | -114.956 |
| Snowslide Creek | 43.738 | -114.830 | 43.723 | -114.789 |
| South Fork Beaver Creek | 44.297 | -115.733 | 44.295 | -115.686 |
| South Fork Boise River | 43.358 | -115.449 | 43.481 | -115.307 |
| South Fork Boise River | 43.335 | -115.537 | 43.550 | -115.722 |
| South Fork Canyon Creek | 44.226 | -115.192 | 44.210 | -115.170 |
| South Fork Clear Creek | 44.183 | -115.484 | 44.232 | -115.440 |
| South Fork Cub Creek | 43.968 | -115.356 | 43.977 | -115.389 |
| South Fork Gold Fork River | 44.653 | -115.840 | 44.674 | -115.897 |
| South Fork Payette River | 43.999 | -115.040 | 44.103 | -116.000 |
| South Fork Ross Fork | 43.735 | -115.022 | 43.796 | -114.989 |
| South Fork Scott Creek | 44.187 | -115.703 | 44.222 | -115.661 |
| Squaw Creek | 44.436 | -116.153 | 44.437 | -116.279 |
| Stratton Creek | 44.446 | -115.631 | 44.470 | -115.587 |
| Tenmile Creek | 44.086 | -115.237 | 44.119 | -115.386 |
| Third Fork Squaw Creek | 44.453 | -116.157 | 44.424 | -116.211 |
| Trail Creek | 44.164 | -115.093 | 44.158 | -115.084 |
| Trail Creek | 43.912 | -115.407 | 43.871 | -115.409 |
| Trail Creek | 44.239 | -115.759 | 44.279 | -115.667 |
| Trail Creek-Yuba | 43.707 | -115.118 | 43.763 | -115.146 |
| Trinity Creek | 43.600 | -115.270 | 43.630 | -115.341 |
| Tripod Creek | 43.896 | -115.155 | 43.895 | -115.189 |
| Ucon Creek | 44.379 | -115.721 | 44.371 | -115.767 |
| Unnamed | 43.867 | -115.194 | 43.877 | -115.194 |
| Unnamed | 43.781 | -115.252 | 43.766 | -115.273 |
| Unnamed | 43.861 | -115.271 | 43.872 | -115.295 |
| Unnamed | 43.751 | -115.361 | 43.722 | -115.368 |
| Unnamed | 43.987 | -115.418 | 44.005 | -115.416 |
| Unnamed | 44.201 | -115.717 | 44.182 | -115.721 |
| Unnamed | 43.625 | -115.556 | 43.628 | -115.556 |
| Unnamed | 43.664 | -115.527 | 43.657 | -115.526 |
| Unnamed | 43.657 | -115.526 | 43.653 | -115.528 |
| Unnamed | 44.026 | -115.275 | 44.035 | -115.272 |
| Unnamed | 44.029 | -115.368 | 44.026 | -115.365 |
| Unnamed - Off Olive Creek | 44.801 | -116.661 | 44.787 | -116.666 |
| Unnamed - Off Beaver Creek | 44.336 | -115.718 | 44.318 | -115.687 |
| Unnamed - Off Black Warrior Creek | 43.896 | -115.263 | 43.878 | -115.245 |
| Unnamed - Off East Fork Warm Springs Creek | 44.324 | -115.564 | 44.312 | -115.578 |
| Unnamed - Off Long Creek | 44.136 | -115.535 | 44.148 | -115.547 |
| Unnamed - Off Middle Fork Warm Springs Creek | 44.324 | -115.541 | 44.332 | -115.580 |
| Unnamed - Off North Fork Canyon Creek | 44.241 | -115.166 | 44.260 | -115.199 |
| Unnamed - Off South Fork Beaver Creek | 44.283 | -115.722 | 44.294 | -115.687 |
| Unnamed 1 - Off Deer Creek | 44.425 | -115.587 | 44.407 | -115.586 |
| Unnamed 1 - Off Middle Fork Payette River | 44.552 | -115.835 | 44.524 | -115.775 |
| Unnamed 1 - Off Olive Creek | 44.812 | -116.644 | 44.791 | -116.649 |
| Unnamed 1 - Off Third Fork Squaw Creek | 44.420 | -116.148 | 44.424 | -116.211 |
| Unnamed 1- Off Emma Creek | 43.772 | -114.884 | 43.759 | -114.872 |
| Unnamed 2 - Off Deer Creek | 44.388 | -115.554 | 44.401 | -115.560 |
| Unnamed 2 - Off Eightmile Creek | 44.198 | -115.419 | 44.174 | -115.398 |
| Unnamed 2 - Off Of Unnamed 1 Off Of Third Fork Squaw Creek | 44.421 | -116.172 | 44.415 | -116.191 |
| Unnamed 3 - Off Deer Creek | 44.422 | -115.534 | 44.407 | -115.542 |
| Unnamed 3 - Off Middle Fork Payette River | 44.540 | -115.739 | 44.539 | -115.771 |
| Unnamed 3 - Off Of Unnamed 1 Off Of Third Fork Squaw Creek | 44.426 | -116.161 | 44.416 | -116.202 |
| Unnamed 3 - Off Third Fork Squaw Creek | 44.433 | -116.168 | 44.434 | -116.204 |
| Unnamed 4 - Off Squaw Creek | 44.455 | -116.200 | 44.470 | -116.220 |
| Unnamed 5 - Off Squaw Creek | 44.460 | -116.166 | 44.479 | -116.194 |
| Unnamed 6 - Off Unamed 5 Off Of Squaw Creek | 44.456 | -116.175 | 44.476 | -116.191 |
| Unnamed Trib 3 - Off North Fork Gold Fork River | 44.747 | -115.812 | 44.708 | -115.817 |
| Unnamed Trib 4 - Off North Fork Gold Fork River | 44.679 | -115.812 | 44.706 | -115.820 |
| Valley Creek | 44.280 | -115.743 | 44.333 | -115.777 |
| Vienna Creek | 43.802 | -114.906 | 43.802 | -114.910 |
| Wagontown Creek | 43.565 | -115.277 | 43.607 | -115.324 |
| Wapiti Creek | 44.117 | -115.202 | 44.094 | -115.186 |
| Warm Spring Creek | 44.292 | -115.306 | 44.144 | -115.304 |
| Warm Springs Creek | 44.367 | -115.580 | 44.279 | -115.631 |
| West Fork Big Peak Creek | 43.628 | -114.730 | 43.646 | -114.719 |
| West Fork Big Smoky Creek | 43.788 | -114.821 | 43.744 | -114.727 |
| West Fork Creek | 44.048 | -115.247 | 44.055 | -115.210 |
| West Fork Skeleton Creek | 43.672 | -115.027 | 43.651 | -114.974 |

| Waterbody Name | Stream Begin Point or Lake Center Latitude | Stream Begin Point or Lake Center Longitude | Stream End Point Latitude | Stream End Point Longitude |
|---|---|---|---|---|
| West Parks Creek | 43.623 | -115.341 | 43.612 | -115.366 |
| West Warrior Creek | 43.882 | -115.298 | 43.840 | -115.257 |
| Whitehawk Creek | 44.261 | -115.556 | 44.235 | -115.524 |
| Wild Buck Creek | 44.389 | -115.650 | 44.342 | -115.658 |
| Willow Creek | 43.725 | -115.023 | 43.605 | -115.144 |
| Willow Creek | 43.959 | -115.531 | 43.944 | -115.484 |
| Wilson Creek | 44.366 | -115.565 | 44.292 | -115.641 |
| Yuba River | 43.707 | -115.202 | 43.803 | -115.160 |

(iii) No waterbodies are excluded from critical habitat designation in this unit.

(iv) Map of Unit 26, Southwest Idaho Basins – East Half follows:

BILLING CODE 4310–55–S




BILLING CODE 4310–55–C

(34) Unit 26: Southwest Idaho Basins – West Half

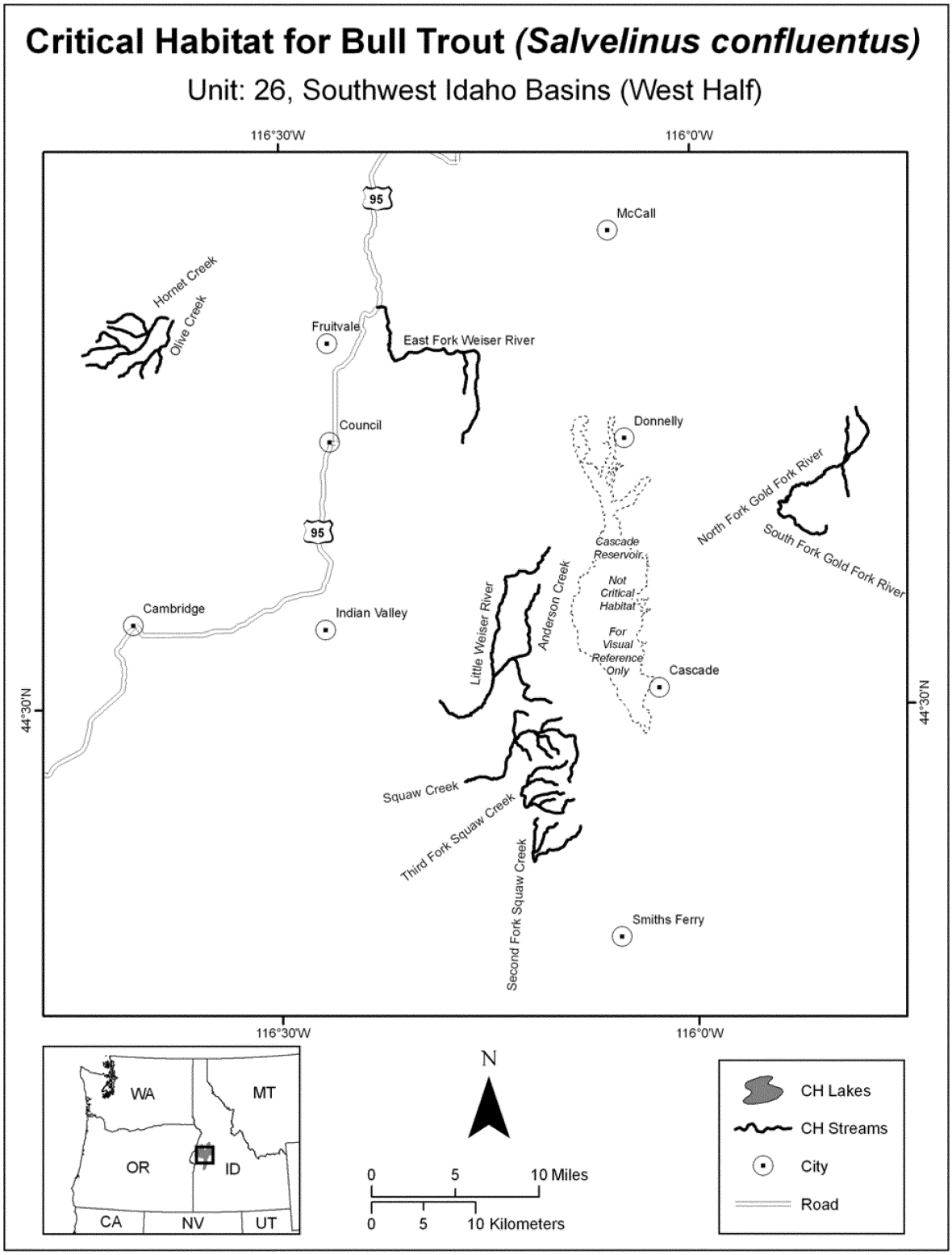
(i) The entire Southwest Idaho Basins unit consists of 2,150 km (1,335.9 mi) of streams and 4,310.5 ha (10,651.5 ac) of lakes and reservoirs. The unit is located in southwestern Idaho.

(ii) See paragraph (e)(33)(ii) of this entry for a list of individual waterbodies in this unit.

(iii) No waterbodies are excluded from critical habitat designation in this unit.

(iv) Map of Unit 26, Southwest Idaho Basins – West Half follows:

BILLING CODE 4310–55–S




BILLING CODE 4310–55–C

(35) Unit 27: Salmon River – East Half

(i) The entire Salmon River unit consists of 7,376.5 km (4,583.5 mi) of streams and 1,683.8 ha (4,160.6 ac) of lakes and reservoirs. The unit is located in central Idaho.

(ii) Individual waterbodies in the unit are bounded by the following coordinates:

| Waterbody Name | Stream Begin Point or Lake Center Latitude | Stream Begin Point or Lake Center Longitude | Stream End Point Latitude | Stream End Point Longitude |
|---|---|---|---|---|
| (Mill Creek (Tributary to Big Creek) | 44.467 | -113.685 | 44.507 | -113.619 |
| Airplane Lake | 45.156 | -114.599 | | |
| Alpine Creek | 45.032 | -114.655 | 45.080 | -114.619 |
| Alpine Creek | 43.930 | -114.970 | 43.896 | -114.907 |
| Alpine Creek Lake #5 | 45.078 | -114.617 | | |
| Alturas Lake | 43.914 | -114.861 | | |
| Alturas Lake Creek | 43.893 | -114.919 | 44.004 | -114.837 |
| Arctic Creek | 45.498 | -114.998 | 45.479 | -115.031 |
| Arnett Creek | 45.265 | -114.201 | 45.205 | -114.134 |
| Arrastra Creek | 44.841 | -114.351 | 44.868 | -114.426 |
| Back Creek | 44.511 | -115.707 | 44.512 | -115.739 |
| Baldwin Creek | 44.500 | -115.106 | 44.541 | -115.068 |
| Banner Creek | 44.291 | -115.188 | 44.356 | -115.209 |
| Bargamin Creek | 45.770 | -114.935 | 45.567 | -115.192 |
| Basin Creek | 44.368 | -114.943 | 44.263 | -114.818 |
| Basin Creek | 45.657 | -114.960 | 45.674 | -114.991 |
| Bayhorse Creek | 44.378 | -114.257 | 44.411 | -114.402 |
| Beagle Creek | 44.996 | -114.480 | 44.991 | -114.462 |
| Bear Creek | 44.597 | -114.463 | 44.569 | -114.362 |
| Bear Creek | 44.834 | -115.514 | 44.826 | -115.483 |
| Bear Creek | 45.106 | -115.618 | 45.117 | -115.638 |
| Bear Creek | 44.606 | -115.601 | 44.623 | -115.691 |
| Bear Creek-Loon | 44.735 | -114.862 | 44.742 | -114.818 |
| Bear Creek-Marsh | 44.490 | -115.099 | 44.439 | -115.101 |
| Bear Valley Creek | 44.804 | -113.867 | 44.772 | -113.708 |
| Bear Valley Creek | 44.236 | -115.500 | 44.449 | -115.231 |
| Bearskin Creek | 44.330 | -115.529 | 44.415 | -115.467 |
| Beaver Creek | 45.272 | -114.186 | 45.274 | -114.335 |
| Beaver Creek | 43.836 | -114.907 | 43.925 | -114.810 |
| Beaver Creek | 44.472 | -114.954 | 44.406 | -115.171 |
| Beaver Creek | 45.242 | -115.315 | 45.250 | -115.340 |
| Belvidere Creek | 45.041 | -115.387 | 45.069 | -115.365 |
| Bernard Creek | 44.975 | -114.735 | 44.982 | -114.760 |
| Big Bear Creek | 45.472 | -114.963 | 45.457 | -115.093 |
| Big Boulder Creek | 44.113 | -114.551 | 44.118 | -114.429 |
| Big Buck Creek | 45.252 | -115.540 | 45.263 | -115.586 |
| Big Chief Creek | 44.817 | -115.369 | 44.838 | -115.298 |
| Big Cottonwood Creek | 44.879 | -115.207 | 44.912 | -115.083 |
| Big Creek | 44.442 | -113.601 | 44.495 | -113.819 |
| Big Creek | 45.060 | -115.452 | 45.094 | -114.733 |
| Big Creek Marsh | 45.091 | -115.333 | | |
| Big Eightmile Creek | 44.560 | -113.563 | 44.739 | -113.460 |
| Big Flat Creek | 45.227 | -115.545 | 45.235 | -115.590 |
| Big Harrington Creek | 45.518 | -114.824 | 45.473 | -114.964 |
| Big Mallard Creek | 45.537 | -115.270 | 45.544 | -115.280 |
| Big Ramey Creek | 45.279 | -115.244 | 45.177 | -115.160 |
| Big Timber Creek | 44.509 | -113.539 | 44.699 | -113.375 |
| Birdseye Creek | 44.938 | -114.457 | 44.927 | -114.385 |
| Blackeagle Creek | 44.992 | -114.568 | 45.006 | -114.547 |
| Blackmare Creek | 44.809 | -115.796 | 44.822 | -115.704 |
| Blue Fork Silver Creek | 44.854 | -114.359 | 44.883 | -114.355 |
| Blue Lake Creek | 45.132 | -115.781 | 45.133 | -115.717 |
| Bohannon Creek | 45.229 | -113.668 | 45.112 | -113.747 |
| Boulder Creek | 45.277 | -115.341 | 45.242 | -115.315 |
| Boulder Creek | 45.129 | -116.476 | 45.204 | -116.311 |
| Bowery Creek | 44.011 | -114.390 | 44.032 | -114.461 |
| Bray Creek | 44.675 | -113.814 | 44.706 | -113.769 |
| Browning Creek | 44.759 | -115.364 | 44.738 | -115.407 |
| Bruin Creek | 45.517 | -115.076 | 45.492 | -115.113 |
| Brush Creek | 44.965 | -114.860 | 44.955 | -114.734 |
| Buck Creek | 44.929 | -115.003 | 44.896 | -115.065 |
| Buck Creek | 44.751 | -115.480 | 44.792 | -115.519 |
| Buckhorn Creek | 44.853 | -115.887 | 44.922 | -115.737 |
| Bum Creek | 45.036 | -115.287 | 44.995 | -115.319 |
| Burgdorf Creek | 45.268 | -115.911 | 45.255 | -115.963 |

| Waterbody Name | Stream Begin Point or Lake Center Latitude | Stream Begin Point or Lake Center Longitude | Stream End Point Latitude | Stream End Point Longitude |
|---|---|---|---|---|
| Burn Creek | 45.500 | -116.105 | 45.505 | -116.125 |
| Burnt Creek | 44.149 | -113.633 | 44.284 | -113.653 |
| Burntlog Creek | 44.718 | -115.420 | 44.803 | -115.519 |
| Cabin Creek | 44.419 | -114.902 | 44.397 | -114.828 |
| Cabin Creek | 43.929 | -114.880 | 43.928 | -114.843 |
| Cabin Creek | 45.195 | -114.838 | 45.126 | -114.936 |
| Cabin Creek | 44.703 | -115.648 | 44.666 | -115.686 |
| Cabin Creek-Loon | 44.760 | -114.693 | 44.691 | -114.754 |
| Cache Creek | 45.636 | -115.118 | 45.691 | -115.181 |
| Cache Creek | 44.262 | -115.403 | 44.346 | -115.420 |
| Cache Creek-Loon | 44.776 | -114.688 | 44.801 | -114.806 |
| California Creek | 45.341 | -115.851 | 45.448 | -115.760 |
| Camas Creek | 44.708 | -114.388 | 44.892 | -114.723 |
| Camp Creek | 45.222 | -114.115 | 45.279 | -114.159 |
| Camp Creek | 44.945 | -114.595 | 44.955 | -114.611 |
| Camp Creek | 45.643 | -114.961 | 45.657 | -115.001 |
| Camp Creek | 44.985 | -115.414 | 44.990 | -115.444 |
| Camp Creek | 44.607 | -115.680 | 44.605 | -115.634 |
| Camp Creek | 44.898 | -115.717 | 44.891 | -115.618 |
| Cane Creek | 44.978 | -115.262 | 44.953 | -115.292 |
| Canyon Creek | 44.575 | -114.914 | 44.568 | -114.847 |
| Cape Horn Creek | 44.333 | -115.288 | 44.395 | -115.169 |
| Carlson Creek | 45.345 | -115.517 | 45.339 | -115.560 |
| Casner Creek | 44.281 | -115.452 | 44.295 | -115.485 |
| Castle Creek | 44.826 | -114.313 | 44.801 | -114.472 |
| Cat Creek | 44.619 | -114.653 | 44.652 | -114.628 |
| Cave-Big Creek | 45.240 | -114.847 | 45.132 | -114.956 |
| Cayuse Creek | 45.500 | -114.603 | 45.474 | -114.569 |
| Challis Creek | 44.552 | -114.512 | 44.570 | -114.187 |
| Chamberlain Creek | 45.336 | -115.330 | 45.454 | -114.933 |
| Champion Creek | 44.026 | -114.839 | 43.988 | -114.691 |
| Chicken Creek | 45.287 | -115.474 | 45.319 | -115.412 |
| Chip Creek | 44.443 | -115.359 | 44.429 | -115.341 |
| Cinnabar Creek | 44.912 | -115.267 | 44.952 | -115.294 |
| Clear Creek | 45.146 | -114.579 | 45.295 | -114.352 |
| Cliff Creek | 44.790 | -115.697 | 44.769 | -115.744 |
| Club Creek | 45.291 | -115.037 | 45.266 | -115.084 |
| Cold Creek | 45.488 | -115.071 | 45.465 | -115.077 |
| Cold Creek | 44.371 | -115.318 | 44.425 | -115.311 |
| Cold Spring Creek-Loon | 44.682 | -114.841 | 44.718 | -114.799 |
| Colson Creek | 45.299 | -114.532 | 45.379 | -114.552 |
| Cook Creek | 44.373 | -115.445 | 44.408 | -115.378 |
| Cooper Creek | 44.675 | -113.703 | 44.726 | -113.726 |
| Corn Creek | 45.368 | -114.685 | 45.385 | -114.559 |
| Corral Creek | 45.545 | -114.111 | 45.498 | -114.147 |
| Corral Creek | 44.876 | -114.220 | 44.779 | -114.248 |
| Cottonwood Creek | 44.623 | -114.761 | 44.593 | -114.680 |
| Cougar Creek | 44.810 | -115.805 | 44.889 | -115.717 |
| Crooked Creek | 45.195 | -115.032 | 45.163 | -115.129 |
| Crooked Creek | 45.612 | -115.439 | 45.434 | -115.667 |
| Cub Creek | 44.319 | -115.518 | 44.324 | -115.474 |
| Cultus Creek | 44.781 | -115.211 | 44.813 | -115.176 |
| Curtis Creek | 44.562 | -115.760 | 44.652 | -115.704 |
| Dagger Creek | 44.456 | -115.374 | 44.523 | -115.282 |
| Dahlonega Creek | 45.524 | -113.836 | 45.541 | -113.929 |
| Dairy Creek | 44.620 | -113.594 | 44.637 | -113.553 |
| Deadhorse Creek | 45.574 | -116.145 | 45.613 | -116.067 |
| Deadwood Creek | 44.349 | -114.836 | 44.376 | -114.777 |
| Deep Creek | 45.018 | -114.098 | 45.126 | -114.216 |
| Deep Creek | 45.051 | -115.754 | 45.071 | -115.743 |
| Deer Creek | 44.776 | -113.810 | 44.793 | -113.778 |
| Deer Creek | 44.571 | -114.907 | 44.548 | -114.855 |
| Deer Creek | 45.382 | -115.092 | 45.453 | -115.130 |
| Devils Toe Creek | 45.436 | -114.893 | 45.419 | -114.935 |
| Dillinger Creek | 45.530 | -115.108 | 45.480 | -115.215 |
| Disappointment Creek | 45.422 | -114.880 | 45.300 | -114.945 |
| Dismal Creek | 45.351 | -114.950 | 45.306 | -114.958 |
| Ditch Creek | 45.506 | -114.004 | 45.597 | -114.041 |
| Dog Creek | 45.380 | -115.151 | 45.448 | -115.163 |
| Dollar Creek | 44.722 | -115.696 | 44.759 | -115.752 |

| Waterbody Name | Stream Begin Point or Lake Center Latitude | Stream Begin Point or Lake Center Longitude | Stream End Point Latitude | Stream End Point Longitude |
|---|---|---|---|---|
| Duffield Creek | 44.570 | -114.931 | 44.551 | -115.008 |
| Dump Creek | 45.329 | -114.041 | 45.318 | -114.039 |
| Dutch Creek | 44.799 | -115.520 | 44.798 | -115.523 |
| Dynamite Creek | 44.871 | -115.208 | 44.876 | -115.058 |
| East Basin Creek | 44.343 | -114.791 | 44.277 | -114.850 |
| East Fork Big Ramey Creek | 45.245 | -115.137 | 45.214 | -115.188 |
| East Fork Burntlog Creek | 44.730 | -115.427 | 44.737 | -115.502 |
| East Fork Cache Creek | 44.306 | -115.390 | 44.314 | -115.424 |
| East Fork Elk Creek | 44.481 | -115.360 | 44.485 | -115.453 |
| East Fork Fall Creek | 45.360 | -115.964 | 45.415 | -115.976 |
| East Fork Hayden Creek | 44.664 | -113.684 | 44.760 | -113.712 |
| East Fork Herd Creek | 43.984 | -114.204 | 44.058 | -114.234 |
| East Fork John Day Creek | 45.577 | -116.154 | 45.573 | -116.230 |
| East Fork Mayfield Creek | 44.480 | -114.714 | 44.539 | -114.798 |
| East Fork Morgan Creek | 44.670 | -113.829 | 44.675 | -113.900 |
| East Fork Owl Creek | 45.340 | -114.463 | 45.345 | -114.458 |
| East Fork Pahsimeroi River | 44.081 | -113.721 | 44.157 | -113.704 |
| East Fork Salmon River | 43.929 | -114.555 | 44.268 | -114.327 |
| East Fork South Fork Salmon River | 44.886 | -115.257 | 45.015 | -115.714 |
| East Fork Thomas Creek | 44.668 | -115.043 | 44.705 | -115.028 |
| East Fork Valley Creek | 44.327 | -114.988 | 44.357 | -115.049 |
| East Fork Whimstick Creek | 45.300 | -115.029 | 45.288 | -114.962 |
| East Pass Creek | 44.050 | -114.277 | 44.076 | -114.244 |
| Eightmile Creek | 44.471 | -114.716 | 44.426 | -114.620 |
| Elevenmile Creek | 44.436 | -114.545 | 44.467 | -114.579 |
| Elk Creek | 44.196 | -115.134 | 44.293 | -115.024 |
| Elk Creek | 44.485 | -115.453 | 44.410 | -115.373 |
| Elk Creek | 45.157 | -115.432 | 45.156 | -115.585 |
| Elkhorn Creek | 44.582 | -115.370 | 44.615 | -115.257 |
| Elkhorn Creek | 45.270 | -116.122 | 45.404 | -116.095 |
| Enos Creek | 45.148 | -115.795 | 45.102 | -115.851 |
| Fall Creek | 45.331 | -115.996 | 45.432 | -115.984 |
| Falls Creek | 44.611 | -113.685 | 44.565 | -113.879 |
| Falls Creek | 44.881 | -115.508 | 44.885 | -115.536 |
| Fernan Creek | 45.238 | -115.813 | 45.235 | -115.850 |
| Fir Creek | 44.618 | -114.671 | 44.655 | -114.698 |
| Fir Creek | 44.344 | -115.299 | 44.428 | -115.291 |
| Fish Creek | 45.352 | -115.304 | 45.384 | -115.335 |
| Fishhook Creek | 44.133 | -114.982 | 44.143 | -114.920 |
| Fitsum Creek | 45.000 | -115.763 | 44.999 | -115.723 |
| Fivemile Creek | 44.355 | -114.616 | 44.405 | -114.655 |
| Fivemile Creek | 45.412 | -115.470 | 45.392 | -115.456 |
| Flat Creek | 45.302 | -115.880 | 45.271 | -115.837 |
| Float Creek | 44.523 | -115.179 | 44.571 | -115.072 |
| Flossie Creek | 45.372 | -115.207 | 45.389 | -115.295 |
| Fly Creek | 44.670 | -114.551 | 44.705 | -114.497 |
| Forty-Five Creek | 44.665 | -115.309 | 44.718 | -115.233 |
| Fourmile Creek | 44.798 | -115.622 | 44.857 | -115.696 |
| Fourth of July Creek | 45.427 | -113.774 | 45.364 | -113.944 |
| Fourth of July Creek | 44.986 | -114.347 | 44.991 | -114.414 |
| Fourth of July Creek | 44.044 | -114.621 | 44.032 | -114.837 |
| French Creek | 45.370 | -116.042 | 45.425 | -116.031 |
| Fritser Creek | 45.091 | -115.627 | 45.103 | -115.684 |
| Furnace Creek | 44.789 | -114.344 | 44.766 | -114.487 |
| Game Creek | 45.404 | -115.275 | 45.398 | -115.193 |
| Garden Creek | 45.314 | -114.404 | 45.239 | -114.517 |
| Germania Creek | 43.968 | -114.704 | 44.039 | -114.462 |
| Goat Creek | 44.179 | -115.009 | 44.219 | -114.942 |
| Goodman Creek | 45.636 | -114.965 | 45.647 | -115.017 |
| Granite Fork Lake Fork Rapid River | 45.151 | -116.553 | 45.187 | -116.518 |
| Green Creek | 45.739 | -115.023 | 45.771 | -115.033 |
| Greyhound Creek | 44.588 | -115.155 | 44.648 | -115.168 |
| Grimmet Creek | 45.156 | -115.800 | 45.184 | -115.782 |
| Grouse Creek | 45.226 | -115.545 | 45.186 | -115.482 |
| Grouse Creek | 45.317 | -115.817 | 45.265 | -115.831 |
| Guard Creek | 45.308 | -115.659 | 45.293 | -115.696 |
| Half Moon Creek | 44.557 | -115.412 | 44.558 | -115.410 |
| Hand Creek | 45.287 | -115.246 | 45.228 | -115.301 |
| Hanson Creek | 44.869 | -115.508 | 44.865 | -115.475 |
| Hard Creek | 45.125 | -116.240 | 45.183 | -116.284 |

| Waterbody Name | Stream Begin Point or Lake Center Latitude | Stream Begin Point or Lake Center Longitude | Stream End Point Latitude | Stream End Point Longitude |
|---|---|---|---|---|
| Hartan Creek | 45.519 | -115.258 | 45.477 | -115.229 |
| Hayden Creek | 44.722 | -113.820 | 44.869 | -113.627 |
| Hazard Creek | 45.201 | -116.255 | 45.184 | -116.301 |
| Hell Roaring Creek | 44.023 | -114.842 | 44.027 | -114.929 |
| Hell Roaring Lake | 44.024 | -114.935 | | |
| Herd Creek | 44.058 | -114.234 | 44.154 | -114.301 |
| Hida Creek | 45.556 | -115.167 | 45.515 | -115.204 |
| Holdover Creek | 44.845 | -115.698 | 44.840 | -115.726 |
| Honeymoon Creek | 44.553 | -115.414 | 44.560 | -115.411 |
| Hoodoo Creek | 45.060 | -114.553 | 44.953 | -114.582 |
| Horse Creek | 45.475 | -114.402 | 45.395 | -114.733 |
| Hot Springs Creek | 45.729 | -115.032 | 45.721 | -114.977 |
| Hot Springs Creek | 45.511 | -115.042 | 45.468 | -115.131 |
| Hotzel Creek | 45.373 | -115.188 | 45.349 | -115.204 |
| Hughes Creek | 45.582 | -114.121 | 45.476 | -113.989 |
| Hull Creek | 45.468 | -113.993 | 45.491 | -114.094 |
| Hungry Creek | 45.392 | -114.916 | 45.352 | -114.870 |
| Ibex Creek | 43.908 | -114.493 | 43.953 | -114.526 |
| Indian Creek | 45.552 | -114.145 | 45.400 | -114.168 |
| Indian Creek | 44.799 | -115.390 | 44.770 | -115.090 |
| Indian Creek | 44.970 | -115.732 | 44.958 | -115.691 |
| Indian Creek-Loon | 44.672 | -114.840 | 44.692 | -114.755 |
| Inyo Creek | 44.532 | -113.628 | 44.535 | -113.684 |
| Iron Creek | 44.189 | -115.047 | 44.223 | -114.948 |
| J Fell Creek | 44.614 | -114.462 | 44.684 | -114.459 |
| Jack Creek | 44.678 | -114.836 | 44.696 | -114.761 |
| Jeanette Creek | 45.276 | -115.919 | 45.294 | -115.899 |
| Jefferson Creek | 45.220 | -114.120 | 45.242 | -114.149 |
| Job Creek | 44.243 | -115.003 | 44.243 | -115.002 |
| John Day Creek | 45.521 | -116.196 | 45.586 | -116.296 |
| Johnson Creek | 44.632 | -115.526 | 44.962 | -115.502 |
| Jordan Creek | 44.469 | -114.771 | 44.379 | -114.721 |
| Josephine Creek | 45.225 | -115.971 | 45.224 | -115.930 |
| Jungle Creek | 45.147 | -115.799 | 45.108 | -115.826 |
| Kadletz Creek | 44.740 | -113.820 | 44.775 | -113.743 |
| Kenney Creek | 45.110 | -113.514 | 45.032 | -113.663 |
| Kinnikinic Creek | 44.258 | -114.402 | 44.260 | -114.403 |
| Knapp Creek | 44.424 | -114.916 | 44.365 | -115.132 |
| Knee Creek | 44.676 | -115.662 | 44.695 | -115.624 |
| Krassel Creek | 44.979 | -115.727 | 44.987 | -115.704 |
| Lake Creek | 44.985 | -114.081 | 45.017 | -113.989 |
| Lake Creek | 44.981 | -114.646 | 44.947 | -114.592 |
| Lake Creek | 44.720 | -115.142 | 44.714 | -115.097 |
| Lake Creek | 44.643 | -115.181 | 44.662 | -115.231 |
| Lake Creek | 45.616 | -115.687 | 45.514 | -115.575 |
| Lake Creek | 45.374 | -115.899 | 45.372 | -115.895 |
| Lake Creek | 45.294 | -116.220 | 45.400 | -116.213 |
| Lake Creek Lake | 45.373 | -115.897 | | |
| Lake Fork Rapid River | 45.190 | -116.558 | 45.187 | -116.483 |
| Landmark Creek | 44.657 | -115.543 | 44.626 | -115.583 |
| Lee Creek | 44.740 | -113.482 | 44.659 | -113.616 |
| Lemhi River | 44.682 | -113.355 | 45.188 | -113.890 |
| Liberty Creek | 44.783 | -114.618 | 44.759 | -114.650 |
| Lick Creek | 44.775 | -114.348 | 44.722 | -114.272 |
| Lick Creek | 45.049 | -115.915 | 45.062 | -115.762 |
| Lightning Creek | 44.466 | -114.788 | 44.388 | -114.796 |
| Little Beaver Creek | 44.445 | -115.528 | 44.409 | -115.492 |
| Little Boulder Creek | 44.065 | -114.543 | 44.099 | -114.443 |
| Little Buck Creek | 45.252 | -115.551 | 45.247 | -115.588 |
| Little Cottonwood Creek | 44.942 | -115.020 | 44.907 | -115.074 |
| Little Creek | 44.695 | -114.981 | 44.724 | -114.998 |
| Little Deep Creek | 45.001 | -114.163 | 45.108 | -114.180 |
| Little East Fork Elk Creek | 44.480 | -115.398 | 44.464 | -115.446 |
| Little Eightmile Creek | 44.823 | -113.366 | 44.739 | -113.460 |
| Little Horse Creek | 45.440 | -114.585 | 45.477 | -114.450 |
| Little Indian Creek | 44.871 | -115.219 | 44.841 | -115.257 |
| Little Indian Creek | 44.967 | -115.727 | 44.951 | -115.702 |
| Little Jacket Creek | 44.926 | -114.479 | 44.953 | -114.566 |
| Little Lodgepole Creek | 45.351 | -115.155 | 45.328 | -115.218 |
| Little Loon Creek | 44.615 | -114.964 | 44.731 | -114.941 |

| Waterbody Name | Stream Begin Point or Lake Center Latitude | Stream Begin Point or Lake Center Longitude | Stream End Point Latitude | Stream End Point Longitude |
|---|---|---|---|---|
| Little Mallard Creek | 45.530 | -115.306 | 45.529 | -115.304 |
| Little Pistol Creek | 44.721 | -115.405 | 44.721 | -115.204 |
| Little Redfish Lake | 44.161 | -114.909 | | |
| Little Salmon River | 45.181 | -116.302 | 45.417 | -116.314 |
| Little Slate Creek | 45.620 | -116.067 | 45.463 | -116.122 |
| Little Timber Creek | 44.605 | -113.445 | 44.642 | -113.384 |
| Livingston Creek | 44.144 | -114.609 | 44.194 | -114.604 |
| Lodgepole Creek | 44.554 | -114.475 | 44.540 | -114.409 |
| Lodgepole Creek | 45.372 | -115.126 | 45.305 | -115.255 |
| Lodgepole Creek | 44.576 | -115.611 | 44.593 | -115.687 |
| Logan Creek | 45.072 | -115.456 | 45.118 | -115.320 |
| Lola Creek | 44.391 | -115.240 | 44.408 | -115.175 |
| Long Tom Creek | 43.978 | -114.402 | 44.027 | -114.430 |
| Loon Creek | 44.444 | -114.941 | 44.553 | -114.850 |
| Loon Creek | 45.167 | -115.837 | 45.170 | -115.809 |
| Loon Lake | 45.163 | -115.840 | | |
| Lucky Creek | 44.625 | -115.277 | 44.664 | -115.299 |
| Luger Creek | 44.618 | -115.396 | 44.686 | -115.358 |
| Magpie Creek | 45.548 | -115.153 | 45.506 | -115.201 |
| Mahogany Creek | 44.159 | -113.768 | 44.208 | -113.702 |
| Marble Creek | 44.983 | -115.080 | 44.743 | -115.017 |
| Marsh Creek | 44.329 | -115.092 | 44.449 | -115.231 |
| Martin Creek | 44.426 | -114.564 | 44.387 | -114.495 |
| Martin Creek | 44.117 | -114.798 | 44.137 | -114.725 |
| Martindale Creek | 44.813 | -114.545 | 44.825 | -114.577 |
| Mayfield Creek | 44.552 | -114.850 | 44.539 | -114.798 |
| Mayflower Creek | 45.259 | -115.602 | 45.248 | -115.654 |
| McCalla Creek | 45.255 | -115.128 | 45.414 | -114.982 |
| McConn Creek | 45.527 | -114.243 | 45.504 | -114.153 |
| McHoney Creek | 44.638 | -114.610 | 44.670 | -114.555 |
| McKay Creek | 44.475 | -114.492 | 44.489 | -114.551 |
| McKee Creek | 44.567 | -114.672 | 44.577 | -114.649 |
| Meadow Creek | 44.990 | -114.487 | 44.977 | -114.471 |
| Meadow Creek | 44.863 | -115.373 | 44.902 | -115.328 |
| Meadow Creek - mouth to Trap | 44.316 | -115.089 | 44.306 | -115.053 |
| Meridian Creek | 43.988 | -114.257 | 44.011 | -114.252 |
| Middle Fork Elkhorn Creek | 44.628 | -115.369 | 44.620 | -115.291 |
| Middle Fork Indian Creek | 44.856 | -115.104 | 44.796 | -115.133 |
| Middle Fork Salmon River | 44.449 | -115.231 | 45.296 | -114.594 |
| Middle Fork Smith Creek | 45.157 | -115.413 | 45.170 | -115.381 |
| Mill Creek | 44.656 | -113.657 | 44.766 | -113.519 |
| Mill Creek | 44.470 | -114.492 | 44.561 | -114.275 |
| Mill Creek | 45.356 | -115.520 | 45.331 | -115.581 |
| Mink Creek | 44.865 | -114.298 | 44.842 | -114.331 |
| Missouri Creek | 45.028 | -115.352 | 45.007 | -115.395 |
| Moccasin Creek | 45.088 | -114.090 | 45.153 | -114.172 |
| Monumental Creek | 44.903 | -115.263 | 45.160 | -115.130 |
| Moose Creek | 45.691 | -113.945 | 45.654 | -113.971 |
| Moose Creek | 45.318 | -114.039 | 45.328 | -114.042 |
| Moose Creek | 45.283 | -115.293 | 45.356 | -115.250 |
| Moose Creek | 44.853 | -115.510 | 44.838 | -115.484 |
| Moose Jaw Creek | 45.312 | -115.118 | 45.278 | -115.172 |
| Morgan Creek | 44.675 | -113.900 | 44.618 | -113.964 |
| Morgan Creek | 44.846 | -114.262 | 44.612 | -114.169 |
| Mormon Creek | 44.499 | -115.655 | 44.524 | -115.696 |
| Morse Creek | 44.653 | -113.709 | 44.569 | -113.886 |
| Moyer Creek | 45.024 | -114.312 | 44.900 | -114.223 |
| Musgrove Creek | 45.096 | -114.471 | 45.022 | -114.313 |
| My Creek | 45.357 | -115.004 | 45.338 | -114.982 |
| Mystery Creek | 44.519 | -114.775 | 44.490 | -114.793 |
| Napias Creek | 45.244 | -114.024 | 45.137 | -114.218 |
| Nasty Creek | 44.877 | -115.697 | 44.879 | -115.630 |
| Nelson Creek | 44.499 | -114.805 | 44.540 | -114.804 |
| Nethker Creek | 45.249 | -115.972 | 45.265 | -115.906 |
| Nick Creek | 44.927 | -115.795 | 44.926 | -115.855 |
| Ninemile Creek | 44.414 | -114.583 | 44.445 | -114.605 |
| No Name Creek | 45.361 | -115.225 | 45.322 | -115.234 |
| North Fork Bear Creek | 44.826 | -115.483 | 44.824 | -115.437 |
| North Fork Big Creek | 44.552 | -113.593 | 44.442 | -113.601 |
| North Fork Bowery Creek | 44.049 | -114.366 | 44.032 | -114.401 |

| Waterbody Name | Stream Begin Point or Lake Center Latitude | Stream Begin Point or Lake Center Longitude | Stream End Point Latitude | Stream End Point Longitude |
|---|---|---|---|---|
| North Fork Buckhorn Creek | 44.928 | -115.775 | 44.941 | -115.868 |
| North Fork Camp Creek | 44.888 | -115.691 | 44.924 | -115.629 |
| North Fork Dollar Creek | 44.715 | -115.707 | 44.718 | -115.710 |
| North Fork Elk Creek | 44.527 | -115.459 | 44.485 | -115.453 |
| North Fork Elkhorn Creek | 44.638 | -115.363 | 44.625 | -115.277 |
| North Fork Fitsum Creek | 44.985 | -115.884 | 44.999 | -115.760 |
| North Fork Lick Creek | 45.072 | -115.784 | 45.075 | -115.885 |
| North Fork Little Timber Creek | 44.605 | -113.445 | 44.583 | -113.513 |
| North Fork Morgan Creek | 44.710 | -113.830 | 44.675 | -113.900 |
| North Fork Riordan Creek | 44.867 | -115.447 | 44.862 | -115.389 |
| North Fork Salmon River | 45.702 | -113.990 | 45.405 | -113.994 |
| North Fork Sand Creek | 44.642 | -115.497 | 44.656 | -115.451 |
| North Fork Sheep Creek | 45.483 | -113.774 | 45.482 | -113.837 |
| North Fork Sheep Creek | 44.648 | -114.964 | 44.649 | -115.018 |
| North Fork Sheep Creek | 45.039 | -115.584 | 45.059 | -115.557 |
| North Fork Six-bit Creek | 44.670 | -115.763 | 44.711 | -115.782 |
| North Fork Smith Creek | 45.188 | -115.346 | 45.197 | -115.352 |
| North Fork Sulphur Creek | 44.597 | -115.466 | 44.554 | -115.440 |
| North Fork Wolf Fang Creek | 45.216 | -115.444 | 45.212 | -115.393 |
| Norton Creek | 44.890 | -114.902 | 44.827 | -114.794 |
| Oompaul Creek | 45.034 | -115.736 | 45.054 | -115.717 |
| Opal Creek | 44.898 | -114.278 | 44.896 | -114.315 |
| Opal Lake | 44.899 | -114.281 | | |
| Otter Creek | 44.869 | -114.249 | 44.860 | -114.291 |
| Our Creek | 45.364 | -115.000 | 45.354 | -114.976 |
| Owl Creek | 45.474 | -114.383 | 45.318 | -114.448 |
| Pahsimeroi River | 44.157 | -113.704 | 44.692 | -114.049 |
| Panther Creek | 44.829 | -114.295 | 45.316 | -114.406 |
| Papoose Creek | 45.174 | -114.721 | 45.273 | -114.821 |
| Papoose Creek | 44.796 | -115.278 | 44.837 | -115.246 |
| Paradise Creek | 45.121 | -115.765 | 45.123 | -115.727 |
| Park Creek | 44.734 | -115.551 | 44.724 | -115.593 |
| Parker Creek | 44.622 | -114.597 | 44.608 | -114.540 |
| Parks Creek | 44.955 | -115.536 | 44.970 | -115.531 |
| Partridge Creek | 45.287 | -116.218 | 45.408 | -116.127 |
| Patterson Creek | 44.635 | -113.653 | 44.614 | -113.966 |
| Peanut Creek | 44.688 | -115.486 | 44.663 | -115.454 |
| Pepper Creek | 44.949 | -115.351 | 44.916 | -115.384 |
| Perkins Lake | 43.929 | -114.841 | | |
| Pete Creek | 45.298 | -115.926 | 45.285 | -115.979 |
| Petit Lake | 43.980 | -114.879 | | |
| Pettit Lake Creek | 43.976 | -114.902 | 43.988 | -114.841 |
| Phelan Creek | 45.146 | -114.042 | 45.167 | -114.161 |
| Pierce Creek | 45.670 | -113.933 | 45.621 | -113.964 |
| Pigtail Creek | 44.122 | -114.736 | 44.129 | -114.727 |
| Pine Creek | 45.282 | -114.168 | 45.364 | -114.300 |
| Pioneer Creek - Loon | 44.521 | -114.865 | 44.441 | -114.895 |
| Pistol Creek | 44.644 | -115.443 | 44.724 | -115.150 |
| Poet Creek | 45.722 | -115.034 | 45.754 | -115.073 |
| Poker Creek | 44.445 | -115.367 | 44.429 | -115.335 |
| Pole Creek | 43.964 | -114.691 | 43.926 | -114.810 |
| Pole Creek | 45.335 | -115.160 | 45.308 | -115.182 |
| Pole Creek | 44.361 | -115.367 | 44.386 | -115.380 |
| Pole Creek-Camas | 44.763 | -114.675 | 44.794 | -114.595 |
| Pony Creek | 45.194 | -114.138 | 45.187 | -114.059 |
| Pony Creek | 45.179 | -115.704 | 45.187 | -115.563 |
| Porcupine Creek | 44.890 | -115.499 | 44.902 | -115.538 |
| Porphyry Creek | 45.069 | -114.434 | 45.004 | -114.334 |
| Porter Creek | 44.470 | -115.540 | 44.457 | -115.451 |
| Profile Creek | 45.053 | -115.417 | 44.957 | -115.429 |
| Prospect Creek | 44.357 | -114.985 | 44.394 | -114.986 |
| Pruvan Creek | 45.498 | -113.821 | 45.467 | -113.790 |
| Pup Creek | 45.378 | -115.147 | 45.413 | -115.139 |
| Quartz Creek | 45.048 | -115.497 | 44.970 | -115.478 |
| Queen Creek | 45.400 | -115.049 | 45.458 | -115.110 |
| Raines Creek | 45.332 | -115.501 | 45.308 | -115.591 |
| Rams Creek | 44.861 | -114.453 | 44.871 | -114.456 |
| Ranch Creek | 45.374 | -115.186 | 45.404 | -115.234 |
| Rapid River | 44.551 | -115.008 | 44.680 | -115.153 |
| Rapid River | 45.114 | -116.507 | 45.374 | -116.356 |

| Waterbody Name | Stream Begin Point or Lake Center Latitude | Stream Begin Point or Lake Center Longitude | Stream End Point Latitude | Stream End Point Longitude |
|---|---|---|---|---|
| Rapps Creek | 45.268 | -114.172 | 45.213 | -114.164 |
| Rat Creek | 44.566 | -114.785 | 44.588 | -114.826 |
| Rattlesnake Creek | 45.249 | -115.518 | 45.221 | -115.492 |
| Raven Creek | 45.550 | -115.161 | 45.517 | -115.195 |
| Red Top Creek | 45.362 | -115.266 | 45.384 | -115.292 |
| Redfish Lake | 44.117 | -114.932 | | |
| Redfish Lake Creek | 44.099 | -114.954 | 44.169 | -114.899 |
| Reeves Creek | 44.686 | -115.619 | 44.667 | -115.667 |
| Rhett Creek | 45.476 | -115.408 | 45.472 | -115.394 |
| Rice Creek | 44.510 | -115.645 | 44.575 | -115.686 |
| Richardson Creek | 45.539 | -115.261 | 45.474 | -115.240 |
| Rim Creek | 45.281 | -115.383 | 45.336 | -115.330 |
| Riordan Creek | 44.808 | -115.392 | 44.907 | -115.486 |
| Riordan Lake | 44.850 | -115.439 | | |
| Roaring Creek | 45.259 | -114.646 | 45.241 | -114.615 |
| Rock Creek | 44.639 | -115.543 | 44.600 | -115.593 |
| Rock Creek-Loon | 44.754 | -114.671 | 44.674 | -114.741 |
| Rocky Creek | 44.521 | -113.434 | 44.535 | -113.505 |
| Rooster Creek | 45.309 | -115.490 | 45.328 | -115.437 |
| Root Creek | 45.382 | -114.993 | 45.362 | -114.964 |
| Royal Creek | 45.525 | -116.098 | 45.525 | -116.134 |
| Rubie Creek | 45.546 | -116.079 | 45.543 | -116.026 |
| Ruby Creek | 45.190 | -115.915 | 45.258 | -115.879 |
| Rush Creek | 44.536 | -114.652 | 44.578 | -114.614 |
| Rush Creek | 44.933 | -114.991 | 45.105 | -114.861 |
| Ryan Creek | 45.019 | -115.395 | 45.033 | -115.380 |
| Sabe Creek | 45.681 | -114.949 | 45.507 | -115.025 |
| Sack Creek | 44.320 | -115.352 | 44.359 | -115.408 |
| Salmon River | 43.797 | -114.775 | 45.856 | -116.795 |
| Salt Creek | 44.984 | -114.297 | 44.979 | -114.223 |
| Salt Creek | 44.973 | -115.325 | 44.949 | -115.353 |
| Sand Creek | 44.632 | -115.526 | 44.609 | -115.414 |
| Sand Creek | 45.327 | -115.863 | 45.307 | -115.821 |
| Schissler Creek | 45.320 | -115.780 | 45.328 | -115.708 |
| Seafoam Creek | 44.518 | -115.119 | 44.542 | -115.065 |
| Secesh River | 45.256 | -115.897 | 45.025 | -115.707 |
| Sharkey Creek | 45.222 | -114.109 | 45.212 | -114.048 |
| Sheep Creek | 45.482 | -113.837 | 45.504 | -113.954 |
| Sheep Creek | 44.770 | -114.483 | 44.769 | -114.516 |
| Sheep Creek | 44.649 | -115.018 | 44.647 | -115.058 |
| Sheep Creek | 44.708 | -115.561 | 44.698 | -115.613 |
| Sheep Creek | 45.049 | -115.637 | 45.049 | -115.515 |
| Sheep Creek | 45.614 | -115.697 | 45.468 | -115.811 |
| Sheep Creek-Lmf | 44.915 | -114.904 | 44.943 | -114.727 |
| Sheep Trail Creek | 44.360 | -115.452 | 44.337 | -115.448 |
| Shell Creek | 44.632 | -114.834 | 44.613 | -114.789 |
| Ship Island Creek | 45.152 | -114.603 | 45.174 | -114.633 |
| Ship Island Lake #1 | 45.166 | -114.625 | | |
| Shoban Lake | 45.153 | -114.602 | | |
| Short Creek | 44.773 | -113.797 | 44.788 | -113.768 |
| Short Creek | 44.313 | -114.856 | 44.291 | -114.872 |
| Shovel Creek | 45.034 | -114.444 | 45.000 | -114.479 |
| Silge Creek | 45.545 | -115.248 | 45.517 | -115.225 |
| Silver Creek | 44.852 | -114.344 | 44.830 | -114.502 |
| Silver Rule Creek | 44.146 | -114.582 | 44.207 | -114.597 |
| Six-Bit Creek | 44.645 | -115.809 | 44.686 | -115.707 |
| Sixmile Creek | 44.385 | -114.596 | 44.413 | -114.638 |
| Slate Creek | 44.154 | -114.630 | 44.256 | -114.564 |
| Slate Creek | 45.625 | -116.055 | 45.626 | -116.046 |
| Slaughter Creek | 45.297 | -115.610 | 45.261 | -115.673 |
| Smith Creek | 45.170 | -115.381 | 45.152 | -115.298 |
| Smith Creek | 45.241 | -115.528 | 45.280 | -115.583 |
| Snowslide Creek | 45.045 | -115.282 | 45.098 | -115.157 |
| Soldier Creek | 45.007 | -114.882 | 45.029 | -114.727 |
| Soldier Creek | 44.528 | -115.202 | 44.626 | -115.213 |
| South Fork Bear Creek | 44.826 | -115.483 | 44.817 | -115.458 |
| South Fork Big Creek | 44.385 | -113.476 | 44.442 | -113.601 |
| South Fork Blackmare Creek | 44.770 | -115.804 | 44.809 | -115.748 |
| South Fork Buckhorn Creek | 44.840 | -115.824 | 44.890 | -115.824 |
| South Fork Camas Creek | 44.730 | -114.641 | 44.721 | -114.499 |

| Waterbody Name | Stream Begin Point or Lake Center Latitude | Stream Begin Point or Lake Center Longitude | Stream End Point Latitude | Stream End Point Longitude |
|---|---|---|---|---|
| South Fork Chamberlain Creek | 45.336 | -115.330 | 45.278 | -115.353 |
| South Fork Cottonwood Creek | 44.563 | -114.781 | 44.621 | -114.760 |
| South Fork Dillinger Creek | 45.495 | -115.156 | 45.455 | -115.169 |
| South Fork East Fork Salmon River | 43.848 | -114.567 | 43.929 | -114.555 |
| South Fork Elk Creek | 45.136 | -115.509 | 45.079 | -115.467 |
| South Fork Fitsum Creek | 45.000 | -115.763 | 44.970 | -115.775 |
| South Fork Fourmile Creek | 44.860 | -115.680 | 44.814 | -115.665 |
| South Fork John Day Creek | 45.571 | -116.229 | 45.555 | -116.226 |
| South Fork Moyer Creek | 44.958 | -114.294 | 44.879 | -114.227 |
| South Fork Rush Creek | 44.965 | -114.929 | 45.014 | -114.979 |
| South Fork Salmon River | 44.493 | -115.714 | 45.378 | -115.513 |
| South Fork Sheep Creek | 45.449 | -113.801 | 45.482 | -113.837 |
| South Fork Sheep Creek | 44.603 | -115.007 | 44.649 | -115.018 |
| South Fork Sheep Creek | 45.036 | -115.623 | 44.984 | -115.604 |
| South Fork Smith Creek | 45.149 | -115.420 | 45.170 | -115.381 |
| South Fork Threemile Creek | 45.307 | -115.929 | 45.315 | -115.886 |
| South Fork Warm Spring Creek | 44.568 | -114.543 | 44.578 | -114.552 |
| South Fork Whimstick Creek | 45.284 | -115.031 | 45.243 | -115.045 |
| Spider Creek | 44.697 | -114.484 | 44.676 | -114.512 |
| Springfield Creek | 44.789 | -115.298 | 44.764 | -115.313 |
| Squaw Creek | 45.504 | -114.258 | 45.399 | -114.169 |
| Squaw Creek | 44.249 | -114.455 | 44.456 | -114.504 |
| Starvation Creek | 45.358 | -114.934 | 45.323 | -114.980 |
| Station Creek | 45.352 | -115.521 | 45.355 | -115.473 |
| Stoddard Creek | 45.235 | -114.668 | 45.243 | -114.687 |
| Sugar Creek | 44.936 | -115.337 | 44.975 | -115.246 |
| Sulphur Creek | 44.510 | -115.519 | 44.555 | -115.298 |
| Sulphur Creek-Rapid | 44.562 | -115.162 | 44.586 | -115.073 |
| Summit Creek | 45.172 | -115.916 | 45.256 | -115.897 |
| Sunday Creek | 44.341 | -114.970 | 44.349 | -114.906 |
| Tamarack Creek | 44.984 | -115.270 | 44.959 | -115.390 |
| Tater Creek | 44.661 | -113.840 | 44.632 | -113.903 |
| Tenmile Creek | 44.484 | -114.647 | 44.465 | -114.582 |
| Thirty-Eight Creek | 44.713 | -115.413 | 44.673 | -115.396 |
| Thomas Creek | 44.705 | -115.028 | 44.715 | -115.012 |
| Thompson Creek | 44.284 | -114.523 | 44.284 | -114.523 |
| Threemile Creek | 45.334 | -115.891 | 45.299 | -115.930 |
| Tie Creek | 45.017 | -115.770 | 45.037 | -115.762 |
| Trail Creek | 45.215 | -114.234 | 45.250 | -114.320 |
| Trail Creek | 44.976 | -114.532 | 44.964 | -114.490 |
| Trail Creek | 44.628 | -115.791 | 44.635 | -115.718 |
| Trail Creek-Loon | 44.506 | -114.960 | 44.543 | -114.859 |
| Trail Creek-Marble | 44.952 | -114.935 | 44.841 | -115.009 |
| Trapper Creek | 44.504 | -114.618 | 44.597 | -114.603 |
| Trapper Creek | 44.774 | -115.405 | 44.831 | -115.514 |
| Tumbull Creek | 45.523 | -116.093 | 45.533 | -116.136 |
| Twelvemile Creek | 44.497 | -114.615 | 44.478 | -114.565 |
| Twin Creek | 45.591 | -114.082 | 45.608 | -113.965 |
| Twist Creek | 45.633 | -114.961 | 45.628 | -114.926 |
| Tyndall Creek | 44.562 | -115.749 | 44.580 | -115.685 |
| Unnamed | 44.618 | -113.964 | 44.670 | -114.018 |
| Unnamed | 44.670 | -114.018 | 44.667 | -114.025 |
| Unnamed | 44.632 | -113.903 | 44.618 | -113.964 |
| Unnamed | 44.565 | -113.881 | 44.562 | -113.877 |
| Unnamed | 44.565 | -113.881 | 44.569 | -113.886 |
| Unnamed - didgitized | 44.766 | -113.519 | 44.769 | -113.515 |
| Unnamed - digitized | 44.562 | -113.877 | 44.557 | -113.881 |
| Unnamed - digitized | 44.565 | -113.879 | 44.565 | -113.881 |
| Unnamed - digitized | 44.667 | -114.025 | 44.665 | -114.030 |
| Unnamed - Diversion between Geertson Creek and Kirtley Creek | 45.175 | -113.816 | 45.132 | -113.770 |
| Unnamed - North Fork Lake Creek | 45.015 | -114.068 | 45.009 | -114.017 |
| Unnamed - North Fork Mayflower Creek | 45.245 | -115.647 | 45.254 | -115.635 |
| Unnamed - Off Buck Creek | 44.767 | -115.485 | 44.761 | -115.477 |
| Unnamed - Off Burntlog Creek | 44.686 | -115.468 | 44.680 | -115.455 |
| Unnamed - Off Corral Creek | 44.840 | -114.199 | 44.804 | -114.225 |
| Unnamed - Off Deep Creek | 45.080 | -114.092 | 45.064 | -114.122 |
| Unnamed - Off Mckay Creek | 44.445 | -114.526 | 44.477 | -114.526 |
| Unnamed - Off Mormon Creek | 44.509 | -115.676 | 44.498 | -115.674 |
| Unnamed - Off Rice Creek | 44.561 | -115.644 | 44.551 | -115.656 |
| Unnamed - Off South Fork Salmon River | 44.556 | -115.683 | 44.552 | -115.707 |

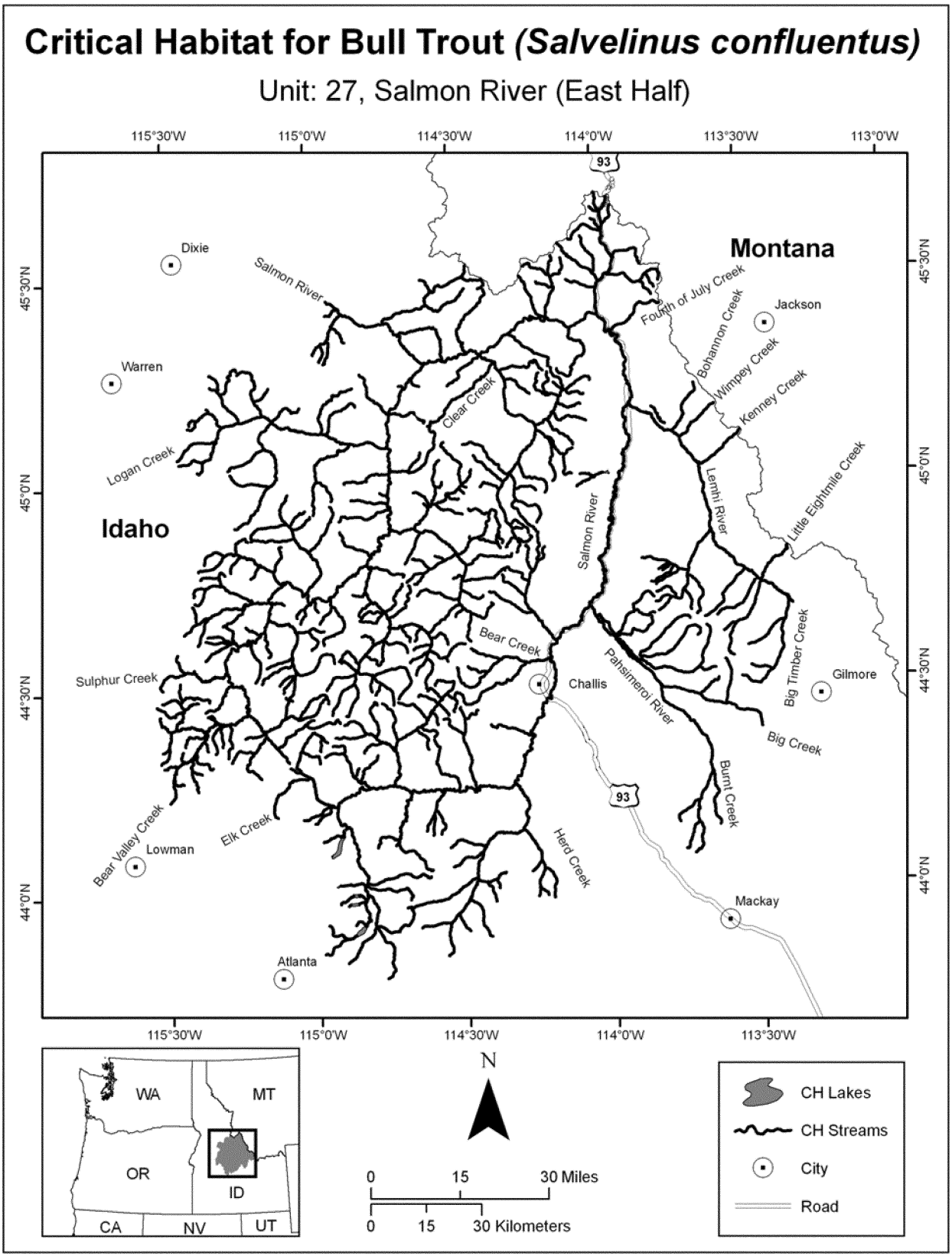
| Waterbody Name | Stream Begin Point or Lake Center Latitude | Stream Begin Point or Lake Center Longitude | Stream End Point Latitude | Stream End Point Longitude |
|---|---|---|---|---|
| Unnamed - Off Trail Creek | 44.599 | -115.803 | 44.626 | -115.746 |
| Unnamed - Off Unnamed to Buck Creek | 44.767 | -115.484 | 44.769 | -115.479 |
| Unnamed - Off Unnamed to Burntlog Creek | 44.730 | -115.482 | 44.720 | -115.463 |
| Unnamed - to Knapp Creek | 44.421 | -115.036 | 44.433 | -115.004 |
| Unnamed 1 - Off Curtis Creek | 44.586 | -115.804 | 44.609 | -115.746 |
| Unnamed 2 - Off Curtis Creek | 44.568 | -115.794 | 44.594 | -115.753 |
| Unnamed Lake on Meadow Creek | 44.890 | -115.351 | | |
| Unnamed to Bearskin Creek | 44.374 | -115.500 | 44.358 | -115.523 |
| Unnamed Trib 1-Off Trapper Creek | 44.794 | -115.462 | 44.800 | -115.452 |
| Unnamed Trib 2-Off Trapper Creek | 44.795 | -115.441 | 44.781 | -115.427 |
| Unnamed Trib 3- Off Trapper Creek | 44.772 | -115.434 | 44.793 | -115.465 |
| Unnamed Tributary to Pete Creek | 45.281 | -115.955 | 45.272 | -115.967 |
| Unnamed Tributary to Threemile Creek | 45.323 | -115.912 | 45.317 | -115.894 |
| Unnamed Tributary to West Fork Elk Creek | 45.069 | -115.483 | 45.095 | -115.514 |
| Valley Creek | 44.377 | -114.961 | 44.225 | -114.928 |
| Van Buren Creek | 45.536 | -116.169 | 45.532 | -116.083 |
| Van Horn Creek | 44.785 | -114.338 | 44.757 | -114.257 |
| Vanity Creek | 44.481 | -115.077 | 44.553 | -115.062 |
| Vein Creek | 45.008 | -115.472 | 45.056 | -115.455 |
| Victor Creek | 45.147 | -115.937 | 45.182 | -115.822 |
| Victor Creek | 45.510 | -116.101 | 45.515 | -116.127 |
| Vine Creek | 45.638 | -114.001 | 45.611 | -113.967 |
| Wapiti Creek | 45.335 | -115.022 | 45.309 | -115.074 |
| Wardenhoff Creek | 44.822 | -115.518 | 44.832 | -115.568 |
| Warm Lake | 44.645 | -115.670 | | |
| Warm Lake Creek | 44.653 | -115.662 | 44.666 | -115.699 |
| Warm Spring Creek | 44.609 | -114.482 | 44.653 | -114.737 |
| Warm Springs Creek | 44.059 | -114.614 | 44.254 | -114.676 |
| Warren Creek | 45.237 | -115.676 | 45.397 | -115.593 |
| Weasel Creek | 44.888 | -114.273 | 44.887 | -114.306 |
| Webfoot Creek | 45.217 | -115.696 | 45.237 | -115.676 |
| West Fork Buckhorn Creek | 44.917 | -115.743 | 44.900 | -115.858 |
| West Fork Camas Creek | 44.819 | -114.655 | 44.831 | -114.504 |
| West Fork Chamberlain Creek | 45.463 | -115.185 | 45.383 | -115.167 |
| West Fork East Fork Salmon River | 43.918 | -114.656 | 43.929 | -114.555 |
| West Fork Elk Creek | 44.480 | -115.521 | 44.479 | -115.458 |
| West Fork Elk Creek | 45.061 | -115.520 | 45.147 | -115.512 |
| West Fork Enos Creek | 45.148 | -115.804 | 45.143 | -115.837 |
| West Fork Hayden Creek | 44.697 | -113.823 | 44.705 | -113.757 |
| West Fork Herd Creek | 43.990 | -114.225 | 44.058 | -114.234 |
| West Fork Indian Creek | 45.489 | -114.199 | 45.475 | -114.139 |
| West Fork Little Loon Creek | 44.666 | -114.977 | 44.710 | -114.935 |
| West Fork Mayfield Creek | 44.539 | -114.798 | 44.465 | -114.732 |
| West Fork Monumental Creek | 45.034 | -115.276 | 45.005 | -115.140 |
| West Fork Morgan Creek | 44.734 | -114.394 | 44.681 | -114.244 |
| West Fork North Fork Salmon River | 45.667 | -114.003 | 45.654 | -113.971 |
| West Fork Pahsimeroi River | 44.092 | -113.750 | 44.157 | -113.704 |
| West Fork Rapid River | 45.230 | -116.538 | 45.307 | -116.420 |
| West Fork Springfield Creek | 44.780 | -115.383 | 44.786 | -115.321 |
| West Fork Thomas Creek | 44.682 | -115.055 | 44.705 | -115.028 |
| West Fork Whimstick Creek | 45.294 | -115.031 | 45.291 | -115.037 |
| West Fork Yankee Fork | 44.388 | -114.933 | 44.351 | -114.727 |
| West Pass Creek | 43.893 | -114.419 | 43.988 | -114.491 |
| Whangdoodle Creek | 45.150 | -115.797 | 45.181 | -115.738 |
| Whimstick Creek | 45.241 | -115.054 | 45.378 | -115.000 |
| White Goat Creek | 44.726 | -114.416 | 44.741 | -114.489 |
| Wickiup Creek-Loon | 44.598 | -114.659 | 44.606 | -114.597 |
| Willey Creek | 45.043 | -115.628 | 45.061 | -115.604 |
| Williams Lake | 45.016 | -113.976 | | |
| Willow Basket Creek | 45.192 | -115.895 | 45.186 | -115.832 |
| Willow Creek | 44.447 | -114.446 | 44.428 | -114.490 |
| Willow Creek | 45.356 | -115.858 | 45.331 | -115.950 |
| Wilson Creek | 45.143 | -114.589 | 45.033 | -114.724 |
| Wimpey Creek | 45.098 | -113.721 | 45.176 | -113.598 |
| Wind River | 45.605 | -115.918 | 45.455 | -115.942 |
| Winnemucca Creek | 44.485 | -114.963 | 44.436 | -115.059 |
| Woods Creek | 45.535 | -114.443 | 45.505 | -114.460 |
| Woodtick Creek | 44.973 | -114.192 | 45.046 | -114.283 |
| Woodtick Creek | 44.808 | -114.680 | 44.884 | -114.626 |
| Wright Creek | 44.746 | -113.836 | 44.783 | -113.755 |

| Waterbody Name | Stream Begin Point or Lake Center Latitude | Stream Begin Point or Lake Center Longitude | Stream End Point Latitude | Stream End Point Longitude |
|---|---|---|---|---|
| Wyoming Creek | 44.355 | -115.342 | 44.425 | -115.321 |
| Yankee Fork | 44.510 | -114.589 | 44.270 | -114.735 |
| Yellow Jacket Creek | 45.145 | -116.445 | 45.137 | -116.413 |
| Yellowbelly Creek | 43.981 | -114.928 | 44.000 | -114.869 |
| Yellowbelly Lake | 44.001 | -114.876 | | |
| Yellowjacket Creek | 45.103 | -114.536 | 44.892 | -114.645 |
| Zena Creek | 45.041 | -115.748 | 45.057 | -115.732 |

(iii) No waterbodies are excluded from critical habitat designation in this unit.

(iv) Map of Unit 27, Salmon River – East Half follows:

BILLING CODE 4310–55–S




BILLING CODE 4310–55–C

(36) Unit 27: Salmon River – West Half

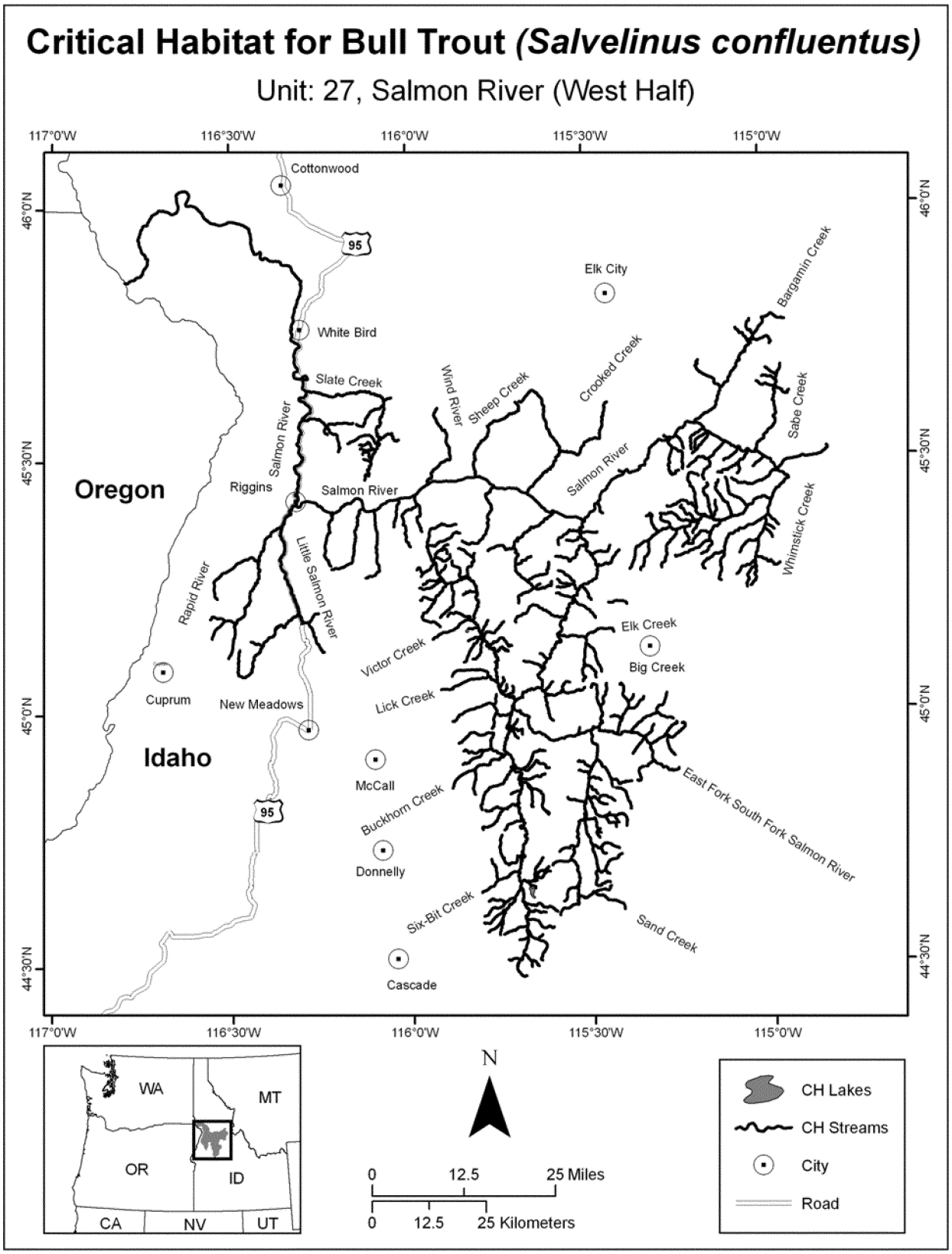
(i) The entire Salmon River unit consists of 7,376.5 km (4,583.5 mi) of streams and 1,683.8 ha (4,160.6 ac) of lakes and reservoirs. The unit is located in central Idaho.

(ii) See paragraph (e)(35)(ii) of this entry for a complete list of individual waterbodies in this unit.

(iii) No waterbodies are excluded from critical habitat designation in this unit.

(iv) Map of Unit 27, Salmon River – West Half follows:

BILLING CODE 4310–55–S



**BILLING CODE 4310–55–C**

(37) Unit 28: Little Lost River

(i) This unit consists of 89.2 km (55.4 mi) of streams. The unit is located in eastern Idaho.

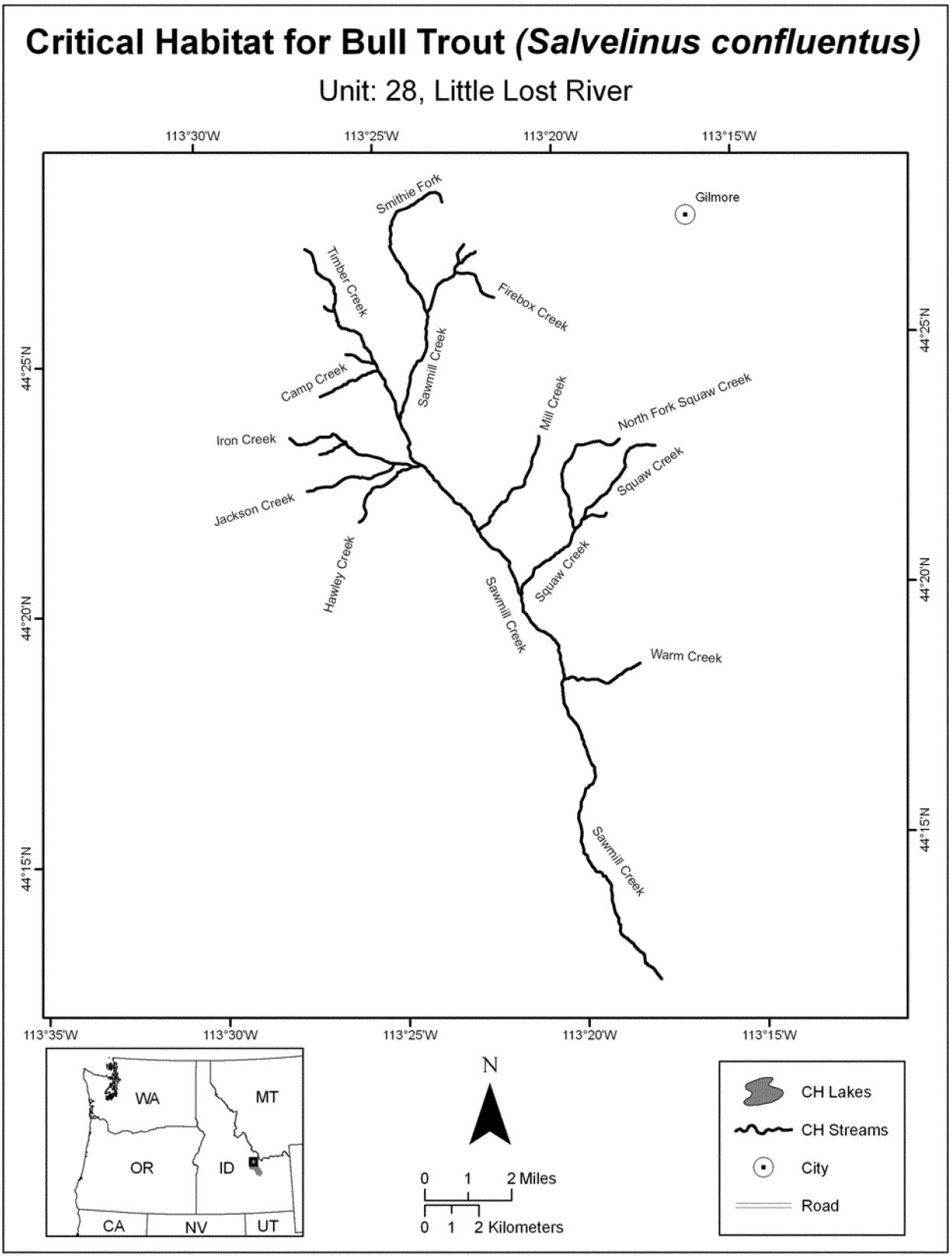
(ii) Individual waterbodies in the unit are bounded by the following coordinates:

| Waterbody Name | Stream Begin Point or Lake Center Latitude | Stream Begin Point or Lake Center Longitude | Stream End Point Latitude | Stream End Point Longitude |
|---|---|---|---|---|
| Camp Creek | 44.408 | -113.433 | 44.411 | -113.418 |
| Firebox Creek | 44.434 | -113.363 | 44.443 | -113.380 |
| Hawley Creek | 44.361 | -113.430 | 44.379 | -113.404 |
| Iron Creek | 44.387 | -113.435 | 44.390 | -113.461 |
| Iron Creek | 44.389 | -113.437 | 44.387 | -113.435 |
| Jackson Creek | 44.372 | -113.454 | 44.380 | -113.413 |
| Left Fork Iron Creek | 44.384 | -113.447 | 44.387 | -113.435 |
| Mill Creek | 44.387 | -113.345 | 44.357 | -113.375 |
| North Fork Squaw Creek | 44.379 | -113.330 | 44.356 | -113.330 |
| Redrock Creek | 44.417 | -113.433 | 44.414 | -113.419 |
| Right Fork Little Lost River | 44.449 | -113.370 | 44.446 | -113.378 |
| Sawmill Creek | 44.452 | -113.376 | 44.204 | -113.299 |
| Slide Creek | 44.433 | -113.442 | 44.432 | -113.437 |
| Smithie Fork | 44.430 | -113.394 | 44.467 | -113.385 |
| Squaw Creek | 44.375 | -113.306 | 44.375 | -113.306 |
| Timber Creek | 44.394 | -113.409 | 44.453 | -113.450 |
| Unnamed - Off Squaw Creek | 44.360 | -113.315 | 44.359 | -113.326 |
| Warm Creek | 44.310 | -113.302 | 44.306 | -113.338 |

(iii) No waterbodies are excluded from critical habitat designation in this unit.

(iv) Map of Unit 28, Little Lost River follows:

**BILLING CODE 4310–55–S**




BILLING CODE 4310–55–C

(38) Unit 29: Coeur d'Alene River Basin

(i) This unit consists of 821.5 km (510.5 mi) of streams and 12,606.9 ha (31,152.1 ac) of lakes and reservoirs. The unit is located in northern Idaho.

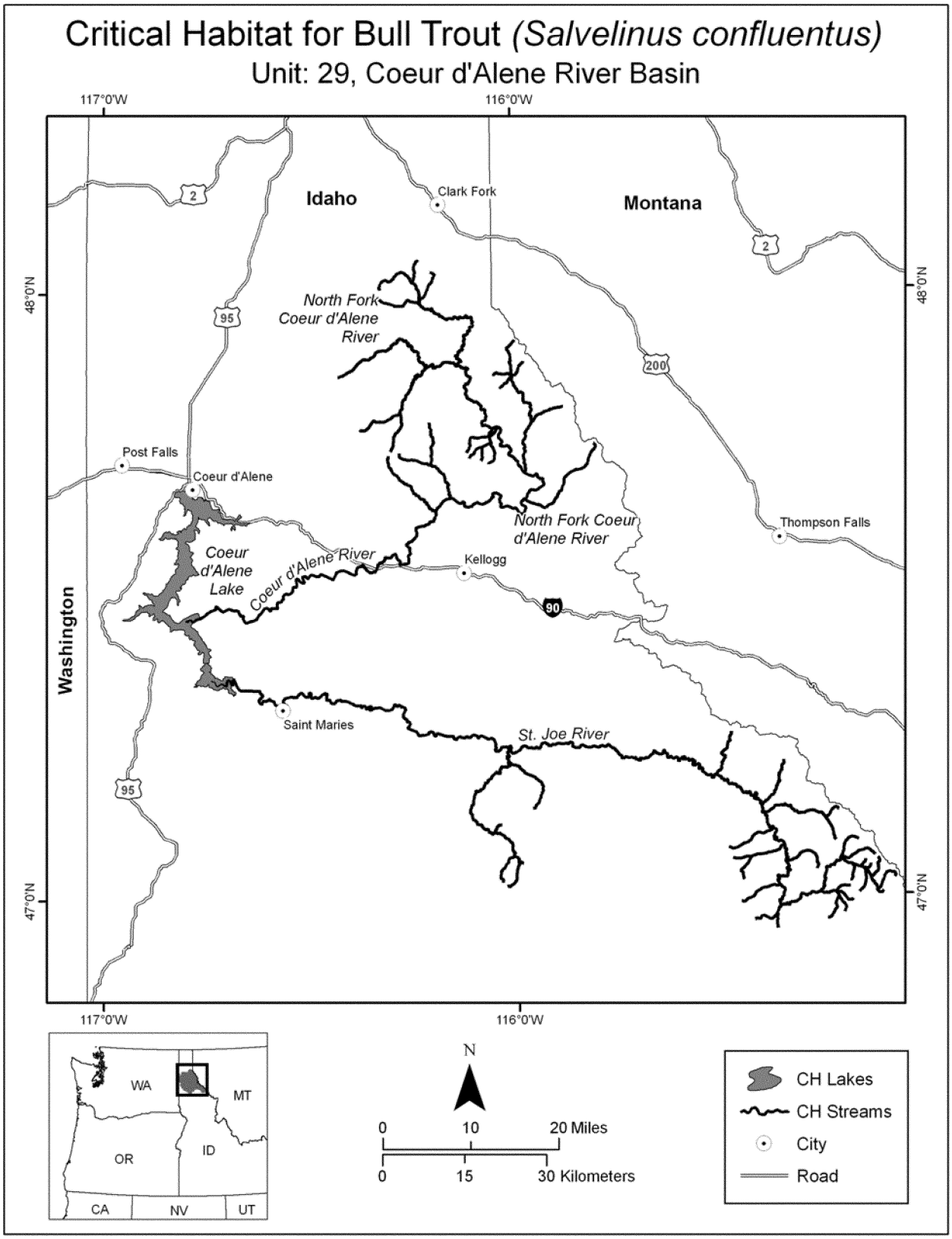
(ii) Individual waterbodies in the unit are bounded by the following coordinates:

| Waterbody Name | Stream Begin Point or Lake Center Latitude | Stream Begin Point or Lake Center Longitude | Stream End Point Latitude | Stream End Point Longitude |
|---|---|---|---|---|
| Bad Bear Creek | 47.045 | -115.460 | 47.045 | -115.460 |
| Bean Creek | 47.005 | -115.271 | 46.993 | -115.193 |
| Beaver Creek | 47.083 | -115.356 | 47.064 | -115.481 |
| Big Elk Creek | 47.804 | -116.276 | 47.775 | -116.374 |
| Bluebells Creek | 47.041 | -115.157 | 47.050 | -115.149 |
| Boulder Creek | 47.227 | -116.020 | 47.149 | -115.963 |
| Buckskin Creek | 47.987 | -116.226 | 48.034 | -116.200 |
| California Creek | 47.041 | -115.160 | 47.004 | -115.178 |
| Cascade Creek (St. Joe trib) | 47.044 | -115.171 | 47.057 | -115.162 |
| Coeur d'Alene Lake | 47.525 | -116.794 | | |
| Coeur d'Alene River | 47.460 | -116.799 | 47.557 | -116.258 |
| Cougar Creek | 47.640 | -116.192 | 47.732 | -116.306 |
| Delaney Creek | 47.062 | -115.998 | 47.059 | -115.987 |
| Dolly Creek | 47.126 | -115.255 | 47.140 | -115.223 |
| Downey Creek | 47.778 | -116.037 | 47.746 | -116.075 |
| Eagle Creek | 47.644 | -115.922 | 47.652 | -115.904 |
| East Fork Downey Creek | 47.746 | -116.075 | 47.723 | -116.079 |
| East Fork Steamboat Creek | 47.716 | -116.200 | 47.787 | -116.205 |
| Entente Creek | 47.231 | -115.494 | 47.271 | -115.478 |
| Falls Creek | 47.787 | -115.955 | 47.811 | -115.878 |
| Fly Creek | 47.113 | -115.386 | 47.081 | -115.490 |
| Freezeout Creek | 47.071 | -116.009 | 47.027 | -116.036 |
| Gold Creek | 47.151 | -115.409 | 47.224 | -115.354 |
| Heller Creek | 47.061 | -115.221 | 47.091 | -115.177 |
| Homestead Creek | 47.109 | -116.058 | 47.123 | -116.038 |
| Independence Creek | 47.877 | -116.209 | 47.862 | -116.428 |
| Little Lost Fork | 47.862 | -116.002 | 47.862 | -116.046 |
| Marble Creek | 47.251 | -116.022 | 47.021 | -116.026 |
| Medicine Creek | 47.028 | -115.150 | 47.060 | -115.132 |
| Mill Creek | 46.997 | -115.227 | 46.971 | -115.214 |
| Mosquito Creek | 48.018 | -116.245 | 48.055 | -116.229 |
| My Creek | 46.971 | -115.377 | 46.946 | -115.375 |
| North Fork Bean Creek | 47.005 | -115.235 | 47.014 | -115.199 |
| North Fork Coeur d'Alene River | 47.557 | -116.258 | 48.005 | -116.322 |
| North Grizzly Creek | 47.753 | -116.054 | 47.717 | -116.061 |
| Prichard Creek | 47.658 | -115.977 | 47.644 | -115.922 |
| Quartz Creek | 47.201 | -115.517 | 47.231 | -115.494 |
| Red Ives Creek | 47.056 | -115.352 | 47.043 | -115.279 |
| Ruby Creek | 46.983 | -115.368 | 46.961 | -115.431 |
| Sentinel Creek | 47.861 | -116.001 | 47.842 | -116.032 |
| Sherlock Creek | 47.064 | -115.219 | 47.064 | -115.138 |
| Shoshone Creek | 47.703 | -115.972 | 47.922 | -115.995 |
| Simmons Creek | 47.137 | -115.401 | 47.090 | -115.232 |
| Spruce Creek | 47.982 | -116.226 | 47.993 | -116.333 |
| St. Joe River | 47.354 | -116.726 | 47.005 | -115.119 |
| Steamboat Creek | 47.662 | -116.155 | 47.716 | -116.200 |
| Tepee Creek | 47.881 | -116.133 | 47.739 | -116.300 |
| Timber Creek | 47.018 | -115.369 | 46.991 | -115.463 |
| Tinear Creek | 47.002 | -115.231 | 46.961 | -115.256 |
| Ulm Creek | 47.861 | -116.001 | 47.886 | -115.974 |
| West Fork Downey Creek | 47.746 | -116.075 | 47.727 | -116.107 |
| West Fork Eagle Creek | 47.652 | -115.904 | 47.750 | -115.804 |
| West Fork Steamboat Creek | 47.716 | -116.200 | 47.736 | -116.278 |
| Wisdom Creek | 47.009 | -115.134 | 47.027 | -115.088 |
| Yankee Bar Creek | 47.049 | -115.192 | 47.021 | -115.195 |
| Yellow Dog Creek | 47.776 | -116.050 | 47.736 | -116.114 |

(iii) No waterbodies are excluded from critical habitat designation in this unit.

(iv) Map of Unit 29, Coeur d'Alene River Basin follows:

BILLING CODE 4310–55–S




BILLING CODE 4310–55–C

(39) Unit 30: Kootenai River Basin

(i) This unit consists of 522.5 km (324.7 mi) of streams and 12,089.2 ha (29,873.0 ac) of lakes and reservoirs. The unit is located in northern Idaho and northwestern Montana.

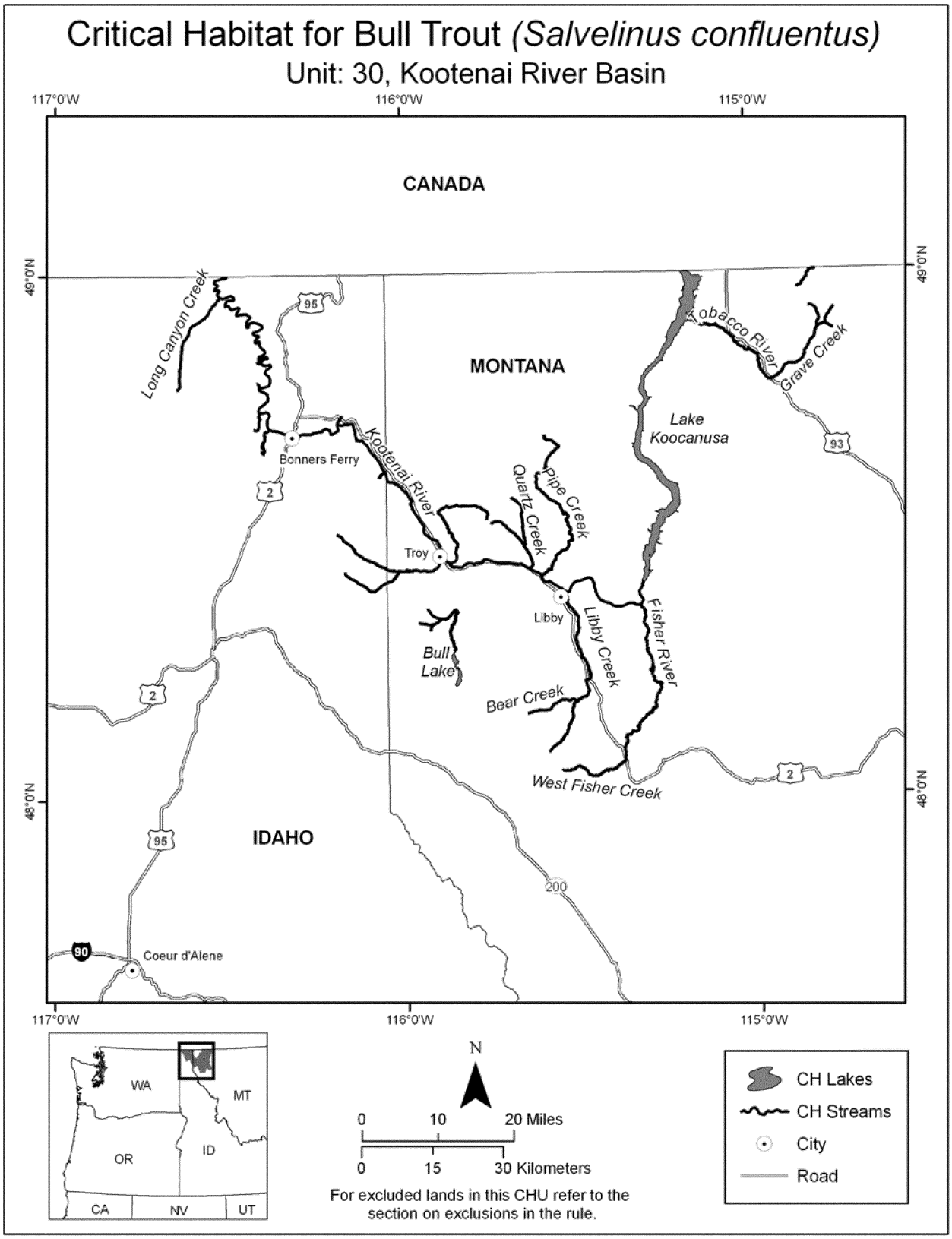
(ii) Individual waterbodies in the unit are bounded by the following coordinates:

| Waterbody Name | Stream Begin Point or Lake Center Latitude | Stream Begin Point or Lake Center Longitude | Stream End Point Latitude | Stream End Point Longitude |
|---|---|---|---|---|
| Ball Creek | 48.787 | -116.410 | 48.794 | -116.420 |
| Bear Creek | 48.162 | -115.654 | 48.184 | -115.508 |
| Blue Sky Creek | 48.895 | -114.776 | 48.887 | -114.752 |
| Boulder Creek | 48.625 | -116.052 | 48.613 | -116.070 |
| Bull Lake | 48.247 | -115.852 | | |
| Callahan Creek | 48.457 | -115.882 | 48.435 | -116.013 |
| Caribou Creek | 48.664 | -116.400 | 48.659 | -116.402 |
| Clarence Creek | 48.889 | -114.799 | 48.930 | -114.825 |
| Deep Creek | 48.708 | -116.384 | 48.664 | -116.400 |
| East Fork Pipe Creek | 48.616 | -115.619 | 48.692 | -115.594 |
| Fisher River | 48.069 | -115.375 | 48.366 | -115.324 |
| Grave Creek | 48.798 | -114.953 | 48.927 | -114.751 |
| Keeler Creek | 48.360 | -115.852 | 48.335 | -115.961 |
| Kootenai River | 48.617 | -116.048 | 48.617 | -116.048 |
| Lake Creek | 48.360 | -115.852 | 48.282 | -115.859 |
| Lake Koocanusa | 48.727 | -115.244 | | |
| Libby Creek | 48.121 | -115.544 | 48.121 | -115.544 |
| Long Canyon Creek | 48.961 | -116.527 | 48.784 | -116.652 |
| Moyie River | 48.715 | -116.186 | 48.732 | -116.176 |
| Myrtle Creek | 48.739 | -116.412 | 48.707 | -116.430 |
| North Callahan Creek | 48.435 | -116.013 | 48.506 | -116.192 |
| North Fork Keeler Creek | 48.342 | -115.897 | 48.362 | -115.934 |
| O'Brien Creek | 48.448 | -115.867 | 48.531 | -115.763 |
| Pipe Creek | 48.424 | -115.607 | 48.616 | -115.619 |
| Quartz Creek | 48.438 | -115.639 | 48.573 | -115.690 |
| Snow Creek | 48.664 | -116.403 | 48.665 | -116.409 |
| South Callahan Creek | 48.414 | -116.049 | 48.435 | -116.013 |
| South Fork Keeler Creek | 48.320 | -115.927 | 48.333 | -115.919 |
| Tobacco River | 48.897 | -115.127 | 48.798 | -114.953 |
| Trout Creek | 48.840 | -116.411 | 48.835 | -116.420 |
| West Fisher Creek | 48.069 | -115.375 | 48.052 | -115.555 |
| West Fork Quartz Creek | 48.479 | -115.654 | 48.523 | -115.750 |
| Wigwam River | 49.000 | -114.801 | 48.965 | -114.856 |

(iii) Waterbodies associated with the following habitat conservation plan (HCP) totaling 66.2 km (41.1 mi) of streams have been excluded from critical habitat designation under section 4(b)(2) of the Act in this unit. These are waterbodies within the geographic area covered by the Plum Creek Native Fish Habitat Conservation Plan (HCP), including portions of the Kootenai River and Lake Koocanusa CHSUs.

(iv) Map of Unit 30, Kootenai River Basin follows:

**BILLING CODE 4310–55–S**




BILLING CODE 4310–55–C

(40) Unit 31: Clark Fork River Basin

(i) This unit consists of 5,356.0 km (3,328.1 mi) of streams and 119,620.1 ha (295,586.6 ac) of lakes and reservoirs. The unit is located in northwestern Montana and northern Idaho.

(ii) Individual waterbodies in the unit are bounded by the following coordinates:

| Waterbody Name | Stream Begin Point or Lake Center Latitude | Stream Begin Point or Lake Center Longitude | Stream End Point Latitude | Stream End Point Longitude |
|---|---|---|---|---|
| Akokala Creek | 48.881 | -114.199 | 48.920 | -114.167 |
| Akokala Lake | 48.879 | -114.199 | | |
| Albert Creek | 46.972 | -114.311 | 46.972 | -114.311 |
| Alder Creek | 46.442 | -113.826 | 46.471 | -113.777 |
| Arrow Lake | 48.706 | -113.885 | | |
| Babcock Creek | 47.366 | -113.270 | 47.359 | -113.353 |
| Barker Creek | 46.100 | -113.116 | 46.163 | -113.116 |
| Basin Creek | 47.966 | -112.996 | 47.935 | -113.075 |
| Bear Creek | 48.234 | -113.567 | 48.296 | -113.384 |
| Beatrice Creek | 47.794 | -115.103 | 47.775 | -115.153 |
| Belmont Creek | 46.954 | -113.570 | 47.054 | -113.642 |
| Bench Creek | 48.869 | -117.003 | 48.876 | -117.014 |
| Big Creek | 48.604 | -114.164 | 48.515 | -114.327 |
| Big Salmon Creek | 47.586 | -113.420 | 47.567 | -113.495 |
| Big Salmon Lake | 47.602 | -113.387 | | |
| Bitterroot River | 46.861 | -114.118 | 45.944 | -114.129 |
| Blackfoot River | 46.870 | -113.891 | 47.043 | -112.409 |
| Blodgett Creek | 46.304 | -114.154 | 46.304 | -114.154 |
| Blue Joint Creek | 45.695 | -114.314 | 45.600 | -114.519 |
| Boles Creek | 47.119 | -113.547 | 47.099 | -113.731 |
| Boulder Creek | 46.343 | -113.077 | 46.478 | -113.238 |
| Boulder Creek | 45.817 | -114.239 | 45.842 | -114.272 |
| Bowl Creek | 47.996 | -113.058 | 47.966 | -112.996 |
| Bowles Creek | 46.192 | -113.748 | 46.207 | -113.813 |
| Bowman Creek | 48.906 | -114.118 | 48.974 | -114.064 |
| Bowman Lake | 48.864 | -114.161 | | |
| Bull River | 48.024 | -115.845 | 48.193 | -115.816 |
| Bunker Creek | 47.830 | -113.416 | 47.829 | -113.582 |
| Burnt Fork Bitterroot River | 46.542 | -114.100 | 46.304 | -113.838 |
| Butte Cabin Creek | 46.482 | -113.684 | 46.520 | -113.768 |
| Cabinet Gorge Reservoir | 48.036 | -115.873 | | |
| Cache Creek | 46.813 | -114.640 | 46.725 | -114.759 |
| Calispell Creek | 48.321 | -117.308 | 48.321 | -117.308 |
| Calispell Lake | 48.274 | -117.333 | | |
| Camas Creek | 48.664 | -113.935 | 48.737 | -113.883 |
| Caribou Creek | 48.748 | -116.865 | 48.798 | -116.815 |
| Carpp Creek | 46.025 | -113.428 | 46.032 | -113.525 |
| Cedar Creek | 47.048 | -115.044 | 47.178 | -114.863 |
| Cedar Creek | 48.893 | -116.916 | 48.880 | -116.960 |
| Cedar Creek | 48.742 | -117.412 | 48.845 | -117.522 |
| Cerulean Lake | 48.872 | -114.057 | | |
| Char Creek | 48.291 | -116.074 | 48.262 | -116.068 |
| Clack Creek | 48.012 | -113.090 | 47.988 | -113.106 |
| Clark Fork River | 46.601 | -113.037 | 47.961 | -115.734 |
| Clearwater Lake | 47.385 | -113.560 | | |
| Clearwater River | 47.067 | -113.391 | 47.395 | -113.531 |
| Clearwater River, E Fk | 47.342 | -113.496 | 47.352 | -113.581 |
| Coal Creek | 48.690 | -114.194 | 48.698 | -114.540 |
| Cold Creek | 47.547 | -113.920 | 47.584 | -113.757 |
| Cooper Gulch | 47.544 | -115.592 | 47.513 | -115.648 |
| Copper Creek | 47.009 | -112.558 | 47.060 | -112.753 |
| Copper Creek | 46.068 | -113.539 | 45.948 | -113.570 |
| Cottonwood Creek | 47.025 | -113.282 | 47.161 | -113.346 |
| Crow Creek | 47.539 | -115.547 | 47.525 | -115.558 |
| Crow Creek | 47.525 | -115.558 | 47.539 | -115.547 |
| Cyclone Creek | 48.665 | -114.239 | 48.712 | -114.392 |
| Cyclone Lake | 48.705 | -114.301 | | |
| Daly Creek | 46.168 | -113.911 | 46.250 | -113.807 |
| Danaher Creek | 47.445 | -113.183 | 47.275 | -113.014 |
| Dead Horse Creek | 48.663 | -114.279 | 48.659 | -114.296 |
| Deer Creek | 45.595 | -114.322 | 45.570 | -114.510 |
| Divide Creek | 46.043 | -113.819 | 46.064 | -113.968 |
| Doctor Creek | 47.402 | -113.485 | 47.407 | -113.480 |
| Doctor Lake | 47.404 | -113.481 | | |
| Dolly Varden Creek | 48.066 | -113.245 | 47.995 | -113.185 |
| Dry Lake Creek | 47.259 | -113.904 | 47.308 | -113.894 |
| Dunham Creek | 47.103 | -113.156 | 47.238 | -113.317 |
| East Branch LeClerc Creek | 48.534 | -117.283 | 48.673 | -117.189 |
| East Fork Bitterroot River | 45.944 | -114.129 | 45.911 | -113.596 |
| East Fork Bull River | 48.109 | -115.783 | 48.091 | -115.645 |

| Waterbody Name | Stream Begin Point or Lake Center Latitude | Stream Begin Point or Lake Center Longitude | Stream End Point Latitude | Stream End Point Longitude |
|---|---|---|---|---|
| East Fork Creek | 48.241 | -116.113 | 48.262 | -116.040 |
| East Fork Crow Creek | 47.525 | -115.558 | 47.519 | -115.556 |
| East Fork Reservoir | 46.118 | -113.375 | | |
| East Fork Rock Creek | 46.103 | -113.369 | 46.200 | -113.500 |
| East Fork Small Creek | 48.328 | -117.355 | 48.371 | -117.399 |
| East Fork Strawberry Creek | 48.064 | -113.031 | 48.092 | -112.992 |
| East Fork Swift Creek | 48.687 | -114.583 | 48.757 | -114.585 |
| East River | 48.371 | -116.820 | 48.353 | -116.853 |
| Elk Creek | 47.544 | -113.742 | 47.480 | -113.857 |
| Fish Creek | 47.003 | -114.699 | 46.927 | -114.697 |
| Fishtrap Creek | 47.713 | -115.059 | 47.817 | -115.152 |
| Fitzsimmons Creek | 48.735 | -114.734 | 48.751 | -114.618 |
| Flathead Lake | 47.885 | -114.134 | | |
| Flathead River | 47.365 | -114.777 | 48.467 | -114.070 |
| Flint Creek | 46.528 | -113.227 | 46.528 | -113.227 |
| Foster Creek | 46.164 | -113.120 | 46.284 | -113.110 |
| Fourth of July Creek | 48.556 | -117.273 | 48.557 | -117.264 |
| Fred Burr Creek | 46.348 | -114.152 | 46.357 | -114.316 |
| Frozen Creek | 49.000 | -114.678 | 48.990 | -114.738 |
| Frozen Lake | 48.999 | -114.681 | | |
| Gateway Creek | 48.030 | -113.022 | 48.046 | -112.959 |
| Goat Creek | 47.749 | -113.829 | 47.760 | -113.657 |
| Gold Creek | 46.919 | -113.677 | 47.058 | -113.745 |
| Gold Creek | 46.398 | -113.904 | 46.363 | -113.931 |
| Gold Creek | 47.971 | -116.455 | 47.953 | -116.452 |
| Gold Creek | 48.811 | -117.032 | 48.821 | -116.974 |
| Gordon Creek | 47.423 | -113.439 | 47.434 | -113.474 |
| Granite Creek | 48.145 | -113.377 | 48.227 | -113.333 |
| Granite Creek | 48.087 | -116.428 | 48.060 | -116.330 |
| Granite Creek | 48.639 | -116.864 | 48.700 | -117.030 |
| Grant Creek | 46.868 | -114.104 | 47.036 | -113.955 |
| Graves Creek | 47.682 | -115.410 | 47.718 | -115.381 |
| Grouse Creek | 48.403 | -116.478 | 48.483 | -116.229 |
| Hallowat Creek | 48.574 | -114.317 | 48.625 | -114.425 |
| Harrison Creek | 48.529 | -113.751 | 48.574 | -113.702 |
| Harrison Lake | 48.516 | -113.771 | | |
| Harvey Creek | 46.581 | -113.574 | 46.707 | -113.373 |
| Hogback Creek | 46.410 | -113.703 | 46.440 | -113.626 |
| Holland Creek | 47.451 | -113.582 | 47.451 | -113.572 |
| Holland Lake | 47.448 | -113.598 | | |
| Hughes Creek | 45.621 | -114.304 | 45.657 | -114.044 |
| Hughes Fork | 48.805 | -116.924 | 48.893 | -117.001 |
| Hungry Horse Reservoir | 48.201 | -113.798 | | |
| Indian Creek | 48.610 | -116.837 | 48.634 | -116.790 |
| Indian Creek | 48.242 | -117.153 | 48.299 | -117.152 |
| Jackson Creek | 48.856 | -117.002 | 48.854 | -117.024 |
| Jim Creek | 47.648 | -113.793 | 47.587 | -113.898 |
| Jocko River | 47.195 | -113.853 | 47.201 | -113.924 |
| Johnson Creek | 48.131 | -116.226 | 48.139 | -116.230 |
| Keokee Creek | 48.389 | -116.698 | 48.407 | -116.685 |
| Kintla Creek | 48.975 | -114.250 | 48.986 | -114.064 |
| Kintla Lake | 48.959 | -114.307 | | |
| Kishenehn Creek | 48.950 | -114.412 | 49.000 | -114.365 |
| Lake Alva | 47.313 | -113.582 | | |
| Lake Inez | 47.282 | -113.567 | | |
| Lake Isabel | 48.422 | -113.494 | | |
| Lake Marshall | 47.288 | -113.650 | | |
| Lake McDonald | 48.583 | -113.926 | | |
| Lake Pend Oreille | 48.152 | -116.410 | | |
| Landers Fork | 46.965 | -112.563 | 47.099 | -112.569 |
| LeClerc Creek | 48.518 | -117.284 | 48.534 | -117.283 |
| Lick Creek | 45.939 | -113.679 | 45.938 | -113.718 |
| Lightning Creek | 48.140 | -116.192 | 48.353 | -116.176 |
| Lime Creek | 48.907 | -116.957 | 48.894 | -116.965 |
| Lincoln Creek | 48.592 | -113.767 | 48.596 | -113.759 |
| Lincoln Lake | 48.591 | -113.771 | | |
| Lindbergh Lake | 47.381 | -113.734 | | |
| Lion Creek | 47.681 | -113.816 | 47.670 | -113.711 |
| Lion Creek | 48.736 | -116.832 | 48.725 | -116.673 |
| Little Boulder Creek | 45.716 | -114.278 | 45.726 | -114.228 |

| Waterbody Name | Stream Begin Point or Lake Center Latitude | Stream Begin Point or Lake Center Longitude | Stream End Point Latitude | Stream End Point Longitude |
|---|---|---|---|---|
| Little Joe Creek | 47.269 | -115.141 | 47.297 | -115.121 |
| Little Salmon Creek | 47.587 | -113.611 | 47.654 | -113.361 |
| Little Stony Creek | 46.293 | -113.683 | 46.286 | -113.775 |
| Lodgepole Creek | 47.182 | -113.203 | 47.229 | -113.271 |
| Lodgepole Creek | 48.115 | -113.264 | 48.141 | -113.133 |
| Logging Creek | 48.776 | -114.020 | 48.784 | -114.002 |
| Logging Lake | 48.758 | -114.075 | | |
| Lolo Creek | 46.712 | -114.533 | 46.743 | -114.061 |
| Long Creek | 48.157 | -113.530 | 48.094 | -113.497 |
| Lost Creek | 47.870 | -113.849 | 47.873 | -113.825 |
| Lost Creek | 47.118 | -115.109 | 47.118 | -115.109 |
| Lost Horse Creek | 46.120 | -114.306 | 46.120 | -114.306 |
| Lower Quartz Lake | 48.807 | -114.172 | | |
| Lunch Creek | 48.825 | -117.399 | 48.820 | -117.389 |
| Malcom Creek | 48.982 | -116.940 | 48.980 | -116.931 |
| Marshall Creek | 47.279 | -113.598 | 47.276 | -113.727 |
| Martin Creek | 45.930 | -113.724 | 46.009 | -113.812 |
| Mathias Creek | 48.669 | -114.423 | 48.647 | -114.472 |
| McDonald Creek | 48.506 | -114.006 | 48.646 | -113.848 |
| McDonald Lake | 47.421 | -113.977 | | |
| Meadow Creek | 46.128 | -113.429 | 46.097 | -113.441 |
| Meadow Creek | 45.908 | -113.781 | 45.813 | -113.791 |
| Middle Branch Le Clerc Creek | 48.585 | -117.262 | 48.654 | -117.218 |
| Middle Fork East River | 48.371 | -116.820 | 48.386 | -116.678 |
| Middle Fork Flathead River | 48.468 | -114.070 | 47.996 | -113.058 |
| Middle Fork Rock Creek | 46.001 | -113.526 | 46.223 | -113.522 |
| Middle Quartz Lake | 48.822 | -114.142 | | |
| Mill Creek | 48.489 | -117.266 | 48.447 | -117.139 |
| Mission Creek | 47.320 | -113.990 | 47.324 | -113.974 |
| Mission Reservoir | 47.319 | -114.008 | | |
| Monture Creek | 47.020 | -113.236 | 47.268 | -113.181 |
| Moose Creek | 45.922 | -113.728 | 46.009 | -113.708 |
| Mormon Creek | 46.756 | -114.115 | 46.697 | -114.205 |
| Morrell Creek | 47.141 | -113.461 | 47.342 | -113.472 |
| Morris Creek | 48.208 | -116.081 | 48.224 | -116.118 |
| Morrison Creek | 48.110 | -113.311 | 48.237 | -113.261 |
| Nez Perce Fork | 45.802 | -114.268 | 45.734 | -114.473 |
| North Fork Blackfoot River | 46.985 | -113.130 | 47.196 | -112.887 |
| North Fork Cold Creek | 47.562 | -113.812 | 47.555 | -113.906 |
| North Fork East River | 48.371 | -116.820 | 48.449 | -116.735 |
| North Fork Fish Creek | 46.907 | -114.806 | 46.932 | -114.924 |
| North Fork Flathead River | 48.469 | -114.073 | 49.000 | -114.475 |
| North Fork Granite Creek | 48.700 | -117.030 | 48.771 | -117.067 |
| North Fork Indian Creek | 48.658 | -116.719 | 48.634 | -116.790 |
| North Fork Jocko River | 47.201 | -113.924 | 47.226 | -113.816 |
| North Fork Little Joe Creek | 47.203 | -115.275 | 47.269 | -115.141 |
| North Fork Lost Creek | 47.873 | -113.825 | 47.896 | -113.738 |
| North Fork Of South Fork Tacoma Creek | 48.399 | -117.362 | 48.435 | -117.483 |
| North Fork Rock Creek | 46.212 | -113.697 | 46.232 | -113.756 |
| North Gold Creek | 47.973 | -116.453 | 47.975 | -116.427 |
| Noxon Rapids Reservoir | 47.892 | -115.675 | | |
| Nyack Creek | 48.452 | -113.797 | 48.490 | -113.701 |
| O'Brien Creek | 46.837 | -114.299 | 46.850 | -114.103 |
| Ole Creek | 48.283 | -113.599 | 48.316 | -113.464 |
| Oregon Gulch | 47.143 | -114.968 | 47.122 | -115.021 |
| Overwhich Creek | 45.674 | -114.308 | 45.717 | -114.081 |
| Pack River | 48.320 | -116.383 | 48.603 | -116.637 |
| Painted Rocks Reservoir | 45.701 | -114.294 | | |
| Park Creek | 48.310 | -113.614 | 48.420 | -113.509 |
| Pend Oreille River | 48.989 | -117.349 | 48.251 | -116.538 |
| Petty Creek | 46.992 | -114.447 | 46.849 | -114.439 |
| Piper Creek | 47.675 | -113.816 | 47.622 | -113.956 |
| Placid Creek | 47.116 | -113.542 | 47.178 | -113.675 |
| Placid Lake | 47.119 | -113.525 | | |
| Pocket Creek | 48.934 | -114.079 | 48.955 | -114.104 |
| Poorman Creek | 46.897 | -112.653 | 46.897 | -112.653 |
| Porcupine Creek | 48.267 | -116.124 | 48.253 | -116.157 |
| Post Creek | 47.416 | -113.961 | 47.399 | -113.893 |
| Priest Lake | 48.588 | -116.865 | | |
| Priest River | 48.173 | -116.893 | 48.490 | -116.905 |

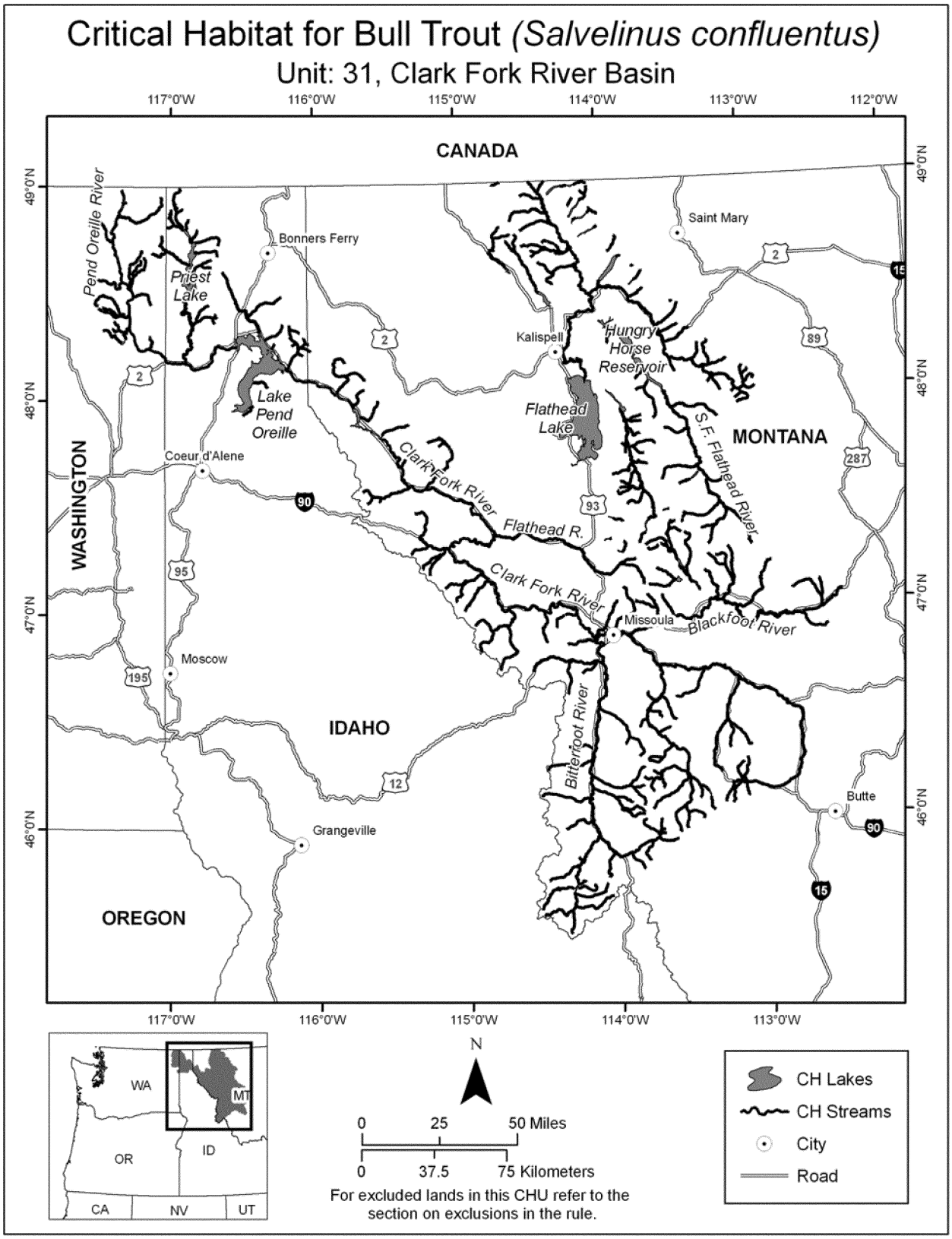
| Waterbody Name | Stream Begin Point or Lake Center Latitude | Stream Begin Point or Lake Center Longitude | Stream End Point Latitude | Stream End Point Longitude |
|---|---|---|---|---|
| Prospect Creek | 47.592 | -115.358 | 47.568 | -115.677 |
| Quartz Creek | 48.815 | -114.166 | 48.839 | -114.004 |
| Quartz Lake | 48.829 | -114.102 | | |
| Quintonkon Creek | 48.013 | -113.768 | 48.026 | -113.708 |
| Railroad Creek | 46.158 | -113.886 | 46.167 | -113.816 |
| Rainbow Creek | 48.855 | -114.054 | 48.869 | -114.054 |
| Rainy Lake | 47.339 | -113.595 | | |
| Ranch Creek | 46.468 | -113.578 | 46.583 | -113.679 |
| Rapid Creek | 47.372 | -113.055 | 47.382 | -113.026 |
| Rattle Creek | 48.326 | -116.173 | 48.314 | -116.101 |
| Rattlesnake Creek | 46.867 | -113.986 | 47.098 | -113.910 |
| Red Meadow Creek | 48.805 | -114.325 | 48.773 | -114.543 |
| Reynolds Creek | 45.947 | -113.718 | 45.957 | -113.682 |
| Rock Creek | 46.725 | -113.683 | 46.223 | -113.522 |
| Rock Creek | 47.975 | -115.744 | 48.044 | -115.654 |
| Rock Creek | 48.923 | -116.966 | 48.906 | -116.971 |
| Ross Fork | 46.184 | -113.526 | 46.184 | -113.526 |
| Ruby Creek | 48.556 | -117.343 | 48.568 | -117.510 |
| Saint Mary's Lake | 47.261 | -113.923 | | |
| Saint Regis River | 47.297 | -115.090 | 47.349 | -115.292 |
| Salmon Lake | 47.093 | -113.404 | | |
| Sand Basin Creek | 46.197 | -113.704 | 46.153 | -113.688 |
| Savage Creek | 48.226 | -116.029 | 48.248 | -116.097 |
| Scalp Creek | 47.982 | -113.042 | 47.957 | -113.082 |
| Schafer Creek | 48.038 | -113.270 | 48.071 | -113.251 |
| Seeley Lake | 47.194 | -113.510 | | |
| Shorty Creek | 48.851 | -114.594 | 48.818 | -114.614 |
| Skalkaho Creek | 46.220 | -114.163 | 46.071 | -113.818 |
| Slate Creek | 45.698 | -114.287 | 45.712 | -114.166 |
| Slate Creek | 48.923 | -117.333 | 48.927 | -117.318 |
| Sleeping Child Creek | 46.161 | -114.160 | 46.033 | -113.815 |
| Small Creek | 48.321 | -117.308 | 48.337 | -117.410 |
| Soup Creek | 47.837 | -113.844 | 47.812 | -113.751 |
| South Boulder Creek | 46.415 | -113.201 | 46.415 | -113.201 |
| South Fork Bull River | 48.170 | -115.789 | 48.193 | -115.816 |
| South Fork Coal Creek | 48.680 | -114.346 | 48.674 | -114.472 |
| South Fork Fish Creek | 46.927 | -114.697 | 46.813 | -114.640 |
| South Fork Flathead River | 47.830 | -113.416 | 47.833 | -113.417 |
| South Fork Granite Creek | 48.700 | -117.030 | 48.691 | -117.134 |
| South Fork Indian Creek | 48.624 | -116.717 | 48.634 | -116.790 |
| South Fork Jocko River | 47.103 | -113.768 | 47.195 | -113.853 |
| South Fork Little Joe Creek | 47.172 | -115.224 | 47.269 | -115.141 |
| South Fork Lolo Creek | 46.762 | -114.266 | 46.605 | -114.309 |
| South Fork Lost Creek | 47.868 | -113.738 | 47.873 | -113.825 |
| South Fork Tacoma Creek | 48.394 | -117.324 | 48.432 | -117.507 |
| South Woodward Creek | 47.754 | -113.858 | 47.717 | -113.858 |
| Spotted Bear River | 47.924 | -113.526 | 47.877 | -113.212 |
| Squeezer Creek | 47.750 | -113.816 | 47.717 | -113.729 |
| Stillwater River | 48.604 | -114.657 | 48.789 | -114.686 |
| Stony Creek | 46.274 | -113.731 | 46.274 | -113.731 |
| Storm Lake Creek | 46.169 | -113.154 | 46.075 | -113.268 |
| Strawberry Creek | 47.996 | -113.058 | 48.111 | -113.028 |
| Strong Creek | 48.243 | -116.303 | 48.264 | -116.279 |
| Sullivan Creek | 48.050 | -113.689 | 47.879 | -113.657 |
| Sullivan Creek | 48.865 | -117.371 | 48.955 | -117.069 |
| Sullivan Springs | 48.088 | -116.412 | 48.084 | -116.388 |
| Swamp Creek | 47.920 | -115.689 | 47.994 | -115.565 |
| Swan Lake | 47.955 | -113.895 | | |
| Swan River | 47.346 | -113.742 | 47.404 | -113.718 |
| Swift Creek | 48.481 | -114.425 | 48.654 | -114.551 |
| Tacoma Creek | 48.391 | -117.289 | 48.445 | -117.508 |
| The Thorofare | 48.740 | -116.843 | 48.766 | -116.865 |
| Thompson River | 47.576 | -115.241 | 47.713 | -115.059 |
| Tillicum Creek | 48.725 | -117.071 | 48.729 | -117.083 |
| Tin Cup Creek | 45.973 | -114.349 | 46.016 | -114.168 |
| Tolan Creek | 45.777 | -113.827 | 45.856 | -113.913 |
| Trail Creek | 48.013 | -113.020 | 48.012 | -112.946 |
| Trail Creek | 48.924 | -114.386 | 48.933 | -114.536 |
| Trapper Creek | 48.796 | -116.897 | 48.851 | -116.879 |
| Trestle Creek | 48.351 | -116.235 | 48.283 | -116.353 |

| Waterbody Name | Stream Begin Point or Lake Center Latitude | Stream Begin Point or Lake Center Longitude | Stream End Point Latitude | Stream End Point Longitude |
|---|---|---|---|---|
| Trout Creek | 47.030 | -114.966 | 47.106 | -114.897 |
| Trout Lake | 48.680 | -113.910 | | |
| Twelvemile Creek | 47.349 | -115.292 | 47.465 | -115.325 |
| Twin Lakes Creek | 46.070 | -113.221 | 46.169 | -113.153 |
| Two Bear Creek | 46.111 | -114.010 | 46.094 | -113.897 |
| Two Mouth Creek | 48.674 | -116.677 | 48.687 | -116.837 |
| Uleda Creek | 48.388 | -116.708 | 48.362 | -116.696 |
| Upper Kintla Lake | 48.976 | -114.176 | | |
| Upper Priest Lake | 48.785 | -116.889 | | |
| Upper Priest River | 48.799 | -116.912 | 48.995 | -116.942 |
| Upper Stillwater Lake | 48.588 | -114.637 | | |
| Upper Whitefish Lake | 48.687 | -114.579 | | |
| Vermilion River | 47.832 | -115.535 | 47.879 | -115.355 |
| Ward Creek | 47.274 | -115.355 | 47.312 | -115.234 |
| Warm Springs Creek | 46.210 | -112.768 | 46.261 | -113.137 |
| Warm Springs Creek | 45.860 | -114.026 | 45.742 | -114.070 |
| Welcome Creek | 46.566 | -113.701 | 46.603 | -113.768 |
| Wellington Creek | 48.295 | -116.174 | 48.290 | -116.163 |
| West Branch LeClerc Creek | 48.534 | -117.283 | 48.701 | -117.212 |
| West Fork Bitterroot River | 45.621 | -114.304 | 45.718 | -114.281 |
| West Fork Clearwater River | 47.256 | -113.551 | 47.287 | -113.745 |
| West Fork Fish Creek | 46.927 | -114.697 | 46.812 | -114.891 |
| West Fork Fishtrap Creek | 47.793 | -115.224 | 47.816 | -115.145 |
| West Fork Gold Creek | 46.996 | -113.686 | 47.032 | -113.828 |
| West Fork Rock Creek | 46.170 | -113.762 | 46.171 | -113.762 |
| West Fork Swift Creek | 48.654 | -114.551 | 48.726 | -114.653 |
| West Fork Thompson River | 47.650 | -115.174 | 47.714 | -115.207 |
| West Gold Creek | 47.953 | -116.452 | 47.930 | -116.504 |
| Whale Creek | 48.849 | -114.353 | 48.851 | -114.594 |
| Wheeler Creek | 48.097 | -113.730 | 48.066 | -113.776 |
| White River | 47.588 | -113.299 | 47.611 | -113.204 |
| Whitefish Lake | 48.451 | -114.381 | | |
| Winchester Creek | 48.271 | -117.343 | 48.329 | -117.476 |
| Woodward Creek | 47.767 | -113.880 | 47.777 | -113.846 |
| Wounded Buck Creek | 48.280 | -113.936 | 48.234 | -113.963 |
| Youngs Creek | 47.445 | -113.183 | 47.282 | -113.314 |

(iii) Waterbodies associated with the following habitat conservation plan (HCP) totaling 209.0 km (129.9 mi) of streams and 32.2 ha (79.7 ac) of lakes and reservoirs have been excluded from critical habitat designation under section 4(b)(2) of the Act in this unit. These are waterbodies within the geographic area covered by the Plum Creek Native Fish Habitat Conservation Plan (HCP), including portions of Lower Clark Fork River, Middle Clark Fork River, Upper Clark Fork River, Bitterroot River, Rock Creek, Blackfoot, Clearwater, Flathead, Swan, and South Fork CHSUs.

(iv) Map of Unit 31, Clark Fork River Basin follows:

**BILLING CODE 4310–55–S**




BILLING CODE 4310–55–C

(41) Unit 32: St. Mary River Basin

(i) This unit consists of 34.7 km (21.6 mi) of streams and 1,669.3 ha (4,125.0 ac) of lakes and reservoirs. The unit is located in northwestern Montana.

(ii) Individual waterbodies in the unit are bounded by the following coordinates:

| Waterbody Name | Stream Begin Point or Lake Center Latitude | Stream Begin Point or Lake Center Longitude | Stream End Point Latitude | Stream End Point Longitude |
|---|---|---|---|---|
| Boulder Creek | 48.776 | -113.550 | 48.839 | -113.460 |
| Canyon Creek | 48.740 | -113.647 | 48.730 | -113.657 |
| Cracker Lake | 48.744 | -113.644 | | |
| Divide Creek | 48.694 | -113.421 | 48.751 | -113.438 |
| Kennedy Creek | 48.851 | -113.604 | 48.905 | -113.409 |
| Lee Creek | 48.998 | -113.601 | 48.919 | -113.638 |
| Lower St. Mary Lake | 48.796 | -113.423 | | |
| Middle Fork Lee Creek | 48.998 | -113.550 | 48.978 | -113.585 |
| Otatso Creek | 48.894 | -113.638 | 48.904 | -113.621 |
| Otatso Lake | 48.892 | -113.677 | | |
| Red Eagle Creek | 48.648 | -113.510 | 48.630 | -113.541 |
| Red Eagle Lake | 48.652 | -113.507 | | |
| Saint Mary River | 48.756 | -113.425 | 48.844 | -113.418 |
| Slide Lakes - lower pool | 48.905 | -113.616 | | |
| Slide Lakes - upper pool | 48.902 | -113.625 | | |
| St. Mary Lake | 48.699 | -113.509 | | |
| Swiftcurrent Creek | 48.836 | -113.429 | 48.839 | -113.460 |

(iii) Waterbodies associated with the following tribal lands totaling 82.1 km (51.0 mi) of streams and 886.1 ha (2,189.5 ac) of lakes and reservoirs have been excluded from critical habitat designation under section 4(b)(2) of the Act in this unit. These are waterbodies within the areas under management by the Blackfeet Tribe, within reservation boundaries, and waterbodies that are adjacent to:

(A) Lands held in trust by the United States for their benefit;

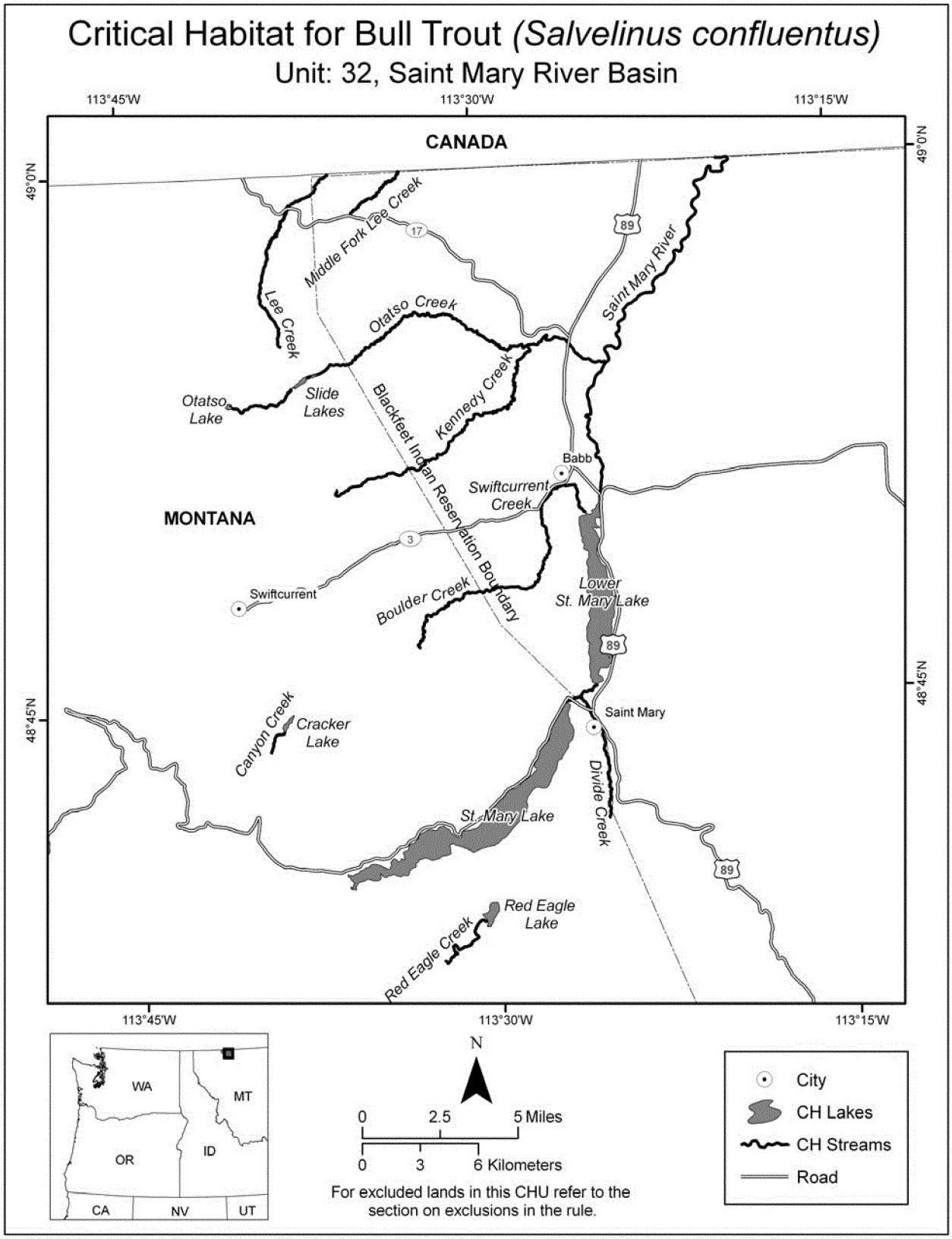
(B) Lands held in trust by the United States for any Indian Tribe or individual subject to restrictions by the United States against alienation;

(C) Fee lands, either within or outside the reservation boundaries, owned by the tribal government; and

(D) Fee lands within the reservation boundaries owned by individual Indians.

(iv) Map of Unit 32, St. Mary River Basin follows:

**BILLING CODE 4310–55–S**


Critical Habitat for Bull Trout (Salvelinus confluentus)
Unit: 32, Saint Mary River Basin
113°45'W
113°30'W
113°15'W
49°0'N
48°45'N
CANADA
MONTANA
Middle Fork Lee Creek
Lee Creek
Otatso Creek
Saint Mary River
Otatso Lake
Slide Lakes
Blackfeet Indian Reservation Boundary
Kennedy Creek
Babb
Swiftcurrent Creek
Swiftcurrent
Boulder Creek
Lower St. Mary Lake
Saint Mary
Canyon Creek
Cracker Lake
Divide Creek
St. Mary Lake
Red Eagle Lake
Red Eagle Creek
17
89
3
WA
MT
OR
ID
CA
NV
UT
N
0 2.5 5 Miles
0 3 6 Kilometers
For excluded lands in this CHU refer to the section on exclusions in the rule.
City
CH Lakes
CH Streams
Road

**BILLING CODE 4310–55–C**

* * * * *

Dated: September 10, 2010

**Thomas L. Strickland,**

*Assistant Secretary for Fish and Wildlife and Parks.*

[FR Doc. 2010–25028 Filed 10–15–10; 8:45 am]

**BILLING CODE 4310–55–S**

Federal Register

Monday,
October 18, 2010

# Part III

# Department of the Treasury

## Internal Revenue Service

**26 CFR Parts 1, 31, 301 et al.**

**Basis Reporting by Securities Brokers and Basis Determination for Stock; Final Rule**

**DEPARTMENT OF THE TREASURY**

**Internal Revenue Service**

**26 CFR Parts 1, 31, 301, and 602**

**[TD 9504]**

**RIN 1545–BI66**

## Basis Reporting by Securities Brokers and Basis Determination for Stock

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**ACTION:** Final regulations.

**SUMMARY:** This document contains final regulations on broker reporting of sales of securities and on the basis of securities. These final regulations reflect amendments under the Energy Improvement and Extension Act of 2008 that require brokers to report a customer's adjusted basis in sold securities and classify gain or loss as long-term or short-term, and that allow taxpayers to compute the basis of certain stock by averaging. The regulations affect brokers and custodians that make sales or transfer securities on behalf of customers, issuers of securities, and taxpayers that purchase or sell securities. The regulations also reflect amendments that provide brokers and others until February 15 to furnish certain information statements to customers.

**DATES:** *Effective Date:* These regulations are effective on October 18, 2010.

*Applicability Date:* For dates of applicability, *see* §§ 1.1012–1(c)(10), 1.1012–1(e)(12), 1.6045A–1(d), and 1.6045B–1(g).

**FOR FURTHER INFORMATION CONTACT:** Concerning the regulations under sections 408, 6039, 6042, 6044, 6045, 6045A, 6045B, 6049, 6051, 6721, and 6722, Stephen Schaeffer of the Office of Associate Chief Counsel (Procedure and Administration) at (202) 622–4910; concerning the regulations under section 1012, Edward C. Schwartz of the Office of Associate Chief Counsel (Income Tax and Accounting) at (202) 622–4960 (not toll-free numbers).

**SUPPLEMENTARY INFORMATION:**

### Paperwork Reduction Act

The collection of information contained in these final regulations related to the furnishing of information in connection with the transfer of securities has been reviewed and approved by the Office of Management and Budget (OMB) in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)) under control number 1545–2186. The collection of information in these final regulations in §§ 1.6045–1(c)(3)(xi)(C) and 1.6045A–1 is required to comply with the provisions of section 403 of the Energy Improvement and Extension Act of 2008, Division B of Public Law 110–343 (122 Stat. 3765, 3854 (2008)).

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid control number assigned by the Office of Management and Budget.

Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law.

### Background

This document contains amendments to the Income Tax Regulations (26 CFR part 1), the Regulations on Employment Tax and Collection of Income Tax at the Source (26 CFR part 31), and the Regulations on Procedure and Administration (26 CFR part 301).

On December 17, 2009, the Treasury Department and the IRS published in the **Federal Register** (74 FR 67010) proposed regulations (REG–101896–09) relating to information reporting by brokers, transferors, and issuers of securities under sections 6045, 6045A, and 6045B of the Internal Revenue Code (Code), and the computation of basis under section 1012. Written and electronic comments responding to the notice of proposed rulemaking were received, and a public hearing was held on February 17, 2010.

After considering the comments, the proposed regulations are adopted as amended by this Treasury decision. The comments and revisions are discussed in the preamble.

### Summary of Comments and Explanation of Revisions

*1. Effective Date*

Commentators requested a delay in the effective date of the reporting requirements to allow adequate time to administratively implement the rules. The final regulations do not adopt this request as inconsistent with the statutorily mandated effective dates. However, in order to promote industry readiness to comply with the reporting requirements beginning in 2011, a separate notice is being issued with these final regulations to provide transitional relief from the transfer reporting requirements under section 6045A (discussed in more detail later in this preamble). *See* Notice 2010–67. The notice provides that the IRS will not assert penalties under section 6722 for a failure to furnish a transfer statement for any transfer of stock in 2011 that is not incidental to the stock's purchase or sale. Further, a receiving broker may treat this stock as a noncovered security. *See* § 601.601(d)(2). Additionally, the IRS will continue to work closely with stakeholders to ensure the smooth implementation of the provisions in these regulations, including the mitigation of penalties in the early stages of implementation for all but particularly egregious cases.

*2. Basis Determination—Average Basis Method*

a. Definition of Dividend Reinvestment Plan

i. Acquisition of Stock

Consistent with section 1012(d)(4)(B), the proposed regulations provided that stock is acquired in connection with a dividend reinvestment plan (DRP) if the stock is acquired under the DRP or if the dividends paid on the stock are subject to the DRP. A commentator stated that DRP classification under the proposed regulations is highly factual and brokers will have difficulty determining if stock is in a DRP. The commentator recommended that the final regulations provide that a broker should be required to treat stock as DRP stock only if the broker receives documentation that a plan is a DRP and knows or has reason to know that the stock is subject to the plan. The final regulations do not adopt this recommendation as unduly restrictive.

ii. Dividend Reinvestment

Section 1012(d)(4)(A) defines a *dividend reinvestment plan* as an arrangement under which dividends are reinvested in identical stock. The proposed regulations provided that a plan qualifies as a DRP if the written plan documents require that at least 10 percent of every dividend paid on any share of stock is reinvested in identical stock.

Several commentators recommended eliminating the 10 percent rule because it will require many existing plans to amend their plan documents at considerable expense. The commentators suggested that a plan should qualify as a DRP if the plan documents merely allow the reinvestment of dividends.

The final regulations do not adopt this comment, which is inconsistent with the legislative intent that basis averaging is appropriate when dividends actually are reinvested. If a stock pays dividends, a plan should be required to reinvest a minimum percentage of dividends to qualify as a DRP. Ten percent is a reasonable minimum percentage.

iii. Definition of Dividend

The proposed regulations did not define the term dividend. Commentators recommended that the final regulations define dividend broadly to include any distribution on stock, including ordinary dividends, capital gains distributions, non-taxable returns of capital, and cash in lieu of fractional shares.

The final regulations do not define dividend. They provide that only dividends within the meaning of section 316 are subject to the 10 percent reinvestment requirement. The final regulations also clarify that a DRP may average the basis of stock acquired by reinvesting distributions that are not dividends under section 316.

b. Definition of Regulated Investment Company

The proposed regulations did not address the definition of a regulated investment company (RIC). Under § 1.1012–1(e)(5)(ii), a unit investment trust (UIT) is treated as a RIC for basis averaging purposes only if the UIT meets certain requirements. A commentator suggested that the regulations should delete this provision and allow all UITs that elect to be treated as RICs to use the average basis method.

The proposed regulations did not address this issue. Therefore, the final regulations do not adopt this suggestion. The treatment of UITs as RICs for purposes of allowing basis averaging may be considered for future guidance.

c. Definition of Identical Stock

The proposed regulations provided that stock is identical if it has the same Committee on Uniform Security Identification Procedures (CUSIP) number, except that stock in a DRP is not identical to stock not in a DRP. The proposed regulations also provided that stock acquired in connection with a DRP includes transfers of identical stock into a DRP. A commentator noted that, if stock in a DRP is not identical to stock not in a DRP, then a taxpayer could not transfer identical stock into a DRP.

To address this comment, the final regulations delete from the definition of identical stock the rule that stock in a DRP is not identical to stock not in a DRP. Because this rule served to limit the average basis method to stock in a DRP, the final regulations provide that, for purposes of computing the average basis of identical stock, stock in a DRP is not identical to stock with the same CUSIP number that is not in a DRP.

d. Time and Manner of Making the Average Basis Method Election

i. Requirement for Affirmative Election

A commentator requested clarification on whether a taxpayer is treated as electing the average basis method if the taxpayer fails to affirmatively elect a basis determination method and the average basis method is the broker's default method. In response to this comment, the final regulations clarify that a taxpayer's failure to notify a broker that the taxpayer elects a basis determination method is not an election of a method. Thus, a taxpayer that fails to affirmatively elect the average basis method has not made an election that the taxpayer may revoke. If the average basis method is the broker's default method, the taxpayer may change from that method prospectively.

ii. Scope of Average Basis Method Election

The proposed regulations required a taxpayer to elect the average basis method separately for each account holding stock that is a covered security for which the method is permissible. A commentator suggested that the final regulations permit one average basis method election to encompass all eligible accounts with a custodian or agent, as well as future accounts with that custodian or agent. The final regulations adopt this comment. The final regulations also clarify that the average basis method election must identify each account and the stock in the account to which the election applies.

iii. Written Average Basis Method Election

The proposed regulations provided that a taxpayer must notify a custodian or agent of the average basis method election in writing. A commentator stated that this requirement should be eliminated because it is difficult to implement and confusing to taxpayers who use the average basis method for RIC stock acquired before 2012. The commentator opined that the writing requirement will prevent brokers from using the average basis method as their default method.

The final regulations do not adopt this comment. The writing requirement ensures that both taxpayers and brokers have a record of the fact and scope of the election. The requirement applies to a taxpayer's election to use average basis and does not prevent a broker from selecting average basis as a default method.

Commentators requested that the final regulations clarify that a taxpayer may make a written average basis election electronically. The final regulations adopt this comment.

iv. Transition Rule From Double-Category Method

The proposed regulations provided a transition rule effective on the publication date of the final regulations for stock for which a taxpayer uses the double-category method of determining average basis. A commentator requested that the final regulations delay the effective date of the transition rule to allow time for programming and accounting system changes. The final regulations adopt this comment and provide an April 1, 2011, effective date for the transition rule.

e. Change in Method of Accounting

The proposed regulations stated that a change in basis determination method is a change in method of accounting requiring the consent of the Commissioner. A commentator opined that a change to or from the average basis method is not a change in method of accounting that requires the consent of the Commissioner. Another commentator requested that a change to or from the average basis method be allowed without the Commissioner's consent or that the process be simplified. The commentator suggested that the final regulations require taxpayers to notify their custodians or agents of the change.

The final regulations provide rules governing the time and manner of electing or changing from the average basis method, determining the basis of stock following a change between the average basis method and a cost basis method, and identifying stock sold. The regulations permit taxpayers to elect or change from the average basis method at any time during a taxable year and to choose a method to identify stock sold on a sale-by-sale basis. These rules do not involve the elements of consistency and regularity inherent in methods of tax accounting, which generally apply on the basis of a taxable year. Therefore, the final regulations provide that a basis determination method for stock is not a method of accounting and a change in a method of determining basis for stock is not a change in method of accounting to which sections 446 and 481 apply.

f. Account by Account Rules

The proposed regulations provided that DRP or RIC stock acquired before January 1, 2012, is treated as held in a separate account from DRP or RIC stock acquired on or after that date. The proposed regulations also provided that

covered and noncovered securities are treated as held in separate accounts.

The purpose of the separate account rule is to ensure that covered securities and noncovered securities are treated as held in separate accounts. DRP and RIC stock acquired before January 1, 2012, are noncovered securities. Therefore, the two separate account rules are duplicative. The final regulations eliminate the separate account rule for DRP and RIC stock based on the date the stock is acquired and retain the separate account rule for covered and noncovered securities because this rule is more precise.

g. Single-Account Election

i. Identity of Account Ownership

A commentator requested clarification on whether a single-account election may apply to an account owned by a taxpayer singly and an account a taxpayer owns jointly with another party. In response to this comment, the final regulations clarify that a single-account election applies only to accounts with the same ownership.

ii. Effect on the Single-Account Election of Revoking or Changing From the Average Basis Method

The proposed regulations provided that a RIC, DRP, or broker may make an irrevocable election to treat as held in a single account identical RIC stock or DRP stock held or treated as held in separate accounts for which the taxpayer has elected to use the average basis method. The proposed regulations also allowed a taxpayer to revoke an average basis method election by the earlier of one year from the date of the election or the first disposition of the stock. The basis of stock to which a revocation applies is its basis before averaging. After the revocation period expires, a taxpayer may change from the average basis method to another method prospectively. The basis of stock to which a change applies is the basis immediately before the change.

Commentators asked how a taxpayer's revocation of or change from the average basis method affects a single-account election. In response to this comment, the final regulations provide that a taxpayer's revocation of an average basis method election for a particular stock voids the single-account election for that stock. Thus, taxpayers and brokers must retain pre-election basis information for averaged shares for as long as the taxpayer may revoke the average basis method election. Stock that becomes a covered security only as a result of a single-account election no longer is a covered security after the single-account election is voided.

After a taxpayer changes from, rather than revokes, the average basis method, the shares that were treated as held in a single account before the change continue to be covered securities and treated as held in a single account, and the basis of each share of stock remains the same as the basis immediately before the change.

iii. Accurate Basis Information Requirement

Under the proposed regulations, a RIC, DRP, or broker may make a single-account election only for stock for which it has accurate basis information, which is information that the RIC, DRP, or broker neither knows nor has reason to know is inaccurate.

Commentators suggested eliminating the accuracy requirement for the single-account election because it is subjective and increases uncertainty. A commentator noted that the accuracy requirement may deter RICs from making a single-account election because of uncertainty over whether basis determination practices in earlier years satisfy the standard. A commentator suggested permitting the use of any data that has been maintained to determine the basis of noncovered stock included in the single-account election. A commentator recommended that brokers be permitted to use taxpayer-provided information to determine the basis of noncovered stock in making the single-account election. A commentator requested penalty relief if a broker lacks actual knowledge that information is inaccurate.

The final regulations retain the accuracy requirement and the "neither knows nor has reason to know" standard as striking an appropriate balance between the need for accuracy and flexibility. The "neither knows nor has reason to know" test is consistent with existing standards familiar to brokers for demonstrating reasonable cause for penalty relief under section 6724.

*3. Other Basis Determination Issues*

a. Use of Agent To Select Basis Determination Method

Commentators suggested that the final regulations explicitly allow a taxpayer's agent, such as an asset manager, investment advisor, or introducing broker, to select a basis determination method for a taxpayer. The final regulations do not adopt this comment. However, a taxpayer may authorize an agent to select a basis determination method under general agency principles.

b. Cost Basis of Multiple Lots Purchased on One Day

Commentators suggested that the final regulations allow brokers to average the basis of identical stock purchased or sold on the same day. In response to this comment, the final regulations provide that a taxpayer must determine the basis of identical stock by averaging the basis of each share if the stock is purchased at separate times on the same calendar day in executing a single trade order and the broker executing the trade provides a single confirmation that reports an aggregate total cost or an average cost per share. However, a taxpayer may determine the basis of the stock by the actual cost per share if the taxpayer notifies the broker in writing of this intent. The taxpayer must notify the broker by the earlier of the date of the sale of any of the stock for which the taxpayer received the confirmation or one year after the date of the confirmation. A broker may extend the one-year period but the taxpayer must notify the broker no later than the date of sale of any of the stock.

c. Identification of Securities Sold

i. Standing Orders

The proposed regulations stated that a standing order for the specific identification of stock is treated as an adequate identification. A commentator suggested that the final regulations clarify that brokers are not required to accept standing orders. The proposed regulations allowed standing orders to serve as an adequate identification but did not require taxpayers or brokers to use or accept them. Therefore, the final regulations do not adopt this comment.

ii. Confirmation of Sales

The proposed regulations retained the rule that brokers or other agents must supply written confirmation of a taxpayer's specific identification following a sale or transfer. A commentator stated that the final regulations should eliminate this requirement and opined that the Form 1099–B, "Proceeds From Broker and Barter Exchange Transactions," provides a sufficient confirmation of the transaction. Alternatively, the commentator suggested eliminating the confirmation requirement if the stock was identified by standing order. Another commentator suggested that a periodic customer account statement should qualify as a written confirmation.

The final regulations retain the requirement for written confirmation of all sales and transfers of specifically identified stock as a reasonable

safeguard that specific identification orders are properly executed. However, in response to these comments, the final regulations provide that account statements or other documents a broker or agent periodically provides to a taxpayer may serve as written confirmation if provided to the taxpayer within a reasonable time after the sale or transfer.

iii. Application of FIFO Rule Account by Account

The proposed regulations provided that if a taxpayer sells or transfers stock and does not adequately identify the stock sold or transferred, the shares of stock deemed sold or transferred are the earliest acquired shares (FIFO rule). A commentator suggested that the final regulations clarify that the FIFO rule applies on an account by account basis.

The account by account rule in section 1012(c)(1) relates to stock eligible for the average basis method. This rule overrides the earlier requirement that taxpayers must apply the average basis method across accounts and does not mandate similar treatment for cost basis stock. Incorporating an account by account requirement into the FIFO rule creates unnecessary complexity. Therefore, the final regulations do not adopt this comment.

*4. Returns of Brokers*

a. Form and Manner of Broker Reporting Requirements

The proposed regulations provided that brokers must report on Form 1099–B adjusted basis and whether any gain or loss is long-term or short-term for a covered security. A commentator suggested that the final regulations allow long-term and short-term sales to be reported on the same return to improve reconciliation between the broker's Form 1099–B and the customer's Schedule D, "Capital Gains and Losses." The final regulations do not adopt the suggestion. As noted by another commentator, brokers that use substitute statements may already segregate long-term sales from short-term sales on the same statement in the same manner as on Schedule D, which segregates long-term transactions from short-term transactions.

Consistent with the rule for aggregating the cost basis of multiple lots purchased on one day (discussed earlier in this preamble), the final regulations provide that a broker must report the basis of purchased stock and the gross proceeds of sold stock by averaging the basis or proceeds of each share if the stock is purchased or sold at separate times on the same calendar day in executing a single trade order and the broker executing the trade provides a single confirmation to the taxpayer that reports an aggregate total price or an average price per share. However, the final regulations do not permit a broker to average the basis or proceeds of stock if the customer timely notifies the broker in writing of an intent to determine the basis or proceeds by the actual cost or proceeds per share. A notification of an intent to determine the basis by the actual cost per share is timely if made in accordance with § 1.1012–1(c)(1)(ii). A notification of an intent to determine the proceeds by the actual proceeds per share is timely if the broker receives the notification by January 15 of the calendar year following the year of the sale. A broker may extend the January 15 deadline but not beyond the due date for filing Form 1099–B.

The proposed regulations moved the modifier "for cash" in the definition of sale to clarify that Form 1099–B reporting is required under section 6045 for a sale only when and to the extent cash proceeds are paid to the seller. Commentators suggested further clarifying that this limitation applied to all disposition events listed in the definition. The final regulations adopt this request.

Currently, sales of fractional shares of less than $20 are exempted from broker reporting. Commentators recommended expanding this exception to sales of fractional shares of less than $100. The final regulations do not adopt this request.

b. Identification of a Security as Stock

Under section 6045(g)(3)(C), the reporting requirements before 2013 apply only to stock. The proposed regulations provided that, for basis reporting purposes, any security an issuer classifies solely as stock is treated as stock. If an issuer has not classified the security, the security is not treated as stock unless the broker knows, or has reason to know, that the security reasonably is classified as stock under general tax principles.

Commentators suggested that issuers should be required to classify securities and that a security should be classified as stock only if the issuer has classified it as stock. The final regulations do not adopt these suggestions. It is appropriate to require a broker to report basis if the broker knows the security is stock for Federal tax purposes even if the issuer has not classified the security.

Commentators suggested that the IRS create and maintain a list of every security classified as stock. The final regulations do not adopt this comment.

Commentators requested that brokers only treat securities as stock if they know that the security is reasonably classified as stock under general tax principles instead of when they have reason to know. The final regulations adopt this comment.

Commentators requested guidance addressing when an issuer fails to classify a security and brokers disagree whether the security is stock for Federal tax purposes. The final regulations clarify that a broker is not bound by another broker's classification. As long as the issuer has not classified the security as stock, a broker is not required to treat a security as stock despite another broker's classification unless the broker knows that the security is stock for Federal tax purposes.

The proposed regulations treated any share of stock in a corporation described in § 301.7701–2(b) as stock for basis reporting purposes. Commentators asked whether interests in a real estate investment trust (REIT) or exchange-traded fund (ETF) are treated as stock under that definition. The final regulations clarify that any share of stock or any interest treated as stock in an entity organized as, or treated for Federal tax purposes as, a corporation (foreign or domestic) is stock for basis reporting purposes. Therefore, interests treated as stock in REITs and ETFs are treated as stock for basis reporting purposes if the issuers are taxable as corporations under the Code.

Commentators also asked whether a depositary receipt representing shares of stock in a foreign corporation (an ADR) is treated as stock. The final regulations clarify that an ADR is stock for basis reporting purposes.

c. Covered Securities

The proposed regulations defined covered security to include a specified security acquired through a sale transaction. Commentators asked whether stock acquired through a stock split, the exercise of rights distributed by an issuer, the grant of restricted stock by an employer, and other scenarios constituted acquisitions through sale transactions. In response to these comments, the final regulations eliminate the sale-transaction rule and define covered security to include a specified security acquired for cash. Therefore, stock acquired through the exercise of rights distributed by an issuer is a covered security while restricted stock granted by an employer is not a covered security because the former is acquired for cash and the latter

is not. The final regulations also treat a security acquired due to a stock dividend, stock split, reorganization, redemption, stock conversion, recapitalization, corporate division, or other similar action as if it were acquired for cash and, therefore, as a covered security if the basis of the new security is determined from the basis of a covered security.

The proposed regulations treated all stock acquired in 2011 as covered securities except RIC stock and DRP stock, which are not covered securities unless acquired in 2012 or later. Commentators suggested that stock acquired in 2011 no longer be a covered security if placed into a DRP. In response to this comment, the final regulations provide that stock acquired in 2011 no longer is a covered security if transferred to a DRP in 2011, but remains a covered security if transferred to a DRP after 2011.

The final regulations also clarify that a security acquired by a foreign person that § 1.6045–1(g)(1)(i) exempts from Form 1099–B reporting at the time of acquisition is not a covered security even if the customer later loses this exemption, unless the broker knows or should have known (including by reason of information that the broker is required to collect under section 1471 or 1472) that the customer is not a foreign person when the security is acquired.

A commentator requested that a broker selling stock owned by a domestic partnership be exempted from basis reporting if the broker also prepared the customer's Form 1065, "U.S. Return of Partnership Income," because the partnership return also reports the basis of securities sold by the partnership. The final regulations do not adopt this request. The commentator also requested that a broker selling stock owned by a foreign partnership be exempted from basis reporting when reporting the sale directly to U.S. partners under § 1.6049–5(d)(3)(ii) because any cost basis information reported by the broker would be erroneous. The final regulations adopt this request.

d. Foreign Intermediaries

The proposed regulations included in the definition of broker non-U.S. payors and non-U.S. middlemen to the extent provided in a withholding agreement described in § 1.1441–1(e)(5)(iii) between a qualified intermediary and the IRS. Commentators requested that the regulations instead exempt all foreign qualified intermediaries from basis reporting. In response to these comments, the final regulations do not adopt the proposed changes to the definition of broker. Thus, a qualified intermediary that is not a U.S. payor or U.S. middleman as described in § 1.6049–5(c)(5) will not be treated as a broker with respect to sales effected at an office outside the United States. The Treasury Department and the IRS also note that the recently enacted provisions of chapter 4 of Subtitle A of the Code will impose certain information reporting requirements on foreign financial institutions that enter into an agreement with the IRS under section 1471(b). The Treasury Department and the IRS intend to issue future guidance coordinating the reporting requirements under section 6045 with the reporting requirements under section 1471. In addition, section 1471 allows a person who has entered into an agreement under section 1471(b) to elect to report certain information required under sections 6041, 6042, 6045, and 6049. The Treasury Department and IRS anticipate that, if a foreign financial institution that has entered into an agreement under section 1471(b) makes such an election, the agreement would specify the extent of such person's reporting obligations with respect to information required to be reported under section 6045.

Commentators requested that the regulations also exempt nonqualified intermediaries from basis reporting, even if the nonqualified intermediary is treated as a broker under § 1.6045–1 (for example, where the nonqualified intermediary effects the sale within the United States). The regulations do not adopt this request as contrary to the purposes of the statute.

e. Treatment of Foreign Securities

Commentators requested that a security issued by a non-U.S. issuer be excluded from the definition of a covered security. The commentators questioned whether foreign issuers will comply with section 6045B and report the U.S. tax consequences of their corporate actions. The final regulations do not adopt this comment because section 6045 does not distinguish between U.S. and non-U.S. issuers of securities. The regulations permit but do not require a broker to adjust basis for unreported corporate actions.

f. Determination of Basis and Whether Gain or Loss on the Sale Is Long-Term or Short-Term

The proposed regulations required brokers to adjust the reported basis to reflect information received on a transfer statement or issuer return (discussed in more detail later in this preamble) but otherwise do not require brokers to consider transactions, elections, or events occurring outside the account. Commentators asked whether brokers must apply certain Code provisions in determining reported basis.

i. Regulated Investment Companies and Real Estate Investment Trusts

Under sections 852(b)(4)(A) and 857(b)(8), a loss on the sale of RIC or REIT shares held 6 months or less is long-term to the extent of capital gain dividends (distributed and undistributed) on the shares. One commentator asked whether brokers are required to adjust the character of the loss for the effects of sections 852(b)(4)(A) or 857(b)(8). Under section 852(b)(4)(B), if a shareholder in a RIC sells shares at a loss and held the shares for six months or less, the loss is disallowed to the extent the shareholder received a tax-exempt dividend. One commentator asked whether brokers are required to adjust the amount of the loss for the effects of section 852(b)(4)(B). The final regulations clarify that adjustments under sections 852(b)(4)(A), 857(b)(8), and 852(b)(4)(B) are not required because the payment of tax-exempt dividends and the existence of capital gain dividends (distributed and undistributed) may or may not occur in the same account as the sale. Further, requiring adjustments would also necessitate requiring brokers to include information on transfer statements about whether and when these types of dividends have been received or reported.

A commentator requested the IRS to exercise its authority under section 852(b)(4)(E) to shorten the holding period under section 852(b)(4) to 31 days. This request is outside the scope of the current project and may be considered for future guidance.

A commentator requested limiting the application of section 852(f), relating to load charges on the purchase of RIC stock, to reinvestments in securities with the same CUSIP consistent with proposed legislation that would limit section 852(f) to reinvestments by January 31st of the year following the disposition of the load-paying shares. The final regulations do not adopt this suggestion.

ii. Straddles and Hedging Transactions

Several commentators asked whether brokers are required to adjust their determination of holding period for securities in a single account if the securities are part of a hedging transaction, as defined in § 1.1221–2(b), or a straddle, as defined in section 1092. They also asked whether the provisions of section 1233(b) must be applied to

adjust the holding period or character of gain of a security when a customer has, in a single account, sold short some securities and holds or later acquires substantially identical securities. The fact patterns that fall under sections 1092 and 1233(b) and § 1.1221–2(b) include situations when the CUSIPs of the positions may not be identical as well as situations when the CUSIPs of the positions are identical. Regardless, under the final regulations, brokers are not required to adjust the holding period or character of gain under sections 1092 and 1233(b) and § 1.1221–2(b).

iii. Events Occurring Outside the Account

The proposed regulations required a broker to take into account in determining basis any corporate action reported by an issuer of the security. Commentators requested clarification on how to determine basis after a corporate action that results in different treatment for minority shareholders than for a majority shareholder. The final regulations permit a broker to treat all customers after a corporate action as minority shareholders of the corporation unless the broker knows that the customer is a majority shareholder and the issuer reports the action's effect on the basis of majority shareholders.

The proposed regulations did not permit brokers to apply section 1259 (regarding constructive sales) and section 475 (regarding the mark-to-market method of accounting) when reporting adjusted basis and whether any gain or loss on the sale of a security is long-term or short-term. A commentator requested that reporting adjustments be permitted under these sections even if not required. The final regulations adopt this request. Another commentator asked whether brokers must apply section 1296 (regarding mark-to-market accounting for marketable stock in a passive foreign investment company). The final regulations provide that these adjustments are not required. A broker should inform customers of any non-required adjustments so that customers will not duplicate these adjustments.

iv. Basis Determination Method

The proposed regulations required brokers to report basis using the basis determination method a customer elects. Commentators requested that brokers be permitted to offer limited basis reporting methods even if this practice would force a customer that wanted a different method to move his or her account to a broker that offered reporting under that method. The final regulations do not adopt this request because section 1012 permits customers to report basis by a different permissible method than the default method selected by the broker and section 6045 requires brokers to follow instructions from customers regarding this selection.

v. Long-Term or Short-Term Gain or Loss

Section 1222 defines long-term or short-term gain or loss by reference to whether a taxpayer has held a capital asset for more than one year. A commentator noted that accounting standards may define a year in different ways and requested that the final regulations adopt a uniform definition of a year for reporting purposes, such as 360 or 365 days. The final regulations do not adopt this comment. The rules for determining whether a taxpayer has held an asset for more than one year are well established. No good justification exists for adopting a different rule solely for broker reporting purposes.

vi. Commissions and Options Proceeds

The proposed regulations required brokers to adjust basis for commissions and transfer taxes incurred from a purchase and, if not subtracted from gross proceeds, commissions charged for a sale and transfer taxes incurred on a sale. Commentators requested that the final regulations expand the definition of gross proceeds to explicitly permit adjustments for transfer taxes incurred on sale. The final regulations incorporate this suggestion.

The proposed regulations did not alter the current rule under which some brokers report proceeds reduced by sales commissions and inform customers of this fact through a flag in Box 2 on Form 1099–B. Instead, in requiring brokers to account for sales commissions, the proposed regulations permitted brokers to either reduce the reported proceeds or increase the reported basis by the amount of the sales commissions. Commentators requested that all brokers be required to reduce the reported proceeds for commissions and transfer taxes from the sale. This suggestion is not adopted but may be considered in future guidance.

Commentators requested that brokers be permitted to adjust basis for option premiums when an option is exercised in purchasing or selling a security even though this reporting is not mandatory until 2013. The proposed regulations permitted this treatment, which is also permitted under the final regulations.

vii. Employee Compensation-Related Issues

Section 6045(h) requires certain basis reporting adjustments to account for income recognized on options granted or acquired beginning in 2013. Because the option reporting requirements do not take effect until 2013, the proposed regulations provided that, for stock acquired in 2011 and 2012 in connection with employee stock purchase plans and incentive stock options, brokers did not need to adjust basis to account for the income recognized by the purchaser. Commentators suggested that this stock be excluded from basis reporting until 2013 because purchasers may improperly rely on the reported basis. The final regulations do not adopt this suggestion. Purchasers will be assisted by IRS forms and publications, including Form 3921, "Exercise of an Incentive Stock Option Under Section 422(b)" (in development), and Form 3922, "Transfer of Stock Acquired Through an Employee Stock Purchase Plan Under Section 423(c)" (in development), in determining basis for stock acquired in 2011 and 2012.

Commentators also requested that the final regulations not require basis reporting for stock acquired through an employee stock purchase plan because Form 3922 will report the exercise price per share and the fair market value of the stock on both the grant date and the exercise date. The final regulations do not adopt this comment because Form 3922 must be filed when a purchaser first transfers legal title to the stock, not necessarily when the purchaser sells the stock, and these events may occur many years apart. Further, Form 3922 will not identify which shares are sold and will not reflect stock splits or other corporate actions between the date of reporting on Form 3922 and the date of sale.

viii. Payments in a Foreign Currency

The proposed regulations provided that brokers receiving payments made in foreign currency should report the amounts paid by converting each payment to a U.S. dollar amount using a spot rate or spot rate convention determined at the time the broker receives the payment. Commentators expressed the concern that determining the spot rate on the payment receipt date treats all sales as if the customer had elected under section 988 to incorporate the amount of gain or loss on the currency into the gain or loss on the sale of the security. However, the section 988(d) election is only relevant in the context of certain hedges. In the non-hedging context, long-standing

rules provide that investors must always compute gain or loss by determining adjusted basis using the spot rate as of the payment receipt date. *See* Rev. Rul. 54–105 (1954–1 CB 12). Even in the hedging context, investors must compute gain or loss under these same rules unless they make the election under section 988. The final regulations therefore adopt the proposed rule. *See* § 601.601(d)(2).

Commentators asked whether the payment receipt date is the date the broker receives payment from the customer or the settlement date of the purchase. The final regulations continue to treat the payment receipt date as the date the broker receives payment but clarify that, for securities traded on an established securities market, the payment receipt date is the settlement date of the purchase. *See* § 1.988–2(a)(2)(iv). The final regulations also clarify that the same foreign currency reporting rules apply to transfer statements.

g. Customer Identification of Securities

The proposed regulations required brokers to report the sales of securities on a first-in, first-out basis within an account unless the customer notified the broker by means of making an adequate and timely identification of the securities to be sold. Commentators asked that, for reporting purposes, brokers be permitted to rely on customers' standing orders or instructions for the sale or transfer of shares of stock. The proposed rule by cross reference to § 1.1012–1(c) already permitted standing orders to serve as an adequate identification for both sales and transfers of stock. Therefore, the final regulations adopt the proposed rule.

Commentators asked how to apply the first-in, first-out reporting rule when the broker does not know the acquisition date of some shares of the security within the account. The final regulations clarify that brokers must report the sale of any shares or units of a security in the account with unknown acquisition dates first. Customers are expected to report basis consistently with broker reporting.

h. Reporting of Wash Sales

Section 6045(g)(2)(B)(ii) requires that, except as otherwise provided by the Secretary, a broker must apply the wash sale rules of section 1091 when reporting the adjusted basis of a covered security if the purchase and sale transactions resulting in a wash sale occur in the same account and are for identical securities (rather than substantially identical securities). A commentator objected to limiting broker reporting of wash sales to instances in which the purchase and sale transactions occur in the same account and are for identical securities. The final regulations retain these two statutory limitations but do not prohibit brokers from reporting wash sales across accounts or for substantially identical securities.

A commentator asked whether brokers must report wash sales when the purchase and sale transactions are initiated in different accounts but the purchased shares are later transferred into the account of the sold shares. The final regulations clarify that brokers need not report wash sales in these circumstances because the purchase and sale transactions do not occur in the same account.

Another commentator asked whether brokers must report wash sales when the purchase and sale transactions occur in the same account but the purchased security is transferred out of the account prior to the wash sale. The commentator opposed applying the wash sale reporting rules in this scenario because the rules would require a broker to adjust basis for a security no longer in the broker's custody. The final regulations clarify that brokers do not need to report a wash sale if the purchased security is transferred to another account before the wash sale.

Commentators asked whether brokers must report wash sales when stock is treated as held in a separate account under the basis method determination rules of § 1.1012–1. The final regulations clarify that the account limitation for wash sale reporting applies to stock treated as held in separate accounts. Thus, a broker is not required to report a wash sale involving a covered security and a noncovered security unless a single-account election is in effect. Similarly, a broker is not required to report a wash sale involving stock in a DRP and identical stock that is not in a DRP.

Commentators requested exclusions from broker reporting of wash sales for de minimis amounts, sales of fractional shares, automatic dividend reinvestments, or compensation-related acquisitions. The final regulations do not adopt these proposals because, as other commentators noted, the substantive wash sale rules under section 1091 do not exclude these items. Creating additional exclusions solely for broker reporting purposes would introduce further discrepancies between broker reporting and customer reporting of wash sales.

Commentators requested an exclusion from broker reporting of wash sales for customers that have made valid and timely mark-to-market accounting method elections under section 475 or, in the alternative, for customers that execute 10,000 trades in a single year. Other commentators stated that excluding these customers may be more burdensome than reporting wash sales for these accounts. The final regulations permit brokers to exclude from wash sales reporting a customer that has informed the broker in writing that the customer has made an election under section 475(f)(1). The exclusion only applies to the accounts identified by the customer as solely containing securities subject to the election. The final regulations also clarify that a taxpayer that is not a trader in securities within the meaning of section 475(f)(1) does not become a trader in securities, or create an inference that it is a trader in securities, by notifying a broker that it has made a valid and timely election under section 475(f)(1).

Commentators asked that Form 1099–B and the transfer statement indicate whether the holding period of a security has been adjusted to reflect a wash sale. The final regulations do not adopt this suggestion. The rules require the holding period reported on Form 1099–B and transfer statements to reflect any wash sale adjustments.

Commentators asked how the holding period rules such as section 1223(3) apply to wash sales. One commentator asked about the proper treatment of a wash sale when the sale and purchase transactions occur over a period of time and a corporate event occurs during that period that causes one pre-event share to not be economically equivalent to one post-event share. These and other comments requesting guidance on how the wash sale reporting rule applies to various types of activity within an account relate to the substantive rules under section 1091 and are outside the scope of these regulations.

i. Reporting of Short Sales

Beginning in 2011, section 6045(g)(5) requires gross proceeds and basis reporting for short sales for the year in which the short sale is closed rather than, as under the present law rule for gross proceeds reporting, the year in which the short sale is opened. The proposed regulations included a transition rule requiring brokers to report all short sales opened on or after January 1, 2010, for the year in which the short sale is closed. Commentators asked that this transition rule be modified to permit 2010 reporting of all short sales opened in 2010 even if the short sale remained open at the end of

2010. The final regulations adopt this request.

Commentators requested that, for short sales opened before 2011 and closed in 2011 or later years, the regulations permit brokers to report the short sale for both the year the short sale is opened and the year the short sale is closed. The final regulations do not adopt this suggestion because no penalty is imposed for filing a nonrequired return.

Reportable payments on securities sales under section 6045 are subject to backup withholding as provided in section 3406(b)(3)(C). When backup withholding applies to a short sale, current regulations at § 31.3406(b)(3)–2(b)(4) require backup withholding when the short sale is opened but permit a broker to delay withholding until the short sale is closed if, at the time the short sale is opened, the broker expects that the amount of gain realized upon the closing of the short sale will be determinable from the broker's records. The proposed regulations required backup withholding only when the short sale was closed and the short sale became subject to reporting under section 6045(g)(5). Commentators asked that backup withholding on short sales continue to be permitted when the short sale is opened because the broker has cash proceeds from the sale on which to withhold. The final regulations adopt this comment and leave in place the current rule permitting a broker to perform backup withholding when the short sale is opened or closed. The proposed amendment to § 31.3406(b)(3)–2(b)(4) is therefore not adopted.

As a result of retaining the current backup withholding rule, a broker may perform backup withholding in a year before the short sale is closed. Current regulations at § 31.6051–4 require the broker to report the withholding on a Form 1099–B for the year of the withholding in addition to reporting the sale for the year the short sale is closed. The final regulations amend § 31.6051–4 to permit the IRS to determine whether to require gross proceeds to be reported only when the short sale is closed.

j. Reporting of Sales by S Corporations

Currently, no broker reporting on Form 1099–B is required for customers that are corporations, including S corporations. Section 6045(g)(4) requires brokers to begin Form 1099–B reporting for S corporations (other than a financial institution) for sales of covered securities acquired on or after January 1, 2012. The proposed regulations accordingly removed corporations for which an election under section 1362(a) is in effect from the list of exempt Form 1099–B recipients for sales of covered securities acquired beginning in 2012. Commentators requested that the regulations instead refer to the definition of S corporation at section 1361(a). The final regulations adopt this comment for all references to an S corporation.

Also, for sales of covered securities acquired beginning in 2012, the proposed regulations eliminated the so-called "eyeball test" allowing brokers to rely solely on the name of the customer to determine whether the customer is a corporation exempt from reporting. The proposed regulations retained the actual knowledge rule so that a broker does not need to obtain an exemption certificate for a customer that the broker knows is exempt. Commentators asked that the final regulations retain the eyeball test because brokers otherwise may be required to seek a certification from all corporate customers. The regulations do not adopt this comment because brokers generally cannot determine from a customer's name alone whether the customer is taxed as an S corporation or C corporation. The final regulations retain a limited eyeball test for insurance companies and foreign corporations, however, because insurance companies and foreign corporations are ineligible to be S corporations.

Commentators requested that the final regulations retain current rules that allow brokers to determine that a customer is a foreign corporation by relying upon the name of the customer or upon a certification on a Form W–8 such as Form W–8BEN, "Certificate of Foreign Status of Beneficial Owner for United States Tax Withholding." These current rules were not retained in the proposed regulations. The final regulations adopt the suggestion to retain these current rules.

A commentator requested that brokers be permitted to rely on Form 8832, "Entity Classification Election," to determine that a customer is a C corporation if the customer has elected on Form 8832 to be classified as an association taxable as a corporation. According to the commentator, reliance on Form 8832 is appropriate because the form's instructions provide that an entity that is separately filing an election to be classified as an S corporation need not file Form 8832. The final regulations do not adopt the suggestion because an S corporation may still file Form 8832 or may have filed Form 8832 before electing to be classified as an S corporation.

Commentators requested that accounts opened by S corporations before 2012 be excepted from reporting. The regulations do not adopt this request as contrary to the statute.

k. Reporting to Trust Interest Holders in a WHFIT

The proposed regulations provided that, with respect to a widely held fixed investment trust (WHFIT), the requirements of section 6045(g), to the extent applicable, are met by compliance with the WHFIT reporting rules in § 1.671–5. One commentator noted that § 1.671–5(d)(2)(ii)(H) requires that a trustee or middleman filing a Form 1099 for an interest in a WHFIT provide, in addition to the items listed in § 1.671–5(d)(2)(ii), any other information required by the Form 1099. The commentator noted that this requirement could create confusion for reporting basis information to the extent the Form 1099–B is modified to require basis information. In response, the final regulations continue to provide that the requirements of section 6045(g) are met by compliance with the WHFIT rules. The IRS intends to address the commentator's concern in the instructions to the Form 1099–B.

l. Due Date for Payee Statements Furnished in a Consolidated Reporting Statement

Section 6045(b) extended the due date to furnish payee statements to customers from January 31 to February 15, effective for statements required to be furnished after December 31, 2008. Section 6045(b) also provides that this February 15 due date applies to any other statement required to be furnished on or before January 31 of the same year if furnished in a consolidated reporting statement with a statement required under section 6045.

The proposed regulations defined *consolidated reporting statement* as a grouping of statements that includes a required section 6045 statement and is furnished to the same customer or group of customers on the same date. The proposed regulations also permitted a broker to treat any customer as receiving a required section 6045 statement if the customer had an account for which section 6045 would require a statement if a sale occurred during the year. In response to a request from a commentator, the final regulations clarify that a customer may be treated as receiving a required section 6045 statement under this rule even if the customer's account holds only cash or shares of money market funds.

Commentators requested that the definition of consolidated reporting

statement include all statements a broker sends to a customer, whether or not the broker includes a required section 6045 statement to that customer, if the broker includes a required section 6045 statement to one of its customers. Other commentators supported the rule in the proposed regulations requiring brokers to continue to furnish in January pension statements and other statements to customers that hold only nontaxable accounts. The final regulations do not adopt the suggestion to broaden the definition of consolidated reporting statement. The suggested definition is inconsistent with statutory intent to limit the extended due date to statements that are or can be provided with other required section 6045 reporting.

A commentator also requested that the rules for consolidated reporting by brokers refer to "reporting entities" instead of "brokers" because custodians for individual retirement accounts (IRAs) may not stand ready to effect sales to be made by others and, therefore, may not be considered brokers under section 6045. The final regulations do not adopt this comment because an entity that is not considered a broker under section 6045 may not furnish a consolidated reporting statement.

*5. Reporting Required in Connection With Transfers of Securities*

a. Scope of Transfer Reporting

The proposed regulations identified brokers, persons acting as custodians of securities in the ordinary course of a trade or business, issuers of securities, and their agents as applicable persons required to furnish a transfer statement. Commentators asked whether agents of an issuer such as a transfer agent or administrator of an employee stock purchase plan are applicable persons. The final regulations clarify that agents of an issuer are applicable persons required to furnish transfer statements and provide additional examples to illustrate these agency arrangements.

A commentator requested that stock transfer agents that do not file Form 1099–B be excluded from transfer reporting. The final regulations do not adopt this comment as inconsistent with the statutory purpose of transfer reporting. A broker selling a transferred security is only able to report basis if informed of the basis. The regulations properly place the duty to furnish the transfer statement to the selling broker on the person transferring custody of the security.

Commentators requested an exclusion for transfers excepted from all section 6045 reporting (including gross proceeds reporting) at the time of the transfer. The final regulations adopt this suggestion. Commentators also requested exclusions for transfers to or from a nontaxable account. Sales of securities in nontaxable accounts are always excepted from all reporting under section 6045. The final regulations accordingly provide an exclusion for transfers to trustees and custodians of individual retirement plans. However, the exclusion does not apply to transfers from these accounts to a customer subject to reporting under section 6045(a).

Commentators requested that transfer statements for securities distributed from a nontaxable account to an owner or an heir report the new owner's basis as the fair market value of the security as of the date of distribution or date of death, whichever applies. The final regulations do not adopt this comment because securities held in individual retirement plans generally are treated as noncovered securities. Transferors of securities from nontaxable accounts need not report basis although they may choose to do so.

Commentators requested that all trustees or fiduciaries of a trust or estate be required to furnish transfer statements when assets are distributed to the beneficiaries or heirs. The final regulations do not adopt this suggestion. A trustee or fiduciary must furnish a transfer statement if the trustee is also the broker effecting the transfer. If a trustee merely distributes securities in a transfer effected by a separate broker, then the broker must furnish the transfer statement.

Commentators requested an exclusion for securities transferred in connection with a loan or under a repurchase agreement or securities collateral agreement because the lender's basis in the securities is not relevant to the borrower. The final regulations adopt this request only to the extent that the transferor lends or borrows securities as a principal (for example, when a customer opens or closes a short sale). When a transferor otherwise lends or borrows securities for a customer whose transfers are not otherwise exempt from transfer reporting, transfer statements will ensure that securities returned to the lender or collateral provider remain covered securities even if the securities are returned to a different account. Further, the broker for the borrower or secured party may not know that the securities it receives are exempted from reporting under the proposed exclusion and would be compelled to ask for a transfer statement if none were provided.

Commentators requested an exclusion for money market funds because brokers do not currently report their sales on Form 1099–B. The final regulations adopt this comment and also exempt money market funds from issuer reporting under section 6045B.

b. Information Furnished on a Transfer Statement

The proposed regulations required transfer statements to include information regarding the "beneficial owner" of securities. Commentators suggested that "beneficial owner" is not an appropriate term because securities are often transferred for accounts titled in the name of someone other than a beneficial owner, such as an agent of an undisclosed principal. Accordingly, the final regulations use the designation "customer" instead of "beneficial owner."

Commentators asked whether separate transfer statements must be furnished to identify noncovered securities at the lot level. The final regulations clarify that the transfer statement need not identify noncovered securities at the lot level and that a single transfer statement may report the transfer of multiple noncovered securities.

Commentators requested that transfer statements exclude sensitive customer information due to privacy concerns. Commentators also suggested that transfer statements not include the security symbol and lot number of the transferred security or the date of any previous transfer statement for the same transfer. In response to these comments, the final regulations provide that a transfer statement need not include the taxpayer identification number, address, or phone number of the customer; the security symbol or lot number of the transferred security; or the date of any previous transfer statement. Although the transfer statement must include the customer's name and account number, this information may be reported in coded format.

Commentators requested that transfer statements not include the transferor's classification of the security (for example, as stock or debt) because the receiving broker might classify the security differently. The final regulations do not adopt this suggestion. The receiving broker need not accept the transferor's classification unless it is the same as the issuer's classification. Nonetheless, the transferor's classification may clarify how the transferor computed adjustments to the security's basis.

Commentators asked whether the parties to a transfer statement could agree to substitute a security identifier

for the CUSIP. The final regulations clarify that the parties may use codes to substitute for other information, including a security symbol or other identification number or scheme to substitute for the CUSIP.

Section 1012(c)(2)(B)(ii) provides that all stock for which a broker or fund has made a single-account election shall be treated as covered securities regardless of the date of the acquisition of the stock. Commentators asked whether pre-effective date stock for which a broker or fund has made the single-account election remains a covered security when transferred to another broker. Because stock subject to the single-account election must be treated as a covered security and reported as a covered security on the transfer statement, it remains a covered security after the transfer under section 6045(g)(3)(A)(ii), provided the receiving broker receives a transfer statement.

c. Reporting of Transfers of Gifted and Inherited Securities

Under the proposed regulations, gifted and inherited securities that were covered securities in the account of the donor or decedent remained covered securities when transferred to the recipient's account and accompanied by a transfer statement. Commentators recommended that transfers of gifted and inherited securities be excluded from the transfer statement requirement because these transfers are outside the scope of the statute. Section 6045(g)(3)(A)(ii) provides that the term "covered security" includes all transferred securities that are covered securities in the account from which transferred, provided the receiving broker receives a transfer statement. Therefore, the final regulations do not adopt this recommendation.

The proposed regulations required that a transfer statement for gifted securities indicate that the transfer consists of gifted securities and state the adjusted basis of the securities in the hands of the donor (carryover basis) and the donor's original acquisition date of the securities. The proposed regulations also required that the transfer statement report the date of the gift (if known when furnishing the statement) and the fair market value of the gift on that date (if known or readily ascertainable). The proposed regulations required that, upon the subsequent sale or other disposition of these securities, the selling broker apply the relevant basis rules for gifts, such as rules disallowing loss on the sale of gifted securities to the extent of built-in loss at the time of the gift.

Commentators requested simplified conventions for reporting the basis of gifted securities. They asked that the rules require reporting of carryover basis without regard to rules disallowing loss to the extent of built-in loss at the time of the gift. They stated that gifts of depreciated securities were rare and did not justify the burden of obtaining the fair market value of the securities as of the date of the gift. They suggested instead that a subsequent sale be identified as a sale of gifted securities on Form 1099–B to alert the seller that the reported basis may not be correct. The final regulations do not adopt these suggestions. The burden on brokers to determine fair market value in applying the gift basis rules is not excessive. If fair market value as of the date of the gift is not readily ascertainable, a broker may substitute gross proceeds on a subsequent sale for this amount in determining the initial basis and the gain or loss on the subsequent sale.

Commentators also requested simplified conventions for reporting the basis of inherited securities. The proposed regulations required that basis be reported on the transfer statement in accordance with the instructions and valuations furnished by an authorized representative of the estate, which the transferor must request before reporting. Commentators asked that the rules require only reporting of basis equal to the fair market value of the security on the date of death and eliminate the requirement to request instructions from the estate representative. This suggestion was adopted. The final regulations provide that the transferor must report adjusted basis equal to the fair market value of the security on the date of death unless the broker receives different instructions from the estate representative. If the transferor neither knows nor can readily ascertain the fair market value of a security on the date of death, the final regulations provide that the transferor may treat the security as noncovered. If the transferor cannot identify which securities in a joint account have been transferred from the decedent, the final regulations require the transferor to treat each security in the account as if it were a noncovered security.

A commentator requested that the transfer statement for a subsequent transfer of an inherited security include the information necessary to apply section 1223(9), relating to the holding period of property acquired from a decedent that is sold or otherwise disposed of within one year after the decedent's death. This suggestion was adopted. The final regulations require transfer statements for both initial and subsequent transfers of an inherited security to indicate that the security is inherited.

d. Other Transfer Reporting Issues

The proposed regulations permitted combined transfer reporting of a security acquired on different dates or at different prices when the security's basis is determined using an average basis method and the security has been held for more than five years. Commentators requested that combined transfer reporting be permitted for averaged securities held for more than one year consistent with the two categories of capital gain (long term and short term). The final regulations do not adopt this comment. In 2011, absent a statutory change, lower income tax rates will apply to securities held more than five years.

Commentators asked how a broker determines if a transfer statement is complete. The final regulations clarify that a statement is complete if, in the view of the receiving broker, it provides sufficient information to report the sale of the transferred security as a covered security (or states that the security is a noncovered security). For example, if the transfer statement fails to specify whether the security is stock, the receiving broker may treat the transfer statement as complete if the receiving broker otherwise has sufficient information to report the sale of the security as a covered security (or the transfer statement states that the security is a noncovered security).

Commentators asked how transfer reporting applies to purchases and sales of securities involving multiple brokers or to a cash-on-delivery account. The final regulations clarify that, for a transfer in connection with a sale, a custodian or other transferor that transfers custody of a security to a broker in order to effect a sale must furnish a transfer statement only to the broker that effects the sale. However, no transfer statement is required if the transferor itself either effects the sale or is required to report the sale on Form 1099–B. The final regulations also provide that, for a transfer in connection with a purchase, a broker that effects a purchase but does not receive custody of the purchased security must furnish a transfer statement to the broker that receives custody. However, no transfer statement is required if the broker effects a purchase solely at the instruction of the broker receiving custody.

The proposed regulations proposed to exclude "any person acting solely as a clearing organization with respect to the transfer" from the transfer reporting

requirements. Commentators asked that the final regulations clarify what it means to act "solely as a clearing organization." The final regulations clarify that the exception applies to an organization that holds and transfers obligations among its members as a service to its members.

Commentators requested a requirement that all transfer statements for covered securities reflect the quantitative effect of any organizational actions on basis reported by issuers under section 6045B while the transferor holds custody instead of identifying which corporate action statements are reflected on the transfer statement. The final regulations adopt this comment.

Commentators requested a default rule requiring transferors to furnish the transfer statement electronically unless the parties agree to a different method. The final regulations do not adopt this suggestion. A consent requirement ensures that both parties have the ability to submit and receive transfer statements electronically.

*6. Reporting by Issuers of Actions Affecting Basis of Securities*

Under section 6045B, if an organizational action (such as a stock split or a merger or acquisition) by an issuer affects the basis of a specified security, the issuer must file a return with the IRS and furnish an information statement to each certificate holder or nominee reporting the quantitative effect on basis. The proposed regulations required the issuer to assign a sequential number determined separately by security for each organizational action reported. Several commentators requested that the final regulations delete the sequential number requirement. Another commentator requested that the rules create a standardized number system.

The purpose of the sequential number requirement was to indicate which basis adjustments for organizational actions are reflected on the transfer statement. The final regulations require transfer statements to reflect all organizational actions that occur while the transferor holds custody. Therefore, the final regulations eliminate the sequential number requirement.

A commentator asked that a RIC be deemed to comply with issuer reporting of an organizational action if it follows existing industry procedures for transmitting information to brokers. The commentator asserted that reporting under section 6045B would be duplicative and unnecessary. The final regulations do not adopt this comment as inconsistent with the statutory reporting requirement.

A commentator asked whether a RIC or REIT must file an issuer return under section 6045B for undistributed capital gains reported under section 852(b)(3)(D) or 857(b)(3)(D) on Form 2438, "Undistributed Capital Gain Tax Return," and Form 2439, "Notice to Shareholder of Undistributed Long-Term Capital Gains." Because these forms report the information required under § 1.6045B–1, the final regulations provide that an issuer that files and furnishes both forms is deemed to meet the requirements under section 6045B for undistributed capital gains affecting the basis of its stock reported on the forms. The final regulations also provide that RICs, REITs, and brokers holding custody of RIC and REIT stock must adjust basis in accordance with the information reported on the forms.

Commentators asked whether an ADR is subject to issuer reporting under section 6045B. Because an ADR is a specified security, a foreign corporation that takes an organizational action that affects the basis of an ADR that represents stock in the foreign corporation must file an issuer return. The final regulations clarify that an issuer may use an agent, including a depositary, to satisfy the requirements of this section. Nonetheless, the issuer remains liable for penalty for any failure to comply unless, as under current law, the failure is due to reasonable cause and not willful neglect.

The proposed regulations permitted issuers to make reasonable assumptions about facts having a quantitative effect on basis that could not be determined before the reporting due date and required corrected reporting within forty-five days of determining the necessary facts. A commentator asked to what extent an issuer is required to amend a return with additional facts that may affect taxability once the facts are known. The final regulations clarify that corrected reporting is required whenever an issuer determines additional facts that result in a different quantitative effect on basis from what the issuer previously reported.

Commentators requested that issuer reporting under section 6045B be coordinated with reporting under section 6043(c) for certain changes in corporate control and capital structure. One commentator requested relief from duplicate reporting of a corporate action under section 6043(c) when reporting the action under section 6045B. This request was not adopted. Reporting on Form 1099–CAP, "Changes in Corporate Control and Capital Structure," is specific to each shareholder and includes each shareholder's name and aggregate value of cash and other property received by each shareholder. Similarly, reporting on Form 8806, "Information Return for Acquisition of Control or Substantial Change in Capital Structure," while not shareholder-specific, includes information not required under section 6045B and permits the issuer to consent to IRS disclosure of some of the contents of the return.

Section 6045B(e) waives the requirements to file issuer returns and furnish issuer statements if the issuer makes the information about the organizational action publicly available in the form and manner determined by the Secretary. The proposed regulations provided that an issuer may publicly report by posting a statement with the required information in a readily accessible format in an area of its primary public Web site dedicated to this purpose by the same due date for reporting the organizational action to the IRS and keeps the form accessible to the public.

Some commentators objected to the public reporting method in the proposed regulations on the ground that it would be too burdensome for brokers to monitor issuer Web sites. Commentators suggested that the IRS permit issuers to consent to public disclosure by the IRS and that the IRS establish a central repository on its Web site for posting information statements from issuers that wish to report publicly. Commentators also suggested that the IRS formally recognize a clearing facility to serve as a central repository. Other commentators suggested that the final regulations require issuers to send their public reports or copies of their returns to clearing organizations, which will disseminate the information to brokers, holders, and their nominees. Commentators also suggested that issuers should be required to furnish a copy of their public report or issuer return to any entity that requests it. Other commentators supported the public reporting method in the proposed regulations. The final regulations adopt the public reporting method in the proposed regulations and do not adopt any of the suggested changes.

Commentators requested that the regulations limit the time period for which issuers must keep the public report posted on their Web site. The final regulations limit the required period to 10 years.

*7. Penalty Provisions*

The proposed regulations generally required brokers to adjust basis of covered securities reported on Form 1099–B to reflect information from any transfer statement received as well as any issuer reporting through the date of sale. The proposed regulations provided that any failure to report correct information that arises solely from reliance on transfer statements and issuer reporting is deemed to be due to reasonable cause for purposes of penalties under sections 6721 and 6722. The proposed regulations permitted, but did not require, a broker to further adjust the reported basis for information not reflected on one of these sources, including any information the broker has about securities held by the same customer in other accounts with the broker. The proposed regulations further provided that a broker that takes into account additional information received from a customer or third party is deemed to have relied upon this information in good faith in accordance with current rules in § 301.6724–1(c)(6) for purposes of penalty relief under sections 6721 and 6722 if the broker neither knows nor has reason to know that the information is incorrect.

Commentators expressed concern that a "know or reason to know" standard would require an excessive level of due diligence and asked that brokers be subject to penalties only if they have actual knowledge that the information is incorrect, the same standard for reliance on transfer statements and issuer statements. The final regulations do not adopt this suggestion. A "know or reason to know" standard is consistent with the existing standard for penalty relief and better ensures the integrity of the information reported on the return.

The proposed regulations provided that brokers and transferors must correct their Form 1099–B or transfer statement to account for late or corrected transfer statements or issuer reports. Commentators requested time limits on the correction requirement. This suggestion was adopted. The final regulations require corrected reporting only when brokers receive corrected information within 3 years after issuing a Form 1099–B or 18 months after issuing a transfer statement. Commentators also suggested that corrected Forms 1099–B or transfer statements not be required for de minimis changes or for closed accounts. The final regulations do not adopt this suggestion.

A commentator also asked about the interaction of the basis reporting rules with the requirements for tax return preparers under section 6694. The commentator expressed concern that a duly diligent preparer could be subject to penalties under section 6694 for preparing a return or claim for refund that reports (1) information that the preparer believes to be accurate after exercising due diligence but that differs from the information reported on Form 1099–B or (2) inaccurate information from Form 1099–B that the preparer does not know (or have reason to know) is incorrect.

In many cases, basis reported on Form 1099–B may not reflect the taxpayer's correct basis. For example, brokers need not adjust basis for wash sales unless the transactions that trigger the wash sale occur in the same account with respect to identical securities. Additionally, brokers are permitted, but not required, to report basis for noncovered securities. Taxpayers are expected to report the correct basis on Schedule D regardless of the amount reported on Form 1099–B. The IRS is currently revising Schedule D and the related instructions and publications to facilitate reconciliation.

With respect to tax return preparer penalties under section 6694, these regulations do not alter current rules governing preparer reliance on client information. Generally, § 1.6694–1(e)(1) permits tax return preparers to rely in good faith upon information furnished by a client taxpayer or another party so long as the preparer does not ignore other information furnished to or actually known by the preparer and makes reasonable inquiries if the furnished information appears to be incorrect or incomplete. This same standard applies to information furnished on Form 1099–B.

**Effective/Applicability Dates**

The regulations on broker basis reporting under section 6045(g) apply to: (1) Any share of stock or any interest treated as stock in an entity organized as, or treated for Federal tax purposes as, a corporation (foreign or domestic) acquired on or after January 1, 2011, other than RIC stock or DRP stock; and (2) any share of RIC stock or DRP stock acquired on or after January 1, 2012. The regulations regarding the timing for reporting short sales of securities under section 6045 apply to short sales opened on or after January 1, 2011.

These regulations regarding the determination of basis under section 1012 apply for taxable years beginning after October 18, 2010. However, the rules in § 1.1012–1(e)(1)(i), in part, apply to stock acquired on or after January 1, 2011; the rules in § 1.1012–1(e)(2) apply to stock acquired on or after January 1, 2012; the rules in § 1.1012–1(e)(7)(iii) apply to stock acquired before and sold, exchanged, or disposed of on or after April 1, 2011; and the rules in § 1.1012–1(e)(7)(i), in part, § 1.1012–1(e)(9), in part, and in § 1.1012–1(e)(10), in part, apply to sales, exchanges, or other dispositions of stock on or after January 1, 2012.

The regulations regarding transfer statement reporting under section 6045A apply to: (1) Transfers of stock other than RIC stock on or after January 1, 2011; and (2) transfers of RIC stock on or after January 1, 2012. The regulations regarding issuer reporting under section 6045B apply to: (1) Organizational actions affecting basis of stock in an entity organized as, or treated for Federal tax purposes as, a corporation (foreign or domestic) other than RIC stock on or after January 1, 2011; and (2) organizational actions affecting basis of RIC stock on or after January 1, 2012.

**Effect on Other Documents**

As of October 18, 2010, Rev. Rul. 67–436 (1967–2 CB 266) is obsoleted and Rev. Proc. 2008–52 (2008–2 CB 587), as modified, amplified, and clarified by Rev. Proc. 2009–39 (2009–38 IRB 371), is modified by deleting Section 30 of the Appendix. *See* § 601.601(d)(2).

**Special Analyses**

It has been determined that this Treasury decision is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply.

Pursuant to the Regulatory Flexibility Act (5 U.S.C. chapter 6), it is hereby certified that these regulations will not have a significant economic impact on a substantial number of small entities. Any effect on small entities by these regulations flows from section 403 of the Energy Improvement and Extension Act of 2008, Division B of Public Law 110–343 (122 Stat. 3765, 3854 (2008)) (the Act).

Section 403(a) of the Act requires that brokers reporting the sale of a covered security report the adjusted basis of the security and whether any gain or loss is long-term or short-term. It is anticipated that this statutory requirement will affect only financial services firms with annual receipts greater than $7 million that, therefore, are not small entities. Further, the regulations under this section impose no reporting requirements not found in the Act.

Section 403(c) of the Act requires applicable persons to furnish a transfer statement in connection with the

transfer of custody of a covered security. The regulations define applicable person to include brokers, professional custodians of securities, issuers of securities, and trustee and custodians of individual retirement plans. This definition effectuates the Act by giving the broker that receives the transfer statement the information necessary to accurately report the sale of the security regardless of how the owner previously held its custody. The regulations limit the impact on small entities by limiting reporting to necessary entities and information.

Section 403(d) of the Act requires reporting by all issuers of specified securities regardless of size or whether the securities are publicly traded. The regulations limit the reporting burden by requiring only necessary information and by permitting issuers to report actions publicly instead of by furnishing a statement to each nominee or holder. The regulations therefore mitigate the statutory impact on small entities.

Therefore, because this regulation will not have a significant economic impact on a substantial number of small entities, a regulatory flexibility analysis is not required. Pursuant to section 7805(f) of the Code, the notice of proposed rulemaking preceding this regulation has been submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

**Drafting Information**

The principal authors of these proposed regulations are Edward C. Schwartz, Amy J. Pfalzgraf, and William L. Candler, Office of Associate Chief Counsel (Income Tax and Accounting), and Stephen Schaeffer, Office of Associate Chief Counsel (Procedure and Administration). However, other personnel from the IRS and the Treasury Department participated in their development.

**List of Subjects**

*26 CFR Part 1*

Income taxes, Reporting and recordkeeping requirements.

*26 CFR Part 31*

Employment taxes, Income taxes, Penalties, Pensions, Railroad retirement, Reporting and recordkeeping requirements, Social security, Unemployment compensation.

*26 CFR Part 301*

Employment taxes, Estate taxes, Excise taxes, Gift taxes, Income taxes, Penalties, Reporting and recordkeeping requirements.

*26 CFR Part 602*

Reporting and recordkeeping requirements.

**Adoption of Amendments to the Regulations**

■ Accordingly, 26 CFR parts 1, 31, 301, and 602 are amended as follows:

## PART 1—INCOME TAXES

■ **Paragraph 1.** The authority citation for part 1 is amended by adding entries in numerical order to read in part as follows:

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

Section 1.6045A–1 also issued under 26 U.S.C. 6045A(a), (b), (c).

Section 1.6045B–1 also issued under 26 U.S.C. 6045B(a), (c), (e). * * *

■ **Par. 2.** Section 1.408–7 is amended by adding two new sentences at the end of paragraph (d)(2) to read as follows:

**§ 1.408–7 Reports on distributions from individual retirement plans.**

* * * * *

(d) * * *

(2) * * * However, for a distribution after December 31, 2008, the February 15 due date under section 6045 applies to the statement if the statement is furnished in a consolidated reporting statement under section 6045. *See* §§ 1.6045–1(k)(3), 1.6045–2(d)(2), 1.6045–3(e)(2), 1.6045–4(m)(3), and 1.6045–5(a)(3)(ii).

* * * * *

■ **Par. 3.** Section 1.1012–1 is amended by:

■ 1. Revising paragraphs (c)(1), (c)(4), (c)(6), (c)(7)(ii), (c)(7)(iii) introductory text, and (c)(7)(iii)(*a*).

■ 2. Adding new paragraphs (c)(8), (c)(9), (c)(10), and (c)(11).

■ 3. Revising the heading of paragraphs (e) and (e)(5).

■ 4. Revising paragraphs (e)(1), (e)(2), (e)(3), (e)(4), (e)(6), and (e)(7).

■ 5. Adding new paragraphs (e)(8), (e)(9), (e)(10), (e)(11), and (e)(12).

The additions and revisions read as follows:

**§ 1.1012–1 Basis of property.**

* * * * *

(c) *Sale of stock*—(1) *In general.* (i) Except as provided in paragraph (e)(2) of this section (dealing with stock for which the average basis method is permitted), if a taxpayer sells or transfers shares of stock in a corporation that the taxpayer purchased or acquired on different dates or at different prices and the taxpayer does not adequately identify the lot from which the stock is sold or transferred, the stock sold or transferred is charged against the earliest lot the taxpayer purchased or acquired to determine the basis and holding period of the stock. If the earliest lot purchased or acquired is held in a stock certificate that represents multiple lots of stock, and the taxpayer does not adequately identify the lot from which the stock is sold or transferred, the stock sold or transferred is charged against the earliest lot included in the certificate. See paragraphs (c)(2), (c)(3), and (c)(4) of this section for rules on what constitutes an adequate identification.

(ii) A taxpayer must determine the basis of identical stock (within the meaning of paragraph (e)(4) of this section) by averaging the cost of each share if the stock is purchased at separate times on the same calendar day in executing a single trade order and the broker executing the trade provides a single confirmation that reports an aggregate total cost or an average cost per share. However, the taxpayer may determine the basis of the stock by the actual cost per share if the taxpayer notifies the broker in writing of this intent. The taxpayer must notify the broker by the earlier of the date of the sale of any of the stock for which the taxpayer received the confirmation or one year after the date of the confirmation. A broker may extend the one-year period but the taxpayer must notify the broker no later than the date of sale of any of the stock.

* * * * *

(4) *Stock held by a trustee, executor, or administrator.* (i) A trustee or executor or administrator of an estate holding stock (not left in the custody of a broker) makes an adequate identification if the trustee, executor, or administrator—

(*a*) Specifies in writing in the books and records of the trust or estate the particular stock to be sold, transferred, or distributed;

(*b*) In the case of a distribution, furnishes the distributee with a written document identifying the particular stock distributed; and

(*c*) In the case of a sale or transfer through a broker or other agent, specifies to the broker or agent the particular stock to be sold or transferred, and within a reasonable time thereafter the broker or agent confirms the specification in a written document.

(ii) The stock the trust or estate identifies under paragraph (c)(4)(i) of this section is the stock treated as sold, transferred, or distributed, even if the trustee, executor, or administrator delivers stock certificates from a different lot.

* * * * *

(6) *Bonds.* Paragraphs (1) through (5), (8), and (9) of this section apply to the sale or transfer of bonds.

(7) * * *

(ii) In applying paragraph (c)(3)(i)(*b*) of this section to a sale or transfer of a book-entry security pursuant to a taxpayer's written instruction, a confirmation is made by furnishing to the taxpayer a written advice of transaction from the Reserve Bank or other person through whom the taxpayer sells or transfers the securities. The confirmation document must describe the securities and specify the date of the transaction and amount of securities sold or transferred.

(iii) For purposes of this paragraph (c)(7):

(*a*) The term *book-entry security* means a transferable Treasury bond, note, certificate of indebtedness, or bill issued under the Second Liberty Bond Act (31 U.S.C. 774(2)), as amended, or other security of the United States (as defined in paragraph (c)(7)(iii)(*b*) of this section) in the form of an entry made as prescribed in 31 CFR Part 306, or other comparable Federal regulations, on the records of a Reserve Bank.

* * * * *

(8) *Time for making identification.* For purposes of this paragraph (c), an adequate identification of stock is made at the time of sale, transfer, delivery, or distribution if the identification is made no later than the earlier of the settlement date or the time for settlement required by Rule 15c6–1 under the Securities Exchange Act of 1934, 17 CFR 240.15c6–1 (or its successor). A standing order or instruction for the specific identification of stock is treated as an adequate identification made at the time of sale, transfer, delivery, or distribution.

(9) *Method of writing.* (i) A written confirmation, record, document, instruction, notification, or advice includes a writing in electronic format.

(ii) A broker or agent may include the written confirmation required under this paragraph (c) in an account statement or other document the broker or agent periodically provides to the taxpayer if the broker or agent provides the statement or other document within a reasonable time after the sale or transfer.

(10) *Method for determining basis of stock.* A method of determining the basis of stock, including a method of identifying stock sold under this paragraph (c) and the average basis method described in paragraph (e) of this section, is not a method of accounting. Therefore, a change in a method of determining the basis of stock is not a change in method of accounting to which sections 446 and 481 apply.

(11) *Effective/applicability date.* Paragraphs (c)(1), (c)(4), (c)(6), (c)(7)(ii), (c)(7)(iii)(*a*), (c)(8), (c)(9), and (c)(10) of this section apply for taxable years beginning after October 18, 2010.

* * * * *

(e) *Election to use average basis method*—(1) *In general.* Notwithstanding paragraph (c) of this section, and except as provided in paragraph (e)(8) of this section, a taxpayer may use the average basis method described in paragraph (e)(7) of this section to determine the cost or other basis of identical shares of stock if—

(i) The taxpayer leaves shares of stock in a regulated investment company (as defined in paragraph (e)(5) of this section) or shares of stock acquired after December 31, 2010, in connection with a dividend reinvestment plan (as defined in paragraph (e)(6) of this section) with a custodian or agent in an account maintained for the acquisition or redemption, sale, or other disposition of shares of the stock; and

(ii) The taxpayer acquires identical shares of stock at different prices or bases in the account.

(2) *Determination of method.* (i) If a taxpayer places shares of stock described in paragraph (e)(1)(i) of this section acquired on or after January 1, 2012, in the custody of a broker (as defined by section 6045(c)(1)), including by transfer from an account with another broker, the basis of the shares is determined in accordance with the broker's default method, unless the taxpayer notifies the broker that the taxpayer elects another permitted method. The taxpayer must report gain or loss using the method the taxpayer elects or, if the taxpayer fails to make an election, the broker's default method. *See* paragraphs (e)(9)(i) and (e)(9)(v), *Example 2,* of this section.

(ii) The provisions of this paragraph (e)(2) are illustrated by the following example:

*Example.* (i) In connection with a dividend reinvestment plan, Taxpayer B acquires 100 shares of G Company in 2012 and 100 shares of G Company in 2013, in an account B maintains with R Broker. B notifies R in writing that B elects to use the average basis method to compute the basis of the shares of G Company. In 2014, B transfers the shares of G Company to an account with S Broker. B does not notify S of the basis determination method B chooses to use for the shares of G Company, and S's default method is first-in, first-out. In 2015, B purchases 200 shares of G Company in the account with S. In 2016, B instructs S to sell 150 shares of G Company.

(ii) Because B does not notify S of a basis determination method for the shares of G Company, under paragraph (e)(2)(i) of this section, the basis of the 150 shares of G Company S sells for B in 2016 must be determined under S's default method, first-in, first-out.

(3) *Shares of stock.* For purposes of this paragraph (e), securities issued by unit investment trusts described in paragraph (e)(5) of this section are treated as shares of stock and the term *share* or *shares* includes fractions of a share.

(4) *Identical stock.* For purposes of this paragraph (e), *identical shares of stock* means stock with the same Committee on Uniform Security Identification Procedures (CUSIP) number or other security identifier number as permitted in published guidance of general applicability, *see* § 601.601(d)(2) of this chapter.

(5) *Regulated investment company.* * * *

(6) *Dividend reinvestment plan*—(i) *In general.* For purposes of this paragraph (e), the term *dividend reinvestment plan* means any written plan, arrangement, or program under which at least 10 percent of every dividend (within the meaning of section 316) on any share of stock is reinvested in stock identical to the stock on which the dividend is paid. A plan is a dividend reinvestment plan if the plan documents require that at least 10 percent of any dividend paid is reinvested in identical stock even if the plan includes stock on which no dividends have ever been declared or paid or on which an issuer ceases paying dividends. A plan that holds one or more different stocks may permit a taxpayer to reinvest a different percentage of dividends in the stocks held. A dividend reinvestment plan may reinvest other distributions on stock, such as capital gain distributions, non-taxable returns of capital, and cash in lieu of fractional shares. The term dividend reinvestment plan includes both issuer administered dividend reinvestment plans and non-issuer administered dividend reinvestment plans.

(ii) *Acquisition of stock.* Stock is acquired in connection with a dividend reinvestment plan if the stock is acquired under that plan, arrangement, or program, or if the dividends and other distributions paid on the stock are subject to that plan, arrangement, or program. Shares of stock acquired in connection with a dividend reinvestment plan include the initial purchase of stock in the dividend reinvestment plan, transfers of identical stock into the dividend reinvestment plan, additional periodic purchases of

identical stock in the dividend reinvestment plan, and identical stock acquired through reinvestment of the dividends or other distributions paid on the stock held in the plan.

(iii) *Dividends and other distributions paid after reorganization.* For purposes of this paragraph (e)(6), dividends and other distributions declared or announced before or pending a corporate action (such as a merger, consolidation, acquisition, split-off, or spin-off) involving the issuer and subsequently paid and reinvested in shares of stock in the successor entity or entities are treated as reinvested in shares of stock identical to the shares of stock of the issuer.

(iv) *Withdrawal from or termination of plan.* If a taxpayer withdraws stock from a dividend reinvestment plan or the plan administrator terminates the dividend reinvestment plan, the shares of identical stock the taxpayer acquires after the withdrawal or termination are not acquired in connection with a dividend reinvestment plan. The taxpayer may not use the average basis method after the withdrawal or termination but may use any other permissible basis determination method. See paragraph (e)(7)(v) of this section for the basis of the shares after withdrawal or termination.

(7) *Computation of average basis*—(i) *In general.* Average basis is determined by averaging the basis of all shares of identical stock in an account regardless of holding period. However, for this purpose, shares of stock in a dividend reinvestment plan are not identical to shares of stock with the same CUSIP number that are not in a dividend reinvestment plan. The basis of each share of identical stock in the account is the aggregate basis of all shares of that stock in the account divided by the aggregate number of shares. Unless a single-account election is in effect, see paragraph (e)(11) of this section, a taxpayer may not average together the basis of identical stock held in separate accounts that the taxpayer sells, exchanges, or otherwise disposes of on or after January 1, 2012.

(ii) *Order of disposition of shares sold or transferred.* In the case of the sale or transfer of shares of stock to which the average basis method election applies, shares sold or transferred are deemed to be the shares first acquired. Thus, the first shares sold or transferred are those with a holding period of more than 1 year (long-term shares) to the extent that the account contains long-term shares. If the number of shares sold or transferred exceeds the number of long-term shares in the account, the excess shares sold or transferred are deemed to be shares with a holding period of 1 year or less (short-term shares). Any gain or loss attributable to shares held for more than 1 year constitutes long-term gain or loss, and any gain or loss attributable to shares held for 1 year or less constitutes short-term gain or loss. For example, if a taxpayer sells 50 shares from an account containing 100 long-term shares and 100 short-term shares, the shares sold or transferred are all long-term shares. If, however, the account contains 40 long-term shares and 100 short-term shares, the taxpayer has sold 40 long-term shares and 10 short-term shares.

(iii) *Transition rule from double-category method.* This paragraph (e)(7)(iii) applies to stock for which a taxpayer uses the double-category method under § 1.1012–1(e)(3) (April 1, 2010), that the taxpayer acquired before April 1, 2011, and that the taxpayer sells, exchanges, or otherwise disposes of on or after that date. The taxpayer must calculate the average basis of this stock by averaging together all identical shares of stock in the account on April 1, 2011, regardless of holding period.

(iv) *Wash sales.* A taxpayer must apply section 1091 and the associated regulations (dealing with wash sales of substantially identical securities) in computing average basis regardless of whether the stock or security sold or otherwise disposed of and the stock acquired are in the same account or in different accounts.

(v) *Basis after change from average basis method.* Unless a taxpayer revokes an average basis method election under paragraph (e)(9)(iii) of this section, if a taxpayer changes from the average basis method to another basis determination method (including a change resulting from a withdrawal from or termination of a dividend reinvestment plan), the basis of each share of stock immediately after the change is the same as the basis immediately before the change. *See* paragraph (e)(9)(iv) of this section for rules for changing from the average basis method.

(vi) The provisions of this paragraph (e)(7) are illustrated by the following examples:

*Example 1.* (i) In 2011, Taxpayer C acquires 100 shares of H Company and enrolls them in a dividend reinvestment plan administered by T Custodian. C elects to use the average basis method for the shares of H Company enrolled in the dividend reinvestment plan. T also acquires for C's account 50 shares of H Company and does not enroll these shares in the dividend reinvestment plan.

(ii) Under paragraph (e)(7)(i) of this section, the 50 shares of H Company not in the dividend reinvestment plan are not identical to the 100 shares of H Company enrolled in the dividend reinvestment plan, even if they have the same CUSIP number. Accordingly, under paragraphs (e)(1) and (e)(7)(i) of this section, C may not average the basis of the 50 shares of H Company with the basis of the 100 shares of H Company. Under paragraph (e)(1)(i) of this section, C may not use the average basis method for the 50 shares of H Company because the shares are not acquired in connection with a dividend reinvestment plan.

*Example 2.* (i) Taxpayer D enters into an agreement with W Custodian establishing an account for the periodic acquisition of shares of L Company, a regulated investment company. W acquires for D's account shares of L Company stock on the following dates and amounts:

| Date | Number of shares | Cost |
|---|---|---|
| January 8, 2010 ..... | 25 | $200 |
| February 8, 2010 ..... | 24 | 200 |
| March 8, 2010 ..... | 20 | 200 |
| April 8, 2010 ..... | 20 | 200 |

(ii) At D's direction, W sells 40 shares from the account on January 15, 2011, for $10 per share or a total of $400. D elects to use the average basis method for the shares of L Company. The average basis for the shares sold on January 15, 2011, is $8.99 (total cost of shares, $800, divided by the total number of shares, 89).

(iii) Under paragraph (e)(7)(ii) of this section, the shares sold are the shares first acquired. Thus, D realizes $25.25 ($1.01 * 25) long-term capital gain for the 25 shares acquired on January 8, 2010, and $15.15 ($1.01 * 15) short-term capital gain for 15 of the shares acquired on February 8, 2010.

*Example 3.* (i) The facts are the same as in *Example 2,* except that on February 8, 2011, D changes to the first-in, first-out basis determination method. W purchases 25 shares of L Company for D on March 8, 2011, at $12 per share. D sells 40 shares on May 8, 2011, and 34 shares on July 8, 2012.

(ii) Because D uses the first-in, first-out method, the 40 shares sold on May 8, 2011 are 9 shares purchased on February 8, 2010, 20 shares purchased on March 8, 2010, and 11 shares purchased on April 8, 2010. Because, under paragraph (e)(7)(v) of this section, the basis of the shares D owns when D changes from the average basis method remains the same, the basis of the shares sold on May 8, 2011, is $8.99 per share, not the original cost of $8.33 per share for the shares purchased on February 8, 2010, or $10 per share for the shares purchased on March 8, 2010, and April 8, 2010. The basis of the shares sold on July 8, 2012, is $8.99 per share for 9 shares purchased on April 8, 2010, and $12 per share for 25 shares purchased on March 8, 2011.

*Example 4.* (i) The facts are the same as in *Example 2,* except that D uses the first-in, first-out method for the 40 shares sold on January 15, 2011. W purchases 25 shares of L Company for D on March 8, 2011, at $12 per share. D sells 40 shares on May 8, 2011, and elects the average basis method.

(ii) Because D uses the first-in, first-out method for the sale on January 15, 2011, the 40 shares sold are the 25 shares acquired on

January 8, 2010, for $200 (basis $8 per share) and 15 of the 24 shares purchased on February 8, 2010, for $200 (basis $8.33 per share).

(iii) Under paragraph (e)(7)(i) of this section, under the average basis method, the basis of all of the shares of identical stock in D's account is averaged. Thus, the basis of each share D sells on May 8, 2011, after electing the average basis method, is $10.47. This figure is the total cost of the shares in D's account ($74.97 for the 9 shares acquired on February 8, 2010, $200 for the 20 shares acquired on March 8, 2010, $200 for the 20 shares acquired on April 8, 2010, and $300 for the 25 shares acquired on March 8, 2011) divided by 74, the total number of shares ($774.97/74).

(8) *Limitation on use of average basis method for certain gift shares.* (i) Except as provided in paragraph (e)(8)(ii) of this section, a taxpayer may not use the average basis method for shares of stock a taxpayer acquires by gift after December 31, 1920, if the basis of the shares (adjusted for the period before the date of the gift as provided in section 1016) in the hands of the donor or the last preceding owner by whom the shares were not acquired by gift was greater than the fair market value of the shares at the time of the gift. This paragraph (e)(8)(i) does not apply to shares the taxpayer acquires as a result of a taxable dividend or capital gain distribution on the gift shares.

(ii) Notwithstanding paragraph (e)(8)(i) of this section, a taxpayer may use the average basis method if the taxpayer states in writing that the taxpayer will treat the basis of the gift shares as the fair market value of the shares at the time the taxpayer acquires the shares. The taxpayer must provide this statement when the taxpayer makes the election under paragraph (e)(9) of this section or when transferring the shares to an account for which the taxpayer has made this election, whichever occurs later. The statement must be effective for any gift shares identical to the gift shares to which the average basis method election applies that the taxpayer acquires at any time and must remain in effect as long as the election remains in effect.

(iii) The provisions of this paragraph (e)(8) are illustrated by the following examples:

*Example 1.* (i) Taxpayer E owns an account for the periodic acquisition of shares of M Company, a regulated investment company. On April 15, 2010, E acquires identical shares of M Company by gift and transfers those shares into the account. These shares had an adjusted basis in the hands of the donor that was greater than the fair market value of the shares on that date. On June 15, 2010, E sells shares from the account and elects to use the average basis method.

(ii) Under paragraph (e)(8)(ii) of this section, E may elect to use the average basis method for shares sold or transferred from the account if E includes a statement with E's election that E will treat the basis of the gift shares in the account as the fair market value of the shares at the time E acquired them. *See* paragraph (e)(9)(ii) of this section.

*Example 2.* (i) The facts are the same as in *Example 1,* except E acquires the gift shares on April 15, 2012, transfers those shares into the account, and used the average basis method for sales of shares of M Company before acquiring the gift shares. E sells shares of M Company on June 15, 2012.

(ii) Under paragraph (e)(8)(ii) of this section, the basis of the gift shares may be averaged with the basis of the other shares of M Company in E's account if, when E transfers the gift shares to the account, E provides a statement to E's broker that E will treat the basis of the gift shares in the account as the fair market value of the shares at the time E acquired them. *See* paragraph (e)(9)(i) of this section.

(9) *Time and manner for making the average basis method election*—(i) *In general.* A taxpayer makes an election to use the average basis method for shares of stock described in paragraph (e)(1)(i) of this section that are covered securities (within the meaning of section 6045(g)(3)) by notifying the custodian or agent in writing by any reasonable means. For purposes of this paragraph (e), a writing may be in electronic format. A taxpayer has not made an election within the meaning of this section if the taxpayer fails to notify a broker of the taxpayer's basis determination method and basis is determined by the broker's default method under paragraph (e)(2) of this section. A taxpayer may make the average basis method election at any time, effective for sales or other dispositions of stock occurring after the taxpayer notifies the custodian or agent. The election must identify each account with that custodian or agent and each stock in that account to which the election applies. The election may specify that it applies to all accounts with a custodian or agent, including accounts the taxpayer later establishes with the custodian or agent. If the election applies to gift shares, the taxpayer must provide the statement required by paragraph (e)(8)(ii) of this section, if applicable, to the custodian or agent with the taxpayer's election.

(ii) *Average basis method election for securities that are noncovered securities.* A taxpayer makes an election to use the average basis method for shares of stock described in paragraph (e)(1)(i) of this section that are noncovered securities (as described in § 1.6045–1(a)(16)) on the taxpayer's income tax return for the first taxable year for which the election applies. A taxpayer may make the election on an amended return filed no later than the time prescribed (including extensions) for filing the original return for the taxable year for which the election applies. The taxpayer must indicate on the return that the taxpayer used the average basis method in reporting gain or loss on the sale or other disposition. A taxpayer must attach to the return the statement described in paragraph (e)(8)(ii) of this section, if applicable. A taxpayer making the election must maintain records necessary to substantiate the average basis reported.

(iii) *Revocation of election.* A taxpayer may revoke an election under paragraph (e)(9)(i) of this section by the earlier of one year after the taxpayer makes the election or the date of the first sale, transfer, or disposition of that stock following the election. A custodian or agent may extend the one-year period but a taxpayer may not revoke an election after the first sale, transfer, or disposition of the stock. A revocation applies to all stock the taxpayer holds in an account that is identical to the shares of stock for which the taxpayer revokes the election. A revocation is effective when the taxpayer notifies, in writing by any reasonable means, the custodian or agent holding the stock to which the revocation applies. After revocation, the taxpayer's basis in the shares of stock to which the revocation applies is the basis before averaging.

(iv) *Change from average basis method.* A taxpayer may change basis determination methods from the average basis method to another method prospectively at any time. A change from the average basis method applies to all identical stock the taxpayer sells or otherwise disposes of before January 1, 2012, that was held in any account. A change from the average basis method applies on an account by account basis (within the meaning of paragraph (e)(10) of this section) to all identical stock the taxpayer sells or otherwise disposes of on or after January 1, 2012. The taxpayer must notify, in writing by any reasonable means, the custodian or agent holding the stock to which the change applies. Unless paragraph (e)(9)(iii) of this section applies, the basis of each share of stock to which the change applies remains the same as the basis immediately before the change. *See* paragraph (e)(7)(v) of this section.

(v) *Examples.* The provisions of this paragraph (e)(9) are illustrated by the following examples:

*Example 1.* (i) Taxpayer F enters into an agreement with W Custodian establishing an account for the periodic acquisition of shares of N Company, a regulated investment company. W acquires for F's account shares

of N Company on the following dates and amounts:

| Date | Number of shares | Cost |
|---|---|---|
| January 8, 2012 ..... | 25 | $200 |
| February 8, 2012 ..... | 24 | 200 |
| March 8, 2012 ..... | 20 | 200 |

(ii) F notifies W that F elects, under paragraph (e)(9)(i) of this section, to use the average basis method for the shares of N Company. On May 8, 2012, under paragraph (e)(9)(iii) of this section, F notifies W that F revokes the average basis method election. On June 1, 2012, F sells 60 shares of N Company using the first-in, first-out basis determination method.

(iii) Under paragraph (e)(9)(iii) of this section, the basis of the N Company shares upon revocation, and for purposes of determining gain on the sale, is $8.00 per share for each of the 25 shares purchased on January 8, 2012, $8.34 per share for each of the 24 shares purchased on February 8, 2012, and $10 per share for the remaining 11 shares purchased on March 8, 2012.

*Example 2.* (i) The facts are the same as in *Example 1,* except that F does not notify W that F elects a basis determination method. W's default basis determination method is the average basis method and W maintains an averaged basis for F's shares of N Company on W's books and records.

(ii) F has not elected the average basis method under paragraph (e)(9)(i) of this section. Therefore, F's notification to W on May 8, 2012, is not an effective revocation under paragraph (e)(9)(iii) of this section. F's attempted revocation is, instead, notification of a change from the average basis method under paragraph (e)(9)(iv) of this section. Accordingly, the basis of each share of stock F sells on June 1, 2012, is the basis immediately before the change, $8.70 (total cost of shares, $600, divided by the total number of shares, 69).

(10) *Application of average basis method account by account*—(i) *In general.* For sales, exchanges, or other dispositions on or after January 1, 2012, of stock described in paragraph (e)(1)(i) of this section, the average basis method applies on an account by account basis. A taxpayer may use the average basis method for stock in a regulated investment company or stock acquired in connection with a dividend reinvestment plan in one account but use a different basis determination method for identical stock in a different account. If a taxpayer uses the average basis method for a stock described in paragraph (e)(1)(i) of this section, the taxpayer must use the average basis method for all identical stock within that account. The taxpayer may use different basis determination methods for stock within an account that is not identical. Except as provided in paragraph (e)(10)(ii) of this section, a taxpayer must make separate elections to use the average basis method for stock held in separate accounts.

(ii) *Account rule for stock sold before 2012.* A taxpayer's election to use the average basis method for shares of stock described in paragraph (e)(1)(i) of this section that a taxpayer sells, exchanges, or otherwise disposes of before January 1, 2012, applies to all identical shares of stock the taxpayer holds in any account.

(iii) *Separate account.* Unless the single-account election described in paragraph (e)(11)(i) of this section applies, stock described in paragraph (e)(1)(i) of this section that is a covered security (within the meaning of section 6045(g)(3)) is treated as held in a separate account from stock that is a noncovered security (as described in § 1.6045–1(a)(16)), regardless of when acquired.

(iv) *Examples.* The provisions of this paragraph (e)(10) are illustrated by the following examples:

*Example 1.* (i) In 2012, Taxpayer G enters into an agreement with Y Broker establishing three accounts (G–1, G–2, and G–3) for the periodic acquisition of shares of P Company, a regulated investment company. Y makes periodic purchases of P Company for each of G's accounts. G elects to use the average basis method for account G–1. On July 1, 2013, G sells shares of P Company from account G–1.

(ii) G is not required to use the average basis method for the shares of P Company that G holds in accounts G–2 and G–3 because, under paragraph (e)(10)(i) of this section, the average basis method election applies to shares sold after 2011 on an account by account basis.

*Example 2.* The facts are the same as in *Example 1,* except that G also instructs Y to acquire shares of Q Company, a regulated investment company, for account G–1. Under paragraph (e)(10)(i) of this section, G may use any permissible basis determination method for the shares of Q Company because, under paragraph (e)(4) of this section, the shares of Q Company are not identical to the shares of P Company.

*Example 3.* (i) The facts are the same as in *Example 1,* except that G establishes the accounts in 2011 and Y sells shares of P Company from account G–1 on July 1, 2011.

(ii) For sales before 2012, under paragraph (e)(10)(ii) of this section, G's election applies to all accounts in which G holds identical stock. G must average together the basis of the shares in all accounts to determine the basis of the shares sold from account G–1.

*Example 4.* (i) In 2011, Taxpayer H acquires 80 shares of R Company and enrolls them in R Company's dividend reinvestment plan. In 2012, H acquires 50 shares of R Company in the dividend reinvestment plan. H elects to use the average basis method for the shares of R Company in the dividend reinvestment plan. R Company does not make the single-account election under paragraph (e)(11)(i) of this section.

(ii) Under section 6045(g)(3) and § 1.6045–1(a)(16), the 80 shares acquired in 2011 are noncovered securities and the 50 shares acquired in 2012 are covered securities. Therefore, under paragraph (e)(10)(iii) of this section, the 80 shares are treated as held in a separate account from the 50 shares. H must make a separate average basis method election for each account and must average the basis of the shares in each account separately from the shares in the other account.

*Example 5.* (i) B Broker maintains an account for Taxpayer J for the periodic acquisition of shares of S Company, a regulated investment company. In 2013, B purchases shares of S Company for J's account that are covered securities within the meaning of section 6045(g)(3). On April 15, 2014, J inherits shares of S Company that are noncovered securities and transfers the shares into the account with B.

(ii) Under paragraph (e)(10)(iii) of this section, J must treat the purchased shares and the inherited shares of S Company as held in separate accounts. J may elect to apply the average basis method to all the shares of S Company, but must make a separate election for each account, and must average the basis of the shares in each account separately from the shares in the other account.

*Example 6.* (i) In 2010, Taxpayer K purchases stock in T Company in an account with C Broker. In 2012, K purchases additional T Company stock and enrolls that stock in a dividend reinvestment plan maintained by C. K elects the average basis method for the T Company stock. In 2013, K transfers the T Company stock purchased in 2010 into the dividend reinvestment plan.

(ii) Under paragraphs (e)(1)(i) and (e)(6)(ii) of this section, the stock purchased in 2010 is not stock acquired after December 31, 2010, in connection with a dividend reinvestment plan before transfer into the dividend reinvestment plan. Therefore, the stock is not eligible for the average basis method at that time.

(iii) Once transferred into the dividend reinvestment plan in 2013, the stock K purchased in 2010 is acquired after December 31, 2010, in connection with a dividend reinvestment plan within the meaning of paragraph (e)(6)(ii) of this section and is eligible for the average basis method. Because stock purchased in 2010 is a noncovered security under § 1.6045–1(a)(16), under paragraph (e)(10)(iii) of this section, the 2010 stock and the 2012 stock must be treated as held in separate accounts. Under paragraph (e)(7)(i) of this section, the basis of the 2010 shares may not be averaged with the basis of the 2012 shares.

*Example 7.* The facts are the same as in *Example 6,* except that K purchases the initial T Company stock in January 2011. Because this stock is a covered security under section 6045(g)(3) and § 1.6045–1(a)(15)(iv)(A), the 2011 stock and the 2012 stock are not required under paragraph (e)(10)(iii) of this section to be treated as held in separate accounts. Under paragraph (e)(7)(i) of this section, the basis of the 2011 shares must be averaged with the basis of the 2012 shares.

*Example 8.* (i) The facts are the same as in *Example 7,* except that K purchases the additional T Company stock and enrolls in

the dividend reinvestment plan in March 2011. In September 2011, K transfers the T Company stock purchased in January 2011 into the dividend reinvestment plan. K sells some of the T Company stock in 2012.

(ii) Under section 6045(g)(3) and § 1.6045–1(a)(16), the stock K purchases in January 2011 is a covered security at the time of purchase but the stock K purchases and enrolls in the dividend reinvestment plan in March 2011 is a noncovered security. However, under § 1.6045–1(a)(15)(iv)(A), the stock purchased in January 2011 becomes a noncovered security after it is transferred to the dividend reinvestment plan. Because all the shares in the dividend reinvestment plan in September 2011 are noncovered securities, when K sells stock in 2012, the January 2011 stock and the March 2011 stock are not required under paragraph (e)(10)(iii) of this section to be treated as held in separate accounts. Under paragraph (e)(7)(i) of this section, the basis of the January 2011 shares must be averaged with the basis of the March 2011 shares.

(11) *Single-account election*—(i) *In general.* Paragraph (e)(10)(iii) of this section does not apply if a regulated investment company or dividend reinvestment plan elects to treat all identical shares of stock described in paragraph (e)(1)(i) of this section as held in a single account (single-account election). The single-account election applies only to stock for which a taxpayer elects to use the average basis method that is held in separate accounts or treated as held in separate accounts maintained for the taxpayer and only to accounts with the same ownership. If a broker (as defined by section 6045(c)(1)) holds the stock as a nominee, the broker, and not the regulated investment company or dividend reinvestment plan, makes the election. The single-account election is irrevocable, but is void if the taxpayer revokes the average basis election under paragraph (e)(9)(iii) of this section.

(ii) *Scope of election.* A company, plan, or broker may make a single-account election for one or more taxpayers for which it maintains an account, and for one or more stocks it holds for a taxpayer. The company, plan, or broker may make the election only for the shares of stock for which it has accurate basis information. A company, plan, or broker has accurate basis information if the company, plan, or broker neither knows nor has reason to know that the basis information is inaccurate. *See* also section 6724 and the associated regulations regarding standards for relief from information reporting penalties. Stock for which accurate basis information is unavailable may not be included in the single-account election and must be treated as held in a separate account.

(iii) *Effect of single-account election.* If a company, plan, or broker makes the single-account election, the basis of all identical shares of stock to which the election applies must be averaged together regardless of when the taxpayer acquires the shares, and all the shares are treated as covered securities. The single-account election applies to all identical stock a taxpayer later acquires in the account that is a covered security (within the meaning of section 6045(g)(3)). A company, plan, or broker may make another single-account election if, for example, the broker later acquires accurate basis information for a stock, or a taxpayer acquires identical stock in the account that is a noncovered security (as described in § 1.6045–1(a)(16)) for which the company, plan, or broker has accurate basis information.

(iv) *Time and manner for making the single-account election.* A company, plan, or broker makes the single-account election by clearly noting it on its books and records. The books and records must reflect the date of the election; the taxpayer's name, account number, and taxpayer identification number; the stock subject to the election; and the taxpayer's basis in the stock. The company, plan, or broker must provide copies of the books and records regarding the election to the taxpayer upon request. A company, plan, or broker may make the single-account election at any time.

(v) *Notification to taxpayer.* A company, plan, or broker making the single-account election must use reasonable means to notify the taxpayer of the election. Reasonable means include mailings, circulars, or electronic mail sent separately to the taxpayer or included with the taxpayer's account statement, or other means reasonably calculated to provide actual notice to the taxpayer. The notice must identify the securities subject to the election and advise the taxpayer that the securities will be treated as covered securities regardless of when acquired.

(vi) *Examples.* The provisions of this paragraph (e)(11) are illustrated by the following examples:

*Example 1.* (i) E Broker maintains Accounts A and B for Taxpayer M for the acquisition and disposition of shares of T Company, a regulated investment company. In 2011, E purchases 100 shares of T Company for M's Account A. E has accurate basis information for these shares. In 2012, E purchases 150 shares of T Company for M's Account A and 80 shares of T Company for M's Account B. M elects to use the average basis method for all shares of T Company. E makes a single-account election for M's T Company stock.

(ii) The shares of T Company in Accounts A and B are held in separate accounts. Under section 6045(g)(3) and § 1.6045–1(a)(16), of the shares purchased in Account A, the 100 shares purchased in 2011 are noncovered securities and the 150 shares purchased in 2012 are covered securities. Under paragraph (e)(10)(iii) of this section, the 100 shares are treated as held in a separate account from the 150 shares. Under paragraph (e)(11)(i) of this section, the single-account election applies to all 330 shares of T Company in Accounts A and B. Thus, under paragraph (e)(11)(iii) of this section, the basis of the 330 shares of stock is averaged together and all the shares are treated as covered securities.

*Example 2.* The facts are the same as in *Example 1,* except that M owns Account B jointly with Taxpayer N. E may make a single-account election for the 250 shares of stock in M's Account A. However, under paragraph (e)(11)(i) of this section, E may not make a single-account election for Accounts A and B because the accounts do not have the same ownership.

*Example 3.* (i) C Broker maintains an account for Taxpayer K for the acquisition and disposition of shares of T Company, a regulated investment company, and shares of V Company that K enrolls in C's dividend reinvestment plan. In 2011, C purchases for K's account 100 shares of T Company in multiple lots and 80 shares of V Company in multiple lots that are enrolled in the dividend reinvestment plan. C has accurate basis information for all 100 shares of T Company and 80 shares of V Company. In 2012, C acquires for K's account 150 shares of T Company and 160 shares of V Company that are enrolled in the dividend reinvestment plan. K elects to use the average basis method for all the shares of T Company and V Company.

(ii) Under paragraphs (e)(11)(i) and (ii) of this section, C may make a single-account election for the T Company stock or the V Company stock, or both. After making a single-account election for each stock, under paragraph (e)(11)(iii) of this section, the basis of all T Company stock is averaged together and the basis of all V Company stock is averaged together, regardless of when acquired, and all the shares of T Company and V Company are treated as covered securities.

*Example 4.* The facts are the same as in *Example 3,* except that K transfers the 100 shares of T Company acquired in 2011 from an account with another broker into K's account with C. C does not have accurate basis information for 30 of the 100 shares of T Company, which K had acquired in two lots. Under paragraph (e)(11)(ii) of this section, C may make the single-account election only for the 70 shares of T Company stock for which C has accurate basis information. C must treat the 30 shares of T Company for which C does not have accurate basis information as held in a separate account. K may use the average basis method for the 30 shares of T Company, but must make a separate average basis method election for these shares and must average the basis of these shares separately from the 70 shares subject to C's single-account election.

*Example 5.* The facts are the same as in *Example 3,* except that C has made the single-account election and in 2013 K acquires additional shares of T Company that are covered securities in K's account with C. Under paragraph (e)(11)(iii) of this section, these shares of T Company are subject to C's single-account election.

*Example 6.* The facts are the same as in *Example 3,* except that C has made the single-account election and in 2013 K inherits shares of T Company that are noncovered securities and transfers the shares into the account with C. C has accurate basis information for these shares. Under paragraph (e)(11)(iii) of this section, C may make a second single-account election to include the inherited T Company shares.

*Example 7.* (i) Between 2002 and 2011, Taxpayer L acquires 1,500 shares of W Company, a regulated investment company, in an account with D Broker, for which L uses the average basis method, and sells 500 shares. On January 5, 2012, based on accurate basis information, the averaged basis of L's remaining 1,000 shares of W Company is $24 per share. On January 5, 2012, L acquires 100 shares of W Company for $28 per share and makes an average basis election for those shares under paragraph (e)(9)(i) of this section.

(ii) On February 1, 2012, D makes a single-account election that includes all 1,100 of L's shares in W Company. Thereafter, the basis of L's shares of W Company is $24.36 per share (($24,000 + $2,800)/1,100). On September 12, 2012, under paragraph (e)(9)(iii) of this section, L revokes the average basis election for the 100 shares acquired on January 5, 2012.

(iii) Under paragraph (e)(11)(i) of this section, D's single-account election is void. Therefore, the basis of the 1,000 shares of W Company that L acquires before 2012 is $24 per share and the basis of the 100 shares of W Company that L acquires in 2012 is $28 per share.

(12) *Effective/applicability date.* Except as otherwise provided in paragraphs (e)(1), (e)(2), (e)(7), (e)(9), and (e)(10) of this section, this paragraph (e) applies for taxable years beginning after October 18, 2010.

* * * * *

■ **Par. 4.** Section 1.6039–2 is amended by adding two new sentences at the end of paragraph (c)(1) to read as follows:

**§ 1.6039–2 Statements to persons with respect to whom information is reported.**

* * * * *

(c) * * *

(1) * * * However, for a statement required to be furnished after December 31, 2008, the February 15 due date under section 6045 applies to the statement if the statement is furnished in a consolidated reporting statement under section 6045. *See* §§ 1.6045–1(k)(3), 1.6045–2(d)(2), 1.6045–3(e)(2), 1.6045–4(m)(3), and 1.6045–5(a)(3)(ii).

* * * * *

■ **Par. 5.** Section 1.6042–4 is amended by adding two new sentences at the end of paragraph (e)(1) to read as follows:

**§ 1.6042–4 Statements to recipients of dividend payments.**

* * * * *

(e) * * *

(1) * * * For a statement required to be furnished after December 31, 2008, the February 15 due date under section 6045 applies to the statement if the statement is furnished in a consolidated reporting statement under section 6045. *See* §§ 1.6045–1(k)(3), 1.6045–2(d)(2), 1.6045–3(e)(2), 1.6045–4(m)(3), and 1.6045–5(a)(3)(ii).

* * * * *

■ **Par. 6.** Section 1.6044–5 is amended by adding two new sentences at the end of paragraph (b) to read as follows:

**§ 1.6044–5 Statements to recipients of patronage dividends.**

* * * * *

(b) * * * For a statement required to be furnished after December 31, 2008, the February 15 due date under section 6045 applies to the statement if the statement is furnished in a consolidated reporting statement under section 6045. *See* §§ 1.6045–1(k)(3), 1.6045–2(d)(2), 1.6045–3(e)(2), 1.6045–4(m)(3), and 1.6045–5(a)(3)(ii).

* * * * *

■ **Par. 7.** Section 1.6045–1 is amended by:

■ 1. Revising paragraph (a)(9) and adding paragraphs (a)(14), (a)(15), and (a)(16).

■ 2. Adding *Examples 9, 10,* and *11* to paragraph (b).

■ 3. Revising paragraphs (c)(2), (c)(3)(i)(B)(*1*), and (c)(3)(i)(C).

■ 4. Removing paragraph (c)(3)(xii) and redesignating paragraph (c)(3)(xi) as (c)(3)(xii) and adding a new paragraph (c)(3)(xi).

■ 5. Adding *Examples 7, 8,* and *9* to paragraph (c)(4).

■ 6. Revising paragraphs (d)(1), (d)(2), and (d)(5).

■ 7. Redesignating paragraphs (d)(6) and (d)(7) as (d)(8) and (d)(9) respectively and adding new paragraphs (d)(6) and (d)(7).

■ 8. Revising newly designated paragraphs (d)(8) and (d)(9).

■ 9. Revising paragraphs (e)(2)(i), (f)(2)(i), (k)(1), and (k)(2).

■ 10. Redesignating paragraph (k)(3) as (k)(4) and adding a new paragraph (k)(3).

■ 11. Removing paragraphs (p) and (q) and redesignating paragraph (r) as (p).

The additions and revisions read as follows:

**§ 1.6045–1 Returns of information of brokers and barter exchanges.**

(a) * * *

(9) The term *sale* means any disposition of securities, commodities, regulated futures contracts, or forward contracts, and includes redemptions of stock, retirements of indebtedness, and enterings into short sales, but only to the extent any of these actions are conducted for cash. In the case of a regulated futures contract or a forward contract, a sale is any closing transaction. When a closing transaction in a regulated futures contract involves making or taking delivery, the profit or loss on the contract is a sale and the delivery is a separate sale. When a closing transaction in a forward contract involves making or taking delivery, the delivery is a sale without separating the profit or loss on the contract from the profit or loss on the delivery, except that taking delivery for United States dollars is not a sale. Grants or purchases of options, exercises of call options, and enterings into contracts that require delivery of personal property or an interest therein are not sales. For purposes of this section only, a constructive sale under section 1259 and a mark to fair market value under sections 475 or 1296 are not sales.

* * * * *

(14) The term *specified security* means any share of stock (or any interest treated as stock, including, for example, an American Depositary Receipt) in an entity organized as, or treated for Federal tax purposes as, a corporation (foreign or domestic). Solely for purposes of this paragraph (a)(14), a security classified as stock by the issuer is treated as stock. If the issuer has not classified the security, the security is not treated as stock unless the broker knows that the security is reasonably classified as stock under general Federal tax principles.

(15) The term *covered security* means a specified security described in this paragraph (a)(15).

(i) *In general.* Except as provided in paragraph (a)(15)(iv) of this section, the following securities are covered securities:

(A) A specified security acquired for cash in an account on or after January 1, 2011, except stock for which the average basis method is available under § 1.1012–1(e).

(B) Stock for which the average basis method is available under § 1.1012–1(e) acquired for cash in an account on or after January 1, 2012.

(C) A specified security transferred to an account if the broker or other custodian of the account receives a

transfer statement (as described in § 1.6045A–1) reporting the security as a covered security.

(ii) *Acquired in an account.* For purposes of this paragraph (a)(15), a security is considered acquired in a customer's account at a broker or custodian if the security is acquired by the customer's broker or custodian or acquired by another broker and delivered to the customer's broker or custodian.

(iii) *Corporate actions and other events.* For purposes of this paragraph (a)(15), a security acquired due to a stock dividend, stock split, reorganization, redemption, stock conversion, recapitalization, corporate division, or other similar action is considered acquired for cash in an account.

(iv) *Exceptions.* Notwithstanding paragraph (a)(15)(i) of this section, the following securities are not covered securities:

(A) Stock acquired in 2011 that is transferred to a dividend reinvestment plan (as described in § 1.1012–1(e)(6)) in 2011. However, a covered security acquired in 2011 that is transferred to a dividend reinvestment plan after 2011 remains a covered security.

(B) A security acquired through an event described in paragraph (a)(15)(iii) of this section if the basis of the acquired security is determined from the basis of a noncovered security.

(C) A security that is excepted at the time of its acquisition from reporting under paragraph (c)(3) or (g) of this section. However, a broker cannot treat a security as acquired by an exempt foreign person under paragraph (g)(1)(i) of this section at the time of acquisition if, at that time, the broker knows or should have known (including by reason of information that the broker is required to collect under section 1471 or 1472) that the customer is not a foreign person.

(D) A security for which reporting under this section is required by § 1.6049–5(d)(3)(ii) (certain securities owned by a foreign intermediary or flow-through entity).

(16) The term *noncovered security* means any security that is not a covered security.

(b) * * *

* * * * *

*Example 9.* E, an individual not otherwise exempt from reporting, maintains an account with S, a broker. On June 1, 2012, E instructs S to purchase stock that is a specified security for cash. S places an order to purchase the stock with T, another broker. E does not maintain an account with T. T executes the purchase. Custody of the purchased stock is transferred to E's account at S. Under paragraph (a)(15)(ii) of this section, the stock is considered acquired for cash in E's account at S. Because the stock is acquired on or after January 1, 2012, under paragraph (a)(15)(i) of this section, it is a covered security.

*Example 10.* F, an individual not otherwise exempt from reporting, is granted 100 shares of stock in F's employer by F's employer. Because F does not acquire the stock for cash or through a transfer to an account with a transfer statement (as described in § 1.6045A–1), under paragraph (a)(15) of this section, the stock is not a covered security.

*Example 11.* G, an individual not otherwise exempt from reporting, owns 400 shares of stock in Q, a corporation, in an account with U, a broker. Of the 400 shares, 100 are covered securities and 300 are noncovered securities. Q takes a corporate action to split its stock in a 2-for-1 split. After the stock split, G owns 800 shares of stock. Because the adjusted basis of 600 of the 800 shares that G owns is determined from the basis of noncovered securities, under paragraphs (a)(15)(iii) and (a)(15)(iv)(B) of this section, these 600 shares are not covered securities and the remaining 200 shares are covered securities.

(c) * * *

(2) *Sales required to be reported.* Except as provided in paragraphs (c)(3), (c)(5), and (g) of this section, a broker is required to make a return of information for each sale by a customer of the broker if, in the ordinary course of a trade or business in which the broker stands ready to effect sales to be made by others, the broker effects the sale or closes the short position opened by the sale.

(3) * * *

(i) * * *

(B) * * *

(*1*) A corporation as defined in section 7701(a)(3), whether domestic or foreign, except that this exclusion does not apply to sales of covered securities acquired on or after January 1, 2012, by an S corporation as defined in section 1361(a);

* * * * *

(C) *Exemption certificate*—(*1*) *In general.* Except as provided in paragraph (c)(3)(i)(C)(*2*) of this section, a broker may treat a person described in paragraph (c)(3)(i)(B) of this section as an exempt recipient based on a properly completed exemption certificate (as provided in § 31.3406(h)–3 of this chapter); the broker's actual knowledge that the customer is a person described in paragraph (c)(3)(i)(B) of this section; or the applicable indicators described in § 1.6049–4(c)(1)(ii)(A) through (M). A broker may require an exempt recipient to file a properly completed exemption certificate and may treat an exempt recipient that fails to do so as a recipient that is not exempt.

(*2*) *Limitation for corporate customers.* For sales of covered securities acquired on or after January 1, 2012, a broker may not treat a customer as an exempt recipient described in paragraph (c)(3)(i)(B)(*1*) of this section based on the indicators of corporate status described in § 1.6049–4(c)(1)(ii)(A). However, for sales of all securities, a broker may treat a customer as an exempt recipient if one of the following applies:

(*i*) The name of the customer contains the term "insurance company," "indemnity company," "reinsurance company," or "assurance company."

(*ii*) The name of the customer indicates that it is an entity listed as a per se corporation under § 301.7701–2(b)(8)(i) of this chapter.

(*iii*) The broker receives a properly completed exemption certificate (as provided in § 31.3406(h)–3 of this chapter) that asserts that the customer is not an S corporation as defined in section 1361(a).

(*iv*) The broker receives a withholding certificate described in § 1.1441–1(e)(2)(i) that includes a certification that the person whose name is on the certificate is a foreign corporation.

* * * * *

(xi) *Short sales*—(A) *In general.* A broker may not make a return of information under this section for a short sale of a security entered into on or after January 1, 2011, until the year a customer delivers a security to satisfy the short sale obligation. The return must be made without regard to the constructive sale rule in section 1259 or to section 1233(h). In general, the broker must report on a single return the information required by paragraph (d)(2)(i) of this section for the short sale except that the broker must report the date the short sale was closed in lieu of the sale date. In applying paragraph (d)(2)(i) of this section, the broker must report the relevant information regarding the security sold to open the short sale and the adjusted basis of the security delivered to close the short sale and whether any gain or loss on the closing of the short sale is long-term or short-term (within the meaning of section 1222).

(B) *Short sale closed by delivery of a noncovered security.* A broker is not required to report adjusted basis and whether any gain or loss on the closing of the short sale is long-term or short-term if the short sale is closed by delivery of a noncovered security and the return so indicates. A broker that chooses to report this information is not subject to penalties under section 6721 or 6722 for failure to report this information correctly if the broker indicates on the return that the short

sale was closed by delivery of a noncovered security.

(C) *Short sale obligation transferred to another account.* If a short sale obligation is satisfied by delivery of a security transferred into a customer's account accompanied by a transfer statement (as described in § 1.6045A–1(b)(4)) indicating that the security was borrowed, the broker receiving custody of the security may not file a return of information under this section. The receiving broker must furnish a statement to the transferor that reports the amount of gross proceeds received from the short sale, the date of the sale, the quantity of shares or units sold, and the Committee on Uniform Security Identification Procedures (CUSIP) number of the sold security (if applicable) or other security identifier number that the Secretary may designate by publication in the **Federal Register** or in the Internal Revenue Bulletin (*see* § 601.601(d)(2) of this chapter). The statement to the transferor also must include the transfer date, the name and contact information of the receiving broker, the name and contact information of the transferor, and sufficient information to identify the customer. If the customer subsequently closes the short sale obligation in the transferor's account with non-borrowed securities, the transferor must make the return of information required by this section. In that event, the transferor must take into account the information furnished under this paragraph (c)(3)(xi)(C) on the return unless the transferor knows that the information furnished under this paragraph is incorrect or incomplete. A failure to report correct information that arises solely from this reliance is deemed to be due to reasonable cause for purposes of penalties under sections 6721 and 6722. *See* § 301.6724–1(a)(1) of this chapter.

* * * * *

(4) * * *

* * * * * *

*Example 7.* On June 24, 2010, H, an individual who is not an exempt recipient, opens a short sale of stock in an account with M, a broker. Because the short sale is entered into before January 1, 2011, paragraph (c)(3)(xi) of this section does not apply. Under paragraphs (c)(2) and (j) of this section, M must make a return of information for the year of the sale regardless of when the short sale is closed.

*Example 8.* (i) On August 25, 2011, H opens a short sale of stock in an account with M, a broker. H closes the short sale with M on January 25, 2012, by purchasing stock of the same corporation in the account in which H opened the short sale and delivering the stock to satisfy H's short sale obligation. The stock H purchased is a covered security.

(ii) Because the short sale is entered into on or after January 1, 2011, under paragraphs (c)(2) and (c)(3)(xi) of this section, the broker closing the short sale must make a return of information reporting the sale for the year in which the short sale is closed. Thus, M is required to report the sale for 2012. M must report on a single return the relevant information for the sold stock, the adjusted basis of the purchased stock, and whether any gain or loss on the closing of the short sale is long-term or short-term (within the meaning of section 1222). Thus, M must report the information about the short sale opening and closing transactions on a single return for taxable year 2012.

*Example 9.* (i) Assume the same facts as in *Example 8* except that H also has an account with N, a broker, and satisfies the short sale obligation with M by borrowing stock of the same corporation from N and transferring custody of the borrowed stock from N to M. N indicates on the transfer statement that the transferred stock was borrowed in accordance with § 1.6045A–1(b)(4).

(ii) Under paragraph (c)(3)(xi)(C) of this section, M may not file the return of information required under this section. M must furnish a statement to N that reports the gross proceeds from the short sale on August 25, 2011, the date of the sale, the quantity of shares sold, the CUSIP number or other security identifier number of the sold stock, the transfer date, the name and contact information of M and N, and information identifying H such as H's name and the account number from which H transferred the borrowed stock.

(iii) N must report the gross proceeds from the short sale, the date the short sale was closed, the adjusted basis of the stock acquired to close the short sale, and whether any gain or loss on the closing of the short sale is long-term or short-term (within the meaning of section 1222) on the return of information N is required to file under paragraph (c)(2) of this section when H closes the short sale in the account with N.

* * * * *

(d) * * * (1) *In general.* A broker that is required to make a return of information under paragraph (c) of this section during a reporting period is required to report for each filing group on a separate Form 1096, "Annual Summary and Transmittal of U.S. Information Returns," or any successor form, the information required by the form in the manner and number of copies required by the form.

(2) *Transactional reporting*—(i) *Required information.* Except as provided in paragraph (c)(5) of this section, for each sale for which a broker is required to make a return of information under this section, the broker must report on Form 1099–B, "Proceeds From Broker and Barter Exchange Transactions," or any successor form the name, address, and taxpayer identification number of the customer, the property sold, the CUSIP number of the security sold (if applicable) or other security identifier number that the Secretary may designate by publication in the **Federal Register** or in the Internal Revenue Bulletin (*see* § 601.601(d)(2) of this chapter), the adjusted basis of the security sold, whether any gain or loss with respect to the security sold is long-term or short-term (within the meaning of section 1222), the gross proceeds of the sale, the sale date, and other information required by the form in the manner and number of copies required by the form.

(ii) *Specific identification of securities.* Except as provided in § 1.1012–1(e)(7)(ii), a broker must report a sale on or after January 1, 2011, of less than the entire position in an account of a specified security that was acquired on different dates or at different prices consistently with a customer's adequate and timely identification of the security to be sold. *See* § 1.1012–1(c). If the customer does not provide an adequate and timely identification for the sale, the broker must first report the sale of any shares or units in the account for which the broker does not know the acquisition or purchase date followed by the earliest shares or units purchased or acquired, whether covered securities or noncovered securities.

(iii) *Sales of noncovered securities.* A broker is not required to report adjusted basis and whether any gain or loss on the sale is long-term or short-term for the sale of a noncovered security if the return identifies the sale as a sale of a noncovered security. A broker that chooses to report this information for a noncovered security is not subject to penalties under section 6721 or 6722 for failure to report this information correctly if the return identifies the sale as a sale of a noncovered security. For purposes of this paragraph (d)(2)(iii), a broker must treat a security for which a broker makes the single-account election described in § 1.1012–1(e)(11)(i) as a covered security.

(iv) *Information from other parties and other accounts*—(A) *Transfer and issuer statements.* When reporting a sale of a covered security, a broker must take into account all information, other than the classification of the security (such as stock), furnished on a transfer statement (as described in § 1.6045A–1) and all information furnished or deemed furnished on an issuer statement (as described in § 1.6045B–1), unless the statement is incomplete or the broker has actual knowledge that it is incorrect. A broker may treat a customer as a minority shareholder when taking the information on an issuer statement into account unless the broker knows that

the customer is a majority shareholder and the issuer statement reports the action's effect on the basis of majority shareholders. A failure to report correct information that arises solely from reliance on information furnished on a transfer statement or issuer statement is deemed to be due to reasonable cause for purposes of penalties under sections 6721 and 6722. *See* § 301.6724–1(a)(1) of this chapter.

(B) *Other information.* A broker is permitted, but not required, to take into account information about a covered security other than what is furnished on a transfer statement or issuer statement, including any information the broker has about securities held by the same customer in other accounts with the broker. For purposes of penalties under sections 6721 and 6722, a broker that takes into account information received from a customer or third party other than information furnished on a transfer statement or issuer statement is deemed to have relied upon this information in good faith if the broker neither knows nor has reason to know that the information is incorrect. *See* § 301.6724–1(c)(6) of this chapter.

(v) *Failure to receive a complete transfer statement.* A broker that has not received a complete transfer statement as required under § 1.6045A–1(a)(3) for a transfer of a specified security must request a complete statement from the applicable person effecting the transfer unless, under § 1.6045A–1(a), the transferor has no duty to furnish a transfer statement for the transfer. The broker is only required to make this request once. If the broker does not receive a complete transfer statement after requesting it, the broker may treat the security as a noncovered security upon its subsequent sale or transfer. A transfer statement for a covered security is complete if, in the view of the receiving broker, it provides sufficient information to comply with this section when reporting the sale of the security. A transfer statement for a noncovered security is complete if it indicates that the security is a noncovered security.

(vi) *Reporting by other parties after a sale*—(A) *Transfer statements.* If a broker receives a transfer statement indicating that a security is a covered security after the broker reports the sale of the security, the broker must file a corrected return within thirty days of receiving the statement unless the broker reported the required information on the original return consistently with the transfer statement.

(B) *Issuer statements.* If a broker receives or is deemed to receive an issuer statement after the broker reports the sale of a covered security, the broker must file a corrected return within thirty days of receiving the issuer statement unless the broker reported the required information on the original return consistently with the issuer statement.

(C) *Exception.* A broker is not required to file a corrected return under this paragraph (d)(2)(vi) if the broker receives the transfer statement or issuer statement more than three years after the broker filed the return.

(vii) *Examples.* The following examples illustrate the rules of this paragraph (d)(2):

*Example 1.* (i) On February 22, 2012, K sells 100 shares of stock of C, a corporation, at a loss in an account held with F, a broker. On March 15, 2012, K purchases 100 shares of C stock for cash in an account with G, a different broker. Because K acquires the stock purchased on March 15, 2012, for cash in an account after January 1, 2012, under paragraph (a)(15) of this section, the stock is a covered security. K asks G to increase K's adjusted basis in the stock to account for the application of the wash sale rules under section 1091 to the loss transaction in the account held with F.

(ii) Under paragraph (d)(2)(iv)(B) of this section, G is not required to take into account the information provided by K when subsequently reporting the adjusted basis and whether any gain or loss on the sale is long-term or short-term. If G chooses to take this information into account, under paragraph (d)(2)(iv)(B) of this section, G is deemed to have relied upon the information received from K in good faith for purposes of penalties under sections 6721 and 6722 if G neither knows nor has reason to know that the information provided by K is incorrect.

*Example 2.* (i) L purchases shares of stock of a single corporation in an account with F, a broker, on April 17, 1969, April 17, 2012, April 17, 2013, and April 17, 2014. In January 2015, L sells all the stock.

(ii) Under paragraph (d)(2)(i) of this section, F must separately report the gross proceeds and adjusted basis attributable to the stock purchased in 2014, for which the gain or loss on the sale is short-term, and the combined gross proceeds and adjusted basis attributable to the stock purchased in 2012 and 2013, for which the gain or loss on the sale is long-term. Under paragraph (d)(2)(iii) of this section, F must also separately report the gross proceeds attributable to the stock purchased in 1969 as the sale of noncovered securities in order to avoid treatment of this sale as the sale of covered securities.

* * * * *

(5) *Gross proceeds.* For purposes of this section, *gross proceeds* on a sale are the total amount paid to the customer or credited to the customer's account as a result of the sale reduced by the amount of any interest reported under paragraph (d)(3) of this section and increased by any amount not paid or credited by reason of repayment of margin loans. In the case of a closing transaction that results in a loss, gross proceeds are the amount debited from the customer's account. A broker may, but is not required to, reduce gross proceeds by the amount of commissions and transfer taxes, provided the treatment chosen is consistent with the books of the broker. For securities sold pursuant to the exercise of an option granted or acquired before January 1, 2013, a broker may, but is not required to, take the option premiums into account in determining the gross proceeds of the securities sold, provided the treatment chosen is consistent with the books of the broker. A broker must report the gross proceeds of identical stock (within the meaning of § 1.1012–1(e)(4)) by averaging the proceeds of each share if the stock is sold at separate times on the same calendar day in executing a single trade order and the broker executing the trade provides a single confirmation to the customer that reports an aggregate total price or an average price per share. However, a broker may not average the proceeds if the customer notifies the broker in writing of an intent to determine the proceeds of the stock by the actual proceeds per share and the broker receives the notification by January 15 of the calendar year following the year of the sale. A broker may extend the January 15 deadline but not beyond the due date for filing the return required under this section.

(6) *Adjusted basis—(i) In general.* For purposes of this section, the adjusted basis of a security is determined from the initial basis under paragraph (d)(6)(ii) of this section as of the date the security is acquired in an account, increased by the commissions and transfer taxes related to its sale to the extent not accounted for in gross proceeds as described in paragraph (d)(5) of this section. A broker is not required to consider transactions, elections, or events occurring outside the account except for an organizational action taken by an issuer during the period the broker holds custody of the security (not including the transfer settlement date if the security was transferred) reported on an issuer statement (as described in § 1.6045B–1) furnished or deemed furnished to the broker.

(ii) *Initial basis—(A) Cost basis.* For a security acquired for cash, the initial basis is the total amount of cash paid by the customer or credited against the customer's account for the security, increased by the commissions and transfer taxes related to its acquisition. A broker may, but is not required to, take option premiums into account in determining the initial basis of securities purchased or acquired pursuant to the exercise of an option granted or acquired before January 1,

2013. A broker may, but is not required to, increase initial basis for income recognized upon the exercise of a compensatory option or the vesting or exercise of other equity-based compensation arrangements, granted or acquired before January 1, 2013. A broker must report the basis of identical stock (within the meaning of § 1.1012–1(e)(4)) by averaging the basis of each share if the stock is purchased at separate times on the same calendar day in executing a single trade order and the broker executing the trade provides a single confirmation to the customer that reports an aggregate total price or an average price per share. However, a broker may not average the basis if the customer timely notifies the broker in writing of an intent to determine the basis of the stock by the actual cost per share in accordance with § 1.1012–1(c)(1)(ii).

(B) *Transferred basis—(1) In general.* The initial basis of a security transferred to an account is generally the basis reported on the transfer statement (as described in § 1.6045A–1).

(2) *Securities acquired by gift.* If a transfer statement indicates that the security is acquired as a gift, a broker must apply the relevant basis rules for property acquired by gift in determining the initial basis, but is not required to adjust basis for gift tax. A broker must treat the initial basis as equal to the gross proceeds from the sale determined under paragraph (d)(5) of this section if the relevant basis rules for property acquired by gift prevent recognizing both gain and loss, or if the relevant basis rules treat the initial basis of the security as its fair market value as of the date of the gift and the broker neither knows nor can readily ascertain this value. If the transfer statement did not report a date for the gift, the broker must treat the settlement date for the transfer as the date of the gift.

(iii) *Adjustments for wash sales—(A) In general.* A broker must apply the wash sale rules under section 1091 if both the sale and purchase transactions are of covered securities with the same CUSIP number or other security identifier number that the Secretary may designate by publication in the **Federal Register** or in the Internal Revenue Bulletin (*see* § 601.601(d)(2) of this chapter). When reporting the sale transaction that triggered the wash sale, the broker must report the amount of loss that is disallowed by section 1091 in addition to gross proceeds and adjusted basis. The broker must increase the adjusted basis of the purchased security by the amount of loss disallowed on the sale transaction.

(B) *Securities in different accounts.* A broker is not required to apply paragraph (d)(6)(iii)(A) of this section if the securities are purchased and sold from different accounts, if the purchased security is transferred to another account before the wash sale, or if the securities are treated as held in separate accounts under § 1.1012–1(e). A security is not purchased in an account if it is purchased in another account and transferred into the account.

(C) *Effect of election under section 475(f)(1).* A broker is not required to apply paragraph (d)(6)(iii)(A) of this section to securities in an account if a customer has in writing both informed the broker that the customer has made a valid and timely election under section 475(f)(1) and identified the account as solely containing securities subject to the election. For purposes of this paragraph (d)(6)(iii)(C), a writing may be in electronic format. If a customer subsequently informs a broker that the election no longer applies to the customer or the account, the broker must prospectively apply paragraph (d)(6)(iii)(A) of this section but is not required to apply paragraph (d)(6)(iii)(A) of this section for the period covered by the customer's prior instruction to the broker. A taxpayer that is not a trader in securities within the meaning of section 475(f)(1) does not become a trader in securities, or create an inference that it is a trader in securities, by notifying a broker that it has made a valid and timely election under section 475(f)(1).

(D) *Reporting at or near the time of sale.* If a wash sale occurs after a broker has completed a return or statement reporting a sale of a covered security, the broker must redetermine adjusted basis under this paragraph (d)(6)(iii) and, if the return or statement included information inconsistent with this redetermination, correct the return or statement by the applicable original due date set forth in this section for the return or statement.

(iv) *Constructive sale and mark-to-market adjustments.* A broker is not required to apply section 1259 (regarding constructive sales), section 475 (regarding the mark-to-market method of accounting), or section 1296 (regarding the mark-to-market method of accounting for marketable stock in a passive foreign investment company) when reporting adjusted basis.

(v) *Average basis method adjustments.* For a covered security for which basis may be determined by the average basis method, a broker must compute basis using the average basis method if a customer validly elects that method for the securities sold or, in the absence of any instruction from the customer, if the broker chooses that method as its default basis determination method. *See* § 1.1012–1(e).

(vi) *Regulated investment company and real estate investment trust adjustments.* A broker must adjust the basis of a covered security issued by a regulated investment company or real estate investment trust for the effects of undistributed capital gains reported to or by the broker under section 852(b)(3)(D) or section 857(b)(3)(D).

(vii) *Examples.* The following examples, in which all the securities are covered securities, illustrate the rules of this paragraph (d)(6):

*Example 1.* (i) On September 21, 2012, P purchases 100 shares of stock in an account with J, a broker. On December 14, 2012, P purchases 100 shares of stock with the same CUSIP number in the same account. On January 4, 2013, P sells the 100 shares purchased on September 21, 2012, at a loss.

(ii) Because the sale of stock on January 4, 2013, and the purchase of stock on December 14, 2012, are of covered securities with the same CUSIP number, under paragraph (d)(6)(iii)(A) of this section, J must report the amount of loss disallowed by section 1091 in addition to the gross proceeds of the sale and the adjusted basis of the September 21, 2012, stock.

(iii) P later sells the stock acquired on December 14, 2012. When reporting the sale of the stock, under paragraph (d)(6)(iii)(A) of this section, J must increase the adjusted basis of the stock acquired on December 14, 2012, by the amount of loss disallowed on the January 4, 2013, sale.

*Example 2.* Assume the same facts as in *Example 1* except that the December 14, 2012, purchase occurs in another account P maintains with J. Because the December 14, 2012, purchase does not occur in the same account as the sale of the September 21, 2012, stock, under paragraph (d)(6)(iii)(B) of this section, J is not required to apply the wash sale rules in reporting the sale of stock acquired on September 21, 2012, or December 14, 2012. Under paragraphs (d)(2)(iii) and (d)(2)(iv)(B) of this section, J may choose to apply the wash sale rules as if the transactions occurred in the same account. The result is the same whether P keeps the stock purchased on December 14, 2012, in the other account or transfers the stock into the account from which P sells the stock sold on January 4, 2013.

*Example 3.* (i) K, a regulated investment company, offers two funds for sale, Fund D and Fund E. On April 22, 2012, Q purchases shares of Fund D and pays a separate load charge. By paying the load charge, Q acquires a reinvestment right in shares of Fund E. On April 23, 2012, at the request of Q, Fund D redeems the shares. Q uses the proceeds to purchase shares of Fund E in a separate account. As a result of the reinvestment right, Q pays no load charge in purchasing the Fund E shares.

(ii) Under paragraph (d)(6)(i) of this section, when reporting adjusted basis of the Fund D and Fund E shares at the time of their redemption, K is not required to adjust basis for any deferral of the load charge under section 852(f), because the transactions concerning Fund D and Fund E occur in separate accounts. Under paragraph (d)(2)(iv)(B) of this section, K may choose to apply the provisions of section 852(f).

*Example 4.* R, an employee of C, a corporation, participates in C's stock option plan. On April 2, 2012, C grants R a nonstatutory option under the plan to buy 100 shares of stock. The option becomes substantially vested on April 2, 2013. On October 2, 2013, R exercises the option and purchases 100 shares. On December 2, 2013, R sells the 100 shares. Under paragraph (d)(6)(ii)(A) of this section, C is required to determine adjusted basis from the amount R pays under the terms of the option. Because C grants the option to R before January 1, 2013, under paragraph (d)(6)(ii)(A) of this section, C is not required to adjust basis for any amount R must include as wage income with respect to the October 2, 2013, stock purchase. The result is the same if C grants R a statutory option.

(7) *Long-term or short-term gain or loss*—(i) *In general.* In determining whether any gain or loss on the sale of a security is long-term or short-term within the meaning of section 1222 for purposes of this section, a broker must consider the information reported on a transfer statement (as described in § 1.6045A–1) and apply the relevant rules for property acquired from a decedent or by gift. A broker is not required to consider transactions, elections, or events occurring outside the account except for an organizational action taken by an issuer during the period the broker holds custody of the security (not including the transfer settlement date if the security was transferred) reported on an issuer statement (as described in § 1.6045B–1) furnished or deemed furnished to the broker.

(ii) *Adjustments for wash sales*—(A) *In general.* A broker must apply the wash sale rules under section 1091 if both the sale and purchase transactions are of covered securities with the same CUSIP number or other security identifier number that the Secretary may designate by publication in the **Federal Register** or in the Internal Revenue Bulletin (*see* § 601.601(d)(2) of this chapter).

(B) *Securities in different accounts.* A broker is not required to apply paragraph (d)(7)(ii)(A) of this section if the securities are purchased and sold from different accounts, if the purchased security is transferred to another account before the wash sale, or if the securities are treated as held in separate accounts under § 1.1012–1(e). A security is not purchased in an account if it is purchased in another account and transferred into the account.

(C) *Effect of election under section 475(f)(1).* A broker is not required to apply paragraph (d)(7)(ii)(A) of this section to securities in an account if a customer has in writing both informed the broker that the customer has made a valid and timely election under section 475(f)(1) and identified the account as solely containing securities subject to the election. For purposes of this paragraph (d)(7)(ii)(C), a writing may be in electronic format. If a customer subsequently informs a broker that the election no longer applies to the customer or the account, the broker must prospectively apply paragraph (d)(7)(ii)(A) of this section but is not required to apply paragraph (d)(7)(ii)(A) of this section for the period covered by the customer's prior instruction to the broker. A taxpayer that is not a trader in securities within the meaning of section 475(f)(1) does not become a trader in securities, or create an inference that it is a trader in securities, by notifying a broker that it has made a valid and timely election under section 475(f)(1).

(D) *Reporting at or near the time of sale.* If a wash sale occurs after a broker has completed a return or statement reporting a sale of a covered security, the broker must redetermine whether gain or loss on the sale is long-term or short-term under this paragraph (d)(7)(ii) and, if the return or statement included information inconsistent with this redetermination, correct the return or statement by the applicable original due date set forth in this section for the return or statement.

(iii) *Constructive sale and mark-to-market adjustments.* A broker is not required to apply section 1259 (regarding constructive sales), section 475 (regarding the mark-to-market method of accounting), or section 1296 (regarding the mark-to-market method of accounting for marketable stock in a passive foreign investment company) when determining whether any gain or loss on the sale of a security is long-term or short-term.

(iv) *Regulated investment company and real estate investment trust adjustments.* A broker is not required to apply sections 852(b)(4)(A) and 857(b)(8) (regarding effect of distributed and undistributed capital gain dividends on a loss on sale of regulated investment company or real estate investment trust shares held six months or less) or section 852(b)(4)(B) (regarding loss disallowance on sale of regulated investment company shares held six months or less due to receipt of tax-exempt dividends) when determining whether any gain or loss on the sale of a security is long-term or short-term.

(v) *No adjustments for hedging transactions or offsetting positions.* A broker is not required to apply section 1092 (regarding straddles), section 1233(b)(2) (regarding effect of short sale on holding period of substantially identical property), or § 1.1221–2(b) (regarding hedging transactions) when determining whether any gain or loss on the sale of a security is long-term or short-term.

(8) *Conversion into United States dollars of amounts paid or received in foreign currency*—(i) *Conversion rules.* (A) When a payment is made in a foreign currency, a broker must determine the U.S. dollar amount of the payment by converting the foreign currency into U.S. dollars on the date it receives, credits, or makes the payment, as applicable, at the spot rate (as defined in § 1.988–1(d)(1)) or pursuant to a reasonable spot rate convention. When reporting the sale of a security traded on an established securities market, however, a broker must determine the U.S. dollar amounts at the spot rate or pursuant to a reasonable spot rate convention as of the settlement date of the purchase or sale, as applicable.

(B) A reasonable spot rate convention includes a month-end spot rate or a monthly average spot rate. A spot rate convention must be used consistently for all non-dollar amounts reported and from year to year. The convention may not be changed without the consent of the Commissioner or his or her delegate.

(ii) *Effect of identification under § 1.988–5(a), (b), or (c) when the taxpayer effects a sale and a hedge through the same broker.* In lieu of the amounts reportable under paragraph (d)(8)(i) of this section, the gross proceeds and adjusted basis must each be the integrated amount computed under § 1.988–5(a), (b) or (c) if—

(A) A taxpayer effects through a broker a sale or exchange of nonfunctional currency (as defined in § 1.988–1(c)) and hedges all or a part of the sale as provided in § 1.988–5(a), (b) or (c) with the same broker; and

(B) The taxpayer complies with the requirements of § 1.988–5(a), (b) or (c) and so notifies the broker prior to the end of the calendar year in which the sale occurs.

(iii) *Example.* The following example illustrates the rules of this paragraph (d)(8):

*Example.* (i) Z, an individual, is a U.S. citizen. On July 4, 2012, Z purchases stock

of C, SA, a French corporation traded on an established securities market, in an account with Q, a broker. Q uses a daily spot rate for converting euro and U.S. dollars. Z pays €1,200 for the stock. On the settlement date for the purchase, the spot rate is €1 = $1.30. On October 4, 2012, Z sells the stock for €1,000. On the settlement date for the sale, the spot rate is €1 = $1.35. On October 5, 2012, Z purchases additional shares of C, SA, that cause the €200 loss on the stock sold on October 4, 2012, to be disallowed under section 1091.

(ii) Under paragraph (d)(8)(i)(A) of this section, Q must determine adjusted basis by converting the €1,200 paid on behalf of Z into U.S. dollars using the €1 = $1.30 spot rate on the settlement date of the purchase. Q must convert the €1,000 gross proceeds into U.S. dollars using the €1 = $1.35 spot rate on the settlement date for the sale. Thus, Q must report adjusted basis equal to $1,560, gross proceeds equal to $1,350, and $210 in loss disallowed by section 1091.

(9) *Coordination with the reporting rules for widely held fixed investment trusts under § 1.671–5.* Information required to be reported under section 6045(a) for a sale of a security in a widely held fixed investment trust (WHFIT) (as defined under § 1.671–5) and the sale of an interest in a WHFIT must be reported as provided by this section unless the information is also required to be reported under § 1.671–5. To the extent that this section requires additional information under section 6045(g), those requirements are deemed to be met through compliance with the rules in § 1.671–5.

(e) * * *

(2) * * * (i) *In general.* Except as provided in paragraphs (e)(2)(ii) and (g) of this section, a barter exchange must make a return of information for exchanges of personal property or services through the barter exchange during the calendar year among its members or clients or between these persons and the barter exchange. For this purpose, property or services are exchanged through a barter exchange if payment for property or services is made by means of a credit on the books of the barter exchange or scrip issued by the barter exchange or if the barter exchange arranges a direct exchange of property or services among its members or clients or exchanges property or services with a member or client.

* * * * *

(f) * * *

(2) * * * (i) *In general.* As to each exchange for which a barter exchange is required to make a return of information under this section, the barter exchange must show on Form 1099–B, "Proceeds From Broker and Barter Exchange Transactions," or any successor form the name, address, and taxpayer identification number of each member or client providing property or services in the exchange, the property or services provided, the amount received by the member or client for the property or services, the date on which the exchange occurred, and other information required by the form in the manner and number of copies required by the form.

* * * * *

(k) * * * (1) *General requirements.* A broker or barter exchange making a return of information under this section must furnish to the person whose identifying number is (or is required to be) shown on the return a written statement showing the information required by paragraph (c)(5), (d), or (f) of this section and containing a legend stating that the information is being reported to the Internal Revenue Service. If the return of information is not made on magnetic media, this requirement may be satisfied by furnishing to the person a copy of all Forms 1099 or any successor form for the person filed with the Internal Revenue Service Center. A statement is considered to be furnished to a person to whom a statement is required to be made under this paragraph (k) if it is mailed to the person at the last address of the person known to the broker or barter exchange.

(2) *Time for furnishing statements.* A broker or barter exchange may furnish the statements required under this paragraph (k) yearly, quarterly, monthly, or on any other basis, without regard to the reporting period the broker or barter exchange elects; however, all statements required to be furnished under this paragraph (k) for a calendar year must be furnished on or before February 15 of the following calendar year.

(3) *Consolidated reporting.* (i) The term *consolidated reporting statement* means a grouping of statements the same broker or barter exchange furnishes to the same customer or group of customers on the same date for the same reporting year that includes a statement required under this section. A consolidated reporting statement is limited to statements based on the same relationship of broker or barter exchange to customer as the statement required to be furnished under this section. For purposes of this paragraph (k)(3)(i), a broker may treat a shareholder of a broker as a customer of the broker and may treat a grouping of statements for a customer as including a statement required to be furnished under this section if the customer has an account with the broker for which a statement would be required to be furnished under this section if the customer purchased and sold stock in a corporation in the account during the year.

(ii) A consolidated reporting statement must be furnished on or before February 15 of the year following the calendar year reported. Any statement that otherwise must be furnished on or before January 31 must be furnished on or before February 15 if it is furnished in the consolidated reporting statement.

(iii) *Examples.* The following examples illustrate the rules of this paragraph (k)(3):

*Example 1.* D has a taxable account with B, a broker, consisting solely of stock in a single corporation. In 2010, D receives reportable dividends from this stock and sells the stock. Under this section and § 1.6042–4, B must furnish a Form 1099–B, "Proceeds From Broker and Barter Exchange Transactions," and Form 1099–DIV, "Dividends and Distributions," to D in 2011 for the sale and the dividends. Under paragraph (k)(2) of this section, B is required to furnish the required statement under this section to D by February 15, 2011. B must furnish the statement reporting the dividends by the January 31, 2011, due date provided in § 1.6042–4. However, under paragraph (k)(3)(ii) of this section, B must furnish the statement reporting the dividends by February 15, 2011, if furnished in a consolidated reporting statement as defined in paragraph (k)(3)(i) of this section.

*Example 2.* Assume the same facts as in *Example 1* except that D has invested solely in a money market fund for which sales are excepted from the reporting required under this section. B therefore is not required to issue a statement under this section if D sells an interest in the money market fund. Under paragraph (k)(3)(i) of this section, B may treat a grouping of statements for D as including a required statement under this section because D has an account for which a statement would be required under this section if D purchased and sold stock in a corporation in the account during the year. Therefore, under paragraph (k)(3)(ii) of this section, B must furnish the statement reporting the dividends by February 15, 2011.

*Example 3.* E has a nontaxable IRA account with B, a broker. This account is the only account E holds with B. E sells stock in 2010 in this account. E also receives a cash distribution from the account in 2010. The cash distribution from the IRA is reportable on Form 1099–R, "Distributions From Pensions, Annuities, Retirement or Profit-Sharing Plans, IRAs, Insurance Contracts, etc.," under § 1.408–7. Because the account is not taxable, sales in the account are not subject to reporting under this section. Therefore, because no statement is required under this section, under paragraph (k)(3) of this section, B may not furnish any statements to E in a consolidated reporting statement. B must furnish the Form 1099–R by the date required under § 1.408–7.

*Example 4.* Assume the same facts as in *Example 3* except that E and F have a joint

taxable account with B. Because sales in the joint taxable account are subject to reporting under this section, under paragraph (k)(3) of this section, B must furnish by February 15, 2011, all customer statements for 2010 that B otherwise must furnish jointly to E and F on or before January 31, 2011, if furnished on the same date in a consolidated reporting statement with the required statements under this section for any sales in the joint taxable account. However, B may not include any statement for E's IRA account in the consolidated reporting statement furnished jointly to E and F because the statements are not furnished to the same customer or group of customers.

* * * * *

■ **Par. 8.** Section 1.6045–2 is amended by revising paragraph (d) to read as follows:

**§ 1.6045–2 Furnishing statement required with respect to certain substitute payments.**

* * * * *

(d) *Time for furnishing statements*—(1) *General requirements.* A broker must furnish the statements required by paragraph (a) of this section for each calendar year. The statements must be furnished after April 30th of the calendar year but in no case before the final substitute payment for the calendar year is made, and on or before February 15 of the following calendar year.

(2) *Consolidated reporting.* (i) The term *consolidated reporting statement* means a grouping of statements the same broker furnishes to the same customer or group of customers on the same date for the same reporting year that includes a statement required under this section. A consolidated reporting statement is limited to statements based on the same relationship of broker to customer as the statement required to be furnished under this section.

(ii) A consolidated reporting statement must be furnished on or before February 15 of the year following the calendar year reported. Any statement that otherwise must be furnished on or before January 31 must be furnished on or before February 15 if it is furnished in the consolidated reporting statement.

* * * * *

■ **Par. 9.** Section 1.6045–3 is amended by revising paragraph (e) to read as follows:

**§ 1.6045–3 Information reporting for an acquisition of control or a substantial change in capital structure.**

* * * * *

(e) *Furnishing of forms to customers*—(1) *General requirements.* A broker must furnish Form 1099–B to the customer on or before February 15 of the year following the calendar year in which the customer receives stock, cash or other property.

(2) *Consolidated reporting.* (i) The term *consolidated reporting statement* means a grouping of statements the same broker furnishes to the same customer or group of customers on the same date for the same reporting year that includes a statement required under this section. A consolidated reporting statement is limited to statements based on the same relationship of broker to customer as the statement required to be furnished under this section.

(ii) A consolidated reporting statement must be furnished on or before February 15 of the year following the calendar year reported. Any statement that otherwise must be furnished on or before January 31 must be furnished on or before February 15 if it is furnished in the consolidated reporting statement.

* * * * *

■ **Par. 10.** Section 1.6045–4 is amended by revising paragraph (m)(2) and adding paragraph (m)(3) to read as follows:

**§ 1.6045–4 Information reporting on real estate transactions with dates of closing on or after January 1, 1991.**

* * * * *

(m) * * *

(2) *Time for furnishing statement.* The statement required under this paragraph (m) must be furnished to the transferor on or after the date of closing and on or before February 15 of the following calendar year.

(3) *Consolidated reporting.* (i) The term *consolidated reporting statement* means a grouping of statements the same reporting person furnishes to the same transferor or group of transferors on the same date for the same reporting year that includes a statement required under this section. A consolidated reporting statement is limited to statements based on the same relationship of reporting person to transferor as the statement required to be furnished under this section.

(ii) A consolidated reporting statement must be furnished on or before February 15 of the year following the calendar year reported. Any statement that otherwise must be furnished on or before January 31 must be furnished on or before February 15 if it is furnished in the consolidated reporting statement.

* * * * *

■ **Par. 11.** Section 1.6045–5 is amended by revising paragraph (a)(3) to read as follows:

**§ 1.6045–5 Information reporting on payments to attorneys.**

(a) * * *

(3) *Requirement to furnish statement*—(i) *General requirements.* A person required to file an information return under paragraph (a)(1) of this section must furnish to the attorney a written statement of the information required to be shown on the return. This requirement may be met by furnishing a copy of the return to the attorney. The written statement must be furnished to the attorney on or before February 15 of the year following the calendar year in which the payment was made.

(ii) *Consolidated reporting.* (A) The term *consolidated reporting statement* means a grouping of statements the same payor furnishes to the same payee or group of payees on the same date for the same reporting year that includes a statement required under this section. A consolidated reporting statement is limited to statements based on the same relationship of payor to payee as the statement required to be furnished under this section.

(B) A consolidated reporting statement must be furnished on or before February 15 of the year following the calendar year reported. Any statement that otherwise must be furnished on or before January 31 must be furnished on or before February 15 if it is furnished in the consolidated reporting statement.

* * * * *

■ **Par. 12.** Section 1.6045A–1 is added to read as follows:

**§ 1.6045A–1 Statements of information required in connection with transfers of securities.**

(a) *Duty to furnish transfer statement*—(1) *In general*—(i) *Transfers between accounts.* Except as provided in paragraphs (a)(1)(ii) through (v) of this section, every applicable person (transferor) (as described in paragraph (a)(4) of this section) that transfers custody of a specified security to a broker (as described in paragraph (a)(5) of this section) must furnish to the receiving broker a transfer statement that includes the information described in paragraph (b) of this section with respect to the transferred security. Except as provided in paragraphs (b)(1)(vii) and (b)(3) of this section (relating to noncovered securities and certain securities for which basis is determined under an average basis method), a transferor must furnish a separate statement for each security and, if transferring custody of the same security acquired on different dates or at different prices, for each acquisition.

(ii) *Cash on delivery accounts and multiple broker arrangements*—(A) *Sales.* A custodian or other transferor that transfers custody of a security to a broker solely to effect a sale must furnish a transfer statement only to the

broker that effects the sale. However, no transfer statement is required if the transferor itself either effects the sale or is required to report the sale of the security under § 1.6045–1.

(B) *Purchases.* A broker that effects a purchase but does not receive custody of the security must furnish a transfer statement to the broker receiving custody. However, no transfer statement is required if the broker effects the purchase solely at the instruction of the broker receiving custody.

(iii) *Exempt recipients and exempt foreign payees.* A transferor is not required to furnish a transfer statement for a security that, after the transfer, is held for a customer that is an exempt recipient under § 1.6045–1(c)(3)(i) or an exempt foreign person under § 1.6045–1(g)(1)(i).

(iv) *Securities lending transactions—transferor as principal.* A transferor that lends or borrows securities as a principal is not required to furnish a transfer statement for a security that is transferred pursuant to such lending or borrowing arrangement (for example, when a customer opens or closes a short sale). This exception does not apply when a transferor transfers a security under a lending or borrowing arrangement of the customer. This exception also does not apply when a transferor transfers a previously borrowed security to another account of the same customer (for example, to satisfy an existing short sale obligation). *See* paragraph (b)(4) of this section.

(v) *Certain money market funds.* A transferor of stock in a regulated investment company described in § 1.6045–1(c)(3)(vi) is not required to furnish a transfer statement.

(2) *Format of transfer statement.* The transfer statement must be furnished in writing unless both the transferor and the receiving broker agree to a different format or method before the transfer. If a transfer occurs between accounts at the same or affiliated entities, a transfer statement is deemed to have been furnished and received if the required information, including any required adjustments, is incorporated into the records for the recipient account.

(3) *Time for furnishing statement.* A transferor must furnish a transfer statement within fifteen days after the date of settlement for the transfer.

(4) *Applicable person effecting transfer. Applicable person* means any transferor who is a person described in § 1.6045–1(a)(1), a person that acts as a custodian of securities in the ordinary course of a trade or business, an issuer of securities, a trustee or custodian of an individual retirement plan, or any agent of these persons. Applicable person does not include the beneficial owner of a security or any agent substituted for an undisclosed beneficial owner, any governmental unit or agency or instrumentality of a governmental unit holding escheated securities, or any organization that holds and transfers obligations among members of the organization as a service to its members.

(5) *Broker receiving custody.* Solely for purposes of this section, *broker* means any person described in § 1.6045–1(a)(1), any person that acts as a custodian of securities in the ordinary course of a trade or business, any issuer of securities, and any agent of these persons. Broker does not include the beneficial owner of a security or any agent substituted for an undisclosed beneficial owner, any governmental unit or agency or instrumentality of a governmental unit holding escheated securities, or any organization that holds and transfers obligations among members of the organization as a service to its members.

(6) *Other terms.* For purposes of this section, the terms sale, specified security, covered security, noncovered security, and customer have the same meaning as in § 1.6045–1(a)(9), (a)(14), (a)(15), (a)(16), and (h)(1).

(7) *Examples.* The following examples illustrate the rules of this paragraph (a). Unless otherwise stated, in each example the customer is not treated as an exempt recipient under § 1.6045–1(c)(3)(i) or an exempt foreign person under § 1.6045–1(g)(1)(i). The examples are as follows:

*Example 1.* V, an entity treated as an exempt recipient under § 1.6045–1(c)(3)(i), owns a security in an account with E, a broker. On February 1, 2012, V instructs E to transfer custody of the security to an account V maintains with F, another broker. Because E may treat V as an exempt recipient under § 1.6045–1(c)(3)(i), under paragraph (a)(1)(iii) of this section, E is not required to furnish a transfer statement.

*Example 2.* W maintains an account with G, a custodial broker. On August 1, 2012, W instructs G to purchase a security. G places an order to purchase the security with H, a broker with which G has a clearing agreement. W does not maintain a direct account with H. H executes the purchase and has the security delivered to G. Under paragraph (a)(1)(ii)(B) of this section, H is not required to furnish a transfer statement because G received custody of the security and H purchased the security solely at the instruction of G.

*Example 3.* Assume the same facts as in *Example 2* except that W later instructs G to sell the security. G places an order with H to sell the security. H executes the sale. G delivers the security to settle the sale. G is required to report the sale of the security under § 1.6045–1. Therefore, under paragraph (a)(1)(ii)(A) of this section, G is not required to furnish a transfer statement.

*Example 4.* (i) X maintains an account with J, an introducing broker. J contracts with K, a clearing broker, to allow K to execute trades on J's behalf under a clearing agreement. K uses L, a custodian of securities in the ordinary course of a trade or business, to hold custody of the securities of K's customers. K maintains a separate disclosed account for X as a clearing broker with custody at L. On May 1, 2012, X instructs J to purchase a security for X as the beneficial owner. J instructs K to purchase the security. K effects the purchase and has the security delivered to L.

(ii) K is a broker and therefore is an applicable person that is a transferor within the meaning of paragraph (a)(4) of this section. L acts as a custodian of securities in the ordinary course of a trade or business and therefore is a broker within the meaning of paragraph (a)(5) of this section. Because K effects the purchase of the security but does not receive custody of the security, under paragraphs (a)(1)(i) and (a)(1)(ii)(B) of this section, K must furnish a transfer statement to L.

*Example 5.* (i) Assume the same facts as in *Example 4* except that X later instructs J to sell the security. J instructs K to sell the security. K sells the security. L transfers custody of the security to settle X's sale in accordance with its custody arrangement with K by delivering the security to the purchasing broker. K deposits the sale proceeds in X's account with K. K is required to report the sale of the security under § 1.6045–1.

(ii) L acts as a custodian of securities in the ordinary course of a trade or business and therefore is an applicable person that is a transferor within the meaning of paragraph (a)(4) of this section. Because L transfers custody of the security to the purchaser's broker solely to effect the sale, under paragraphs (a)(1)(i) and (a)(1)(ii)(A) of this section, L must furnish a transfer statement to K.

(iii) If the terms of their custody arrangement so provide, K may furnish the transfer statement as L's agent and satisfy L's duty to furnish the transfer statement under paragraphs (a)(1)(i) and (a)(1)(ii)(A) of this section. Under paragraph (a)(2) of this section, K may satisfy this duty by maintaining the information required on the transfer statement, including all required adjustments, in its records for X's account.

*Example 6.* (i) Y, an investment advisor, wants to purchase shares of stock in C, a corporation, for several of Y's customers. Y establishes a delivery-on-payment account with M, a broker, and provides M a standing instruction to deliver stock purchased in the account to Y's account at N, a custodian of securities in the ordinary course of a trade or business. On November 1, 2012, Y enters into a cash-on-delivery transaction by instructing M to purchase shares of C stock. M executes the purchase and effects delivery of the C stock to N.

(ii) M is a broker and therefore is an applicable person that is a transferor within the meaning of paragraph (a)(4) of this section. N acts as a custodian of securities in the ordinary course of a trade or business and therefore is a broker within the meaning of

paragraph (a)(5) of this section. Because M effects the purchase of the stock and N receives custody of the stock, under paragraphs (a)(1)(i) and (a)(1)(ii)(B) of this section, M must furnish a transfer statement to N.

*Example 7.* (i) Z owns shares of stock in C, a corporation, in an account with O, a broker. On February 1, 2013, Z instructs O to transfer the C stock to C so that ownership is held on the books of the issuer. C has an arrangement with D, a transfer agent, to keep records of ownership of the company's stock, how that stock is held, and how many shares each investor owns. O transfers the stock to D.

(ii) O is a broker and therefore is an applicable person that is a transferor within the meaning of paragraph (a)(4) of this section. D is an agent of C, the issuer of the stock, and therefore is a broker within the meaning of paragraph (a)(5) of this section. Because O transfers custody of the stock to D, under paragraph (a)(1)(i) of this section, O must furnish a transfer statement to D.

*Example 8.* Assume the same facts as in *Example 7* except that Z later instructs D to transfer the stock to an account Z maintains with P, another broker. D transfers the stock to P. D is an agent of C, the issuer of the stock, and therefore is an applicable person that is a transferor within the meaning of paragraph (a)(4) of this section. Because P is a broker and D transfers custody of the stock to P, under paragraph (a)(1)(i) of this section, D must furnish a transfer statement to P.

(b) *Information required*—(1) *In general.* Each transfer statement must include the information described in this paragraph (b)(1).

(i) *Statement date.* The date the statement is furnished.

(ii) *Applicable person effecting transfer.* The name, address, and telephone number of the applicable person furnishing the statement.

(iii) *Broker receiving custody.* The name, address, and telephone number of the broker receiving custody of the security.

(iv) *Customers.* The name and account number of the customer or customers for the account from which the security is transferred and, if different, the name and account number of the customer or customers for the account to which the security is transferred.

(v) *Security identifiers.* The Committee on Uniform Security Identification Procedures (CUSIP) number of the security transferred (if applicable) or other security identifier number that the Secretary may designate by publication in the **Federal Register** or in the Internal Revenue Bulletin (*see* § 601.601(d)(2) of this chapter), quantity of shares or units, and classification of the security (such as stock).

(vi) *Transfer dates.* The date the transfer was initiated and the settlement date of the transfer (if known when furnishing the statement).

(vii) *Adjusted basis and acquisition date.* The total adjusted basis of the security, the original acquisition date of the security, and, if applicable, the holding period adjustment required by section 1091. The transferor must determine this information as provided under § 1.6045–1(d) including reporting the adjusted basis of the security in U.S. dollars. If the basis of the transferred security is determined using an average basis method (as described in § 1.1012–1(e)), the transferor may report any securities acquired more than five years before the transfer on a single statement on which the original acquisition date is reported as "VARIOUS" if the other information reported on the statement applies to all of the securities.

(viii) *Examples.* The following examples illustrate the rules of this paragraph (b)(1):

*Example 1.* (i) In a single account with P, a broker, Q purchases three lots of 100 shares of stock each in C, a corporation, at different prices on April 2, 2012, July 2, 2012, and October 2, 2012. Q instructs P to enroll the shares of the C stock in P's dividend reinvestment plan and to average the basis of the shares of the C stock. All of the C stock purchased by P has the same CUSIP number. On September 13, 2013, less than five years after the acquisition dates for all three lots, Q transfers all 300 shares of the C stock to an account with another broker.

(ii) Under paragraph (a)(1)(i) of this section, P must furnish three transfer statements. Under paragraph (b)(1) of this section, one statement must report the transfer of 100 shares with an original acquisition date of April 2, 2012, one statement must report the transfer of 100 shares with an original acquisition date of July 2, 2012, and one statement must report the transfer of 100 shares with an original acquisition date of October 2, 2012.

*Example 2.* Assume the same facts as in *Example 1* except that Q transfers the shares to the account with the other broker on September 13, 2017. For the 100 shares purchased on April 2, 2012, and the 100 shares purchased on July 2, 2012, under paragraph (b)(1)(vii) of this section, P may furnish a single transfer statement reporting the transfer of 200 shares with the original acquisition date as "VARIOUS" instead of furnishing two separate transfer statements.

*Example 3.* (i) Assume the same facts as in *Example 1* except that, on June 15, 2012, Q sells the 100 shares purchased on April 2, 2012, at a loss.

(ii) Under paragraph (a)(1)(i) of this section, P must furnish two transfer statements. Under paragraph (b)(1)(vii) of this section and § 1.6045–1(d)(6)(iii) and (d)(7)(ii), P must determine the average basis for the 200 transferred shares and the date for computing whether any gain or loss with respect to the stock purchased on July 2, 2012, is long-term or short-term by applying the rules for broker reporting of wash sales to the stock purchased on July 2, 2012. Therefore, on both transfer statements, P must increase the average basis of the stock by the amount of loss disallowed under section 1091 on the sale of the 100 shares purchased on April 2, 2012. On the transfer statement reporting the transfer of the 100 shares purchased on July 2, 2012, P must adjust the holding period of the July 2, 2012, shares in accordance with section 1091.

*Example 4.* (i) R, an employee of C, a corporation, participates in C's employee stock purchase program that satisfies the requirements of section 423. D administers the plan. R purchases stock in the plan at a 15 percent discount to the fair market value of the stock determined on the date of purchase. R purchases stock through the plan during 2012 until R terminates employment on October 15, 2012. R later instructs D to transfer the plan shares to S, a broker.

(ii) D is the agent of C, the issuer of the securities, and therefore is an applicable person within the meaning of paragraph (a)(4) of this section. Because S is a broker and D transfers custody of the stock to S, under paragraph (a)(1)(i) of this section, D must furnish a transfer statement to S.

(iii) Under paragraph (b)(1)(vii) of this section and § 1.6045–1(d)(6)(ii)(A), D must report adjusted basis on the transfer statement based on the amount paid by R. Under paragraph (b)(1)(vii) of this section and § 1.6045–1(d)(6)(ii)(A), D is permitted, but is not required, to increase the adjusted basis for the amount (if any) includible as wage income by R for R's purchases of the stock.

(2) *Format of identification.* An applicable person furnishing a transfer statement and a broker receiving the transfer statement may agree to combine the information required in paragraph (b)(1) of this section in any format or to use a code in place of one or more required items. For example, a transferor and a receiving broker may agree to use a single code to represent the broker instead of the broker's name, address, and telephone number, or may use a security symbol or other identification number or scheme instead of the security identifier required by paragraph (b)(1) of this section.

(3) *Transfers of noncovered securities.* The information described in paragraphs (b)(1)(vii), (b)(5), and (b)(6) of this section is not required for a transfer of a noncovered security if the transfer statement identifies the security as a noncovered security. A transferor that chooses to report nonrequired information is not subject to penalties under section 6722 for failure to report this information correctly if the transfer statement identifies the security as a noncovered security. A single transfer statement may report the transfer of multiple noncovered securities if the transfer statement clearly conveys, either specifically or generally, the information described in paragraph

(b)(1)(v) of this section to identify each security. For purposes of this paragraph (b)(3), a transferor must treat a security for which a broker makes a single-account election described in § 1.1012–1(e)(11)(i) as a covered security.

(4) *Transfers of borrowed securities.* The transfer statement must indicate that a transferred security is borrowed if the transferor knows that the security is transferred pursuant to a lending or borrowing arrangement. The transfer statement must not report an adjusted basis If the transferor knows that the transferred security is lent or borrowed pursuant to a short sale. The receiving broker may be subject to special transfer reporting rules upon receipt of a borrowed security if the security is used to satisfy an existing short sale obligation. *See* § 1.6045–1(c)(3)(xi)(C).

(5) *Transfers pursuant to an inheritance*—(i) *In general.* A transfer statement for a transfer of a security from a decedent or decedent's estate must indicate that the security is inherited. The transfer statement must report the date of death as the original acquisition date and must report adjusted basis according to the instructions or valuations furnished by an authorized representative of the estate, including any required adjustments to basis for property acquired from a decedent. If a transferor has not received instructions or valuations from an authorized representative, the transferor must report basis as the fair market value of the security on the date of death.

However, if the transferor neither knows nor can readily ascertain the fair market value of the security on the date of death at the time the transfer statement is prepared, the transfer statement must indicate that the transfer consists of an inherited security but may otherwise report the security as if it were a noncovered security. If the transferor cannot identify which securities in a joint account have been transferred from the decedent, the transferor must treat each security in the account as if it were a noncovered security but must not indicate that any security is an inherited security.

(ii) *Transfers of shares to satisfy a cash legacy.* If a security is transferred from a decedent or a decedent's estate to satisfy a cash legacy, paragraph (b)(1) of this section applies and paragraph (b)(5)(i) of this section does not apply.

(iii) *Subsequent transfers of inherited securities.* A transfer statement must indicate that the transfer consists of an inherited security if a prior transfer statement reported the security as inherited.

(6) *Gift or deemed gift transfers*—(i) *In general.* A transfer statement for a security transferred to a different owner (other than a transfer that the transferor knows is pursuant to a lending or borrowing arrangement or is from a decedent or decedent's estate) must indicate that the security is a gift and must report the date of the gift (if known when furnishing the statement) and the fair market value of the gift on that date (if known or readily ascertainable at the time the transfer statement is prepared). The transfer statement must report the adjusted basis and original acquisition date of the security in the hands of the donor. However, if the transfer is between persons for whom gift-related basis adjustments are inapplicable or between accounts that share at least one common customer, the transferor must apply paragraph (b)(1) of this section as if the security were not a gift or deemed gift.

(ii) *Subsequent transfers of gifts by the same customer.* If a transferor transfers to a different account of the same customer a security that a prior transfer statement reported as a gifted security, the transferor must include on the transfer statement the information described in paragraph (b)(6)(i) of this section for the date of the gift to the customer. If the prior transfer statement did not report a date for the gift, the transferor must treat the settlement date for the prior transfer as the date of the gift.

(iii) *Examples.* The following examples illustrate the rules of this paragraph (b)(6):

*Example 1.* X instructs S, a broker, to give to Y stock in a publicly traded company that X holds in an account with S. The stock is a covered security. On X's instruction, S transfers custody of the stock to T, Y's broker. The transfer settles on August 15, 2013. Under paragraph (b)(6)(i) of this section, S must provide a transfer statement to T that identifies the securities as gifted securities and indicates X's adjusted basis and original acquisition date. If S knows the settlement date, the transfer statement must also indicate that the date of the gift was August 15, 2013, and, because S can readily ascertain the fair market value of the stock on August 15, 2013, the fair market value of the stock on that date.

*Example 2.* Assume the same facts as in *Example 1* except that, one year later, Y transfers the stock to an account in his name with U, another broker. Under paragraph (b)(6)(ii) of this section, T must provide a transfer statement to U that identifies the securities as gifted securities and indicates X's adjusted basis and original acquisition date of the stock. The transfer statement must also indicate the date of the gift, August 15, 2013, and the fair market value of the stock on that date either by reporting the value that S reported to T or, because T can readily ascertain the fair market value of the stock on August 15, 2013, by determining the fair market value of the stock on that date.

(7) *Specific identification of securities.* Except as provided in § 1.1012–1(e)(7)(ii), a transfer statement must report a transfer of less than the entire position in an account of a security that was acquired on different dates or at different prices consistently with a customer's adequate and timely identification of the security to be transferred. *See* § 1.1012–1(c). If the customer does not provide an adequate and timely identification for the transfer, a transferor must first report the transfer of any shares or units in the account for which the transferor does not know the acquisition or purchase date followed by the earliest shares or units purchased or acquired, whether covered securities or noncovered securities.

(8) *Information from other parties and other accounts*—(i) *Transfer and issuer statements and transfers pursuant to an inheritance.* When reporting a transfer of a covered security, a transferor must take into account all information, other than the classification of the security (such as stock), furnished on a transfer statement, all information furnished or deemed furnished on an issuer statement (as described in § 1.6045B–1), and all instructions and valuations furnished by an authorized representative of the estate of a decedent, unless the statement or instructions are incomplete or the broker has actual knowledge that they are incorrect. A transferor may treat a customer as a minority shareholder when taking the information on an issuer statement into account unless the transferor knows that the customer is a majority shareholder and the issuer statement reports the action's effect on the basis of majority shareholders. Any failure to report correct information that arises solely from reliance on information furnished on a transfer statement or issuer statement or by an authorized representative of the estate is deemed to be due to reasonable cause for purposes of penalties under section 6722. *See* § 301.6724–1(a)(1) of this chapter.

(ii) *Other information.* A transferor is permitted, but not required, to take into account information about a covered security other than what is furnished on a transfer statement or issuer statement or by an authorized representative of the estate of a decedent, including any information the transferor has about securities held by the same customer in other accounts with the transferor. For purposes of penalties under section 6722, a transferor that takes into account

information received from a customer or third party other than information furnished on a transfer statement or issuer statement or by an authorized representative of the estate of a decedent is deemed to have relied upon this information in good faith if the transferor neither knows nor has reason to know that the information is incorrect. *See* § 301.6724–1(c)(6) of this chapter.

(9) *Failure to receive a complete transfer statement.* A receiving broker that has not received a complete transfer statement as required under paragraph (a)(3) of this section for the transfer must request a complete statement from the transferor unless, under paragraph (a) of this section, the transferor has no duty to furnish a transfer statement for the transfer. The receiving broker is only required to make this request once. If the receiving broker does not receive a complete transfer statement after requesting it, the receiving broker may treat the security as a noncovered security upon its subsequent sale or transfer. A transfer statement for a covered security is complete if, in the view of the receiving broker, it provides sufficient information to comply with § 1.6045–1 when reporting the sale of the security. A transfer statement for a noncovered security is complete if it indicates that the security is a noncovered security.

(c) *Reporting by other parties after a transfer*—(1) *In general.* A transferor that has furnished a transfer statement must furnish a corrected statement for a covered security within fifteen days of receiving a transfer statement, an issuer statement (as described in § 1.6045B–1), or instructions or valuations from an authorized representative of an estate, that provides information under paragraph (b) of this section that was not reported on the initial transfer statement.

(2) *Exception.* A transferor is not required to furnish a corrected transfer statement for a covered security under this paragraph (c) if the transferor receives the transfer statement or issuer statement or receives the instructions or valuations from an authorized representative of an estate more than eighteen months after the transferor furnished the transfer statement.

(d) *Effective/applicability dates.* This section applies to transfers on or after January 1, 2011, of specified securities other than stock in a regulated investment company within the meaning of § 1.1012–1(e)(5) and to transfers on or after January 1, 2012, of stock in a regulated investment company.

■ **Par. 13.** Section 1.6045B–1 is added to read as follows:

**§ 1.6045B–1 Returns relating to actions affecting basis of securities.**

(a) *In general*—(1) *Information required.* An issuer of a specified security (within the meaning of § 1.6045–1(a)(14)) that takes an organizational action that affects the basis of the security must file an issuer return setting forth the following information and any other information specified in the return form and instructions:

(i) *Reporting issuer.* The name and taxpayer identification number of the reporting issuer.

(ii) *Security identifiers.* The identifiers of each security involved in the organizational action including, as applicable, the Committee on Uniform Security Identification Procedures (CUSIP) number or other security identifier number that the Secretary may designate by publication in the **Federal Register** or in the Internal Revenue Bulletin (*see* § 601.601(d)(2) of this chapter), classification of the security (such as stock), account number, serial number, and ticker symbol, as well as any descriptions about the class of security affected.

(iii) *Contact at reporting issuer.* The name, address, e-mail address, and telephone number of a contact person at the issuer.

(iv) *Information about action.* The type or nature of the organizational action including, as applicable, the date of the action or the date against which shareholders' ownership is measured for the action.

(v) *Effect of the action.* The quantitative effect of the organizational action on the basis of the security in the hands of a U.S. taxpayer as an adjustment per share or as a percentage of old basis, including a description of the calculation, the applicable Internal Revenue Code section and subsection upon which the tax treatment is based, the data supporting the calculation such as the market values of securities and valuation dates, any other information necessary to implement the adjustment including the reportable taxable year, and whether any resulting loss may be recognized.

(2) *Time for filing the return*—(i) *In general.* An issuer must file an issuer return with the IRS pursuant to the prescribed form and instructions on or before the 45th day following the organizational action, or, if earlier, January 15 of the year following the calendar year of the organizational action. For purposes of this paragraph (a)(2), a redemption occurs on the last day a holder may redeem a security. The issuer may file the return before the organizational action if the quantitative effect on basis is determinable beforehand.

(ii) *Reasonable assumptions.* To report the quantitative effect on basis by the due date in paragraph (a)(2)(i) of this section, an issuer may make reasonable assumptions about facts that cannot be determined before the due date. An issuer must file a corrected return within forty-five days of determining facts that result in a different quantitative effect on basis from what the issuer previously reported. However, for purposes of this paragraph (a)(2)(ii), an issuer must treat a payment that may be a dividend consistently with its treatment of the payment under section 6042(b)(3) and § 1.6042–3(c).

(3) *Exception for public reporting.* An issuer is not required to file a return with the IRS under this paragraph (a) if, by the due date described in paragraph (a)(2)(i) of this section, the issuer posts the return with the required information in a readily accessible format in an area of its primary public Web site dedicated to this purpose and keeps the return accessible for ten years to the public on its primary public Web site or the primary public Web site of any successor organization.

(4) *Exception when holders are exempt recipients.* No reporting is required under this paragraph (a) if the issuer reasonably determines that all of the holders of the security are exempt recipients under paragraph (b)(5) of this section.

(5) *Exception for certain money market funds.* No reporting is required under this paragraph (a) by a regulated investment company described in § 1.6045–1(c)(3)(vi).

(b) *Statements to nominees and certificate holders*—(1) *In general.* An issuer required to file an information return under this section must furnish a written statement with the same information to each holder of record of the security or to the holder's nominee. This issuer statement must indicate that the information is being reported to the IRS. An issuer may satisfy this requirement by furnishing a copy of the information return.

(2) *Time for furnishing statements.* An issuer must furnish each issuer statement on or before January 15 of the year following the calendar year of the organizational action. For purposes of this paragraph (b)(2), a redemption occurs on the last day a holder may redeem a security. An issuer may furnish the statement before the organizational action if the quantitative effect on basis is determinable

beforehand. An issuer must furnish a statement that corresponds to a corrected return described in paragraph (a)(2)(ii) of this section by the later of the due date described in this paragraph (b)(2) or forty-five days after determining the facts that result in a different quantitative effect on basis from what the issuer previously reported on the return.

(3) *Recipients of statements.* An issuer must furnish a separate statement to each holder of record of the security as of the date of the organizational action and all subsequent holders of record up to the date the issuer furnishes the statement required under this section. If the issuer records the security on its books in the name of a nominee, the issuer must furnish the statement to the nominee in lieu of the holder. However, if the nominee is the issuer, an agent of the issuer, or a plan operated by the issuer, the issuer must furnish the statement to the holder.

(4) *Exception for public reporting.* An issuer is deemed to furnish an issuer statement under this paragraph (b) to all holders and nominees if the issuer satisfies the public reporting requirements of paragraph (a)(3) of this section.

(5) *Exempt recipients*—(i) *In general.* An issuer is not required to furnish an issuer statement to a holder or its nominee if the holder is an exempt recipient under § 1.6045–1(c)(3)(i)(B), provided the issuer has actual knowledge that the holder is described in that section or has a properly completed exemption certificate from the holder asserting that the holder is an exempt recipient (as provided in § 31.3406(h)–3 of this chapter). An issuer may treat a holder as an exempt recipient based on the applicable indicators described in § 1.6049–4(c)(1)(ii)(A) through (M).

(ii) *Limitation for corporate holders.* For an organizational action occurring on or after January 1, 2012, an issuer may treat a holder as an exempt recipient based on the indicator described in § 1.6049–4(c)(1)(ii)(A) only if one of the following applies:

(A) The name of the holder contains the term "insurance company," "indemnity company," "reinsurance company," or "assurance company."

(B) The name of the holder indicates that it is an entity listed as a per se corporation under § 301.7701–2(b)(8)(i) of this chapter.

(C) The issuer receives a properly completed exemption certificate (as provided in § 31.3406(h)–3 of this chapter) that asserts that the holder is not an S corporation as defined in section 1361(a).

(D) The issuer receives a withholding certificate described in § 1.1441–1(e)(2)(i) that includes a certification that the person whose name is on the certificate is a foreign corporation.

(iii) *Foreign holders.* An issuer may treat a holder as an exempt recipient if the issuer, prior to the transaction, associates the holder with documentation upon which the issuer may rely in order to treat payments to the holder as made to a foreign beneficial owner in accordance with § 1.1441–1(e)(1)(ii) or as made to a foreign payee in accordance with § 1.6049–5(d)(1) or presumed to be made to a foreign payee under § 1.6049–5(d)(2) or (3). For purposes of this paragraph (b)(5)(iii), the provisions in § 1.6049–5(c) (regarding rules applicable to documentation of foreign status and definition of U.S. payor and non-U.S. payor) apply. Rules similar to the rules of § 1.1441–1 apply by substituting the terms "issuer" and "holder" in place of the terms "withholding agent" and "payee" and without regard to the limitation to amounts subject to withholding under chapter 3 of the Internal Revenue Code. Rules similar to the rules of § 1.6049–5(d) apply by substituting the terms "issuer" and "holder" in place of the terms "payor" and "payee."

(c) *Special rule for S corporations.* An S corporation (as defined in section 1361(a)) is deemed to satisfy the requirements of paragraphs (a) and (b) of this section for any organizational action affecting the basis of its stock if the corporation reports the effect of the organizational action on a timely filed Schedule K–1 (Form 1120S), "Shareholder's Share of Income, Deductions, Credits, etc.," for each shareholder and timely furnishes copies of these schedules to all proper parties.

(d) *Special rule for certain regulated investment companies and real estate investment trusts.* A regulated investment company (RIC) that reports undistributed capital gains to shareholders under section 852(b)(3)(D) or a real estate investment trust (REIT) that reports undistributed capital gains to shareholders under section 857(b)(3)(D) is deemed to have satisfied the requirements of paragraphs (a) and (b) of this section for undistributed capital gains affecting the basis of its stock if the RIC or REIT timely files and furnishes the information returns required under section 852(b)(3)(D) or section 857(b)(3)(D) to all proper parties for the organizational action.

(e) *Acquiring and successor entities.* An acquiring or successor entity of an issuer that fails to satisfy the reporting obligations of paragraphs (a) or (b) of this section must satisfy these reporting obligations. If neither the issuer nor the acquiring or successor entity satisfies these reporting obligations, both parties are jointly and severally liable for any applicable penalties.

(f) *Penalties.* An issuer may use an agent to satisfy the requirements of this section for the issuer. Nonetheless, the issuer remains liable for penalty for any failure to comply unless it is shown that the failure is due to reasonable cause and not willful neglect. *See* sections 6721 through 6724.

(g) *Examples.* The following examples illustrate the rules of this section:

*Example 1.* (i) C, a corporation, distributes stock to shareholders on March 31, 2013.

(ii) Under paragraph (a)(2)(i) of this section, C must file an issuer return with the IRS on or before May 15, 2013 (45 days after the distribution date), reporting the quantitative effect of this distribution on the basis of C's stock. Under paragraph (b)(2) of this section, C must furnish issuer statements to its nominees and certificate holders on or before January 15, 2014.

(iii) Alternatively, under paragraphs (a)(3) and (b)(4) of this section, C may post by May 15, 2013, and maintain for ten years, the return with the required information in a readily accessible format in an area of its primary public Web site dedicated to this purpose.

*Example 2.* (i) D, a corporation, makes a cash distribution to shareholders on December 10, 2013.

(ii) Under paragraphs (a)(2)(i) and (b)(2) of this section, D is required to file an issuer return with the IRS and furnish issuer statements to its nominees and certificate holders on or before January 15, 2014.

(iii) On January 15, 2014, D is unsure whether the distribution will exceed its earnings and profits for the fiscal year. For purposes of section 6042(b)(3) and § 1.6042–3(c), D must treat the distribution as a dividend. Therefore, under paragraph (a)(2)(ii) of this section, D is not required to file an issuer return. If D later determines that dividend treatment was incorrect, D must file an issuer return reporting the correct quantitative effect on basis.

*Example 3.* E, a corporation, undertakes a stock split as of April 1, 2014. E furnishes issuer statements under paragraph (b) of this section on April 1, 2014, at which time the books and records of E show that 90 percent of its outstanding stock is owned by shareholders through a clearing organization as their nominee, 7 percent is owned by 5,000 individuals, and the remaining 3 percent is owned by a dividend reinvestment plan operated by E that has 1,000 members. Under paragraph (b)(3) of this section, E must furnish statements to the clearing organization, the 5,000 individuals, and the 1,000 members of the dividend reinvestment plan.

(h) *Effective/applicability dates.* This section applies to organizational actions occurring on or after January 1, 2011, that affect the basis of specified

securities within the meaning of § 1.6045–1(a)(14) other than stock in a regulated investment company within the meaning of § 1.1012–1(e)(5) and to organizational actions occurring on or after January 1, 2012, that affect stock in a regulated investment company.

■ **Par. 14.** Section 1.6049–6 is amended by adding two new sentences to the end of paragraphs (c) and (e)(2) to read as follows:

**§ 1.6049–6 Statements to recipients of interest payments and holders of obligations for attributed original issue discount.**

* * * * *

(c) * * * However, for a statement required to be furnished after December 31, 2008, the February 15 due date under section 6045 applies to the statement if the statement is furnished in a consolidated reporting statement under section 6045. *See* §§ 1.6045–1(k)(3), 1.6045–2(d)(2), 1.6045–3(e)(2), 1.6045–4(m)(3), and 1.6045–5(a)(3)(ii).

* * * * *

(e) * * *

(2) * * * However, for a statement required to be furnished after December 31, 2008, the February 15 due date under section 6045 applies to the statement if the statement is furnished in a consolidated reporting statement under section 6045. *See* §§ 1.6045–1(k)(3), 1.6045–2(d)(2), 1.6045–3(e)(2), 1.6045–4(m)(3), and 1.6045–5(a)(3)(ii).

* * * * *

## PART 31—EMPLOYMENT TAXES AND COLLECTION OF INCOME TAX AT THE SOURCE

■ **Par. 15.** The authority citation for part 31 continues to read in part as follows:

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

■ **Par. 16.** Section 31.6051–4 is amended by revising paragraph (c)(2) and adding two new sentences at the end of paragraph (d) to read as follows:

**§ 31.6051–4 Statement required in case of backup withholding.**

* * * * *

(c) * * *

(2) Except as provided in the prescribed form or instructions, the amount subject to reporting under section 6041, 6041A(a), 6042, 6044, 6045, 6049, 6050A, 6050N, or 6050W whether or not the amount of the reportable payment is less than the amount for which an information return is required or, if tax is withheld under section 3406, the amount of the payment withheld upon;

* * * * *

(d) * * * However, for a statement required to be furnished after December 31, 2008, the February 15 due date under section 6045 applies to the statement if the statement reports tax withheld from a payment reportable under section 6045 or is furnished in a consolidated reporting statement under section 6045. *See* §§ 1.6045–1(k)(3), 1.6045–2(d)(2), 1.6045–3(e)(2), 1.6045–4(m)(3), and 1.6045–5(a)(3)(ii) of this chapter.

* * * * *

## PART 301—PROCEDURE AND ADMINISTRATION

■ **Par. 17.** The authority citation for part 301 continues to read in part as follows:

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

■ **Par. 18.** Section 301.6721–1 is amended by revising paragraphs (g)(2) and (g)(3) to read as follows:

**§ 301.6721–1 Failure to file correct information returns.**

* * * * *

(g) * * *

(2) *Statements.* The statements subject to this section are the statements required by—

(i) Section 6041(a) or (b) (relating to certain information at source, generally reported on Form 1099–MISC, "Miscellaneous Income"; Form W–2, "Wage and Tax Statement"; Form W–2G, "Certain Gambling Winnings"; and Form 1099–INT, "Interest Income");

(ii) Section 6042(a)(1) (relating to payments of dividends, generally reported on Form 1099–DIV, "Dividends and Distributions");

(iii) Section 6044(a)(1) (relating to payments of patronage dividends, generally reported on Form 1099–PATR, "Taxable Distributions Received From Cooperatives");

(iv) Section 6049(a) (relating to payments of interest, generally reported on Form 1099–INT or Form 1099–OID, "Original Issue Discount");

(v) Section 6050A(a) (relating to reporting requirements of certain fishing boat operators, generally reported on Form 1099–MISC);

(vi) Section 6050N(a) (relating to payments of royalties, generally reported on Form 1099–MISC);

(vii) Section 6051(d) (relating to information returns with respect to income tax withheld, generally reported on Form W–2);

(viii) Section 6050R (relating to returns relating to certain purchases of fish, generally reported on Form 1099–MISC);

(ix) Section 110(d) (relating to qualified lessee construction allowances for short-term leases, generally reported by attaching a statement to an income tax return);

(x) Section 408(i) (relating to reports with respect to individual retirement accounts or annuities on Form 1099–R, "Distributions From Pensions, Annuities, Retirement or Profit-Sharing Plans, IRAs, Insurance Contracts, etc."); or

(xi) Section 6047(d) (relating to reports by employers, plan administrators, etc., on Form 1099–R).

(3) *Returns.* The returns subject to this section are the returns required by—

(i) Section 6041A(a) or (b) (relating to returns of direct sellers, generally reported on Form 1099–MISC);

(ii) Section 6043A(a) (relating to returns relating to taxable mergers and acquisitions);

(iii) Section 6045(a) or (d) (relating to returns of brokers, generally reported on Form 1099–B, "Proceeds From Broker and Barter Exchange Transactions," for broker transactions; Form 1099–S, "Proceeds From Real Estate Transactions," for gross proceeds from the sale or exchange of real estate; and Form 1099–MISC for certain substitute payments and payments to attorneys);

(iv) Section 6045B(a) (relating to returns relating to actions affecting basis of specified securities);

(v) Section 6050H(a) or (h)(1) (relating to mortgage interest received in trade or business from individuals, generally reported on Form 1098, "Mortgage Interest Statement");

(vi) Section 6050I(a) or (g)(1) (relating to cash received in trade or business, etc., generally reported on Form 8300, "Report of Cash Payments Over $10,000 Received In a Trade or Business");

(vii) Section 6050J(a) (relating to foreclosures and abandonments of security, generally reported on Form 1099–A, "Acquisition or Abandonment of Secured Property");

(viii) Section 6050K(a) (relating to exchanges of certain partnership interests, generally reported on Form 8308, "Report of a Sale or Exchange of Certain Partnership Interests");

(ix) Section 6050L(a) (relating to returns relating to certain dispositions of donated property, generally reported on Form 8282, "Donee Information Return");

(x) Section 6050P (relating to returns relating to the cancellation of indebtedness by certain financial entities, generally reported on Form 1099–C, "Cancellation of Debt");

(xi) Section 6050Q (relating to certain long-term care benefits, generally reported on Form 1099–LTC, "Long-Term Care and Accelerated Death Benefits");

(xii) Section 6050S (relating to returns relating to payments for qualified tuition and related expenses, generally

reported on Form 1098–E, "Student Loan Interest Statement," or Form 1098–T, "Tuition Statement");

(xiii) Section 6050T (relating to returns relating to credit for health insurance costs of eligible individuals, generally reported on Form 1099–H, "Health Coverage Tax Credit (HCTC) Advance Payments");

(xiv) Section 6052(a) (relating to reporting payment of wages in the form of group-life insurance, generally reported on Form W–2);

(xv) Section 6050V (relating to returns relating to applicable insurance contracts in which certain exempt organizations hold interests, generally reported on Form 8921, "Applicable Insurance Contract Information Return");

(xvi) Section 6053(c)(1) (relating to reporting with respect to certain tips, generally reported on Form 8027, "Employer's Annual Information Return of Tip Income and Allocated Tips");

(xvii) Section 1060(b) (relating to reporting requirements of transferors and transferees in certain asset acquisitions, generally reported on Form 8594, "Asset Acquisition Statement"), or section 1060(e) (relating to information required in the case of certain transfers of interests in entities (effective for acquisitions after October 9, 1990, except any acquisition pursuant to a written binding contract in effect on October 9, 1990, and at all times thereafter before such acquisition));

(xviii) Section 4101(d) (relating to information reporting with respect to fuel oils (effective for information returns required to be filed after November 30, 1990));

(xix) Section 338(h)(10)(C) (relating to information required to be furnished to the Secretary in case of elective recognition of gain or loss (effective for acquisitions after October 9, 1990, except any acquisition pursuant to a written binding contract in effect on October 9, 1990, and at all times thereafter before such acquisition));

(xx) Section 264(f)(5)(A)(iv) (relating to reporting with respect to certain life insurance and annuity contracts);

(xxi) Section 6050U (relating to charges or payments for qualified long-term care insurance contracts under combined arrangements, generally reported on Form 1099–R);

(xxii) Section 6039(a) (relating to returns required with respect to certain options); or

(xxiii) Section 6050W (relating to information returns with respect to payments made in settlement of payment card and third party network transactions).

* * * * *

■ **Par. 19.** Section 301.6722–1 is amended by revising paragraph (d)(2) to read as follows:

**§ 301.6722–1 Failure to furnish correct payee statements.**

* * * * *

(d) * * *

(2) *Payee statement.* The term *payee statement* means any statement required to be furnished under—

(i) Section 6031(b) or (c), 6034A, or 6037(b) (relating to statements furnished by certain pass-thru entities, generally a Schedule K–1 (Form 1065), "Partner's Share of Income, Deductions, Credits, etc.," for section 6031(b) or (c), a copy of the Schedule K–1 (Form 1041), "Beneficiary's Share of Income, Deductions, Credits, etc.," for section 6034A, and a copy of Schedule K–1 (Form 1120S), "Shareholder's Share of Income, Deductions, Credits, etc.," for section 6037(b));

(ii) Section 6039(b) (relating to information required in connection with certain options);

(iii) Section 6041(d) (relating to information at source, generally the recipient copy of Form 1099–MISC, "Miscellaneous Income"; Form W–2, "Wage and Tax Statement"; Form 1099–INT, "Interest Income"; and the winner's copies of Form W–2G, "Certain Gambling Winnings");

(iv) Section 6041A(e) (relating to returns regarding payments of remuneration for services and direct sales, generally the recipient copy of Form 1099–MISC);

(v) Section 6042(c) (relating to returns regarding payments of dividends and corporate earnings and profits, generally the recipient copy of Form 1099–DIV, "Dividends and Distributions");

(vi) Section 6043A(b) or (d) (relating to returns relating to taxable mergers and acquisitions);

(vii) Section 6044(e) (relating to returns regarding payments of patronage dividends, generally the recipient copy of Form 1099–PATR, "Taxable Distributions Received From Cooperatives");

(viii) Section 6045(b) or (d) (relating to returns of brokers, generally the recipient copy of Form 1099–B, "Proceeds From Broker and Barter Exchange Transactions," for broker transactions; the transferor copy of Form 1099–S, "Proceeds From Real Estate Transactions," for reporting proceeds from real estate transactions; and the recipient copy of Form 1099–MISC for certain substitute payments and payments to attorneys);

(ix) Section 6045A (relating to information required in connection with transfers of covered securities to brokers);

(x) Section 6045B(c) or (e) (relating to returns relating to actions affecting basis of specified securities);

(xi) Section 6049(c) (relating to returns regarding payments of interest, generally the recipient copy of Form 1099–INT or Form 1099–OID, "Original Issue Discount");

(xii) Section 6050A(b) (relating to reporting requirements of certain fishing boat operators, generally the recipient copy of Form 1099–MISC);

(xiii) Section 6050H(d) or (h)(2) (relating to returns relating to mortgage interest received in trade or business from individuals, generally the payor copy of Form 1098, "Mortgage Interest Statement");

(xiv) Section 6050I(e), (g)(4), or (g)(5) (relating to returns relating to cash received in trade or business, etc., generally a copy of Form 8300, "Report of Cash Payments Over $10,000 Received In a Trade or Business");

(xv) Section 6050J(e) (relating to returns relating to foreclosures and abandonments of security, generally the borrower copy of Form 1099–A, "Acquisition or Abandonment of Secured Property");

(xvi) Section 6050K(b) (relating to returns relating to exchanges of certain partnership interests, generally a copy of Form 8308, "Report of a Sale or Exchange of Certain Partnership Interests");

(xvii) Section 6050L(c) (relating to returns relating to certain dispositions of donated property, generally a copy of Form 8282, "Donee Information Return");

(xviii) Section 6050N(b) (relating to returns regarding payments of royalties, generally the recipient copy of Form 1099–MISC);

(xix) Section 6050P(d) (relating to returns relating to the cancellation of indebtedness by certain financial entities, generally the recipient copy of Form 1099–C, "Cancellation of Debt");

(xx) Section 6050Q(b) (relating to certain long-term care benefits, generally the policyholder and insured copies of Form 1099–LTC, "Long-Term Care and Accelerated Death Benefits");

(xxi) Section 6050R(c) (relating to returns relating to certain purchases of fish, generally the recipient copy of Form 1099–MISC);

(xxii) Section 6051 (relating to receipts for employees, generally the employee copy of Form W–2);

(xxiii) Section 6052(b) (relating to returns regarding payment of wages in the form of group-term life insurance, generally the employee copy of Form W–2);

(xxiv) Section 6053(b) or (c) (relating to reports of tips, generally the employee copy of Form W–2);

(xxv) Section 6048(b)(1)(B) (relating to foreign trust reporting requirements, generally copies of the owner and beneficiary statements of Form 3520–A, "Annual Information Return of Foreign Trust With a U.S. Owner");

(xxvi) Section 408(i) (relating to reports with respect to individual retirement plans on the recipient copies of Form 1099–R, "Distributions From Pensions, Annuities, Retirement or Profit-Sharing Plans, IRAs, Insurance Contracts, etc.");

(xxvii) Section 6047(d) (relating to reports by plan administrators on the recipient copies of Form 1099–R);

(xxviii) Section 6050S(d) (relating to returns relating to qualified tuition and related expenses, generally the borrower copy of Form 1098–E, "Student Loan Interest Statement," or the student copy of Form 1098–T, "Tuition Statement");

(xxix) Section 264(f)(5)(A)(iv) (relating to reporting with respect to certain life insurance and annuity contracts);

(xxx) Section 6050T (relating to returns relating to credit for health insurance costs of eligible individuals, generally the recipient copy of Form 1099–H, "Health Coverage Tax Credit (HCTC) Advance Payments");

(xxxi) Section 6050U (relating to charges or payments for qualified long-term care insurance contracts under combined arrangements, generally the recipient copy of Form 1099–R); or

(xxxii) Section 6050W (relating to information returns with respect to payments made in settlement of payment card and third party network transactions).

* * * * *

## PART 602—OMB CONTROL NUMBERS UNDER THE PAPERWORK REDUCTION ACT

■ **Par. 20.** The authority citation for part 602 continues to read in part as follows:

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

■ **Par. 21.** In § 602.101, paragraph (b) is amended by adding the following entries to the table in numerical order to read in part as follows:

**§ 602.101 OMB Control numbers.**

* * * * *

(b) * * *

| CFR part or section where identified and described | Current OMB control No. |
|---|---|
| * * * * * | |
| 1.6045–1(c)(3)(xi)(C) ..... | 1545–2186 |
| 1.6045A–1 ..... | 1545–2186 |
| * * * * * | |

**Steven T. Miller,**

*Deputy Commissioner for Services and Enforcement.*

Approved: October 1, 2010.

**Michael Mundaca,**

*Assistant Secretary of the Treasury (Tax Policy).*

[FR Doc. 2010–25504 Filed 10–12–10; 4:15 pm]

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Monday,
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## Part IV

# The President

**Notice of October 14, 2010—Continuation of the National Emergency With Respect to Significant Narcotics Traffickers Centered In Colombia**

Federal Register
Vol. 75, No. 200
Monday, October 18, 2010

# Presidential Documents

**Title 3—**

## The President

**Notice of October 14, 2010**

## Continuation of the National Emergency With Respect to Significant Narcotics Traffickers Centered In Colombia

On October 21, 1995, by Executive Order 12978, the President declared a national emergency pursuant to the International Emergency Economic Powers Act (50 U.S.C. 1701–1706) to deal with the unusual and extraordinary threat to the national security, foreign policy, and economy of the United States constituted by the actions of significant narcotics traffickers centered in Colombia and the extreme level of violence, corruption, and harm such actions cause in the United States and abroad.

Because the actions of significant narcotics traffickers centered in Colombia continue to threaten the national security, foreign policy, and economy of the United States and cause an extreme level of violence, corruption, and harm in the United States and abroad, the national emergency declared on October 21, 1995, and the measures adopted pursuant thereto to deal with that emergency, must continue in effect beyond October 21, 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 with respect to significant narcotics traffickers centered in Colombia. This notice shall be published in the *Federal Register* and transmitted to the Congress.

THE WHITE HOUSE,
*October 14, 2010.*

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**H.R. 3219/P.L. 111–275**
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**H.R. 4543/P.L. 111–276**
To designate the facility of the United States Postal Service located at 4285 Payne Avenue in San Jose, California, as the "Anthony J. Cortese Post Office Building". (Oct. 13, 2010; 124 Stat. 2899)

**H.R. 5341/P.L. 111–277**
To designate the facility of the United States Postal Service located at 100 Orndorf Drive in Brighton, Michigan, as the "Joyce Rogers Post Office Building". (Oct. 13, 2010; 124 Stat. 2900)

**H.R. 5390/P.L. 111–278**
To designate the facility of the United States Postal Service located at 13301 Smith Road in Cleveland, Ohio, as the "David John Donafee Post Office Building". (Oct. 13, 2010; 124 Stat. 2901)

**H.R. 5450/P.L. 111–279**
To designate the facility of the United States Postal Service located at 3894 Crenshaw Boulevard in Los Angeles, California, as the "Tom Bradley Post Office Building". (Oct. 13, 2010; 124 Stat. 2902)

**H.R. 6200/P.L. 111–280**
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