



FEDERAL REGISTER

Vol. 77

Tuesday,

No. 191

October 2, 2012

Pages 60029–60276

OFFICE OF THE FEDERAL REGISTER



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

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9 a.m.-12:30 p.m.

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Conference Room, Suite 700
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Washington, DC 20002

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Title 3—**Executive Order 13627 of September 25, 2012****The President****Strengthening Protections Against Trafficking in Persons in Federal Contracts**

By the authority vested in me as President by the Constitution and the laws of the United States of America, including the Federal Property and Administrative Services Act (40 U.S.C. 101 *et seq.*) and the Trafficking Victims Protection Act of 2000, as amended (TVPA) (Public Law 106–386, Division A), and in order to strengthen protections against trafficking in persons in Federal contracting, it is hereby ordered as follows:

Section 1. Policy. More than 20 million men, women, and children throughout the world are victims of severe forms of trafficking in persons (“trafficking” or “trafficking in persons”)—defined in section 103 of the TVPA, 22 U.S.C. 7102(8), to include sex trafficking in which a commercial sex act is induced by force, fraud, or coercion, or in which the person induced to perform such act has not attained 18 years of age, or the recruitment, harboring, transportation, provision, or obtaining of a person for labor or services, through the use of force, fraud, or coercion, for the purpose of subjection to involuntary servitude, peonage, debt bondage, or slavery.

The United States has long had a zero-tolerance policy regarding Government employees and contractor personnel engaging in any form of this criminal behavior. As the largest single purchaser of goods and services in the world, the United States Government bears a responsibility to ensure that taxpayer dollars do not contribute to trafficking in persons. By providing our Government workforce with additional tools and training to apply and enforce existing policy, and by providing additional clarity to Government contractors and subcontractors on the steps necessary to fully comply with that policy, this order will help to protect vulnerable individuals as contractors and subcontractors perform vital services and manufacture the goods procured by the United States.

In addition, the improved safeguards provided by this order to strengthen compliance with anti-trafficking laws will promote economy and efficiency in Government procurement. These safeguards, which have been largely modeled on successful practices in the private sector, will increase stability, productivity, and certainty in Federal contracting by avoiding the disruption and disarray caused by the use of trafficked labor and resulting investigative and enforcement actions.

Sec. 2. Anti-Trafficking Provisions. (a) Within 180 days of the date of this order, the Federal Acquisition Regulatory (FAR) Council, in consultation with the Secretary of State, the Attorney General, the Secretary of Labor, the Secretary of Homeland Security, the Administrator for the United States Agency for International Development, and the heads of such other executive departments and agencies (agencies) as the FAR Council determines to be appropriate, shall take steps necessary to amend the Federal Acquisition Regulation to:

(1) strengthen the efficacy of the Government’s zero-tolerance policy on trafficking in persons by Federal contractors and subcontractors in solicitations, contracts, and subcontracts for supplies or services (including construction and commercial items), by:

(A) expressly prohibiting Federal contractors, contractor employees, subcontractors, and subcontractor employees from engaging in any of the following types of trafficking-related activities:

(i) using misleading or fraudulent recruitment practices during the recruitment of employees, such as failing to disclose basic information or making material misrepresentations regarding the key terms and conditions of employment, including wages and fringe benefits, the location of work, living conditions and housing (if employer provided or arranged), any significant costs to be charged to the employee, and, if applicable, the hazardous nature of the work;

(ii) charging employees recruitment fees;

(iii) destroying, concealing, confiscating, or otherwise denying access by an employee to the employee's identity documents, such as passports or drivers' licenses; and

(iv) for portions of contracts and subcontracts:

(I) performed outside the United States, failing to pay return transportation costs upon the end of employment, for an employee who is not a national of the country in which the work is taking place and who was brought into that country for the purpose of working on a U.S. Government contract or subcontract;

(II) not covered by subsection (a)(1)(A)(iv)(I) of this section, failing to pay return transportation costs upon the end of employment, for an employee who is not a national of the country in which the work is taking place and who was brought into that country for the purpose of working on a U.S. Government contract or subcontract, if the payment of such costs is required under existing temporary worker programs or pursuant to a written agreement with the employee; provided, however

(III) that the requirements of subsections (a)(1)(A)(iv)(I) and (II) shall not apply to:

(aa) an employee who is legally permitted to remain in the country of employment and who chooses to do so; or

(bb) an employee who is a victim of trafficking and is seeking victim services or legal redress in the country of employment, or an employee who is a witness in a trafficking-related enforcement action;

(v) other specific activities that the FAR Council identifies as directly supporting or promoting trafficking in persons, the procurement of commercial sex acts, or the use of forced labor in the performance of the contract or subcontract;

(B) requiring contractors and their subcontractors, by contract clause, to agree to cooperate fully in providing reasonable access to allow contracting agencies and other responsible enforcement agencies to conduct audits, investigations, or other actions to ascertain compliance with the TVPA, this order, or any other applicable law or regulation establishing restrictions on trafficking in persons, the procurement of commercial sex acts, or the use of forced labor; and

(C) requiring contracting officers to notify, in accordance with agency procedures, the agency's Inspector General, the agency official responsible for initiating suspension or debarment actions, and law enforcement, if appropriate, if they become aware of any activities that would justify termination under section 106(g) of the TVPA, 22 U.S.C. 7104(g), or are inconsistent with the requirements of this order or any other applicable law or regulation establishing restrictions on trafficking in persons, the procurement of commercial sex acts, or the use of forced labor, and further requiring that the agency official responsible for initiating suspension and debarment actions consider whether suspension or debarment is necessary in order to protect the Government's interest;

(2) except as provided in subsection (a)(3) of this section, ensure that provisions in solicitations and clauses in contracts and subcontracts, where the estimated value of the supplies acquired or services required to be performed outside the United States exceeds \$500,000, include the following

requirements pertaining to the portion of the contract or subcontract performed outside the United States:

(A) that each such contractor and subcontractor maintain a compliance plan during the performance of the contract or subcontract that is appropriate for the size and complexity of the contract or subcontract and the nature and scope of the activities performed, including the risk that the contract or subcontract will involve services or supplies susceptible to trafficking. The compliance plan shall be provided to the contracting officer upon request, and relevant contents of the plan shall be posted no later than the initiation of contract performance at the workplace and on the contractor or subcontractor's Web site (if one is maintained), and shall, at a minimum, include:

(i) an awareness program to inform employees about:

(I) the policy of ensuring that employees do not engage in trafficking in persons or related activities, including those specified in subsection (a)(1)(A) of this section, the procurement of commercial sex acts, or the use of forced labor; and

(II) the actions that will be taken against employees for violation of such policy;

(ii) a process for employees to report, without fear of retaliation, any activity that would justify termination under section 106(g) of the TVPA, or is inconsistent with the requirements of this order, or any other applicable law or regulation establishing restrictions on trafficking in persons, the procurement of commercial sex acts, or the use of forced labor;

(iii) a recruitment and wage plan that only permits the use of recruitment companies with trained employees, prohibits charging recruitment fees to the employee, and ensures that wages meet applicable host country legal requirements or explains any variance;

(iv) a housing plan, if the contractor or subcontractor intends to provide or arrange housing, that ensures that the housing meets host country housing and safety standards or explains any variance; and

(v) procedures to prevent subcontractors at any tier from engaging in trafficking in persons, including those trafficking-related activities described in subsection (a)(1)(A) of this section, and to monitor, detect, and terminate any subcontractors or subcontractor employees that have engaged in such activities; and

(B) that each such contractor and subcontractor shall certify, prior to receiving an award and annually thereafter during the term of the contract or subcontract, that:

(i) it has the compliance plan referred to in subsection (a)(2)(A) of this section in place to prevent trafficking-related activities described in section 106(g) of the TVPA and this order; and

(ii) either, to the best of its knowledge and belief, neither it nor any of its subcontractors has engaged in any such activities; or, if abuses have been found, the contractor or subcontractor has taken the appropriate remedial and referral actions;

(3) specify that the requirements in subsections (a)(2)(A) and (B) of this section shall not apply with respect to contracts or subcontracts for commercially available off-the-shelf items.

(b) Not later than 1 year after the date of this order, the member agencies of the President's Interagency Task Force to Monitor and Combat Trafficking in Persons (PITF), established pursuant to section 105 of the TVPA, 22 U.S.C. 7103, shall jointly establish a process for evaluating and identifying, for Federal contracts and subcontracts performed substantially within the United States, whether there are industries or sectors with a history (or where there is current evidence) of trafficking-related or forced labor activities described in section 106(g) of the TVPA, in subsection (a)(1)(A) of this section, or any other applicable law or regulation establishing restrictions

on trafficking in persons, the procurement of commercial sex acts, or the use of forced labor. Where the PITF has identified such industries or sectors, it shall notify agencies of these designations, and individual agencies shall, in consultation with the Office of Federal Procurement Policy of the Office of Management and Budget, adopt and publish appropriate safeguards, guidance, and compliance assistance to prevent trafficking and forced labor in Federal contracting in these identified areas.

Sec. 3. *Guidance and Training.* (a) The Administrator for Federal Procurement Policy shall:

(1) in consultation with appropriate management councils, such as the Chief Acquisition Officers Council, provide guidance to agencies on developing appropriate internal procedures and controls for awarding and administering Federal contracts to improve monitoring of and compliance with actions to prevent trafficking in persons, consistent with section 106 of the TVPA, including the development of methods to track the number of trafficking violations reported and remedies applied; and

(2) in consultation with the Federal Acquisition Institute and appropriate management councils, such as the Chief Acquisition Officers Council:

(A) develop methods to track the number of Federal employees trained; and

(B) implement training requirements to ensure that the Federal acquisition workforce is trained on the policies and responsibilities for combating trafficking, including on:

(i) applicable laws, regulations, and policies; and

(ii) internal controls and oversight procedures implemented by the agency, including enforcement procedures available to the agency to investigate, manage, and mitigate contractor and subcontractor trafficking violations.

(b) The member agencies of PITF shall jointly facilitate the sharing of information that may be used by acquisition, program, and other offices within agencies to evaluate where the risk of trafficking in persons may be heightened based on the nature of the work to be performed, the place of performance, and any other relevant considerations.

Sec. 4. *Effective Date.* This order shall become effective immediately and shall apply to solicitations issued on or after the effective date for the action taken by the FAR Council under subsection 2(a) of this order.

Sec. 5. *General Provisions.* (a) Nothing in this order shall be construed to impair or otherwise affect:

(1) the authority granted by law to an executive department, agency, or the head thereof; or

(2) the functions of the Director of the Office of Management and Budget relating to budgetary, administrative, or legislative proposals.

(b) This order shall be implemented consistent with applicable law and subject to the availability of appropriations.

(c) This order is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person.

A handwritten signature in black ink, appearing to be Barack Obama's signature, consisting of a large 'B' followed by a circle and a horizontal line.

THE WHITE HOUSE,
Washington, September 25, 2012.

Presidential Documents

Memorandum of September 27, 2012

Provision of Aviation Insurance Coverage for Commercial Air Carrier Service in Domestic and International Operations

Memorandum for the Secretary of Transportation

By the authority vested in me as President by the Constitution and the laws of the United States, including 49 U.S.C. 44301–44310, I hereby:

1. Determine that the continuation of U.S. air transportation is necessary in the interest of air commerce, national security, and the foreign policy of the United States.

2. Approve provision by the Secretary of Transportation of insurance or reinsurance to U.S.-certificated air carriers against loss or damage arising out of any risk from the operation of an aircraft, in the manner and to the extent provided in chapter 443 of title 49, U.S. Code, until September 30, 2013, if he determines that such insurance or reinsurance cannot be obtained on reasonable terms from any company authorized to conduct an insurance business in a State of the United States.

3. Delegate to the Secretary of Transportation the authority, vested in me by 49 U.S.C. 44306(c), to extend this approval and determination beyond September 30, 2013, to December 31, 2013, if he finds that the continued operation of aircraft to be insured or reinsured is necessary in the interest of air commerce or national security or to carry out the foreign policy of the United States Government, if he also determines that such insurance or reinsurance cannot be obtained on reasonable terms from any company authorized to conduct an insurance business in a State of the United States.

You are directed to bring this determination immediately to the attention of all air carriers, as defined in 49 U.S.C. 40102(a)(2), and to arrange for its publication in the *Federal Register*.



THE WHITE HOUSE,
Washington, September 27, 2012

Presidential Documents

Notice of September 11, 2012—Continuation of the National Emergency With Persons Who Commit, Threaten To Commit, or Support Terrorism

Correction

In Presidential document 2012–22710 beginning on page 56519 in the issue of Wednesday, September 12, 2012, make the following correction:

On page 56519, the heading should read “Continuation of the National Emergency With Respect to Persons Who Commit, Threaten To Commit, or Support Terrorism”.

Rules and Regulations

Federal Register

Vol. 77, No. 191

Tuesday, October 2, 2012

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

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

FEDERAL RETIREMENT THRIFT INVESTMENT BOARD

5 CFR Part 1631

Availability of Records; Correction

AGENCY: Federal Retirement Thrift Investment Board.

ACTION: Direct final rule; correction.

SUMMARY: The Federal Retirement Thrift Investment Board (Agency) published a direct final rule in the February 27, 2012, *Federal Register*, pursuant to the Privacy Act of 1974, as amended, to permit Freedom of Information Act (FOIA) requests via electronic mail and facsimile. The direct final rule was published with an incorrect facsimile number. This facsimile number publication was a technical error, and is hereby corrected.

DATES: Effective October 2, 2012.

FOR FURTHER INFORMATION CONTACT: Erin F. Graham, (202)–942–1605.

SUPPLEMENTARY INFORMATION: This document contains corrections to FRTIB regulations stemming from the direct final rule published in the February 27, 2012, *Federal Register* (77 FR 11384) and provides the correct facsimile number for FOIA requests.

List of Subjects in 5 CFR Part 1631

Courts, Freedom of information, Government employees.

Accordingly, 5 CFR part 1631 is amended by making the following correcting amendment:

PART 1631—AVAILABILITY OF RECORDS

■ 1. The authority citation for part 1631 continues to read as follows:

Authority: 5 U.S.C. 552.

§ 1631.6 [Amended]

■ 2. In § 1631.6, in paragraph (a)(3), revise “202–942–1776” to read “202–942–1676”.

Dated: September 6, 2012

James B. Petrick,
General Counsel.

[FR Doc. 2012–22512 Filed 10–1–12; 8:45 am]

BILLING CODE 6760–01–P

NUCLEAR REGULATORY COMMISSION

10 CFR Part 50

[NRC–2011–0087]

RIN 3150–AI96

Non-Power Reactor License Renewal

AGENCY: Nuclear Regulatory Commission.

ACTION: Final regulatory basis; availability of rulemaking documents.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC or the Commission) is publishing the final regulatory basis for rulemaking to streamline non-power reactor license renewal. This final regulatory basis incorporates input from the public, licensees, certificate holders, and other stakeholders provided during the public comment period that ended July 31, 2012. This regulatory basis provides the technical basis to support proceeding with rulemaking to streamline and enhance the Research and Test Reactor (RTR) License Renewal Process. This contemplated rulemaking also recommends conforming changes to address technical issues in existing non-power reactor regulations. The NRC has developed a final technical basis for this proposed rulemaking that describes the agency’s overall objectives, conceptual approaches, potential solutions, integration with agency strategic goals, and related technical and regulatory clarity issues.

SUPPLEMENTARY INFORMATION:

I. Accessing Information

Please refer to Docket ID NRC–2011–0087 when contacting the NRC about the availability of information regarding this document. You may access information related to this document by any of the following methods:

- *Federal Rulemaking Web site:* Go to <http://www.regulations.gov> and search for Docket ID NRC–2011–0087.

- *NRC’s Agencywide Documents Access and Management System (ADAMS):* You may access publicly-available documents online in the NRC Library at <http://www.nrc.gov/reading-rm/adams.html>. To begin the search, select “ADAMS Public Documents” and then select “Begin Web-based ADAMS Search.” For problems with ADAMS, please contact the NRC’s Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by email to pdr.resource@nrc.gov. The ADAMS accession number for each document referenced in this document (if that document is available in ADAMS) is provided the first time that a document is referenced.

- *NRC’s PDR:* You may examine and purchase copies of public documents at the NRC’s PDR, Room O1–F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.

II. Background

The Commission provided direction presented in the Staff Requirements Memorandum, SECY–08–0161 (ADAMS Accession No. ML082550140) that directed the staff to develop and submit a long-term plan for an enhanced RTR license renewal process for Commission review. “The plan should include, but not be limited to, developing a basis for redefining the scope of the process, as well as a recommendation regarding the need for rulemaking and guidance development. The staff should submit to the Commission a resource request, including staffing and contract funding needs, to formalize the review process changes and establish a stable and predictable regulatory regime for RTRs. This long term plan should consider elements of the generic analysis approach, generic siting analysis, and the extended license term * * *.”

III. Public Comments on Draft Regulatory Basis

The NRC published a draft regulatory basis on June 29, 2012 (77 FR 38742), for comment from the public, licensees, certificate holders, and other stakeholders. The public comment period that ended July 31, 2012. The NRC received two comment letters: one from the University of Florida and one from the National Institute of Standards and Technology, in electronic form via

the Regulations.gov Web site. Most of the comments focused on the three main elements; ensuring minimum regulation, need for objective evidence, and general support or opposition to options proposed in the regulatory basis. The NRC staff reviewed and considered the comments in updating the draft regulatory basis to a final regulatory basis. A listing of the comments and the NRC's comment responses are provided in ADAMS under Accession No. ML12240A676. The final regulatory basis provides the technical basis to support proceeding with rulemaking to streamline and enhance the Research and Test Reactor License Renewal Process. The final regulatory basis is provided in ADAMS under Accession No. ML12240A677.

FOR FURTHER INFORMATION CONTACT: Duane Hardesty, Project Manager, Research and Test Reactors Licensing Branch, Division of Policy and Rulemaking, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, telephone: 301-415-3724; email: Duane.Hardesty@nrc.gov.

The NRC is issuing this notice for the availability of the final regulatory basis to streamline non-power reactor license renewal.

Dated at Rockville, Maryland, this 19th day of September 2012.

For the Nuclear Regulatory Commission,
Linh N. Tran,

Acting Chief, Research and Test Reactors Licensing Branch, Division of Policy and Rulemaking, Office of Nuclear Reactor Regulation.

[FR Doc. 2012-24221 Filed 10-1-12; 8:45 am]

BILLING CODE 7590-01-P

DEPARTMENT OF LABOR

Employment and Training Administration

20 CFR Part 655

RIN 1205-AB61

Wage Methodology for the Temporary Non-Agricultural Employment H-2B Program; Delay of Effective Date

AGENCY: Employment and Training Administration, Labor.

ACTION: Final rule; delay of effective date.

SUMMARY: The Department of Labor (Department) is delaying the effective date of the Wage Methodology for the Temporary Non-agricultural Employment H-2B Program final rule, in response to recently enacted

legislation that prohibits any funds from being used to implement the Wage Rule for the first 6 months of fiscal year (FY) 2013. The Wage Rule revised the methodology by which the Department calculates the prevailing wages to be paid to H-2B workers and United States (U.S.) workers recruited in connection with a temporary labor certification for use in petitioning the Department of Homeland Security to employ a nonimmigrant worker in H-2B status.

DATES: The effective date for the final rule amending 20 CFR part 655, published at 76 FR 3452, January 19, 2011, effective January 1, 2012, amended to September 30, 2011, at 76 FR 45667, August 1, 2011, delayed until November 30, 2011, at 76 FR 59896 (September 28, 2011), delayed until January 1, 2012, at 76 FR 73508 (November 29, 2011), and delayed until October 1, 2012 at 76 FR 82115 (December 30, 2011), is further delayed until March 27, 2013.

FOR FURTHER INFORMATION CONTACT: William L. Carlson, Ph.D., Administrator, Office of Foreign Labor Certification, ETA, U.S. Department of Labor, 200 Constitution Avenue NW., Room C-4312, Washington, DC 20210; Telephone (202) 693-3010 (this is not a toll-free number). Individuals with hearing or speech impairments may access the telephone number above via TTY by calling the toll-free Federal Information Relay Service at 1-877-889-5627 (TTY/TDD).

SUPPLEMENTARY INFORMATION:

The Department published the Wage Methodology for the Temporary Non-agricultural Employment H-2B Program final rule (the Wage Rule) on January 19, 2011, 76 FR 3452. The Wage Rule revised the methodology by which the Department calculates the prevailing wages to be paid to H-2B workers and United States (U.S.) workers recruited in connection with a temporary labor certification for use in petitioning the Department of Homeland Security to employ a nonimmigrant worker in H-2B status. The Department originally set the effective date of the Wage Rule for January 1, 2012. However, due to a court ruling that invalidated the January 1, 2012 effective date of the Wage Rule,¹ the Department issued a Notice of Proposed Rulemaking (NPRM) on June 28, 2011, which proposed that the Wage Rule take effect 60 days from the date of publication of a final rule resulting from the NPRM. 76 FR 37686 (June 28, 2011). After a period of public comment, a Final Rule was published on August 1, 2011, which set the new

¹ *CATA v. Solis*, Civil Docket No. 09-240, Doc. No. 119, 2011 WL 2414555 (E.D. Pa. June 16, 2011).

effective date for the Wage Rule of September 30, 2011 (the Effective Date Rule).

Both the Wage Rule and the Effective Date Rule were challenged in two separate lawsuits² seeking to bar their implementation. In consideration of the two pending challenges to the Wage Rule and its new effective date, and the possibility that the litigation would be transferred to another court,³ the Department issued a final rule, 76 FR 59896, September 28, 2011, postponing the effective date of the Wage Rule from September 30, 2011, until November 30, 2011, in accordance with the Administrative Procedure Act, 5 U.S.C. 705.

Thereafter, the Department postponed the effective date of the Wage Rule again, in light of the enactment on November 18, 2011, of the Consolidated and Further Continuing Appropriations Act, 2012, which provided that “[n]one of the funds made available by this or any other Act for fiscal year 2012 may be used to implement, administer, or enforce, prior to January 1, 2012 the [Wage Rule].” Public Law 112-55, Div. B, Title V, § 546 (Nov. 18, 2011) (the November Appropriations Act). In delaying the Wage Rule's effective date, the Department stated that although the November Appropriations Act “prevent[ed] the expenditure of funds to implement, administer, or enforce the Wage Rule before January 1, 2012, it did not prohibit the Wage Rule from going into effect, which was scheduled to occur on November 30, 2011. When the Wage Rule goes into effect, it will supersede and make null the prevailing wage provisions at 20 CFR 655.10(b) of the Department's existing H-2B regulations, which were promulgated under Labor Certification Process and Enforcement for Temporary Employment in Occupations Other Than Agriculture or Registered Nursing in the United States (H-2B Workers), and Other Technical Changes; final rule, 73 FR 78020, Dec. 19, 2008 (the H-2B

² See *Louisiana Forestry Association, Inc., et al. (LFA) v. Solis, et al.*, Civil Docket No. 11-1623 (W.D. La, Alexandria Division); and *Bayou Lawn & Landscape Services, et al. (Bayou) v. Solis, et al.*, Civil Docket No. (N.D. Fla., Pensacola Division).

³ On September 19, 2011, the plaintiffs in the *CATA* litigation moved to intervene in the *LFA* litigation, and also moved to transfer venue over the litigation to the Eastern District of Pennsylvania, the court in which the *CATA* case remains pending. The plaintiffs' motion to intervene was granted by the U.S. District Court in the Western District of Louisiana on Sept. 22, 2011, but was denied by the U.S. District Court in the Northern District of Florida on Nov. 23, 2011. Additionally, the motion to transfer venue was granted by the U.S. District Court in the Western District of Louisiana on Dec. 12, 2011 but was denied by the U.S. District Court in the Northern District of Florida on Dec. 12, 2011.

2008 Rule).” 76 FR 82115, 82116. Accordingly, the Department determined that it was necessary in light of the November Appropriations Act to delay the effective date of the Wage Rule in order to avoid the replacement of the H-2B 2008 Rule with a new rule that the Department lacks appropriated funds to implement. As a result, the Department issued a final rule, 76 FR 73508, on November 29, 2011 which delayed the effective date of the Wage Rule until January 1, 2012.

On December 23, 2011, President Obama signed into law the Consolidated Appropriations Act, 2012 (the December Appropriations Act), which provided that “[n]one of the amounts made available under this Act may be used to implement the [Wage Rule].” Similar to the November Appropriations Act, the December Appropriations Act prevented the expenditure of funds to implement the Wage Rule for the remainder of FY 2012. In light of the December Appropriations Act, the Department issued a Final Rule, 76 FR 82115, on December 30, 2011, which further delayed the effective date of the Wage Rule until October 1, 2012.

In anticipation of the enactment of H.J. Res. 117, which continues the Department’s appropriations from the December Appropriations Act until March 27, 2013 “under the authority and conditions provided” in the December Appropriations Act, H.J. Res. 117, Sec. 101(a), the Department must again delay the effective date of the Wage Rule to prevent the replacement of the H-2B 2008 Rule with a new rule that the Department lacks appropriated funds to implement. As noted with the previous delays in the effective dates, if the Wage Rule were to become effective on October 1, 2012 and H.J. Res. 117 becomes law, the Department would be unable to issue prevailing wage determinations under the H-2B 2008 rule. The Department of Homeland Security (DHS), under its regulations at 8 CFR 214.2(h)(6)(iii) and (iv) requires an employer seeking H-2B workers to obtain a labor certification from the Department. Because the Department would be legally precluded from issuing prevailing wage determinations, temporary labor certifications for employers seeking H-2B workers could not be issued because the Department could not comply with its own regulations or those of DHS. As a result, the H-2B program would be held in abeyance for the first 6 months of FY 2013; therefore, the Department is extending the effective date of the Wage Rule until March 27, 2013.

The Department considers this situation an emergency warranting the publication of a final rule under the good cause exception of the Administrative Procedure Act. See 5 U.S.C. 553(b)(B) and 553(d)(3). In order to avoid an operational suspension during the first 6 months of FY 2013, the Department finds good cause to adopt this rule, effective immediately, and without prior notice and comment. See 5 U.S.C. 553(b)(B) and 553(d)(3). As such, a delay in promulgating this rule past the date of publication would be impracticable and unnecessary and would disrupt the program, leaving program users without access to the H-2B program.

Signed at Washington, DC this 27th day of September, 2012.

Jane Oates,

Assistant Secretary for Employment and Training.

[FR Doc. 2012-24264 Filed 9-28-12; 8:45 am]

BILLING CODE 4510-FP-P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

25 CFR Part 36

[Docket ID BIA-2012-0001]

RIN 1076-AF10

Heating, Cooling, and Lighting Standards for Bureau-Funded Dormitory Facilities

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Final rule.

SUMMARY: The Bureau of Indian Affairs (BIA) is confirming the interim final rule published and effective on May 24, 2012, addressing heating, cooling, and lighting standards for Bureau-funded dormitory facilities. This rule was developed through negotiated rulemaking, as required by the No Child Left Behind Act of 2001. The May 24, 2012, publication stated that the BIA would review comments on the interim final rule and either confirm the rule or initiate a proposed rulemaking. BIA did not receive any adverse comments, and therefore confirms the rule without change.

DATES: Effective October 2, 2012.

FOR FURTHER INFORMATION CONTACT: Regina Gilbert, Office of Regulatory Affairs and Collaborative Action, Office of the Assistant Secretary—Indian Affairs, 1001 Indian School Road, NW.,

Suite 312, Albuquerque, NM 87104; telephone (505) 563-3805; fax (505) 563-3811.

SUPPLEMENTARY INFORMATION: The No Child Left Behind School Facilities and Construction Negotiated Rulemaking Committee developed the interim final rule to complete the work responding to the mandates of the No Child Left Behind Act at 25 U.S.C. 2002. See the May 24, 2012, interim final rule (77 FR 30888) for additional background on the Committee. The Committee determined, by consensus, that the codes and standards identified in the “School Facilities Design Handbook” (handbook) dated March 30, 2007, respecting heating, ventilation, air conditioning, and lighting are appropriate for home-living (dormitory) situations at Bureau-funded Indian education facilities. On May 24, 2012, BIA published the interim final rule (77 FR 30888), under Docket No. BIA-2012-0001, to make the codes and standards identified in the handbook respecting heating, ventilation, air conditioning, and lighting mandatory for home-living (dormitory) situations at Bureau-funded Indian education facilities; require the Bureau to give the public notice and an opportunity to comment on any proposal to change which standard building codes are incorporated in the handbook; and make a technical change to remove reference to subpart H, which is no longer in existence, and replace it with a reference to subpart G.

We stated in the interim final rule that we would address comments received and, by a future publication in the **Federal Register**, confirm the interim final rule, with or without change, or initiate a proposed rulemaking. We did not receive any comments on the interim final rule; therefore, we are confirming the interim final rule without change.

List of Subjects in 25 CFR Part 36

Educational facilities, Incorporation by reference, Indians—education, school construction.

Accordingly, the interim rule published May 24, 2012, at 77 FR 30888, is adopted as final without change.

Dated: September 20, 2012.

Donald E. Laverdure,

Acting Assistant Secretary—Indian Affairs.

[FR Doc. 2012-24258 Filed 10-1-12; 8:45 am]

BILLING CODE 4310-W7-P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG–2012–0896]

RIN 1625–AA00

Safety Zone; Research Vessel SIKULIAQ Launch, Marinette, WI

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone on the Menominee River in Marinette Wisconsin. This zone is intended to restrict vessels from a portion of Menominee River during the launching of the Research vessel SIKULIAQ, on October 13th, 2012. This temporary safety zone is necessary to protect the surrounding public and vessels from the hazards associated with the launching of this 261 foot, research vessel.

DATES: This rule will be effective from 9:00 a.m. to 12:00 p.m. on October 13, 2012.

ADDRESSES: Documents indicated in this preamble as being available in the docket are part of docket USCG–2012–0896 and are available online by going to <http://www.regulations.gov>, inserting USCG–2012–0896 in the “Search” 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, contact or email MST1 Joseph McCollum, U.S. Coast Guard Sector Lake Michigan, at 414–747–7148 or Joseph.P.McCollum@uscg.mil. If you have questions on viewing or submitting material to the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202–366–9826.

SUPPLEMENTARY INFORMATION:

Table of Acronyms

DHS Department of Homeland Security
FR Federal Register
NPRM Notice of Proposed Rulemaking

A. Regulatory History and Information

The Coast Guard is issuing this temporary final rule without prior notice and opportunity to comment pursuant to authority under section 4(a)

of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are “impracticable, unnecessary, or contrary to the public interest.” Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because doing so would be impracticable and contrary to the public interest. The final details for this event were not known to the Coast Guard until there was insufficient time remaining before the event to publish an NPRM. Thus, delaying the effective date of this rule to wait for a comment period to run would be both impracticable and contrary to the public interest because it would inhibit the Coast Guard’s ability to protect spectators and vessels from the hazards associated with the launching of a 261 ft Research vessel.

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**. For the same reasons discussed in the preceding paragraph, waiting for a 30 day notice period to run would be impracticable and contrary to the public interest.

B. Basis and Purpose

Between 9:00 a.m. until 12:00 p.m. on October 13, 2012 the 261 foot, research vessel SIKULIAQ, will be launched from shore to the waters of Menominee River. This event will take place in Marinette, WI. The Captain of the Port, Sector Lake Michigan, has determined that this launching will pose a significant risk to public safety and property. Such hazards include the creation of a large wake as the vessel enters the water, and the collision of the launched research vessel with other vessels in the water.

C. Discussion of Rule

With the aforementioned hazards in mind, the Captain of the Port, Sector Lake Michigan, has determined that this temporary safety zone is necessary to ensure the safety of spectators and vessels during the launch. This zone will be effective and enforced from 9:00 a.m. to 12:00 p.m. on October 13, 2012. The safety zone will encompass all waters of the Menominee River in the vicinity of Marinette Marine Corporation, between the Bridge Street Bridge located in position 45°06’12” N, 087°37’34” W and a line crossing the river perpendicularly passing through position 45°05’57” N, 087°36’43” W, in

the vicinity of the Ansul Company (NAD 83).

Entry into, transiting, or anchoring within the safety zone is prohibited unless authorized by the Captain of the Port, Sector Lake Michigan, or his designated on-scene representative. The Captain of the Port or his designated on-scene representative may be contacted via VHF Channel 16.

D. Regulatory Analyses

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

1. Regulatory Planning and Review

This rule is not a significant regulatory action under section 3(f) of Executive Order 12866, Regulatory Planning and Review, as supplemented by Executive Order 13563, Improving Regulation and Regulatory Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of Executive Order 12866 or under section 1 of Executive Order 13563. The Office of Management and Budget has not reviewed it under those Orders. It is not “significant” under the regulatory policies and procedures of the Department of Homeland Security (DHS). We conclude that this rule is not a significant regulatory action because we anticipate that it will have minimal impact on the economy, will not interfere with other agencies, will not adversely alter the budget of any grant or loan recipients, and will not raise any novel legal or policy issues. The safety zone created by this rule will be relatively small and enforced for three hours. Under certain conditions, moreover, vessels may still transit through the safety zone when permitted by the Captain of the Port.

2. Impact on Small Entities

The Regulatory Flexibility Act of 1980 (RFA), 5 U.S.C. 601–612, as amended, requires federal agencies to consider the potential impact of regulations on small entities during rulemaking. The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

This rule will affect the following entities, some of which might be small entities: The owners or operators of vessels intending to transit or anchor in a portion of Menominee River, Marinette, WI, on October 13, 2012.

This safety zone will not have a significant economic impact on a substantial number of small entities for

the following reasons: This safety zone would be activated, and thus subject to enforcement, for only three hours on October 13, 2012. Traffic may be allowed to pass through the zone with the permission of the Captain of the Port. The Captain of the Port can be reached via VHF channel 16. Before the activation of the zone, we would issue local Broadcast Notice to Mariners.

3. Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104-121), we want to assist small entities in understanding this rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section above.

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.

4. Collection of Information

This rule will not call for a new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520).

5. Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has 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. We have analyzed this rule under that Order and determined that this rule does not have implications for federalism.

6. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to contact the person listed in the "**FOR FURTHER INFORMATION CONTACT**" section to coordinate protest activities so that your

message can be received without jeopardizing the safety or security of people, places or vessels.

7. 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 an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

8. 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.

9. 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.

10. 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.

11. 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.

12. Energy Effects

This action is not a "significant energy action" under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use.

13. Technical Standards

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

14. Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023-01 and Commandant Instruction M16475.ID, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321-4370f), and have determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves the establishment of a safety zone and, therefore it is categorically excluded from further review under paragraph 34(g) of Figure 2-1 of the Commandant Instruction. An environmental analysis checklist supporting this determination and a Categorical Exclusion Determination are available in the docket where indicated under **ADDRESSES**. We seek any comments or information that may lead to the discovery of a significant environmental impact from this rule.

List of Subjects in 33 CFR Part 165

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

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR parts 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. 1231; 46 U.S.C. Chapters 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.T09-0896 to read as follows:

§ 165.T09-0896 Safety Zone; Research vessel SIKULIAQ Launch, Marinette, Wisconsin.

(a) *Location.* The safety zone will encompass all waters of the Menominee River in the vicinity of Marinette Marine Corporation, between the Bridge Street Bridge located in position 45°06'12" N, 087°37'34" W and a line crossing the river perpendicularly passing through position 45°05'57" N, 087°36'43" W, in the vicinity of the Ansul Company (NAD 83).

(b) *Effective and Enforcement Period.* This regulation is effective and will be enforced on October 13, 2012 from 9:00 a.m. until 12:00 p.m.

(c) *Regulations.* (1) In accordance with the general regulations in section 165.23

of this part, entry into, transiting, or anchoring within this safety zone is prohibited unless authorized by the Captain of the Port, Sector Lake Michigan or his designated on-scene representative.

(2) This safety zone is closed to all vessel traffic, except as may be permitted by the Captain of the Port, Sector Lake Michigan or his designated on-scene representative.

(3) The "on-scene representative" of the Captain of the Port, Sector Lake Michigan is any Coast Guard commissioned, warrant or petty officer who has been designated by the Captain of the Port, Sector Lake Michigan to act on his behalf.

(4) Vessel operators desiring to enter or operate within the safety zone shall contact the Captain of the Port, Sector Lake Michigan or his on-scene representative to obtain permission to do so. The Captain of the Port, Sector Lake Michigan or his on-scene representative may be contacted via VHF Channel 16. Vessel operators given permission to enter or operate in the safety zone must comply with all directions given to them by the Captain of the Port, Sector Lake Michigan, or his on-scene representative.

Dated: September 21, 2012.

M.W. Sibley,

Captain, U.S. Coast Guard, Captain of the Port, Sector Lake Michigan.

[FR Doc. 2012-24198 Filed 10-1-12; 8:45 am]

BILLING CODE 9110-04-P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG-2011-0228]

RIN 1625-AA00

Safety Zone, Brandon Road Lock and Dam to Lake Michigan Including Des Plaines River, Chicago Sanitary and Ship Canal, Chicago River, and Calumet-Saganashkee Channel, Chicago, IL

AGENCY: Coast Guard, DHS.

ACTION: Notice of enforcement of regulation.

SUMMARY: The Coast Guard will enforce a segment of the Safety Zone; Brandon Road Lock and Dam to Lake Michigan including Des Plaines River, Chicago Sanitary and Ship Canal, Chicago River, Calumet-Saganashkee Channel on all waters of the Chicago Sanitary and Ship Canal from Mile Marker 296.1 to Mile

Marker 296.7 at various times from October 8, 2012 through October 12, 2012. This action is necessary to protect the waterways, waterway users, and vessels from hazards associated with the Army Corp of Engineers' barge safety testing operations.

During any of the below listed enforcement periods, entry into, transiting, mooring, laying-up or anchoring within the enforced area of this safety zone by any person or vessel is prohibited unless authorized by the Captain of the Port, Sector Lake Michigan, or his or her designated representative.

DATES: The regulations in 33 CFR 165.930 will be enforced from 7 a.m. to 11 a.m. and from 1 p.m. to 5 p.m. on October 8 through 12, 2012.

FOR FURTHER INFORMATION CONTACT: If you have questions on this notice, call or email MST1 Joseph McCollum, Prevention Department, Coast Guard Sector Lake Michigan, telephone 414-747-7148, email address joseph.p.mccollum@uscg.mil.

SUPPLEMENTARY INFORMATION:

The Coast Guard will enforce a segment of the Safety Zone; Brandon Road Lock and Dam to Lake Michigan including Des Plaines River, Chicago Sanitary and Ship Canal, Chicago River, Calumet-Saganashkee Channel, Chicago, IL, listed in 33 CFR 165.930. Specifically, the Coast Guard will enforce this safety zone between Mile Marker 296.1 to Mile Marker 296.7 on all waters of the Chicago Sanitary and Ship Canal. Enforcement will occur from 7 a.m. until 11 a.m. and 1 p.m. until 5 p.m. on: October 8 through 12, 2012.

This enforcement action is necessary because the Captain of the Port, Sector Lake Michigan has determined that the Army Corp of Engineers' barge effects testing, involving the demonstration barrier, barriers IIA and IIB, pose risks to life and property. The combination of vessel traffic and the testing operations in the water makes the controlling of vessels through the impacted portion of the Chicago Sanitary and Ship Canal necessary to prevent injury and property loss.

In accordance with the general regulations in § 165.23 of this part, entry into, transiting, mooring, laying up or anchoring within the enforced area of this safety zone by any person or vessel is prohibited unless authorized by the Captain of the Port, Sector Lake Michigan, or his or her designated representative.

This notice is issued under authority of 33 CFR 165.930 and 5 U.S.C. 552(a). In addition to this notice in the **Federal**

Register, the Captain of the Port, Sector Lake Michigan, will also provide notice through other means, which may include, but are not limited to, Broadcast Notice to Mariners, Local Notice to Mariners, local news media, distribution in leaflet form, and on-scene oral notice.

Additionally, the Captain of the Port, Sector Lake Michigan, may notify representatives from the maritime industry through telephonic and email notifications.

Dated: September 21, 2012.

M.W. Sibley,

Captain, U.S. Coast Guard, Captain of the Port, Sector Lake Michigan.

[FR Doc. 2012-24163 Filed 10-1-12; 8:45 am]

BILLING CODE 9110-04-P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG-2012-0571]

RIN 1625-AA00

Safety Zone; DeStefano Wedding Fireworks Display, Patchogue Bay, Patchogue, NY

AGENCY: Coast Guard, DHS.

ACTION: Final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone on the navigable waters of Patchogue Bay, in Patchogue, NY for the DeStefano family wedding fireworks display. This action is necessary to provide for the safety of life on navigable waters during the event. Entering into, transiting through, remaining, anchoring or mooring within this regulated area is prohibited unless authorized by the Captain of the Port (COTP) Sector Long Island Sound.

DATES: This rule is effective from November 1, 2012 until 10:30 p.m. on November 4, 2012.

This will be enforced from 8:30 p.m. on November 3, 2012 until 10:30 p.m. on November 4, 2012.

ADDRESSES: Documents mentioned in this preamble are part of docket [USCG-2012-0571]. To view documents mentioned in this preamble as being available in the docket, go to <http://www.regulations.gov>, type the docket number in the "SEARCH" box and click "SEARCH." Click on Open Docket Folder on the line associated with this rulemaking. You may also visit the Docket Management Facility in Room W12-140 on the ground floor of the

Department of Transportation West Building, 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 email Petty Officer Joseph Graun, Prevention Department, Coast Guard Sector Long Island Sound, (203) 468-4544, Joseph.L.Graun@uscg.mil. If you have questions on viewing or submitting material to the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone (202) 366-9826.

SUPPLEMENTARY INFORMATION:

Table of Acronyms

COTP Captain of the Port
DHS Department of Homeland Security
FR Federal Register
NPRM Notice of Proposed Rulemaking

A. Regulatory History and Information

On August 3, 2012 we published a notice of proposed rulemaking (NPRM) entitled Safety Zone; DeStefano Wedding Fireworks Display, Patchogue Bay, Patchogue, NY in the **Federal Register** (77 FR 46349).

We received no comments and no requests for a public meeting.

B. Basis and Purpose

The legal basis for this temporary rule is 33 U.S.C. 1231; 46 U.S.C. Chapters 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 which collectively authorize the Coast Guard to define regulatory safety zones.

This temporary regulation is necessary to ensure the safety of vessels and spectators from hazards associated with fireworks display.

C. Discussion of Comments, Changes and the Final Rule

We received no comments and no changes have been made to the rule.

D. Regulatory Analyses

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

1. Regulatory Planning and Review

This rule is not a significant regulatory action under section 3(f) of Executive Order 12866, Regulatory Planning and Review, as supplemented by Executive Order 13563, Improving Regulation and Regulatory Review, and does not require an assessment of

potential costs and benefits under section 6(a)(3) of Executive Order 12866 or under section 1 of Executive Order 13563. The Office of Management and Budget has not reviewed it under those Orders.

The Coast Guard determined that this rulemaking is not a significant regulatory action for the following reasons: The regulated area is of limited duration and covers only a small portion of the navigable waterways. Also, mariners may request permission from the COTP Sector Long Island Sound or the designated representative to transit the zone.

Advanced public notifications will be made to the local maritime community through the Local Notice to Mariners as well as Broadcast Notice to Mariners.

2. Impact on Small Entities

The Regulatory Flexibility Act of 1980 (RFA), 5 U.S.C. 601-612, as amended, requires federal agencies to consider the potential impact of regulations on small entities during rulemaking. 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 received no comments from the Small Business Administration on this rule. The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

This rule will affect the following entities, some of which may be small entities: the owners or operators of vessels intending to enter, transit, anchor or moor within the regulated area during the enforcement period. The temporary safety zone will not have a significant economic impact on a substantial number of small entities for the following reasons: the regulated area is of limited size and of short duration and mariners may request permission from the COTP Sector Long Island Sound or the designated representative to transit the zone. Notifications will be made to the maritime community through the Local Notice to Mariners and Broadcast Notice to Mariners well in advance of the event.

3. Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104-121), we want to assist small entities in understanding this rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions

concerning its provisions or options for compliance, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT**, above.

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.

4. Collection of Information

This rule will not call for a new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520).

5. Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has 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. We have analyzed this rule under that Order and determined that this rule does not have implications for federalism.

6. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places or vessels.

7. 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 an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

8. 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.

9. 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.

10. 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.

11. 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.

12. Energy Effects

This action is not a "significant energy action" under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use.

13. Technical Standards

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

14. Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023-01 and Commandant Instruction M16475.ID, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA)(42 U.S.C. 4321-4370f), and have determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves the establishment of a safety zone. This rule is categorically excluded from further review under paragraph 34(g) of Figure 2-1 of the Commandant Instruction. An

environmental analysis checklist supporting this determination and a Categorical Exclusion Determination are available in the docket where indicated under **ADDRESSES**. We seek any comments or information that may lead to the discovery of a significant environmental impact from this rule.

List of Subjects in 33 CFR Part 165

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

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

PART 165—REGULATED NAVIGATION AREA AND LIMITED ACCESS AREAS

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

Authority: 33 U.S.C. 1231; 46 U.S.C. Chapters 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.T01-0571 to read as follows:

§ 165.T01-0571 Safety Zone; DeStefano Wedding Fireworks Display Patchogue Bay, Patchogue, NY

(a) *Location.* The following area is a safety zone: All waters of Patchogue Bay within a 1000-foot radius of the fireworks barge located off Patchogue, NY in approximate position 40°44'44.47" N, 073°00'41.25" W North American Datum 1983.

(b) *Notification.* Coast Guard Sector Long Island Sound will cause notifications to be made to the local maritime community through all appropriate means such as Local Notice to Mariners or Broadcast Notice to Mariners well in advance of the event.

(c) *Enforcement Period.* This rule will be enforced from 8:30 p.m. until 10:30 p.m. on November 3, 2012. If the event is postponed due to inclement weather, then this rule will be enforced from 8:30 p.m. until 10:30 p.m. on November 4, 2012.

(d) *Regulations.* The general regulations contained in 33 CFR 165.23 apply. During the enforcement period, entering into, transiting through, remaining, mooring or anchoring within this safety zone is prohibited unless authorized by the Captain of the Port (COTP) or the designated representatives.

(1) *Definitions.* The following definitions apply to this section:

(i) Designated Representative. A "designated representative" is any Coast Guard commissioned, warrant or petty

officer of the U.S. Coast Guard who has been designated by the COTP, Sector Long Island Sound, to act on his or her behalf. The designated representative may be on an official patrol vessel or may be on shore and will communicate with vessels via VHF-FM radio or loudhailer. In addition, members of the Coast Guard Auxiliary may be present to inform vessel operators of this regulation.

(ii) Official Patrol Vessels. Official patrol vessels may consist of any Coast Guard, Coast Guard Auxiliary, state, or local law enforcement vessels assigned or approved by the COTP Sector Long Island Sound.

(iii) Spectators. All persons and vessels not registered with the event sponsor as participants or official patrol vessels.

(2) Vessel operators desiring to enter or operate within the regulated area should contact the COTP Sector Long Island Sound at 203-468-4401 (Sector LIS command center) or the designated representative via VHF channel 16 to obtain permission to do so.

(3) Spectators or other vessels shall not anchor, block, loiter, or impede the transit of event participants or official patrol vessels in the regulated area during the effective dates and times, or dates and times as modified through the Local Notice to Mariners, unless authorized by COTP Sector Long Island Sound or designated representative.

(4) Upon being hailed by a U.S. Coast Guard vessel or the designated representative, by siren, radio, flashing light or other means, the operator of the vessel shall proceed as directed. Failure to comply with a lawful direction may result in expulsion from the area, citation for failure to comply, or both.

(5) The COTP Sector Long Island Sound or designated representative may delay or terminate any marine event in this subpart at any time it is deemed necessary to ensure the safety of life or property.

(6) Fireworks barges used in this location will have a sign on their port and starboard side labeled "FIREWORKS—STAY AWAY". This sign will consist of 10 inch high by 1.5 inch wide red lettering on a white background.

Dated: September 21, 2012.

H.L. Najarian,

Commander, U.S. Coast Guard, Acting Captain of the Port Sector Long Island Sound.

[FR Doc. 2012-24166 Filed 10-1-12; 8:45 am]

BILLING CODE 9110-04-P

DEPARTMENT OF EDUCATION**34 CFR Part 36**

RIN 1801-AA12

Adjustment of Civil Monetary Penalties for Inflation**AGENCY:** Department of Education.**ACTION:** Final regulations.

SUMMARY: The Department of Education (Department) issues these final regulations to adjust the Department's civil monetary penalties (CMPs) for inflation, as required by the Federal Civil Penalties Inflation Adjustment Act of 1990.

DATES: These regulations are effective October 2, 2012.

FOR FURTHER INFORMATION CONTACT: Peter Wathen-Dunn, Office of the General Counsel, U.S. Department of Education, 400 Maryland Avenue SW., Room 6E207, Washington, DC 20202-2241. Telephone: (202) 401-8300.

If you use a telecommunications device for the deaf (TDD) or a text telephone (TTY), call the Federal Relay Service (FRS), toll free, at 1-800-877-8339.

Individuals with disabilities can obtain this document in an accessible format (e.g., Braille, large print, audiotape, or compact disc) on request to the contact person listed under **FOR FURTHER INFORMATION CONTACT**.

SUPPLEMENTARY INFORMATION:**Background**

The Federal Civil Penalties Inflation Adjustment Act of 1990 (Inflation Adjustment Act) (28 U.S.C. 2461 note) provides for the regular evaluation of civil monetary penalties (CMPs) to ensure that they continue to maintain their deterrent value. The Inflation Adjustment Act requires that each agency issue regulations to adjust its CMPs beginning in 1996 and at least every four years thereafter. The Department published its most recent cost adjustment to each CMP in the **Federal Register** on January 4, 2005 (70 FR 297), and those adjustments became effective on the date of publication. The Department previously adjusted its CMPs in 2002. It has been more than four years since the last adjustment. Accordingly, the Department is now making the necessary adjustments.

A CMP is defined in the statute as any penalty, fine, or other sanction that is (1) for a specific monetary amount as provided by Federal law, or has a maximum amount provided for by Federal law; (2) assessed or enforced by an agency pursuant to Federal law; and

(3) assessed or enforced pursuant to an administrative proceeding or a civil action in the Federal courts.

The formula for the amount of a CMP inflation adjustment is prescribed by law and is not subject to the exercise of discretion by the Secretary of Education (Secretary). The adjustment reflects the percentage increase in the Consumer Price Index for all urban consumers (CPI-U) published by the Department of Labor from June of the calendar year in which the amount was last adjusted, to June of the calendar year preceding the adjustment. The Inflation Adjustment Act also requires agencies to round the inflation adjustment based on the amount of the penalty when last adjusted.

- For penalties greater than \$100 but less than or equal to \$1,000, the adjusted amount must be rounded to the nearest \$100.

- For penalties greater than \$1,000 but less than or equal to \$10,000, the adjusted amount must be rounded to the nearest \$1,000.

- For penalties greater than \$10,000 but less than or equal to \$100,000, the adjusted amount must be rounded to the nearest \$5,000.

- For penalties greater than \$100,000 but less than or equal to \$200,000, the adjusted amount must be rounded to the nearest \$10,000.

- For penalties greater than \$200,000, the adjusted amount must be rounded to the nearest \$25,000.

The Department's Civil Monetary Penalties

The following analysis calculates new civil monetary penalties for penalty statutes in the order in which they appear in 34 CFR 36.2. The Inflation Adjustment Act provides that adjustments to an agency's CMPs apply only to violations that occur after the effective date of the adjustments. These regulations become effective upon publication in the **Federal Register**. Therefore, the adjustments made by this amendment to the Department's CMPs apply only to violations that occur after the date these regulations are published in the **Federal Register**.

Statute: 20 U.S.C. 1015(c)(5).

Current Regulations: The CMP for 20 U.S.C. 1015(c)(5) [Section 131(c)(5) of the Higher Education Act of 1965, as amended (HEA)], as last adjusted in 2005, is a fine of up to \$27,500 for failure by an IHE to provide information on the cost of higher education to the Commissioner of Education Statistics.

New Regulations: The new penalty for this section is \$30,000.

Reason: This CMP was last adjusted in 2005. Therefore, the inflation

adjustment is the percentage change in the CPI-U from June 2005 (194.5) through June 2011 (225.722), or 16%. The new penalty is calculated as follows: $\$27,500 \times 16\% = \$4,400$, which increases the penalty, when rounded to the nearest \$5,000, to \$30,000.

Statute: 20 U.S.C. 1027(f)(3)(now 20 U.S.C. 1022d(a)(3)).

Current Regulations: The CMP for 20 U.S.C. 1027(f)(3) [Section 207(f)(3) of the HEA], as last adjusted in 2005, provides for a fine of up to \$27,500 for failure by an IHE to provide information to the State and the public regarding its teacher-preparation programs.

New Regulations: The new penalty for this section is \$30,000.

Reason: In 2008, Congress amended the HEA, redesignating this CMP as section 205(a)(3) of the HEA (20 U.S.C. 1022d(a)(3)) and setting the fine at \$27,500. Because Congress reauthorized this penalty in 2008, the inflation adjustment for 20 U.S.C. 1022d(a)(3) is the percentage change in the CPI-U from June 2008 (218.815) through June 2011 (225.722), or 3.2%. The new penalty is calculated as follows: $\$27,500 \times 3.2\% = \880 , which increases the penalty, when rounded to the nearest \$5,000, to \$30,000.

Statute: 20 U.S.C. 1082(g).

Current Regulations: The CMP for 20 U.S.C. 1082(g) [Section 432(g) of the HEA], as last adjusted in 2002, provides for a fine of up to \$27,500 for violations by lenders and guaranty agencies of Title IV of the HEA, which authorizes the Federal Family Education Loan Program.

New Regulation: The new penalty for this section is \$35,000.

Reason: This CMP was last adjusted in 2002. Therefore, the inflation adjustment is the percentage change in the CPI-U from June 2002 (179.9) through June 2011 (225.722), or 25.5%. The new penalty is calculated as follows: $\$27,500 \times 25.5\% = \$7,012.5$, which increases the penalty, when rounded to the nearest \$5,000, to \$35,000.

Statute: 20 U.S.C. 1094(c)(3)(B).

Current Regulations: The CMP for 20 U.S.C. 1094(c)(3)(B) [Section 487(c)(3)(B) of the HEA], as last adjusted in 2002, provides for a fine of up to \$27,500 for an IHE's violation of Title IV of the HEA or its implementing regulations. Title IV authorizes various programs of student financial assistance.

New Regulations: The new penalty for this section is \$35,000.

Reason: This CMP was last adjusted in 2002. Therefore, the inflation adjustment is the percentage change in the CPI-U from June 2002 (179.9)

through June 2011 (225.722), or 25.5%. The new penalty is calculated as follows: $\$27,500 \times 25.5\% = \$7,012.5$, which increases the penalty, when rounded to the nearest \$5,000, to \$35,000.

Statute: 20 U.S.C. 1228c(c)(2)(E).

Current Regulations: None.

New Regulations: The new penalty for this section is \$1,100.

Reason: The CMP for 20 U.S.C. 1228c(c)(2)(E) [Section 429 of the General Education Provisions Act] was established in 1994 and has not been adjusted. It provides a penalty of up to \$1,000 for an educational organization's failure to disclose certain information to minor students and their parents.

The Inflation Adjustment Act was passed in 1990 and required agencies to first adjust their CMPs in 1996.

Although the percentage change in the CPI-U from June 1994 through June 2011 is greater than 10%, the 1996 statute that amended the Inflation Adjustment Act also limited the first adjustment of a CMP to no more than 10 percent of the original penalty. Because the Department has never adjusted the CMP for 20 U.S.C. 1228c(c)(2)(E), the Department is limited to a maximum inflation adjustment of 10%, rounded to the nearest \$100. The new penalty is calculated as follows: $\$1,000 \times 10\%$, which increases the penalty, when rounded to the nearest \$100, to \$1,100.

Statute: 31 U.S.C. 1352(c)(1) and (c)(2)(A).

Current Regulations: The CMPs for 31 U.S.C. 1352(c)(1) and (c)(2)(A), as last adjusted in 2002, provide for a fine of \$11,000 to \$110,000 for recipients of Government grants, contracts, etc. that improperly lobby Congress or the Executive Branch with respect to the award of Government grants and contracts.

New Regulations: The new penalties for these sections are \$15,000 to \$140,000.

Reason: These CMPs were last adjusted in 2002. Therefore, the inflation adjustment is the percentage change in the CPI-U from June 2002 (179.9) through June 2011 (225.722), or 25.5%. The new penalties are calculated as follows: For the minimum fine of \$11,000, $\$11,000 \times 25.5\% = \$2,805$, which increases the minimum penalty, when rounded to the nearest \$5,000, to \$15,000. For the maximum penalty of \$110,000, $\$110,000 \times 25.5\% = \$28,050$, which increases the maximum penalty, when rounded to the nearest \$10,000, to \$140,000.

Statute: 31 U.S.C. 3802(a)(1) and (a)(2).

Current Regulations: The CMPs for 31 U.S.C. 3802(a)(1) and (a)(2), as last adjusted in 2002, provide for a fine of up to \$5,500 for false claims and statements made to the Government.

New Regulations: The new penalty for this section is \$7,000.

Reason: This CMP was last adjusted in 2002. Therefore, the inflation adjustment is the percentage change in the CPI-U from June 2002 (179.9) through June 2011 (225.722), or 25.5%. The new penalty is calculated as follows: $\$5,500 \times 25.5\% = \$1,402$, which increases the penalty, when rounded to the nearest \$1,000, to \$7,000.

Executive Orders 12866 and 13563

Regulatory Impact Analysis

Under Executive Order 12866, the Secretary must determine whether this regulatory action is "significant" and, therefore, subject to the requirements of the Executive order and subject to review by the Office of Management and Budget (OMB). Section 3(f) of Executive Order 12866 defines a significant regulatory action as an action likely to result in a rule that may—

(1) Have an annual effect on the economy of \$100 million or more, or adversely affect a sector of the economy; productivity; competition; jobs; the environment; public health or safety; or State, local, or tribal governments or communities in a material way (also referred to as "economically significant" regulations);

(2) Create serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impacts of entitlement grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles stated in the Executive order.

Based on the number and amount of penalties imposed under the CMPs amended in this final regulation, we have determined that this final regulatory action will have none of the economic impacts described under the Executive order. These final regulations are required by statute, are not at the Secretary's discretion, and, accordingly, do not have any of the policy impacts described under the Executive order. Because this final regulatory action is not a significant regulatory action, it is not subject to review by OMB under section 3(f) of Executive Order 12866.

We have also reviewed these regulations under Executive Order 13563, which supplements and

explicitly reaffirms the principles, structures, and definitions governing regulatory review established in Executive Order 12866. To the extent permitted by law, Executive Order 13563 requires that an agency—

(1) Propose or adopt regulations only upon a reasoned determination that their benefits justify their costs (recognizing that some benefits and costs are difficult to quantify);

(2) Tailor its regulations to impose the least burden on society, consistent with obtaining regulatory objectives and taking into account, among other things, and to the extent practicable, the costs of cumulative regulations;

(3) In choosing among alternative regulatory approaches, select those approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity);

(4) To the extent feasible, specify performance objectives, rather than the behavior or manner of compliance a regulated entity must adopt; and

(5) Identify and assess available alternatives to direct regulation, including economic incentives—such as user fees or marketable permits—to encourage the desired behavior, or providing information that enables the public to make choices.

Executive Order 13563 also requires an agency "to use the best available techniques to quantify anticipated present and future benefits and costs as accurately as possible." The Office of Information and Regulatory Affairs of OMB has emphasized that these techniques may include "identifying changing future compliance costs that might result from technological innovation or anticipated behavioral changes."

We are issuing these final regulations as required by statute. The Secretary has no discretion to consider alternative approaches as delineated in the Executive order. Based on this analysis and the reasons stated in the preamble, the Department believes that these final regulations are consistent with the principles in Executive Order 13563.

Waiver of Rulemaking and Delayed Effective Date

Under the Administrative Procedure Act (APA) (5 U.S.C. 553), the Department generally offers interested parties the opportunity to comment on proposed regulations. However, the APA provides that an agency is not required to conduct notice- and-comment rulemaking when the agency, for good cause, finds that notice and public comment thereon are

impracticable, unnecessary, or contrary to the public interest (5 U.S.C. 553(b)(B)). There is good cause to waive rulemaking here as unnecessary.

Rulemaking is “unnecessary” when the agency is issuing a minor rule in which the public is not particularly interested. It applies in those situations in which “the administrative rule is a routine determination, insignificant in nature and impact, and inconsequential to the industry and to the public.”

Utility Solid Waste Activities Group v. EPA, 236 F.3d 749, 755 (D.C. Cir. 2001), quoting U.S. Department of Justice, *Attorney General’s Manual on the Administrative Procedure Act* 31 (1947) and *South Carolina v. Block*, 558 F. Supp. 1004, 1016 (D.S.C. 1983).

These regulations merely implement the statutory mandate to adjust CMPs for inflation. The regulations reflect administrative computations performed by the Department as prescribed by the statute and do not establish or affect substantive policy. The Secretary has no discretion in determining the new penalties.

The APA also generally requires that regulations be published at least 30 days before their effective date, unless the agency has good cause to implement its regulations sooner (5 U.S.C. 553(d)(3)). Again, because these final regulations merely implement non-discretionary administrative computations, there is good cause to make them effective on the day they are published.

Regulatory Flexibility Act Certification

The Secretary certifies that these regulations will not have a significant economic impact on a substantial

number of small entities. The formula for the amount of the inflation adjustments is prescribed by statute and is not subject to the Secretary’s discretion. These CMPs are infrequently imposed by the Secretary, and the regulations do not involve any special considerations that might affect the imposition of CMPs on small entities.

Paperwork Reduction Act of 1995

These regulations do not contain any information collection requirements.

Intergovernmental Review

This program is not subject to Executive Order 12372 and the regulations in 34 CFR part 79.

Assessment of Educational Impact

Based on our own review, we have determined that these final regulations do not require transmission of information that any other agency or authority of the United States gathers or makes available.

Electronic Access to This Document:

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 via the Federal Digital System at: www.gpo.gov/fdsys. At this site 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). To use PDF you must have Adobe Acrobat Reader, which is available free at the site.

You may also access documents of the Department published in the **Federal**

Register by using the article search feature at: www.federalregister.gov. Specifically, through the advanced search feature at this site, you can limit your search to documents published by the Department.

(Catalog of Federal Domestic Assistance Number does not apply)

List of Subjects in 34 CFR Part 36

Claims, Fraud, Penalties.

Dated: September 27, 2012.

Arne Duncan,

Secretary of Education.

For the reasons discussed in the preamble, the Secretary amends part 36 in title 34 of the Code of Federal Regulations as follows:

PART 36—ADJUSTMENT OF CIVIL MONETARY PENALTIES FOR INFLATION

■ 1. The authority citation for part 36 is revised to read as follows:

Authority: 20 U.S.C. 1221e–3 and 3474; 28 U.S.C. 2461 note, unless otherwise noted.

■ 2. The authority citation for § 36.1 is revised to read as follows:

§ 36.2 Purpose.

* * * * *

(Authority: 20 U.S.C. 1221e–3 and 3474; 28 U.S.C. 2461 note, unless otherwise noted)

■ 3. Section 36.2 is amended by revising Table I and the authority citation to read as follows:

§ 36.2 Penalty adjustment.

* * * * *

TABLE I, SECTION 36.2—CIVIL MONETARY PENALTY INFLATION ADJUSTMENTS

Statute	Description	New maximum (and minimum, if applicable) penalty amount
20 U.S.C. 1015(c)(5) (Section 131(c)(5) of the Higher Education Act of 1965 (HEA)).	Provides for a fine, as last adjusted, of up to \$27,500 for failure by an institute of higher education to provide information on the cost of higher education to the Commissioner of Education Statistics.	\$30,000.
20 U.S.C. 1022d(a)(3) (Section 205(a)(3) of the HEA)	Provides for a fine, as set by Congress in 2008, of up to \$27,500 for failure by an IHE to provide information to the State and the public regarding its teacher-preparation programs.	\$30,000.
20 U.S.C. 1082(g) (Section 432(g) of the HEA)	Provides for a civil penalty, as last adjusted, of up to \$27,500 for violations by lenders and guaranty agencies of Title IV of the HEA, which authorizes the Federal Family Education Loan Program.	\$35,000.
20 U.S.C. 1094(c)(3)(B) (Section 487(c)(3)(B) of the HEA)	Provides for a civil penalty, as last adjusted, of up to \$27,500 for an IHE’s violation of Title IV of the HEA, which authorizes various programs of student financial assistance.	\$35,000.
20 U.S.C. 1228c(c)(2)(E) (Section 429 of the General Education Provisions Act).	Provides for a civil penalty of up to \$1,000 for an educational organization’s failure to disclose certain information to minor students and their parents.	\$1,100.

TABLE I, SECTION 36.2—CIVIL MONETARY PENALTY INFLATION ADJUSTMENTS—Continued

Statute	Description	New maximum (and minimum, if applicable) penalty amount
31 U.S.C. 1352(c)(1) and (c)(2)(A)	Provides for a civil penalty, as last adjusted, of \$11,000 to \$110,000 for recipients of Government grants, contracts, etc. that improperly lobby Congress or the Executive Branch with respect to the award of Government grants and contracts.	\$15,000 to \$140,000.
31 U.S.C. 3802(a)(1) and (a)(2)	Provides for a civil penalty, as last adjusted, of up to \$5,500 for false claims and statements made to the Government.	\$7,000.

(Authority: 20 U.S.C. 1221e-3 and 3474; 28 U.S.C. 2461 note, unless otherwise noted)
 [FR Doc. 2012-24248 Filed 10-1-12; 8:45 am]
BILLING CODE 4000-01-P

DEPARTMENT OF THE INTERIOR

National Park Service

36 CFR Part 7

[NPS-SAGU-10884; 8671-0004-SZM]

RIN 1024-AE08

Special Regulations; Areas of the National Park System, Saguaro National Park, Bicycling

AGENCY: National Park Service, Interior.
ACTION: Final rule.

SUMMARY: This rule designates the Hope Camp Trail as a route for bicycle use and allows for management of bicycle use within Saguaro National Park. Further, the rule meets the provision of the National Park Service general regulation pertaining to bicycles requiring promulgation of a special regulation to designate bicycle routes outside of developed areas.

DATES: This rule is effective November 1, 2012.

FOR FURTHER INFORMATION CONTACT: Darla Sidles, Superintendent, Saguaro National Park, (520) 733-5101.

SUPPLEMENTARY INFORMATION:

Background

Legislation and Purposes of Saguaro National Park

In 1933, in order to protect lands with exceptional growth of various species of cacti, including the so-called giant or saguaro cactus, President Herbert Hoover established what would later be known as Saguaro National Monument through Proclamation No. 2032 (47 Stat. 2557). In 1961 President John F. Kennedy enlarged the national monument to include certain lands in what was then known as the Tucson

Mountain Park through Proclamation No. 3439 (76 Stat. 1437). In 1976 Congress designated 71,400 acres of the national monument as wilderness (Pub. L. 94-567, 90 Stat. 2692, 2693). Then, in 1991, through the Saguaro National Monument Expansion Act of 1991, Congress authorized the addition of approximately 3,540 acres of lands to the Rincon Unit of the national monument (Pub. L. 102-61, 105 Stat. 303). Finally in 1994, through the Saguaro National Park Establishment Act of 1994, Congress again expanded the park area and renamed it Saguaro National Park (Park) (Pub. L. 103-364, 108 Stat. 3467, codified at 16 U.S.C. 410zz through 410zz-3).

The Park is an important national resource visited by approximately 700,000 people annually. It encompasses approximately 91,450 acres, 71,400 acres of which are designated as wilderness. The Park has two Districts—the Rincon Mountain District east of Tucson and the Tucson Mountain District west of Tucson. Both are within Pima County, Arizona, and are separated by the city of Tucson. The Park protects a superb example of the Sonoran Desert ecosystem, featuring exceptional stands of saguaro cacti. The saguaro is the tallest cactus in the United States, and is recognized worldwide as an icon of the American Southwest.

The Hope Camp Trail is a 2.8-mile-long hiking and equestrian trail that originates at the Loma Alta Trailhead and travels east through the southwestern portion of the Park's Rincon Mountain District to the Arizona State Trust Lands boundary beyond Hope Camp. The trail generally traverses relatively even terrain and rolling hills and is lined with a variety and abundance of desert trees and shrubs. The trail is not within eligible, proposed, recommended, or designated wilderness.

Prior to the National Park Service (NPS) acquisition in the mid 1990s, the land was part of a privately-owned ranch, and the trail route was a graded

dirt road used to support ranching operations. The former owner also allowed the route to be used for recreational purposes, including hiking, equestrian, and bicycle use. Shortly after acquiring the land, the NPS closed the route to motor vehicles and bicycles. The trail is currently open to hiker and equestrian use only. Although closed to vehicular traffic, the route remains approximately 14 feet wide, allowing adequate room for two-way passage of diverse user groups.

General Management Plan

The Park's General Management Plan/ Environmental Impact Statement (GMP) was completed in 2008. The GMP may be viewed online at <http://parkplanning.nps.gov/sagu>.

The purposes of the GMP are as follows:

- Confirm the purpose, significance, and special mandates of the Park.
- Clearly define resource conditions and visitor uses and experiences to be achieved at the Park.
- Provide a framework for NPS managers to use when making decisions about how to:
 - Best protect Park resources;
 - Provide quality visitor uses and experiences; and
 - Manage visitor uses and what kinds of facilities, if any, to develop in/near the Park.
- Ensure that a foundation for decision making has been developed in consultation with interested stakeholders and adopted by NPS leadership after an adequate analysis of the benefits, impacts, and economic cost of alternative courses of action.

The GMP identifies six different management zones, which are specific descriptions of desired conditions for Park resources and visitor experiences in different areas of the Park. As identified in the GMP, the Hope Camp Trail lies within the Natural Zone.

Under the GMP, activities within the Natural Zone would include hiking, horseback riding, running, bicycling, and viewing flora and fauna. The zone

is available for day use only, and visitors are required to stay on trails. The GMP provides that bicycling opportunities will be explored along the Hope Camp Trail.

Comprehensive Trails Management Plan/Environmental Assessment

In November 2005, the Park initiated the development of a Comprehensive Trails Management Plan/Environmental Assessment (Plan/EA) for the Park. Internal scoping occurred with Park staff, planning professionals from the NPS Intermountain Support Office, along with representatives from the U.S. Forest Service and the Sonoran Institute. External scoping included mailing and distribution of three separate newsletters, four public open house meetings, and a 60-day public comment period. As a result of this process, four alternatives for the Park's Rincon Mountain District (including a no action alternative) were identified for public comments. Two alternatives called for converting the Hope Camp Trail into a multi-use trail, to include the use of bicycles, and two alternatives kept the trail open to hikers and equestrians only. During the public comment period on the draft Plan/EA, the NPS considered 253 pieces of correspondence, containing a total of 638 comments on the draft Plan/EA alternatives.

The objectives of the Plan/EA were to:

- Prevent impairment and unacceptable impacts on natural and cultural resources.
- Provide reasonable access to the trails network and trailheads.
- Eliminate unnecessary and parallel/duplicate trails.
- Ensure that the resulting trails network is safe and maintainable.
- Provide for a clearly designated trail system.
- Provide for a variety of trail experiences.

The Plan/EA was completed in 2009. The selected alternative and the Finding of No Significant Impact (FONSI) signed by the NPS Intermountain Regional Director on July 31, 2009, calls for converting the Hope Camp Trail to a multi-use trail, including bicycling. The Plan/EA and FONSI may be viewed online at <http://www.nps.gov/sagu/parkmgmt/park-planning.htm>.

History of Bicycle Use

A 2003 rulemaking authorized bicycle use on the 2.5-mile-long Cactus Forest Trail that bisects the paved, 8-mile-long Cactus Forest Loop Drive in the Rincon Mountain District of the Park. This rulemaking does not address the Cactus Forest Trail (CFT), which remains open

to bicycle use, as well as hiker and equestrian use. The CFT has recently been used to introduce underserved youth to the Park and the NPS via bicycling and educational fieldtrips as part of the "Trips for Kids" program. Currently, this is the only trail in the Park open to bicycle use.

Authorizing Bicycle Use

This rule designates as a bicycle route and opens to bicycle use the approximate 2.8-mile-long Hope Camp Trail, from the Loma Alta Trailhead east to the Arizona State Trust Lands boundary, approximately .2 miles beyond Hope Camp. Park staff, volunteer organizations, and local interest groups will monitor and mitigate the environmental impacts of bicycle use on the Hope Camp Trail to ensure that the trail is maintained in good condition and that any issues of concern that may arise are immediately brought to the attention of Park management.

Notice of Proposed Rulemaking

On March 2, 2012, the NPS published a Notice of Proposed Rulemaking for the designation of the Hope Camp Trail as a bicycle route within Saguaro National Park (77 FR 12761). The proposed rule was available for a 60-day public comment period, from March 2, 2012 through May 1, 2012.

Summary of and Responses to Public Comment

Comments were accepted through the mail, by hand delivery, and through the Federal eRulemaking Portal: <http://www.regulations.gov>. The NPS received 148 public comments during the comment period. Of these responses, 142 expressed support for the proposed rule. Three of the responses were from organizations, and the rest were from individuals. The three organizations that responded, all in support of the proposed regulation, are the Southern Arizona Hiking Club, Arizona Trail Association, and International Mountain Bicycling Association. There were no responses received from organizations in opposition of the proposed rule.

Some of the 142 comments received supporting the proposed include:

1. *Comment:* I support the proposed regulation to allow bicycles on Hope Camp Trail in Saguaro National Park. The special regulation to allow bicycles on the Hope Camp Trail should be promulgated because:

(a) Bicycles were allowed on this dirt road before the property was acquired by the NPS;

(b) Bicycle access on Hope Camp trail is not controversial because the area is

not recommended or designated as Wilderness;

(c) Bicycle access is consistent with the 2009 Comprehensive Trails Management Plan; and

(d) The Hope Camp trail provides a vital connection between Tucson and the Arizona Trail.

Having this connectivity would allow riders to use the City of Tucson as a starting or ending destination when riding the southern sections of the Arizona Trail that head south into the Rincon Valley. The Arizona Trail Association is working to find a route that will allow cyclists to also travel north from Tucson.

2. *Comment:* This is a chance to advance an important principle that bicycles are a low-impact recreational opportunity that is compatible with the mission of the National Park Service.

3. *Comment:* In regards to the opening of the trail connecting Saguaro National Park, Hope, and the Arizona Trail—I am in complete support of the change of trail designation to include full multi-use, including hikers, equestrian, and mountain bicycles (no motorized vehicles). I have hiked on this trail, as well as helping to work on it during its very early stages. It will make a vital connection to the Arizona trail for those trail users who enjoy longer excursions into the surrounding area. Also, a significant amount of the proposed section of trail is laid on established right of ways, actually being bladed. A review of trails in the surrounding area will confirm that multi-use trails can and do exist very well, allowing an expanded number of users with minimal impact on the natural resources. Please make this change in designation.

The five comments received in opposition of the proposed rule, along with the NPS response, to each follow:

1. *Comment:* I am NOT in favor of opening the Hope Camp Trail to bicycle use until such time as the trailhead parking area, which I understand is Pima County property, is improved to safely accommodate the additional parking without further damaging the surrounding natural resource.

Response: The NPS agrees that trailhead improvements are needed at the Hope Camp Trailhead. The park's GMP calls for re-designing and improving the Camino Loma Alta trailhead. The current trailhead and access road are on Pima County property. The NPS is working with Pima County to transfer ownership to the NPS. Pima County has also expressed interest in partnering with the park to re-design and improve the Loma Alta Trailhead.

2. *Comment:* As an avid mountain biker, I am always happy to see new access to challenging and scenic land. However, this proposal is an exception, in that this trail will bring mountain bikers much too close to sites of historic and archaeological value. Therefore, I oppose this re-designation, and hope that you decide not to allow bicycle access.

Response: While there are areas of historic and archaeological interest along the Hope Camp area, the NPS believes the return of bicyclists to this pre-existing route will not lead to degradation of these resources. The Hope and Deer Camp areas provide a great opportunity to interpret the Park's ranching heritage; however, an evaluation by the Arizona State Historic Preservation Office found they are not eligible for listing on the National Registry of Historic Places.

3. *Comment:* I oppose any mountain bike trails within Saguaro National Park. I believe that bike use on trails within this park is incompatible with the visitors' expectations of a trail experience within a national park.

Response: The Park completed its GMP in 2008. The GMP's preferred alternative identified the Hope Camp Trail, an area determined not suitable for wilderness designation, for conversion to a multi-use trail. Subsequently, the Plan/EA completed in 2009, also identified conversion of the Hope Camp Trail as a multi-use trail. Numerous public meetings were held for both plans, and both plans were published for 60-day review and comment periods. Public interest in these planning processes was high, and the park received many comments, but none expressed concern that bicycle use was incompatible with visitor experience. The NPS is committed to providing appropriate, high quality opportunities for visitors to enjoy the units of the National Park System, consistent with the agencies' stewardship responsibilities. In 2005, the NPS entered into a General Agreement with the International Mountain Bicycling Association (IMBA). This agreement is the culmination of collaborative efforts of both parties to provide high quality bicycling opportunities for visitors to enjoy the national park system, in appropriate areas in a manner consistent with our stewardship responsibilities. Mountain biking is also compatible with national programs such as the First Lady's "Let's Move Outside" initiative that encourages kids to get outside and be more physically active, as well as with many NPS efforts promoting Healthy People, Healthy Parks.

4. *Comment:* This proposal would lead to significant changes to the trail experience in this portion of Saguaro National Park that will negatively impact hikers, equestrians, wildlife, and will reduce solitude and wilderness-like aesthetics that are long-standing attributes in this area and the primary draw for visitors over the years. Most egregiously, it will also lead to renegade use by cyclists of the Quilter Trail leading into the Saguaro Wilderness, due to unregulated access and a lack of enforcement.

Response: While there may be changes to trail experiences, the NPS believes bicycle use is compatible to the trail's current users. For all park trails connecting to the Hope Camp Trail, including the Quilter Trail, use of bicycles will continue to be prohibited. Appropriate signing will be installed and NPS rangers and volunteers will patrol these trails and enforce NPS regulations.

5. *Comment:* I find it simply wrong to take away this set of trails for only bicycle use, leaving equestrian trail riders and hikers off limits. To me, this would be inappropriate use and a major limitation of this area so a select few can enjoy it.

Response: The Final Rule does not limit the Hope Camp Trail to bicycle use only. Instead, the trail will become a multi-use trail allowing hiking, equestrian, and bicycle use.

One comment received was not relevant to the rule and therefore was not considered.

Changes From the Proposed Rule

Paragraph (a)(2)(ii) was added to clarify that violating a closure, condition, or restriction established by the Superintendent under paragraph (a)(2) is prohibited.

Compliance With Other Laws, Executive Orders, and Department Policy

Regulatory Planning and Review (Executive Orders 12866 and 13563)

Executive Order 12866 provides that the Office of Information and Regulatory Affairs will review all significant rules. The Office of Information and Regulatory Affairs has determined that this rule is not significant.

Executive Order 13563 reaffirms the principles of Executive Order 12866 while calling for improvements in the nation's regulatory system to promote predictability, to reduce uncertainty, and to use the best, most innovative, and least burdensome tools for achieving regulatory ends. The executive order directs agencies to

consider regulatory approaches that reduce burdens and maintain flexibility and freedom of choice for the public where these approaches are relevant, feasible, and consistent with regulatory objectives. Executive Order 13563 emphasizes further that regulations must be based on the best available science and that the rulemaking process must allow for public participation and an open exchange of ideas. We have developed this rule in a manner consistent with these requirements.

Regulatory Flexibility Act (RFA)

This rule will not have a significant economic effect on a substantial number of small entities under the RFA (5 U.S.C. 601 et seq.). This certification is based on information contained in the report titled, "Cost-Benefit and Regulatory Flexibility Analyses for Designating Bicycle Trails in Saguaro National Park" that is available for review at <http://www.nps.gov/sagu/parkmgmt/park-planning.htm>.

Small Business Regulatory Enforcement Fairness Act (SBREFA)

This rule is not a major rule under 5 U.S.C. 804(2), the SBREFA. This rule:

a. Does not have an annual effect on the economy of \$100 million or more.

b. Will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions.

c. Does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises.

There are no businesses in the surrounding area economically dependent on bicycle use of this trail. The park does not have any bicycle rental concessioners, and current users are predominantly individuals engaged in recreational activities.

Unfunded Mandates Reform Act (UMRA)

This rule does not impose an unfunded mandate on State, local, or tribal governments or the private sector of more than \$100 million per year. The rule does not have a significant or unique effect on State, local or tribal governments or the private sector. A statement containing the information required by the UMRA (2 U.S.C. 1531 et seq.) is not required.

Takings (Executive Order 12630)

Under the criteria in section 2 of Executive Order 12630, this rule does not have significant takings implications. A taking implications

assessment is not required because this rule will not deny any private property owner of beneficial uses of their land, nor will it significantly reduce their land's value. No taking of personal property will occur as a result of this rule.

Federalism (Executive Order 13132)

Under the criteria in section 1 of Executive Order 13132, this rule does not have sufficient federalism implications to warrant the preparation of a Federalism summary impact statement. A Federalism summary impact statement is not required.

Civil Justice Reform (Executive Order 12988)

This rule complies with the requirements of Executive Order 12988. Specifically this rule:

(a) Meets the in the criteria of section 3(a) requiring that all regulations be reviewed to eliminate errors and ambiguity and be written to minimize litigation; and

(b) meets the criteria of section 3(b)(2) requiring that all regulations be written in clear language and contain clear legal standards.

Consultation With Indian Tribes (Executive Order 13175 and Department Policy)

The Department of the Interior strives to strengthen its government-to-government relationship with Indian tribes through a commitment to consultation with Indian tribes and recognition of their right to self-governance and tribal sovereignty. We have evaluated this rule under the Department's consultation policy and under the criteria in Executive Order 13175 and have determined that it has no substantial direct effects on federally recognized Indian tribes and that consultation under the Department's tribal consultation policy is not required.

Affiliated Native American tribes were contacted by letters sent in December 2008 to solicit any interests or concerns with the proposed action. No responses were received by the Park.

Paperwork Reduction Act (PRA)

This rule does not contain information collection requirements, and a submission under the PRA is not required.

National Environmental Policy Act (NEPA)

This rule does not constitute a major Federal action significantly affecting the quality of the human environment. A detailed statement under the NEPA is

not required because we reached a FONSI. The Plan/EA and FONSI that included an evaluation of bicycling on the Hope Camp Trail may be viewed online at <http://www.nps.gov/sagu/parkmgmt/park-planning.htm>.

Effects on the Energy Supply (Executive Order 13211)

This rule is not a significant energy action under the definition in Executive Order 13211. A statement of Energy Effects is not required.

Drafting Information

The primary authors of this regulation are Robert Love, Chief Ranger, Saguaro National Park, Darla Sidles, Superintendent, Saguaro National Park, John Calhoun and A.J. North, NPS Regulations Program, Washington, DC.

List of Subjects in 36 CFR Part 7

National Parks, Reporting and recordkeeping requirements.

In consideration of the foregoing, the NPS amends 36 CFR part 7 as set forth below:

PART 7—SPECIAL REGULATIONS, AREAS OF THE NATIONAL PARK SYSTEM

■ 1. The authority citation for Part 7 continues to read as follows:

Authority: 16 U.S.C. 1, 3, 9a, 462(k); Sec. 7.96 also issued under 36 U.S.C. 501–511, D.C. Code 10–137 (2001) and D.C. Code 50–2201 (2001).

■ 2. Revise § 7.11(a) to read as follows:

§ 7.11 Saguaro National Park.

(a) *Bicycling.* (1) The following trails are designated as routes for bicycle use:

- (i) That portion of the Cactus Forest Trail inside the Cactus Forest Drive; and
- (ii) The Hope Camp Trail, from the Loma Alta Trailhead east to the Arizona State Trust Lands boundary, located approximately .2 miles beyond Hope Camp.

(2) The Superintendent may open or close designated routes, or portions thereof, or impose conditions or restrictions for bicycle use after taking into consideration public health and safety, natural and cultural resource protection, and other management activities and objectives.

(i) The Superintendent will provide public notice of all such actions through one or more of the methods listed in § 1.7 of this chapter.

(ii) Violating a closure, condition, or restriction is prohibited.

* * * * *

Dated: September 25, 2012.

Rachel Jacobson,

Principal Deputy Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 2012–24231 Filed 10–1–12; 8:45 am]

BILLING CODE P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R03–OAR–2012–0381; FRL– 9735–7]

Approval and Promulgation of Air Quality Implementation Plans; Delaware; Requirements for Prevention of Significant Deterioration and Nonattainment New Source Review; Fine Particulate Matter (PM_{2.5})

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is approving a State Implementation Plan (SIP) revision submitted by the State of Delaware on March 14, 2012. This SIP revision pertaining to Delaware's Prevention of Significant Deterioration (PSD) and nonattainment New Source Review (NSR) programs incorporates preconstruction permitting requirements for fine particulate matter (PM_{2.5}) into the Delaware SIP. In addition, EPA is approving SIP revisions and portions of SIP submissions for the purpose of determining that Delaware has met its statutory obligations with respect to the infrastructure requirements of the Clean Air Act (CAA) which relate to Delaware's PSD permitting program and are necessary to implement, maintain, and enforce the 1997 national ambient air quality standards (NAAQS) for PM_{2.5} and ozone, the 2006 PM_{2.5} NAAQS, and the 2008 lead NAAQS. EPA is approving these revisions in accordance with the requirements of the Clean Air Act (CAA).

DATES: This final rule is effective on November 1, 2012.

ADDRESSES: EPA has established a docket for this action under Docket ID Number EPA–R03–OAR–2012–0381. All documents in the docket are listed in the 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 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 Delaware Department of Natural Resources and Environmental Control, 89 Kings Highway, P.O. Box 1401, Dover, Delaware 19903.

FOR FURTHER INFORMATION CONTACT: Gerallyn Duke, (215) 814-2084, or by email at duke.gerallyn@epa.gov.

SUPPLEMENTARY INFORMATION:

I. Background

Throughout this document, whenever “we,” “us,” or “our” is used, we mean EPA. On August 1, 2012 (77 FR 45527), EPA published a notice of proposed rulemaking (NPR) for the State of Delaware. The NPR proposed approval of a SIP revision pertaining to Delaware’s Prevention of Significant Deterioration (PSD) and nonattainment New Source Review (NSR) programs which incorporates preconstruction permitting requirements for fine particulate matter (PM_{2.5}) into the Delaware SIP. In addition, EPA proposed approval of SIP revisions and portions of SIP submissions for the purpose of determining that Delaware has met its statutory obligations with respect to the infrastructure requirements of the Clean Air Act (CAA) which relate to Delaware’s PSD permitting program and are necessary to implement, maintain, and enforce the 1997 PM_{2.5} and ozone NAAQS, the 2006 PM_{2.5} NAAQS, and the 2008 lead NAAQS. The formal SIP revision was submitted by Delaware on March 14, 2012.

The purpose of this SIP revision is to incorporate the PSD and nonattainment preconstruction permitting requirements for PM_{2.5} that are set forth in two Federal rules. The first is the “Implementation of the New Source Review (NSR) Program for Particulate Matter less than 2.5 Micrometers (PM_{2.5})” (NSR PM_{2.5} Rule), which was promulgated on May 16, 2008 (73 FR 28321). The second is the “Prevention of Significant Deterioration (PSD) for Particulate Matter less than 2.5 Micrometers (PM_{2.5})—Increments, Significant Impact Levels (SILs) and Significant Monitoring Concentration (SMC)” (PSD PM_{2.5} Rule), which was promulgated on October 20, 2010 (75 FR 64864).

II. Summary of SIP Revision

The SIP revision consists of amendments to sections 1.0, 2.0, and 3.0 of 7 DE Admin. Code 1125, “Requirements for Preconstruction Review.” The amendments establish the major source threshold, significant emission rate and offset ratios for PM_{2.5}, establish NO_x and SO₂ as precursors to PM_{2.5}, and establish the allowance for interpollutant trading for offsets and NSR applicability to PM_{2.5} precursor pollutants, pursuant to the May 2008 NSR PM_{2.5} Rule. In addition, the amendments add maximum allowable ambient pollutant concentrations (increments), an SMC for PM_{2.5} pursuant to the October 2010 PSD PM_{2.5} Rule, and SILs. As discussed in the NPR, we do not consider the SILs to be a mandatory SIP element, and in light of litigation before the U.S. Court of Appeals (D.C. Circuit), we are taking no action at this time with regard to new section 3.9 of DE Admin. Code 1125, “Source Impact Analysis.”

Other specific requirements of the regulations and the rationale for EPA’s proposed action are explained in the NPR and will not be restated here. No public comments were received on the NPR.

III. Final Action

EPA is approving the March 14, 2012 SIP submission pertaining to Delaware’s PSD and nonattainment NSR programs to incorporate the preconstruction permitting requirements for PM_{2.5} as a revision to the Delaware SIP, with the exception for the portion of the SIP submission concerning the implementation of SILs for PM_{2.5}. Additionally, in light of this SIP revision, EPA is approving the portions of Delaware’s December 13, 2007, March 12, 2008, September 19, 2008, September 16, 2009, and April 1, 2010 infrastructure SIP submittals which address the obligations set forth at CAA section 110(a)(2)(D)(i)(II) relating to Delaware’s PSD permit program for the 1997 PM_{2.5} and ozone NAAQS as well as for the 2006 PM_{2.5} NAAQS. Finally, in light of Delaware’s submission dated October 17, 2011 and the March 2012 SIP revision which address the obligations set forth at CAA sections 110(a)(2)(C), (D)(i)(II) and (J) relating to the Delaware’s PSD permit program, EPA has determined that Delaware’s SIP meets the statutory obligations relating to its PSD permit program set forth at CAA sections 110(a)(2)(C), (D)(i)(II), and (J) for the 2008 lead NAAQS.

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 3, 2012. Filing a petition for reconsideration by the Administrator of this final rule 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. This action pertaining to NSR requirements for PM_{2.5} may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and

recordkeeping requirements, Sulfur oxides.

Dated: September 18, 2012.

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 I—Delaware

■ 2. In § 52.420, the table in paragraph (c) is amended by revising the entries for Regulation 1125, sections 1.0, 2.0, and 3.0 in numerical order, to read as follows:

§ 52.420 Identification of plan.

* * * * *
(c) * * *

EPA-APPROVED REGULATIONS IN THE DELAWARE SIP

State regulation (7 DNREC 1100)	Title/subject	State effective date	EPA approval date	Additional explanation
* * *	* * *	* * *	* * *	* * *
1125 Requirements for Preconstruction Review				
Section 1.0	General Provisions	2/11/12	10/2/12 [<i>Insert page number where the document begins</i>].	Added 4 terms, Revised 5 terms. Note: In section 1.9, the previous SIP-approved baseline dates for sulfur dioxide, particulate matter, and nitrogen dioxide in the definition of “Baseline Date” remain part of the SIP.
Section 2.0	Emission Offset Provisions (EOP).	2/11/12	10/2/12 [<i>Insert page number where the document begins</i>].	Added Section 2.2.5, 2.4.3.3 and 2.5.7
Section 3.0	Prevention of Significant Deterioration of Air Quality.	2/11/12	10/2/12 [<i>Insert page number where the document begins</i>].	Revised Section 3.2 and 3.7.7.1. Note: Previous SIP-approved revisions to Section 3.1 for nitrogen dioxide increments and Section 3.9A (now designated as Section 3.10.1) for air quality models remain part of the SIP.
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[FR Doc. 2012-24095 Filed 10-1-12; 8:45 am]
BILLING CODE 6560-50-P

DEPARTMENT OF TRANSPORTATION

Pipeline and Hazardous Materials Administration

49 CFR Part 173

Shippers—General Requirements for Shipments and Packagings

CFR Correction

In Title 49 of the Code of Federal Regulations, Parts 100 to 177, revised as of October 1, 2011, make the following corrections:

■ 1. In § 173.133, on page 539, paragraph (e) is redesignated as (c) and revised to read as follows:

§ 173.133 Assignment of packing group and hazard zones for Division 6.1 materials.
* * * * *

(c) *Transitional provisions.* The criteria for packing group assignments in effect on December 31, 2006, may continue to be used until January 1, 2012.

■ 2. In § 173.134, on page 543, the second paragraph (c) is removed and (c)(2) is revised to read as follows:

§ 173.134 Class 6, Division 6.2—Definitions and exceptions.

* * * * *
(c) * * *
* * * * *

(2) The following materials may be offered for transportation and transported as a regulated medical waste when packaged in a rigid non-bulk packaging conforming to the general packaging requirements of §§ 173.24 and 173.24a and packaging requirements specified in 29 CFR 1910.1030 and transported by a private or contract carrier in a vehicle used exclusively to transport regulated medical waste:

(i) Waste stock or culture of a Category B infectious substance;

(ii) Plant and animal waste regulated by the Animal and Plant Health Inspection Service (APHIS);

(iii) Waste pharmaceutical materials;

(iv) Laboratory and recyclable wastes;

(v) Infectious substances that have been treated to eliminate or neutralize pathogens;

(vi) Forensic materials being transported for final destruction;

(vii) Rejected or recalled health care products;

(viii) Documents intended for destruction in accordance with the Health Insurance Portability and Accountability Act of 1996 (HIPAA) requirements; and

(ix) Medical or clinical equipment and laboratory products provided they are properly packaged and secured against exposure or contamination. Sharps containers must be securely closed to prevent leaks or punctures.

* * * * *

[FR Doc. 2012-24294 Filed 9-28-12; 11:15 am]
BILLING CODE 1505-01-D

Proposed Rules

Federal Register

Vol. 77, No. 191

Tuesday, October 2, 2012

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 THE TREASURY

Office of the Comptroller of the Currency

12 CFR Part 45

[Docket No. OCC-2011-0008]

RIN 1557-AD43

BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM

12 CFR Part 237

[Docket No. R-1415]

RIN 7100 AD74

FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Part 324

RIN 3064-AD79

FARM CREDIT ADMINISTRATION

12 CFR Part 624

RIN 3052-AC69

FEDERAL HOUSING FINANCE AGENCY

12 CFR Part 1221

RIN 2590-AA45

Margin and Capital Requirements for Covered Swap Entities; Reopening of Comment Period

AGENCY: Office of the Comptroller of the Currency, Treasury (OCC); Board of Governors of the Federal Reserve System (Board); Federal Deposit Insurance Corporation (FDIC); Farm Credit Administration (FCA); and the Federal Housing Finance Agency (FHFA).

ACTION: Reopening of comment period for proposed rule.

SUMMARY: The OCC, Board, FDIC, FCA, and FHFA (collectively, the Agencies) are reopening the comment period for the proposed rule published in the

Federal Register on May 11, 2011 (76 FR 27564) to establish minimum margin and capital requirements for uncleared swaps and security-based swaps entered into by swap dealers, major swap participants, security-based swap dealers, and major security-based swap participants for which one of the Agencies is the prudential regulator (Proposed Margin Rule). Reopening the comment period that expired on July 11, 2011 will allow interested persons additional time to analyze and comment on the Proposed Margin Rule in light of the consultative document on margin requirements for non-centrally-cleared derivatives recently published for comment by the Basel Committee on Banking Supervision (BCBS) and the International Organization of Securities Commissions (IOSCO).

DATES: Comments must be received on or before November 26, 2012.

ADDRESSES: Interested parties are encouraged to submit written comments jointly to all of the Agencies.

Commenters are encouraged to use the title "Margin and Capital Requirements for Covered Swap Entities" to facilitate the organization and distribution of comments among the Agencies. Commenters are also encouraged to identify the number of the specific question for comment to which they are responding.

Office of the Comptroller of the Currency: Because paper mail in the Washington, DC area and at the OCC is subject to delay, commenters are encouraged to submit comments by the Federal eRulemaking Portal or email, if possible. Please use the title "Margin and Capital Requirements" to facilitate the organization and distribution of the comments. You may submit comments by any of the following methods:

- *Federal eRulemaking Portal—"Regulations.gov":* Go to <http://www.regulations.gov>. Select "Document Type" of "Proposed Rules," and in the "Enter Keyword or ID Box," enter Docket ID "OCC-2011-0008," and click "Search." On "View By Relevance" tab at the bottom of screen, in the "Agency" column, locate the Proposed Rule for the OCC, in the "Action" column, click on "Submit a Comment" or "Open Docket Folder" to submit or view public comments and to view supporting and related materials for this rulemaking action.

- Click on the "Help" tab on the Regulations.gov home page to get information on using Regulations.gov, including instructions for submitting or viewing public comments, viewing other supporting and related materials, and viewing the docket after the close of the comment period.

- *Email:*

regs.comments@occ.treas.gov.

- *Mail:* Office of the Comptroller of the Currency, 250 E Street SW., Mail Stop 2-3, Washington, DC 20219.

- *Fax:* (202) 874-5274.

- *Hand Delivery/Courier:* 250 E Street SW., Mail Stop 2-3, Washington, DC 20219.

Instructions: You must include "OCC" as the agency name and "Docket ID OCC-2011-0008" in your comment. In general, OCC will enter all comments received into the docket and publish them on the Regulations.gov Web site without change, including any business or personal information that you provide such as name and address information, email addresses, or phone numbers. Comments received, including attachments and other supporting materials, are part of the public record and subject to public disclosure. Do not enclose any information in your comment or supporting materials that you consider confidential or inappropriate for public disclosure.

You may review comments and other related materials that pertain to this proposed rulemaking by any of the following methods:

- *Viewing Comments Electronically:* Go to <http://www.regulations.gov>. Select "Document Type" of "Public Submissions," and in the "Enter Keyword or ID Box," enter Docket ID "OCC-2011-0008," and click "Search." Comments will be listed under "View By Relevance" tab at the bottom of screen. If comments from more than one agency are listed, the "Agency" column will indicate which comments were received by the OCC.

- *Viewing Comments Personally:* You may personally inspect and photocopy comments at the OCC, 250 E Street SW., Washington, DC 20219. For security reasons, the OCC requires that visitors make an appointment to inspect comments. You may do so by calling (202) 874-4700. Upon arrival, visitors will be required to present valid government-issued photo identification and submit to security screening in

order to inspect and photocopy comments.

- *Docket*: You may also view or request available background documents and project summaries using the methods described above.

Board of Governors of the Federal Reserve System: You may submit comments, identified by Docket No. R-1415 and RIN 7100 AD74, by any of the following methods:

- *Agency Web Site*: <http://www.federalreserve.gov>. Follow the instructions for submitting comments at <http://www.federalreserve.gov/generalinfo/foia/ProposedRegs.cfm>.

- *Federal eRulemaking Portal*: <http://www.regulations.gov>. Follow the instructions for submitting comments.

- *Email*: regs.comments@federalreserve.gov. Include the docket number in the subject line of the message.

- *Fax*: (202) 452-3819 or (202) 452-3102.

- *Mail*: Address to Robert deV. Frierson, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue NW., Washington, DC 20551.

All public comments will be made available on the Board's Web site at <http://www.federalreserve.gov/generalinfo/foia/ProposedRegs.cfm> as submitted, unless modified for technical reasons. Accordingly, comments will not be edited to remove any identifying or contact information. Public comments may also be viewed electronically or in paper in Room MP-500 of the Board's Martin Building (20th and C Streets NW.) between 9:00 a.m. and 5:00 p.m. on weekdays.

Federal Deposit Insurance Corporation: You may submit comments, identified by RIN3064 AD-79, by any of the following methods:

- *Agency Web Site*: <http://www.fdic.gov/regulations/laws/federal/propose.html>. Follow instructions for submitting comments on the Agency Web Site.

- *Email*: Comments@FDIC.gov. Include the RIN number on the subject line of the message.

- *Mail*: Robert E. Feldman, Executive Secretary, Attention: Comments, Federal Deposit Insurance Corporation, 550 17th Street NW., Washington, DC 20429.

- *Hand Delivery*: Comments may be hand delivered to the guard station at the rear of the 550 17th Street Building (located on F Street) on business days between 7:00 a.m. and 5:00 p.m.

Instructions: All comments received must include the agency name and RIN for this rulemaking and will be posted without change to <http://www.fdic.gov/regulations/laws/federal/propose.html>,

including any personal information provided.

Farm Credit Administration: We offer a variety of methods for you to submit your comments. For accuracy and efficiency reasons, commenters are encouraged to submit comments by email or through the FCA's Web site. As facsimiles (fax) are difficult for us to process and achieve compliance with section 508 of the Rehabilitation Act, we are no longer accepting comments submitted by fax. Regardless of the method you use, please do not submit your comments multiple times via different methods. You may submit comments by any of the following methods:

- *Email*: Send us an email at reg-comm@fca.gov.

- *FCA Web site*: <http://www.fca.gov>. Select "Public Commenters," then "Public Comments," and follow the directions for "Submitting a Comment."

- *Federal eRulemaking Portal*: <http://www.regulations.gov>. Follow the instructions for submitting comments.

- *Mail*: Gary K. Van Meter, Director, Office of Regulatory Policy, Farm Credit Administration, 1501 Farm Credit Drive, McLean, VA 22102-5090.

You may review copies of all comments we receive at our office in McLean, Virginia or on our Web site at <http://www.fca.gov>. Once you are in the Web site, select "Public Commenters," then "Public Comments," and follow the directions for "Reading Submitted Public Comments." We will show your comments as submitted, including any supporting data provided, but for technical reasons we may omit items such as logos and special characters. Identifying information that you provide, such as phone numbers and addresses, will be publicly available. However, we will attempt to remove email addresses to help reduce Internet spam.

Federal Housing Finance Agency: You may submit your written comments on the proposed rulemaking, identified by regulatory information number (RIN) 2590-AA45, by any of the following methods:

- *Email*: Comments to Alfred M. Pollard, General Counsel, may be sent by email at RegComments@fhfa.gov. Please include "RIN 2590-AA45" in the subject line of the message.

- *Federal eRulemaking Portal*: <http://www.regulations.gov>. Follow the instructions for submitting comments. If you submit your comment to the *Federal eRulemaking Portal*, please also send it by email to RegComments@fhfa.gov to ensure timely receipt by the Agency. Please

include "RIN 2590-AA45" in the subject line of the message.

- *U.S. Mail, United Parcel Service, Federal Express, or Other Mail Service*: The mailing address for comments is: Alfred M. Pollard, General Counsel, Attention: Comments/RIN 2590-AA45, Federal Housing Finance Agency, Eighth Floor, 400 Seventh Street SW., Washington, DC 20024.

- *Hand Delivery/Courier*: The hand delivery address is: Alfred M. Pollard, General Counsel, Attention: Comments/RIN 2590-AA45, Federal Housing Finance Agency, Eighth Floor, 400 Seventh Street SW., Washington, DC 20024. The package should be logged at the Seventh Street entrance Guard Desk, First Floor, on business days between 9:00 a.m. and 5:00 p.m.

All comments received by the deadline will be posted for public inspection without change, including any personal information you provide, such as your name, address (mailing or email), and telephone numbers, on the FHFA Web site at <http://www.fhfa.gov>. Copies of all comments timely received will be available for public inspection and copying at the address above on government-business days between the hours of 10:00 a.m. and 3:00 p.m. To make an appointment to inspect comments please call the Office of General Counsel at (202) 649-3804.

FOR FURTHER INFORMATION CONTACT:

OCC: Jamey Basham, Assistant Director, Legislative and Regulatory Activities Division (202) 874-5090, Marvin Shaw, Counsel, Ron Shimabukuro, Senior Counsel, Legislative and Regulatory Activities Division (202) 874-5090, or Kurt Wilhelm, Director, Financial Markets Group (202) 874-4479, Office of the Comptroller of the Currency, 250 E Street SW., Washington, DC 20219.

Board: Sean D. Campbell, Deputy Associate Director, Division of Research and Statistics, (202) 452-3761; Jordan Bleicher, Division of Banking Supervision and Regulation, (202) 973-6123; or Christopher M. Paridon, Counsel, (202) 452-3274 or Anna M. Harrington, Attorney, (202) 452-6406, Legal Division, Board of Governors of the Federal Reserve System, 20th and C Streets NW., Washington, DC 20551.

FDIC: Bobby R. Bean, Associate Director, Capital Market Branch, (202) 898-6705, John Feid, Senior Policy Analyst, (202) 898-8649, Division of Risk Management Supervision, Thomas F. Hearn, Counsel, (202) 898-6967, or Ryan K. Clougherty, Senior Attorney, (202) 898-3843, Legal Division, Federal Deposit Insurance Corporation, 550 17th Street NW., Washington, DC 20429.

FCA: William G. Dunn, Acting Associate Director, Finance and Capital Markets Team, Office of Regulatory Policy, Farm Credit Administration, McLean, VA 22102-5090, (703) 883-4414, TTY (703) 883-4434, Joseph T. Connor, Associate Director for Policy and Analysis, Office of Secondary Market Oversight, Farm Credit Administration, McLean, VA 22102-5090, (703) 883-4280, TTY (703) 883-4434, or Rebecca S. Orlich, Senior Counsel, Office of General Counsel, Farm Credit Administration, McLean, VA 22102-5090, (703) 883-4020, TTY (703) 883-4020.

FHFA: Robert Collender, Principal Policy Analyst, Office of Policy Analysis and Research, (202) 649-3196, Robert.Collender@fhfa.gov, or Peggy Balsawer, Assistant General Counsel, Office of General Counsel, (202) 649-3060, Peggy.Balsawer@fhfa.gov, (not toll-free numbers), Federal Housing Finance Agency, 400 Seventh Street SW., Washington, DC 20024. The telephone number for the Telecommunications Device for the Hearing Impaired is (800) 877-8339.

SUPPLEMENTARY INFORMATION:

I. Background

On May 11, 2011, the Agencies published in the **Federal Register** a notice of proposed rulemaking that would establish minimum margin and capital requirements for registered swap dealers, major swap participants, security-based swap dealers, and major security-based swap participants for which one of the Agencies is the prudential regulator, as required under sections 731 and 764 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (the “Dodd-Frank Act”).¹ Sections 731 and 764 of the Dodd-Frank Act add a new section 4s to the Commodity Exchange Act and a new section 15F to the Securities Exchange Act of 1934, respectively, which require the registration and regulation of swap dealers and major swap participants and security-based swap dealers and major security-based swap participants (collectively, swap entities). For certain types of swap entities that are prudentially regulated by one of the Agencies, sections 731 and 764 of the Dodd-Frank Act require the Agencies to adopt rules jointly for swap entities under their respective jurisdictions imposing: (i) Capital requirements and (ii) initial and variation margin

requirements on all non-cleared swaps and non-cleared security-based swaps.²

II. Reopening of Comment Period and Request for Comment

The original comment period to the Proposed Margin Rule closed on June 24, 2011.³ In order to allow interested persons additional time to analyze the proposed rule and prepare their comments, the Agencies extended the comment period until July 11, 2011.⁴ In the Proposed Margin Rule, the Agencies noted that applying the proposed margin requirements to transactions involving foreign swap entities or foreign counterparties could subject those transactions to multiple, and potentially conflicting, margin requirements established by U.S. and foreign regulators and could raise questions of competitive equality among U.S. and foreign firms. Margin standards that are developed and harmonized on an international basis could help address those issues.

In October 2011, the BCBS and IOSCO established a Working Group on Margin Requirements to develop harmonized international margin standards for non-cleared swaps. On July 6, 2012, BCBS and IOSCO published a Consultative Document entitled “Margin requirements for non-centrally-cleared derivatives” (Consultative Document) that outlines possible margin requirements for non-centrally-cleared derivatives.⁵ The Consultative Document addresses a number of topics, including: (i) The instruments that would be subject to margin requirements; (ii) the market participants that would be subject to margin requirements; (iii) initial margin and variation margin methodology; (iv) eligible collateral; (v) treatment of provided margin; (vi) treatment of inter-

² Sections 731 and 764 of the Dodd-Frank Act also require the Commodity Futures Trading Commission (“CFTC”) and Securities and Exchange Commission (“SEC”) to separately adopt rules imposing capital and margin requirements for swap entities for which there is no prudential regulator. See 7 U.S.C. 6s(e)(2)(B); 15 U.S.C. 78o-8(e)(2)(B). The Dodd-Frank Act requires the CFTC, SEC, and the Agencies to establish and maintain, to the maximum extent practicable, capital and margin requirements that are comparable, and to consult with each other periodically (but no less than annually) regarding these requirements. See 7 U.S.C. 6s(e)(2)(A); 6s(e)(3)(D); 15 U.S.C. 78o-8(e)(2)(A), 78o-8(e)(3)(D). Staff of the Agencies consulted with staff of the CFTC and SEC in developing the proposed rule.

³ See 76 FR 27564 (May 11, 2011).

⁴ See 76 FR 37029 (June 24, 2011).

⁵ See BCBS and IOSCO, Margin requirements for non-centrally-cleared derivatives (July 6, 2012), available at www.bis.org/publ/bcb226.pdf.

affiliate transactions; and (vii) treatment of cross-border transactions.

BCBS and IOSCO are requesting comment on the initial proposals set forth in the Consultative Document by September 28, 2012. It is expected that, after reviewing and evaluating any comments received, the BCBS and IOSCO will issue final policy recommendations for margin requirements for non-centrally-cleared derivatives. As part of the international efforts to implement consistent global standards for non-centrally-cleared derivatives, the Agencies intend to consider the final policy recommendations set forth by the BCBS and IOSCO when adopting final U.S. rules for margin for non-cleared swaps.

Accordingly, the Agencies believe it is appropriate to reopen the comment period for the Proposed Margin Rule in order to give interested persons additional time to analyze the Proposed Margin Rule in light of the Consultative Document and an opportunity to comment on the Consultative Document and Proposed Margin Rule concurrently.⁶

Therefore, the Agencies are reopening the comment period until November 26, 2012, for all aspects of the Proposed Margin Rule.

Dated: September 25, 2012.

Thomas Curry,
Comptroller of the Currency.

By order of the Board of Governors of the Federal Reserve System, acting through the Secretary under delegated authority, September 18, 2012.

Robert deV. Frierson,
Secretary of the Board.

Dated at Washington, DC, this 29th of August 2012.

Federal Deposit Insurance Corporation.

Valerie J. Best,
Assistant Executive Secretary.

Dated: September 7, 2012.

Dale L. Aultman,
Secretary, Farm Credit Administration Board.

Dated: September 5, 2012.

Edward J. DeMarco,
Acting Director, Federal Housing Finance Agency.

[FR Doc. 2012-24276 Filed 10-1-12; 8:45 am]

BILLING CODE 4810-33-8070-01-P;6705-01-P;6714-01-P;6210-01-P;4810-33-P

⁶ On July 12, 2012, the CFTC reopened the comment period on its proposed margin rule under section 731 and 764 of the Dodd-Frank Act. See 76 FR 41109 (July 12, 2012).

¹ Dodd-Frank Wall Street Reform and Consumer Protection Act, Public Law 111-203, 124 Stat. 1376 (2010).

DEPARTMENT OF TRANSPORTATION**Federal Aviation Administration****14 CFR Part 39**

[Docket No. FAA-2012-1003; Directorate Identifier 2012-NM-064-AD]

RIN 2120-AA64

Airworthiness Directives; Bombardier, Inc. Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: We propose to adopt a new airworthiness directive (AD) for certain Bombardier, Inc. Model DHC-8-400 series airplanes. This proposed AD was prompted by reports of engine fire/overheat detector assemblies advance pneumatic detectors (APDs) failing to reset after activation due to permanent deformation of the detector switch diaphragm after being exposed to high temperatures. This proposed AD would require replacing all three APDs with new detector assemblies. We are proposing this AD to prevent a continued engine fire indication in the cockpit after the actual fire has been extinguished, which is misleading and may influence the pilot to conduct a potentially hazardous "off-airport" landing.

DATES: We must receive comments on this proposed AD by November 16, 2012.

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

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

For service information identified in this proposed AD, contact Bombardier, Inc., Q-Series Technical Help Desk, 123 Garratt Boulevard, Toronto, Ontario M3K 1Y5, Canada; telephone 416-375-4000; fax 416-375-4539; email thd.qseries@aero.bombardier.com; Internet <http://www.bombardier.com>. You may review copies of the referenced service information at the

FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, WA. For information on the availability of this material at the FAA, call 425-227-1221.

Examining the AD Docket

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

FOR FURTHER INFORMATION CONTACT:

Mazdak Hobbi, Aerospace Engineer, Propulsion and Services Branch, ANE-173, FAA, New York Aircraft Certification Office, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; telephone 516-228-7330; fax 516-794-5531.

SUPPLEMENTARY INFORMATION:**Comments Invited**

We invite you to send any written relevant data, views, or arguments about this proposed AD. Send your comments to an address listed under the **ADDRESSES** section. Include "Docket No. FAA-2012-1003; Directorate Identifier 2012-NM-064-AD" at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD based on those comments.

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

Discussion

Transport Canada Civil Aviation (TCCA), which is the aviation authority for Canada, has issued Canadian Airworthiness Directive CF-2012-07, dated January 27, 2012 (referred to after this as "the MCAI"), to correct an unsafe condition for the specified products. The MCAI states:

There have been engine fires on DHC-8 Series 400 aeroplanes, where the "ENGINE FIRE, CHECK FIRE DETECT" warning and "FUEL OFF" handle lights failed to reset and remained illuminated after the fire was extinguished. An investigation has revealed

that the existing engine fire/overheat detector assemblies "Advance Pneumatic Detectors (APD)" may fail to reset after activation due to permanent deformation of the detector switch diaphragm after being exposed to high temperatures.

This abnormal condition of a continued engine fire indication in the cockpit, after the actual fire has been extinguished, is misleading and may influence the pilot's decision to conduct a potentially hazardous "off-airport" landing, which is considered an unsafe condition that warrants mitigating action.

To mitigate this potentially hazardous condition, Bombardier has issued multiple service bulletins (SBs) [Bombardier Service Bulletins 84-26-08, Revision A, dated May 12, 2011; 84-26-09, Revision A, dated May 12, 2011; and 84-26-12, Revision A, dated December 13, 2011] to replace all three affected APDs with new detector assemblies that are not susceptible to the subject diaphragm deformation when exposed to excessive heat. * * *

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

Relevant Service Information

Bombardier, Inc. has issued Service Bulletins 84-26-08, Revision A, dated May 12, 2011; 84-26-09, Revision A, dated May 12, 2011; and 84-26-12, Revision A, dated December 13, 2011. The actions described in this service information are intended to correct the unsafe condition identified in the MCAI.

FAA's Determination and Requirements of This Proposed AD

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

Costs of Compliance

Based on the service information, we estimate that this proposed AD would affect about 84 products of U.S. registry. We also estimate that it would take about 63 work-hours per product to comply with the basic requirements of this proposed AD. The average labor rate is \$85 per work-hour. Required parts would cost about \$5,700 per product. Where the service information lists required parts costs that are covered under warranty, we have assumed that there will be no charge for

these parts. As we do not control warranty coverage for affected parties, some parties may incur costs higher than estimated here. Based on these figures, we estimate the cost of the proposed AD on U.S. operators to be \$928,620, or \$11,055 per product.

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

List of Subjects in 14 CFR Part 39

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

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Bombardier, Inc.: Docket No. FAA-2012-1003; Directorate Identifier 2012-NM-064-AD.

(a) Comments Due Date

We must receive comments by November 16, 2012.

(b) Affected ADs

None.

(c) Applicability

This AD applies to Bombardier, Inc. Model DHC-8-400, -401, and -402 airplanes; certificated in any category; serial numbers 4001 through 4373 inclusive.

(d) Subject

Air Transport Association (ATA) of America Code 26, Fire protection.

(e) Reason

This AD was prompted by reports of engine fire/overheat detector assemblies advance pneumatic detectors (APDs) failing to reset after activation due to permanent deformation of the detector switch diaphragm after being exposed to high temperatures. We are issuing this AD to prevent a continued engine fire indication in the cockpit after the actual fire has been extinguished, which is misleading and may influence the pilot to conduct a potentially hazardous "off-airport" landing.

(f) Compliance

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

(g) Installation

Within 6,000 flight hours or 30 months after the effective date of this AD, whichever occurs first, replace the APDs as specified in paragraphs (g)(1), (g)(2), and (g)(3) of this AD.

(1) For the nacelle of the engine primary zone: Remove any APD having part number (P/N) 10-1098 and install a new APD having P/N 10-1098-01, in accordance with the Accomplishment Instructions of Bombardier Service Bulletin 84-26-08, Revision A, dated May 12, 2011.

(2) For the nacelle of the landing gear primary zone: Remove any APD having P/N 10-1097 or 10-1097-01 and install a new APD having P/N 10-1097-02, in accordance with the Accomplishment Instructions of Bombardier Service Bulletin 84-26-09, Revision A, dated May 12, 2011.

(3) For the propeller engine controller: Remove any APD having P/N 10-1096, 10-1096-01, or 10-1096-02 (serial number is all numeric characters), and install a new APD having P/N 10-1096-02 (serial number is three alpha and four numeric characters), in accordance with the Accomplishment Instructions of Bombardier Service Bulletin 84-26-12, Revision A, dated December 13, 2011.

(h) Credit for Previous Actions

This paragraph provides credit for actions required by paragraph (g) of this AD, if those actions were performed before the effective date of this AD using the service information specified in paragraph (h)(1), (h)(2), or (h)(3) of this AD.

(1) Bombardier Service Bulletin 84-26-08, dated March 11, 2011.

(2) Bombardier Service Bulletin 84-26-09, dated March 11, 2011.

(3) Bombardier Service Bulletin 84-26-12, dated October 12, 2011.

(i) Other FAA AD Provisions

The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, New York Aircraft Certification Office (ACO), ANE-170, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the ACO, send it to ATTN: Program Manager, Continuing Operational Safety, FAA, New York ACO, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; telephone 516-228-7300; fax 516-794-5531. Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the local flight standards district office/certificate holding district office. The AMOC approval letter must specifically reference this AD.

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

(j) Related Information

(1) Refer to MCAI Transport Canada Civil Aviation Airworthiness Directive CF-2012-07, dated January 27, 2012; and the service bulletins identified in paragraphs (j)(1)(i), (j)(1)(ii), and (j)(1)(iii) of this AD; for related information.

(i) Bombardier Service Bulletin 84-26-08, Revision A, dated May 12, 2011.

(ii) Bombardier Service Bulletin 84-26-09, Revision A, dated May 12, 2011.

(iii) Bombardier Service Bulletin 84-26-12, Revision A, dated December 13, 2011.

(2) For service information identified in this AD, contact Bombardier, Inc., Q-Series Technical Help Desk, 123 Garratt Boulevard, Toronto, Ontario M3K 1Y5, Canada; telephone 416-375-4000; fax 416-375-4539;

email thd.qseries@aero.bombardier.com; Internet <http://www.bombardier.com>. You may review copies of the referenced service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, WA. For information on the availability of this material at the FAA, call 425-227-1221.

Issued in Renton, Washington, on September 21, 2012.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2012-24174 Filed 10-1-12; 8:45 am]

BILLING CODE 4910-13-P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA-2012-1052; Directorate Identifier 2012-CE-014-AD]

RIN 2120-AA64

Airworthiness Directives; Cessna Aircraft Company Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: We propose to supersede an existing airworthiness directive (AD) that applies to certain Cessna Aircraft Company (Cessna) Models 172R, 172S, 182S, 182T, T182T, 206H, and T206H airplanes. The existing AD currently requires an inspection of the engine oil pressure switch and, if applicable, replacement of the engine oil pressure switch. Since we issued that AD, we have received new reports of internal failure of the engine oil pressure switch, which could result in complete loss of engine oil with consequent partial or complete loss of engine power or fire. This proposed AD would increase the applicability of the AD and place a life-limit of 3,000 hours time-in-service on the engine oil pressure switch, requiring replacement when the engine oil pressure switch reaches its life limit. We are proposing this AD to correct the unsafe condition on these products.

DATES: We must receive comments on this proposed AD by November 16, 2012.

ADDRESSES: You may send comments, using the procedures found in 14 CFR 11.43 and 11.45, by any of the following methods:

- *Federal eRulemaking Portal:* Go to <http://www.regulations.gov>. Follow the instructions for submitting comments.
- *Fax:* 202-493-2251.
- *Mail:* U.S. Department of Transportation, Docket Operations, M-

30, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue SE., Washington, DC 20590.

• *Hand Delivery:* Deliver to Mail address above between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

For service information identified in this proposed AD, contact Cessna Aircraft Company, Product Support, P.O. Box 7706, Wichita, Kansas 67277; telephone: (316) 517-5800; fax (316) 942-9006; Internet: www.cessna.com/customer-service/technical-publications.html. You may review copies of the referenced service information at the FAA, Small Airplane Directorate, 901 Locust, Kansas City, Missouri 64106. For information on the availability of this material at the FAA, call (816) 329-4148.

Examining the AD Docket

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

FOR FURTHER INFORMATION CONTACT: Jeff Janusz, Sr. Propulsion Engineer, Wichita Aircraft Certification Office, FAA, 1801 Airport Road, Wichita, KS 67209; phone: (316) 946-4148; fax: (316) 946-4107; email: jeff.janusz@faa.gov.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposed AD. Send your comments to an address listed under the **ADDRESSES** section. Include "Docket No. FAA-2012-1052; Directorate Identifier 2012-CE-014-AD" at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD because of those comments.

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

Discussion

On February 11, 2000, we issued AD 2000-04-01, amendment 39-11583 (65 FR 8649, February 22, 2000), for certain Cessna Aircraft Company Models 172R, 172S, 182S, 206H, and T206H airplanes. That AD requires inspection of the engine oil pressure switch to determine if the engine oil pressure switch is part-number (P/N) 77041 or P/N 83278 and replacement of any P/N 77041 engine oil pressure switch with a P/N 83278 engine oil pressure switch. That AD resulted from reports of failure of the engine oil pressure switch diaphragm. We issued that AD to prevent loss of engine oil through the failure of the engine oil pressure switch diaphragm, which could result in partial or complete loss of engine power.

Actions Since Existing AD Was Issued

Since we issued AD 2000-04-01, amendment 39-11583 (65 FR 8649, February 22, 2000), we have received new reports of internal failure of the engine oil pressure switch, which could result in complete loss of engine oil with consequent partial or complete loss of engine power or fire.

Relevant Service Information

We reviewed Cessna Service Bulletin 07-79-01, dated January 29, 2007. The service information describes procedures for replacement of the engine oil pressure switch.

FAA's Determination

We are proposing this AD because we evaluated all the relevant information and determined the unsafe condition described previously is likely to exist or develop in other products of these same type designs.

Proposed AD Requirements

This proposed AD would retain none of the requirements of AD 2000-04-01, amendment 39-11583 (65 FR 8649, February 22, 2000). This proposed AD would increase the applicability statement of the existing AD and require an inspection of the engine oil pressure switch with replacement of the engine oil pressure switch when it reaches its life limit of 3,000 hours time-in-service. We are proposing this AD to correct the unsafe condition on these products.

Differences Between the Proposed AD and the Service Information

Applicability in this proposed AD has been expanded to include additional airplane serial numbers.

Costs of Compliance

We estimate that this proposed AD affects 6,155 airplanes of U.S. registry.

We estimate the following costs to comply with this proposed AD:

ESTIMATED COSTS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Inspection of the airplane or engine records.	.5 work-hour × \$85 per hour = \$42.50 ..	Not applicable	\$42.50	\$261,587.50
Inspection of the engine oil pressure switch installation.	.5 work-hour × \$85 per hour = \$42.50 ..	Not applicable	42.50	261,587.50
Removal and replacement of the engine oil pressure switch and logbook entry.	.5 work-hour × \$85 per hour = \$42.50 ..	\$54	96.50	593,957.50

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

- (1) Is not a "significant regulatory action" under Executive Order 12866,
- (2) Is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979),
- (3) Will not affect intrastate aviation in Alaska, and
- (4) 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.

List of Subjects in 14 CFR Part 39

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

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

2. The FAA amends § 39.13 by removing airworthiness directive (AD) 2000-04-01, Amendment 39-11583 (65 FR 8649, February 22, 2000), and adding the following new AD:

Cessna Aircraft Company: Docket No. FAA-2012-1052; Directorate Identifier 2012-CE-014-AD.

(a) Comments Due Date

The FAA must receive comments on this AD action by November 16, 2012.

(b) Affected ADs

This AD supersedes AD 2000-04-01, Amendment 39-11583 (65 FR 8649, February 22, 2000).

(c) Applicability

This AD applies to Cessna Aircraft Company Models 172R, serial numbers (S/N) 17280001 through 17281622; 172S, S/N 172S8001 through 172S11244; 182S, S/N 18280001 through 18280944; 182T, S/N 18280945 through 18282356; T182T, S/N T18208001 through T18209096; 206H, S/N 20608001 through 20608350; and T206H, S/N T20608001 through T20609079; certificated in any category.

(d) Subject

Joint Aircraft System Component (JASC)/ Air Transport Association (ATA) of America Code 7931, Engine Oil Pressure.

(e) Unsafe Condition

This AD was prompted by new reports of internal failure of the engine oil pressure

switch, which could result in complete loss of engine oil with consequent partial or complete loss of engine power or fire. We are issuing this AD to place a life-limit on the engine oil pressure switch after which replacement would be required.

(f) Compliance

Comply with this AD within the compliance times specified, following Cessna Service Bulletin SB 07-79-01, dated January 29, 2007, unless already done.

(g) Actions

(1) At the next scheduled oil change, annual inspection, or 100-hour inspection after the effective date of this AD, whichever occurs later, but in no case later than 12 months after the effective date of this AD, inspect the engine oil pressure switch to determine if it is part-number (P/N) 77041 or P/N 83278.

(2) If after the inspection required in paragraph (g)(1) of this AD, P/N 77041 engine oil pressure switch is installed, before further flight, replace the engine oil pressure switch with a new, zero time, P/N 83278 engine oil pressure switch. Record the engine oil pressure switch part number, date, and airplane hours TIS in the airplane log book. The recorded engine oil pressure switch TIS will be used as the benchmark for calculation of the 3,000 hour TIS limit on the engine oil pressure switch.

(3) After the effective date of this AD, do not install a P/N 77041 engine oil pressure switch on any affected airplane.

(4) If after the inspection required in paragraph (g)(1) of this AD it is confirmed that P/N 83278 engine oil pressure switch is installed, through inspection of the airplane or engine logbooks determine the TIS of the engine oil pressure switch.

(5) If after the inspection required in paragraph (g)(1) of this AD you cannot positively identify the hours TIS on the P/N 83278 engine oil pressure switch, before further flight, replace the engine oil pressure switch with a new, zero time, P/N 83278 engine oil pressure switch. Record the engine oil pressure switch part number, date, and airplane hours in the airplane log book. The recorded engine oil pressure switch TIS will be used as the benchmark for calculation of the 3,000 hour TIS limit on the engine oil pressure switch.

(6) When the engine oil pressure switch is at or greater than 3,000 hours TIS or within 50 hours TIS after the effective date of this AD, whichever occurs later, and repetitively

thereafter at intervals not to exceed 3,000 hours TIS on the P/N 83278 engine oil pressure switch, replace it with a new, zero time, P/N 83278 engine oil pressure switch. Record the engine oil pressure switch part number, date, and airplane hours in the airplane log book. The recorded engine oil pressure switch TIS will be used as the benchmark for calculation of the 3,000 hour TIS limit on the engine oil pressure switch.

(h) Alternative Methods of Compliance (AMOCs)

(1) The Manager, Wichita Aircraft Certification Office (ACO), FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the manager of the ACO, send it to the attention of the person identified in the Related Information section of this AD.

(2) Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the local flight standards district office/certificate holding district office.

(i) Related Information

(1) For more information about this AD, contact Jeff Janusz, Sr. Propulsion Engineer, Wichita ACO, FAA, 1801 Airport Road, Wichita, KS 67209 phone: (316) 946-4148; fax: (316) 946-4107; email: jeff.janusz@faa.gov.

(2) For service information identified in this AD, contact Cessna Aircraft Company, Product Support, P.O. Box 7706, Wichita, Kansas 67277; telephone: (316) 517-5800; fax (316) 942-9006; Internet: www.cessna.com/customer-service/technical-publications.html. You may review copies of the referenced service information at the FAA, Small Airplane Directorate, 901 Locust, Kansas City, Missouri 64106. For information on the availability of this material at the FAA, call (816) 329-4148.

Issued in Kansas City, Missouri, on September 26, 2012.

Earl Lawrence,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2012-24207 Filed 10-1-12; 8:45 am]

BILLING CODE 4910-13-P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA-2012-1034; Directorate Identifier 2011-NM-051-AD]

RIN 2120-AA64

Airworthiness Directives; Airbus Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: We propose to supersede an existing airworthiness directive (AD) that applies to certain Airbus Model A318, A319, A320, and A321 series airplanes. The existing AD currently requires one-time and repetitive inspections of specific areas and, when necessary, corrective actions for those rudders where production rework has been identified. Since we issued that AD, we have determined that additional inspections and corrective actions are necessary to address the identified unsafe condition, and that additional airplanes with certain rudders are subject to the identified unsafe condition. This proposed AD would add airplanes with certain rudders to the AD applicability; change an inspection type for certain reinforced rudder areas; require pre-inspections and repairs if needed; and require permanent restoration of vacuum loss holes. This proposed AD would also require additional inspections for certain rudders and repair if needed; and require replacement of certain rudders with new rudders. We are proposing this AD to detect and correct extended de-bonding, which might degrade the structural integrity of the rudder. The loss of the rudder leads to degradation of the handling qualities and reduces the controllability of the airplane.

DATES: We must receive comments on this proposed AD by November 16, 2012.

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

- *Federal eRulemaking Portal:* Go to <http://www.regulations.gov>. Follow the instructions for submitting comments.

- *Fax:* (202) 493-2251.

- *Mail:* U.S. Department of Transportation, Docket Operations, M-30, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue SE., Washington, DC 20590.

- *Hand Delivery:* U.S. Department of Transportation, Docket Operations, M-30, West Building Ground Floor, Room W12-40, 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

For service information identified in this proposed AD, contact Airbus, Airworthiness Office—EAS, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France; telephone +33 5 61 93 36 96; fax +33 5 61 93 44 51; email account.airworth-eas@airbus.com; Internet <http://www.airbus.com>. You may review copies of the referenced service information at the FAA,

Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, WA. For information on the availability of this material at the FAA, call 425-227-1221.

Examining the AD Docket

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

FOR FURTHER INFORMATION CONTACT: Sanjay Ralhan, Aerospace Engineer, International Branch, ANM-116, Transport Airplane Directorate, FAA, 1601 Lind Avenue SW., Renton, WA 98057-3356; telephone (425) 227-1405; fax (425) 227-1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposed AD. Send your comments to an address listed under the **ADDRESSES** section. Include "Docket No. FAA-2012-1034; Directorate Identifier 2011-NM-051-AD" at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD based on those comments.

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

Discussion

On October 26, 2010, we issued AD 2010-23-07, Amendment 39-16496 (75 FR 68181, November 5, 2010; corrected December 17, 2010 (75 FR 78883)). That AD required actions intended to address an unsafe condition on the products listed above.

The European Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Community, has issued EASA Airworthiness Directive 2010-0164, dated August 5, 2010 (referred to after this as "the MCAI"), to correct an unsafe condition for the specified products. The MCAI states:

Surface defects were visually detected on the rudder of one A319 and one A321 in-service aeroplane.

Investigation has determined that the defects reported on both rudders corresponded to areas that had been reworked in production. The investigation confirmed that the defects were a result of de-bonding between the skin and honeycomb core.

An extended de-bonding, if not detected and corrected, may degrade the structural integrity of the rudder. The loss of the rudder leads to degradation of the handling qualities and reduces the controllability of the aeroplane.

EASA AD 2009–0141 required inspections of specific areas and, when necessary, the application of corrective actions for those rudders where production reworks have been identified.

This [EASA] AD retains the requirements of EASA AD 2009–0141 (addressing the populations of rudders affected by AOT A320–55–1038), which is superseded, and requires:

- a local ultrasonic inspection for reinforced area instead of the local thermography inspection, which is maintained for non-reinforced areas, and
- additional work performance for rudders on which this thermography inspection has been performed in the reinforced area, and
- additional work performance for some rudders on which an additional area requiring inspections is defined.

This [EASA] AD also addresses the populations of rudders affected by AOT A320–55–1039 and Airbus SB A320–55–1035, A320–55–1036 and A320–55–1037 which were not included in EASA AD 2009–0141.

Part number (P/N) D554 71000 020 00 serial number (S/N) TS–1494, and P/N D554 71002 000 00 0002 S/N TS–2212 are listed in Appendix A of EASA AD 2010–0164, dated August 5, 2010. These two items are listed in table 6 of this proposed AD, because they were not listed in previous AD 2010–23–07, Amendment 39–16496 (75 FR 68181, November 5, 2010; corrected December 17, 2010 (75 FR 78883)). This proposed AD requires the permanent restoration of vacuum loss holes and does not allow the temporary restoration with self-adhesive patches, or temporary restoration with resin that is specified in the MCAI. You may obtain further information by examining the MCAI in the AD docket.

Relevant Service Information

Airbus has issued the following service information.

- Airbus All Operators Telex (AOT) A320–55A1038, dated April 22, 2009.
- Airbus AOT A320–55A1039, dated November 4, 2009.
- Airbus Service Bulletin A320–55–1035, Revision 01, dated July 2, 2010.
- Airbus Service Bulletin A320–55–1036, Revision 01, dated July 2, 2010.

- Airbus Service Bulletin A320–55–1037, Revision 01, dated July 2, 2010.
- Airbus Technical Disposition TD/K4/S2/27051/2009, Issue B, dated February 25, 2009.
- Airbus Technical Disposition TD/K4/S2/27086/2009, Issue E, dated September 17, 2009.

The actions described in this service information are intended to correct the unsafe condition identified in the MCAI.

FAA's Determination and Requirements of This Proposed AD

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

Differences Between This AD and the MCAI or Service Information

This proposed AD requires the permanent restoration of vacuum loss holes and does not allow the temporary restoration with self-adhesive patches, or temporary restoration with resin that is specified in the MCAI.

Costs of Compliance

Based on the service information, we estimate that this proposed AD would affect about 721 products of U.S. registry.

The actions that are required by AD 2010–23–07, Amendment 39–16496 (75 FR 68181, November 5, 2010; corrected December 17, 2010 (75 FR 78883)), and retained in this proposed AD take about 11 work-hours per product, at an average labor rate of \$85 per work hour. The average labor rate is \$85 per work-hour. Based on these figures, we estimate the cost of the currently required actions on U.S. operators to be \$674,135, or \$935 per product.

We estimate that it would take about 11 work-hours per product to comply with the new basic requirements of this proposed AD. The average labor rate is \$85 per work-hour. Based on these figures, we estimate the cost of the proposed AD on U.S. operators to be \$674,135, or \$935 per product.

In addition, we estimate that any necessary follow-on actions would take about 12 work-hours and require parts costing \$10,000, for a cost of \$11,020 per product. We have no way of

determining the number of products that may need these actions.

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

List of Subjects in 14 CFR Part 39

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

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

2. The FAA amends § 39.13 by removing airworthiness directive (AD) 2010–23–07, Amendment 39–16496 (75 FR 68181, November 5, 2010; corrected December 17, 2010 (75 FR 78883)), and adding the following new AD:

Airbus: Docket No. FAA–2012–1034; Directorate Identifier 2011–NM–051–AD.

(a) Comments Due Date

We must receive comments by November 16, 2012.

(b) Affected ADs

This AD supersedes AD 2010–23–07, Amendment 39–16496 (75 FR 68181, November 5, 2010; corrected December 17, 2010 (75 FR 78883)).

(c) Applicability

This AD applies to the Airbus airplanes identified in paragraphs (c)(1), (c)(2), (c)(3), and (c)(4) of this AD; certificated in any category; all serial numbers having a rudder with a part number (P/N) and serial number (S/N) listed in table 1, 2, 3, 4a and 4b, 5a and 5b, or 6 to paragraph (c) of this AD.

(1) Model A318–111, –112, –121, and –122 airplanes.

(2) Model A319–111, –112, –113, –114, –115, –131, –132, and –133 airplanes.

(3) Model A320–111, –211, –212, –214, –231, –232, and –233 airplanes.

(4) Model A321–111, –112, –131, –211, –212, –213, –231, and –232 airplanes.

TABLE 1 TO PARAGRAPH (C) OF THIS AD

Rudder P/N	Affected rudder S/N
D554 71000 010 00	TS–1069
D554 71000 010 00	TS–1090
D554 71000 012 00	TS–1227
D554 71000 014 00	TS–1350
D554 71000 014 00	TS–1366
D554 71000 014 00	TS–1371
D554 71000 014 00	TS–1383
D554 71000 014 00	TS–1387
D554 71000 016 00	TS–1412
D554 71000 018 00	TS–1443
D554 71000 018 00	TS–1444
D554 71000 018 00	TS–1468
D554 71000 020 00	TS–1480
D554 71000 020 00	TS–1491
D554 71000 020 00	TS–1495
D554 71000 020 00	TS–1498
D554 71000 020 00	TS–1499
D554 71000 020 00	TS–1500
D554 71000 020 00	TS–1505
D554 71000 020 00	TS–1506
D554 71000 020 00	TS–1507
D554 71000 020 00	TS–1509
D554 71000 020 00	TS–1515
D554 71000 020 00	TS–1528

TABLE 1 TO PARAGRAPH (C) OF THIS AD—Continued

Rudder P/N	Affected rudder S/N
D554 71000 020 00	TS–1530
D554 71000 020 00	TS–1532
D554 71000 020 00	TS–1535
D554 71000 020 00	TS–1536
D554 71000 020 00	TS–1538
D554 71001 000 00	TS–1537
D554 71001 000 00	TS–1540
D554 71001 000 00	TS–1541
D554 71001 000 00	TS–1543
D554 71001 000 00	TS–1548
D554 71001 000 00	TS–1549
D554 71001 000 00	TS–1551
D554 71001 000 00	TS–1554
D554 71001 000 00	TS–1555
D554 71001 000 00	TS–1556
D554 71001 000 00	TS–1557
D554 71001 000 00	TS–1559
D554 71001 000 00	TS–1562
D554 71001 000 00	TS–1563
D554 71001 000 00	TS–1564
D554 71001 000 00	TS–1565
D554 71001 000 00	TS–1566
D554 71001 000 00	TS–1567
D554 71001 000 00	TS–1568
D554 71001 000 00	TS–1569
D554 71001 000 00	TS–1570
D554 71001 000 00	TS–1573
D554 71001 000 00	TS–1575
D554 71001 000 00	TS–1578
D554 71001 000 00	TS–1579
D554 71001 000 00	TS–1580
D554 71001 000 00	TS–1581
D554 71001 000 00	TS–1582
D554 71001 000 00	TS–1584
D554 71001 000 00	TS–1593
D554 71001 000 00	TS–1594
D554 71001 000 00	TS–1596
D554 71001 000 00	TS–1599
D554 71001 000 00	TS–1603
D554 71001 000 00	TS–1609
D554 71001 000 00	TS–1621
D554 71001 000 00	TS–1626
D554 71001 000 00	TS–1627
D554 71001 000 00	TS–1635
D554 71001 000 00	TS–1637
D554 71002 000 00	TS–2306
D554 71002 000 00 0001	TS–2003
D554 71002 000 00 0001	TS–2005
D554 71002 000 00 0001	TS–2013
D554 71002 000 00 0001	TS–2016
D554 71002 000 00 0001	TS–2019
D554 71002 000 00 0001	TS–2020
D554 71002 000 00 0001	TS–2022
D554 71002 000 00 0001	TS–2024
D554 71002 000 00 0001	TS–2026
D554 71002 000 00 0001	TS–2031
D554 71002 000 00 0001	TS–2033
D554 71002 000 00 0001	TS–2043
D554 71002 000 00 0001	TS–2047
D554 71002 000 00 0001	TS–2048
D554 71002 000 00 0001	TS–2054
D554 71002 000 00 0001	TS–2058
D554 71002 000 00 0001	TS–2059
D554 71002 000 00 0001	TS–2064
D554 71002 000 00 0001	TS–2072
D554 71002 000 00 0001	TS–2075
D554 71002 000 00 0001	TS–2076
D554 71002 000 00 0001	TS–2079
D554 71002 000 00 0001	TS–2083

TABLE 1 TO PARAGRAPH (C) OF THIS AD—Continued

Rudder P/N	Affected rudder S/N
D554 71002 000 00 0001	TS–2089
D554 71002 000 00 0002	TS–2090
D554 71002 000 00 0002	TS–2095
D554 71002 000 00 0002	TS–2103
D554 71002 000 00 0002	TS–2116
D554 71002 000 00 0002	TS–2122
D554 71002 000 00 0002	TS–2133
D554 71002 000 00 0002	TS–2142
D554 71002 000 00 0002	TS–2147
D554 71002 000 00 0002	TS–2157
D554 71002 000 00 0002	TS–2158
D554 71002 000 00 0002	TS–2162
D554 71002 000 00 0002	TS–2167
D554 71002 000 00 0002	TS–2174
D554 71002 000 00 0002	TS–2176
D554 71002 000 00 0002	TS–2181
D554 71002 000 00 0002	TS–2189
D554 71002 000 00 0002	TS–2191
D554 71002 000 00 0002	TS–2203
D554 71002 000 00 0002	TS–2205
D554 71002 000 00 0002	TS–2207
D554 71002 000 00 0002	TS–2224
D554 71002 000 00 0002	TS–2229
D554 71002 000 00 0002	TS–2233
D554 71002 000 00 0002	TS–2241
D554 71002 000 00 0002	TS–2246
D554 71002 000 00 0002	TS–2249
D554 71002 000 00 0002	TS–2270
D554 71002 000 00 0002	TS–2275
D554 71002 000 00 0002	TS–2289
D554 71002 000 00 0002	TS–2290
D554 71002 000 00 0002	TS–2294
D554 71002 000 00 0002	TS–2309
D554 71002 000 00 0002	TS–2347
D554 71002 000 00 0002	TS–2348
D554 71002 000 00 0002	TS–2349
D554 71002 000 00 0002	TS–2357
D554 71002 000 00 0002	TS–2361
D554 71002 000 00 0002	TS–2380
D554 71002 000 00 0002	TS–2383
D554 71002 000 00 0002	TS–2390
D554 71002 000 00 0002	TS–2394
D554 71002 000 00 0002	TS–2396
D554 71002 000 00 0002	TS–2401
D554 71002 000 00 0002	TS–2406
D554 71002 000 00 0002	TS–2461
D554 71002 000 00 0002	TS–2468
D554 71002 000 00 0002	TS–2516
D554 71002 000 00 0002	TS–2537
D554 71002 000 00 0002	TS–2543
D554 71002 000 00 0002	TS–2546
D554 71002 000 00 0002	TS–2619
D554 71002 000 00 0002	TS–2684
D554 71002 000 00 0003	TS–2752
D554 71002 000 00 0003	TS–2869
D554 71002 000 00 0003	TS–2876
D554 71002 000 00 0003	TS–2970
D554 71002 000 00 0003	TS–2971
D554 71002 000 00 0003	TS–2987
D554 71004 000 00 0000	TS–3083
D554 71004 000 00 0000	TS–3197

Note 1 to paragraph (c) of this AD: For table 1 to paragraph (c) of this AD, only rudder P/N D554 71000 010 00 having affected rudder S/Ns TS–1069 and TS–1090, and rudder P/N D554 71000 012 00 having affected rudder S/N TS–1227, have a core

density of 24 kilogram (kg)/meters cubed (m³).

TABLE 3 TO PARAGRAPH (C) OF THIS AD

rudder S/N TS-1092, have a core density of 24 kg/m³.

TABLE 2 TO PARAGRAPH (C) OF THIS AD

Rudder P/N	Affected rudder S/N
D554-71000-014-00	TS-1278
D554-71002-000-00-0001	TS-2081
D554-71002-000-00-0002	TS-2125
D554-71002-000-00-0002	TS-2129
D554-71002-000-00-0002	TS-2160
D554-71002-000-00-0002	TS-2201
D554-71002-000-00-0002	TS-2328
D554-71002-000-00-0002	TS-2425
D554-71002-000-00-0002	TS-2511
D554-71002-000-00-0003	TS-2768
D554-71002-000-00-0003	TS-2999
D554-71002-000-00-0003	TS-3004
D554-71002-000-00-0003	TS-3051
D554-71004-000-00-0001	TS-3288

Rudder P/N	Affected rudder S/N
D554-71000-008-00	TS-1032
D554-71000-010-00	TS-1092
D554-71000-014-00	TS-1314
D554-71000-018-00	TS-1445
D554-71000-020-00	TS-1520
D554-71002-000-00-0001	TS-2037
D554-71002-000-00-0002	TS-2109
D554-71002-000-00-0002	TS-2123
D554-71002-000-00-0002	TS-2124
D554-71002-000-00-0002	TS-2424
D554-71002-000-00-0002	TS-2559
D554-71002-000-00-0003	TS-3061
D554-71004-000-00-0001	TS-3694
D554-71004-000-00-0001	TS-3709
D554-71004-000-00-0002	TS-4148

TABLE 4A TO PARAGRAPH (C) OF THIS AD

Rudder P/N with any S/N listed in table 4b to paragraph (c) of this AD
D5547100000000
D5547100000200
D5547100000400
D5547100000600
D5547100000800
D5547100001000
D5547100001200
D5547100001400
D5547100001600
D5547100001800
D5547100002000
D5547100100000
D5547100200000
D5547100300000
D5547100400000

Note 2 to paragraph (c) of this AD: For table 3 to paragraph (c) of this AD, only rudder P/N D554-71000-008-00 having affected rudder S/N TS-1032, and rudder P/N D554-71000-010-00 having affected

TABLE 4B TO PARAGRAPH (C) OF THIS AD

Affected S/N for rudders listed in table 4a to paragraph (c) of this AD

TS-1368	TS-1616	TS-2080	TS-2159	TS-2222	TS-2276	TS-2327
TS-1389	TS-1619	TS-2082	TS-2163	TS-2223	TS-2279	TS-2330
TS-1496	TS-1622	TS-2084	TS-2168	TS-2227	TS-2280	TS-2331
TS-1501	TS-1632	TS-2085	TS-2169	TS-2228	TS-2281	TS-2332
TS-1503	TS-1639	TS-2086	TS-2170	TS-2230	TS-2284	TS-2333
TS-1508	TS-2004	TS-2094	TS-2172	TS-2231	TS-2285	TS-2334
TS-1516	TS-2008	TS-2096	TS-2175	TS-2232	TS-2286	TS-2336
TS-1527	TS-2010	TS-2097	TS-2177	TS-2234	TS-2293	TS-2337
TS-1529	TS-2012	TS-2098	TS-2179	TS-2235	TS-2297	TS-2338
TS-1534	TS-2014	TS-2100	TS-2182	TS-2236	TS-2298	TS-2339
TS-1545	TS-2017	TS-2101	TS-2183	TS-2238	TS-2299	TS-2340
TS-1547	TS-2018	TS-2106	TS-2185	TS-2240	TS-2302	TS-2341
TS-1553	TS-2023	TS-2113	TS-2192	TS-2242	TS-2303	TS-2343
TS-1560	TS-2025	TS-2115	TS-2193	TS-2244	TS-2304	TS-2346
TS-1561	TS-2029	TS-2118	TS-2195	TS-2245	TS-2305	TS-2352
TS-1571	TS-2032	TS-2126	TS-2199	TS-2248	TS-2307	TS-2353
TS-1572	TS-2034	TS-2130	TS-2200	TS-2250	TS-2310	TS-2354
TS-1574	TS-2039	TS-2131	TS-2204	TS-2251	TS-2311	TS-2355
TS-1576	TS-2040	TS-2132	TS-2206	TS-2252	TS-2312	TS-2356
TS-1577	TS-2041	TS-2134	TS-2208	TS-2254	TS-2313	TS-2358
TS-1583	TS-2046	TS-2136	TS-2209	TS-2258	TS-2315	TS-2360
TS-1585	TS-2050	TS-2140	TS-2210	TS-2259	TS-2316	TS-2362
TS-1588	TS-2051	TS-2143	TS-2211	TS-2260	TS-2319	TS-2363
TS-1591	TS-2052	TS-2144	TS-2213	TS-2261	TS-2320	TS-2364
TS-1600	TS-2053	TS-2145	TS-2216	TS-2262	TS-2321	TS-2365
TS-1602	TS-2056	TS-2149	TS-2217	TS-2265	TS-2322	TS-2366
TS-1607	TS-2060	TS-2152	TS-2218	TS-2268	TS-2323	TS-2367
TS-1608	TS-2069	TS-2154	TS-2220	TS-2271	TS-2325	TS-2370
TS-1614	TS-2070	TS-2155	TS-2221	TS-2272	TS-2326	TS-2371
TS-2372	TS-2483	TS-2583	TS-2665	TS-2743	TS-2813	TS-2878
TS-2373	TS-2484	TS-2584	TS-2666	TS-2744	TS-2814	TS-2879
TS-2374	TS-2486	TS-2585	TS-2667	TS-2745	TS-2815	TS-2880
TS-2377	TS-2488	TS-2586	TS-2668	TS-2747	TS-2816	TS-2881
TS-2381	TS-2491	TS-2587	TS-2671	TS-2749	TS-2818	TS-2882
TS-2382	TS-2493	TS-2590	TS-2674	TS-2751	TS-2819	TS-2885
TS-2387	TS-2494	TS-2591	TS-2675	TS-2753	TS-2821	TS-2886
TS-2388	TS-2498	TS-2592	TS-2676	TS-2754	TS-2822	TS-2890
TS-2392	TS-2499	TS-2593	TS-2677	TS-2755	TS-2823	TS-2891
TS-2393	TS-2501	TS-2596	TS-2679	TS-2756	TS-2824	TS-2892
TS-2395	TS-2505	TS-2597	TS-2680	TS-2757	TS-2826	TS-2893
TS-2397	TS-2506	TS-2601	TS-2681	TS-2758	TS-2827	TS-2896
TS-2398	TS-2508	TS-2602	TS-2682	TS-2759	TS-2828	TS-2897
TS-2399	TS-2510	TS-2603	TS-2683	TS-2760	TS-2830	TS-2898

TABLE 4B TO PARAGRAPH (C) OF THIS AD—Continued

TS-2407	TS-2512	TS-2605	TS-2685	TS-2762	TS-2831	TS-2899
TS-2408	TS-2514	TS-2606	TS-2688	TS-2765	TS-2832	TS-2900
TS-2409	TS-2517	TS-2611	TS-2689	TS-2771	TS-2833	TS-2903
TS-2410	TS-2518	TS-2612	TS-2691	TS-2772	TS-2834	TS-2904
TS-2411	TS-2521	TS-2614	TS-2695	TS-2773	TS-2835	TS-2906
TS-2412	TS-2522	TS-2615	TS-2697	TS-2775	TS-2836	TS-2907
TS-2415	TS-2527	TS-2616	TS-2698	TS-2776	TS-2837	TS-2908
TS-2417	TS-2529	TS-2617	TS-2699	TS-2778	TS-2838	TS-2909
TS-2421	TS-2532	TS-2620	TS-2700	TS-2779	TS-2839	TS-2910
TS-2422	TS-2536	TS-2625	TS-2701	TS-2780	TS-2840	TS-2911
TS-2423	TS-2540	TS-2626	TS-2707	TS-2782	TS-2843	TS-2913
TS-2427	TS-2544	TS-2628	TS-2710	TS-2783	TS-2844	TS-2914
TS-2428	TS-2545	TS-2629	TS-2711	TS-2784	TS-2845	TS-2916
TS-2435	TS-2547	TS-2630	TS-2712	TS-2785	TS-2846	TS-2917
TS-2437	TS-2551	TS-2631	TS-2713	TS-2786	TS-2848	TS-2919
TS-2440	TS-2552	TS-2632	TS-2714	TS-2788	TS-2849	TS-2920
TS-2444	TS-2553	TS-2634	TS-2716	TS-2790	TS-2850	TS-2922
TS-2446	TS-2554	TS-2635	TS-2717	TS-2791	TS-2851	TS-2923
TS-2447	TS-2555	TS-2636	TS-2719	TS-2792	TS-2852	TS-2924
TS-2453	TS-2558	TS-2637	TS-2722	TS-2793	TS-2853	TS-2925
TS-2455	TS-2562	TS-2640	TS-2724	TS-2794	TS-2854	TS-2927
TS-2458	TS-2563	TS-2641	TS-2725	TS-2795	TS-2855	TS-2928
TS-2460	TS-2566	TS-2642	TS-2726	TS-2796	TS-2856	TS-2929
TS-2463	TS-2568	TS-2644	TS-2727	TS-2797	TS-2857	TS-2930
TS-2466	TS-2570	TS-2647	TS-2728	TS-2799	TS-2860	TS-2932
TS-2467	TS-2571	TS-2648	TS-2732	TS-2801	TS-2861	TS-2933
TS-2471	TS-2572	TS-2650	TS-2734	TS-2803	TS-2862	TS-2934
TS-2472	TS-2573	TS-2651	TS-2735	TS-2804	TS-2863	TS-2935
TS-2474	TS-2574	TS-2653	TS-2736	TS-2805	TS-2864	TS-2937
TS-2476	TS-2575	TS-2656	TS-2738	TS-2807	TS-2865	TS-2938
TS-2477	TS-2576	TS-2657	TS-2739	TS-2808	TS-2868	TS-2939
TS-2478	TS-2579	TS-2658	TS-2740	TS-2810	TS-2872	TS-2943
TS-2481	TS-2580	TS-2659	TS-2741	TS-2811	TS-2874	TS-2944
TS-2482	TS-2581	TS-2662	TS-2742	TS-2812	TS-2877	TS-2946
TS-2948	TS-3040	TS-3113	TS-3177	TS-3249	TS-3689	TS-3928
TS-2949	TS-3043	TS-3114	TS-3178	TS-3250	TS-3690	TS-3936
TS-2950	TS-3046	TS-3116	TS-3179	TS-3251	TS-3695	TS-3939
TS-2951	TS-3049	TS-3119	TS-3180	TS-3252	TS-3699	TS-3942
TS-2953	TS-3050	TS-3120	TS-3181	TS-3253	TS-3702	TS-3950
TS-2954	TS-3052	TS-3121	TS-3182	TS-3255	TS-3703	TS-3958
TS-2955	TS-3054	TS-3122	TS-3183	TS-3256	TS-3704	TS-3961
TS-2957	TS-3055	TS-3123	TS-3184	TS-3257	TS-3706	TS-3968
TS-2958	TS-3056	TS-3124	TS-3185	TS-3259	TS-3708	TS-3987
TS-2959	TS-3058	TS-3125	TS-3186	TS-3262	TS-3710	TS-3993
TS-2960	TS-3060	TS-3126	TS-3188	TS-3271	TS-3717	TS-3995
TS-2962	TS-3065	TS-3127	TS-3189	TS-3276	TS-3718	TS-4003
TS-2964	TS-3066	TS-3129	TS-3191	TS-3278	TS-3734	TS-4027
TS-2965	TS-3071	TS-3131	TS-3193	TS-3282	TS-3743	TS-4031
TS-2968	TS-3072	TS-3132	TS-3194	TS-3286	TS-3761	TS-4087
TS-2969	TS-3074	TS-3133	TS-3195	TS-3289	TS-3772	TS-4099
TS-2973	TS-3075	TS-3134	TS-3198	TS-3290	TS-3780	TS-4118
TS-2976	TS-3076	TS-3135	TS-3200	TS-3291	TS-3789	TS-4145
TS-2980	TS-3077	TS-3138	TS-3201	TS-3292	TS-3805	TS-4146
TS-2984	TS-3078	TS-3139	TS-3202	TS-3295	TS-3820	TS-4147
TS-2985	TS-3079	TS-3140	TS-3204	TS-3297	TS-3821	TS-4163
TS-2986	TS-3080	TS-3141	TS-3205	TS-3306	TS-3822	TS-4167
TS-2988	TS-3081	TS-3142	TS-3207	TS-3309	TS-3824	TS-4175
TS-2991	TS-3082	TS-3143	TS-3210	TS-3310	TS-3825	TS-4178
TS-2998	TS-3084	TS-3144	TS-3215	TS-3317	TS-3839	TS-4181
TS-3001	TS-3087	TS-3145	TS-3216	TS-3320	TS-3841	TS-4186
TS-3002	TS-3088	TS-3148	TS-3217	TS-3328	TS-3843	TS-4195
TS-3003	TS-3089	TS-3149	TS-3218	TS-3388	TS-3844	TS-4212
TS-3005	TS-3090	TS-3151	TS-3219	TS-3392	TS-3846	TS-4232
TS-3006	TS-3091	TS-3154	TS-3221	TS-3395	TS-3849	TS-4271
TS-3009	TS-3093	TS-3155	TS-3222	TS-3429	TS-3850	TS-4331
TS-3011	TS-3094	TS-3156	TS-3223	TS-3441	TS-3851	TS-4345
TS-3016	TS-3096	TS-3158	TS-3224	TS-3516	TS-3853	TS-4366
TS-3018	TS-3097	TS-3159	TS-3226	TS-3561	TS-3855	TS-4396
TS-3020	TS-3098	TS-3160	TS-3227	TS-3567	TS-3857	TS-4401
TS-3021	TS-3100	TS-3161	TS-3232	TS-3574	TS-3860	TS-4420
TS-3025	TS-3101	TS-3162	TS-3234	TS-3590	TS-3862	TS-4461
TS-3026	TS-3102	TS-3164	TS-3235	TS-3591	TS-3863	TS-4480
TS-3027	TS-3103	TS-3166	TS-3236	TS-3595	TS-3871	TS-4636
TS-3028	TS-3104	TS-3167	TS-3237	TS-3598	TS-3878	TS-4651

TABLE 4B TO PARAGRAPH (C) OF THIS AD—Continued

TS-3030	TS-3105	TS-3168	TS-3240	TS-3609	TS-3879	TS-4678
TS-3031	TS-3106	TS-3169	TS-3241	TS-3625	TS-3882	TS-4696
TS-3032	TS-3107	TS-3170	TS-3242	TS-3638	TS-3883	TS-4770
TS-3033	TS-3108	TS-3171	TS-3243	TS-3650	TS-3885	N/A
TS-3034	TS-3109	TS-3172	TS-3244	TS-3669	TS-3910	N/A
TS-3035	TS-3110	TS-3174	TS-3245	TS-3684	TS-3914	N/A
TS-3037	TS-3111	TS-3175	TS-3247	TS-3685	TS-3921	N/A
TS-3038	TS-3112	TS-3176	TS-3248	TS-3687	TS-3924	N/A

TABLE 5A TO PARAGRAPH (C) OF THIS AD

Rudder P/N with any S/N listed in table 5b to paragraph (c) of this AD

- D5547100000000
- D5547100000200
- D5547100000400
- D5547100000600
- D5547100000800
- D5547100001000
- D5547100001200
- D5547100001400
- D5547100001600
- D5547100001800
- D5547100002000
- D5547100100000
- D5547100200000
- D5547100300000
- D5547100400000

TABLE 5B TO PARAGRAPH (C) OF THIS AD

- TS-2141
- TS-2269
- TS-2274
- TS-2295
- TS-2317
- TS-2664
- TS-2715

TABLE 6 TO PARAGRAPH (C) OF THIS AD

Rudder P/N	Affected rudder S/N
D554 71000 020 00	TS-1494
D554 71002 000 00 0002	TS-2212

(d) Subject

Air Transport Association (ATA) of America Code 55, Stabilizers.

(e) Reason

This AD was prompted by reports of surface defects on rudders that were the result of debonding between the skin and honeycomb core. We are issuing this AD to detect and correct extended de-bonding, which might degrade the structural integrity of the rudder. The loss of the rudder leads to degradation of the handling qualities and reduces the controllability of the airplane.

(f) Compliance

You are responsible for having the actions required by this AD performed within the

compliance times specified, unless the actions have already been done.

(g) Retained Repetitive Inspections of Rudders With a Core Density of 24 kg/m³

This paragraph restates the requirements of paragraph (g) of AD 2010-23-07 Amendment 39-16496 (75 FR 68181, November 5, 2010; corrected December 17, 2010 (75 FR 78883)). For rudders identified in table 1 to paragraph (c) of this AD with a honeycomb core density of 24 kg/m³ (rudder P/N D554 71000 010 00 having affected rudder S/Ns TS-1069 and TS-1090, and rudder P/N D554 71000 012 00 having affected rudder S/N TS-1227), do the actions specified in paragraphs (g)(1), (g)(2), (g)(3), and (g)(4) of this AD, in accordance with Airbus All Operators Telex (AOT) A320-55A1038, Revision 01, dated June 10, 2009; or Airbus AOT A320-55A1038, Revision 02, dated September 28, 2009; for the locations defined in the applicable AOT specified in this paragraph.

(1) Within 200 days after December 10, 2010 (the effective date of AD 2010-23-07, Amendment 39-16496 (75 FR 68181, November 5, 2010; corrected December 17, 2010 (75 FR 78883))); Perform a vacuum loss inspection on the rudder reinforced area.

(2) Within 20 months after December 10, 2010 (the effective date of AD 2010-23-07, Amendment 39-16496 (75 FR 68181, November 5, 2010; corrected December 17, 2010 (75 FR 78883))); Perform an elasticity laminate checker inspection on the rudder trailing edge area. Repeat the inspection two times, at intervals not to exceed 4,500 flight cycles, but not sooner than 4,000 flight cycles after the last inspection.

(3) Within 200 days after December 10, 2010 (the effective date of AD 2010-23-07, Amendment 39-16496 (75 FR 68181, November 5, 2010; corrected December 17, 2010 (75 FR 78883))); Perform an elasticity laminate checker inspection of the other areas (splice/lower rib/upper edge/leading edge/other specified locations). Repeat the inspection at intervals not to exceed 1,500 flight cycles or 200 days, whichever comes first.

(4) Within 20 months after December 10, 2010 (the effective date of AD 2010-23-07, Amendment 39-16496 (75 FR 68181, November 5, 2010; corrected December 17, 2010 (75 FR 78883))); Perform a vacuum loss inspection of the other areas (splice/lower rib/upper edge/leading edge/other specified locations). Accomplishment of the action specified in paragraph (g)(4) of this AD terminates the requirements of paragraph (g)(3) of this AD.

(h) Retained Repetitive Inspections of Rudders Without a Core Density of 24 kg/m³

This paragraph restates the requirements of paragraph (h) of AD 2010-23-07 Amendment 39-16496 (75 FR 68181, November 5, 2010; corrected December 17, 2010 (75 FR 78883)). For rudders that do not have a honeycomb core density of 24 kg/m³ (all rudders identified in table 1 to paragraph (c) of this AD, except rudder P/N D554 71000 010 00 having affected rudder S/Ns TS-1069 and TS-1090, and rudder P/N D554 71000 012 00 having affected rudder S/N TS-1227), do the actions specified in paragraphs (h)(1), (h)(2), (h)(3), and (h)(4) of this AD, in accordance with Airbus AOT A320-55A1038, Revision 01, dated June 10, 2009; or Airbus AOT A320-55A1038, Revision 02, dated September 28, 2009; for the locations defined in the applicable AOT specified in this paragraph. As of the effective date of this AD, use only Airbus AOT A320-55A1038, Revision 02, dated September 28, 2009. For this paragraph, “reference date” is defined as December 10, 2010 (the effective date of AD 2010-23-07), or the date when the rudder will accumulate 20,000 total flight cycles from its first installation on an airplane, whichever occurs later.

(1) Within 200 days after the reference date, perform a vacuum loss inspection on the rudder reinforced area.

(2) Within 20 months after the reference date, perform an elasticity laminate checker inspection on the rudder trailing edge area. Repeat the inspection two times at intervals not to exceed 4,500 flight cycles, but not sooner than 4,000 flight cycles after the last inspection.

(3) Within 200 days after the reference date, perform an elasticity laminate checker inspection of the other areas (splice/lower rib/upper edge/leading edge/other specified locations). Repeat the inspection at intervals not to exceed 1,500 flight cycles or 200 days, whichever comes first.

(4) Within 20 months after the reference date, perform a vacuum loss inspection of the other areas (splice/lower rib/upper edge/leading edge/other specified locations). Accomplishment of the actions specified in this paragraph terminates the requirements of paragraph (h)(3) of this AD.

(i) Retained Corrective Actions for De-Bonding

This paragraph restates the requirements of paragraph (i) of AD 2010-23-07 Amendment 39-16496 (75 FR 68181, November 5, 2010; corrected December 17, 2010 (75 FR 78883)). In case of de-bonding found during any inspection required by paragraph (g) or (h) of this AD, before further flight, contact Airbus for further instructions and apply the associated instructions and corrective actions

in accordance with the approved data provided, or repair the debonding using a method approved by either the Manager, International Branch, ANM-116, Transport Airplane Directorate, FAA; or the European Aviation Safety Agency (EASA) (or its delegated agent). After the effective date of this AD, repair the debonding using only a method approved by either the Manager, International Branch, ANM-116; or the EASA (or its delegated agent).

(j) Retained Reporting for Findings From Actions Required by Paragraphs (g) and (h) of this AD

This paragraph restates the requirements of paragraph (j) of AD 2010-23-07 Amendment 39-16496 (75 FR 68181, November 5, 2010; corrected December 17, 2010 (75 FR 78883)). At the applicable time specified in paragraph (j)(1) or (j)(2) of this AD, submit a report of the findings (both positive and negative) of each inspection required by paragraphs (g) and (h) of this AD. The report must include the inspection results, as specified in Airbus Technical Disposition TD/K4/S2/27086/2009, Issue E, dated September 17, 2009. For positive findings, submit the report to either the Manager, Seer1/Seer2/Seer3 Customer Services, fax +33 (0)5 61 93 28 73, email *region1.structurerepairsupport@airbus.com*, *region2.structurerepairsupport@airbus.com*, or *region3.structurerepairsupport@airbus.com*; or AIRTAC (Airbus Technical AOG Center) Customer Services, telephone +33 (0)5 61 93 34 00, fax +33 (0)5 61 93 35 00, email *airtac@airbus.com*. For negative findings, submit the report to Nicolas Seynaeve, Sees1, Customer Services; telephone +33 (0)5 61 93 34 38; fax +33 (0)5 61 93 36 14; email *nicolas.seynaeve@airbus.com*.

(1) For any inspection done on or after December 10, 2010 (the effective date of AD 2010-23-07, Amendment 39-16496 (75 FR 68181, November 5, 2010; corrected December 17, 2010 (75 FR 78883))): Submit the report within 30 days after the inspection.

(2) For any inspection done before December 10, 2010 (the effective date of AD 2010-23-07, Amendment 39-16496 (75 FR 68181, November 5, 2010; corrected December 17, 2010 (75 FR 78883))): Submit the report within 30 days after December 10, 2010.

(k) Retained Inspection in Additional Areas

This paragraph restates the provisions of paragraph (k) of AD 2010-23-07, Amendment 39-16496, (75 FR 68181, November 5, 2010; corrected December 17, 2010 (75 FR 78883)). All rudders that have passed the inspection specified in paragraphs (g)(1), (g)(2), (g)(3), (g)(4), (h)(1), (h)(2), (h)(3), and (h)(4) of this AD before December 10, 2010 (the effective date of AD 2010-23-07), in accordance with Airbus AOT A320-55A1038, dated April 22, 2009; or Airbus Technical Disposition TD/K4/S2/27051/2009, Issue B, dated February 25, 2009; are compliant with this AD only for the areas inspected. Additional areas defined in Section 0, "Reason for Revision," of Airbus AOT A320-55A1038, Revision 01, dated June 10, 2009; or Airbus AOT A320-55A1038,

Revision 02, dated September 28, 2009; must be inspected as specified in paragraph (g) or (h) of this AD. For all areas, the repetitive inspections required by paragraph (g) or (h) of this AD remain applicable.

(l) Retained Parts Installation Limitations

This paragraph restates the requirements of paragraph (l) of AD 2010-23-07, Amendment 39-16496 (75 FR 68181, November 5, 2010; corrected December 17, 2010 (75 FR 78883)). After December 10, 2010 (the effective date of AD 2010-23-07), no rudder listed in table 1 to paragraph (c) of this AD may be installed on any airplane, unless the rudder is inspected in accordance with paragraph (g) or (h) of this AD, as applicable, and all applicable actions specified in paragraph (i) of this AD are done.

(m) New Restoration of Vacuum Loss Holes

If no de-bonding is found during any inspection required by paragraph (g) or (h) of this AD: Before further flight, restore the vacuum loss holes by doing a permanent restoration with resin, in accordance with Note 3 of Airbus AOT A320-55A1038, Revision 02, dated September 28, 2009. Before doing the resin injection, do a local ultrasound inspection in reinforced areas, and a thermography inspection in other areas, for damage, in accordance with Note 3 of Airbus AOT A320-55A1038, Revision 02, dated September 28, 2009. If any damage is found during any inspection required by this paragraph: Before further flight, repair the damage using a method approved by either the Manager, International Branch, ANM-116; or the EASA (or its delegated agent).

(n) New X-Ray, Elasticity Laminate Checker (ELCh), Vacuum Loss, or Thermography Inspection

For rudders identified in table 2 to paragraph (c) of this AD, do the actions specified in paragraphs (n)(1) and (n)(2) of this AD, in accordance with Airbus AOT A320-55A1039, dated November 4, 2009, for the locations defined in that AOT. For this paragraph, "reference date" is defined as the effective date of this AD or the date when the rudder will accumulate 20,000 total flight cycles from its first installation on an airplane, whichever occurs later.

(1) Within 20 months after the effective date of this AD, or within 200 days after the reference date, whichever occurs first: Perform X-ray, and/or ELCh, and/or vacuum loss, and/or thermography inspections for damage, as applicable to rudder part number and serial number, in accordance with the instructions of paragraph 4.2.2.1.1. of Airbus AOT A320-55A1039, dated November 4, 2009.

(2) At the applicable time specified in paragraph (n)(2)(i) or (n)(2)(ii) of this AD, send the developed X-ray films and the film layout arrangement, if applicable, to Attn: SDC32 Technical Data and Documentation Services, Airbus Customer Services Directorate, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France; fax (+33) 5 61 93 28 06; email *sb.reporting@airbus.com*.

(i) If the inspection was done on or after the effective date of this AD: Submit the X-

ray films and the film layout arrangement within 10 days after the inspection.

(ii) If the inspection was done before the effective date of this AD: Submit the X-ray films and the film layout arrangement within 10 days after the effective date of this AD.

(3) If any damage is found during any inspection required by paragraph (n) of this AD: Before further flight, repair the damage using a method approved by either the Manager, International Branch, ANM-116; or the EASA (or its delegated agent).

(o) New ELCh Inspection, Vacuum Loss Inspection, and Repairs

For rudders identified in table 2 to paragraph (c) of this AD: Within 1,500 flight cycles or 200 days after doing the requirements of paragraph (n)(1) of this AD, whichever occurs first, do the actions specified in paragraphs (o)(1) and (o)(2) of this AD.

(1) Perform an ELCh inspection for damage on the rudder trailing edge area, in accordance with the instructions of paragraph 4.2.2.1.2. of Airbus AOT A320-55A1039, dated November 4, 2009. In case of no finding, repeat the inspection two times, at intervals not to exceed 4,500 flight cycles but not sooner than 4,000 flight cycles after the last inspection.

(2) Perform a vacuum loss inspection for damage of the other areas (splice/lower rib/upper edge/leading edge/other specified locations), in accordance with the instructions of paragraph 4.2.2.1.2. of Airbus AOT A320-55A1039, dated November 4, 2009.

(3) If any damage is found during any inspection required by paragraph (o) of this AD: Before further flight, repair the damage using a method approved by either the Manager, International Branch, ANM-116; or the EASA (or its delegated agent).

(p) New Restorations and Inspections of Certain Vacuum Loss Holes, and Repairs

If no damage is found during any inspection required by paragraph (o) of this AD: Before further flight, restore the vacuum loss holes by doing a permanent restoration with resin, in accordance with Note 3 of Airbus AOT A320-55A1039, dated November 4, 2009. Before doing the resin injection, do a local ultrasound inspection in reinforced areas, and a thermography inspection in other areas, for damage, in accordance with Note 3 of Airbus AOT A320-55A1039, dated November 4, 2009. If any damage is found during any inspection required by this paragraph: Before further flight, repair the damage using a method approved by either the Manager, International Branch, ANM-116; or the EASA (or its delegated agent).

(q) New Rudder Replacement for Rudders Identified in Table 3 to Paragraph (c) of This AD

For rudders identified in table 3 to paragraph (c) of this AD, do the actions specified in paragraphs (q)(1) and (q)(2) of this AD, in accordance with the instruction of Airbus AOT A320-55A1039, dated November 4, 2009, for the locations defined in that AOT. For this paragraph, "reference date" is defined as the effective date of this

AD or the date when the rudder will accumulate 20,000 total flight cycles from its first installation on an airplane, whichever occurs later.

(1) For rudders identified in table 3 to paragraph (c) of this AD with a honeycomb core density of 24 kg/m³ (rudder P/N D554-71000-008-00 having affected rudder S/N TS-1032 and rudder P/N D554-71000-010-00 having affected rudder S/N TS-1092): Within 200 days after the effective date of this AD, replace the rudder with a new rudder, in accordance with a method approved by the Manager, International Branch, ANM-116; or the EASA (or its delegated agent).

(2) For rudders identified in table 3 to paragraph (c) of this AD that do not have a honeycomb core density of 24 kg/m³ (all except rudder P/N D554-71000-008-00 having affected rudder S/N TS-1032 and rudder P/N D554-71000-010-00 having affected rudder S/N TS-1092): Within 20 months after the effective date of this AD or within 200 days after the reference date, whichever occurs first, replace the rudder with a new rudder, in accordance with a method approved by the Manager, International Branch, ANM-116.

(r) New Vacuum Loss Inspection for Reinforced Areas of Rudder Identified in Table 4 to Paragraph (c) of This AD

For rudders identified in tables 4a and 4b to paragraph (c) of this AD: At the later of the times specified in paragraphs (r)(1) and (r)(2) of this AD, perform a vacuum loss inspection on the rudder reinforced area for damage, in accordance with the Accomplishment Instructions of Airbus Service Bulletin A320-55-1035, Revision 01, dated July 2, 2010 (for Model A320 airplanes); Airbus Service Bulletin A320-55-1036, Revision 01, dated July 2, 2010 (for Model A318 and A321 airplanes); or Airbus Service Bulletin A320-55-1037, Revision 01, dated July 2, 2010 (for Model A319 airplanes).

(1) Before the rudder accumulates 17,000 total flight cycles from its first installation on an airplane without exceeding 20 months from the effective date of this AD.

(2) Within 200 days after the effective date of this AD.

(s) New ELCh Inspection for Rudder Trailing Edge Area

For rudders identified in tables 4a and 4b to paragraph (c) of this AD: Within 20 months after the effective date of this AD, perform an ELCh inspection for damage on the rudder trailing edge area, in accordance with the Accomplishment Instructions of Airbus Service Bulletin A320-55-1035, Revision 01, dated July 2, 2010 (for Model A320 airplanes); Airbus Service Bulletin A320-55-1036, Revision 01, dated July 2, 2010 (for Model A318 and A321 airplanes); or Airbus Service Bulletin A320-55-1037, Revision 01, dated July 2, 2010 (for Model A319 airplanes). Repeat the inspection two times at intervals not to exceed 4,500 flight cycles, but not sooner than 4,000 flight cycles after the last inspection.

(t) New ELCh Inspection for Additional Rudder Areas

For rudders identified in tables 4a and 4b to paragraph (c) of this AD: At the later of the times specified in paragraphs (t)(1) and (t)(2) of this AD, perform an ELCh inspection for damage of the other areas (splice/lower rib/upper edge/leading edge/other specified locations) for damage, in accordance with the Accomplishment Instructions of Airbus Service Bulletin A320-55-1035, Revision 01, dated July 2, 2010 (for Model A320 airplanes); Airbus Service Bulletin A320-55-1036, Revision 01, dated July 2, 2010 (for Model A318 and A321 airplanes); or Airbus Service Bulletin A320-55-1037, Revision 01, dated July 2, 2010 (for Model A319 airplanes). Repeat the inspection thereafter at intervals not to exceed 1,500 flight cycles or 200 days, whichever comes first.

(1) Before the rudder accumulates 17,000 total flight cycles from its first installation on an airplane without exceeding 20 months from the effective date of this AD.

(2) Within 200 days after the effective date of this AD.

(u) New Vacuum Loss Inspection for Certain Areas of Rudders Identified in Tables 4a and 4b to Paragraph (c) of This AD

For rudders identified in tables 4a and 4b of this AD: Within 20 months after the effective date of this AD, perform a vacuum loss inspection for damage of the lower rib, upper edge, leading edge, and other specified locations, in accordance with the Accomplishment Instructions of Airbus Service Bulletin A320-55-1035, Revision 01, dated July 2, 2010 (for Model A320 airplanes); Airbus Service Bulletin A320-55-1036, Revision 01, dated July 2, 2010 (for Model A318 and A321 airplanes); or Airbus Service Bulletin A320-55-1037, Revision 01, dated July 2, 2010 (for Model A319 airplanes). Accomplishment of the actions specified in this paragraph terminates the requirements of paragraph (t) of this AD.

(v) New Corrective Actions for Certain Inspections

In case of damage found during any inspection required by paragraph (r), (s), (t), or (u) of this AD: Before further flight, repair the damage using a method approved by either the Manager, International Branch, ANM-116; or the EASA (or its delegated agent).

(w) New Restorations and Inspections of Certain Vacuum Loss Holes, and Repairs

If no damage is found during any inspection required by paragraph (r) or (u) of this AD: Before further flight, restore the vacuum loss holes by doing a permanent restoration with resin, in accordance with the Accomplishment Instructions of Airbus Service Bulletin A320-55-1035, Revision 01, dated July 2, 2010 (for Model A320 airplanes); Airbus Service Bulletin A320-55-1036, Revision 01, dated July 2, 2010 (for Model A318 and A321 airplanes); or Airbus Service Bulletin A320-55-1037, Revision 01, dated July 2, 2010 (for Model A319 airplanes). Before doing the resin injection, do a local ultrasound inspection in reinforced areas, and a thermography

inspection in other areas, for damage, in accordance with the Accomplishment Instructions of Airbus Service Bulletin A320-55-1035, Revision 01, dated July 2, 2010 (for Model A320 airplanes); Airbus Service Bulletin A320-55-1036, Revision 01, dated July 2, 2010 (for Model A318 and A321 airplanes); or Airbus Service Bulletin A320-55-1037, Revision 01, dated July 2, 2010 (for Model A319 airplanes). If any damage is found during any inspection required by this paragraph: Before further flight, repair the damage using a method approved by either the Manager, International Branch, ANM-116; or the EASA (or its delegated agent).

(x) Credit for Certain Previous Actions

This paragraph provides credit for the inspections required by paragraphs (r), (s), (t), (u), and (w) of this AD only for the inspected area for rudders identified in tables 4a and 4b to paragraph (c) of this AD, if the area passed the inspection before the effective date of this AD using Airbus Service Bulletin A320-55-1035, dated February 17, 2010 (for Model A320 airplanes); Airbus Service Bulletin A320-55-1036, dated February 17, 2010 (for Model A318 and A321 airplanes); or Airbus Service Bulletin A320-55-1037, dated February 17, 2010 (for Model A319 airplanes). For all other inspected areas, the repetitive inspections required by paragraph (s), (t), and (w) of this AD are still required.

(y) New ELCh Inspection and Repairs for Certain Rudders

For rudders identified in tables 5a and 5b to paragraph (c) of this AD: Within 4,500 flight cycles but not sooner than 4,000 flight cycles after the sampling inspection, perform an ELCh inspection for damage on the rudder trailing edge area, in accordance with the Accomplishment Instructions of Airbus Service Bulletin A320-55-1035, Revision 01, dated July 2, 2010 (for Model A320 airplanes); Airbus Service Bulletin A320-55-1036, Revision 01, dated July 2, 2010 (for Model A318 and A321 airplanes); or Airbus Service Bulletin A320-55-1037, Revision 01, dated July 2, 2010 (for Model A319 airplanes). Repeat the inspection within 4,500 flight cycles, but not sooner than 4,000 flight cycles after the last inspection. If any damage is found during any inspection required by paragraph (y) of this AD: Before further flight, repair the damage using a method approved by either the Manager, International Branch, ANM-116; or the EASA (or its delegated agent).

(z) Credit for Certain Other Previous Actions

This paragraph provides credit for the inspection required by paragraph (y) of this AD only for the inspected area for rudders identified in tables 5a and 5b to paragraph (c) of this AD that have passed the inspection before the effective date of this AD using Airbus Service Bulletin A320-55-1035, dated February 17, 2010 (for Model A320 airplanes); Airbus Service Bulletin A320-55-1036, dated February 17, 2010 (for Model A318 and A321 airplanes); or Airbus Service Bulletin A320-55-1037, dated February 17, 2010 (for Model A319 airplanes). For all inspection areas, the repetitive inspections required by paragraph (y) of this AD are still required.

(aa) New Repetitive Inspections of Rudders Identified in Table 6 to Paragraph (c) of This AD

For rudders identified in table 6 to paragraph (c) of this AD, do the actions specified in paragraphs (aa)(1), (aa)(2), (aa)(3), and (aa)(4) of this AD, in accordance with Airbus AOT A320–55A1038, Revision 02, dated September 28, 2009. For this paragraph, “reference date” is defined as the date when the rudder will accumulate 20,000 total flight cycles from its first installation on an airplane.

(1) Within 200 days after the reference date, perform a vacuum loss inspection on the rudder reinforced area.

(2) Within 20 months after the reference date, perform an elasticity laminate checker inspection on the rudder trailing edge area. Repeat the inspection two times at intervals not to exceed 4,500 flight cycles, but not sooner than 4,000 flight cycles, after the last inspection.

(3) Within 200 days after the reference date, perform an elasticity laminate checker inspection of the other areas (splice/lower rib/upper edge/leading edge/other specified locations). Repeat the inspection at intervals not to exceed 1,500 flight cycles or 200 days, whichever comes first.

(4) Within 20 months after the reference date, perform a vacuum loss inspection of the other areas (splice/lower rib/upper edge/leading edge/other specified locations). Accomplishment of the actions specified in this paragraph terminates the requirements of paragraph (h)(3) of this AD.

(bb) New De-Bonding Corrective Actions

In case of de-bonding found during any inspection required by paragraph (aa) of this AD: Before further flight, contact Airbus for further instructions and apply the associated instructions and corrective actions in accordance with the approved data provided.

(cc) New Restoration of Vacuum Loss Holes

If no de-bonding is found during any inspection required by paragraph (aa) of this AD: Before further flight, restore the vacuum loss holes by a permanent restoration with resin, in accordance with Note 3 of Airbus AOT A320–55A1038, Revision 02, dated September 28, 2009. Before doing the resin injection, do a local ultrasound inspection in reinforced areas, and a thermography inspection in other areas, for damage, in accordance with Note 3 of Airbus AOT A320–55A1038, Revision 02, dated September 28, 2009. If any damage is found during any inspection required by this paragraph: Before further flight, repair the damage using a method approved by either the Manager, International Branch, ANM–116; or the EASA (or its delegated agent).

(dd) New Reporting for Paragraphs (n), (o), (r), (s), (t), (u), (y), and (aa) of This AD

At the applicable time specified in paragraph (dd)(1) or (dd)(2) of this AD, submit a report of the findings (both positive and negative) of each inspection required by

paragraphs (n), (o), (r), (s), (t), (u), (y), and (aa) of this AD. The report must include the inspection results, as specified in Airbus Technical Disposition TD/K4/S2/27086/2009, Issue E, dated September 17, 2009. For positive findings, submit the report to either the Manager, Seer1/Seer2/Seer3 Customer Services, fax +33 (0)5 61 93 28 73, email region1.structurerepairsupport@airbus.com, region2.structurerepairsupport@airbus.com, or region3.structurerepairsupport@airbus.com; or AIRTAC (Airbus Technical AOG Center) Customer Services, telephone +33 (0)5 61 93 34 00, fax +33 (0)5 61 93 35 00, email airtac@airbus.com. For negative findings, submit the report to Nicolas Seynaeve, Sees1, Customer Services, telephone +33 (0)5 61 93 34 38, fax +33 (0)5 61 93 36 14, email nicolas.seynaeve@airbus.com.

(1) For any inspection done on or after the effective date of this AD: Submit the report within 10 days after the inspection.

(2) For any inspection done before the effective date of this AD: Submit the report within 10 days after the effective date of this AD.

(ee) New Parts Installation Limitation

As of the effective date of this AD, no rudder listed in table 1, 2, 3, 4a, 4b, 5a, 5b, or 6 to paragraph (c) of this AD may be installed on any airplane, unless the rudder is in compliance with the requirements of this AD.

(ff) Other FAA AD Provisions

The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs)*: The Manager, International Branch, ANM–116, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the International Branch, send it to ATTN: Sanjay Ralhan, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue SW., Renton, WA 98057–3356; telephone (425) 227–1405; fax (425) 227–1149. Information may be emailed to: 9-ANM-116-AMOC-REQUESTS@faa.gov. Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the local flight standards district office/certificate holding district office. The AMOC approval letter must specifically reference this AD.

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

(3) *Reporting Requirements*: A federal agency may not conduct or sponsor, and a person is not 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 unless that collection of information displays a current valid OMB Control Number. The OMB Control Number for this information collection is 2120–0056. Public reporting for this collection of information is estimated to be approximately 5 minutes per response, including the time for reviewing instructions, completing and reviewing the collection of information. All responses to this collection of information are mandatory. Comments concerning the accuracy of this burden and suggestions for reducing the burden should be directed to the FAA at: 800 Independence Ave. SW., Washington, DC 20591, Attn: Information Collection Clearance Officer, AES–200.

(gg) Related Information

(1) Refer to MCAI EASA Airworthiness Directive 2010–0164, dated August 5, 2010, and the following service information, for related information.

(i) Airbus AOT A320–55A1038, dated April 22, 2009.

(ii) Airbus AOT A320–55A1038, Revision 01, dated June 10, 2009.

(iii) Airbus AOT A320–55A1038, Revision 02, dated September 28, 2009.

(iv) Airbus AOT A320–55A1039, dated November 4, 2009.

(v) Airbus Service Bulletin A320–55–1035, Revision 01, dated July 2, 2010.

(vi) Airbus Service Bulletin A320–55–1036, Revision 01, dated July 2, 2010.

(vii) Airbus Service Bulletin A320–55–1037, Revision 01, dated July 2, 2010.

(viii) Airbus Technical Disposition TD/K4/S2/27051/2009, Issue B, dated February 25, 2009.

(ix) Airbus Technical Disposition TD/K4/S2/27086/2009, Issue E, dated September 17, 2009.

(2) For service information identified in this AD, contact Airbus, Airworthiness Office—EAS, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France; telephone +33 5 61 93 36 96; fax +33 5 61 93 44 51; email account.airworth-eas@airbus.com; Internet <http://www.airbus.com>. You may review copies of the referenced service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, WA. For information on the availability of this material at the FAA, call 425–227–1221.

Issued in Renton, Washington, on September 21, 2012.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2012–24175 Filed 10–1–12; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION**Federal Aviation Administration****14 CFR Part 39**

[Docket No. FAA-2012-1032; Directorate Identifier 2012-NM-079-AD]

RIN 2120-AA64

Airworthiness Directives; Saab AB, Saab Aerosystems Airplanes**AGENCY:** Federal Aviation Administration (FAA), DOT.**ACTION:** Notice of proposed rulemaking (NPRM).

SUMMARY: We propose to adopt a new airworthiness directive (AD) for all Saab AB, Saab Aerosystems Model SAAB 2000 airplanes. This proposed AD was prompted by reports of chafing on the bottom panel of the center cabin. This proposed AD would require doing a general visual inspection to determine if certain fasteners are installed, and related investigative and corrective actions. We are proposing this AD to detect and correct any chafing on the bottom panel of the center cabin, which could affect the structural integrity of the affected wing-to-fuselage connection.

DATES: We must receive comments on this proposed AD by November 16, 2012.

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

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

For service information identified in this proposed AD, contact Saab AB, Saab Aeronautics, SE-581 88, Linköping, Sweden; telephone +46 13 18 5591; fax +46 13 18 4874; email saab2000.techsupport@saabgroup.com; Internet <http://www.saabgroup.com>. You may review copies of the referenced service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, WA. For information on the availability of this material at the FAA, call 425-227-1221.

Examining the AD Docket

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

FOR FURTHER INFORMATION CONTACT:

Shahram Daneshmandi, Aerospace Engineer, International Branch, ANM-116, Transport Airplane Directorate, FAA, 1601 Lind Avenue SW., Renton, WA 98057-3356; telephone 425-227-1112; fax 425-227-1149.

SUPPLEMENTARY INFORMATION:**Comments Invited**

We invite you to send any written relevant data, views, or arguments about this proposed AD. Send your comments to an address listed under the **ADDRESSES** section. Include "Docket No. FAA-2012-1032; Directorate Identifier 2012-NM-079-AD" at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD based on those comments.

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

Discussion

The European Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Community, has issued EASA Airworthiness Directive 2012-0068, dated April 25, 2012 (referred to after this as "the MCAI"), to correct an unsafe condition for the specified products. The MCAI states:

On two SAAB 2000 aeroplanes, signs of chafing have been found on the bottom panel of the centre cabin between fuselage station (STA) 562 and STA 622. The investigation results have shown that the chafing is caused by certain Hi Lok fasteners, installed as a repair during production, through the upper wing skin panel.

This condition, if not detected and corrected, could affect the structural integrity of the affected wing-to-fuselage connection.

To address this potential unsafe condition, SAAB issued Service Bulletin (SB) 2000-53-057 to provide instructions for a general visual inspection to detect chafing in the area between the upper wing skin and the cabin centre bottom panel and to verify if there are Hi Lok fasteners installed with the collar up.

For the reasons described above, this [EASA] AD requires a one-time inspection of the designated area, the accomplishment of corrective action(s) [repair], depending on findings, and the reporting of all inspection results * * *.

This [EASA] AD is considered an interim action and further AD action may follow.

Related investigative actions include measuring the distance between the fastener and bottom panel and a boroscope inspection for chafing and damage of the bottom panel. You may obtain further information by examining the MCAI in the AD docket.

Relevant Service Information

Saab AB, Saab Aerosystems has issued Service Bulletin 2000-53-057, dated November 22, 2011. The actions described in this service information are intended to correct the unsafe condition identified in the MCAI.

FAA's Determination and Requirements of This Proposed AD

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

Differences Between This AD and the MCAI or Service Information

Saab Service Bulletin 2000-53-057, dated November 22, 2011, specifies to contact the manufacturer for repair instructions, but this proposed AD would require doing the repair using a method that we approve.

Costs of Compliance

Based on the service information, we estimate that this proposed AD would affect about 10 products of U.S. registry. We also estimate that it would take about 4 work-hours per product to comply with the basic requirements of this proposed AD. The average labor rate is \$85 per work-hour. Based on these figures, we estimate the cost of the proposed AD on U.S. operators to be \$3,400, or \$340 per product.

We have received no definitive data that would enable us to provide a cost estimate for the on-condition actions specified in this proposed AD.

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

List of Subjects in 14 CFR Part 39

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

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Saab AB, Saab Aerosystems: Docket No. FAA-2012-1032; Directorate Identifier 2012-NM-079-AD.

(a) Comments Due Date

We must receive comments by November 16, 2012.

(b) Affected ADs

None.

(c) Applicability

This AD applies to Saab AB, Saab Aerosystems Model SAAB 2000 airplanes, certificated in any category, all serial numbers.

(d) Subject

Air Transport Association (ATA) of America Code 53, Fuselage.

(e) Reason

This AD was prompted by reports of chafing on the bottom panel of the center cabin. We are issuing this AD to detect and correct any chafing on the bottom panel of the center cabin, which could affect the structural integrity of the affected wing-to-fuselage connection.

(f) Compliance

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

(g) Inspection

Within 12 months after the effective date of this AD, do a general visual inspection of the area between the upper part of the wing skin and the center bottom panel to determine if any Hi Lok fasteners are installed with the collar up, and do all applicable related investigative actions, in accordance with the Accomplishment Instructions of Saab Service Bulletin 2000-53-057, dated November 22, 2011.

(h) Repair

If any chafing or damage is found during any inspection required by paragraph (g) of this AD: Before further flight, repair in accordance with a method approved by the Manager, International Branch, ANM-116, Transport Airplane Directorate, FAA; or the European Aviation Safety Agency (EASA) (or its delegated agent).

(i) Reporting

Submit a report of the findings (both positive and negative) of the inspection required by paragraph (g) of this AD to Saab AB, Saab Aerosystems, in accordance with the Accomplishment Instructions of Saab Service Bulletin 2000-53-057, dated November 22, 2011, at the applicable time

specified in paragraph (h)(1) or (h)(2) of this AD. The report must include the inspection results, the airplane serial number, and the number of landings and flight hours on the airplane.

(1) If the inspection was done on or after the effective date of this AD: Submit the report within 30 days after the inspection.

(2) If the inspection was done before the effective date of this AD: Submit the report within 30 days after the effective date of this AD.

(j) Other FAA AD Provisions

The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, International Branch, ANM-116, Transport Airplane Directorate, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the International Branch, send it to ATTN: Shahram Daneshmandi, Aerospace Engineer, International Branch, ANM-116, Transport Airplane Directorate, FAA, 1601 Lind Avenue SW., Renton, WA 98057-3356; telephone 425-227-1112; fax 425-227-1149. Information may be emailed to: 9-ANM-116-AMOC-REQUESTS@faa.gov. Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the local flight standards district office/certificate holding district office. The AMOC approval letter must specifically reference this AD.

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

(3) *Reporting Requirements:* A federal agency may not conduct or sponsor, and a person is not 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 unless that collection of information displays a current valid OMB Control Number. The OMB Control Number for this information collection is 2120-0056. Public reporting for this collection of information is estimated to be approximately 5 minutes per response, including the time for reviewing instructions, completing and reviewing the collection of information. All responses to this collection of information are mandatory. Comments concerning the accuracy of this burden and suggestions for reducing the burden should be directed to the FAA at: 800 Independence Ave. SW., Washington, DC 20591, Attn: Information Collection Clearance Officer, AES-200.

(k) Related Information

(1) Refer to MCAI EASA Airworthiness Directive 2012-0068, dated April 25, 2012;

and Saab Service Bulletin 2000–53–057, dated November 22, 2011; for related information.

(2) For service information identified in this AD, contact Saab AB, Saab Aeronautics, SE–581 88, Linköping, Sweden; telephone +46 13 18 5591; fax +46 13 18 4874; email saab2000.techsupport@saabgroup.com; Internet <http://www.saabgroup.com>. You may review copies of the referenced service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, WA. For information on the availability of this material at the FAA, call 425–227–1221.

Issued in Renton, Washington, on September 21, 2012.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2012–24173 Filed 10–1–12; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2012–1033; Directorate Identifier 2010–NM–266–AD]

RIN 2120–AA64

Airworthiness Directives; Airbus Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: We propose to supersede an existing airworthiness directive (AD) that applies to all Airbus Model A330–200 and –300 series airplanes, and Model A340–200 and –300 series airplanes. The existing AD currently requires repetitive inspections to detect discrepancies of the transfer tubes and the collar of the ball nut of the trimmable horizontal stabilizer actuator (THSA), and corrective action if necessary; repetitive inspections for discrepancies of the ball screw assembly, and corrective action if necessary; repetitive greasing of the THSA ball nut, and replacement of the THSA if necessary; and modification or replacement (as applicable) of the ball nut assembly, which would end certain repetitive inspections. Since we issued that AD, we have determined the repetitive inspections of the ball screw assembly (and corrective action if necessary) and repetitive greasing is needed for additional THSA nuts. This proposed AD would remove certain inspections, revise certain actions, and add airplanes to the applicability. We are proposing this AD to prevent degraded operation of the THSA, which

could result in reduced controllability of the airplane.

DATES: We must receive comments on this proposed AD by November 16, 2012.

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

- **Federal eRulemaking Portal:** Go to <http://www.regulations.gov>. Follow the instructions for submitting comments.

- **Fax:** (202) 493–2251.

- **Mail:** U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590.

- **Hand Delivery:** U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

For Airbus service information identified in this proposed AD, contact Airbus SAS—Airworthiness Office—EAL, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France; telephone +33 5 61 93 36 96; fax +33 5 61 93 45 80; email airworthiness.A330-A340@airbus.com; Internet: <http://www.airbus.com>. For TRW Aeronautical Systems, SAMM Avionique, and Lucas Aerospace service information identified in this proposed AD, contact Goodrich Corporation, Actuation Systems, Stafford Road, Fordhouses, Wolverhampton WV10 7EH, England; telephone +44 (0) 1902 624938; fax +44 (0) 1902 788100; email techpubs.wolverhampton@goodrich.com; Internet <http://www.goodrich.com/TechPubs.Y>. You may review copies of the referenced service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, WA. For information on the availability of this material at the FAA, call 425–227–1221.

Examining the AD Docket

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

FOR FURTHER INFORMATION CONTACT: Vladimir Ulyanov, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA,

1601 Lind Avenue SW., Renton, WA 98057–3356; telephone 425–227–1138; fax 425–227–1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposed AD. Send your comments to an address listed under the **ADDRESSES** section. Include “Docket No. FAA–2012–1033; Directorate Identifier 2010–NM–266–AD” at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD based on those comments.

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

Discussion

On March 17, 2005, we issued AD 2005–07–04, Amendment 39–14028 (70 FR 16104, March 30, 2005). That AD required actions intended to address an unsafe condition on the products listed above. Since we issued AD 2005–07–04, the European Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Community, has issued EASA Airworthiness Directive 2010–0192 (corrected), dated October 11, 2010; and EASA Airworthiness Directive 2010–0193 (corrected), dated October 11, 2010; referred to after this as “the MCAI”), to correct an unsafe condition for the specified products. The MCAI states:

Several cases of transfer tube disconnection from the ball-nut of the trimmable horizontal stabilizer actuator (THSA) part number (P/N) 47172 and 47147–400 were detected on the ground during greasing and maintenance.

This condition is caused by water ingress into the ball-nut resulting in the jamming of the ball transfer circuit when the water freezes.

If the three (independent) ball circuits fail, then the THSA will operate on a fail-safe nut. This nut (which operates without balls) would then jam after several movements on the screw of the THSA.

This degraded operation is not detectable in the cockpit by the crew as long as the THSA does not jam and could damage the ball screw and the fail-safe nut.

To detect this unsafe condition, [Dirección General de Aviación Civil] DGAC France AD F–2001–356 [and F–2001–357] was issued to require repetitive inspections of the transfer tubes and their collars in order to detect at

an early stage any distortion or initiation of disconnection.

Further to a new case of transfer tube disconnection, * * * [revised ADs] required an additional repetitive greasing task with reinforcement of the ball-nut maintenance greasing instructions.

In addition, the electrical flight control computers monitor the operation of the THSA and the jamming of this actuator could be detected and indicated by messages on the maintenance system and on the [electronic centralized aircraft monitor] ECAM. In this case a mandatory inspection of the THSA is required before the next flight.

DGAC France AD F-2002-038 [and F-2002-037] required application of a final fix (related to inspection and greasing task required by DGAC France AD F-2001-356) [and F-2001-357] for the THSA P/N 47172 by application of Airbus modification 49590/Service Bulletin (SB) A330-27-3085 [or SB A340-27-4089]. It changes the THSA P/N from 47172 to 47172-300.

Later on, DGAC France AD F-2002-414R3 replaced the DGAC AD France F-2001-356R2 and F-2002-038 [and DGAC France AD F-2002-415R2 superseded DGAC France ADs F-2001-357R2 and F-2002-037] requiring:

—the repetitive [detailed] inspection [for discrepancies] of all THSA P/N in service [for integrity of the primary and secondary load path and check the Checkable Shear Pins (CSPs)], and

—the lubrication of some THSA P/N, and
—the replacement of THSA P/N 47172, 47147-400 and 47147-2XX/-3XX

[DGAC France AD F-2002-414R3 and F-2002-415R2 correspond to FAA AD 2005-07-04, Amendment 39-14028 (70 FR 16104, March 30, 2005).]

Airbus has later introduced 4 new THSA P/N (47172-500, 47172-510, 47172-520 and 47172-530).

This [EASA] AD retains the requirements of DGAC France AD F-2002-414R3 [and F-2002-415R2], which is superseded, and requires repetitive inspections and lubrications of the new THSA P/N.

The repetitive inspection and lubrication requirements for THSA P/N 47172-520 and 47172-530 shall [also] be included in the next Airworthiness Limitation Section (ALS) Part 4 revision.

* * * * *

Corrective actions include replacing the THSA with a new THSA if cracks, dents, or corrosion are found, or if the feeler gage has failed at any of the four gaps. Corrective action is using a method approved by either the Manager, International Branch, ANM-116, Transport Airplane Directorate, FAA; or the EASA (or its delegated agent) for a finding of metallic debris, loose nut, damaged or missing lock washers, pins and parts, or incorrect installation of items. AD 2005-07-04, Amendment 39-14028 (70 FR 16104, March 30, 2005), specified repetitive inspections for discrepancies. This proposed AD specifies repetitive inspections for the

integrity of the primary and secondary load path, and the CSPs, for certain airplanes. The unsafe condition is the degraded operation of the THSA, which could result in reduced controllability of the airplane. You may obtain further information by examining the MCAI in the AD docket.

Relevant Service Information

Airbus has issued the following service information for Model A330-200 and -300 series airplanes.

- Airbus Mandatory Service Bulletin A330-27-3102, Revision 08, excluding Appendix 1, dated December 6, 2007.

- Task 27.40.00/02, Lubrication of THS Actuator Ball Screw Nut, of Airbus A330 MRBR, Revision 12, dated July 1, 2010.

- Task 274400-00001-1-E of Airbus A330 ALS Part 4—Ageing Systems Maintenance, Revision 02, dated December 16, 2009.

- Task 274400-00001-1-E of Airbus A330 ALS Part 4—Ageing Systems Maintenance, Revision 03, dated September 9, 2011.

- Task 274400-00001-2-E of Airbus A330 ALS Part 4—Ageing Systems Maintenance, Revision 02, dated December 16, 2009.

- Task 274400-00001-2-E of Airbus A330 ALS Part 4—Ageing Systems Maintenance, Revision 03, dated September 9, 2011.

- Task 274400-00001-3-E of Airbus A330 ALS Part 4—Ageing Systems Maintenance, Revision 02, dated December 16, 2009.

- Task 274400-00001-3-E of Airbus A330 ALS Part 4—Ageing Systems Maintenance, Revision 03, dated September 9, 2011.

- Task 274400-00001-4-E of Airbus A330 ALS Part 4—Ageing Systems Maintenance, Revision 02, dated December 16, 2009.

- Task 274400-00001-4-E of Airbus A330 ALS Part 4—Ageing Systems Maintenance, Revision 03, dated September 9, 2011.

- Task 274400-00002-1-E, Lubrication of the THSA Ball Nut, of Airbus A330 ALS Part 4—Ageing Systems Maintenance, Revision 02, dated December 16, 2009.

Airbus has issued the following service information for Model A340-200 and -300 series airplanes.

- Airbus Mandatory Service Bulletin A340-27-4107, Revision 08, excluding Appendix 1, dated December 6, 2007.

- Task 27.40.00/02, Lubrication of THS Actuator Ball Screw Nut, of Airbus A340 MRBR, Revision 12, dated July 1, 2010.

- Task 274400-00001-1-E of Airbus A340 ALS Part 4—Ageing Systems

Maintenance, Revision 01, dated December 15, 2009.

- Task 274400-00001-1-E of Airbus A340 ALS Part 4—Ageing Systems Maintenance, Revision 02, dated October 12, 2011.

- Task 274400-00001-2-E of Airbus A340 ALS Part 4—Ageing Systems Maintenance, Revision 01, dated December 15, 2009.

- Task 274400-00001-2-E of Airbus A340 ALS Part 4—Ageing Systems Maintenance, Revision 02, dated October 12, 2011.

- Task 274400-00001-3-E of Airbus A340 ALS Part 4—Ageing Systems Maintenance, Revision 01, dated December 15, 2009.

- Task 274400-00001-3-E of Airbus A340 ALS Part 4—Ageing Systems Maintenance, Revision 02, dated October 12, 2011.

- Task 274400-00001-4-E of Airbus A340 ALS Part 4—Ageing Systems Maintenance, Revision 01, dated December 15, 2009.

- Task 274400-00001-4-E of Airbus A340 ALS Part 4—Ageing Systems Maintenance, Revision 02, dated October 12, 2011.

- Task 274400-00002-1-E, Lubrication of the THSA Ball Nut, of Airbus of A340 ALS Part 4—Ageing Systems Maintenance, Revision 01, dated December 15, 2009.

The actions described in this service information are intended to correct the unsafe condition identified in the MCAI.

FAA's Determination and Requirements of This Proposed AD

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

Explanation of Updated Credit Language

We have revised the heading and wording for paragraph (i) of this AD to provide appropriate credit for previous accomplishment of certain actions. This change does not affect the intent of that paragraph.

Explanation of Change to Costs of Compliance

Since issuance of AD 2005-07-04, Amendment 39-14028 (70 FR 16104,

March 30, 2005), we have increased the labor rate used in the Costs of Compliance from \$65 per work-hour to \$85 per work-hour. The Costs of Compliance information, below, reflects this increase in the specified labor rate.

Costs of Compliance

Based on the service information, we estimate that this proposed AD would affect about 33 products of U.S. registry.

The actions that are required by AD 2005-07-04, Amendment 39-14028 (70 FR 16104, March 30, 2005), and retained in this proposed AD take up to 36 work-hours per product, at an average labor rate of \$85 per work hour. Based on these figures, the estimated cost of the currently required actions is up to \$3,060 per product.

We estimate that it would take about 2 work-hours per product to comply with the new basic requirements of this proposed AD. The average labor rate is \$85 per work-hour. Based on these figures, we estimate the cost of the proposed AD on U.S. operators to be \$5,610, or \$170 per product.

We have received no definitive data that would enable us to provide cost estimates for the on-condition actions specified in this proposed AD.

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

1. Is not a "significant regulatory action" under Executive Order 12866,
 2. Is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979),
 3. Will not affect intrastate aviation in Alaska, and
 4. Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.
- We prepared a regulatory evaluation of the estimated costs to comply with this proposed AD and placed it in the AD docket.

List of Subjects in 14 CFR Part 39

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

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

2. The FAA amends § 39.13 by removing AD 2005-07-04, Amendment 39-14028 (70 FR 16104, March 30, 2005), and adding the following new AD:

Airbus: Docket No. FAA-2012-1033; Directorate Identifier 2010-NM-266-AD.

(a) Comments Due Date

We must receive comments by November 16, 2012.

(b) Affected ADs

This AD supersedes AD 2005-07-04, Amendment 39-14028 (70 FR 16104, March 30, 2005).

(c) Applicability

This AD applies to all Airbus Model A330-201, -202, -203, -223, -223F, -243, -243F, -301, -302, -303, -321, -322, -323, -341, -342, and -343 airplanes; and Model A340-211, -212, -213, -311, -312, and -313 airplanes; certificated in any category.

(d) Subject

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

(e) Reason

This AD was prompted by several reports of disconnection of the transfer tube from the ball nut of the trimmable horizontal stabilizer actuator (THSA). We are issuing this AD to

prevent degraded operation of the THSA, which could result in reduced controllability of the airplane.

(f) Compliance

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

(g) Retained Modification or Replacement

This paragraph restates the requirements of paragraph (g) of AD 2005-07-04, Amendment 39-14028 (70 FR 16104, March 30, 2005). Except for Model A330-223F and -243F airplanes: Within 24 months after May 4, 2005 (the effective date of AD 2005-07-04), modify the ball nut of each THSA by doing paragraph (g)(1) or (g)(2) of this AD, as applicable.

(1) For THSAs having P/N 47172: Modify the ball nut of the THSA, or replace the existing THSA with a serviceable part having P/N 47172-300; in accordance with Airbus Service Bulletin A330-27-3085 (for Model A330 series airplanes) or A340-27-4089 (for Model A340-313 series airplanes), both Revision 02, both dated September 5, 2002; as applicable.

Note 1 to paragraph (g)(1) of this AD: Airbus Service Bulletins A330-27-3085 and A340-27-4089, both Revision 02, both dated September 5, 2002, refer to TRW Aeronautical Systems Service Bulletin 47172-27-03, dated October 24, 2001, which is not incorporated by reference in this AD, as additional guidance for accomplishing the modification of the ball nut of the THSA.

(2) For THSAs having P/N 47147-200, -210, -213, -300, -303, -350, or -400: Modify the ball nut of the THSA, or replace the existing THSA with an improved part having P/N 47147-500; as applicable; in accordance with Airbus Service Bulletin A330-27-3093 (for Model A330 series airplanes) or A340-27-4099 (for Model A340-200 and -300 series airplanes), both Revision 01, both dated September 5, 2002; as applicable.

Note 2 to paragraph (g)(2) of this AD: Airbus Service Bulletins A330-27-3093 and A340-27-4099, both Revision 01, both dated September 5, 2002, refer to TRW Aeronautical Systems Service Bulletin 47147-27-10, dated June 27, 2002, which is not incorporated by reference in this AD, as additional guidance for accomplishing the modification of the ball nut of the THSA.

(h) Retained Previous/Concurrent Requirements

This paragraph restates the requirements of paragraph (h) of AD 2005-07-04, Amendment 39-14028 (70 FR 16104, March 30, 2005).

(1) Except for Model A330-223F and -243F airplanes, prior to or concurrently with accomplishing the requirements of paragraph (g)(2) of this AD, do all of the actions specified in the Accomplishment Instructions of the applicable Airbus service bulletins listed in table 1 or 2 to paragraph (h)(1) of this AD, as applicable, in accordance with those service bulletins.

Note 3 to paragraph (h)(1) of this AD: Airbus Service Bulletin A330-27-3093,

Revision 01, dated September 5, 2002, specifies that the actions in Airbus Service Bulletin A330-27-3052 be accomplished previously or concurrently. Airbus Service Bulletin A330-27-3052, Revision 03, dated December 5, 2001, specifies that the actions in Airbus Service Bulletins A330-27-3007, A330-27-3015, A330-27-3047, A330-27-

3050, and A330-55-3020 be accomplished previously or concurrently.

Note 4 to paragraph (h)(1) of this AD: Airbus Service Bulletin A340-27-4099, Revision 01, dated September 5, 2002, specifies that the actions in Airbus Service Bulletin A340-27-4059 be accomplished

previously or concurrently. Airbus Service Bulletin A340-27-4059, Revision 03, dated December 5, 2001, specifies that the actions in Airbus Service Bulletins A340-27-4007, A340-27-4025, A340-27-4054, A340-27-4057, and A340-55-4021 be accomplished previously or concurrently.

TABLE 1 TO PARAGRAPH (h)(1) OF THIS AD—RETAINED PREVIOUS/CONCURRENT REQUIREMENTS FOR MODEL A330 SERIES AIRPLANES

Airbus service bulletin—	Revision level—	Date—	Main action—	Additional source of guidance (not incorporated by reference in this AD)—
A330-27-3007	01	September 18, 1996.	Replace rudder servo controls with modified parts.	Samm Avionique Service Bulletin SC5300-27-24-01, dated April 15, 1994.
A330-27-3015	.....	June 7, 1995 ...	Modify the control valve detent and the jamming protection device on the THSA.	Lucas Aerospace Service Bulletin 47147-27-02, Revision 1, dated January 31, 1996.
A330-27-3047	01	November 26, 1997.	Replace hydraulic motors on the THSA with new parts.	Lucas Aerospace Service Bulletin 47147-27-04, Revision 1, dated June 20, 1997.
A330-27-3050	.....	November 15, 1996.	Replace mechanical input shaft for THSA with modified part.	Lucas Aerospace Service Bulletin 47147-27-05, dated November 8, 1996.
A330-27-3052	03	December 5, 2001.	Replace THSA with a modified THSA	Lucas Aerospace Service Bulletin 47147-27-07, dated May 4, 1998.
A330-55-3020	01	October 21, 1998.	Perform a general visual inspection of the THSA screw jack fitting assembly for correct installation of a washer; and correctly install washer as applicable.	None.

TABLE 2 TO PARAGRAPH (h)(1) OF THIS AD—RETAINED PREVIOUS/CONCURRENT REQUIREMENTS FOR MODEL A340 SERIES AIRPLANES

Airbus service bulletin—	Revision level—	Date—	Main action—	Additional source of guidance (not incorporated by reference in this AD)—
A340-27-4007	.....	April 7, 1994	Replace hydraulic motors on the THSA with new parts.	Lucas Aerospace Service Bulletin 47147-27-01, dated May 4, 1998.
A340-27-4025	.....	June 7, 1995 ...	Modify the control valve detent and the jamming protection device on the THSA.	Lucas Aerospace Service Bulletin 47147-27-02, Revision 1, dated January 31, 1996.
A340-27-4054	01	November 26, 1997.	Replace hydraulic motors on the THSA with new parts.	Lucas Aerospace Service Bulletin 47147-27-04, Revision 1, dated June 20, 1997.
A340-27-4057	.....	November 15, 1996.	Replace mechanical input shaft for THSA with modified part.	Lucas Aerospace Service Bulletin 47147-27-05, dated November 8, 1996.
A340-27-4059	03	December 5, 2001.	Replace THSA with a modified THSA	Lucas Aerospace Service Bulletin 47147-27-07, dated May 4, 1998.
A340-55-4021	01	October 21, 1998.	Perform a general visual inspection of the THSA screw jack fitting assembly for correct installation of a washer; and correctly install washer as applicable.	None.

(2) For the purposes of this AD, a general visual inspection is: “A visual examination of an interior or exterior area, installation, or assembly to detect obvious damage, failure, or irregularity. This level of inspection is made from within touching distance unless otherwise specified. A mirror may be necessary to ensure visual access to all surfaces in the inspection area. This level of inspection is made under normally available lighting conditions such as daylight, hangar lighting, flashlight, or droplight and may require removal or opening of access panels or doors. Stands, ladders, or platforms may be required to gain proximity to the area being checked.”

(i) Retained Credit for Previous Actions

This paragraph provides credit for the actions specified in paragraphs (i)(1) and (i)(2) of this AD.

(1) This paragraph provides credit for the requirements of paragraph (g)(1) of this AD, if those actions were performed before May 4, 2005 (the effective date of AD 2005-07-04, Amendment 39-14028 (70 FR 16104, March 30, 2005)), using Airbus Service Bulletin A330-27-3085 (for Model A330 series airplanes) or A340-27-4089 (for Model A340-313 series airplanes), both Revision 01, both dated January 23, 2002 (which are not incorporated by reference in this AD), as applicable.

(2) This paragraph provides credit for the requirements of paragraphs (g)(2) of this AD,

if those actions were performed before May 4, 2005 (the effective date of AD 2005-07-04, Amendment 39-14028 (70 FR 16104, March 30, 2005)), using Airbus Service Bulletin A330-27-3093 (for Model A330 series airplanes) or A340-27-4099 (for Model A340-200 and -300 series airplanes), both dated June 27, 2002 (which are not incorporated by reference in this AD), as applicable.

(j) New Repetitive Greasing Procedure

(1) Within 700 flight hours after the effective date of this AD or within 700 flight

hours after the date of the last lubrication, whichever occurs later, and thereafter at intervals not to exceed 700 flight hours from the last lubrication of the trimmable horizontal stabilizer (THS) actuator ball screw nut: Perform Task 27.40.00/02, Lubrication of THS Actuator Ball Screw Nut, in accordance with Airbus A330 Maintenance Review Board Report (MRBR), Revision 12, dated July 1, 2010 (for Model A330 series airplanes); or Airbus A340 MRBR, Revision 12, dated July 1, 2010 (for Model A340 series airplanes); on all THSA.

(2) For airplanes identified in paragraphs (j)(2)(i), (j)(2)(ii), and (j)(2)(iii) of this AD, as applicable, lubrication of the THS actuator ball screw nut performed at threshold and repetitive interval not exceeding 1,000 flight hours, in accordance with Task 274400-00002-1-E, Lubrication of the THSA Ball Nut, of Airbus A330 Airworthiness Limitations Section (ALS) Part 4—Ageing Systems Maintenance, Revision 02, dated December 16, 2009 (for Model A330 series airplanes); or Task 274400-00002-1-E, Lubrication of the THSA Ball Nut, of Airbus A340 ALS Part 4—Ageing Systems Maintenance, Revision 01, dated December 15, 2009 (for Model A340-200 and -300 series airplanes); is acceptable for compliance with requirements of paragraph (j)(1) of this AD.

(i) Airplanes on which Airbus Modifications 52269, 56056, and 55780 have been done in production.

(ii) Model A330 series airplanes on which the actions specified in Airbus Mandatory Service Bulletin A330-27-3137, dated March 20, 2007, Revision 01, dated December 6, 2007, or Revision 02, dated January 18, 2010; and Airbus Mandatory Service Bulletin A330-92-3046, Revision 04, dated July 16, 2010, or Revision 05, dated November 7, 2011; (which are not incorporated by reference in this AD) have been done in service.

(iii) Model A340-200 and -300 series airplanes on which the actions specified in Airbus Mandatory Service Bulletin A340-27-4136, dated March 20, 2007, Revision 01, dated December 6, 2007, or Revision 02, dated February 24, 2010; and Airbus Mandatory Service Bulletin A340-92-4056, Revision 03, dated July 16, 2010; (which are not incorporated by reference in this AD) have been done in service.

(k) New Repetitive Inspections of the Ball Screw Assembly and Corrective Actions

For all airplanes, except for those airplanes identified in paragraphs (k)(1), (k)(2), and (k)(3) of this AD: Do the applicable actions specified in paragraphs (k)(4) and (k)(5) of this AD within 700 flight hours after the effective date of this AD, and repeat the inspection thereafter at intervals not to exceed 700 flight hours.

(1) Airplanes on which the actions specified in Airbus Modifications 52269, 56056, and 55780 have been done in production.

(2) Model A330 series airplanes on which Airbus Mandatory Service Bulletin A330-27-3137, dated March 20, 2007, Revision 01, dated December 6, 2007, or Revision 02, dated January 18, 2010; and Airbus

Mandatory Service Bulletin A330-92-3046, Revision 04, dated July 16, 2010, or Revision 05, dated November 7, 2011; (which are not incorporated by reference in this AD) have been done in service.

(3) Model A340-200 and -300 series airplanes on which the actions specified in Airbus Mandatory Service Bulletin A340-27-4136, dated March 20, 2007, Revision 01, dated December 6, 2007, or Revision 02, dated February 24, 2010; and Airbus Mandatory Service Bulletin A340-92-4056, Revision 03, dated July 16, 2010; have been done in service.

(4) For airplanes on which the actions specified in Airbus Mandatory Service Bulletin A330-27-3137, dated March 20, 2007, Revision 01, dated December 6, 2007, or Revision 02, dated January 18, 2010 (for Model A330 series airplanes); or Airbus Mandatory Service Bulletin A340-27-4136, dated March 20, 2007, Revision 01, dated December 6, 2007, or Revision 02, dated February 24, 2010 (for Model A340-200 and -300 series airplanes); (which are not incorporated by reference in this AD) have been done: Do the applicable detailed inspection of the ball screw assembly for integrity of the primary and secondary load path and check the checkable shear pins (CSP), and do all applicable corrective actions, in accordance with the Accomplishment Instructions of Airbus Mandatory Service Bulletin A330-27-3102, Revision 08, excluding Appendix 1, dated December 6, 2007 (for Model A330 series airplanes); or Airbus Mandatory Service Bulletin A340-27-4107, Revision 08, excluding Appendix 1, dated December 6, 2007 (for Model A340-200 and -300 series airplanes); except as required by paragraph (k)(6) of this AD. Do all applicable corrective actions before further flight.

(5) For airplanes on which the actions specified in Airbus Mandatory Service Bulletin A330-27-3137, dated March 20, 2007, Revision 01, dated December 6, 2007, or Revision 02, dated January 18, 2010 (for Model A330 series airplanes); or Airbus Mandatory Service Bulletin A340-27-4136, dated March 20, 2007, Revision 01, dated December 6, 2007, or Revision 02, dated February 24, 2010 (for Model A340-200 and -300 series airplanes); (which are not incorporated by reference in this AD) have not been done: Perform a detailed inspection of the ball screw assembly for integrity of the primary and secondary load path, and do all applicable corrective actions, in accordance with the Accomplishment Instructions of Airbus Mandatory Service Bulletin A330-27-3102, Revision 08, excluding Appendix 1, dated December 6, 2007 (for Model A330 series airplanes); or Airbus Mandatory Service Bulletin A340-27-4107, Revision 08, excluding Appendix 1, dated December 6, 2007 (for Model A340 series airplanes); except as required by paragraph (k)(6) of this AD. Do all applicable corrective actions before further flight.

(6) Where Airbus Mandatory Service Bulletin A330-27-3102, Revision 08, excluding Appendix 1, dated December 6, 2007 (for Model A330 series airplanes); or Airbus Mandatory Service Bulletin A340-27-4107, Revision 08, excluding Appendix 1,

dated December 6, 2007 (for Model A340 series airplanes); specify contacting Airbus for a damage assessment, this AD requires contacting the Manager, International Branch, ANM-116, Transport Airplane Directorate, FAA; or the European Aviation Safety Agency (EASA) (or its delegated agent); for required actions before further flight, and doing the specified actions within the times given.

(l) New Actions for Electronic Centralized Aircraft Monitor (ECAM) Fault Messages

For airplanes identified in paragraph (k) of this AD, if one of the “PRIM X PITCH FAULT” or “STAB CTL FAULT” messages is displayed on the ECAM associated with the “PITCH TRIM ACTR (1CS)” maintenance message, do the applicable detailed inspection and all applicable corrective actions specified in paragraph (k)(4) or (k)(5) of this AD, as applicable to airplane configuration, before further flight after the message is displayed on the ECAM.

(m) New Optional Method of Compliance

For airplanes having THSA P/N 47147-500, 47147-700, 47172-300, 47172-500, or 47172-510, accomplishing the repetitive actions specified in paragraph (m)(1) or (m)(2) of this AD, as applicable, is acceptable for compliance with the corresponding actions specified in paragraph (k)(4) or (k)(5) of this AD, as applicable.

(1) For Model A330 series airplanes, the repetitive actions specified in paragraphs (m)(1)(i) through (m)(1)(viii) of this AD.

(i) Task 274400-00001-1-E of Airbus A330 ALS Part 4—Ageing Systems Maintenance, Revision 02, dated December 16, 2009.

(ii) Task 274400-00001-1-E of Airbus A330 ALS Part 4—Ageing Systems Maintenance, Revision 03, dated September 9, 2011.

(iii) Task 274400-00001-2-E of Airbus A330 ALS Part 4—Ageing Systems Maintenance, Revision 02, dated December 16, 2009.

(iv) Task 274400-00001-2-E of Airbus A330 ALS Part 4—Ageing Systems Maintenance, Revision 03, dated September 9, 2011.

(v) Task 274400-00001-3-E of Airbus A330 ALS Part 4—Ageing Systems Maintenance, Revision 02, dated December 16, 2009.

(vi) Task 274400-00001-3-E of Airbus A330 ALS Part 4—Ageing Systems Maintenance, Revision 03, dated September 9, 2011.

(vii) Task 274400-00001-4-E of Airbus A330 ALS Part 4—Ageing Systems Maintenance, Revision 02, dated December 16, 2009.

(viii) Task 274400-00001-4-E of Airbus A330 ALS Part 4—Ageing Systems Maintenance, Revision 03, dated September 9, 2011.

(2) For Model A340-200 and -300 series airplanes, the repetitive actions specified in paragraphs (m)(2)(i) through (m)(2)(viii) of this AD.

(i) Task 274400-00001-1-E of Airbus A340 ALS Part 4—Ageing Systems Maintenance, Revision 01, dated December 15, 2009.

(ii) Task 274400-00001-1-E of Airbus A340 ALS Part 4—Ageing Systems

Maintenance, Revision 02, dated October 12, 2011.

(iii) Task 274400-00001-2-E of Airbus A340 ALS Part 4—Ageing Systems Maintenance, Revision 01, dated December 15, 2009.

(iv) Task 274400-00001-2-E of Airbus A340 ALS Part 4—Ageing Systems Maintenance, Revision 02, dated October 12, 2011.

(v) Task 274400-00001-3-E of Airbus A340 ALS Part 4—Ageing Systems Maintenance, Revision 01, dated December 15, 2009.

(vi) Task 274400-00001-3-E of Airbus A340 ALS Part 4—Ageing Systems Maintenance, Revision 02, dated October 12, 2011.

(vii) Task 274400-00001-4-E of Airbus A340 ALS Part 4—Ageing Systems Maintenance, Revision 01, dated December 15, 2009.

(viii) Task 274400-00001-4-E of Airbus A340 ALS Part 4—Ageing Systems Maintenance, Revision 02, dated October 12, 2011.

(n) New Credit for Previous Actions

(1) This paragraph provides credit for the inspections and corrective actions required by paragraph (k) of this AD, if those actions were performed before the effective date of this AD using the service information specified in paragraphs (n)(1)(i) through (n)(1)(vi) of this AD (which is not incorporated by reference in this AD).

(i) Airbus Service Bulletin A330-27-3102, Revision 02, excluding Appendix 01, dated November 7, 2002.

(ii) Airbus Service Bulletin A330-27-3102, Revision 03, excluding Appendix 01, dated June 20, 2003.

(iii) Airbus Service Bulletin A330-27-3102, Revision 04, excluding Appendix 01, dated December 8, 2003.

(iv) Airbus Mandatory Service Bulletin A330-27-3102, Revision 05, excluding Appendix 01, dated July 7, 2004.

(v) Airbus Mandatory Service Bulletin A330-27-3102, Revision 06, excluding Appendix 01, dated December 16, 2005.

(vi) Airbus Mandatory Service Bulletin A330-27-3102, Revision 07, excluding Appendix 01, dated March 16, 2007.

(2) This paragraph provides credit for the inspections and corrective actions required by paragraph (k) of this AD, if those actions were performed before the effective date of this AD using the service information specified in paragraphs (n)(2)(i) through (n)(2)(vi) of this AD (which is not incorporated by reference in this AD).

(i) Airbus Service Bulletin A340-27-4107, Revision 02, excluding Appendix 01, dated September 23, 2002.

(ii) Airbus Service Bulletin A340-27-4107, Revision 03, excluding Appendix 01, dated December 4, 2002.

(iii) Airbus Mandatory Service Bulletin A340-27-4107, Revision 04, excluding Appendix 01, dated June 20, 2003.

(iv) Airbus Mandatory Service Bulletin A340-27-4107, Revision 05, excluding Appendix 01, dated December 8, 2003.

(v) Airbus Mandatory Service Bulletin A340-27-4107, Revision 06, excluding Appendix 01, dated December 16, 2005.

(vi) Airbus Mandatory Service Bulletin A340-27-4107, Revision 07, excluding Appendix 01, dated March 16, 2007.

(3) This paragraph provides credit for the actions specified in paragraph (j) of this AD, if those actions were performed before the effective date of this AD using Task 27.40.00/02, Lubrication of THS Actuator Ball Screw Nut, of Airbus A330 MRBR, Revision 11, dated June 18, 2008 (which is not incorporated by reference in this AD).

(4) This paragraph provides credit for the actions specified in paragraph (j) of this AD, if those actions were performed before the effective date of this AD using Task 27.40.00/02, Lubrication of THS Actuator Ball Screw Nut, of Airbus A340 MRBR, Revision 11, dated June 18, 2008 (which is not incorporated by reference in this AD).

(o) Other FAA AD Provisions

The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs)*: The Manager, International Branch, ANM-116, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the International Branch, send it to ATTN: Vladimir Ulyanov, Aerospace Engineer, International Branch, ANM-116, Transport Airplane Directorate, FAA, 1601 Lind Avenue SW., Renton, WA 98057-3356; telephone: 425-227-1138; fax: 425-227-1149. Information may be emailed to: 9-ANM-116-AMOC-REQUESTS@faa.gov. Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the local flight standards district office/certificate holding district office. The AMOC approval letter must specifically reference this AD.

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

(p) Related Information

(1) Refer to MCAI EASA Airworthiness Directive 2010-0192 (corrected), dated October 11, 2010; EASA Airworthiness Directive 2010-0193 (corrected), dated October 11, 2010; and the following service information; for related information

(i) Airbus Mandatory Service Bulletin A330-27-3102, Revision 08, excluding Appendix 1, dated December 6, 2007.

(ii) Airbus Mandatory Service Bulletin A340-27-4107, Revision 08, excluding Appendix 1, dated December 6, 2007.

(iii) Airbus Service Bulletin A330-27-3007, Revision 01, dated September 18, 1996.

(iv) Airbus Service Bulletin A330-27-3015, dated June 7, 1995.

(v) Airbus Service Bulletin A330-27-3047, Revision 01, dated November 26, 1997.

(vi) Airbus Service Bulletin A330-27-3050, dated November 15, 1996.

(vii) Airbus Service Bulletin A330-27-3052, Revision 03, dated December 5, 2001.

(viii) Airbus Service Bulletin A330-27-3085, Revision 02, dated September 5, 2002.

(ix) Airbus Service Bulletin A330-27-3093, Revision 01, dated September 5, 2002.

(x) Airbus Service Bulletin A330-55-3020, Revision 01, dated October 21, 1998.

(xi) Airbus Service Bulletin A340-27-4007, dated April 7, 1994.

(xii) Airbus Service Bulletin A340-27-4025, dated June 7, 1995.

(xiii) Airbus Service Bulletin A340-27-4054, Revision 01, dated November 26, 1997.

(xiv) Airbus Service Bulletin A340-27-4057, dated November 15, 1996.

(xv) Airbus Service Bulletin A340-27-4059, Revision 03, dated December 5, 2001.

(xvi) Airbus Service Bulletin A340-27-4089, Revision 02, dated September 5, 2002.

(xvii) Airbus Service Bulletin A340-27-4099, Revision 01, dated September 5, 2002.

(xviii) Airbus Service Bulletin A340-55-4021, Revision 01, October 21, 1998.

(xix) Task 27.40.00/02, Lubrication of THS Actuator Ball Screw Nut, of Airbus A330 MRBR, Revision 12, dated July 1, 2010.

(xx) Task 27.40.00/02, Lubrication of THS Actuator Ball Screw Nut, of Airbus A340 MRBR, Revision 12, dated July 1, 2010.

(xxi) Task 274400-00001-1-E of Airbus A330 ALS Part 4—Ageing Systems Maintenance, Revision 02, dated December 16, 2009.

(xxii) Task 274400-00001-1-E of Airbus A330 ALS Part 4—Ageing Systems Maintenance, Revision 03, dated September 9, 2011.

(xxiii) Task 274400-00001-1-E of Airbus A340 ALS Part 4—Ageing Systems Maintenance, Revision 01, dated December 15, 2009.

(xxiv) Task 274400-00001-1-E of Airbus A340 ALS Part 4—Ageing Systems Maintenance, Revision 02, dated October 12, 2011.

(xxv) Task 274400-00001-2-E of Airbus A330 ALS Part 4—Ageing Systems Maintenance, Revision 02, dated December 16, 2009.

(xxvi) Task 274400-00001-2-E of Airbus A330 ALS Part 4—Ageing Systems Maintenance, Revision 03, dated September 9, 2011.

(xxvii) Task 274400-00001-2-E of Airbus A340 ALS Part 4—Ageing Systems Maintenance, Revision 01, dated December 15, 2009.

(xxviii) Task 274400-00001-2-E of Airbus A340 ALS Part 4—Ageing Systems Maintenance, Revision 02, dated October 12, 2011.

(xxix) Task 274400-00001-3-E of Airbus A330 ALS Part 4—Ageing Systems Maintenance, Revision 02, dated December 16, 2009.

(xxx) Task 274400-00001-3-E of Airbus A330 ALS Part 4—Ageing Systems Maintenance, Revision 03, dated September 9, 2011.

(xxxi) Task 274400-00001-3-E of Airbus A340 ALS Part 4—Ageing Systems Maintenance, Revision 01, dated December 15, 2009.

(xxxii) Task 274400-00001-3-E of Airbus A340 ALS Part 4—Ageing Systems Maintenance, Revision 02, dated October 12, 2011.

(xxxiii) Task 274400-00001-4-E of Airbus A330 ALS Part 4—Ageing Systems Maintenance, Revision 02, dated December 16, 2009.

(xxxiv) Task 274400-00001-4-E of Airbus A330 ALS Part 4—Ageing Systems Maintenance, Revision 03, dated September 9, 2011.

(xxxv) Task 274400-00001-4-E of Airbus A340 ALS Part 4—Ageing Systems Maintenance, Revision 01, dated December 15, 2009.

(xxxvi) Task 274400-00001-4-E of Airbus A340 ALS Part 4—Ageing Systems Maintenance, Revision 02, dated October 12, 2011.

(xxxvii) Task 274400-00002-1-E, Lubrication of the THSA Ball Nut, of Airbus A330 ALS Part 4—Ageing Systems Maintenance, Revision 02, dated December 16, 2009.

(xxxviii) Task 274400-00002-1-E, Lubrication of the THSA Ball Nut, of Airbus of A340 ALS Part 4—Ageing Systems Maintenance, Revision 01, dated December 15, 2009.

(2) For Airbus service information identified in this AD, contact Airbus SAS—Airworthiness Office—EAL, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France; telephone +33 5 61 93 36 96; fax +33 5 61 93 45 80; email airworthiness.A330-A340@airbus.com; Internet: <http://www.airbus.com>. For TRW Aeronautical Systems, SAMM Avionique, and Lucas Aerospace service information identified in this proposed AD, contact Goodrich Corporation, Actuation Systems, Stafford Road, Fordhouses, Wolverhampton WV10 7EH, England; telephone +44 (0) 1902 624938; fax +44 (0) 1902 788100; email techpubs.wolverhampton@goodrich.com; Internet <http://www.goodrich.com/TechPubs.Y>. You may review copies of the referenced service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, WA. For information on the availability of this material at the FAA, call 425-227-1221.

Issued in Renton, Washington, on September 21, 2012.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2012-24172 Filed 10-1-12; 8:45 am]

BILLING CODE 4910-13-P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 110

[Docket No. USCG-2012-0159]

RIN 1625-AA01

Anchorage; Captain of the Port Puget Sound Zone, WA

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to make five general anchorage areas smaller. It also proposes administrative changes that would rename 33 CFR 110.230, reorganize it by incorporating 33 CFR 110.229, and modify the descriptions of four general anchorages. These changes will clarify to the general public the boundaries and requirements of anchorages, and enhance safety by ensuring good order and predictability within the anchorages of the Captain of the Port (COTP) Puget Sound zone.

DATES: Comments and related material must be received by the Coast Guard on or before December 3, 2012. Requests for public meetings must be received by the Coast Guard on or before November 13, 2012.

ADDRESSES: You may submit comments identified by docket number USCG-2012-0159 using any one of the following methods:

(1) *Federal eRulemaking Portal:*

<http://www.regulations.gov>.

(2) *Fax:* 202-493-2251.

(3) *Mail:* Docket Management Facility (M-30), U.S. Department of Transportation, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue SE., Washington, DC 20590-0001.

(4) *Hand delivery:* Same as mail address above, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is 202-366-9329.

To avoid duplication, please use only one of these four methods. See the “Public Participation and Request for Comments” portion of the **SUPPLEMENTARY INFORMATION** section below for instructions on submitting comments.

FOR FURTHER INFORMATION CONTACT: If you have questions on this proposed rule, call or email Mr. Mark Ashley, Director, Vessel Traffic Service Puget Sound, Waterways Management Division, Sector Puget Sound, Coast Guard; telephone 206-217-6046, email Mark.E.Ashley@uscg.mil. If you have

questions on viewing or submitting material to the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202-366-9826.

SUPPLEMENTARY INFORMATION:

Table of Acronyms

DHS Department of Homeland Security
FR Federal Register
NPRM Notice of Proposed Rulemaking

A. Public Participation and Request for Comments

We encourage you to participate in this rulemaking by submitting comments and related materials. All comments received will be posted without change to <http://www.regulations.gov> and will include any personal information you have provided.

1. Submitting Comments

If you submit a comment, please include the docket number for this rulemaking, indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation. You may submit your comments and material online at <http://www.regulations.gov>, or by fax, mail, or hand delivery, but please use only one of these means. If you submit a comment online, it will be considered received by the Coast Guard when you successfully transmit the comment. If you fax, hand deliver, or mail your comment, it will be considered as having been received by the Coast Guard when it is received at the Docket Management Facility. We recommend that you include your name and a mailing address, an email address, or a telephone number in the body of your document so that we can contact you if we have questions regarding your submission.

To submit your comment online, go to <http://www.regulations.gov>, type the docket number [USCG-2012-0159] in the “SEARCH” box and click “SEARCH.” Click on “Submit a Comment” on the line associated with this rulemaking.

If you submit your comments by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit comments by mail and would like to know that they reached the Facility, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period and may change the rule based on your comments.

2. Viewing Comments and Documents

To view comments, as well as documents mentioned in this preamble as being available in the docket, go to <http://www.regulations.gov>, type the docket number [USCG-2012-0159] in the "SEARCH" box and click "SEARCH." Click on Open Docket Folder on the line associated with this rulemaking. You may also visit the Docket Management Facility in Room W12-140 on the ground floor of the Department of Transportation West Building, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

3. Privacy Act

Anyone can search the electronic form of comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review a Privacy Act notice regarding our public dockets in the January 17, 2008, issue of the **Federal Register** (73 FR 3316).

4. Public Meeting

We do not now plan to hold a public meeting. But, you may submit a request for a public meeting by November 13, 2012 using one of the methods specified under **ADDRESSES**. Please explain why you believe a public meeting would be beneficial. If we determine that a public meeting would aid this rulemaking, we will hold one at a time and place announced by a later notice in the **Federal Register**.

B. Basis and Purpose

The legal basis for this rule is: 33 U.S.C. 471, 1221 through 1236, 2030, 2035, 2071; 33 CFR 1.05-1; and Department of Homeland Security Delegation No. 0170.1, which collectively authorize the Coast Guard to define anchorage grounds. The 1976 Puget Sound Area Anchorages rulemaking defined 11 general and explosive anchorages within greater Puget Sound area. These areas are described using geographic points of land and bearings and ranges as the boundaries. This rule proposes to update existing anchorages to describe areas using points of latitude and longitude, which, with the advent of Global Positioning System (GPS), is much more practical and accurate for the mariner. Additionally, changes to shore side infrastructure, safety and security zones, and environmentally sensitive areas have made some of the anchorage boundaries impractical, such that the listed boundaries no longer

reflect the actual anchorages as used today. This rule addresses these changes by reducing the size of specified anchorages.

C. Discussion of Proposed Rule

1. Unchanged Anchorages

This proposed rule would change the descriptions of the following anchorages to points of latitude and longitude, but does not change their actual area and location:

Holmes Harbor General Anchorage. Coordinates would be revised to read: All waters of Holmes Harbor lying south of a line between latitude 48°05'50" N, longitude 122°31'24" W; thence 311°T to latitude 48°07'03" N, longitude 122°33'31" W.

Thorndike Bay Emergency Explosives Anchorage. Coordinates would be revised to read: All waters in a quadrilateral area bounded as follows: Beginning at latitude 47°47'59" N, longitude 122°43'30" W; thence 270°T to latitude 47°47'59" N, longitude 122°44'30" W; thence 180°T to latitude 47°47'30" N, longitude 122°44'30" W; thence 090°T to latitude 47°47'30" N, longitude 122°43'30" W, thence 000°T to the point of origin.

Orchard Point General Anchorage. This rule would rename Orchard Point General Anchorage to the more commonly used name of Yukon Harbor General Anchorage. Yukon Harbor General Anchorage coordinates would be revised to read: All waters inside the area beginning at latitude 47°33'54.66" N, longitude 122°31'54.68" W; thence 106°T to latitude 47°33'23" N, longitude 122°29'05" W; thence 180°T to latitude 47°32'39.5" N, longitude 122°29'05" W; thence south along the eastern shoreline of Blake Island to latitude 47°31'48" N, longitude 122°29'21" W; thence 250°T to latitude 47°31'20.5" N, longitude 122°31'10" W; thence west and north along the Kitsap Peninsula shoreline to the point of origin.

In addition, we propose to update the following anchorages' datum from NAD 27 to NAD 83: Cherry Point General Anchorage, Bellingham Bay General and Explosives Anchorages, Port Townsend Explosives Anchorages, and Commencement Bay General Anchorage. The datum transposition was done using the National Geodetic Survey's NADCON Program Version 2.11 found at www.ngs.noaa.gov/cgi-bin/nadcon.prl.

Finally, the following anchorage areas would remain unchanged: Anacortes General Anchorages, Cap Sante Tug and Barge General Anchorage, and Hat Island Tug and Barge General Anchorage.

2. Anchorages To Be Reduced in Size

This proposed rule would reduce the size of the following anchorages.

Port Gardner General Anchorage. Coordinates would be revised to read: All waters in a quadrilateral area bounded as follows: Beginning at latitude 47°58'57" N, longitude 122°14'05" W; thence 302°T to latitude 47°59'21.5" N, longitude 122°15'02" W; thence 229°T to latitude 47°58'57" N, longitude 122°15'44" W; thence 122°T to latitude 47°58'32.5" N, longitude 122°14'47" W; thence 048°T to point of origin. Modification would eliminate the easternmost portion of the existing anchorage area so as not to encroach on Naval Station Everett Pier Bravo and security barrier and restricted area defined in 33 CFR 334.1215, approaches to Snohomish River channel and shoal area off the southern tip of Jetty Island.

Smith Cove West General Anchorage. Coordinates would be revised to read: All waters inside the area beginning at latitude 47°38'20.44" N, longitude 122°24'48.56" W; thence 207°T to latitude 47°37'51.6" N, longitude 122°25'10.5" W; thence 124°T to latitude 47°36'56.2" N, longitude 122°23'07" W; thence 000°T to latitude 47°37'59.5" N, longitude 122°23'07" W; thence northwest along the shoreline to the point of origin. Modification would align the eastern boundary of the anchorage with the Pier 91 Safety and Security zone defined in 33 CFR 165.1324.

Smith Cove East General Anchorage. Coordinates would be revised to read: All waters inside the area beginning at latitude 47°37'36.2" N, longitude 122°22'43" W; thence 180°T to latitude 47°36'56.2" N, longitude 122°22'43" W; thence 090°T to latitude 47°36'56.2" N, longitude 122°21'22.5" W, thence northwest along the shoreline to the beginning. Modification would align the western boundary of the anchorage with the Pier 91 Safety and Security zone defined in 33 CFR 165.1324.

Elliott Bay East General Anchorage. Coordinates would be revised to read: All waters inside the area beginning at latitude 47°35'25.8" N, longitude 122°20'45.5" W; thence 000°T to latitude 47°35'55.85" N, longitude 122°20'45.5" W; thence 270°T to latitude 47°35'55.85" N, longitude 122°21'30" W; thence 180°T to latitude 47°35'19.2" N, longitude 122°21'30" W; thence east along the shoreline to the point of origin. Modification would correct positions as a result of chart datum changes.

Elliott Bay West General Anchorage. Coordinates would be revised to read: All waters inside the area beginning at

latitude 47°35'30" N, longitude 122°21'41" W, thence 000°T to latitude 47°35'45.5" N, longitude 122°21'41" W; thence 336°T to latitude 47°35'55.85" N, longitude 122°21'48.5" W; thence 270°T to latitude 47°35'55.85" N, longitude 122°23'16.46" W, thence 180°T to Duwamish Head thence southeast following the shoreline to latitude 47°35'30" N, longitude 122°22'54.5" W; thence 090°T to the point of origin. Modification would eliminate the southern portion of the anchorage area to avoid the regulated navigation area protecting the Pacific Sound Resources sediment cap defined in 33 CFR 165.1336.

3. Anchorage To Be Renamed

Freshwater Bay Emergency Explosive Anchorage. This proposed rule would rename the anchorage to Freshwater Bay Emergency Anchorage to reflect its actual and intended use. Freshwater Bay is located approximately 10 miles west of Port Angeles in the Strait of Juan de Fuca. The name change from "Emergency Explosive Anchorage" to "Emergency Anchorage" would more accurately reflect the actual and intended use of this anchorage. Freshwater Bay has been used for many years as a general emergency anchorage for emergencies including explosives and other emergencies requiring vessels to be anchored in a safe area away from infrastructure and densely populated areas. The change in name of Freshwater Bay Emergency Anchorage is deemed to be administrative in nature because the anchorage's usage is exceptionally rare and not expected to change at all as a result of this rulemaking. Anchorage logs show that only two vessels have used the anchorage in the past 10 years. Coordinates would be revised to read: all waters of Freshwater Bay and adjacent waters shoreward of a line beginning at Observatory Point, latitude 48°09'03" N, longitude 123°38'12" W; thence 000°T to latitude 48°09'36" N, longitude 123°38'12" W; thence 090°T to latitude 48°09'36" N, longitude 123°33'27" W; thence 180°T ending at Angeles Point, latitude 48°09'00" N, longitude 123°33'27" W. This anchorage has been used for many years as a general emergency anchorage, for emergency situations requiring vessels to be anchored in a safe place away from infrastructure and densely populated areas, including situations involving explosives. Using the term "Emergency Anchorage" reflects that the anchorage has been used and may be used for a range of emergency situations, including not only explosives, equipment failures, cargo securing, etc. Vessels requiring a

customs inspection will not be allowed to anchor in this area.

4. Reorganization and Combination With 33 CFR 110.229

The proposed rule would rename 33 CFR 110.230 to "Anchorage, Captain of the Port Puget Sound Zone, WA" to better describe the area which is incorporated by this regulation. Additionally, the proposed rule would incorporate into § 110.230 the non-anchorage area contained in 33 CFR 110.229, and update the coordinates to datum NAD 1983. Having two separate regulations for the same COTP zone creates unnecessary redundancy and confusion that can be eliminated by incorporating all anchorages into one regulation.

D. Regulatory Analyses

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

Regulatory Planning and Review

This proposed rule is not a significant regulatory action under section 3(f) of Executive Order 12866, Regulatory Planning and Review, as supplemented by Executive Order 13563, Improving Regulation and Regulatory Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of Executive Order 12866 or under section 1 of Executive Order 13563. The Office of Management and Budget has not reviewed it under that Order. We do not expect this proposed rule to have significant impact because it is administrative in nature and would not alter current navigational practices on the affected waterway.

Impact on Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we have considered the impact of this proposed rule on small entities. The Coast Guard certifies under 5 U.S.C. 605(b) that this proposed rule will not have a significant economic impact on a substantial number of small entities.

This proposed rule would affect the following entities, some of which may be small entities: The owners or operators of vessels intending to transit this portion of Puget Sound, the Strait of Juan de Fuca, and adjoining waters. Because the contemplated changes would be minimal in nature and would not alter current navigational practices on the affected waterway, the proposed rule will not have significant economic

impact on a substantial number of small entities.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule would have a significant economic impact on it, please submit a comment (see **ADDRESSES**) explaining why you think it qualifies and how and to what degree this rule would economically affect it.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this proposed rule. If this rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT**, above. The Coast Guard will not retaliate against small entities that question or complain about this proposed rule or any policy or action of the Coast Guard.

Collection of Information

This proposed rule would call 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 proposed rule under that Order and have determined that it does not have implications for federalism.

Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places or vessels.

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 proposed rule would not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

Taking of Private Property

This proposed rule would 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 proposed 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 proposed rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and would not create an environmental risk to health or risk to safety that might disproportionately affect children.

Indian Tribal Governments

This proposed rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it would 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 proposed 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

This proposed rule does not use technical standards. Therefore, we did

not consider the use of voluntary consensus standards.

Environment

We have analyzed this proposed rule under Department of Homeland Security Management Directive 023-01 and Commandant Instruction M16475.ID, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA)(42 U.S.C. 4321-4370f), and have made a preliminary determination that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves administrative changes to an anchorage regulation that either do not change the size of existing anchorage areas, or make some anchorage areas smaller.

We seek any comments or information that may lead to the discovery of a significant environmental impact from this proposed rule.

List of Subjects in 33 CFR Part 110

Anchorage grounds.

For the reasons discussed in the preamble, the Coast Guard proposes to amend 33 CFR part 110 as follows:

PART 110—ANCHORAGE REGULATIONS

1. The authority citation for part 110 continues to read as follows:

Authority: 33 U.S.C. 471, 1221 through 1236, 2030, 2035, 2071; 33 CFR 1.05-1; Department of Homeland Security Delegation No. 0170.1.

§ 110.229 [Removed]

2. Remove § 110.229.

3. Revise § 110.230 to read as follows:

§ 110.230 Anchorages, Captain of the Port Buoy Sound Zone, WA.

(a) *Anchorage grounds.* All coordinates are expressed in North American Datum 1983.

(1) *Freshwater Bay Emergency Anchorage.* All waters of Freshwater Bay and adjacent waters shoreward of a line beginning at Observatory Point, latitude 48°09'03" N, longitude 123°38'12" W; thence 000°T to latitude 48°09'36" N, longitude 123°38'12" W; thence 090°T to latitude 48°09'36" N, longitude 123°33'27" W; thence 180°T ending at Angeles Point, latitude 48°09'00" N, longitude 123°33'27" W.

(i) This anchorage may only be assigned to vessels experiencing an emergency that requires anchoring. Vessel emergencies include equipment failures, cargo securing, etc. Vessels requiring a customs inspection will not be allowed to anchor in this area.

(ii) [Reserved.]

(2) *Bellingham Bay Anchorages.*

(i) *General Anchorage.* The waters of Bellingham Bay within a circular area with a radius of 2,000 yards, having its center at latitude 48°44'14.39", longitude 122°32'26.62".

(ii) *Explosives Anchorage.* The waters of Bellingham Bay within a circular area with a radius of 1,000 yards, having its center at latitude 48°42'47.39", longitude 122°33'41.62".

(3) *Port Townsend Anchorages.*

(i) *Fair weather explosives anchorage area.* A circular area having a radius of 300 yards, whose center is at latitude 48°06'25.30", longitude 122°43'50.60".

(ii) *Foul weather explosives anchorage area.* A circular area having a radius of 300 yards, whose center is at latitude 48°04'4.33", longitude 122°44'56.60".

(4) *Holmes Harbor General Anchorage.* All waters of Holmes Harbor lying south of a line between latitude 48°05'50" N, longitude 122°31'24" W; thence 311°T to latitude 48°07'03" N, longitude 122°33'31" W.

(5) *Port Gardner General Anchorage.*

All waters in a quadrilateral area bounded as follows: Beginning at latitude 47°58'57" N, longitude 122°14'05" W; thence 302°T to latitude 47°59'21.5" N, longitude 122°15'02" W; thence 229°T to latitude 47°58'57" N, longitude 122°15'44" W; thence 122°T to latitude 47°58'32.5" N, longitude 122°14'47" W; thence 048°T to point of origin.

(6) *Thorndike Bay Emergency Explosives Anchorage.* All waters in a quadrilateral area bounded as follows: Beginning at latitude 47°47'59" N, longitude 122°43'30" W; thence 270°T to latitude 47°47'59" N, longitude 122°44'30" W; thence 180°T to latitude 47°47'30" N, longitude 122°44'30" W; thence 090°T to latitude 47°47'30" N, longitude 122°43'30" W, thence 000°T to point of origin.

(7) *Elliott Bay Anchorages.*

(i) *Smith Cove West General Anchorage.* All waters inside the area beginning at latitude 47°38'20.44" N, longitude 122°24'48.56" W; thence 207°T to latitude 47°37'51.6" N, longitude 122°25'10.5" W; thence 124°T to latitude 47°36'56.2" N, longitude 122°23'07" W; thence 000°T to latitude 47°37'59.5" N, longitude 122°23'07" W; thence northwest along the shoreline to the point of origin.

(ii) *Smith Cove East General Anchorage.* All waters inside the area beginning at latitude 47°37'36.2" N, longitude 122°22'43" W; thence 180°T to latitude 47°36'56.2" N, longitude 122°22'43" W; thence 090°T to latitude 47°36'56.2" N, longitude 122°21'22.5"

W, thence northwest along the shoreline to the point of origin.

(iii) *Elliott Bay East General Anchorage*. All waters inside the area beginning at latitude 47°35'25.8" N, longitude 122°20'45.5" W; thence 000°T to latitude 47°35'55.85" N, longitude 122°20'45.5" W; thence 270°T to latitude 47°35'55.85" N, longitude 122°21'30" W; thence 180°T to latitude 47°35'19.2" N, longitude 122°21'30" W; thence east along the shoreline to the point of origin.

(iv) *Elliott Bay West General Anchorage*. All waters inside the area beginning at latitude 47°35'30" N, longitude 122°21'41" W, thence 000°T to latitude 47°35'45.5" N, longitude 122°21'41" W; thence 336°T to latitude 47°35'55.85" N, longitude 122°21'48.5" W; thence 270°T to latitude 47°35'55.85" N, longitude 122°23'16.46" W, thence 180°T to Duwamish Head thence southeast following the shoreline to latitude 47°35'30" N, longitude 122°22'54.5" W; thence 090°T to the point of origin.

(8) *Yukon Harbor General Anchorage*. All waters inside the area beginning at latitude 47°33'54.66" N, longitude 122°31'54.68" W; thence 106°T to latitude 47°33'23" N, longitude 122°29'05" W; thence 180°T to latitude 47°32'39.5" N, longitude 122°29'05" W; thence south along the eastern shoreline of Blake Island to latitude 47°31'48" N, longitude 122°29'21" W; thence 250°T to latitude 47°31'20.5" N, longitude 122°31'10" W; thence west and north along the Kitsap Peninsula shoreline to the point of origin.

(9) *Cherry Point General Anchorage*. The waters within a circular area with a radius of 1600 yards, having its center at latitude 48°48'29.39" N., longitude 122°46'04.66" W.

(10) *Anacortes General Anchorages*.

(i) *Anacortes East (ANE) Anchorage*. The waters within a circular area with a radius of 600 yards, having its center at 48°31'27" N., 122°33'45" W.

(ii) *Anacortes Center (ANC) Anchorage*. The waters within a circular area with a radius of 600 yards, having its center at 48°30'54" N, 122°34'06" W.

(iii) *Anacortes West (ANW) Anchorage*. The waters within a circular area with a radius of 600 yards, having its center at 48°31'09" N, 122°34'55" W.

(11) *Cap Sante Tug and Barge General Anchorage*. The Cap Sante Tug and Barge General Anchorage includes all waters enclosed by a line connecting the following points: 48°31'16" N, 122°36'00" W, which is approximately the northeast tip of Cap Sante; then southeast to 48°30'53" N, 122°35'28" W; then west southwest to 48°30'45" N, 122°35'52" W, approximately the south

tip of Cap Sante; then north along the shoreline to the point of origin.

(12) *Hat Island Tug and Barge General Anchorage*. The Hat Island Tug and Barge General Anchorage includes all waters enclosed by a line connecting the following points: 48°31'19" N, 122°33'04" W, near the west side of Hat Island; then southwest to 48°30'37" N, 122°33'38" W; then east to 48°30'37" N, 122°32'00" W; then northwest to the point of origin.

(13) *Commencement Bay General Anchorage*. A quadrilateral area bounded as follows: Beginning at latitude 47°17'36.36" N., longitude 122°26'04.45" W.; thence due south to latitude 47°17'18.36" N., longitude 122°26'04.45" W.; thence due east to a point bearing 286°T from Hylebos Waterway Light 1 at a distance of 450 yards; thence due north to latitude 47°17'32.36" N longitude 122°25'04.45" W; thence west northwest to the point of origin.

(14) *Non-anchorage area Port Angeles Harbor*. Beginning at a point on the shore at latitude 48°07'03.83" N., longitude 123°24'20.67" W.; thence to latitude 48°07'38.43" N., longitude 123°24'04.67" W.; thence to latitude 48°07'36.03" N., longitude 123°23'50.67" W.; thence to a point on the shoreline at latitude 48°06'56.73" N., longitude 123°24'08.67" W.

(i) No vessel may anchor in this non-anchorage area at any time.

(ii) Dragging, seining, fishing, or other activities which may foul underwater installations within this non-anchorage area are prohibited.

(iii) Vessels may transit this non-anchorage area, but must proceed by the most direct route and without unnecessary delay.

Note to paragraph (a)(14): The city of Port Angeles will mark this area with signs on the shoreline visible (during normal daylight) 1 mile to seaward reading, "Do not Anchor in This Area."

(b) * * *
* * * * *

Dated: September 12, 2012.

K.A. Taylor,

Rear Admiral, U.S. Coast Guard, Commander, Thirteenth Coast Guard District.

[FR Doc. 2012-24164 Filed 10-1-12; 8:45 am]

BILLING CODE 9110-04-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R03-OAR-2012-0119; FRL-9736-2]

Approval and Promulgation of Air Quality Implementation Plans; West Virginia; The 2002 Base Year Inventory for the Huntington Area

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve the fine particulate matter (PM_{2.5}) 2002 base year emissions inventory portion of the West Virginia State Implementation Plan (SIP) revision submitted by the State of West Virginia, through the West Virginia Department of Environmental Protection (WVDEP), on May 28, 2009 for the Huntington-Ashland, WV-KY-OH nonattainment area (hereafter referred to as the Huntington Area). The emissions inventory is part of the West Virginia May 28, 2009 SIP revision that was submitted to meet nonattainment requirements related to West Virginia's portion of the Huntington Area for the 1997 PM_{2.5} National Ambient Air Quality Standard (NAAQS) SIP. EPA is proposing to approve the 2002 base year PM_{2.5} emissions inventory for the Huntington Area in accordance with the requirements of the Clean Air Act (CAA).

DATES: Written comments must be received on or before November 1, 2012.

ADDRESSES: Submit your comments, identified by Docket ID Number EPA-R03-OAR-2012-0119 by one of the following methods:

A. *www.regulations.gov*. Follow the on-line instructions for submitting comments.

B. *Email: mastro.donna@epa.gov*.

C. *Mail:* EPA-R03-OAR-2010-0140, Donna Mastro, Acting Associate Director, Office of Air Program Planning, Mailcode 3AP30, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103.

D. *Hand Delivery:* At the previously-listed EPA Region III address. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. EPA-R03-OAR-2012-0119. EPA's policy is that all comments received will be included in the public docket without change, and may be made available online at *www.regulations.gov*, including any

personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through www.regulations.gov or email. The www.regulations.gov Web site is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an email comment directly to EPA without going through www.regulations.gov, your email address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the electronic docket are listed in the www.regulations.gov index. Although listed in the index, some information is not publicly available, i.e., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in www.regulations.gov or in hard copy 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 West Virginia Department of Environmental Protection, Division of Air Quality, 601 57th Street SE., Charleston, West Virginia 25304.

FOR FURTHER INFORMATION CONTACT: Irene Shandruk, (215) 814-2166, or by email at shandruk.irene@epa.gov.

SUPPLEMENTARY INFORMATION:

- I. Background
- II. Summary of SIP Revision
- III. Proposed Action
- IV. Statutory and Executive Order Reviews

I. Background

Throughout this document, whenever "we," "us," or "our" is used, we mean EPA. On July 18, 1997 (62 FR 38652), EPA promulgated the 1997 PM_{2.5} NAAQS, including an annual standard of 15.0 micrograms per cubic meter ($\mu\text{g}/\text{m}^3$) based on a 3-year average of annual mean PM_{2.5} concentrations, and a 24-hour (or daily) standard of 65 $\mu\text{g}/\text{m}^3$ based on a 3-year average of the 98th percentile of 24-hour concentrations. EPA established the standards based on significant evidence and numerous health studies demonstrating that serious health effects are associated with exposures to PM_{2.5}.

Following promulgation of a new or revised NAAQS, EPA is required by the CAA to designate areas throughout the United States as attaining or not attaining the NAAQS; this designation process is described in section 107(d)(1) of the CAA. In 1999, EPA and state air quality agencies initiated the monitoring process for the 1997 PM_{2.5} NAAQS and, by January 2001, established a complete set of air quality monitors. On January 5, 2005, EPA promulgated initial air quality designations for the 1997 PM_{2.5} NAAQS (70 FR 944), which became effective on April 5, 2005, based on air quality monitoring data for calendar years 2001–03.

On April 14, 2005, EPA promulgated a supplemental rule amending the agency's initial designations (70 FR 19844), with the same effective date (April 5, 2005) at 70 FR 944. As a result of this supplemental rule, PM_{2.5} nonattainment designations are in effect for 39 areas, comprising 208 counties within 20 states (and the District of Columbia) nationwide, with a combined population of approximately 88 million. The Huntington Area which is the subject of this rulemaking was included in the list of areas not attaining the 1997 PM_{2.5} NAAQS. The West Virginia portion of the Huntington Area consists of Cabell and Wayne Counties and the Graham Tax District in Mason County.

On September 7, 2011 (76 FR 55542), EPA determined that West Virginia had attained the 1997 PM_{2.5} NAAQS in the

Huntington Area. That determination was based on complete, quality-assured, quality-controlled, and certified ambient air monitoring data for the 2008–2010 three-year period that showed the area attained the 1997 PM_{2.5} NAAQS and continues to attain the standard. The September 7, 2011 determination suspended the requirements for West Virginia to submit an attainment demonstration, associated reasonably available control measures, a reasonable further progress plan, contingency measures, and other planning SIP revisions related to attainment of the standard for so long as the nonattainment area continues to meet the 1997 PM_{2.5} NAAQS. Section 172(c)(3) of the CAA requires submission and approval of a comprehensive, accurate, and current inventory of actual emissions. This proposed approval is limited to the emissions inventory for the Huntington Area. Separate action will be taken on the remainder of West Virginia's SIP submittal.

II. Summary of SIP Revision

The 2002 base year emission inventory submitted by WVDEP on May 28, 2009 for the Huntington Area includes emissions estimates that cover the general source categories of point sources, non-road mobile sources, area sources, on-road mobile sources, and biogenic sources. The pollutants that comprise the inventory are nitrogen oxides (NO_x), volatile organic compounds (VOCs), PM_{2.5}, coarse particles (PM₁₀), ammonia (NH₃) and sulfur dioxide (SO₂). EPA has reviewed the results, procedures and methodologies for the base year emissions inventory submitted by WVDEP. The year 2002 was selected by WVDEP as the base year for the emissions inventory per 40 CFR 51.1008(b). A discussion of the emissions inventory development as well as the emissions inventory for the Huntington Area can be found in Appendices C and D of the May 28, 2009 SIP submittal.

Table 1, below, provides a summary of the annual 2002 emissions of NO_x, VOCs, PM_{2.5}, PM₁₀, NH₃ and SO₂ for the West Virginia portion of the Huntington Area submittal.

TABLE 1—2002 BASE YEAR INVENTORY—WEST VIRGINIA PORTION OF HUNTINGTON AREA IN TONS PER YEAR (TPY)

Source sector	NH ₃	NO _x	PM ₁₀	PM _{2.5}	SO ₂	VOC
Point	7	30,148	899	610	84,629	620
Area	273	1,240	8,111	1,779	2,018	6,344
Nonroad	1	6,552	299	277	356	1,792
Onroad	163	4,778	111	79	203	3,658

TABLE 1—2002 BASE YEAR INVENTORY—WEST VIRGINIA PORTION OF HUNTINGTON AREA IN TONS PER YEAR (TPY)—Continued

Source sector	NH ₃	NO _x	PM ₁₀	PM _{2.5}	SO ₂	VOC
Biogenic	N/A	155	N/A	N/A	N/A	20,869
Total	444	42,874	9,420	2,745	87,206	33,283

The CAA section 172(c)(3) emissions inventory is developed by the incorporation of data from multiple sources. States were required to develop and submit to EPA a triennial emissions inventory according to the Consolidated Emissions Reporting Rule (CERR) for all source categories (i.e., point, area, nonroad mobile and on-road mobile). The review and evaluation of the methods used for the emissions inventory submitted by West Virginia are found in the Technical Support Document dated August 12, 2010, available online at www.regulations.gov, Docket No. EPA-R03-OAR-2012-0119. EPA finds that the process used to develop this emissions inventory for the Huntington Area is adequate to meet the requirements of CAA section 172(c)(3), the implementing regulations, and EPA guidance for emission inventories.

III. Proposed Action

EPA is proposing to approve the 2002 base year emissions inventory portion of the SIP revision submitted by the State of West Virginia on May 28, 2009 for the Huntington Area. We have made the determination that this action is consistent with section 110 of the CAA. EPA is soliciting public comments on the issues discussed in this document. These comments will be considered before taking final action.

IV. Statutory and Executive Order Reviews

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 proposes to approve state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this proposed action:

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

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

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

- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (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 proposed rule, pertaining to the PM_{2.5} 2002 base year emissions inventory portion of the West Virginia SIP for the Huntington Area, does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the state, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Nitrogen dioxide, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

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

Dated: September 13, 2012.

W.C. Early,

Acting Regional Administrator, Region III.

[FR Doc. 2012-24240 Filed 10-1-12; 8:45 am]

BILLING CODE 6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R03-OAR-2010-0077; FRL-9735-8]

Approval and Promulgation of Air Quality Implementation Plans; West Virginia; The 2002 Base Year Inventory for the Parkersburg Area

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve the fine particulate matter (PM_{2.5}) 2002 base year emissions inventory portion of the West Virginia State Implementation Plan (SIP) revision submitted by the State of West Virginia, through the West Virginia Department of Environmental Protection (WVDEP), on September 9, 2008 for the Parkersburg-Marietta, WV-OH nonattainment area (hereafter referred to as the Parkersburg Area or Area). The emissions inventory is part of the West Virginia September 9, 2008 SIP revision that was submitted to meet nonattainment requirements related to West Virginia's portion of the Parkersburg Area for the 1997 PM_{2.5} National Ambient Air Quality Standard (NAAQS) SIP. EPA is proposing to approve the 2002 base year PM_{2.5} emissions inventory for the Parkersburg Area in accordance with the requirements of the Clean Air Act (CAA).

DATES: Written comments must be received on or before November 1, 2012.

ADDRESSES: Submit your comments, identified by Docket ID Number EPA-R03-OAR-2010-0077 by one of the following methods:

A. www.regulations.gov. Follow the on-line instructions for submitting comments.

B. *Email:* mastro.donna@epa.gov.

C. *Mail:* EPA-R03-OAR-2010-0140, Donna Mastro, Acting Associate

Director, Office of Air Program Planning, Mailcode 3AP30, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103.

D. Hand Delivery: At the previously-listed EPA Region III address. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. EPA-R03-OAR-2010-0077. EPA's policy is that all comments received will be included in the public docket without change, and may be made available online at www.regulations.gov, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through www.regulations.gov or email. The www.regulations.gov Web site is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an email comment directly to EPA without going through www.regulations.gov, your email address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the electronic docket are listed in the www.regulations.gov index. Although listed in the index, some information is not publicly available, i.e., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in www.regulations.gov or in hard copy 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 West Virginia Department of Environmental Protection, Division of Air Quality, 601 57th Street SE., Charleston, West Virginia 25304.

FOR FURTHER INFORMATION CONTACT: Irene Shandruk, (215) 814-2166, or by email at shandruk.irene@epa.gov.

SUPPLEMENTARY INFORMATION:

- I. Background
- II. Summary of SIP Revision
- III. Proposed Action
- IV. Statutory and Executive Order Reviews

I. Background

Throughout this document, whenever "we," "us," or "our" is used, we mean EPA. On July 18, 1997 (62 FR 38652), EPA promulgated the 1997 PM_{2.5} NAAQS, including an annual standard of 15.0 micrograms per cubic meter ($\mu\text{g}/\text{m}^3$) based on a 3-year average of annual mean PM_{2.5} concentrations, and a 24-hour (or daily) standard of 65 $\mu\text{g}/\text{m}^3$ based on a 3-year average of the 98th percentile of 24-hour concentrations. EPA established the standards based on significant evidence and numerous health studies demonstrating that serious health effects are associated with exposures to PM_{2.5}.

Following promulgation of a new or revised NAAQS, EPA is required by the CAA to designate areas throughout the United States as attaining or not attaining the NAAQS; this designation process is described in section 107(d)(1) of the CAA. In 1999, EPA and state air quality agencies initiated the monitoring process for the 1997 PM_{2.5} NAAQS and, by January 2001, established a complete set of air quality monitors. On January 5, 2005, EPA promulgated initial air quality designations for the 1997 PM_{2.5} NAAQS (70 FR 944), which became effective on April 5, 2005, based on air quality monitoring data for calendar years 2001–03.

On April 14, 2005, EPA promulgated a supplemental rule amending the agency's initial designations (70 FR 19844), with the same effective date (April 5, 2005) at 70 FR 944. As a result of this supplemental rule, PM_{2.5} nonattainment designations are in effect for 39 areas, comprising 208 counties within 20 states (and the District of Columbia) nationwide, with a combined population of approximately 88 million. The Parkersburg Area, which is the subject of this rulemaking, was included in the list of areas not attaining the 1997 PM_{2.5} NAAQS. The West Virginia portion of the Parkersburg Area consists

of Wood County and the Grant Tax District of Pleasants County.

On November 20, 2009 (74 FR 60199), EPA determined that West Virginia had attained the 1997 PM_{2.5} NAAQS in the Parkersburg Area. That determination was based on complete, quality-assured, quality-controlled, and certified ambient air monitoring data for the 2006–2008 three-year period that showed the area attained the 1997 PM_{2.5} NAAQS and continues to attain the standard. The November 20, 2009 determination suspended the requirements for West Virginia to submit an attainment demonstration, associated reasonably available control measures, a reasonable further progress plan, contingency measures, and other planning SIP revisions related to attainment of the standard for so long as the nonattainment area continues to meet the 1997 PM_{2.5} NAAQS. Section 172(c)(3) of the CAA requires a submission and approval of a comprehensive, accurate, and current inventory of actual emissions. This proposed approval is limited to the emissions inventory for the Parkersburg Area. Separate action will be taken on the remainder of West Virginia's SIP submittal.

II. Summary of SIP Revision

The 2002 base year emission inventory submitted by WVDEP on September 9, 2008 for the Parkersburg Area includes emissions estimates that cover the general source categories of point sources, non-road mobile sources, area sources, on-road mobile sources, and biogenic sources. The pollutants that comprise the inventory are nitrogen oxides (NO_x), volatile organic compounds (VOCs), PM_{2.5}, coarse particles (PM₁₀), ammonia (NH₃) and sulfur dioxide (SO₂). EPA has reviewed the results, procedures and methodologies for the base year emissions inventory submitted by WVDEP. The year 2002 was selected by WVDEP as the base year for the emissions inventory per 40 CFR 51.1008(b). A discussion of the emissions inventory development as well as the emissions inventory for the Parkersburg Area can be found in Appendices C and D of the September 9, 2008 SIP submittal.

Table 1, below, provides a summary of the annual 2002 emissions of NO_x, VOCs, PM_{2.5}, PM₁₀, NH₃ and SO₂ for the West Virginia portion of the Parkersburg Area submittal.

TABLE 1—2002 BASE YEAR INVENTORY—WEST VIRGINIA PORTION OF PARKERSBURG AREA IN TONS PER YEAR (TPY)

Source sector	NH ₃	NO _x	PM ₁₀	PM _{2.5}	SO ₂	VOC
Point	52	21,835	1,769	1,068	70,293	1,162
Area	117	749	5,005	1,139	1,311	3,859
Nonroad	1	2,506	130	120	134	1,138
Onroad	86	2,667	62	44	111	1,956
Biogenic	N/A	99	N/A	N/A	N/A	10,252
Total	255	27,856	6,966	2,372	71,849	18,368

The CAA section 172(c)(3) emissions inventory is developed by the incorporation of data from multiple sources. States were required to develop and submit to EPA a triennial emissions inventory according to the Consolidated Emissions Reporting Rule (CERR) for all source categories (i.e., point, area, nonroad mobile and on-road mobile). The review and evaluation of the methods used for the emissions inventory submitted by West Virginia are found in the Technical Support Document dated June 16, 2010, available online at www.regulations.gov, Docket No. EPA-R03-OAR-2010-0077. EPA finds that the process used to develop this emissions inventory for the Parkersburg Area is adequate to meet the requirements of CAA section 172(c)(3), the implementing regulations, and EPA guidance for emission inventories.

III. Proposed Action

EPA is proposing to approve the 2002 base year emissions inventory portion of the SIP revision submitted by the State of West Virginia on September 9, 2008 for the Parkersburg Area. We have made the determination that this action is consistent with section 110 of the CAA. EPA is soliciting public comments on the issues discussed in this document. These comments will be considered before taking final action.

IV. Statutory and Executive Order Reviews

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 proposes to approve state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this proposed action:

- Is not a "significant regulatory action" subject to review by the Office of Management and Budget under

Executive Order 12866 (58 FR 51735, October 4, 1993);

- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);

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

- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (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 proposed rule, pertaining to the PM_{2.5} 2002 base year emissions inventory portion of the West Virginia SIP for the Parkersburg Area, does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the state, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Nitrogen dioxide,

Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

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

Dated: September 13, 2012.

W.C. Early,

Acting Regional Administrator, Region III.

[FR Doc. 2012-24244 Filed 10-1-12; 8:45 am]

BILLING CODE 6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R03-OAR-2012-0371; FRL-9735-4]

Approval and Promulgation of Air Quality Implementation Plans; Delaware, New Jersey, and Pennsylvania; Determination of Attainment of the 2006 24-Hour Fine Particulate Standard for the Philadelphia-Wilmington, PA-NJ-DE Nonattainment Area

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to make a determination of attainment regarding the Philadelphia-Wilmington, PA-NJ-DE fine particulate (PM_{2.5}) nonattainment area (hereafter referred to as "the Philadelphia Area" or "the Area"). EPA is proposing to determine that the Philadelphia Area has attained the 2006 24-hour PM_{2.5} National Ambient Air Quality Standard (NAAQS), based upon complete, quality-assured and certified ambient air monitoring data for the 2008-2010 and 2009-2011 periods and upon preliminary data available to date for 2012. If EPA finalizes this proposed determination of attainment, the requirements for the Area to submit an attainment demonstration and associated reasonably available control measures (RACM), a reasonable further progress (RFP) plan, contingency measures, and other planning State Implementation Plan (SIP) revisions related to the attainment of the standard shall be suspended for so long as the Area continues to attain the 2006 24-

hour PM_{2.5} NAAQS. This action is being taken under the Clean Air Act (CAA). This action does not constitute a redesignation to attainment under the CAA. The designation status of the Philadelphia Area will remain nonattainment for the 2006 24-hour PM_{2.5} NAAQS until such time as EPA determines that the Philadelphia Area meets the CAA requirements for redesignation to attainment, including an approved maintenance plan.

DATES: Written comments must be received on or before November 1, 2012.

ADDRESSES: Submit your comments, identified by Docket ID Number EPA-R03-OAR-2012-0371 by one of the following methods:

A. *www.regulations.gov*. Follow the on-line instructions for submitting comments.

B. *Email: Mastro.donna@epa.gov*.

C. *Mail: EPA-R03-OAR-2012-0371*, Donna Mastro, Acting Associate Director, Office of Air Program Planning, Mailcode 3AP30, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103.

D. *Hand Delivery:* At the previously-listed EPA Region III address. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. EPA-R03-OAR-2012-0371. EPA's policy is that all comments received will be included in the public docket without change, and may be made available online at *www.regulations.gov*, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *www.regulations.gov* or email. The *www.regulations.gov* Web site is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an email comment directly to EPA without going through *www.regulations.gov*, your email address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your

comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the electronic docket are listed in the *www.regulations.gov* index. Although listed in the index, some information is not publicly available, i.e., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in *www.regulations.gov* or in hard copy during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103.

FOR FURTHER INFORMATION CONTACT: If you have questions concerning today's proposed action related to Pennsylvania or Delaware, please contact Emlyn Vélez-Rosa, (215) 814-2038, or by email at *velez-rosa.emlyn@epa.gov*. If you have questions concerning today's proposed action related to New Jersey, please contact Gavin Lau, (212) 637-3708, or by email at *lau.gavin@epa.gov*.

SUPPLEMENTARY INFORMATION:

Throughout this document, whenever "we," "us," or "our" is used, we mean EPA. This supplementary information section is arranged as follows:

- I. What is the action EPA is proposing?
- II. What is the background of this action?
- III. What is EPA's analysis of the relevant air quality data?
- IV. What are the effects of this action?
- V. Statutory and Executive Order Reviews

I. What is the action EPA is proposing?

In accordance with section 179(c)(1) of the CAA, 42 U.S.C. 7509(c)(1), and 40 CFR 51.1004(c), EPA is proposing to determine that the Philadelphia Area has attained the 2006 24-hour PM_{2.5} NAAQS. The proposal is based upon quality-assured and certified ambient air monitoring data for the 2008–2010 and 2009–2011 monitoring periods and upon data available to date for 2012, which show that the Philadelphia Area attained the 2006 24-hour PM_{2.5} NAAQS. EPA received requests from the States of Delaware, Pennsylvania, and New Jersey¹ for the determination of

¹ The New Jersey Department of Environmental Protection (NJDEP) formally requested EPA to make a determination of attainment for the 2006 24-hour PM_{2.5} NAAQS for the Philadelphia Area on October 5, 2011 through a letter from Bob Martin, NJDEP

attainment for the Philadelphia area for the 2006 24-hour PM_{2.5} NAAQS.

II. What is the background of this action?

On September 21, 2006, EPA retained the 1997 annual PM_{2.5} NAAQS at 15.0 micrograms per cubic meter (µg/m³) (hereby "the 2006 annual PM_{2.5} NAAQS") based on a 3-year average of annual mean PM_{2.5} concentrations, and promulgated a new 24-hour standard of 35 µg/m³ based on a 3-year average of the 98th percentile of 24-hour concentrations (71 FR 61144, October 17, 2006). The revised 2006 24-hour PM_{2.5} standard (hereafter "the 2006 24-hour PM_{2.5} NAAQS") became effective on December 18, 2006. See 40 CFR 50.13. The more stringent 2006 24-hour PM_{2.5} NAAQS is based on significant evidence and numerous health studies demonstrating that serious health effects are associated with short-term exposures to PM_{2.5} at this level.

Many petitioners challenged aspects of EPA's 2006 revisions to the PM_{2.5} NAAQS. See *American Farm Bureau Federation and National Pork Producers Council, et al. v. EPA*, 559 F.3d 512 (DC Cir. 2009). As a result of this challenge, the U.S. Court of Appeals for the District of Columbia Circuit remanded the 2006 annual PM_{2.5} NAAQS to EPA for further proceedings. The 2006 24-hour primary and secondary PM_{2.5} NAAQS were not affected by the remand and remain in effect.

The process for designating areas following promulgation of a new or revised NAAQS is contained in section 107(d)(1) of the CAA. On November 13, 2009, EPA published designations for the 2006 24-hour PM_{2.5} NAAQS (74 FR 58688), which became effective on December 14, 2009. In that action, EPA designated the Philadelphia Area as nonattainment for the 2006 24-hour PM_{2.5} NAAQS. The Philadelphia Area is comprised of New Castle County in Delaware; Burlington, Camden, and Gloucester Counties in New Jersey; and Bucks, Chester, Delaware, Montgomery, and Philadelphia Counties in Pennsylvania. See 40 CFR 81.339 (Pennsylvania), 40 CFR 81.331 (New Jersey), and 40 CFR 81.308 (Delaware). This proposed action only addresses the 2006 24-hour PM_{2.5} NAAQS and has no effect on control measures or air quality in the area.

On March 29, 2007, EPA issued a detailed implementation rule, codified at 40 CFR part 51, subpart Z, to assist states and tribes with the development of SIPs to demonstrate attainment with

the 1997 annual and 24-hour PM_{2.5} NAAQS (the “2007 PM_{2.5} Implementation Rule”) (72 FR 20586, April 25, 2007). EPA believes that the overall framework and policy approach of the 2007 PM_{2.5} Implementation Rule provides effective and appropriate guidance on the EPA’s interpretation of the general statutory requirements that states should address in their SIPs, and that such interpretation is relevant to the statutory requirements for the 2006 24-hour PM_{2.5} NAAQS. However, in light of new information that has become available since the issuance of the 2007 PM_{2.5} Implementation Rule, EPA published on March 2, 2012, the memorandum “Implementation Guidance for the 2006 24-Hour Fine Particle (PM_{2.5}) National Ambient Air Quality Standards (NAAQS)” (the “2006 24-hour PM_{2.5} Implementation Guidance”).² This memorandum provides additional guidance to assist states with development of their SIPs for the 2006 24-hour PM_{2.5} NAAQS.

In general, areas violating the NAAQS should meet the basic CAA requirements set forth in section 172. The 2006 24-hour PM_{2.5} nonattainment designations triggered the CAA’s requirements under section 172(c), which requires the submission of an attainment plan for each designated nonattainment area. The 2007 PM_{2.5} Implementation Rule specifies that states must submit attainment plans for their nonattainment areas to EPA by no later than three years from the effective date of designation. Attainment plans for the 2006 24-hour PM_{2.5} NAAQS must be submitted by December 14, 2012. The 2007 PM_{2.5} Implementation Rule also outlines the SIP requirements for the attainment plan, which include among other things, the submission of an attainment demonstration showing the air quality improvements expected to result from national and local control

measures, an analysis of RACM, including all RACT, a RFP plan, and contingency measures. In the 2006 24-hour PM_{2.5} Implementation Guidance, EPA recommends that states follow a similar approach for each one of these SIP requirements when demonstrating attainment of the 2006 24-hour PM_{2.5} NAAQS.

Under section 172(a)(2)(A) of the CAA, an area’s attainment date would be the date by which attainment can be achieved as expeditiously as practicable, but no later than 5 years from the date such area was designated nonattainment, except that the Administrator may extend the attainment date to the extent the Administrator determines appropriate, for a period no greater than 10 years from the date of designation as nonattainment. Because the designation of nonattainment areas for the 2006 24-hour PM_{2.5} NAAQS became effective on December 14, 2009, the presumptive five-year attainment date for many areas would be no later than December 14, 2014. The 2006 24-hour PM_{2.5} NAAQS relies on evaluating three full calendar years of air quality data to calculate the 24-hour design value for the area. To determine attainment, EPA commonly uses the three most recent calendar years of complete air quality data that are available for the nonattainment area.

III. What is EPA’s analysis of the relevant air quality data?

Today’s proposed rulemaking action determines that the Philadelphia Area has attained the 2006 24-hour PM_{2.5} NAAQS, based on quality assured data from 2008–2010 and 2009–2011 monitoring periods. Under EPA regulations at 40 CFR 50.13(c), the 2006 24-hour primary and secondary PM_{2.5} standards are met when the 98th percentile 24-hour concentration, as determined in accordance with 40 CFR

part 50, Appendix N, is less than or equal to 35 µg/m³. Data handling conventions and computations necessary for determining whether areas have met the PM_{2.5} NAAQS, including requirements for data completeness, are listed in appendix N of 40 CFR part 50.

EPA previously determined that the PM_{2.5} monitoring network for the Philadelphia Area is adequate. EPA found that the number of monitors in the Area meets the minimum regulatory requirements given in 40 CFR part 58, appendix D, section 4.7, and that the monitoring network in place is in accordance with the States’ most recent annual monitoring network plans approved by EPA, as required by 40 CFR 58.10.³ During the periods of 2008–2010 and 2009–2011, the Philadelphia Area had in place a total of 16 PM_{2.5} monitoring sites, whose data was eligible for comparison to the 2006 24-hour PM_{2.5} NAAQS.

EPA has reviewed the quality-assured, quality-controlled, certified ambient air monitoring data recorded in the EPA’s Air Quality System (AQS) database for PM_{2.5} for the Philadelphia Area during monitoring periods 2008–2010 and 2009–2011, consistent with the requirements contained in 40 CFR part 50. Preliminary PM_{2.5} data for 2012, which is not yet quality-assured and quality-controlled, was also reviewed. The 24-hour design values for the 2006 24-hour PM_{2.5} NAAQS (i.e., the 3-year average of the 98th percentile values of 24-hour PM_{2.5} concentrations) for the Philadelphia Area for the 2008–2010 and 2009–2011 monitoring periods are provided in Table 1 and Table 2, respectively. Table 3 shows the preliminary PM_{2.5} monitoring data available to date for 2012. The PM_{2.5} 98th percentile values and 24-hour design values for the Philadelphia Area can be found at <http://www.epa.gov/airtrends/values.html>.

TABLE 1—PHILADELPHIA AREA’S 2008–2010 PM_{2.5} AIR QUALITY DATA (IN µg/m³)

State	County	AQS site ID	98th percentile value ²			2008–2010 24-hour design value	Completeness status ³
			2008	2009	2010		
Delaware	New Castle	10–003–1003	* 31.6	23.2	24.3	26	Max quarter.
Delaware	New Castle	10–003–1007	28.1	* 20.6	27.5	25	Max quarter.
Delaware	New Castle	10–003–1012	28.6	23.4	* 24.9	26	Max quarter.
Delaware	New Castle	10–003–2004	34.8	28.4	27.9	30	Complete.

² EPA’s implementation guidance for the 2006 24-hour PM_{2.5} NAAQS is available at http://www.epa.gov/ttn/naaqs/pm/pdfs/20120302_implementation_guidance_24-hr_pm2.5_naaqs.pdf.

³ Separate ambient monitoring network plans are submitted annually to EPA by each of the States in the 24-hour PM_{2.5} Philadelphia Area. The Commonwealth of Pennsylvania’s 2011 annual

ambient monitoring network plan was approved by EPA in a December 6, 2011 letter from Shawn M. Garvin, Regional Administrator, EPA Region III, to Michael L. Krancer, Secretary of the Pennsylvania Department of Environmental Protection (PADEP). The State of Delaware’s 2011 annual ambient monitoring network plan was approved by EPA in a December 6, 2011 letter from Shawn M. Garvin, Regional Administrator, EPA Region III, to Collin P. O’Mara, Secretary of the Delaware Department of

Natural Resources and Environmental Control (DNREC). The State of New Jersey’s 2011 annual ambient monitoring network plan was approved by EPA in an October 27, 2011 letter from John Filippelli, Acting Director of the Division of Environmental Planning and Protection, EPA Region II, to Jane Kozinski, Assistant Commissioner of the New Jersey Department of Environment Protection (NJDEP).

TABLE 1—PHILADELPHIA AREA'S 2008–2010 PM_{2.5} AIR QUALITY DATA (IN µg/m³)—Continued

State	County	AQS site ID	98th percentile value ²			2008–2010 24-hour design value	Completeness status ³
			2008	2009	2010		
New Jersey	Camden	¹ 34–007–0003	36.6	—	—	37	Incomplete.
New Jersey	Camden	34–007–1007	28.0	25.0	23.4	25	Complete.
New Jersey	Gloucester	34–015–0004	23.9	21.9	*21.6	22	Max quarter.
Pennsylvania	Bucks	42–017–0012	*30.9	25.8	28.3	28	Collocated.
Pennsylvania	Chester	42–029–0100	*32.0	31.1	35.1	33	Incomplete.
Pennsylvania	Delaware	42–045–0002	28.6	27.9	32.8	30	Complete.
Pennsylvania	Montgomery	42–091–0013	23.7	27.2	25.9	26	Complete.
Pennsylvania	Philadelphia	42–101–0004	34.5	25.9	27.6	29	Complete.
Pennsylvania	Philadelphia	42–101–0024	30.5	25.5	25.2	27	Complete.
Pennsylvania	Philadelphia	42–101–0047	32.8	27.2	27.6	29	Complete.
Pennsylvania	Philadelphia	42–101–0055	34.5	28.6	28.9	31	Complete.
Pennsylvania	Philadelphia	42–101–0057	32.8	28.3	27.9	30	Complete.

¹ The Camden monitor at site 34–007–0003 was shut down September 2008.

² Annual 98th percentile values not meeting the completeness criteria are marked with an asterisk (*). The dash (—) indicates that no data was collected during this time.

³ This column indicates whether the monitoring data from the monitor meet the completeness requirement (Complete) or not (Incomplete) for each quarter of the 3-year period. “Max quarter” denotes that the monitor has incomplete data, but passed the maximum quarter substitution test. “Collocated” indicates that the collocated data was substituted for missing data. Guidance on EPA’s substitution tests can be found in EPA’s April 1999 document “Guideline on Data Handling Conventions for the PM NAAQS.”

TABLE 2—PHILADELPHIA AREA'S 2009–2011 PM_{2.5} AIR QUALITY DATA (IN µg/m³)

State	County	AQS site ID	98th percentile value ¹			2009–2011 24-hour design value	Completeness status ²
			2009	2010	2011		
Delaware	New Castle	10–003–1003	23.2	24.3	*22.4	23	Max quarter.
Delaware	New Castle	10–003–1007	*20.6	27.5	21.0	23	Max quarter.
Delaware	New Castle	10–003–1012	23.4	24.9	*22.2	24	Max quarter.
Delaware	New Castle	10–003–2004	28.4	27.9	24.7	27	Complete.
New Jersey	Camden	34–007–1007	25.0	23.4	24.3	24	Complete.
New Jersey	Gloucester	34–015–0004	21.9	*21.6	22.2	22	Max quarter.
Pennsylvania	Bucks	42–017–0012	25.8	28.3	29.7	28	Complete.
Pennsylvania	Chester	42–029–0100	31.1	35.1	*33.8	33	Incomplete.
Pennsylvania	Delaware	42–045–0002	27.9	32.8	28.6	30	Complete.
Pennsylvania	Montgomery	42–091–0013	27.2	25.9	27.6	27	Complete.
Pennsylvania	Philadelphia	42–101–0004	25.9	27.6	29.6	28	Complete.
Pennsylvania	Philadelphia	42–101–0024	25.5	25.2	—	25	Incomplete.
Pennsylvania	Philadelphia	42–101–0047	27.2	27.6	27.5	27	Complete.
Pennsylvania	Philadelphia	42–101–0055	28.6	28.9	30.6	29	Complete.
Pennsylvania	Philadelphia	42–101–0057	28.3	27.9	30.5	29	Complete.
Pennsylvania	Philadelphia	42–101–1002	—	—	27.5	27	Incomplete.

¹ Annual 98th percentile values not meeting the completeness criteria are marked with an asterisk (*). The dash (—) indicates that no data was collected during this time.

² This column indicates whether the monitoring data from the monitor meet the completeness requirement (Complete) or not (Incomplete) for each quarter of the 3-year period. “Max quarter” denotes that the monitor has incomplete data, but passed the maximum quarter substitution test. Guidance on EPA’s substitution tests can be found in EPA’s April 1999 document “Guideline on Data Handling Conventions for the PM NAAQS.”

TABLE 3—PHILADELPHIA AREA'S PRELIMINARY 2012 PM_{2.5} AIR QUALITY DATA (IN µg/m³)

State	County	AQS site ID	2012 98th percentile value ¹
Delaware	New Castle	10–003–1003	20.2
Delaware	New Castle	10–003–1007	22.7
Delaware	New Castle	10–003–1012	22.0
Delaware	New Castle	10–003–2004	23.9
New Jersey	Camden	34–007–1007	17.5
New Jersey	Gloucester	34–015–0004	21.8
Pennsylvania	Bucks	42–017–0012	34.9
Pennsylvania	Chester	42–029–0100	21.0
Pennsylvania	Delaware	42–045–0002	23.9
Pennsylvania	Montgomery	42–091–0013	21.1
Pennsylvania	Philadelphia	42–101–0004	27.9
Pennsylvania	Philadelphia	42–101–0047	20.0
Pennsylvania	Philadelphia	42–101–0055	19.6
Pennsylvania	Philadelphia	42–101–0057	20.6

TABLE 3—PHILADELPHIA AREA'S PRELIMINARY 2012 PM_{2.5} AIR QUALITY DATA (IN µg/m³)—Continued

State	County	AQS site ID	2012 98th percentile value ¹
Pennsylvania	Philadelphia	42-101-1002	23.4

¹ Monitoring data available to date correspond to the first quarter of 2012, and have not been quality-assured, quality-controlled, or certified.

The 24-hour design value determined for the Philadelphia Area is the highest 3-year average of the annual 98th percentile measured at all the monitors in the Area during this time, which meets the criteria to be used for comparison to the 2006 24-hour PM_{2.5} NAAQS. Only valid and complete air quality data can be used for comparison to the 2006 24-hour PM_{2.5} NAAQS. A year meets data completeness requirements when at least 75 percent of the scheduled sampling days for each quarter have valid data. However, years are considered valid, notwithstanding quarters with less than complete data, if the resulting annual 98th percentile value or resulting 24-hour standard design value is greater than the level of the standard.

EPA addresses missing data from monitors not meeting the completeness requirement by applying three different procedures: Collocated substitution test, maximum quarter substitution test ("maximum quarter test"), and EPA's statistical procedure. In the collocated substitution test, data from a collocated monitor at the site are substituted for the missing data. In the maximum quarter test, maximum recorded values are substituted for the missing data. For each substitution test, a 24-hour design value is calculated using the substituted data and then compared to the 2006 24-hour PM_{2.5} NAAQS. See EPA's April 1999 "Guideline on Data Handling Conventions for the PM NAAQS."⁴ EPA's statistical procedure is used when a monitor does not pass both of these two substitution tests or the incomplete monitor is not collocated. This procedure is used to determine if the incomplete monitor would have attained the 2006 24-hour PM_{2.5} NAAQS had it been operated during this time by computing a "diagnostic" 24-hour design value.

While most of the PM_{2.5} monitoring data satisfy the data completeness requirement, several monitors in the Philadelphia Area had incomplete 24-hour design values during the 2008–2010 and 2009–2011 periods, as indicated in Tables 1 and 2. EPA has

applied the statistical procedure to address the missing data of two monitors in the Philadelphia Area: Site 34-007-0003 (Camden monitor) in Camden County, New Jersey and site 42-029-0100 (New Garden monitor) in Chester County, Pennsylvania. Diagnostic 24-hour design values were determined for the Camden monitor for 2008–2010 and for the New Garden monitor for both 2008–2010 and 2009–2011 periods. The diagnostic 24-hour design values for the New Garden and Camden monitors in the Philadelphia Area were below the 2006 24-hour PM_{2.5} NAAQS level of 35 µg/m³ during both 2008–2010 and 2009–2011. The statistical method used to compute diagnostic design values was successfully used previously for the Philadelphia Area determination of attainment for the annual 1997 PM_{2.5} NAAQS (see 77 FR 3223 and 77 FR 28782). Additional details on the statistical method can be found in the Technical Support Document (TSD) for this action, which is available online at www.regulations.gov, Docket ID No. EPA-R03-OAR-2012-0371.

As shown in Table 1, the Camden Monitor at site 34-007-0003, located in Camden County, was the highest reading monitor during 2008–2010. However, the 24-hour design value from this site reflects incomplete data during most of the 2008–2010 monitoring period due to the monitor's shutdown in September 2008. This monitor only collected data for 3 out of 12 quarters. The last valid 24-hour design value at site 34-007-0003 was 35 µg/m³ in 2006–2008, prior to its shutdown. After EPA filled in the missing data using its statistical procedure, an attaining 24-hour design value for the Camden monitor of 28 µg/m³ was computed, which is below the 2006 24-hour PM_{2.5} NAAQS of 35 µg/m³. The remaining PM_{2.5} monitors in the Philadelphia area showed concentrations below the 2006 24-hour PM_{2.5} NAAQS during the 2008–2010 monitoring period. As indicated in Table 2, all monitors measured concentrations averaging below the 24-hour PM_{2.5} NAAQS of 35 µg/m³ during 2009–2011. The 24-hour design value for 2009–2011 for the Philadelphia Area is 33 µg/m³ based on monitoring data collected by the New Garden monitor at

site 42-029-0100 in Chester County, Pennsylvania.

EPA's review of quality-assured, quality-controlled, certified ambient air monitoring data collected in the Philadelphia Area during 2008–2010 and 2009–2011 indicates that the Area has attained the 2006 24-hour PM_{2.5} NAAQS. Additionally, preliminary PM_{2.5} data available to date for 2012 is consistent with continued attainment of the 2006 24-hour PM_{2.5} NAAQS in the Philadelphia Area. Additional information about the monitoring network and air quality data used in this determination can be found in the TSD for this action, which is available online at www.regulations.gov, Docket ID No. EPA-R03-OAR-2012-0371.

IV. What are the effects of this action?

If EPA's proposed determination of attainment based on quality-assured data during 2008–2010 and 2009–2011 is made final, the requirements for the Philadelphia Area to submit an attainment demonstration and associated RACM, RFP plan, contingency measures, and any other planning requirements related to attainment of the 2006 24-hour PM_{2.5} NAAQS would be suspended for as long as the Philadelphia Area continues to attain the 2006 24-hour PM_{2.5} NAAQS. Notably, as described below, any such determination would not be equivalent to the redesignation of the Philadelphia Area to attainment for the 2006 24-hour PM_{2.5} NAAQS. If this proposed determination is finalized and EPA subsequently determines, after notice-and-comment rulemaking in the **Federal Register**, that the Area has violated the 2006 24-hour PM_{2.5} NAAQS, the basis for the suspension of the specific requirements would no longer exist for the Philadelphia Area, and the Area would thereafter have to address the applicable requirements for the 2006 24-hour PM_{2.5} NAAQS. See 40 CFR 51.1004(c).

Finalizing this proposed determination would not constitute a redesignation of the Philadelphia Area to attainment of the 2006 24-hour PM_{2.5} NAAQS under section 107(d)(3) of the CAA. Further, finalizing this determination would not involve approving a maintenance plan for the

⁴ EPA's guidance document is available at <http://www.epa.gov/ttn/oarpg/t1/memoranda/pmfinal.pdf>.

Philadelphia Area as required under section 175A of the CAA, nor would it involve finding that the Area has met all other requirements for redesignation under the CAA, including that the attainment be due to permanent and enforceable emission reductions.⁵ Even if EPA finalizes the proposed action, the designation status of the Philadelphia Area would remain nonattainment for the 2006 24-hour PM_{2.5} NAAQS until such time as EPA determines that the Area meets the CAA requirements for redesignation to attainment and takes action to redesignate the Philadelphia Area.

The action described is a proposed determination regarding the Philadelphia Area's attainment only with respect to the 2006 24-hour PM_{2.5} NAAQS. Today's action does not address the 1997 annual or 24-hour PM_{2.5} standards. EPA is soliciting public comments on the issues discussed in this document. These comments will be considered before taking final action.

IV. Statutory and Executive Order Reviews

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 proposes to approve state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this proposed action:

- Is not a "significant regulatory action" subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);

⁵ The monitoring data from the 2008–2010 and 2009–2011 monitoring periods that are relied on in this notice may be impacted by reductions associated with the Clean Air Interstate Rule (CAIR), which is in place only temporarily as it was remanded to EPA in 2008. See *North Carolina v. EPA*, 531 F.3d 896, as modified on reh'g, 550 F.3d 1176 (D.C. Cir. 2008). Nonetheless, because this determination addresses only whether the monitoring data shows attainment, at this time EPA need not address whether such attainment was due to the remanded and thus not permanent CAIR.

- 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 proposed determination of attainment of the Philadelphia Area with respect to the 2006 24-hour PM_{2.5} NAAQS does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the determination is not approved to apply in Indian country located in the state, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Particulate matter, Reporting and recordkeeping requirements.

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

Dated: August 23, 2012.

W.C. Early,

Regional Administrator, Region III.

Dated: September 10, 2012.

Judith A. Enck,

Regional Administrator, Region II.

[FR Doc. 2012–24246 Filed 10–1–12; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R03–OAR–2012–0422; FRL–9735–9]

Approval and Promulgation of Air Quality Implementation Plans; West Virginia; The 2002 Base Year Inventory for the Charleston Area

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve the fine particulate matter (PM_{2.5}) 2002 base year emissions inventory portion of the West Virginia State Implementation Plan (SIP) revision submitted by the State of West Virginia (WV), through the West Virginia Department of Environmental Protection (WVDEP), on November 4, 2009 for the Charleston, WV nonattainment area (hereafter referred to as the Charleston Area or Area). The emissions inventory is part of the West Virginia November 4, 2009 SIP revision that was submitted to meet nonattainment requirements related to the Charleston Area for the 1997 PM_{2.5} National Ambient Air Quality Standard (NAAQS) SIP. EPA is proposing to approve the 2002 base year PM_{2.5} emissions inventory for the Charleston Area in accordance with the requirements of the Clean Air Act (CAA).

DATES: Written comments must be received on or before November 1, 2012.

ADDRESSES: Submit your comments, identified by Docket ID Number EPA–R03–OAR–2012–0422 by one of the following methods:

A. *www.regulations.gov.* Follow the on-line instructions for submitting comments.

B. *Email:* mastro.donna@epa.gov.

C. *Mail:* EPA–R03–OAR–2010–0140, Donna Mastro, Acting Associate Director, Office of Air Program Planning, Mailcode 3AP30, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103.

D. *Hand Delivery:* At the previously-listed EPA Region III address. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. EPA–R03–OAR–2012–0422. EPA's policy is that all comments received will be included in the public docket without change, and may be made available online at www.regulations.gov, including any

personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through www.regulations.gov or email. The www.regulations.gov Web site is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an email comment directly to EPA without going through www.regulations.gov, your email address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the electronic docket are listed in the www.regulations.gov index. Although listed in the index, some information is not publicly available, i.e., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in www.regulations.gov or in hard copy 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 West Virginia Department of Environmental Protection, Division of Air Quality, 601 57th Street SE., Charleston, West Virginia 25304.

FOR FURTHER INFORMATION CONTACT: Irene Shandruk, (215) 814-2166, or by email at shandruk.irene@epa.gov.

SUPPLEMENTARY INFORMATION:

- I. Background
- II. Summary of SIP Revision
- III. Proposed Action
- IV. Statutory and Executive Order Reviews

I. Background

Throughout this document, whenever "we," "us," or "our" is used, we mean EPA. On July 18, 1997 (62 FR 38652), EPA promulgated the 1997 PM_{2.5} NAAQS, including an annual standard of 15.0 micrograms per cubic meter (µg/m³) based on a 3-year average of annual mean PM_{2.5} concentrations, and a 24-hour (or daily) standard of 65 µg/m³ based on a 3-year average of the 98th percentile of 24-hour concentrations. EPA established the standards based on significant evidence and numerous health studies demonstrating that serious health effects are associated with exposures to PM_{2.5}.

Following promulgation of a new or revised NAAQS, EPA is required by the CAA to designate areas throughout the United States as attaining or not attaining the NAAQS; this designation process is described in section 107(d)(1) of the CAA. In 1999, EPA and state air quality agencies initiated the monitoring process for the 1997 PM_{2.5} NAAQS and, by January 2001, established a complete set of air quality monitors. On January 5, 2005, EPA promulgated initial air quality designations for the 1997 PM_{2.5} NAAQS (70 FR 944), which became effective on April 5, 2005, based on air quality monitoring data for calendar years 2001–03.

On April 14, 2005, EPA promulgated a supplemental rule amending the agency's initial designations (70 FR 19844), with the same effective date (April 5, 2005) at 70 FR 944. As a result of this supplemental rule, PM_{2.5} nonattainment designations are in effect for 39 areas, comprising 208 counties within 20 states (and the District of Columbia) nationwide, with a combined population of approximately 88 million. The Charleston Area, which is the subject of this rulemaking, was included in the list of areas not attaining the 1997 PM_{2.5} NAAQS. The Charleston Area consists of Kanawha and Putnam Counties in West Virginia.

On October 11, 2011 (76 FR 62640), EPA determined that West Virginia had attained the 1997 PM_{2.5} NAAQS in the

Charleston Area. That determination was based on complete, quality-assured, quality-controlled, and certified ambient air monitoring data for the 2007–2009 three-year period that showed the area attained the 1997 PM_{2.5} NAAQS and continues to attain the standard. The October 11, 2011 determination suspended the requirements for West Virginia to submit an attainment demonstration, associated reasonably available control measures, a reasonable further progress plan, contingency measures, and other planning SIP revisions related to attainment of the standard for so long as the nonattainment area continues to meet the 1997 PM_{2.5} NAAQS. Section 172(c)(3) of the CAA requires submission and approval of a comprehensive, accurate, and current inventory of actual emissions. This proposed approval is limited to the emissions inventory for the Charleston Area. Separate action will be taken on the remainder of West Virginia's SIP submittal.

II. Summary of SIP Revision

The 2002 base year emission inventory submitted by WVDEP on November 4, 2009 for the Charleston Area includes emissions estimates that cover the general source categories of point sources, non-road mobile sources, area sources, on-road mobile sources, and biogenic sources. The pollutants that comprise the inventory are nitrogen oxides (NO_x), volatile organic compounds (VOCs), PM_{2.5}, coarse particles (PM₁₀), ammonia (NH₃) and sulfur dioxide (SO₂). EPA has reviewed the results, procedures and methodologies for the base year emissions inventory submitted by WVDEP. The year 2002 was selected by WVDEP as the base year for the emissions inventory per 40 CFR 51.1008(b). A discussion of the emissions inventory development as well as the emissions inventory for the Charleston Area can be found in Appendices C and D of the November 4, 2009 SIP submittal.

Table 1, below, provides a summary of the annual 2002 emissions of NO_x, VOCs, PM_{2.5}, PM₁₀, NH₃ and SO₂ for the Charleston Area submittal.

TABLE 1—SUMMARY OF 2002 BASELINE EMISSIONS INVENTORY FOR THE CHARLESTON AREA IN TONS PER YEAR (TPY)

Source sector	NH ₃	NO _x	PM ₁₀	PM _{2.5}	SO ₂	VOC
Point	25	60,138	1,134	632	130,109	3,292
Area	70	1,614	10,039	2,396	2,486	9,209
Nonroad	1	3,957	229	213	239	2,828
Onroad	312	10,213	233	632	411	7,073

TABLE 1—SUMMARY OF 2002 BASELINE EMISSIONS INVENTORY FOR THE CHARLESTON AREA IN TONS PER YEAR (TPY)—Continued

Source sector	NH ₃	NO _x	PM ₁₀	PM _{2.5}	SO ₂	VOC
Biogenic	N/A	N/A	N/A	N/A	N/A	N/A
Total	407	76,016	11,635	3,410	133,245	40,702

The CAA section 172(c)(3) emissions inventory is developed by the incorporation of data from multiple sources. States were required to develop and submit to EPA a triennial emissions inventory according to the Consolidated Emissions Reporting Rule (CERR) for all source categories (i.e., point, area, nonroad mobile and on-road mobile). The review and evaluation of the methods used for the emissions inventory submitted by West Virginia are found in the Technical Support Document dated August 12, 2010, available online at www.regulations.gov, Docket No. EPA-R03-OAR-2012-0422. EPA finds that the process used to develop this emissions inventory for the Charleston Area is adequate to meet the requirements of CAA section 172(c)(3), the implementing regulations, and EPA guidance for emission inventories.

III. Proposed Action

EPA is proposing to approve the 2002 base year emissions inventory portion of the SIP revision submitted by the State of West Virginia on November 4, 2009 for the Charleston Area. We have made the determination that this action is consistent with section 110 of the CAA. EPA is soliciting public comments on the issues discussed in this document. These comments will be considered before taking final action.

IV. Statutory and Executive Order Reviews

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 proposes to approve state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this proposed action:

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

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

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

- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (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 proposed rule, pertaining to the PM_{2.5} 2002 base year emissions inventory portion of the West Virginia SIP for the Charleston Area, does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the state, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Nitrogen dioxide, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

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

Dated: September 13, 2012.

W.C. Early,

Acting Regional Administrator, Region III.

[FR Doc. 2012-24242 Filed 10-1-12; 8:45 am]

BILLING CODE 6560-50-P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

46 CFR Part 8

[Docket No. USCG-2012-0861]

RIN 1625-AB90

Adding International Energy Efficiency (IEE) Certificate to List of Certificates a Recognized Classification Society May Issue

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to amend its Vessel Inspection Alternatives regulations to add the International Energy Efficiency (IEE) Certificate to the list of certificates that a recognized classification society may issue on behalf of the Coast Guard. We make this proposal because Annex VI of the International Convention for the Prevention of Pollution by Ships, 1973, as modified by the Protocol of 1978, has been amended to address energy efficiency for ships, and these amendments call for the issuance of IEE Certificates starting January 1, 2013. This proposed rule would enable recognized classification societies to apply to the Coast Guard to issue IEE Certificates to vessel owners and help to ensure that the demand for IEE Certificates is met.

DATES: Comments and related material must either be submitted to our online docket via <http://www.regulations.gov> on or before November 1, 2012 or reach the Docket Management Facility by that date.

ADDRESSES: You may submit comments identified by docket number USCG-2012-0861 using any one of the following methods:

- (1) *Federal eRulemaking Portal:* <http://www.regulations.gov>.
- (2) *Fax:* 202-493-2251.

(3) *Mail*: Docket Management Facility (M-30), U.S. Department of Transportation, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue SE., Washington, DC 20590-0001.

(4) *Hand delivery*: Same as mail address above, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is 202-366-9329.

To avoid duplication, please use only one of these four methods. See the "Public Participation and Request for Comments" portion of the **SUPPLEMENTARY INFORMATION** section below for instructions on submitting comments.

FOR FURTHER INFORMATION CONTACT: If you have questions on this proposed rule, call or email Mr. Wayne Lundy, Systems Engineering Division, Coast Guard; telephone 202-372-1379, email Wayne.M.Lundy@uscg.mil. If you have questions on viewing or submitting material to the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202-366-9826.

SUPPLEMENTARY INFORMATION:

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I. Public Participation and Request for Comments

We encourage you to participate in this rulemaking by submitting comments and related materials. All comments received will be posted without change to <http://www.regulations.gov> and will include any personal information you have provided.

A. Submitting Comments

If you submit a comment, please include the docket number for this rulemaking (USCG-2012-0861), indicate the specific section of this

document to which each comment applies, and provide a reason for each suggestion or recommendation. You may submit your comments and material online or by fax, mail, or hand delivery, but please use only one of these means. We recommend that you include your name and a mailing address, an email address, or a phone number in the body of your document so that we can contact you if we have questions regarding your submission.

To submit your comment online, go to <http://www.regulations.gov>, and insert "USCG-2012-0861" in the "Search" box. Click on "Submit a Comment" in the "Actions" column. If you submit your comments by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit comments by mail and would like to know that they reached the Facility, please enclose a stamped, self-addressed postcard or envelope.

We will consider all comments and material received during the comment period and may change this proposed rule based on your comments.

B. Viewing Comments and Documents

To view comments, as well as documents mentioned in this preamble as being available in the docket, go to <http://www.regulations.gov>, insert "USCG-2012-0861" in the "Search" box and click "Search." Click the "Open Docket Folder" in the "Actions" column. If you do not have access to the internet, you may view the docket online by visiting the Docket Management Facility in Room W12-140 on the ground floor of the Department of Transportation West Building, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. We have an agreement with the Department of Transportation to use the Docket Management Facility.

C. Privacy Act

Anyone can search the electronic form of comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review a Privacy Act notice regarding our public dockets in the January 17, 2008, issue of the **Federal Register** (73 FR 3316).

D. Public Meeting

We do not plan to hold a public meeting. But you may submit a request for one to the docket using one of the methods specified under **ADDRESSES**. In

your request, please explain why you believe a public meeting would be beneficial. If we determine that one would aid this rulemaking, we will hold one at a time and place announced by a later notice in the **Federal Register**.

II. Abbreviations

APPS Act to Prevent Pollution from Ships
 CFR Code of Federal Regulations
 DHS Department of Homeland Security
 FR **Federal Register**
 IEE International Energy Efficiency
 IMO International Maritime Organization
 MARPOL Protocol International Convention for the Prevention of Pollution from Ships, 1973 as modified by the Protocol of 1978
 MEPC Maritime Environment Protection Committee
 NPRM Notice of Proposed Rulemaking
 OMB Office of Management and Budget
 § Section
 U.S.C. United States Code

III. Background

The Act to Prevent Pollution from Ships (APPS), 33 U.S.C. *et seq.*, implements the International Convention for the Prevention of Pollution from Ships, 1973 as modified by the Protocol of 1978 (MARPOL Protocol), which includes MARPOL Annex VI: Regulations for the Prevention of Air Pollution from Ships. See 33 U.S.C. 1901(a)(4) and (5). APPS directs the Secretary of Homeland Security to prescribe any necessary or desired regulations to carry out the provisions of the MARPOL Protocol and it directs the Secretary to designate those persons authorized to issue MARPOL Protocol certificates on behalf of the United States. See 33 U.S.C. 1903(c) and 1904. This authority was delegated to the Coast Guard. See Department of Homeland Security Delegation No. 0170.1. As required by APPS, the Coast Guard has consulted with the U.S. Environmental Protection Agency regarding this proposed rule.

On July 15, 2011, in resolution MEPC.203(62), the International Maritime Organization's (IMO) Marine Environment Protection Committee (MEPC) adopted amendments to MARPOL Annex VI. Those amendments, which were accepted July 1, 2012, and come into force January 1, 2013, contain energy efficiency provisions for new and existing ships. These amended regulations call for the issuance of an International Energy Efficiency (IEE) Certificate to document compliance with Annex VI's new Chapter 4, Regulations on Energy Efficiency for Ships. See amended Annex VI Regulations 5.4 and 6.4. Since the mid-1990s, under authority of 46 U.S.C. 3103, 3306, 3316, and 3703, and

regulations in 46 CFR part 8—Vessel Inspection Alternatives, the Coast Guard has authorized recognized classification societies to issue international certificates to vessels. The Coast Guard regularly adds to the list, in 33 CFR 8.320(b), of international certificates that classification societies may apply to issue to vessels on the Coast Guard's behalf—including recent additions of the MARPOL 73/78 International Air Pollution Prevention Certificate and the International Anti-Fouling System Certificate. See, respectively, 74 FR 21554, May 8, 2009; and 76 FR 76896, Dec. 9, 2011. The United States currently recognizes seven classification societies for purposes of issuing international certificates: The American Bureau of Shipping (ABS, United States); Det Norske Veritas (DNV, Norway); Lloyd's Register (LR, Great Britain); Germanischer Lloyd (GL, Germany); Bureau Veritas (BV, France); RINA S.p.A. (RINA, Italy), and ClassNK (NKK, Japan).

Recognized classification societies assist the Coast Guard and help to ensure that U.S.-flagged ships that qualify for an international certificate are able to obtain it promptly. As we stated in 1996, to avoid duplication of effort between the Coast Guard and classification societies that results in extra costs to U.S. vessel owners, it is best to take full advantage of inspections done by classification societies:

insurance companies require that, before a vessel is insured, it be classed. This means that a classification society must survey a vessel for compliance with its class rules. Class rules are rules developed by the particular classification society to cover design, construction and safety of vessels. To ensure compliance with these class rules and with international standards, classification societies perform surveys on vessels using qualified marine surveyors. Many of the items examined by the classification society surveyors are the same as those examined by Coast Guard marine inspectors in their inspections for certification.

61 FR 68510–11, December 27, 1996.

Starting January 2013, U.S.-flagged ships that are 400 gross tonnage or more as measured under 46 U.S.C. 14302, Convention Measurement System, (hereafter 400 GT ITC or more) may be subject to detention or delay in foreign ports if they do not have an IEE certificate to document compliance with Annex VI. See amended Annex VI Regulation 19.

Section 8.320 of 46 CFR allows the Coast Guard to delegate issuance of an international convention certificate to a recognized classification society only if the certificate is listed in § 8.320(b). The

IEE Certificate is not currently listed in § 8.320(b).

IV. Discussion of Proposed Rule

Our proposed amendment to 46 CFR 8.320(b) would add the International Energy Efficiency (IEE) Certificate to the list of certificates that may be issued by a recognized classification society on behalf of the Coast Guard. This proposed change would initiate the process that would allow recognized classification societies to issue IEE Certificates on behalf of the Coast Guard. Any recognized classification society that wishes to issue IEE Certificates on the Coast Guard's behalf would be required to request a delegation of authority from the Coast Guard pursuant to the procedures in 46 CFR part 8. See 46 CFR 8.230 for criteria that must be met to become a recognized classification society. In response, the Coast Guard would evaluate the application, and review the applicant's relevant class rules and classification society procedures, before deciding whether to issue a delegation of authority to a recognized classification society. As noted above, we propose this amendment to § 8.320(b) to allow the Coast Guard to enlist the assistance of recognized classification societies to ensure that U.S.-flagged ships that are 400 GT ITC or more that engage in one or more voyages to ports or offshore terminals under the jurisdiction of other contracting parties to the MARPOL Protocol will be able to promptly obtain an IEE certificate.

Also, the Presidential Memorandum of May 20, 2009 titled "Preemption," states that "preemption of State law by executive departments and agencies should be undertaken only with full consideration of the legitimate prerogatives of the States and with a sufficient legal basis for preemption." The memorandum also required agencies to include preemption provisions in the codified regulations when regulatory preambles discussed its intention to preempt State law through the regulation. Furthermore, it directed that these preemption provisions must be justified under the legal principles governing preemption, including those outlined in Executive Order (EO) 13132 on Federalism. Consistent with this May 2009 Presidential Memorandum, EO 13132, and our Federalism discussion below, we have proposed inserting a specific statement regarding preemption in the purpose section, § 8.300, of Part 8's subpart C, International Convention Certificate Issuance, and renaming that section heading "Purpose and Preemption."

V. Regulatory Analyses

We developed this proposed rule after considering numerous statutes and executive orders related to rulemaking. Below we summarize our analyses based on 14 of these statutes or executive orders.

A. Regulatory Planning and Review

Executive Orders 12866 ("Regulatory Planning and Review") and 13563 ("Improving Regulation and Regulatory Review") direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This proposed rule has not been designated a "significant regulatory action" under section 3(f) of Executive Order 12866. Accordingly, this proposed rule has not been reviewed by the Office of Management and Budget. A draft regulatory assessment follows:

Under the authority of 33 U.S.C. 1903, 1904, and 46 U.S.C. 3103, 3306, 3316, and 3703, the Coast Guard proposes to amend 46 CFR 8.320, to enable the Coast Guard to delegate the activity of issuing IEE Certificates to a recognized classification society which would act on behalf of the Coast Guard. The intent of this proposed rule is only to allow for the delegation of IEE Certification to recognized class societies and thus create options for industry in obtaining these certificates; it does not impose mandatory actions on the U.S. maritime industry.

Although requesting the delegation of authority to conduct IEE surveys, inspections, and certifications is voluntary, classification societies may incur minor costs associated with this process. The Coast Guard may incur costs associated with the evaluation of these requests and the issuance of delegations of authority to recognized classification societies.

The Coast Guard estimates that this proposed rule would potentially affect seven classification societies which may request a delegation of authority to issue IEE Certificates. The Coast Guard used an Office of Management and Budget (OMB)-approved collection of information (1625–0041) to estimate the costs and burden.

The Coast Guard estimates that it will take classification society employees

about 5.25 hours to review the rulemaking requirements and prepare the delegation request, at an average one-time cost of \$428.75 per classification society (3.5 hours at \$112 per hour¹ for a director and 1.75 hours at \$21 per hour for an administrative assistant). The total one-time cost for all seven classification societies is estimated to be \$3,000 (rounded).

In addition, the Coast Guard estimates that it will incur a one-time cost to review and approve the requests for delegation. Based on the OMB-approved collections of information discussed above, the Coast Guard estimates that it will take about 5 hours to review, approve, and issue an order to delegate authority, at an average cost of \$360 per event (3.5 hours for reviewing/approving and 1.5 hours for issuing at \$72 per hour for a lieutenant (O-3)). The Coast Guard estimates a total one-time Government cost of \$2,500 (rounded) based on OMB-approved collection of information estimates.

The Coast Guard estimates the total one-time cost of this proposed rule to be approximately \$5,500 (non-discounted) for classification societies and the Government combined.

This proposed rule may result in several benefits to the U.S. maritime industry. First, it may result in a reduction of potential wait time for IEE Certificates. In the absence of delegation of authority to classification societies, vessel owners and operators may experience delays while the Coast Guard processes and issues IEE Certificates. Combined with the Coast Guard's other activities and responsibilities, such a process may result in an unnecessary and burdensome wait for vessels. The Coast Guard also might have to redirect resources that could be used for other missions, resulting in a less efficient use of Government resources. Finally, this proposed rule may mitigate potential consequences to U.S.-flagged vessels due to non-compliance with the Convention, including costly vessel detentions in foreign ports.

B. Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we have considered whether this proposed rule will, if promulgated, 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.

Affected classification societies are classified under one of the following North American Industry Classification System codes for water transportation: 488330—Navigational Services to Shipping, 488390—Other Support Activities for Water Transportation, or 541611—Administrative Management and General Management Consulting Services.

The only predominate U.S. classification society is the American Bureau of Shipping (ABS). ABS is a privately owned non-profit organization that is dominant in its field (Source: 2011 Hoovers, <http://www.hoovers.com/company/American+Bureau+of+Shipping+Inc/rfsksji-1.html>). Based on publicly available information, ABS has more than 3,000 employees and annual revenues of more than \$800 million.² We do not consider ABS to be a small entity using the Small Business Act definitions of a small entity.

The Coast Guard expects that this proposed rule, if promulgated, would not have a significant economic impact on a substantial number of small entities. As described in section V.A. of this preamble, “Regulatory Planning and Review,” the anticipated cost of this proposed rule, per class society, would be less than \$500. This proposed rule is not mandatory, and classification societies, regardless of size, would choose to participate only if the benefits are greater than the costs.

Therefore, the Coast Guard certifies under 5 U.S.C. 605(b) that this proposed rule, if promulgated, will not have a significant economic impact on a substantial number of small entities. If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this proposed rule would have a significant economic impact on it, please submit a comment to the Docket Management Facility at the address under **ADDRESSES**. In your comment, explain why you think it qualifies and how and to what degree this proposed rule would economically affect it.

C. Assistance for Small Entities

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

them and participate in the rulemaking. If the proposed rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please consult Mr. Wayne Lundy, Systems Engineering Division, Coast Guard, telephone 202–372–1379 or email

Wayne.M.Lundy@uscg.mil. The Coast Guard will not retaliate against small entities that question or complain about this proposed rule or any policy or action of the Coast Guard.

D. Collection of Information

This proposed rule would call for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520) because the Coast Guard expects that the number of applications would be fewer than 10 in any given year.

E. Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this proposed rule under that Order and have determined that it does not have implications for federalism.

As noted above, APPS implements the MARPOL Protocol. APPS also directs the Secretary to “designate those persons authorized to issue on behalf of the United States the certificates required by the MARPOL Protocol.” 33 U.S.C. 1904. By enacting this specific provision, it was the intent of Congress to give the Coast Guard, as delegated by the Secretary, the exclusive authority to regulate within this field. Therefore, we have determined that this rule does not have implications for federalism.

F. 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 proposed rule would not result in such expenditure, we do discuss the effects of this proposed rule elsewhere in this preamble.

G. Taking of Private Property

This proposed rule would not cause a taking of private property or otherwise have taking implications under

² Source: 2011 Bloomberg, <http://investing.businessweek.com/research/stocks/private/person.asp?personId=28915205&privcapId=4217113&previousCapId=764755&previousTitle=ABS%20Group%20of%20Companies,%20Inc.>

¹ All hourly wages shown are “fully loaded” wages. Fully loaded wages include the costs of employer paid benefits such as health insurance.

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

H. Civil Justice Reform

This proposed 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.

I. Protection of Children

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

J. Indian Tribal Governments

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

K. Energy Effects

We have analyzed this proposed 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, supplemented by Executive Order 13563, 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.

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

M. Environment

We have analyzed this proposed rule under Department of Homeland Security Management Directive 023-01 and Commandant Instruction M16475.ID, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321-4370f), and have made a preliminary determination that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. A preliminary environmental analysis checklist supporting this determination is available in the docket where indicated under the "Public Participation and Request for Comments" section of this preamble. This proposed rule involves the delegation of authority, the inspection and documentation of vessels, and congressionally-mandated regulations designed to improve or protect the environment.

This action falls under section 2.B.2, figure 2-1, paragraphs (34)(b) and (d), of the Instruction, and under section 6(b) of the "Appendix to National Environmental Policy Act: Coast Guard Procedures for Categorical Exclusions, Notice of Final Agency Policy" (67 FR 48243, July 23, 2002). We seek any comments or information that may lead

to the discovery of a significant environmental impact from this proposed rule.

List of Subjects in 46 CFR Part 8

Administrative practice and procedure, Organization and functions (Government agencies), Reporting and recordkeeping requirements, Vessels.

For the reasons discussed in the preamble, the Coast Guard proposes to amend 46 CFR part 8 as follows:

PART 8—VESSEL INSPECTION ALTERNATIVES

1. The authority citation for part 8 is revised to read as follows:

Authority: 33 U.S.C. 1903, 1904, 3803 and 3821; 46 U.S.C. 3103, 3306, 3316, and 3703; Department of Homeland Security Delegation No. 0170.1 and Aug. 8, 2011 Delegation of Authority, Anti-Fouling Systems.

2. Revise § 8.300 to read as follows:

§ 8.300 Purpose and preemption.

This subpart establishes options for vessel owners and operators to obtain required international convention certification through means other than those prescribed elsewhere in this chapter. The regulations in this subpart have preemptive effect over any State or local regulation within the same field.

3. Amend § 8.320 as follows:

a. In paragraph (b)(12), remove the word "and";

b. In paragraph (b)(13), remove the period at the end of the sentence and add, in its place, the text "; and"; and

c. Add paragraph (b)(14) to read as follows:

§ 8.320 Classification society authorization to issue international certificates.

* * * * *

(b) * * *

(14) MARPOL 73/78 International Energy Efficiency Certificate.

* * * * *

Dated: September 25, 2012.

F.J. Sturm,

Acting Director of Commercial Regulations and Standards, U.S. Coast Guard.

[FR Doc. 2012-24165 Filed 10-1-12; 8:45 am]

BILLING CODE 9110-04-P

Notices

Federal Register

Vol. 77, No. 191

Tuesday, October 2, 2012

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Forest Service

Boundary Establishment for White Salmon Wild and Scenic River "Lower Segment", Gifford Pinchot National Forest, Klickitat County, Washington State

AGENCY: Forest Service, USDA.

ACTION: Notice of availability.

SUMMARY: In accordance with Section 3(b) of the Wild and Scenic Rivers Act, the USDA Forest Service, Washington Office, is transmitting the final amended boundary of the White Salmon Wild and Scenic River "Lower Segment" to Congress.

FOR FURTHER INFORMATION CONTACT:

Information may be obtained by contacting the following office: Columbia River Gorge National Scenic Area, 902 Wasco Avenue, Suite 200, Hood River, OR 97031-3117, (541) 308-1700.

Individuals who use telecommunication devices for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1-800-877-8339 between 8 a.m. and 8 p.m., Eastern Time, Monday through Friday.

SUPPLEMENTARY INFORMATION: The White Salmon Wild and Scenic River "Lower Segment" boundary is available for review at the following offices: USDA Forest Service, Recreation, Yates Building, 14th and Independence Avenues SW., Washington, DC 20024; USDA Forest Service, Pacific Northwest Region, 333 SW. First Avenue, Portland, Oregon 97208-3623.

The Columbia River Gorge National Scenic Area Act (Pub. L. 99-663) of November 17, 1986, designated the White Salmon River, Washington, as a Wild and Scenic River, to be administered by the Secretary of Agriculture. As specified by law, the boundary will not be effective until

ninety (90) days after Congress receives the transmittal.

Dated: September 21, 2012.

Maureen T. Hyzer,

Deputy Regional Forester.

[FR Doc. 2012-24229 Filed 10-1-12; 8:45 am]

BILLING CODE 3410-11-P

DEPARTMENT OF AGRICULTURE

Forest Service

Newspapers To Be Used for Publication of Legal Notice of Appealable Decisions and Publication of Notice of Proposed Actions for Eastern Region: Illinois, Indiana and Ohio, Michigan, Minnesota, Missouri, New Hampshire and Maine, Pennsylvania, Vermont and New York, West Virginia, and Wisconsin

AGENCY: Forest Service, USDA.

ACTION: Notice.

SUMMARY: Deciding Officers in the Eastern Region will publish notice of decisions subject to administrative appeal in the legal notice section of the newspapers listed in the Supplementary Information section of this notice. The public shall be advised through **Federal Register** notice, of the principal newspaper to be utilized for publishing legal notices of decisions. Newspaper publication of notice of decisions is in addition to direct notice of decisions to those who have requested notice in writing and to those known to be interested in or affected by a specific decision. In addition, the Responsible Official in the Eastern Region will also publish notice of proposed actions in the newspapers that are listed in the Supplementary Information section of this notice.

DATES: Use of these newspapers for purposes of publishing legal notice of decisions subject to appeal and notices of proposed actions shall begin on or after the date of this publication.

SUPPLEMENTARY INFORMATION: Deciding Officers in the Eastern Region will give legal notice of decisions subject to appeal under 36 CFR part 217 and 36 CFR 215 in the following newspapers which are listed by Forest Service administrative unit. The timeframe for comment on a proposed action shall be based on the date of publication of the notice of the proposed action in the

principal newspaper. The timeframe for appeals shall be based on the date of publication of the legal notice of the decision in the principal newspaper for both 36 CFR parts 215 and 217.

Where more than one newspaper is listed for any unit, the first newspaper listed is the principal newspaper that will be utilized for publishing the legal notices of decisions. Additional newspapers listed for a particular unit are those newspapers the Deciding Officer expects to use for purposes of providing additional notice. The timeframe for appeal shall be based on the date of publication of the legal notice of the decision in the principal newspaper. The following newspapers will be used to provide notice.

Eastern Region

Regional Forester Decisions

Affecting National Forest System lands in the states of Illinois, Indiana and Ohio, Michigan, Minnesota, Missouri, New Hampshire and Maine, Pennsylvania, Vermont and New York; West Virginia, Wisconsin and for any decision of Region-wide Impact.

Journal/Sentinel published daily in Milwaukee, Milwaukee County, Wisconsin

National Forests

Allegheny National Forest, Pennsylvania

Forest Supervisor Decisions:
Warren Times Observer, Warren, Warren County, Pennsylvania

District Ranger Decisions:
Bradford District: *Bradford Era*, Bradford, McKean County, Pennsylvania

Marienville District: *The Kane Republican*, Kane, Pennsylvania

Chequamegon/Nicolet National Forest, Wisconsin

Forest Supervisor Decisions:
The Northwoods River News, published daily except Saturday
Rhineland, Wisconsin

District Ranger Decisions:
Eagle River/Florence District: *The Northwoods River News*, published daily except Saturday, Rhineland, Wisconsin

Great Divide District: *The Daily Press*, published daily in Ashland, Ashland County, Wisconsin

Medford/Park Falls District: *The Star*

- News, published weekly in Medford, Taylor County, Wisconsin and *The Park Falls Herald*, published weekly in Park Falls, Price County, Wisconsin
- Washburn District: *The Daily Press*, published daily in Ashland County, Ashland, Wisconsin
- Lakewood/Laona District: *The Northwoods River News*, published daily except Saturday, Rhinelander, Wisconsin
- Chippewa National Forest, Minnesota*
- Forest Supervisor Decisions:
Bemidji Pioneer, published daily in Bemidji, Beltrami County, Minnesota
- District Ranger Decisions:
Blackduck District: *The American*, published weekly in Blackduck, Beltrami County, Minnesota
Deer River District: *The Western Itasca Review*, published weekly in Deer River, Itasca County, Minnesota
Walker District: *The Pilot/Independent*, published weekly in Walker, Cass County, Minnesota
- Green Mountain National Forest, Vermont*
- Forest Supervisor Decisions:
The Rutland Herald, published daily in Rutland, Rutland County, Vermont
- District Ranger Decisions:
The Rutland Herald, published daily in Rutland, Rutland County, Vermont is the formal newspaper of record for all district ranger decisions. Other newspapers listed are optional.
- Manchester District: *The Rutland Herald*, published daily in Rutland, Rutland County, Vermont; All others optional, *The Bennington Banner*, published daily in Bennington, Bennington County, Vermont, *Manchester Journal*, published weekly in Bennington County, Vermont and *The Brattleboro Reformer*, published daily in Brattleboro, Windham County, Vermont
- Middlebury District: *The Rutland Herald*, published daily in Rutland, Rutland County, Vermont; All others optional, *The Addison County Independent*, published twice weekly in Middlebury, Addison County, Vermont
- Rochester District: *The Rutland Herald*, published daily in Rutland, Rutland County, Vermont; All others optional, *The Burlington Free Press*, published daily in Burlington, Chittenden County, Vermont; *The Valley Reporter*, published weekly in Washington County, Vermont and *The Randolph Herald*, published weekly in Orange County, Vermont
- Finger Lakes National Forest, New York*
- Forest Supervisor Decisions:
The Ithaca Journal, published daily in Ithaca, Tompkins County, New York
- District Ranger Decisions:
Hector District: *The Ithaca Journal*, published daily in Ithaca, Tompkins County, New York
- Hiawatha National Forest, Michigan*
- Forest Supervisor Decisions:
The Daily Press, published daily in Escanaba, Delta County, Michigan
- District Ranger Decisions:
Rapid River District: *The Daily Press*, published daily in Escanaba, Delta County, Michigan
Manistique District: *The Daily Press*, published daily in Escanaba, Delta County, Michigan
Munising District: *The Mining Journal*, published daily in Marquette, Marquette County, Michigan
Sault Ste. Marie District: *The Evening News*, published daily in Sault Ste. Marie, Chippewa County, Michigan
St. Ignace District: *The Evening News*, published daily in Sault Ste. Marie, Chippewa County, Michigan
- Hoosier National Forest, Indiana*
- Forest Supervisor Decisions:
The Hoosier Times, published in Bloomington, Monroe County, and Bedford, Lawrence County, Indiana
- District Ranger Decisions:
Brownstown District: *The Hoosier Times*, published in Bloomington, Monroe County, and Bedford, Lawrence County, Indiana
Tell City District: *The Perry County News*, published in Tell City, Perry County, Indiana
- Huron-Manistee National Forest, Michigan*
- Forest Supervisor Decisions:
Cadillac News, published daily in Cadillac, Wexford County, Michigan
- District Ranger Decisions:
Baldwin-White Cloud Districts: *Lake County Star*, published weekly in Baldwin, Lake County, Michigan
Cadillac-Manistee Districts: *Manistee News Advocate*, published daily in Manistee, Manistee County, Michigan
Mio District: *Oscoda County Herald*, published weekly in Mio, Oscoda County, Michigan
Huron Shores District: *Oscoda Press*, published weekly in Oscoda, Iosco County, Michigan
- Mark Twain National Forest, Missouri*
- Forest Supervisor Decisions:
Rolla Daily News, published Mon—Sat in Rolla, Phelps County, Missouri
- District Ranger Decisions:
Ava/Cassville/Willow Springs District: *Springfield News-Leader*, published daily in Springfield, Greene County, Missouri
Cedar Creek District: *Fulton Sun*, published daily in Fulton, Callaway County, Missouri
Eleven Point District: *Prospect News*, published weekly in Doniphan, Ripley County, Missouri
Rolla District: *Houston Herald*, published weekly (Thursdays) in Houston, Texas County, Missouri
Houston District: *Houston Herald*, published weekly (Thursdays) in Houston, Texas County, Missouri
Poplar Bluff District: *Daily American Republic*, published daily in Poplar Bluff, Butler County, Missouri
Potosi District: *The Independent-Journal*, published Thursday in Potosi, Washington County, Missouri
Fredericktown District: *The Democrat-News*, published weekly in Fredericktown, Madison County, Missouri
Salem District: *The Salem News*, published Tuesday in Salem, Dent County, Missouri
- Midewin Tallgrass Prairie, Wilmington, Illinois*
- Prairie Supervisor Decisions:
The Herald News, published daily in Joliet, Illinois
- Monongahela National Forest, Elkins, West Virginia*
- Forest Supervisor Decisions:
The Inter-Mountain, published daily in Elkins, Randolph County, West Virginia
- District Ranger Decisions:
Cheat-Potomac District: *The Grant County Press*, published weekly in Petersburg, Grant County, West Virginia
Gauley District: *The Nicholas Chronicle*, published weekly in Summersville, Nicholas County, West Virginia
Greenbrier District: *The Pocahontas Times*, published weekly in Marlinton, Pocahontas County, West Virginia
Marlinton-White Sulphur District: *The Pocahontas Times*, published weekly in Marlinton, Pocahontas County, West Virginia

Ottawa National Forest, Michigan

Forest Supervisor Decisions:

The Ironwood Daily Globe, published in Ironwood, Gogebic County, Michigan and for those on the Iron River District, *The Reporter*, published in Iron River, Iron County, Michigan

District Ranger Decisions:

Bergland, Bessemer, Kenton, Ontonagon and Watersmeet Districts: *The Ironwood Daily Globe*, published in Ironwood, Gogebic County, Michigan
Iron River District: *The Reporter*, published in Iron River, Michigan, Iron County, Michigan

Shawnee National Forest, Illinois

Forest Supervisor Decisions:

Southern Illinoisan, published daily in Carbondale, Jackson County, Illinois

District Ranger Decisions:

Hidden Springs, Mississippi Bluffs Districts: *Southern Illinoisan*, published daily in Carbondale, Jackson County, Illinois

Superior National Forest, Minnesota

Forest Supervisor Decisions:

Duluth News-Tribune, published daily in Duluth, St. Louis County, Minnesota

District Ranger Decisions:

Gunflint District: *Cook County News-Herald*, published weekly in Grand Marais, Cook County, Minnesota

Kawishiwi District: *Ely Echo*, published weekly in Ely, St. Louis County, Minnesota

LaCroix District: *Mesabi Daily News*, published daily in Virginia, St. Louis County, Minnesota

Laurentian District: *Mesabi Daily News*, published daily in Virginia, St. Louis County, Minnesota

Torte District: *Duluth News-Tribune*, published daily in Duluth, St. Louis County, Minnesota

Wayne National Forest, Ohio

Forest Supervisor Decisions:

Athens Messenger, published daily in Athens, Athens County, Ohio

District Ranger Decisions:

Athens District: *Athens Messenger*, (same for Marietta Unit), published daily in Athens, Athens County, Ohio

Ironton District: *The Ironton Tribune*, published daily in Ironton, Lawrence County, Ohio

White Mountain National Forest, New Hampshire and Maine

Forest Supervisor Decisions:

The New Hampshire Union Leader, published daily in Manchester,

County of Hillsborough, New Hampshire. If project will occur in Maine, also the *Lewiston Sun-Journal*, published daily in Lewiston, County of Androscoggin, Maine

Androscoggin District: *The New Hampshire Union Leader*, published daily in Manchester, County of Hillsborough, New Hampshire if project is in New Hampshire and the *Lewiston Sun-Journal*, published daily in Lewiston, County of Androscoggin, Maine if the project is in Maine.

Pemigewasset District: *The New Hampshire Union Leader*, published daily in Manchester, County of Hillsborough, New Hampshire

Saco District: *The New Hampshire Union Leader*, published daily in Manchester, County of Hillsborough, New Hampshire if project is in New Hampshire and the *Lewiston Sun-Journal*, published daily in Lewiston, County of Androscoggin, Maine if the project is in Maine.

FOR FURTHER INFORMATION CONTACT:

Patricia Rowell, 414-297-3439.

Dated: September 26, 2012.

Gene Blankenbaker,

Deputy Regional Forester.

[FR Doc. 2012-24265 Filed 10-1-12; 8:45 am]

BILLING CODE 3410-11-P

DEPARTMENT OF COMMERCE**Foreign-Trade Zones Board**

[S-90-2012]

Approval of Subzone Status; TST NA TRIM, LLC; Hidalgo, TX

On August 3, 2012, the Executive Secretary of the Foreign-Trade Zones (FTZ) Board docketed an application submitted by the McAllen Foreign Trade Zone, Inc., grantee of FTZ 12, requesting subzone status subject to the existing activation limit of FTZ 12, on behalf of TST NA TRIM, LLC, in Hidalgo, Texas.

The application was processed in accordance with the FTZ Act and Regulations, including notice in the **Federal Register** inviting public comment (77 FR 47816, 08/10/2012). The FTZ staff examiner reviewed the application and determined that it meets the criteria for approval. Pursuant to the authority delegated to the FTZ Board Executive Secretary (15 CFR 400.36(f)), the application for the requested subzone (Subzone 12A) is approved, subject to the FTZ Act and

the Board's regulations, including Section 400.13 and further subject to FTZ 12's 873.5-acre activation limit.

Dated: September 27, 2012.

Andrew McGilvray,

Executive Secretary.

[FR Doc. 2012-24215 Filed 10-1-12; 8:45 am]

BILLING CODE P

DEPARTMENT OF COMMERCE**International Trade Administration**

[A-201-820]

Fresh Tomatoes From Mexico: Notice of Preliminary Results of Changed Circumstances Review and Intent To Terminate the Suspended Antidumping Investigation

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: On January 22, 2008, the Department of Commerce (the Department) signed the current suspension agreement on fresh tomatoes with growers/exporters of Mexican tomatoes accounting for substantially all (*i.e.*, not less than 85 percent) of Mexico's tomato exports to the United States. The agreement covers all fresh or chilled tomatoes of Mexican origin, except tomatoes that are for processing. On June 22, 2012, the U.S. petitioners in the suspended antidumping duty investigation filed a request for withdrawal of the petition and termination of the investigation and the suspension agreement. On August 21, 2012, the Department published a notice of initiation of changed circumstances review to examine the petitioners' request to terminate the suspended investigation. See *Fresh Tomatoes from Mexico: Notice of Initiation of Changed Circumstances Review*, 77 FR 50554 (August 21, 2012) and *Correction: Fresh Tomatoes From Mexico: Notice of Initiation of Changed Circumstances Review and Consideration of Termination of Suspended Investigation*, 77 FR 50556 (August 21, 2012) (collectively, *Initiation Notice*). In the *Initiation Notice* we invited interested parties to submit comments for the Department's consideration by September 4, 2012. We have considered the comments received by September 4, 2012, and, for the reasons stated in this notice and in the accompanying decision memorandum, the Department is notifying the public of our preliminary intent to terminate the suspended investigation. If the suspended investigation is terminated in the final results of this review, the

suspension agreement will also terminate, effective on the date of publication of the notice of final results of the changed circumstances review in the **Federal Register**. Interested parties are invited to comment on these preliminary results.

DATES: Effective October 2, 2012.

FOR FURTHER INFORMATION CONTACT:

Judith Wey Rudman, Julie Santoboni, or Anne D'Alauro, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone (202) 482-0192, (202) 482-3063, or (202) 482-4830, respectively.

SUPPLEMENTAL INFORMATION:

Background

On August 21, 2012, the Department published a notice of initiation of changed circumstances review to examine the petitioners' request to terminate the suspended investigation. See *Initiation Notice*. In the *Initiation Notice* we invited interested parties to submit comments for the Department's consideration by September 4, 2012. Interested parties were requested to address the issue of industry support in their comments.

On September 4, 2012, we received comments from the Florida Tomato Exchange (FTE) and the Florida Tomato Growers Exchange (FTGE), Village Farms, Windset Farms and Houwelings Nurseries Oxnard Inc. (collectively, "domestic producers"); CAADES Sinaloa, A.C., Consejo Agrícola de Baja California, A.C., Asociacion Mexicana de Horticultura Protegida, A.C., Union Agrícola Regional de Sonora Productores de Hortalizas Frutas y Legumbres, and Confederacion Nacional de Productores de Hortalizas, (collectively, "Mexican tomato growers/exporters"); San Vicente Camalu S.P.R. de R.I.; NatureSweet Ltd.; McEntire Produce; the Fresh Produce Association of the Americas; Wal-Mart; Grant County Foods, LLC; the Government of Mexico; and the Texas International Produce Association. For additional background information, please see "Decision Memorandum: Preliminary Results of Changed Circumstances Review and Intent to Terminate the Suspended Investigation" (Preliminary Decision Memorandum) from Lynn Fischer Fox, Deputy Assistant Secretary for Policy and Negotiations, to Paul Piquado, Assistant Secretary for Import Administration, dated concurrently with these results and hereby adopted by this notice.

Scope of the Suspended Investigation

The merchandise subject to the suspended investigation is all fresh or chilled tomatoes (fresh tomatoes) which have Mexico as their origin, except for those tomatoes which are for processing. The merchandise subject to the suspended investigation is currently classified under the following subheadings of the Harmonized Tariff Schedules of the United States (HTSUS), according to the season of importation: 0702 and 9906.07.01 through 9906.07.09. Although the HTSUS numbers are provided for convenience and customs purposes, the written description of the scope of the suspended investigation, available at *Suspension of Antidumping Investigation: Fresh Tomatoes from Mexico*, 73 FR 4832 (January 28, 2008), is dispositive.

Preliminary Results of Changed Circumstances Review and Intent to Terminate the Suspended Investigation

When examining the domestic industry's interest in an order or suspended investigation, both the Tariff Act of 1930, as amended (the Act), and the Department's regulations require that "substantially all" domestic producers express a lack of interest in the order or suspension agreement for revocation of an order or termination of a suspended investigation. See 782(h) of the Act and 19 CFR 222(g). The Department has interpreted "substantially all" to represent producers accounting for at least 85 percent of U.S. production of the domestic like product. *Certain Orange Juice from Brazil: Preliminary Results of Antidumping Duty Changed Circumstances Review and Intent Not to Revoke, In Part*, 73 FR 60241, 60242 (October 10, 2008), unchanged in *Certain Orange Juice From Brazil: Final Results of Antidumping Duty Changed Circumstances Review*, 74 FR 4733 (January 27, 2009).

On September 4, 2012, the domestic producers expressing a lack of interest in continuing the suspended investigation provided information regarding the percentage of domestic production that they represent. The domestic producers submitted signed declarations from 80 U.S. tomato producers accounting for slightly over 90 percent of U.S. production in 2011, based on information from the U.S. Department of Agriculture's Economic Research Service "Vegetables and Pulses Yearbook Data" (Yearbook). In their September 4, 2012, comments, the Mexican tomato growers/exporters argued that the USDA data historically

used by the petitioners does not capture total U.S. fresh tomato production. We have considered the arguments raised by interested parties and find that the USDA Yearbook is an objective and reliable source for 2011 U.S. tomato production for purposes of determining industry support in these preliminary results. While we recognize that there are limitations with the USDA data, as discussed in the Preliminary Decision Memorandum, we do not find that these limitations are sufficiently significant as to preclude us from using it to calculate industry support in this instance.

We have considered the information provided by the domestic producers and the September 4, 2012, comments of interested parties and find that, for purposes of these preliminary results, the domestic producers expressing a lack of interest in the suspended investigation account for substantially all, *i.e.*, not less than 85 percent, of the production of fresh tomatoes in the United States, based on the best publicly available production data. For a detailed discussion of this issue and the comments received from interested parties, see the Preliminary Decision Memorandum.

In light of the above, the Department is preliminarily notifying the public of its intent to terminate the suspended investigation on fresh tomatoes from Mexico.

The Department will consider new factual information from interested parties submitted on the record within 15 days of publication of this notice in the **Federal Register**. The Department will consider factual information from interested parties to rebut, clarify, or correct information placed on the record that is submitted not later than five days after the time limit for filing new factual information. For each piece of factual information submitted, the interested party must provide a written explanation of what information that is already on the record of the ongoing proceeding that the factual information is rebutting, clarifying, or correcting.

Public Comment

Interested parties are invited to comment on the preliminary results of this review. The Department will consider case briefs filed by interested parties within 30 days after the date of publication of this notice in the **Federal Register**.¹ Interested parties may file rebuttal briefs, limited to issues raised in the case briefs.² The Department will consider rebuttal briefs filed not later than ten days after the time limit for

¹ See 19 CFR 351.309(c)(1)(iii).

² See 19 CFR 351.309(d).

filing case briefs. Parties who submit arguments are requested to submit with each argument a statement of the issue, a brief summary of the argument, and a table of authorities cited.

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, U.S. Department of Commerce, filed electronically using Import Administration's Antidumping and Countervailing Duty Centralized Electronic Service System (IA ACCESS). An electronically filed document requesting a hearing must be received successfully in its entirety by the Department's electronic records system, IA ACCESS, by 5 p.m. Eastern Time within 30 days after the date of publication of this notice.³ Requests should contain the party's name, address, and telephone number, the number of participants, and a list of the issues to be discussed. If a request for a hearing is made, the Department will inform parties of the scheduled date for the hearing which will be held at the U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230, at a time and location to be determined. Parties should confirm by telephone the date, time, and location of the hearing.

The Department will issue the final results of this changed circumstances review, which will include the results of its analysis raised in any such written comments, as soon as is practicable, but not later than 270 days after the date on which this review was initiated. See 19 CFR 351.216(e).

If the suspended investigation is terminated in the final results of this review, the suspension agreement will also terminate, effective on the date of publication of the notice of final results of the changed circumstances review in the **Federal Register**.

These preliminary results of review and notice are in accordance with sections 751(b) of the Act and 19 CFR 351.216, 351.221(c)(3), and 351.222.

Dated: September 27, 2012.

Paul Piquado,

Assistant Secretary for Import Administration.

[FR Doc. 2012-24283 Filed 10-1-12; 8:45 am]

BILLING CODE 3510-DS-P

DEPARTMENT OF COMMERCE

International Trade Administration

[A-357-812, C-357-813]

Honey From Argentina: Notice of Initiation of Antidumping and Countervailing Duty Changed Circumstances Reviews and Consideration of Revocation of Antidumping and Countervailing Duty Orders

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

DATES: *Effective Date:* October 2, 2012.

FOR FURTHER INFORMATION CONTACT: Patrick Edwards or Angelica Mendoza, AD/CVD Operations, Office 7, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230, at (202) 482-8029 or (202) 482-3019, respectively.

SUMMARY: In response to a request by the American Honey Producers Association (AHPA) and the Sioux Honey Association (SHA), the petitioning parties in the original less-than-fair-value investigation (collectively, petitioners), the Department of Commerce (the Department) is initiating changed circumstances reviews of the antidumping (AD) and countervailing (CVD) duty orders on honey from Argentina. The domestic producers have expressed no further interest in the relief provided by the AD and CVD orders. Interested parties are invited to comment on this notice of initiation.

SUPPLEMENTARY INFORMATION:

Background

On December 10, 2001, the Department published the antidumping and countervailing duty orders on honey from Argentina.¹ On July 24, 2012, petitioners requested that the Department revoke the *Orders*, effective December 1, 2010, based on the domestic U.S. industry's lack of further interest.² We received submissions indicating support for revocation of the *Orders* from respondent parties participating in the ongoing administrative review of the *AD Order*

¹ See *Notice of Antidumping Duty Order: Honey from Argentina*, 66 FR 63672 (December 10, 2001) (*AD Order*). See also *Notice of Countervailing Duty Order: Honey from Argentina*, 66 FR 63673 (December 10, 2001) (*CVD Order*), (collectively, *Orders*).

² See Letter from Petitioners, entitled "Request for 'No Interest' Changed Circumstances Review of the Antidumping and Countervailing Duty Orders on Honey from Argentina," dated July 24, 2012 (CCR Request).

for the period December 1, 2010, through November 30, 2011.³ Additionally, from July 24, 2012, through July 25, 2012, we received notifications of withdrawal from the administrative review of the *AD Order* from petitioners as well as the selected mandatory respondents.⁴

Based on a review of petitioners' July 24, 2012, CCR Request, we requested that petitioners resubmit its filing to provide supplemental information and data regarding domestic U.S. honey production. Accordingly, petitioners provided the requested information on August 22, 2012.⁵ Also in their Supplemental CCR Request, petitioners clarified that the intended date of revocation for the *CVD Order* is December 1, 2011, not December 1, 2010, as they had previously stated, as there is no ongoing review of the *CVD Order* for the 2010 through 2011 period. For further discussion of the information provided in these submissions, see the "Initiation of Changed Circumstances Reviews" section below.

Scope of the Orders

The merchandise covered by the orders is honey from Argentina. The products covered are natural honey, artificial honey containing more than 50 percent natural honey by weight, preparations of natural honey containing more than 50 percent natural honey by weight, and flavored honey. The subject merchandise includes all grades and colors of honey whether in liquid, creamed, comb, cut comb, or chunk form, and whether packaged for retail or in bulk form. The merchandise is currently classifiable under subheadings 0409.00.00, 1702.90.90, and 2106.90.99 of the Harmonized Tariff Schedule of the United States (HTSUS). Although the HTSUS subheadings are

³ See, e.g., Letter from Villamora S.A. and Apicola Danagie to the Secretary of Commerce, dated July 30, 2012 and Letter from Algodonera Avellaneda, S.A., dated August 3, 2012.

⁴ See Letter from Compañía Inversora Platense S.A. to the Secretary of Commerce, re: "Honey From Argentina: Withdrawal of Antidumping Administrative Review Request of Compañía Inversora Platense S.A.," dated July 24, 2012; see also Letter from Nexco S.A. to the Secretary of Commerce, re: "Honey from Argentina, 10th Administrative Review (12/1/10-11/30/11); Withdrawal of Review Request," dated July 24, 2012; see also Letter from Petitioners to the Secretary of Commerce, re: "Tenth Administrative Review of the Antidumping Duty Order on Honey from Argentina—Petitioners' Withdrawal of Request for Administrative Review," dated July 25, 2012.

⁵ See Letter from Petitioners, entitled "Supplement to Petitioners' Request for a 'No-Interest' Changed Circumstances Review of the Antidumping and Countervailing Duty Orders on Honey from Argentina," dated August 22, 2012 (Supplemental CCR Request).

³ See 19 CFR 351.310(c).

provided for convenience and customs purposes, the Department's written description of the merchandise under the orders is dispositive.

Initiation of Changed Circumstances Reviews

Pursuant to section 751(b)(1) of the Tariff Act of 1930, as amended (the Act), the Department will conduct a changed circumstances review upon receipt of a request from an interested party or receipt of information concerning an antidumping or countervailing duty order which shows changed circumstances sufficient to warrant a review of the order.⁶ Section 351.222(g) of the Department's regulations provides that the Department will conduct a changed circumstances review under 19 CFR 351.216, and may revoke an order in whole or in part, if it determines that the producers accounting for substantially all of the production of the domestic like product have expressed a lack of interest in the order, in whole or in part.⁷ In the event that the Department concludes that expedited action is warranted, 19 CFR 351.221(c)(3)(ii) and 19 CFR 351.222(f)(2)(iv) permit the Department to combine the notices of initiation and preliminary results.

Based on the information petitioners provided in their CCR Request and Supplemental CCR Request, the Department has determined that changed circumstances sufficient to warrant the reviews exist.⁸ Both the Act and the Department's regulations require that "substantially all" domestic producers express a lack of interest in the Order for the Department to revoke.⁹ The Department has interpreted "substantially all" to represent producers accounting for at least 85 percent of U.S. production of the domestic like product.¹⁰ Because the data provided in the petitioners' request did not indicate that they account for 85 percent of domestic honey production, we are not combining this notice of initiation with a preliminary determination pursuant to 19 CFR 351.221(c)(3)(ii). Interested parties are, therefore, requested to address the issue of industry support in their comments.

This notice of initiation will accord all interested parties an opportunity to address these proposed revocations.¹¹

In accordance with section 751(b) of the Act and 19 CFR 351.216, 351.221, and 351.222, based on an affirmative statement of no interest by the domestic parties in continuing the AD and CVD orders with respect to honey from Argentina, as described above, we are initiating these changed circumstances administrative reviews.

If, as a result of these reviews, we revoke the Orders, we intend to instruct U.S. Customs and Border Protection (CBP) to end the suspension of liquidation of the subject merchandise on the effective date of the final notice of revocation, and to refund any estimated antidumping duties collected, for all unliquidated entries of such merchandise made on or after December 1, 2010, for the AD Order, and December 1, 2011, for the CVD Order. We will also instruct CBP to pay interest on such refunds in accordance with section 778 of the Act.

Public Comment

Interested parties are invited to comment on the initiation of these changed circumstances reviews. Parties who submit argument in these proceedings are requested to submit with the argument (1) a statement of the issue, and (2) a brief summary of the argument. All written comments may be submitted by interested parties not later than 5 p.m. Eastern Standard Time within 14 days after the date of publication of this notice in accordance with 19 CFR 351.303, and filed electronically using Import Administration's Antidumping and Countervailing Duty Centralized Electronic Service System (IA ACCESS).

The Department will publish in the **Federal Register** a notice of preliminary results of these changed circumstances reviews, in accordance with 19 CFR 351.221(c)(3), which will set forth the factual and legal conclusions upon which our preliminary results are based, and a description of any action proposed based on those results.

This notice of initiation is in accordance with section 751(b)(1) of the Act, 19 CFR 351.216(b) and (d), and 19 CFR 351.221(b)(1).

¹¹ See, e.g., *Certain Corrosion-Resistant Carbon Steel Flat Products and Cut-to-Length Carbon Steel Plate Products from Germany: Initiation of Countervailing Duty Changed Circumstances Reviews*, 68 FR 67657 (December 3, 2003), and *Stainless Steel Plate in Coils from Italy: Final Results of Countervailing Duty Changed Circumstances Review and Revocation of Countervailing Duty Order, in Whole*, 71 FR 15380 (March 28, 2006).

Dated: September 24, 2012.

Christian Marsh,

Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

[FR Doc. 2012-24107 Filed 10-1-12; 8:45 am]

BILLING CODE 3510-DS-P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Membership of the National Oceanic and Atmospheric Administration Performance Review Board

AGENCY: National Oceanic and Atmospheric Administration (NOAA), Department of Commerce (DOC).

ACTION: Notice of Membership of the NOAA Performance Review Board.

SUMMARY: In accordance with 5 U.S.C. 4314(c)(4), NOAA announces the appointment of members who will serve on the NOAA Performance Review Board (PRB). The NOAA PRB is responsible for reviewing performance appraisals and ratings of Senior Executive Service Professional members and making written recommendations to the appointing authority on retention and compensation matters, including performance-based pay adjustments, awarding of bonuses, and reviewing recommendations for potential Presidential Rank Award nominees. The appointment of new members to the NOAA PRB will be for a period of two (2) years.

DATES: Effective Date: The effective date of service of the five new appointees to the NOAA Performance Review Board is September 30, 2012.

FOR FURTHER INFORMATION CONTACT: Omar Williams, Executive Resources Program Manager, Workforce Management Office, NOAA, 1305 East-West Highway, Silver Spring, Maryland 20910, (301) 713-6301.

SUPPLEMENTARY INFORMATION: The names and positions of the members for the 2012 NOAA PRB are set forth below:

Holly A. Bamford, Chair, Deputy Assistant Administrator for Ocean Services and Coastal Zone Management, National Ocean Service.
Charles S. Baker, Co-Chair, Deputy Assistant Administrator, National Environmental Satellite, Data and Information Service.
Jon P. Alexander, Director, Finance Office/Comptroller.
Russell F. Smith III, Deputy Assistant Secretary for International Fisheries, Office of the Under Secretary.
Tyra Dent Smith, Deputy Director, Office of Human Resources

⁶ See also 19 CFR 351.216.

⁷ See section 782(h) of the Act and section 351.222(g)(1) of the Department's regulations.

⁸ See 19 CFR 351.216(d).

⁹ See 782(h) of the Act and 19 CFR 351.222(g).

¹⁰ See *Certain Orange Juice from Brazil: Preliminary Results of Antidumping Duty Changed Circumstances Review and Intent Not to Revoke, In Part*, 73 FR 60241, 60242 (October 10, 2008), unchanged in *Certain Orange Juice From Brazil: Final Results of Antidumping Duty Changed Circumstances Review*, 74 FR 4733 (January 27, 2009).

Management. U.S. Department of Commerce.
 Mark S. Paese, Director, Office of Operational Systems. Office of Operational Systems, National Weather Service.
 Ciaran M. Clayton, Director of Communications Office of the Under Secretary.
 Steven S. Fine, Ph.D., Director, Air Resources Laboratory, Office of Air Resources Laboratory, Office of Oceanic and Atmospheric Research.
 Dr. Ned Cyr, Director, Office of Science and Technology National Marine Fisheries Service.

Dated: September 24, 2012

Jane Lubchenco,

Under Secretary of Commerce for Oceans and Atmosphere.

[FR Doc. 2012-24230 Filed 10-1-12; 8:45 am]

BILLING CODE 3510-12-P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

National Estuarine Research Reserve System

AGENCY: Estuarine Reserves Division, Office of Ocean and Coastal Resource Management, National Ocean Service, National Oceanic and Atmospheric Administration, U.S. Department of Commerce.

ACTION: Notice of Approval of the Rookery Bay, Florida and Kachemak Bay, Alaska National Estuarine Research Reserve Management Plan Revisions.

SUMMARY: Notice is hereby given that the Estuarine Reserves Division, Office of Ocean and Coastal Resource Management, National Ocean Service, National Oceanic and Atmospheric Administration, U.S. Department of Commerce approves the Rookery Bay, Florida and the Kachemak Bay, Alaska National Estuarine Research Reserve Management Plan Revisions. The revised management plans outline the administrative structure; the research, education, training, and stewardship goals of the reserve; and the plans for future land acquisition and facility development to support reserve operations.

The Rookery Bay Reserve takes an integrated approach to management, linking research, education, training and stewardship functions to address high priority issues within the 110,000 acre Reserve including land use changes affecting freshwater inflow, loss of native biodiversity, lack of public awareness and community involvement

in stewardship, incompatible use by visitors, and ecological impacts of catastrophic change events. The Reserve's Environmental Learning Center provides excellent visitor education experiences and a connecting pedestrian bridge connects visitors to a boardwalk and interpretive trails.

The Kachemak Bay Reserve takes an integrated approach to management by linking research, education, and training functions within the 372,000 acre Reserve to address high priority issues including climate change and harvested species, such as salmon and shellfish. The Reserve will continue research on coastal dynamics, monitoring of invasive species and harmful algal blooms, and will transfer information to coastal decision makers.

The Rookery Bay, Florida Reserve Management Plan can be found at www.floridadep.org/rookery/management/plan.htm and the Kachemak Bay, Alaska Reserve Management Plan can be found at www.adfg.alaska.gov/index.cfm?adfg=kbr_r_resources.management.

FOR FURTHER INFORMATION CONTACT:

Erica Seiden at (301) 563-1172 or Laurie McGilvray at (301) 563-1158 of NOAA's National Ocean Service, Estuarine Reserves Division, 1305 East-West Highway, N/ORM5, 10th floor, Silver Spring, MD 20910.

Dated: September 13, 2012.

Margaret Davidson,

Acting Director, Office of Ocean and Coastal Resource Management, National Oceanic and Atmospheric Administration.

[FR Doc. 2012-24156 Filed 10-1-12; 8:45 am]

BILLING CODE 3510-08-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648-XC218

Marine Mammals; File No. 17298

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

ACTION: Notice; receipt of application.

SUMMARY: Notice is hereby given that Mystic Aquarium, Mystic, Connecticut 06355 [Responsible Party: Stephen Coan], has applied in due form for a permit to collect, import, export, and receive marine mammal parts for scientific research.

DATES: Written, telefaxed, or email comments must be received on or before November 1, 2012.

ADDRESSES: The application and related documents are available for review by selecting "Records Open for Public Comment" from the *Features* box on the Applications and Permits for Protected Species (APPS) home page, <https://apps.nmfs.noaa.gov>, and then selecting File No. 17298 from the list of available applications.

These documents are also available upon written request or by appointment in the following offices:

Permits and Conservation Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910; phone (301) 427-8401; fax (301) 713-0376; and

Northeast Region, NMFS, 55 Great Republic Drive, Gloucester, MA 01930; phone (978) 281-9328; fax (978) 281-9394.

Written comments on this application should be submitted to the Chief, Permits and Conservation Division, at the address listed above. Comments may also be submitted by facsimile to (301) 713-0376, or by email to NMFS.Pr1Comments@noaa.gov. Please include the File No. in the subject line of the email comment.

Those individuals requesting a public hearing should submit a written request to the Chief, Permits and Conservation Division at the address listed above. The request should set forth the specific reasons why a hearing on this application would be appropriate.

FOR FURTHER INFORMATION CONTACT: Joselyd Garcia-Reyes or Amy Sloan, (301) 427-8401.

SUPPLEMENTARY INFORMATION: The subject permit is requested under the authority of the Marine Mammal Protection Act of 1972, as amended (MMPA; 16 U.S.C. 1361 *et seq.*), the regulations governing the taking and importing of marine mammals (50 CFR part 216), the Endangered Species Act of 1973, as amended (ESA; 16 U.S.C. 1531 *et seq.*), the regulations governing the taking, importing, and exporting of endangered and threatened species (50 CFR 222-226), and the Fur Seal Act of 1966, as amended (16 U.S.C. 1151 *et seq.*).

The objective of this application is to support multiple ongoing research programs at the Mystic Aquarium, including studies of diet and nutrition, disease, immune function, environmental stressors, toxicology and health of marine mammals. Mystic Aquarium requests the annual collection, receipt, import and export of samples from 5,000 individual cetaceans and 5,000 individual pinnipeds under NMFS jurisdiction for continued research on these species.

Please refer to the following Web site for the list of species: https://apps.nmfs.noaa.gov/docs_cfm/species_lists.cfm. The applicant is requesting samples of marine mammals legally taken in the countries of origin that are the product of a legal subsistence hunt, incidental by-catch, routine husbandry/medical examinations of legally held captive animals, stranded animals in foreign countries, and samples taken under other permitted research activities. No takes of live animals, direct or indirect, are requested in this application. Mystic Aquarium requests the permit be valid for five years.

In compliance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*), an initial determination has been made that the activity proposed is categorically excluded from the requirement to prepare an environmental assessment or environmental impact statement.

Concurrent with the publication of this notice in the **Federal Register**, NMFS is forwarding copies of the application to the Marine Mammal Commission and its Committee of Scientific Advisors.

Dated: September 25, 2012.

P. Michael Payne,

Chief, Permits and Conservation Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2012-24206 Filed 10-1-12; 8:45 am]

BILLING CODE 3510-22-P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648-BA75

Atlantic Highly Migratory Species; Electronic Dealer Reporting System Workshop

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

ACTION: Notice of public workshops.

SUMMARY: On August 8, 2012, NMFS published a final rule that will require, among other things, Federal Atlantic

swordfish, shark, and tunas dealers (except for dealers reporting Atlantic bluefin tuna) to report receipt of Atlantic sharks, swordfish, and bigeye, albacore, yellowfin, and skipjack (BAYS) tunas through one centralized electronic reporting system starting on January 1, 2013. This electronic reporting system will allow dealers to submit Atlantic sharks, swordfish, and BAYS tuna data on a more real-time basis and more efficiently, and will reduce duplicative data submissions from different regions. This notice announces the dates and locations of several training workshops to introduce the new reporting system to HMS dealers. These workshops will be held in the Gulf of Mexico and Atlantic regions and are open to any interested parties.

DATES: Training workshops for the new electronic dealer system will be held from October through December 2012. See **SUPPLEMENTARY INFORMATION** for meeting dates, times, and locations.

ADDRESSES: Workshops will be held in Barnegat Light, NJ; Ocean Pines, MD; Gulf Shores and Coden, AL; Charleston, SC; Portland, ME; Gloucester, MA; Manteo, NC, and Dickinson, TX. See **SUPPLEMENTARY INFORMATION** for dates, times, and locations.

FOR FURTHER INFORMATION CONTACT: Delisse Ortiz or Karyl Brewster-Geisz at (301) 427-8503 (phone); or Jackie Wilson at (240) 338-3936, or (301) 713-1917 (fax); or <http://www.nmfs.noaa.gov/sfa/hms/index.htm>.

SUPPLEMENTARY INFORMATION: Atlantic HMS are managed under the dual authority of the Magnuson-Stevens Fishery Conservation and Management Act (MSA), 16 U.S.C. 1801 *et seq.*, and the Atlantic Tunas Convention Act (ATCA), 16 U.S.C. 971 *et seq.* Under the MSA, NMFS must ensure consistency with the National Standards and manage fisheries to maintain optimum yield, rebuild overfished fisheries, and prevent overfishing. ATCA authorizes the Secretary of Commerce to promulgate regulations, as may be necessary and appropriate, to implement the recommendations adopted by the International Commission for the Conservation of

Atlantic Tunas (ICCAT). The authority to issue regulations under MSA and ATCA has been delegated from the Secretary to the Assistant Administrator for Fisheries, NOAA. The implementing regulations for Atlantic HMS are at 50 CFR part 635.

Background

On August 8, 2012 (77 FR 47303), we published a final rule in the **Federal Register** that requires, among other things, Federal Atlantic swordfish, shark, and tunas dealers (except for dealers reporting Atlantic bluefin tuna) to report receipt of Atlantic sharks, swordfish, and BAYS tunas through one centralized electronic reporting system. Under this new system, dealers will submit HMS data electronically (instead of in a paper format) and include additional information that is necessary for management purposes (*e.g.*, vessel and logbook information). The electronic submission of data will eliminate the delay associated with mailing in hardcopy reports. In this manner, HMS landings data will be submitted on a more real-time basis, allowing for timely and efficient data collection for management of Atlantic HMS.

In order to give sufficient time for dealers to adjust to implementation of the new system and the additional requirements, we delayed implementation of the new HMS electronic reporting system for all federally-permitted HMS dealers until January 1, 2013. Additionally, we are conducting outreach to HMS dealers to train them how to use the new system and help ease the transition from the current paper format to the new HMS electronic reporting system. To date, we conducted 11 training workshops in the Caribbean, Gulf of Mexico and Atlantic regions in order to introduce the new reporting system to HMS dealers. In this notice, we announce the date and location for one webinar and nine additional training workshops in the Gulf of Mexico and Atlantic regions in order to continue introducing HMS dealers to the new electronic system. We may announce additional workshops at a future date.

Tentative date	Time	Meeting locations	Address
October 17, 2012	6:00-9:00 pm	US Coast Guard Station Barnegat Light	Sixth and Bayview Avenue, Barnegat Light, NJ 08006.
October 18, 2012	2:00-5:00 pm	Ocean Pines Library Conference Room	111707 Cathell Road, Ocean Pines, MD 21811.
October 23, 2012	3:00-6:00 pm	Alabama Department of Conservation and Natural Resources Division/Marine Resources Claude Peteet Mariculture Center.	21055 Waterway E Blvd, Gulf Shores, AL 36542.
October 24, 2012	3:00-6:00 pm	Coastal Response Center	7385 Highway 188, Coden, AL 36523.

Tentative date	Time	Meeting locations	Address
November 1, 2012	5:00–8:00 pm	SC Dept of Natural Resources Marine Resources Research Institute Auditorium.	217 Fort Johnson Rd., Charleston, SC 29412.
November 8, 2012	5:00–8:00 pm	Casco Bay Ferry Terminal (Casco Bay Lines)	56 Commercial Street, Portland, ME 04112.
November 14, 2012	2:00–5:00 pm	NOAA Northeast Regional Office	55 Great Republic Drive, Gloucester, MA 01930.
November 27, 2012	1:00–4:00 pm	Webinar	https://www1.gotomeeting.com/register/941053440 .
December 5, 2012	4:00–7:00 pm	Dare County Administration Building, Room 168.	954 Marshall C. Collins Drive, Manteo, NC 27954.
December 13, 2012	5:00–8:00 pm	Texas Parks and Wildlife Department	1502 FM 517 East, Dickinson, TX 77539.

These workshops will be physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Delisse Ortiz at (301) 425–8503 or Jackie Wilson at (240) 338–3936 at least 7 days prior to the workshop date. The public is reminded that NMFS expects participants at the workshop to conduct themselves appropriately. At the beginning of each workshop, a representative of NMFS will explain the ground rules (e.g., alcohol is prohibited from the hearing room; each attendee will have an opportunity to ask questions; and attendees should not interrupt one another). Attendees are expected to respect the ground rules; if they do not, they will be asked to leave the workshop.

Dated: September 27, 2012.

Lindsay Fullenkamp,

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

[FR Doc. 2012–24205 Filed 10–1–12; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XC187

Takes of Marine Mammals Incidental to Specified Activities; Harbor Activities Related to the Delta IV/Evolved Expendable Launch Vehicle at Vandenberg Air Force Base, CA

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

ACTION: Notice; issuance of an incidental harassment authorization.

SUMMARY: In accordance with the Marine Mammal Protection Act (MMPA) regulations, notification is hereby given that NMFS has issued an Incidental Harassment Authorization (IHA) to United Launch Alliance (ULA), to take marine mammals, by Level B

harassment, incidental to conducting *Delta Mariner* activities related to the Delta IV/Evolved Expendable Launch Vehicle (Delta IV/EELV) at south Vandenberg Air Force Base, CA (VAFB).

DATES: Effective September 26, 2012, through September 25, 2013.

ADDRESSES: To obtain an electronic copy of the authorization, application, and associated Environmental Assessment (EA) and Finding of No Significant Impact (FONSI), write to the previously mentioned address, telephone the contact listed here (see **FOR FURTHER INFORMATION CONTACT**), or download the file at: <http://www.nmfs.noaa.gov/pr/permits/incidental.htm#applications>.

Documents cited in this notice may also be viewed, by appointment, during regular business hours, at the aforementioned address.

FOR FURTHER INFORMATION CONTACT:

Jeannine Cody, NMFS, Office of Protected Resources, NMFS (301) 427–8401.

SUPPLEMENTARY INFORMATION:

Background

Section 101(a)(5)(D) of the MMPA (MMPA; 16 U.S.C. 1361 *et seq.*) directs the Secretary of Commerce to authorize, upon request, the incidental, but not intentional, taking of small numbers of marine mammals of a species or population stock, by United States citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region if: (1) We make certain findings; (2) the taking is limited to harassment; and (3) we provide a notice of a proposed authorization to the public for review.

Authorization shall be granted for the incidental taking of small numbers of marine mammals if we, NMFS, find that the taking will have a negligible impact on the species or stock(s), and will not have an unmitigable adverse impact on the availability of the species or stock(s) for subsistence uses (where relevant). The authorization must set forth the permissible methods of taking; other means of effecting the least practicable adverse impact on the species or stock

and its habitat; and requirements pertaining to the mitigation, monitoring and reporting of such takings.

We have defined “negligible impact” in 50 CFR 216.103 as “an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival.”

Section 101(a)(5)(D) of the Marine Mammal Protection Act established an expedited process by which citizens of the United States can apply for an authorization to incidentally take small numbers of marine mammals by harassment. Section 101(a)(5)(D) of the Act establishes a 45-day time limit for our review of an application followed by a 30-day public notice and comment period on any proposed authorizations for the incidental harassment of small numbers of marine mammals. Within 45 days of the close of the public comment period, we must either issue or deny the authorization and must publish a notice in the **Federal Register** within 30 days of our determination to issue or deny the authorization.

Except with respect to certain activities not applicable here, the Marine Mammal Protection Act defines “harassment” as: Any act of pursuit, torment, or annoyance which (i) has the potential to injure a marine mammal or marine mammal stock in the wild [Level A harassment]; or (ii) has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering [Level B harassment].

Summary of Request

We received an application on May 7, 2012, from United Launch Alliance requesting the taking, by Level B harassment only, of small numbers of marine mammals, incidental to conducting *Delta Mariner* harbor operations for one year. We determined the application complete and adequate on June 5, 2012.

These activities (*i.e.*, transport vessel operations, cargo movement activities, and harbor maintenance dredging) will support Delta IV/EELV launch activities from the Space Launch Complex at Vandenberg Air Force Base (Base) and would occur in the vicinity of a known pinniped haul out site (Small Haul-out Site #1 in the Application) located in a harbor on the southwest section of the Base.

Acoustic and visual stimuli generated by the use of heavy equipment during the *Delta Mariner* off-loading operations and the cargo movement activities, the increased presence of personnel, and harbor maintenance dredging may have the potential to cause California sea lions (*Zalophus californianus*), Pacific harbor seals (*Phoca vitulina*), and Northern elephant seals (*Mirounga angustirostris*) hauled out on Small Haul-out Site #1 to flush into VAFB Harbor or to cause a short-term behavioral disturbance for marine mammals in the area. These types of disturbances are the principal means of marine mammal taking associated with these activities, and ULA has requested an authorization to take 1,075 Pacific harbor seals; 86 California sea lions; and 43 Northern elephant seals by Level B harassment only.

We have outlined the purpose of the program in a previous notice for the proposed Authorization (77 FR 38587, June 28, 2012). ULA's proposed activities have not changed between the proposed IHA notice and this final notice announcing the issuance of the Authorization. For a more detailed description of the authorized action, including a discussion of associated noise sources from the harbor operations, refer to the notice of the proposed IHA (77 FR 38587, June 28, 2012) and the application for a more detailed description of the authorized action.

This is ULA's tenth request for an Authorization and they have requested take of Pacific harbor seals; California sea lions; and Northern elephant seals by Level B harassment only. To date, we have issued nine, 1-year, Incidental Harassment Authorizations to them for the same activities from 2002 to 2011, with the last Authorization expiring on June 6, 2012 (76 FR 33721, June 9, 2011).

Description of the Specified Geographic Region

The activities will take place in or near the VAFB harbor located on the central coast of California at 34°33' N, 120°36' W in the northeast Pacific Ocean. The harbor is approximately 2.5 miles (mi) (4.02 kilometers (km)) south

of Point Arguello, CA, and approximately 1 mi (1.61 km) south of the nearest marine mammal rookery.

Comments and Responses

We published a notice of receipt of the ULA application and proposed IHA in the **Federal Register** on June 28, 2012 (77 FR 38587). During the 30-day public comment period, we received one comment from the Marine Mammal Commission (Commission).

Comment 1: The Commission recommended that we issue the IHA, subject to inclusion of the proposed mitigation and monitoring measures.

Response: The issued IHA will include all of the mitigation and monitoring measures that we proposed in the notice of the proposed IHA (77 FR 38587, June 28, 2012).

Description of Marine Mammals in the Area of the Specified Activity

The marine mammal species most likely to be harassed incidental to conducting *Delta Mariner* activities at the Base are the California sea lion, the Pacific harbor seal, and the northern elephant seal. California sea lions, Pacific harbor seals, and northern elephant seals are not listed as threatened or endangered under the U.S. Endangered Species Act of 1973 (ESA; 16 U.S.C. 1531 *et seq.*), nor are they categorized as depleted under the MMPA.

Other cetaceans that have the potential to transit in the vicinity of the Base's harbor include the short-beaked common dolphin (*Delphinus delphis*), the Pacific white-sided dolphin (*Lagenorhynchus obliquidens*), and the gray whale (*Eschrichtius robustus*). However, these species are rare in the immediate harbor area. We included a more detailed discussion of the status of these stocks and their occurrence at the Base in the notice of the proposed IHA (77 FR 38587, June 28, 2012).

Potential Effects on Marine Mammals

Acoustic and visual stimuli generated by: The use of heavy equipment during the *Delta Mariner* off-loading operations and harbor dredging and the increased presence of personnel may have the potential to cause Level B harassment of any pinnipeds hauled out in the VAFB harbor. This disturbance from acoustic and visual stimuli is the principal means of marine mammal taking associated with these activities.

The effects of the harbor activities would be limited to short-term startle responses and localized behavioral changes and have the potential to temporarily displace the animals from a haul out site. We would expect the

pinnipeds to return to a haulout site within 60 minutes of the disturbance (Allen *et al.*, 1985) and do not expect that the pinnipeds would permanently abandon a haul-out site during the conduct of harbor maintenance and *Delta Mariner* operations.

None of ULA's operations would occur on pinniped rookeries; therefore, we do not expect mother and pup separation or crushing of pups to occur. For a more detailed discussion of the sound levels produced by the equipment, behavioral reactions of marine mammals to loud noises or looming visual stimuli, and some specific observations of the response of marine mammals to this activity gathered during previous monitoring, we refer the reader to the notice of the proposed IHA (77 FR 38587, June 28, 2012), the application, and associated documents.

Anticipated Effects on Habitat

We do not anticipate that the proposed operations would result in any temporary or permanent effects on the habitats used by the marine mammals in the proposed area, including the food sources they use (*i.e.* fish and invertebrates). We do not anticipate that there would be any physical damage to any habitat. While we anticipate that the specified activity may result in marine mammals avoiding certain areas due to temporary ensonification and human presence, this impact to habitat is temporary and reversible which we considered in detail in the notice of the proposed IHA (77 FR 38587, June 28, 2012), as behavioral modification.

Mitigation

In order to issue an incidental take authorization under section 101(a)(5)(D) of the Marine Mammal Protection Act, we must set forth the permissible methods of taking pursuant to such activity, and other means of effecting the least practicable adverse impact on such species or stock and its habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance, and the availability of such species or stock for taking for certain subsistence uses.

ULA has based the mitigation measures described herein, to be implemented for harbor operations, on the following:

- (1) Protocols used during previous operations as required by us; and
- (2) Previous Authorization applications and Authorizations issued by us.

To reduce the potential for disturbance from visual and acoustic stimuli associated with the activities,

ULA/and or its designees shall implement the following mitigating measures for marine mammals:

(1) If activities occur during nighttime hours, United Launch Alliance will turn on lighting equipment before dusk. The lights would remain on for the entire night to avoid startling pinnipeds.

(2) Initiate operations before dusk.

(3) Keep construction noises at a constant level (*i.e.*, not interrupted by periods of quiet in excess of 30 minutes) while pinnipeds are present.

(4) If activities cease for longer than 30 minutes and pinnipeds are in the area, United Launch Alliance would initiate a gradual start-up of activities to ensure a gradual increase in noise levels.

(5) A qualified marine mammal observer would visually monitor the harbor seals on the beach adjacent to the harbor and on rocks for any flushing or other behaviors as a result of United Launch Alliance's activities (see Proposed Monitoring).

(6) The *Delta Mariner* and accompanying vessels would enter the harbor only when the tide is too high for harbor seals to haul-out on the rocks; reducing speed to 1.5 to 2 knots (1.5–2.0 nm/hr; 2.8–3.7 km/hr) once the vessel is within 3 mi (4.83 km) of the harbor. The vessel would enter the harbor stern first, approaching the wharf and moorings at less than 0.75 knot (1.4 km/hr).

(7) As United Launch Alliance explores alternate dredge methods, the dredge contractor may introduce quieter techniques and equipment.

We have carefully evaluated the applicant's proposed mitigation measures and have considered a range of other measures in the context of ensuring that we prescribe the means of effecting the least practicable impact on the affected marine mammal species and stocks and their habitat. Our evaluation of potential measures included consideration of the following factors in relation to one another:

(1) the manner in which, and the degree to which, the successful implementation of the measure is expected to minimize adverse impacts to marine mammals;

(2) the proven or likely efficacy of the specific measure to minimize impacts as planned; and

(3) the practicability of the measure for applicant implementation.

Based on our evaluation of the applicant's proposed measures, as well as other measures considered by us or recommended by the public, we have determined that the mitigation measures provide the means of effecting the least practicable adverse impacts on marine

mammals species or stocks and their habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance.

Monitoring

In order to issue an ITA for an activity, section 101(a)(5)(D) of the MMPA states that NMFS must set forth "requirements pertaining to the monitoring and reporting of such taking". The MMPA implementing regulations at 50 CFR 216.104 (a)(13) indicate that requests for IHAs must include the suggested means of accomplishing the necessary monitoring and reporting that will result in increased knowledge of the species and of the level of taking or impacts on populations of marine mammals that are expected to be present in the action area.

ULA will sponsor a marine mammal monitor during the present project, in order to implement the mitigation measures thus satisfying the monitoring requirements of the IHA. ULA's monitoring activities will consist of:

(1) Designating a qualified and biologically trained observer monitoring the area for pinnipeds during all harbor activities. During nighttime activities, the monitor would use a night vision scope.

(2) Conducting baseline observation of pinnipeds in the project area prior to initiating project activities.

(3) Conducting and recording observations on pinnipeds in the vicinity of the harbor for the duration of the activity occurring when tides are low enough (less than or equal to 2 ft (0.61 m) for pinnipeds to haul out.

(4) Conducting post-construction observations of pinniped haul-outs in the project area to determine whether animals disturbed by the project activities return to the haul-out.

Reporting

United Launch Alliance will notify us two weeks prior to initiation of each activity. After the completion of each activity, they will submit a draft final monitoring report to us within 120 days to the Director of the Office of Protected Resources at our headquarters. If United Launch Alliance receives no comments from us on the draft Final Monitoring Report, we would consider the draft Final Monitoring Report to be the Final Monitoring Report.

The final report would provide dates, times, durations, and locations of specific activities, details of pinniped behavioral observations, and estimates of numbers of affected pinnipeds and impacts (behavioral or other). In addition, the report would include

information on the weather, tidal state, horizontal visibility, and composition (species, gender, and age class) and locations of haul-out group(s).

In the unanticipated event that the specified activity clearly causes the take of a marine mammal in a manner prohibited by the authorization (if issued), such as an injury (Level A harassment), serious injury or mortality (*e.g.*, ship-strike, gear interaction, and/or entanglement), United Launch Alliance shall immediately cease the specified activities and immediately report the incident to the Incidental Take Program Supervisor, Permits and Conservation Division, Office of Protected Resources, NMFS, at 301–427–8401 and/or by email to Jolie.Harrison@noaa.gov and ITP.Cody@noaa.gov and to the Southwest Regional Stranding Coordinator at (562) 980–3230 (Sarah.Wilkin@noaa.gov). The report must include the following information:

- Time, date, and location (latitude/longitude) of the incident;
- Name and type of vessel involved;
- Vessel's speed during and leading up to the incident;
- Description of the incident;
- Status of all sound source use in the 24 hours preceding the incident;
- Water depth;
- Environmental conditions (*e.g.*, wind speed and direction, Beaufort sea state, cloud cover, and visibility);
- Description of all marine mammal observations in the 24 hours preceding the incident;
- Species identification or description of the animal(s) involved;
- Fate of the animal(s); and
- Photographs or video footage of the animal(s) (if equipment is available).

United Launch Alliance shall not resume its activities until we are able to review the circumstances of the prohibited take. We shall work with them to determine what is necessary to minimize the likelihood of further prohibited take and ensure Marine Mammal Protection Act compliance. They may not resume their activities until notified by us via letter, email, or telephone.

In the event that United Launch Alliance discovers an injured or dead marine mammal, and the observer determines that the cause of the injury or death is unknown and the death is relatively recent (*i.e.*, in less than a moderate state of decomposition as we describe in the next paragraph), the United Launch Alliance will immediately report the incident to the Incidental Take Program Supervisor, Permits and Conservation Division, Office of Protected Resources, at 301–427–8401 and/or by email to

Jolie.Harrison@noaa.gov and ITP.Cody@noaa.gov and to the Southwest Regional Stranding Coordinator at (562) 980-3230 (Sarah.Wilkin@noaa.gov). The report must include the same information identified in the paragraph above this section. Activities may continue while we review the circumstances of the incident. We will work with the United Launch Alliance to determine whether modifications in the activities are appropriate.

In the event that United Launch Alliance discovers an injured or dead marine mammal, and the observer determines that the injury or death is not associated with or related to the authorized activities (e.g., previously wounded animal, carcass with moderate to advanced decomposition, or scavenger damage), United Launch Alliance will report the incident to the Incidental Take Program Supervisor, Permits and Conservation Division, Office of Protected Resources, at 301-427-8401 and/or by email to Jolie.Harrison@noaa.gov and ITP.Cody@noaa.gov and the Southwest Regional Stranding Coordinator at (562) 980-3230 (Sarah.Wilkin@noaa.gov), within 24 hours of the discovery. United Launch Alliance will provide photographs or video footage (if available) or other documentation of the stranded animal sighting to us.

Estimated Take by Incidental Harassment

Except with respect to certain activities not pertinent here, the Marine Mammal Protection Act defines "harassment" as: any act of pursuit, torment, or annoyance which (i) has the potential to injure a marine mammal or marine mammal stock in the wild [Level A harassment]; or (ii) has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering [Level B harassment].

We anticipate take by Level B harassment only as a result of the harbor maintenance and *Delta Mariner* operations in the VAFB harbor. Based on previous monitoring reports, with the same activities conducted in the proposed operations area, we estimate that approximately 1,161 Pacific harbor seals; 86 California sea lions; and 43 northern elephant seals could be potentially affected by Level B behavioral harassment over the course of the period of effectiveness of the proposed Authorization. We base these estimates on historical pinniped survey counts from 2001 to 2011 and calculated

takes by multiplying the average of the maximum abundance by 43 days (i.e., the total number of operational days). Thus, United Launch Alliance requests an Authorization to incidentally harass approximately 1,161 Pacific harbor seals (27 animals times 43 days), 86 California sea lions (2 animals times 43 days), and 43 northern elephant seals (1 animal times 43 days).

For this IHA, NMFS has authorized the take of 1,161 Pacific harbor seals, 86 California sea lions, and 43 northern elephant seals. Because of the required mitigation measures and the likelihood that some pinnipeds will avoid the area due to wave inundation of the haulout area, we expect no injury, serious injury, or mortality to occur, and no takes by injury or mortality are authorized.

Negligible Impact and Small Numbers Analysis and Determination

We have defined "negligible impact" in 50 CFR 216.103 as "* * * an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival." In making a negligible impact determination, we consider:

- (1) The number of anticipated injuries, serious injuries, or mortalities;
- (2) The number, nature, and intensity, and duration of Level B harassment (all relatively limited); and
- (3) The context in which the takes occur (i.e., impacts to areas of significance, impacts to local populations, and cumulative impacts when taking into account successive/contemporaneous actions when added to baseline data);
- (4) The status of stock or species of marine mammals (i.e., depleted, not depleted, decreasing, increasing, stable, impact relative to the size of the population);
- (5) Impacts on habitat affecting rates of recruitment/survival; and
- (6) The effectiveness of monitoring and mitigation measures.

As mentioned previously, we estimate that three species of marine mammals could be potentially affected by Level B harassment over the course of the Authorization. For each species, these numbers are small relative to the population size. These incidental harassment numbers represent 0.03 percent of the U.S. stock of California sea lion, 3.8 percent of the California stock of Pacific harbor seal, and 0.03 percent of the California breeding stock of northern elephant seal.

For reasons stated previously in this document, United Launch Alliance's

specified activities are not likely to cause long-term behavioral disturbance, abandonment of the haulout area, serious injury, or mortality because:

(1) The effects of the harbor activities are expected to be limited to short-term startle responses and localized behavioral changes. Minor and brief responses, such as short-duration startle or alert reactions, are not likely to constitute disruption of behavioral patterns, such as migration, nursing, breeding, feeding, or sheltering.

(2) The likelihood that marine mammal detection by trained, visual observers is high at close proximity the harbor;

(3) *Delta Mariner* off-loading operations and associated cargo movements within the harbor would occur at a maximum frequency of four times per year and the vessel's arrival and departure would occur during daylight hours at high tide when the haulout areas are fully submerged and few, if any, pinnipeds are present in the harbor;

(4) The relatively slow operational speed of the *Delta Mariner* (1.5 to 2 kts; 1.72 mph) during its approach to the harbor at high tide and the vessel's slow operational speed (0.75 kts; 0.86 mph) during its approach to the wharf;

(5) There is no potential for large-scale movements leading to serious injury or mortality near the south Base harbor because, historically, the number of harbor seals hauled out near the site is less than 30 individuals;

(6) The specified activities do not occur near rookeries;

(7) The availability of alternate areas near the harbor for pinnipeds to avoid the resultant noise from the maintenance and vessel operations. Results from previous monitoring reports that support our conclusions that the pinnipeds returned to the haulout site during periods of low tide after the disturbance and do not permanently abandon a haul-out site during the conduct of harbor maintenance and *Delta Mariner* operations.

We do not anticipate that any injuries, serious injuries, or mortalities would occur as a result of ULA's proposed activities, and we do not propose to authorize injury, serious injury or mortality. These species may exhibit behavioral modifications, including temporarily vacating the area during the proposed harbor maintenance and *Delta Mariner* operations to avoid the resultant acoustic and visual disturbances. Due to the nature, degree, and context of the behavioral harassment anticipated, the activities are not expected to impact rates of recruitment or survival. Further, these

proposed activities would not take place in areas of significance for marine mammal feeding, resting, breeding, or calving and would not adversely impact marine mammal habitat.

We have determined, provided that ULA carries out the previously described mitigation and monitoring measures, that the impact of conducting harbor activities related to the Delta IV/ Evolved Expendable Launch Vehicle at Vandenberg Air Force Base, CA, September 2012, through September 2013, may result, at worst, in a temporary modification in behavior and/or low-level physiological effects (Level B harassment) of small numbers of certain species of marine mammals.

Based on the analysis contained here of the likely effects of the specified activity on marine mammals and their habitat, and taking into consideration the implementation of the mitigation and monitoring measures, have determined that the total taking from the proposed activities will have a negligible impact on the affected species or stocks; and that impacts to affected species or stocks of marine mammals would be mitigated to the lowest level practicable.

Impact on Availability of Affected Species or Stock for Taking for Subsistence Uses Section 101(a)(5)(D) of the Marine Mammal Protection Act also requires us to determine that the authorization will not have an unmitigable adverse effect on the availability of marine mammal species or stocks for subsistence use. There are no relevant subsistence uses of marine mammals in the study area (northeastern Pacific Ocean) that implicate section 101(a)(5)(D) of the Marine Mammal Protection Act.

Endangered Species Act (ESA)

This action will not affect species listed under the Endangered Species Act that are under our jurisdiction. The U.S. Fish and Wildlife Service issued a Biological Opinion in August 2001, which concluded that the program was not likely to jeopardize the continued existence of the southern sea otter. The activities covered by our Incidental Harassment Authorization are analyzed in that Biological Opinion, and this Authorization does not modify the action in a manner not previously analyzed.

National Environmental Policy Act (NEPA)

In 2001, the U.S. Air Force (Air Force) prepared an Environmental Assessment for Harbor Activities Associated with the Delta IV Program at Vandenberg Air Force Base. In 2005, we prepared an

Environmental Assessment augmenting the information contained in the Air Force's EA and issued a Finding of No Significant Impact on the issuance of an Incidental Harassment Authorization for United Launch Alliance's harbor activities in accordance with section 6.01 of the NOAA Administrative Order 216-6 (Environmental Review Procedures for Implementing the National Environmental Policy Act, May 20, 1999). United Launch Alliance's proposed activities and impacts for 2012-2013 are within the scope of our 2005 Environmental Assessment and Finding of No Significant Impact. We have again reviewed the 2005 Environmental Assessment and determined that there are no new direct, indirect or cumulative impacts to the human and natural environment associated with the Incidental Harassment Authorization requiring evaluation in a supplemental Environmental Assessment and we, therefore, we reaffirm the 2005 Finding of No Significant Impact.

Authorization

As a result of these determinations, NMFS has issued an IHA to ULA to take marine mammals, by Level B harassment only, incidental to conducting *Delta Mariner* operations, cargo unloading activities, and harbor maintenance activities at south VAFB, provided the previously mentioned mitigation, monitoring, and reporting requirements are incorporated.

Dated: September 26, 2012.

Helen M. Golde,

Acting Office Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2012-24204 Filed 10-1-12; 8:45 am]

BILLING CODE 3510-22-P

COMMODITY FUTURES TRADING COMMISSION

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-67927; File No. S7-32-11]

Acceptance of Public Submissions Regarding the Study of Stable Value Contracts

AGENCY: Commodity Futures Trading Commission; Securities and Exchange Commission.

ACTION: Request for comment; reopening of comment period.

SUMMARY: The Commodity Futures Trading Commission (the "CFTC") and the Securities and Exchange Commission (the "SEC" and, together

with the CFTC, the "Commissions") are reopening the comment period for a study to determine whether stable value contracts ("SVCs") fall within the definition of a swap. The study is required by Section 719(d) of the Dodd-Frank Wall Street Reform and Consumer Protection Act (the "Dodd-Frank Act"). The original comment period for the study closed on September 26, 2011. The Commissions did not complete the study pending adoption of final rules further defining the terms "swap" and "security-based swap." The Commissions are considering the study in light of the recent adoption of these final rules. Accordingly, the Commissions are reopening for 30 days the time period in which to provide the Commissions with comments.

DATES: Comments should be received on or before November 1, 2012.

ADDRESSES: Comments may be submitted by any of the following methods:

CFTC

- *Agency Web site*, via its Comments Online process: <http://comments.cftc.gov>. Follow the instructions for submitting comments through the Web site.

- *Mail:* Sauntia S. Warfield, Assistant Secretary, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street NW., Washington, DC 20581.

- *Hand Delivery/Courier:* Same as mail above.

- *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the instructions for submitting comments.

Please submit your comments using only one method. "*Stable Value Contract Study*" must be in the subject field of responses submitted via email, and clearly indicated on written submissions. All comments must be submitted in English, or if not, accompanied by an English translation. Comments will be posted as received to www.cftc.gov. You should submit only information that you wish to make available publicly. If you wish the CFTC to consider information that you believe is exempt from disclosure under the Freedom of Information Act, a petition for confidential treatment of the exempt information may be submitted according to the procedures established in section 145.9 of the CFTC's regulations.¹

The CFTC reserves the right, but shall have no obligation, to review, pre-screen, filter, redact, refuse, or remove any or all of your submission from www.cftc.gov that it may deem to be

¹ 17 CFR 145.9.

inappropriate for publication, including obscene language. All submissions that have been redacted or removed that contain comments on the merits of the rulemaking will be retained in the public comment file and will be considered as required under applicable laws, and may be accessible under the Freedom of Information Act.

SEC

Electronic Comments

- Use the SEC's Internet comment form (<http://www.sec.gov/rules/other>);
- Send an email to rule-comments@sec.gov. Please include File Number S7-32-11 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 S7-32-11. This file number should be included on the subject line if email is used. To help us process and review your comments more efficiently, please use only one method. The SEC will post all comments on the SEC's Internet web site (<http://www.sec.gov/rules/other>). Comments will also be available for Web site viewing and printing in the SEC'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; the SEC does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly.

FOR FURTHER INFORMATION CONTACT:

CFTC: Stephen A. Kane, Research Economist, Office of the Chief Economist, (202) 418-5911, skane@cftc.gov; or David E. Aron, Counsel, Office of the General Counsel, (202) 418-6621, daron@cftc.gov, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street NW., Washington, DC 20581; SEC: Donna Chambers, Senior Special Counsel, (202) 551-5870, Division of Trading and Markets, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549-8010.

SUPPLEMENTARY INFORMATION: Pursuant to section 719(d)(1)(A) of the Dodd-Frank Act, the Commissions jointly must conduct a study to determine whether SVCs fall within the definition

of a swap.² Section 719(d)(1)(A) of the Dodd-Frank Act also requires the Commissions, in making such determination, jointly to consult with the Department of Labor, the Department of the Treasury, and the State entities that regulate the issuers of SVCs.

If the Commissions determine that SVCs fall within the definition of a swap, they jointly must determine if an exemption for SVCs from the definition of a swap is appropriate and in the public interest and issue regulations implementing such determination.³ Until the effective date of any such regulations, and notwithstanding any other provision of Title VII of the Dodd-Frank Act, the Title VII requirements will not apply to SVCs.⁴

On August 18, 2011, the Commissions requested comment regarding the study of SVCs required by Section 719(d) of the Dodd-Frank Act.⁵ Specifically, the request for comment included 29 questions and encouraged commenters to provide additional relevant information beyond that specified in the questions. The Commissions originally requested that comments be received by September 26, 2011.⁶

Given the regulatory developments since the initial request for comment was issued, specifically the adoption of final rules further defining the terms "swap" and "security-based swap,"⁷ the Commissions believe that it would be appropriate to solicit additional public comments on the study of SVCs required by Section 719(d) of the Dodd-Frank Act. Accordingly, the Commissions are reopening the public comment period for 30 days. The Commissions are reopening the comment period for the limited purpose of soliciting additional or updated comments regarding the impact of the final rules further defining the terms

² The term "swap" is defined in Commodity Exchange Act ("CEA") section 1a(47), 7 U.S.C. 1a(47). The term "security-based swap" is defined as an agreement, contract, or transaction that is a "swap" (without regard to the exclusion from that definition for security-based swaps) and that also has certain characteristics specified in the Dodd-Frank Act. See section 3(a)(68) of the Securities Exchange Act of 1934, 15 U.S.C. 78c(a)(68). Thus, a determination regarding whether SVCs fall within the definition of a swap also is relevant to a determination of whether SVCs fall within the definition of the term "security-based swap."

³ See section 719(d)(1)(B) of the Dodd-Frank Act.

⁴ See section 719(d)(1)(C) of the Dodd-Frank Act.

⁵ See Acceptance of Public Submissions Regarding the Study of Stable Value, 76 FR 53162 (Aug. 25, 2011).

⁶ *Id.*

⁷ The Commission and the CFTC have approved the final rules further defining the terms "swap" and "security-based swap" but did not address therein whether SVCs are swaps or SBSs. See 77 FR 48208 (Aug. 13, 2012).

"swap" and "security-based swap" on the SVC study.⁸ The Commissions have received and reviewed the comments previously submitted in response to the initial request for comment. Commenters do not need to resubmit comments that have already been provided.

By the Commodity Futures Trading Commission.

Dated: September 26, 2012.

Sauntia S. Warfield,
Assistant Secretary.

By the Securities and Exchange Commission.

Dated: September 26, 2012.

Elizabeth M. Murphy,
Secretary.

[FR Doc. 2012-24179 Filed 10-1-12; 8:45 am]

BILLING CODE 6351-01-P; 8011-P

COMMODITY FUTURES TRADING COMMISSION

Agency Information Collection Activities Under OMB Review

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice of intent to renew.

SUMMARY: The Commodity Futures Trading Commission (CFTC) is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, and to allow 60 days for public comment in response to the notice. This notice solicits comments on collections of information provided for by the Disclosure and Retention of Certain Information Related to Cleared Swaps, Customer Collateral.

DATES: Comments must be submitted on or before December 3, 2012.

⁸ Question 4 in the request for comment related to the applicability and usefulness of the proposed rules further defining the terms "swap" and "security-based swap" ("Proposed Definitions"):

Are the proposed rules and the interpretive guidance set forth in the [Proposed Definitions] useful, appropriate, and sufficient for persons to consider when evaluating whether SVCs fall within the definition of a swap? If not, why not? Would SVCs satisfy the test for insurance provided in the [Proposed Definitions]? Why or why not? Is additional guidance necessary with regard to SVCs in this context? If so, what further guidance would be appropriate? Please explain.

See Acceptance of Public Submissions Regarding the Study of Stable Value Contracts, *supra* note 5, at 53163.

ADDRESSES: Send comments regarding the burden estimated or any other aspect of the information collection, including suggestions for reducing the burden, to the addresses below. Please refer to OMB Control No. 3038–0091 in any correspondence.

Martin B. White, Office of the General Counsel, Commodity Futures Trading Commission, 1155 21st Street NW., Washington, DC 20581; and Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for CFTC, 725 17th Street, Washington, DC 20503.

Comments may also be submitted by any of the following methods:

The agency's Web site, at <http://comments.cftc.gov>. Follow the instructions for submitting comments through the Web site.

Mail: Sauntia S. Warfield, Assistant 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.

Federal eRulemaking Portal: <http://www.regulations.gov>. Follow the instructions for submitting comments.

Please submit your comments using only one method and identity that it is for the renewal of 3038–0091.

All comments must be submitted in English, or if not, accompanied by an English translation. Comments will be posted as received to www.cftc.gov. You should submit only information that you wish to make available publicly. If you wish the Commission to consider information that you believe is exempt from disclosure under the Freedom of Information Act, a petition for confidential treatment of the exempt information may be submitted according to the procedures established in § 145.9 of the Commission's regulations. See 17 CFR 145.9.

FOR FURTHER INFORMATION CONTACT:

Martin B. White, Office of the General Counsel, Commodity Futures Trading Commission, 1155 21st Street NW., Washington, DC 20581, (202) 418–5129; Fax: (202) 418–5567; email: mwhite@cftc.gov and refer to OMB Control No. 3038–0091.

SUPPLEMENTARY INFORMATION: *Title:*

Disclosure and Retention of Certain Information Related to Cleared Swaps, Customer Collateral (OMB Control No. 3038–0091). This is a request for extension of a currently approved information collection. *Abstract:* Under the PRA, Federal agencies must obtain approval from the Office of Management

and Budget (OMB) for each collection of information they conduct or sponsor, "Collection of Information" is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and include agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 350(c)(2)(A) of the PRA, 44 Section 3506(c)(2)(A), requires Federal Agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, before submitting the collection to OMB to approve. To comply with this requirement, the CFTC is publishing notice of the proposed collection of the information below.

With respect to the following collection of information, the CFTC invites comments on:

Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information will have a practical use;

The accuracy of the Commission's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

Ways to minimize the burden of collection of information on those who are to respond, including through the use of appropriate electronic, mechanical, or other technological collection techniques or other forms of information technology; e.g., permitting electronic submission of responses.

Disclosure and Retention of Certain Information Related to Cleared Swaps, Customer Collateral. OMB Control No. 3038–0091—Extension

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for the CFTC's regulations were published on December 30, 1981. See 46 FR 63035 (Dec. 30, 1981). The **Federal Register** notice with a 60-day comment period soliciting comments on this collection of information was published on December 29, 2012 (73 FR 81916).

Burden statement: Section 22.2(g) requires each futures commission merchant (FCM) with Cleared Swaps Customer Accounts to compute daily the amount of Cleared Swaps Customer Collateral on deposit in Cleared Swaps Customer Accounts, the amount of such collateral required to be on deposit in such accounts and the amount of the FCM's residual financial interest in such

accounts. Section 22.5(a) requires an FCM or derivatives clearing organization (DCO) to obtain, from each depository with which it deposits cleared swaps customer funds, a letter acknowledging that such funds belong to the Cleared Swaps Customers of the FCM, and not the FCM itself or any other person. Section 22.11 requires each FCM that intermediates cleared swaps for customers on or subject to the rules of a DCO, whether directly as a clearing member or indirectly through a Collecting FCM, to provide the DCO or the Collecting FCM, as appropriate, with information sufficient to identify each customer of the FCM whose swaps are cleared by the FCM. Section 22.11 also requires the FCM, at least once daily, to provide the DCO or the Collecting FCM, as appropriate, with information sufficient to identify each customer's portfolio of rights and obligations arising out of cleared swaps intermediated by the FCM. Section 22.12 requires that each Collecting FCM and DCO, on a daily basis, calculate, based on information received pursuant to section 22.11 and on information generated and used in the ordinary course of business by the Collecting FCM or DCO, and record certain information about the amount of collateral required for each Cleared Swaps Customer and the sum of these amounts. Section 22.16 requires that each FCM who has Cleared Swaps Customers disclose to each of such customers the governing provisions, as established by DCO rules or customer agreements between collecting and depositing FCMs, relating to use of customer collateral, transfer, neutralization of the risks, or liquidation of cleared swaps in the event of a default by a Depositing FCM relating to a Cleared Swaps Customer Account.

The Commission estimates the average burden of this collection of information as follows:

The recordkeeping and disclosure requirements of sections 22.2(g) and 22.11 are expected to apply to approximately 100 entities on a daily basis. The recordkeeping requirement of section 22.5 is expected to apply to approximately 100 entities on an approximately annual basis. Based on experience with analogous recordkeeping and disclosure requirements for FCMs in futures transactions, the recordkeeping and disclosure required by section 22.2(g) is expected to require about 100 hours annually per entity, for a total burden of approximately 10,000 hours.

The disclosure required by section 22.11 involves information that FCMs that intermediate swaps generate and

use in the usual and customary ordinary course of their business. It is expected that the required disclosure will be performed using automated data systems that FCMs maintain and use in the usual and customary ordinary course of their business but that certain additional functionality will need to be added to these systems to perform the required disclosure. Because of the novel character of proposed section 22.11, it is not possible to make a precise estimate of the paperwork burden. The necessary modifications to, and maintenance of, systems may require a range of between 20 and 40 hours of work annually.

The recordkeeping required by section 22.12 involves information that Collecting FCMs and DCOs will receive pursuant to section 22.11 or that they generate and use in the usual and customary ordinary course of their business. It is expected that the required recordkeeping will be performed using automated data systems that Collecting FCMs and DCOs maintain and use in the usual and customary ordinary course of their business but that certain additional functionality will need to be added to these systems to perform the required disclosure. Because of the novel character of section 22.12, it is not possible to make a precise estimate of the paperwork burden. The necessary modifications to, and maintenance of, systems may require a range of between 20 and 40 hours of work annually. It is expected that the required recordkeeping will be performed by approximately 100 entities. The total annual burden for section 22.11 therefore is estimated at 2,000 to 4,000 hours.

Section 22.16 would apply to the same estimated 100 entities as sections 22.2(g), 22.5(a), and 22.11. The required disclosure would have to be made once each time a swaps customer begins to be cleared through a particular DCO or collecting FCM and each time a DCO or collecting FCM through which a customer's swaps are cleared changes it polices on the matters covered by the disclosure. It is expected that each disclosure would require about 0.2 hours of staff time by staff. It is uncertain what average number of swaps customers FCMs will have, and what average number of disclosures will be required for each customer annually. Assuming an average of 500 customers per FCM and two disclosures per customer per year, the estimated total annual burden would be 200 hours.

There are estimated to be no capital costs or operating and maintenance costs associated with this collection.

Dated September 26, 2012.

Sauntia S. Warfield,

Assistant Secretary of the Commission.

[FR Doc. 2012-24131 Filed 10-1-12; 8:45 am]

BILLING CODE 6351-01-P

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests; State Plan for Vocational Rehabilitation Services and Supplement for Supported Employment Services

SUMMARY: The Rehabilitation Act of 1973, as amended (the Act), requires each state to submit to the Commissioner of the Rehabilitation Services Administration a State Plan for the Vocational Rehabilitation (VR) Services program and the State Supported Employment (SE) Services program that meets the requirements of Sections 101(a) and 625 of the Act.

DATES: Interested persons are invited to submit comments on or before December 3, 2012.

ADDRESSES: Comments submitted in response to this notice should be submitted electronically through the Federal eRulemaking Portal at <http://www.regulations.gov> by selecting Docket ID number ED-2012-OSERS-0031 or via postal mail, commercial delivery, or hand delivery. *Please note that comments submitted by fax or email and those submitted after the comment period will not be accepted.* Written requests for information or comments submitted by postal mail or delivery should be addressed to the Director of the Information Collection Clearance Division, U.S. Department of Education, 400 Maryland Avenue SW., LBJ, Room 2E117, Washington, DC 20202-4537.

Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1-800-877-8339.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that Federal agencies provide interested parties an early opportunity to comment on information collection requests. The Director, Information Collection Clearance Division, Privacy, Information and Records Management Services, Office of Management, publishes this notice containing proposed information collection requests at the beginning of the Departmental review of the information collection. The Department of Education is especially interested in public comment addressing the

following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology. Please note that written comments received in response to this notice will be considered public records.

Title of Collection: State Plan for Vocational Rehabilitation Services and Supplement for Supported Employment Services.

OMB Control Number: 1820-0500.

Type of Review: Extension.

Total Estimated Number of Annual Responses: 80.

Total Estimated Number of Annual Burden Hours: 1,002,000.

Abstract: The approved VR State Plan and SE supplement form the basis upon which a state participates in programs under Title I and Title VI, Part B of the Act and receives federal funds. Program funding is contingent on Departmental approval of the State Plan and its supplement.

Dated: September 27, 2012.

Darrin A. King,

Director, Information Collection Clearance Division, Privacy, Information and Records Management Services, Office of Management.

[FR Doc. 2012-24225 Filed 10-1-12; 8:45 am]

BILLING CODE 4000-01-P

ENVIRONMENTAL PROTECTION AGENCY

[EPA-HQ-ORD-2012-0718; FRL-9736-4]

Human Studies Review Board; Notification of a Public Meeting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The EPA Office of the Science Advisor announces a public meeting of the Human Studies Review Board to advise the Agency on the EPA scientific and ethical reviews of research with human subjects.

DATES: This public meeting will be held on November 1, 2012, from approximately 1 p.m. to approximately 4:30 p.m. Eastern Time. Comments may be submitted on or before noon (Eastern Time) on Thursday, October 25, 2012.

ADDRESSES: Submit your written comments, identified by Docket ID No.

EPA-HQ-ORD-2012-0718, by one of the following methods:

Internet: <http://www.regulations.gov>: Follow the online instructions for submitting comments.

Email: ORD.Docket@epa.gov.

Mail: The EPA Docket Center EPA/DC, ORD Docket, Mail code: 28221T, 1200 Pennsylvania Avenue NW., Washington, DC 20460.

Hand Delivery: The EPA/DC Public Reading Room is located in the EPA Headquarters Library, Room Number 3334 in the EPA West Building, at 1301 Constitution Avenue NW., Washington, DC 20460. The hours of operation are 8:30 a.m. to 4:30 p.m. Eastern Time, Monday through Friday, excluding federal holidays. Please call (202) 566-1744 or email the ORD Docket at ord.docket@epa.gov for instructions. Updates to Public Reading Room access are available on the Web site <http://www.epa.gov/epahome/dockets.htm>.

Instructions: Direct your comments to Docket ID No. EPA-HQ-ORD-2012-0718. The Agency's policy is that all comments received will be included in the public docket without change and may be made available online at <http://www.regulations.gov>, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information or other information the disclosure of which is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through <http://www.regulations.gov> or email. The <http://www.regulations.gov> Web site is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an email comment directly to the EPA without going through <http://www.regulations.gov>, your email address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, the EPA recommends that you include your name and other contact information in the body of your comment and with any electronic storage media you submit. If the EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, the EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

FOR FURTHER INFORMATION CONTACT: Any member of the public who wishes to receive further information should

contact Jim Downing at telephone number (202) 564-2468; fax: (202) 564-2070; email address:

downing.jim@epa.gov or Lu-Ann Kleibacker on telephone number (202) 564-7189; fax (202) 564-2070; email address kleibacker.lu-ann@epa.gov; mailing address Environmental Protection Agency, Office of the Science Advisor, Mail code 8105R, 1200 Pennsylvania Avenue NW., Washington, DC 20460. General information concerning the EPA HSRB can be found on the EPA Web site at <http://www.epa.gov/osa/hsrb/>.

SUPPLEMENTARY INFORMATION:

Location: The meeting will be held at the EPA Conference Center—Lobby Level, One Potomac Yard (South Building), 2777 S. Crystal Drive, Arlington, VA 22202.

Meeting access: Seating at the meeting will be on a first-come basis. To request accommodation of a disability, please contact the persons listed under **FOR FURTHER INFORMATION CONTACT** at least ten business days prior to the meeting using the information under **FOR FURTHER INFORMATION CONTACT**, so that appropriate arrangements can be made.

Procedures for providing public input: Interested members of the public may submit relevant written or oral comments for the HSRB to consider during the advisory process. Additional information concerning submission of relevant written or oral comments is provided in Section I, "Public Meeting" under subsection D. "How May I Participate in This Meeting?" of this notice.

I. Public Meeting

A. Does this action apply to me?

This action is directed to the public in general. This Notice may, however, be of particular interest to persons who conduct or assess human studies, especially studies on substances regulated by the EPA, or to persons who are, or may be required to conduct testing of chemical substances under the Federal Food, Drug, and Cosmetic Act or the Federal Insecticide, Fungicide, and Rodenticide Act. This notice might also be of special interest to participants of studies involving human subjects, or representatives of study participants or experts on community engagement. Since many entities may also be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult Jim Downing or Lu-Ann Kleibacker, listed

under FOR FURTHER INFORMATION CONTACT.

B. How can I access electronic copies of this document and other related information?

In addition to using [regulations.gov](http://www.regulations.gov), you may access this **Federal Register** document electronically through the EPA Internet under the **Federal Register** listings at <http://www.epa.gov/fedrgstr/>.

Docket: All documents in the docket are listed in the <http://www.regulations.gov> index. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in <http://www.regulations.gov> or in hard copy at the ORD Docket, EPA/DC, Public Reading Room. The EPA/DC Public Reading Room is located in the EPA Headquarters Library, Room Number 3334 in the EPA West Building, at 1301 Constitution Avenue NW., Washington, DC 20460. The hours of operation are 8:30 a.m. to 4:30 p.m. Eastern Time, Monday through Friday, excluding federal holidays. Please call (202) 566-1744 or email the ORD Docket at ord.docket@epa.gov for instructions. Updates to Public Reading Room access are available on the Web site (<http://www.epa.gov/epahome/dockets.htm>). The Agency's position paper(s), charge/questions to the HSRB, and the meeting agenda will be available by the second week of October 2012. In addition, the Agency may provide additional background documents as the materials become available. You may obtain electronic copies of these documents, and certain other related documents that might be available electronically, from the [regulations.gov](http://www.regulations.gov) Web site and the EPA HSRB Web site at <http://www.epa.gov/osa/hsrb/>. For questions on document availability, or if you do not have access to the Internet, consult either Jim Downing or Lu-Ann Kleibacker listed under **FOR FURTHER INFORMATION CONTACT**.

C. What should I consider as I prepare my comments for the EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.
2. Describe any assumptions that you used.

3. Provide copies of any technical information and/or data that you used to support your views.

4. Provide specific examples to illustrate your concerns and suggest alternatives.

5. To ensure proper receipt by the EPA, be sure to identify the Docket ID number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

D. How may I participate in this meeting?

You may participate in this meeting by following the instructions in this section. To ensure proper receipt by the EPA, it is imperative that you identify Docket ID number EPA-HQ-ORD-2012-0718 in the subject line on the first page of your request.

1. *Oral comments.* Requests to present oral comments will be accepted up to Thursday, October 25, 2012. To the extent that time permits, interested persons who have not pre-registered may be permitted by the Chair of the HSRB to present oral comments at the meeting. Each individual or group wishing to make brief oral comments to the HSRB is strongly advised to submit their request (preferably via email) to Jim Downing or Lu-Ann Kleibacker, under **FOR FURTHER INFORMATION CONTACT** no later than noon, Eastern Time, Thursday, October 25, 2012, in order to be included on the meeting agenda and to provide sufficient time for the HSRB Chair and HSRB Designated Federal Official to review the meeting agenda to provide an appropriate public comment period. The request should identify the name of the individual making the presentation and the organization (if any) the individual will represent. Oral comments before the HSRB are generally limited to five minutes per individual or organization. Please note that this includes all individuals appearing either as part of, or on behalf of, an organization. While it is our intent to hear a full range of oral comments on the science and ethics issues under discussion, it is not our intent to permit organizations to expand the time limitations by having numerous individuals sign up separately to speak on their behalf. If additional time is available, further public comments may be possible.

2. *Written comments.* Submit your written comments prior to the meeting. For the Board to have the best opportunity to review and consider your comments as it deliberates on its report, you should submit your comments at

least five business days prior to the beginning of this meeting. If you submit comments after this date, those comments will be provided to the Board members, but you should recognize that the HSRB members may not have adequate time to consider those comments prior to making a decision. Thus, if you plan to submit written comments, the agency strongly encourages you to submit such comments no later than noon, Eastern Time, Thursday, October 25, 2012. You should submit your comments using the instructions in Section I., under subsection C., "What Should I Consider as I Prepare My Comments for the EPA?" In addition, the agency also requests that persons submitting comments directly to the docket also provide a copy of their comments to Jim Downing or Lu-Ann Kleibacker listed under **FOR FURTHER INFORMATION CONTACT**. There is no limit on the length of written comments for consideration by the HSRB.

E. Background

The HSRB is a Federal advisory committee operating in accordance with the Federal Advisory Committee Act 5 U.S.C. App. 2 § 9. The HSRB provides advice, information, and recommendations to the EPA on issues related to scientific and ethical aspects of human subjects research. The major objectives of the HSRB are to provide advice and recommendations on: (1) Research proposals and protocols; (2) reports of completed research with human subjects; and (3) how to strengthen EPA's programs for protection of human subjects of research. The HSRB reports to the EPA Administrator through the Agency's Science Advisor.

1. *Topics for discussion.* At its meeting on November 1, 2012, EPA's Human Studies Review Board will consider scientific and ethical issues surrounding this topic:

a. A completed study report from the Antimicrobial Exposure Assessment Task Force II (AEATF) in which the dermal and inhalation exposure of professional janitorial workers was monitored as they poured liquid antimicrobial pesticide products from conventional or reduced-splash containers into different sizes and types of source containers. EPA seeks the advice of the HSRB on the scientific soundness of this completed research and on its appropriateness for use in estimating exposure that results from pouring liquid antimicrobial pesticide products. EPA also seeks the advice of the HSRB on whether available information supports a determination

that the study was conducted in substantial compliance with subparts K and L of 40 CFR part 26.

2. *Meeting minutes and reports.* Minutes of the meeting, summarizing the matters discussed and recommendations, if any, made by the advisory committee regarding such matters, will be released within 90 calendar days of the meeting. Such minutes will be available at <http://www.epa.gov/osa/hsrb/> and <http://www.regulations.gov>. In addition, information regarding the Board's final meeting report will be found at <http://www.epa.gov/osa/hsrb/> or from the person listed under **FOR FURTHER INFORMATION CONTACT**.

Dated: September 25, 2012.

Glenn Paulson,
Science Advisor.

[FR Doc. 2012-24239 Filed 10-1-12; 8:45 am]

BILLING CODE 6560-50-P

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisitions of Shares of a Bank or Bank Holding Company

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire shares of a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than October 17, 2012.

A. Federal Reserve Bank of New York (Ivan Hurwitz, Vice President) 33 Liberty Street, New York, New York 10045-0001:

1. *Muhammad Habib, Kusunacht, Switzerland, and Hamza Habib,* Dubai, U.A.E. United Arab Emirates; to retain a controlling interest in Maham Beteiligungsgesellschaft AG, Zurich, Switzerland, and thereby indirectly retain control of Habib American Bank, New York, New York.

B. Federal Reserve Bank of Chicago (Colette A. Fried, Assistant Vice President) 230 South LaSalle Street, Chicago, Illinois 60690-1414:

1. *Voting Trust and David E. Kirschner,* as trustee, both of

Springfield, Illinois; to join the existing Kirschner Family Control Group by acquiring voting shares of Town and Country Financial Corporation, and thereby indirectly acquire voting shares of Town and Country Bank, both in Springfield, Illinois, and Logan County Bank, Lincoln, Illinois.

C. Federal Reserve Bank of San Francisco (Kenneth Binning, Vice President, Applications and Enforcement) 101 Market Street, San Francisco, California 94105-1579:

1. *Tieming Chen*, Missouri, Texas; to acquire voting shares of Orient Bancorporation, and thereby indirectly acquire voting shares of Bank of the Orient, both in San Francisco, California.

Board of Governors of the Federal Reserve System, September 27, 2012.

Robert deV. Frierson,
Secretary of the Board.

[FR Doc. 2012-24200 Filed 10-1-12; 8:45 am]

BILLING CODE 6210-01-P

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The applications will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of

Governors not later than October 27, 2012.

A. Federal Reserve Bank of Atlanta (Chapelle Davis, Assistant Vice President) 1000 Peachtree Street, NE., Atlanta, Georgia 30309:

1. *Independent Bancshares, Inc. Employee Stock Ownership Plan*, Red Bay, Alabama; to acquire an additional 1.5 percent, for a total of 48 percent, of the voting shares of Independent Bancshares, Inc., and thereby indirectly acquire additional voting shares of Community Spirit Bank, both in Red Bay, Alabama.

B. Federal Reserve Bank of Kansas City (Dennis Denney, Assistant Vice President) 1 Memorial Drive, Kansas City, Missouri 64198-0001:

1. *Luxury Development Partners, Inc.*, Wichita, Kansas; to become a bank holding company by acquiring, together with its owners, more than 25 percent of the voting shares Community State Bancshares, and Community State Bank, both in Wichita, Kansas.

Board of Governors of the Federal Reserve System, September 27, 2012.

Robert deV. Frierson,
Secretary of the Board.

[FR Doc. 2012-24201 Filed 10-1-12; 8:45 am]

BILLING CODE 6210-01-P

FEDERAL RESERVE SYSTEM

Notice of Proposals To Engage in or To Acquire Companies Engaged in Permissible Nonbanking Activities

The companies listed in this notice have given notice under section 4 of the Bank Holding Company Act (12 U.S.C. 1843) (BHC Act) and Regulation Y, (12 CFR part 225) to engage *de novo*, or to acquire or control voting securities or assets of a company, including the companies listed below, that engages either directly or through a subsidiary or other company, in a nonbanking activity that is listed in § 225.28 of Regulation Y (12 CFR 225.28) or that the Board has determined by Order to be closely related to banking and permissible for bank holding companies. Unless otherwise noted, these activities will be conducted throughout the United States.

Each notice is available for inspection at the Federal Reserve Bank indicated. The notice also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether the proposal complies with the standards of section 4 of the BHC Act.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated

or the offices of the Board of Governors not later than October 27, 2012.

A. Federal Reserve Bank of New York (Ivan Hurwitz, Vice President) 33 Liberty Street, New York, New York 10045-0001:

1. *M&T Bank Corporation, Buffalo, New York, and Wilmington Trust Corporation*, Wilmington, Delaware; to acquire Hudson City Bancorp, Inc., and thereby indirectly acquire Hudson City Savings Bank, FSB, both in Paramus, New Jersey, and thereby engage in operating a savings association, pursuant to section 225.28(b)(4)(ii).

Board of Governors of the Federal Reserve System, September 27, 2012.

Robert deV. Frierson,
Secretary of the Board.

[FR Doc. 2012-24202 Filed 10-1-12; 8:45 am]

BILLING CODE 6210-01-P

FEDERAL TRADE COMMISSION

[File No. 112 3151]

Proposed Consent Agreements: DesignerWare, LLC, Timothy Kelly and Ronald P. Koller, Aspen Way Enterprises, Inc., Watershed Development Corp., et al.; Analysis of Proposed Consent Orders To Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed consent agreements.

Overview Information: DesignerWare, LLC; Timothy Kelly and Ronald P. Koller; Aspen Way Enterprises, Inc.; Watershed Development Corp., also doing business as Watershed and Aaron's Sales and Lease Ownership; Showplace, Inc., also doing business as Showplace Rent-to-Own and Showplace Lease/Purchase; J.A.G. Rents, LLC, also doing business as ColorTyme; Red Zone Investment Group, Inc., also doing business as ColorTyme; B. Stamper Enterprises, Inc., also doing business as Premier Rental Purchase; and C.A.L.M. Ventures, Inc., also doing business as Premier Rental Purchase; Analysis of Proposed Consent Orders to Aid Public Comment.

SUMMARY: The consent agreements in these matters settle alleged violations of federal law prohibiting unfair or deceptive acts or practices or unfair methods of competition. The attached Analysis to Aid Public Comment describes both the allegations in the draft complaints and the terms of the consent orders—embodied in the consent agreements—that would settle these allegations.

DATES: Comments must be received on or before October 25, 2012.

ADDRESSES: Interested parties may file a comment online or on paper, by following the instructions in the Request for Comment part of the **SUPPLEMENTARY INFORMATION** section below. Write “DesignerWare, LLC”; “Timothy Kelly and Ronald P. Koller”; “Aspen Way Enterprises, Inc.”; “Watershed Development Corp.”; “Showplace, Inc.”; “J.A.G. Rents, LLC”; “Red Zone, Inc.”; “B. Stamper Enterprises, Inc.”; or “C.A.L.M. Ventures, Inc.”, and “File No. 112 3151” on your comment, and file your comment online on one of the following web-based forms: <https://ftcpublishcommentworks.com/ftc/designwareconsent>; <https://ftcpublishcommentworks.com/ftc/kellyandkollerconsent>; <https://ftcpublishcommentworks.com/ftc/aspewayenterprisesconsent>; <https://ftcpublishcommentworks.com/ftc/watersheddevelopmentconsent>; <https://ftcpublishcommentworks.com/ftc/showplaceinconsent>; <https://ftcpublishcommentworks.com/ftc/jagrentsconsent>; <https://ftcpublishcommentworks.com/ftc/redzoneinvestmentconsent>; <https://ftcpublishcommentworks.com/ftc/bstamperenterprisesconsent>; or <https://ftcpublishcommentworks.com/ftc/calmventuresconsent>, by following the instructions on the web-based form. If you prefer to file your comment on paper, mail or deliver your comment to the following address: Federal Trade Commission, Office of the Secretary, Room H-113 (Annex D), 600 Pennsylvania Avenue NW., Washington, DC 20580.

FOR FURTHER INFORMATION CONTACT: Tracy Thorleifson (206-220-4481) or Julie Mayer (206-220-4475), FTC, Northwest Region, 600 Pennsylvania Avenue NW., Washington, DC 20580.

SUPPLEMENTARY INFORMATION: Pursuant to section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46(f), and § 2.34 the Commission Rules of Practice, 16 CFR 2.34, notice is hereby given that the above-captioned consent agreements containing consent orders to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, have been placed on the public record for a period of thirty (30) days. The following Analysis to Aid Public Comment describes the terms of the consent agreements, and the allegations in the complaints. An electronic copy of the full text of each consent agreement package can be obtained from the FTC Home Page (for September 25, 2012), on the World Wide Web, at <http://www.ftc.gov/os/actions.shtm>. A paper

copy can be obtained from the FTC Public Reference Room, Room 130-H, 600 Pennsylvania Avenue NW., Washington, DC 20580, either in person or by calling (202) 326-2222.

You can file a comment online or on paper. For the Commission to consider your comment, we must receive it on or before October 25, 2012. Write “DesignerWare, LLC”; “Timothy Kelly and Ronald P. Koller”; “Aspen Way Enterprises, Inc.”; “Watershed Development Corp.”; “Showplace, Inc.”; “J.A.G. Rents, LLC”; “Red Zone, Inc.”; “B. Stamper Enterprises, Inc.”; or “C.A.L.M. Ventures, Inc.” and “File No. 112 3151” on your comment. Your comment—including your name and your state—will be placed on the public record of this proceeding, including, to the extent practicable, on the public Commission Web site, at <http://www.ftc.gov/os/publiccomments.shtm>. As a matter of discretion, the Commission tries to remove individuals’ home contact information from comments before placing them on the Commission Web site.

Because your comment will be made public, you are solely responsible for making sure that your comment does not include any sensitive personal information, like anyone’s Social Security number, date of birth, driver’s license number or other state identification number or foreign country equivalent, passport number, financial account number, or credit or debit card number. You are also solely responsible for making sure that your comment does not include any sensitive health information, like medical records or other individually identifiable health information. In addition, do not include any “[t]rade secret or any commercial or financial information which is * * * privileged or confidential,” as discussed in Section 6(f) of the FTC Act, 15 U.S.C. 46(f), and FTC Rule 4.10(a)(2), 16 CFR 4.10(a)(2). In particular, do not include competitively sensitive information such as costs, sales statistics, inventories, formulas, patterns, devices, manufacturing processes, or customer names.

If you want the Commission to give your comment confidential treatment, you must file it in paper form, with a request for confidential treatment, and you have to follow the procedure explained in FTC Rule 4.9(c), 16 CFR 4.9(c).¹ Your comment will be kept confidential only if the FTC General

¹ In particular, the written request for confidential treatment that accompanies the comment must include the factual and legal basis for the request, and must identify the specific portions of the comment to be withheld from the public record. See FTC Rule 4.9(c), 16 CFR 4.9(c).

Counsel, in his discretion, grants your request in accordance with the law and the public interest.

Postal mail addressed to the Commission is subject to delay due to heightened security screening. As a result, we encourage you to submit your comments online. To make sure that the Commission considers your online comment, you must file it on one of the following web-based forms: <https://ftcpublishcommentworks.com/ftc/designwareconsent>; <https://ftcpublishcommentworks.com/ftc/kellyandkollerconsent>; <https://ftcpublishcommentworks.com/ftc/aspewayenterprisesconsent>; <https://ftcpublishcommentworks.com/ftc/watersheddevelopmentconsent>; <https://ftcpublishcommentworks.com/ftc/showplaceinconsent>; <https://ftcpublishcommentworks.com/ftc/jagrentsconsent>; <https://ftcpublishcommentworks.com/ftc/redzoneinvestmentconsent>; <https://ftcpublishcommentworks.com/ftc/bstamperenterprisesconsent>; or <https://ftcpublishcommentworks.com/ftc/calmventuresconsent>, by following the instructions on the web-based form. If this Notice appears at <http://www.regulations.gov/#!home>, you also may file a comment through that Web site.

If you file your comment on paper, write “DesignerWare, LLC”; “Timothy Kelly and Ronald P. Koller”; “Aspen Way Enterprises, Inc.”; “Watershed Development Corp.”; “Showplace, Inc.”; “J.A.G. Rents, LLC”; “Red Zone, Inc.”; “B. Stamper Enterprises, Inc.”; or “C.A.L.M. Ventures, Inc.” and “File No. 112 3151” on your comment and on the envelope, and mail or deliver it to the following address: Federal Trade Commission, Office of the Secretary, Room H-113 (Annex D), 600 Pennsylvania Avenue NW., Washington, DC 20580. If possible, submit your paper comment to the Commission by courier or overnight service.

Visit the Commission Web site at <http://www.ftc.gov> to read this Notice and the news release describing it. The FTC Act and other laws that the Commission administers permit the collection of public comments to consider and use in this proceeding as appropriate. The Commission will consider all timely and responsive public comments that it receives on or before October 25, 2012. You can find more information, including routine uses permitted by the Privacy Act, in the Commission’s privacy policy, at <http://www.ftc.gov/ftc/privacy.htm>.

Analysis of Agreement Containing Consent Order To Aid Public Comment

The Federal Trade Commission (“Commission” or “FTC”) has accepted, subject to final approval, consent agreements from the following respondents: DesignerWare, LLC; Timothy Kelly, and Ronald P. Koller, individually and as officers of DesignerWare, LLC; Aspen Way Enterprises, Inc.; Watershed Development Corp.; Showplace, Inc., d/b/a Showplace Rent-to-Own; J.A.G. Rents, LLC, d/b/a ColorTyme; Red Zone, Inc., d/b/a ColorTyme; B. Stamper Enterprises, Inc., d/b/a Premier Rental Purchase; and C.A.L.M. Ventures, Inc., d/b/a Premier Rental Purchase.

The proposed consent orders have been placed on the public record for thirty (30) days for receipt of comments by interested persons. Comments received during this period will become part of the public record. After thirty (30) days, the Commission will again review the agreements and the comments received, and will decide whether it should withdraw from any of the agreements and take appropriate action or make final the agreements’ proposed orders.

Timothy Kelly and Ronald Koller founded and co-owned DesignerWare, LLC, a small software company that designed and licenses a single product, PC Rental Agent. Mr. Koller ended his association with DesignerWare in March 2012. PC Rental Agent is exclusively marketed to rent-to-own (“RTO”) stores. RTO stores rent to consumers a variety of household items, including personal computers. PC Rental Agent is designed to assist RTO stores in tracking and recovering rented computers. Its chief function is a “kill switch,” a program that can be used by a store to render a computer inoperable if the consumer renter is late or defaults on payments or if the computer is stolen. PC Rental Agent also offers a wiping feature that permits RTO stores to quickly erase the hard drives of computers prior to re-renting them to consumers.

Through PC Rental Agent, which RTO store licensees installed on rented computers, DesignerWare also provided access to “Detective Mode.” Detective Mode was a software application embedded in the PC Rental Agent program. At the request of an RTO store, DesignerWare would remotely complete the Detective Mode installation process on an individual computer and activate “the Detective.” Detective Mode would surreptitiously log the computer user’s keystrokes, capture screenshots, and take pictures with the computer’s webcam and send the data to

DesignerWare’s servers. Neither DesignerWare nor the RTO stores who have used Detective Mode disclosed to computer users that they were being monitored in this manner. Although DesignerWare recommended that Detective Mode be installed and activated only to locate and identify the person in possession of a lost or stolen computer, DesignerWare did not monitor its own collection of or limit RTO stores’ access to Detective Mode information to ensure that the information was obtained and used only for designated purposes.

DesignerWare sent the information captured by Detective Mode to an email account designated by each RTO store. Although DesignerWare’s employees did not themselves view Detective Mode data, without DesignerWare licensing PC Rental Agent and making Detective Mode available to the RTO stores, as well as providing them with access to its web portal and providing servers to support both PC Rental Agent and Detective Mode, this collection and disclosure of consumers’ private information would not be possible.

RTO stores also used Detective Mode to send fake “software registration” forms to consumers to deceive them into providing their contact and location information. DesignerWare created several different fake registration forms that its servers displayed on consumers’ computers. An RTO store could use this feature of Detective Mode by requesting that DesignerWare activate it. No actual software was registered as a result of a consumer providing the requested information. Rather, Detective Mode captured the information entered in the prompt boxes and sent it to DesignerWare, who then emailed the data to the RTO store, all unbeknownst to the consumer. DesignerWare discontinued use of Detective Mode in January 2012.

In September 2011, DesignerWare added another feature to PC Rental Agent: the capacity to track the physical location of rented computers via WiFi hotspot locations. The information derived from WiFi hotspot contacts can frequently pinpoint a computer’s location to a single building and, when aggregated, can track the movements and patterns of individual computer users over time. DesignerWare makes this information easily available to the RTO stores by cross-referencing a list of publicly available WiFi hotspots with the street addresses for the particular hotspots viewed or accessed by rented computers. DesignerWare applied its location tracking upgrade of PC Rental Agent to every computer on which PC Rental Agent was installed, without

obtaining consent from, or providing notice to, the computers’ renters. DesignerWare recommends that RTO stores only use this tracking data in connection with recovering stolen property, but it does not monitor or limit the RTO stores’ access to such location information.

Aspen Way Enterprises, Watershed Development, Showplace, J.A.G. Rents, Red Zone, B. Stamper Enterprises, and C.A.L.M. Ventures are RTO stores that have licensed PC Rental Agent from DesignerWare. These RTO stores have used information transmitted by DesignerWare when attempting to collect from computer renters who are late in paying or have otherwise breached their rental contracts. Using Detective Mode, these RTO stores have received from DesignerWare webcam photos of computer users (and anyone else within view of the camera), computer users’ keystrokes, and screenshots of their computer activities. This information has revealed private and confidential details about computer users, such as their passwords for access to email accounts, social media Web sites, and financial institutions. Other confidential information was also captured, including medical records, private emails to doctors, employment applications containing Social Security numbers, bank and credit card statements, and discussions of defense strategies in a pending lawsuit. Through Detective Mode, DesignerWare and the RTO stores also secretly photographed the private conduct of consumers in their homes. This included pictures of children, household visitors, individuals not fully clothed, and couples engaged in intimate activities.

The collection and disclosure of such private and confidential information about consumers causes or is likely to cause substantial injury to consumers. Consumers are likely to be substantially injured by the exposure to strangers of personal, financial account access, and medical information. Consumers are actually harmed by DesignerWare’s unwarranted invasion into their homes and lives and its capture and disclosure of the private details of individual and family life, including, for example, images of visitors, children, family interactions, partially undressed individuals, and couples engaged in sexual activities. Sharing data like that collected by Detective Mode with third parties can cause consumers financial and physical injury, and impair their peaceful enjoyment of their homes. Because Detective Mode functions secretly, consumers cannot reasonably avoid this harm, which is neither trivial nor speculative. Moreover, there are no

countervailing benefits to consumers or competition for continued use of Detective Mode in this context, where RTO stores have effective alternative methods for collections.

DesignerWare also sent consumers' contact information to the RTO stores. DesignerWare gathered this information from computer users who completed the deceptive "software registration" forms sent through Detective Mode. The RTO stores used this information to find, require payment for, or repossess a rented computer.

The Commission's complaint against DesignerWare, Kelly, and Koller (collectively, "DesignerWare Respondents") alleges that the company and its principals engaged in unfair and deceptive conduct and provided the means and instrumentalities to engage in unfairness, all in violation of Section 5 of the Federal Trade Commission Act, 15 U.S.C. 45. The first count of the complaint focuses on actions taken by DesignerWare that caused or were likely to cause substantial injury to consumers. Count I alleges that the DesignerWare Respondents engaged in unfair conduct by installing monitoring software on rented computers, gathering personal, financial, and health information about consumers from computers, and disclosing that information to RTO store licensees. Count I also alleges as unfair the DesignerWare Respondents' installation of geophysical location tracking software on rented computers without consent from the computer renters, the tracking of computers' geophysical locations without notice to computer users, and the disclosure of that information to the RTO stores.

Count II alleges that the DesignerWare Respondents provided the means to third parties—the RTO stores—to violate Section 5. The first part of the count charges the DesignerWare Respondents with providing RTO stores with the means and instrumentalities to engage in unfairness by furnishing them with software that could monitor consumers by recording their keystrokes, capturing screenshots of information displayed on a computer, and taking pictures of the computer user, and further could track the geophysical location data of rented computers without the consent of the computer renter or notice to the computer user. The second part of Count II alleges that the DesignerWare Respondents provided the means and instrumentalities to RTO stores to engage in unfair collection practices by providing them with the data gathered via PC Rental Agent and Detective Mode. Count II focuses on actions taken

by DesignerWare that were integral to the harm to consumers caused or likely to be caused by the RTO stores. Here, without PC Rental Agent and Detective Mode and without access to DesignerWare's servers to execute their commands to rented computers, collect consumers' confidential information and transmit it to them, the RTO stores could not unfairly monitor their computer renters or use improperly gathered information in connection with collections.

Count III of the complaint charges the DesignerWare Respondents with deceptively gathering—and disclosing—consumers' personal information collected from the fake software registration forms that Detective Mode caused to appear on consumers' rented computers.

Each of the Commission's complaints against the seven RTO stores contains substantially similar allegations regarding the stores' violations of the FTC Act. The complaints charge that the RTO stores unfairly gathered consumers' personal information by installing monitoring software on rented computers and engaged in unfair collection practices by using the improperly gathered information to collect on consumer rental contracts. The complaints further allege that the RTO stores deceptively gathered consumers' personal information by activating the Detective Mode feature that sends the fake software registration forms to consumers' rented computers.

The proposed orders contain strong injunctive relief designed to remedy the unlawful conduct by DesignerWare, its principals, and the RTO stores. The orders define "monitoring technology and geophysical location tracking technology" so that the technological applications covered by the order are clearly described. "Monitoring technology" means any hardware, software, or application utilized in conjunction with a computer that can cause the computer to (1) capture, monitor, or record, and (2) report information about user activities by recording keystrokes, clicks, or other user-generated actions; capturing screenshots of the information displayed on a computer monitor or screen; or activating the camera or microphone function of a computer to take photographs or record audio or visual content through the computer's webcam or microphone. The definition of "geophysical location tracking" includes the reporting of GPS coordinates, WiFi hotspots, or telecommunications towers—all technologies that allow for a relatively precise location of the item tracked. In

addition, a "covered rent-to-own transaction" is defined as one in which a consumer agrees to purchase or rent a computer, where the rental agreement provides for payments over time and an option to purchase the computer.

The proposed orders with DesignerWare and its principals, Kelly and Koller, are separate, but contain identical injunctive provisions. Section I of the proposed orders with DesignerWare and its principals bans them from using—as well as licensing, selling, or otherwise providing third parties with—monitoring technology in connection with any covered RTO transaction. Section II prohibits them from using geophysical location tracking technology to gather information from any computer without providing clear and prominent notice to and obtaining affirmative express consent from the computer's renter at the time the computer is rented. This section also requires clear and prominent notice to computer users immediately prior to each time tracking technology is activated. In addition, Section II mandates that DesignerWare and its principals require their licensees to obtain consent and provide notice prior to initiating any location tracking. However, DesignerWare and its principals do not need to provide notice to a computer user prior to activating geophysical location tracking technology if (1) there is a reasonable basis to believe that the computer has been stolen and (2) a police report has been filed.

Section III of the proposed orders with DesignerWare and its principals prohibits the deceptive collection of consumer information via fake software registration notices. Section IV requires that any data that was collected through any monitoring or tracking software without the requisite notice and consent be destroyed and that any properly collected data be encrypted when transmitted. Section V bars DesignerWare and its principals from making misrepresentations about the privacy or security of any personal information gathered from or about consumers.

Sections VI through IX of both orders contain reporting and compliance provisions. Section VI of the proposed DesignerWare order requires the company to disseminate the order now and in the future to all current and future principals, officers, directors, and managers, and to persons with responsibilities relating to the subject matter of the order. This section also requires DesignerWare to secure a signed and dated statement acknowledging receipt of the order from

all persons who receive a copy. Section VII requires DesignerWare to submit compliance reports to the Commission within sixty (60) days, and periodically thereafter as requested. It also requires the company to notify the Commission of changes in DesignerWare's corporate status.

Section VI of the proposed order with the DesignerWare principals requires respondents to distribute it to all current and future principals, officers, directors, and managers of any company that either respondent controls that engages in any covered RTO transaction as well as to all current and future employees, agents, and representatives having responsibilities relating to the subject matter of this order. It also requires the respondents to secure a signed and dated statement acknowledging receipt of the order from all persons who receive a copy. Section VII of the proposed order with the DesignerWare principals requires them to submit compliance reports to the Commission within sixty (60) days, and periodically thereafter as requested. In addition, this section requires them to notify the Commission of changes in their business or employment for three (3) years.

Under Section VIII of the proposed orders with both DesignerWare and its principals, respondents must retain documents relating to their compliance with the order for a five (5) year period. Finally, Section IX of both proposed orders is a provision "sunsetting" the orders after twenty (20) years, with certain exceptions.

The proposed orders against the RTO stores (which are identical to each other) contain similar injunctive provisions to those in the proposed orders with DesignerWare and its principals. Section I of each of the proposed orders bans the RTO stores from using monitoring technology in connection with any covered RTO transaction. Section II prohibits the stores from using geophysical location tracking technology to gather information from any computer without providing clear and prominent notice to the computer's renter and obtaining affirmative express consent from the computer's renter at the time the computer is rented. This section also requires clear and prominent notice to a computer user immediately prior to each time such technology is activated. The proposed RTO store orders also suspend the notice requirement if (1) there is a reasonable basis to believe that the computer has been stolen and (2) a police report has been filed. Section III of each of the proposed orders prohibits the deceptive collection of consumer

information via fake software registration notices.

Section IV bars the stores from collecting or attempting to collect a debt, money, or property pursuant to a consumer rental contract by using any information or data that was improperly obtained from a computer by monitoring technology. Section V requires that any data collected through any monitoring or tracking software without the requisite notice and consent be destroyed, and that any properly collected data be encrypted when transmitted. As fencing in, Section VI bars misrepresentations about the privacy or security of any personal information gathered from or about consumers.

Sections VII through X of the proposed RTO store orders contain reporting and compliance provisions. Section VII requires distribution of the order now and in the future to all current and future principals, officers, directors, and managers, and to persons with responsibilities relating to the subject matter of the order. It also requires the RTO stores to secure signed and dated statements acknowledging receipt of the order from all persons who receive a copy of the order. Section VIII requires the RTO stores to submit compliance reports to the Commission within sixty (60) days, and periodically thereafter as requested, and ensures notification to the Commission of changes in corporate status. Under Section IX, the RTO stores must retain documents relating to order compliance for a five (5) year period. Finally, Section X is a provision "sunsetting" the order after twenty (20) years, with certain exceptions.

The purpose of this analysis is to facilitate public comment on the proposed orders. It is not intended to constitute an official interpretation of the proposed complaints or orders or to modify the terms of the orders in any way.

By direction of the Commission,
Commissioner Rosch abstaining.

Donald S. Clark,
Secretary.

[FR Doc. 2012-24177 Filed 10-1-12; 8:45 am]

BILLING CODE 6750-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Meeting Notice for the President's Advisory Council on Faith-Based and Neighborhood Partnerships

In accordance with section 10(a)(2) of the Federal Advisory Committee Act

(Pub. L. 92-463), the President's Advisory Council on Faith-based and Neighborhood Partnerships announces the following three conference calls:

Name: President's Advisory Council on Faith-based and Neighborhood Partnerships Council Conference Calls

Time and Date: Thursday, October 18th 4 p.m.-5:30 p.m. (EDT); Thursday, November 15th 4 p.m.-5:30 p.m. (EST); December 13th 4 p.m.-5:30 p.m. (EST)

Place: All meetings announced herein will be held by conference call. The call-in line is: 1-866-823-5144; Passcode: 1375705. Space is limited so please RSVP to partnerships@hhs.gov to participate.

Status: Open to the public, limited only by lines available.

Purpose: The Council brings together leaders and experts in fields related to the work of faith-based and neighborhood organizations in order to: Identify best practices and successful modes of delivering social services; evaluate the need for improvements in the implementation and coordination of public policies relating to faith-based and other neighborhood organizations; and make recommendations for changes in policies, programs, and practices.

Contact Person for Additional Information: Please contact Ben O'Dell for any additional information about the President's Advisory Council meeting at partnerships@hhs.gov.

Agenda: Please visit <http://www.whitehouse.gov/partnerships> for further updates on the Agenda for the meeting.

Public Comment: There will be an opportunity for public comment at the conclusion of the meeting. Comments and questions can be asked over the conference call line, or sent in advance to partnerships@hhs.gov.

Dated: September 26, 2012.

Ben O'Dell,

Designated Federal Officer and Associate Director, HHS Center for Faith-Based and Neighborhood Partnerships.

[FR Doc. 2012-24218 Filed 10-1-12; 8:45 am]

BILLING CODE 4154-07-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Community Living

Agency Information Collection Activities: Submission for OMB Review; Comment Request; Developmental Disabilities Protection & Advocacy Program Statement of Goals and Priorities

AGENCY: Administration for Community Living, HHS.

ACTION: Notice.

SUMMARY: The Administration Intellectual and Developmental Disabilities (AIDD), Administration for Community Living (ACL) is announcing that the proposed collection of

information listed below has been submitted to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995. This notice originally had a submission deadline of September 19, 2012. We are republishing the notice to due to incorrect contact information for OMB. Comments already successfully submitted will be given consideration and in the event an individual or organization resubmits comments, there most recent submission will be considered.

DATES: Submit written comments on the collection of information by November 1, 2012.

ADDRESSES: Submit written comments on the collection of information to OIRA_submission@omb.eop.gov or by

fax to 202.395.5806. Attn: OMB Desk Officer for ACL, Office of Information and Regulatory Affairs, OMB.

FOR FURTHER INFORMATION CONTACT: Brianne Burger, 202.618.5525.

SUPPLEMENTARY INFORMATION: In compliance with 44 U.S.C. 3507, ACL has submitted the following proposed collection of information to OMB for review and clearance. Federal statute and regulation require each State Protection and Advocacy (P&A) System to prepare and solicit public comment on a Statement of Goals and Priorities (SGP) for the P&A for Developmental Disabilities (PADD) program for each coming fiscal year. While the P&A is mandated to protect and advocate under a range of different federally authorized disabilities programs, only the PADD program requires an SGP. Following the

required public input for the coming fiscal year, the P&As submit the final version of this SGP to the Administration on Intellectual and Developmental Disabilities (AIDD). AIDD will aggregate the information in the SGPs into a national profile of programmatic emphasis for P&A Systems in the coming year. This aggregation will provide AIDD with a tool for monitoring of the public input requirement. Furthermore, it will provide an overview of program direction, and permit AIDD to track accomplishments against goals/targets, permitting the formulation of technical assistance and compliance with the Government Performance and Results Act of 1993. ACL estimates the burden of this collection of information as follows:

ANNUAL BURDEN ESTIMATES

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
P&A SGP	57	1	44	2,508

Estimated Total Annual Burden Hours: 2,508.

Dated: September 27, 2012.

Kathy Greenlee,

Administrator & Assistant Secretary for Aging.

[FR Doc. 2012-24236 Filed 10-1-12; 8:45 am]

BILLING CODE 4154-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA-2012-D-1010]

Draft Guidance for Industry on Initial Completeness Assessments for Type II Active Pharmaceutical Ingredient Drug Master Files Under the Generic Drug User Fee Amendments of 2012

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA or the Agency) is announcing the availability of a draft guidance for industry entitled "Initial Completeness Assessments for Type II API DMFs Under GDUFA." Under the Generic Drug User Fee Amendments of 2012 (GDUFA), holders of certain drug master files, namely, Type II active pharmaceutical ingredient (API) drug master files (DMFs) that are referenced in generic drug applications, or in

amendments or prior approval supplements to these applications, will be required to undergo an initial completeness assessment in accordance with FDA criteria. This guidance is intended to clarify the criteria FDA will use in the initial completeness assessment.

DATES: Although you can comment on any guidance at any time (see 21 CFR 10.115(g)(5)), to ensure that the Agency considers your comment on this draft guidance before it begins work on the final version of the guidance, submit either electronic or written comments on the draft guidance by December 3, 2012.

ADDRESSES: Submit written requests for single copies of the draft guidance to the Division of Drug Information, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, Rm. 2201, Silver Spring, MD 20993-0002. Send one self-addressed adhesive label to assist the office in processing your requests. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the draft guidance document.

Submit electronic comments on the draft guidance 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.

FOR FURTHER INFORMATION CONTACT: Jaewon Hong, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Silver Spring, MD 20993-0002, 1-866-405-5367 or 301-796-6707.

SUPPLEMENTARY INFORMATION:

I. Background

Section 744B(a)(2)(D)(ii) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 379j-42(a)(2)(D)(ii)) (FD&C Act), which was added by GDUFA, Title III, Food and Drug Administration Safety and Innovation Act (Pub. L. 112-144), states that, on or after October 1, 2012, a Type II API DMF will be deemed available for reference in an abbreviated new drug application (ANDA), ANDA amendment, or ANDA prior approval supplement (PAS), if the required fee has been paid *and* if the DMF has not failed an initial completeness assessment "in accordance with criteria to be published by" FDA. Any Type II API DMF intended for reference in a generic drug submission for which the fee is paid will undergo an initial completeness assessment. Section 744B(a)(2)(D)(iii) of the FD&C Act requires FDA to make publicly available on its Web site a list of DMF numbers that correspond to DMFs that have successfully undergone an initial completeness assessment in accordance with criteria to be published by FDA and are available for reference.

This list will thus contain DMF numbers for those DMFs for which the fee has been paid and which have successfully undergone the initial completeness assessment. Note that these provisions do not apply to Type II API DMFs that are not intended to be referenced in an ANDA, ANDA amendment, or ANDA PAS.

Fee amounts and the due date for the fee will be announced in a separate **Federal Register** notice or notices.

For DMFs that fail the initial completeness assessment, FDA will issue a letter notifying the holder of the DMF that the DMF is incomplete and identifying missing elements in the DMF that must be addressed. Once the DMF is amended, FDA will re-evaluate it for completeness. This draft guidance describes the criteria that FDA will use in its initial completeness assessment of Type II API DMFs to be referenced in generic drug submissions.

This draft guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). The draft guidance, when finalized, will represent the Agency's current thinking on initial completeness assessments of Type II API DMFs to be referenced in generic drug submissions. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the requirements of the applicable statutes and regulations.

II. Comments

Interested persons may submit either written comments regarding this document to the Division of Dockets Management (see **ADDRESSES**) or electronic comments to <http://www.regulations.gov>. It is only necessary to send one set of 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, and will be posted to the docket at <http://www.regulations.gov>.

III. Electronic Access

Persons with access to the Internet may obtain the document at either <http://www.fda.gov/Drugs/GuidanceComplianceRegulatoryInformation/Guidances/default.htm> or <http://www.regulations.gov>.

Dated: September 28, 2012.

Leslie Kux,

Assistant Commissioner for Policy.

[FR Doc. 2012-24325 Filed 10-1-12; 8:45 am]

BILLING CODE 4160-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA-2012-N-1006]

Generic Drug Facilities, Sites and Organizations

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of Requirement.

SUMMARY: The Food and Drug Administration (FDA) is notifying generic drug facilities, and certain sites and organizations identified in a generic drug submission, that they must provide identification information to FDA. This information is required to be submitted to the FDA annually under the Generic Drug User Fee Act Amendments of 2012 (GDUFA) included in the Food and Drug Administration Safety and Innovation Act (FDASIA). This notice is intended to help organizations ascertain if they need to self-identify with the FDA, determine what information they are required to submit, and familiarize themselves with the means and format for submitting the required information.

DATES: For fiscal year 2013, identification information must be submitted by December 3, 2012. For each subsequent fiscal year, identification information must be submitted, updated, or reconfirmed on or before June 1 of the preceding fiscal year.

ADDRESSES: Electronic tools for submitting the required information may be found at the following Web sites:

- *eSubmitter tool:* <http://www.fda.gov/ForIndustry/FDAeSubmitter/ucm108165.htm>.
- *Structured Product Labeling (SPL) Xforms:* <http://www.fda.gov/ForIndustry/DataStandards/StructuredProductLabeling/ucm189651.htm>.

Step-by-step instructions for electronically creating, validating, and submitting self-identification information are available at www.fda.gov/gdufa. Technical specifications for self-identification are also available at www.fda.gov/gdufa. Once finalized, the file should be transmitted to FDA through the Electronic Submissions Gateway (ESG), FDA's electronic information portal. Information on the ESG is available at <http://www.fda.gov/ForIndustry/ElectronicSubmissionsGateway/default.htm>.

FOR FURTHER INFORMATION CONTACT:

Jaewon Hong, Center for Drug Evaluation and Research (HFD-300),

Food and Drug Administration, 10903 New Hampshire Ave., Silver Spring, MD 20993-0002, 1-866-405-5367 or 301-796-6707.

SUPPLEMENTARY INFORMATION: On July 9, 2012, GDUFA (FDASIA, Title III) (Pub. L. 112-144, Title III) was signed into law by the President. GDUFA requires that generic drug facilities, and certain sites and organizations identified in a generic drug submission, provide identification information annually to FDA. This notice specifies who is required to self-identify, the type of information to be submitted, the means and format for submission of this information, and the penalty for failing to comply. Additional information is contained in the draft guidance for industry entitled "Self-Identification of Generic Drug Facilities, Sites and Organizations" available at <http://www.fda.gov/Drugs/GuidanceComplianceRegulatoryInformation/Guidances/default.htm>. This self-identification information will assist in constructing an accurate inventory of facilities, sites and organizations involved in the manufacture of generic drugs. Among other things, the identification information may be used by FDA for purposes including setting fee amounts and targeting inspections.

I. Who is required to self-identify?

The following types of generic industry facilities, sites, and organizations are required to be identified to FDA:

1. Facilities identified, or intended to be identified in at least one generic drug submission that is pending or approved to produce a finished dosage form (FDF) of a human generic drug or an active pharmaceutical ingredient (API) contained in a human generic drug. Thus, facilities engaged in manufacturing or processing a generic API or FDF must be identified. For purposes of self-identification and payment of fees, GDUFA defines API and FDF manufacturers differently from the way they have been defined historically. The GDUFA definitions are included in the draft guidance for industry entitled "Self-Identification of Generic Drug Facilities, Sites and Organizations," available at <http://www.fda.gov/Drugs/GuidanceComplianceRegulatoryInformation/Guidances/default.htm>.

2. Sites and organizations that package the FDF of a human generic drug into the primary container/closure system and label the primary container/closure system. Sites and organizations that package the FDF of a human generic drug into the primary container/closure system and label the primary

container/closure system are considered to be manufacturers, whether or not that packaging is done pursuant to a contract or by the applicant itself.

3. Sites that are identified in a generic drug submission and pursuant to a contract with the applicant remove the drug from a primary container/closure system and subdivide the contents into a different primary container/closure system (contract repackagers).

4. Bioequivalence (BE)/bioavailability (BA) sites that are identified in a generic drug submission and conduct clinical BE/BA testing (i.e., clinical research organizations), bioanalytical testing of samples collected from clinical BE/BA testing, and/or in vitro BE testing.

5. Sites that are identified in a generic drug submission and perform testing of one or more attributes or characteristics of the FDF or the API pursuant to a contract with the applicant to satisfy a current good manufacturing practice testing requirement (excluding sites that are testing for research purposes only).

II. What type of information must be submitted?

The information required to be submitted is identified in GDUFA SPL Industry Technical Specification Information document available at www.fda.gov/gdufa. Note that the name and contact information for both the registrant owner and the facility, if they are different, must be submitted. This information includes the type of business operation, and, if applicable, the Data Universal Numbering System (DUNS) number(s) and the Facility Establishment Identifier (FEI). A DUNS number is a unique nine-digit sequence provided by Dun & Bradstreet, Inc. An FEI is a unique identifier designated by FDA to assign, monitor, and track inspections of regulated firms. Business entities will also be asked if they manufacture drugs other than generics.

A facility or site that has previously registered with FDA (under section 510 of the Federal Food, Drug, and Cosmetic Act or section 351 of the Public Health Service Act), can verify its DUNS number(s) and FEI(s) on FDA's registration site for drug establishments available at <http://www.accessdata.fda.gov/scripts/cder/drls/default.cfm>. Information on obtaining a DUNS number or FEI(s) is provided in the draft guidance for industry entitled "Self-Identification of Generic Drug Facilities, Sites and Organizations," available at <http://www.fda.gov/Drugs/GuidanceComplianceRegulatoryInformation/Guidances/default.htm>. FDA encourages business entities to

obtain the necessary information as soon as possible to avoid delay.

III. What is the means and format for submission?

The new electronic self-identification process will be familiar to many business entities who have previously submitted information to FDA electronically. Self-identification files should be formatted in the same electronic messaging standard used for drug registration and listing information and for the content of labeling for abbreviated new drug applications (ANDAs). This standard known as Health Level Seven SPL allows information to be exchanged, searched, and combined with other data sources in a manner that supports health information technology initiatives to improve patient care.

The required information may be submitted using any of the following tools to generate a self-identification SPL file:

1. eSubmitter tool, a free stand-alone application available at <http://www.fda.gov/ForIndustry/FDAeSubmitter/ucm108165.htm>. Step-by-step instructions for electronically creating, validating, and submitting self-identification information through eSubmitter are available in "eSubmitter Quick Guide—Generic Drug Facility Self-Identification" available at <http://www.fda.gov/ForIndustry/FDAeSubmitter/ucm274477.htm>; or

2. Xforms, a free tool for generating SPL files available at <http://www.fda.gov/ForIndustry/DataStandards/StructuredProductLabeling/ucm189651.htm>. Step-by-step instructions for electronically creating, validating, and submitting self-identification information using Xforms are available at <http://www.fda.gov/ForIndustry/DataStandards/StructuredProductLabeling/default.htm>; or

3. Software tools developed internally by generic manufacturers utilizing the SPL technical specifications. Additional information is available at <http://www.fda.gov/ForIndustry/DataStandards/StructuredProductLabeling/default.htm>.

4. Other commercially available applications (e.g., vendor tools).

Once a self-identification SPL file is created and finalized, transmit the file to FDA through the ESG, FDA's electronic information portal. More information on ESG procedures and process is available on the Electronic Submission Gateway Web site (<http://www.fda.gov/ForIndustry/ElectronicSubmissionsGateway/default.htm>).

IV. What is the penalty for failing to self-identify?

Under GDUFA, if a facility fails to self-identify, all FDF or API products manufactured at the facility and all FDFs containing APIs manufactured at the facility will be deemed misbranded. It is a violation of Federal law to ship misbranded products in interstate commerce or to import them into the United States. Such a violation can result in prosecution of those responsible, injunctions, or seizures of the misbranded products. Products that are deemed misbranded because of failure of the facility to self-identify are subject to being denied entry into the United States.

Dated: September 28, 2012.

Leslie Kux,

Assistant Commissioner for Policy.

[FR Doc. 2012-24326 Filed 10-1-12; 8:45 am]

BILLING CODE 4160-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA-2012-D-0971; Formerly Docket FDA-2008-N-0041; Formerly 2008N-0004]

Guidance for Industry on Acute Bacterial Otitis Media: Developing Drugs for Treatment; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a guidance for industry entitled "Acute Bacterial Otitis Media: Developing Drugs for Treatment." This guidance addresses FDA's current thinking regarding the overall development program and clinical trial designs for drugs to support an indication for the treatment of acute bacterial otitis media (ABOM). This guidance finalizes the revised draft guidance of the same name issued on January 18, 2008.

DATES: Submit either electronic or written comments on Agency guidances at any time.

ADDRESSES: Submit written requests for single copies of this guidance to the Division of Drug Information, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, Rm. 2201, Silver Spring, MD 20993-0002. Send one self-addressed adhesive label to assist that office in processing your requests. See the **SUPPLEMENTARY**

INFORMATION section for electronic access to the guidance document.

Submit electronic comments on the guidance 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.

FOR FURTHER INFORMATION CONTACT:

Joseph G. Toerner, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 22, Rm. 6244, Silver Spring, MD 20993-0002, 301-796-1300.

SUPPLEMENTARY INFORMATION:

I. Background

FDA is announcing the availability of a guidance for industry entitled "Acute Bacterial Otitis Media: Developing Drugs for Treatment." The purpose of this guidance is to assist sponsors in the overall clinical development of drugs to support an indication for the treatment of ABOM, defined in the guidance as "the recent or acute onset of inflammation of the middle ear caused by a bacterial pathogen." This guidance finalizes the revised draft guidance issued on January 18, 2008, which in turn revised the draft guidance for industry entitled "Acute Otitis Media—Developing Antimicrobial Drugs for Treatment" issued in 1998. Changes from the revised draft guidance are incorporated in the appropriate sections of the guidance and are based on comments received to the docket for the draft guidance. In addition, developments in scientific and medical information and technology in the treatment of ABOM are included in this guidance. This guidance fulfills the statutory requirement described in the Food and Drug Administration Amendments Act of 2007 that directed FDA to update the guidance within 5 years.¹ This guidance also responds to the requirement set forth in the Food and Drug Administration Safety and Innovation Act of 2012 that FDA review guidances for the conduct of clinical trials with respect to antibacterial and antifungal drugs and revise such guidances as appropriate.²

This guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). The guidance represents the Agency's current thinking on developing drugs

for the treatment of ABOM. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the requirements of the applicable statutes and regulations.

II. The Paperwork Reduction Act of 1995

This guidance refers to previously approved collections of information that are subject to review by the Office of Management and Budget under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520). The collections of information in 21 CFR parts 312 and 314 have been approved under 0910-0014 and 0910-0001, respectively. The collections of information referred to in the guidance for clinical trial sponsors entitled "Establishment and Operation of Clinical Trial Data Monitoring Committees" have been approved under 0910-0581.

III. Comments

Interested persons may submit either written comments regarding this document to the Division of Dockets Management (see **ADDRESSES**) or electronic comments to <http://www.regulations.gov>. It is only necessary to send one set of 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, and will be posted to the docket at <http://www.regulations.gov>.

IV. Electronic Access

Persons with access to the Internet may obtain the document at either <http://www.fda.gov/Drugs/GuidanceComplianceRegulatoryInformation/Guidances/default.htm> or <http://www.regulations.gov>.

Dated: September 26, 2012.

Leslie Kux,

Assistant Commissioner for Policy.

[FR Doc. 2012-24211 Filed 10-1-12; 8:45 am]

BILLING CODE 4160-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Agency Information Collection Activities: Submission for OMB Review; Comment Request

The Health Resources and Services Administration (HRSA) periodically

publishes abstracts of information collection requests under review by the Office of Management and Budget (OMB), in compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35). To request a copy of the clearance requests submitted to OMB for review, email paperwork@hrsa.gov or call the HRSA Reports Clearance Office at (301) 443-1984.

The following request has been submitted to the Office of Management and Budget for review under the Paperwork Reduction Act of 1995:

Proposed Project: Healthy Weight Collaborative Evaluation (OMB No. 0915-xxxx)—[NEW]

Background: Supported by the Prevention and Public Health Fund created by Section 4002 of the Affordable Care Act, HRSA awarded \$5 million to the National Initiative for Children's Healthcare Quality (NICHQ) to create the Collaborative for Healthy Weight, a national initiative to bring together primary care providers, public health professionals, and leaders of community-based organizations to use quality improvement methods to address the obesity epidemic in communities across the country. A key part of that initiative was creation of the Healthy Weight Collaborative (HWC), a quality improvement project working with 50 community teams to identify, test, and evaluate a national "change package" of evidence-based program and policy interventions to address childhood obesity. The HWC is being implemented in two consecutive phases, each with a series of learning sessions and action periods. The first phase (July 2011 to July 2012) includes 10 community teams; the second phase (March 2012 to March 2013) includes 40 additional teams.

Purpose: The purpose of this evaluation is to assess the quality and effectiveness of the HWC. This one-year information collection will supplement the analysis of existing quantitative HWC administrative and team data by collecting primary data using individual and group interviews with two groups of stakeholders: (a) NICHQ project leadership, staff, and faculty; and (b) community team members at 11 selected sites (four Phase 1 teams and seven Phase 2 teams). Data from these interviews will be used to evaluate the quality and effectiveness of the HWC. NICHQ leadership, staff, and faculty interview topics include: the design and implementation of the HWC project; the content and quality of the HWC learning sessions, coaching assistance, and other action period activities; the community teams' experiences implementing the

¹ See Title IX, section 911, of the Food and Drug Administration Amendments Act of 2007 (Pub. L. 110-85).

² See Title VIII, section 804(a)(1), of the Food and Drug Administration Safety and Innovation Act of 2012 (Pub. L. 112-144).

HWC change package and quality improvement indicators; and stakeholders' perceptions of the quality and effectiveness of the HWC in accelerating community efforts to address childhood obesity. Community team interviews will be conducted with the team coordinator, the quality improvement data manager, and other team members, including primary care

providers, public health officials, school administrators, and other community volunteers. Separate interview protocols will be developed for the Phase 1 and Phase 2 community teams. Phase 1 protocols will examine community team strategies, activities, and approaches that have been sustained and spread after the end of Phase 1. Phase 2 protocols will examine: (1) Team goals,

objectives, and program elements; (2) team implementation of the HWC change package; (3) team engagement in HWC activities; and (4) team linkages and organizational and policy changes resulting from the team's participation in the HWC.

The annual estimate of burden is as follows:

Instrument	Number of respondents	Responses per respondent	Total responses	Hours per response	Total burden hours
NICHQ Leaders Interview	4	1	4	1.0	4.0
NICHQ Staff Interview	5	1	5	1.0	5.0
NICHQ Faculty Group Interview	*6	1	6	1.0	6.0
Phase 1 Team Group Interview	**24	1	24	1.5	36.0
Phase 1 Team Coordinator Interview	4	1	4	1.5	6.0
Phase 1 Team Data Manager Interview	4	1	4	.5	2.0
Phase 2 Team Group Interview	***42	1	42	1.5	63.0
Phase 2 Team Coordinator Interview	7	1	7	1.5	10.5
Phase 2 Team Data Manager Interview	7	1	7	.5	3.5
Total	103	.....	103	.....	136.0

* One group interview: 6 people per group.
 ** Four group interviews: 6 people per group.
 *** Seven group interviews: 6 people per group.

Written comments and recommendations concerning the proposed information collection should be sent within 30 days of this notice to the desk officer for HRSA, either by email to *OIRA_submission@omb.eop.gov* or by fax to 202-395-5806. Please direct all correspondence to the "attention of the desk officer for HRSA."

Dated: September 26, 2012.

Bahar Niakan,
 Director, Division of Policy and Information Coordination.

[FR Doc. 2012-24249 Filed 10-1-12; 8:45 am]

BILLING CODE 4165-15-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Noncompetitive Supplements to Nursing Assistant and Home Health Aide Program Grantees

AGENCY: Health Resources and Services Administration (HRSA), HHS.

ACTION: Notice of Noncompetitive Program Expansion Supplements to Develop, Implement, and Evaluate Educational Curricula in Medication Administration and Management; Care Coordination and Follow Up; and Behavioral Health and Social Support for Home Health Aides.

SUMMARY: The Health Resources and Services Administration (HRSA) will

offer noncompetitive program expansion supplements of \$100,000 to 10 Nursing Assistant and Home Health Aide (NAHHA) Program grantees to develop, implement, and evaluate enhanced training programs to build competency in medication administration and management, care coordination and follow up, and behavioral health and social support for home health aides. Approximately \$1,000,000 is available in fiscal year (FY) 2012. The NAHHA grantees have the capability, expertise, experience and infrastructure to expeditiously and effectively implement this enhanced training program. Their existing curricular efforts have built-in opportunities to offer continuing/expanded training, and these skills represent ones that have been identified by program participants and employers as highly desirable areas for training.

SUPPLEMENTARY INFORMATION:

Grantees of record are:

- American Red Cross, Greater Cleveland Chapter, 3747 Euclid Avenue, Cleveland, OH 44115-2501, T51HP20694
- American Red Cross of Sonoma, Mendocino & Lake Counties, 5297 Aero Drive, Santa Rosa, CA 95403, T51HP20693
- College of Menominee Nation, PO Box 1179, Keshena, WI 54135, T51HP20696
- Erie 1 BOCES (Board of Cooperative Educational Services), 355 Harlem Road, West Seneca, NY 14224, T51HP20701
- Hazard Community and Technical College, One Community Drive, Hazard, KY 41701, T51HP20697

- Jewish Vocational Service and Employment Center, 216 W. Jackson Boulevard, Suite 700, Chicago, IL 60606-6921, T51HP20695
- Penn Asian Senior Services, 420 York Road, Jenkintown, PA 19046, T51HP20699
- Sears Methodist Retirement System, Inc., Texas Tech University Health Sciences Center (TTUHSC) School of Nursing, 302 Pine Street, Abilene, TX 79601, T51HP20702
- Southwestern Oregon Community College, 1988 Newmark Avenue, Coos Bay, OR 97420, T51HP20698
- St. Joseph Medical Center, P.O. Box 316, Reading, PA 19603-0316, T51HP20700

Intended Recipients of the Award: 10 Existing NAHHA awardees.

Intended Amount of Each Award: \$100,000.

CFDA Number: 93.503

Project Period: September 30, 2012, through September 29, 2013.

Authority: Public Health Service Act, Title VIII, Section 831, 42 U.S.C. 296p, as amended by the Affordable Care Act (Pub. L. 111-148).

Justification: These program expansion supplements allow the Bureau of Health Professions to consolidate resources and provide enhanced curricular offerings and technical assistance, grant monitoring and oversight to the NAHHA initiative within currently existing grants. Moreover, providing additional funding to existing grantees offers the opportunity to expand upon the program evaluation imbedded in the existing NAHHA program, increasing the knowledge yield for HRSA and the

grantees. This program supplement aligns with the current NAHHA budget period cycle, resulting in administrative savings over a competitive grant making process.

FOR FURTHER INFORMATION CONTACT: Kirk Koyama, Health Resources and Services Administration, Division of Nursing, 5600 Fishers Lane, Room 9-61, Rockville, Maryland 20857, or email kkoyama@hrsa.gov.

Dated: September 26, 2012.

Mary K. Wakefield,
Administrator.

[FR Doc. 2012-24250 Filed 10-1-12; 8:45 am]

BILLING CODE 4165-15-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Indian Health Service

60-Day Proposed Information Collection: Indian Health Service Forms To Implement the Privacy Rule; Request for Public Comment

AGENCY: Indian Health Service, HHS.

ACTION: Notice.

SUMMARY: In compliance with Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, which requires 60 days for public comment on proposed information collection projects, the Indian Health Service (IHS) is publishing for comment a summary of a proposed information collection to be submitted to the Office of Management and Budget (OMB) for review.

Proposed Collection: Title: 0917-0030, "IHS Forms to Implement the Privacy Rule (45 CFR Parts 160 & 164)". *Type of Information Collection Request:* Extension, without revisions, of currently approved information collection, 0917-0030, "IHS Forms to Implement the Privacy Rule (45 CFR Parts 160 & 164)". *Form Number(s):* IHS-810, IHS-912-1, IHS-912-2, IHS-913 and IHS-917. *Need and Use of Information Collection:* This collection

of information is made necessary by the Department of Health and Human Services Rule entitled "Standards for Privacy of Individually Identifiable Health Information" (Privacy Rule) (45 CFR parts 160 and 164). The Privacy Rule implements the privacy requirements of the Administrative Simplification subtitle of the Health Insurance Portability and Accountability Act of 1996, creates national standards to protect individual's personal health information, and gives patients increased access to their medical records. 45 CFR 164.508, 164.522, 164.526 and 164.528 of the Rule require the collection of information to implement these protection standards and access requirements. The IHS will continue to use the following data collection instruments to meet the information collection requirements contained in the Rule.

45 CFR 164.508: This provision requires covered entities to obtain or receive a valid authorization for its use or disclosure of protected health information for other than for treatment, payment and healthcare operations. Under the provision individuals may initiate a written authorization permitting covered entities to release their protected health information to entities of their choosing. The form IHS-810 "Authorization for Use or Disclosure of Protected Health Information" is used to document an individual's authorization to use or disclose their protected health information.

45 CFR 164.522: Section 164.522(a)(1) requires a covered entity to permit individuals to request that the covered entity restrict the use and disclosure of their protected health information. The covered entity may or may not agree to the restriction. The form IHS-912-1 "Request for Restrictions(s)" is used to document an individual's request for restriction of their protected health information, and whether IHS agreed or

disagreed with the restriction. Section 164.522(a)(2) permits a covered entity to terminate its agreement to a restriction if the individual agrees to or requests the termination in writing. The form IHS-912-2 "Request for Revocation of Restriction(s)" is used to document the agency or individual request to terminate a formerly agreed to restriction regarding the use and disclosure of protected health information.

45 CFR 164.528 and 45 CFR 5b.9(c): This provision requires covered entities to permit individuals to request that the covered entity provide an accounting of disclosures of protected health information made by the covered entity. The form IHS-913 "Request for an Accounting of Disclosures" is used to document an individual's request for an accounting of disclosures of their protected health information and the agency's handling of the request.

45 CFR 164.526: This provision requires covered entities to permit an individual to request that the covered entity amend protected health information. If the covered entity accepts the requested amendment, in whole or in part, the covered entity must inform the individual that the amendment is accepted. If the covered entity denies the requested amendment, in whole or in part, the covered entity must provide the individual with a written denial. The form IHS-917 "Request for Correction/Amendment of Protected Health Information" will be used to document an individual's request to amend their protected health information and the agency's decision to accept or deny the request. Completed forms used in this collection of information are filed in the IHS medical, health and billing record, a Privacy Act System of Records Notice. *Affected Public:* Individuals and households. *Type of Respondents:* Individuals. *Burden Hours:* The table below provides the estimated burden hours for this information collection:

Data collection instrument	Number of respondents	Responses per respondent	Average burden hour per response*	Total annual burden hours
Authorization for Use or Disclosure of Protected Health Information (OMB Form No. 0917-0030, IHS-810)	500,000	1	20/60	166,667
Request for Restriction(s) (OMB Form No. 0917-0030, IHS-912-1)	15,000	1	10/60	2,500
Request for Revocation of Restriction(s) (OMB Form No. 0917-0030, IHS-912-2)	5,000	1	10/60	833
Request for Accounting of Disclosures (OMB Form No. 0917-0030, IHS-913)	15,000	1	10/60	2,500
Request for Correction/Amendment of Protected Health Information (OMB Form No. 0917-0030, IHS-917)	7,500	1	15/60	1,875
Total Annual Burden .....	.....	5	.....	174,375

*For ease of understanding, burden hours are provided in actual minutes.

The total estimated burden for this collection of information is 174,375 hours. There are no capital costs, operating costs and/or maintenance costs to respondents.

Request for Comments: Your written comments and/or suggestions are invited on one or more of the following points: (a) Whether the information collection activity is necessary to carry out an agency function; (b) whether the agency processes the information collected in a useful and timely fashion; (c) the accuracy of public burden estimate (the estimated amount of time needed for individual respondents to provide the requested information); (d) whether the methodology and assumptions used to determine the estimate are logical; (e) ways to enhance the quality, utility, and clarity of the information being collected; and (f) ways to minimize the public burden through the use of automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Send Comments and Requests for Further Information: Send your written comments and requests for more information on the proposed collection or requests to obtain a copy of the data collection instrument(s) and instructions to: Tamara Clay, IHS Reports Clearance Officer, 801 Thompson Avenue, TMP, Suite 450, Rockville, MD 20852, call non-toll free (301) 443-1611, send via facsimile to (301) 443-2316, or send your email requests, comments, and return address to: tamara.clay@ihs.gov.

Comment Due Date: Your 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: September 20, 2012.

Yvette Roubideaux,

Director, Indian Health Service.

[FR Doc. 2012-24119 Filed 10-1-12; 8:45 am]

BILLING CODE 4165-16-P

DEPARTMENT OF HOMELAND SECURITY

[Docket No. DHS-2012-0043]

Agency Information Collection Activities: Submission for Review; Information Collection Extension Request for the Support Anti-Terrorism by Fostering Effective Technologies (SAFETY) Act Program

AGENCY: Science and Technology Directorate, DHS.

ACTION: 60-day notice and request for comment.

SUMMARY: The Department of Homeland Security (DHS) is soliciting public comment on the following forms: (1) Registration as a Seller of an Anti-Terrorism Technology (DHS Form 10010); (2) Request for a Pre-Application Consultation (DHS Form 10009); (3) Notice of License of Qualified Anti-Terrorism Technology (DHS Form 10003); (4) Notice of Modification of Qualified Anti-Terrorism Technology (DHS Form 10002); (5) Application for Transfer of SAFETY Act Designation and Certification (DHS Form 10001); (6) Application for Renewal Of SAFETY Act Protections of a Qualified Anti-Terrorism Technology (DHS Form 10057); (7) Application for SAFETY Act Developmental Testing and Evaluation Designation (DHS Form 10006); (8) Application for SAFETY Act Designation (DHS Form 10008); (9) Application for SAFETY Act Certification (DHS Form 10007); (10) SAFETY Act Block Designation Application (DHS Form 10005); and (11) SAFETY Act Block Certification Application (DHS Form 10004).

DATES: Comments are encouraged and will be accepted until December 3, 2012.

ADDRESSES: You may submit comments, identified by docket number DHS-2012-0043, by one of the following methods:

- *Federal eRulemaking Portal:* <http://www.regulations.gov>. Please follow the instructions for submitting comments.

- *Email:* douglas.m.smith@hq.dhs.gov. Please include docket number DHS-2012-0043 in the subject line of the message.

- *Mail:* Science and Technology Directorate, ATTN: SAFETY Act, 245 Murray Lane SW., Mail Stop 0202, Washington, DC 20528.

FOR FURTHER INFORMATION CONTACT: douglas.m.smith@hq.dhs.gov (202) 254-5604 (Not a toll free number).

SUPPLEMENTARY INFORMATION: DHS S&T provides a secure Web site, accessible through www.SAFETYAct.gov, through which the public can learn about the program, submit applications for SAFETY Act protections, submit questions to the Office of SAFETY Act Implementation (OSAI), and provide feedback. The data collection forms have standardized the collection of information that is both necessary and essential for the DHS OSAI.

The SAFETY Act program promotes the development and use of anti-terrorism technologies that will enhance

the protection of the nation and provides risk management and litigation management protections for sellers of Qualified Anti-Terrorism Technology (QATT) and others in the supply and distribution chain. The Department of Homeland Security Science & Technology Directorate (DHS S&T) currently has approval to collect information for the implementation of the SAFETY Act program until March 31, 2013. With this notice, DHS S&T seeks approval to renew this information collection for continued use after this date. The SAFETY Act program requires the collection of this information in order to evaluate and qualify Anti-Terrorism Technologies, based on the economic and technical criteria contained in the Regulations Implementing the Support Anti-Terrorism by Fostering Effective Technologies Act (the Final Rule), for protection in accordance with the Act, and therefore encourage the development and deployment of new and innovative anti-terrorism products and services. The Support Anti-Terrorism by Fostering Effective Technologies (SAFETY) Act (6 U.S.C. 441) was enacted as part of the Homeland Security Act of 2002, Public Law 107-296 establishing this requirement. This notice and request for comments is required by the Paperwork Reduction Act of 1995 (Pub. L. 104-13, 44 U.S.C. chapter 35).

DHS S&T currently has approval to collect information utilizing the Registration of a Seller as an Anti-Terrorism Technology (DHS Form 10010), Request for a Pre-Application Consultation (DHS Form 10009), Notice of License of Qualified Anti-Terrorism Technology (DHS Form 10003), Notice of Modification of Qualified Anti-Terrorism Technology (DHS Form 10002), Application for Transfer of SAFETY Act Designation and Certification (DHS Form 10001), Application for Renewal Of SAFETY Act Protections of a Qualified Anti-Terrorism Technology (DHS Form 10057), Application for SAFETY Act Developmental Testing and Evaluation Designation (DHS Form 10006), Application for SAFETY Act Designation (DHS Form 10008), Application for SAFETY Act Certification (DHS Form 10007), SAFETY Act Block Designation Application (DHS Form 10005), SAFETY Act Block Certification Application (DHS Form 10004) until 31 March 2013 with OMB approval number 1640-0001.

The Department is committed to improving its information collection and urges all interested parties to

suggest how these materials can further reduce burden while seeking necessary information under the Act.

DHS is particularly interested in comments that:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Suggest ways to enhance the quality, utility, and clarity of the information to be collected; and

(4) Suggest ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submissions of responses.

Overview of Information Collection

(1) *Type of Information Collection:* Existing information collection.

(2) *Title of the Form/Collection:* SAFETY Act Program.

(3) *Agency Form Number, if any, and the applicable component of the Department of Homeland Security sponsoring the collection:* DHS Science & Technology Directorate, DHS Forms 10001, 10002, 10003, 10004, 10005, 10006, 10007, 10008, 10009, 10010, and 10057.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Business entities, Associations, and State, Local and Tribal Government entities. Applications are reviewed for benefits, technology/program evaluations, and regulatory compliance.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:*

a. *Estimate of the total number of respondents:* 950.

b. *An estimate of the time for an average respondent to respond:* 18.2 burden hours.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 17,300 burden hours.

Dated: September 17, 2012.

Rick Stevens,

Chief Information Officer for Science and Technology.

[FR Doc. 2012-24199 Filed 10-1-12; 8:45 am]

BILLING CODE 9110-9F-P

DEPARTMENT OF HOMELAND SECURITY

Office of the Secretary

[Docket No. DHS-2012-0052]

DHS Data Privacy and Integrity Advisory Committee

AGENCY: Privacy Office, DHS.

ACTION: Committee Management; Notice of Federal Advisory Committee Meeting.

SUMMARY: The DHS Data Privacy and Integrity Advisory Committee will meet on November 7, 2012, in Washington, DC. The meeting will be open to the public.

DATES: The DHS Data Privacy and Integrity Advisory Committee will meet on Wednesday, November 7, 2012, from 1 p.m. to 5 p.m. Please note that the meeting may end early if the Committee has completed its business.

ADDRESSES: The meeting will be held at the Ronald Reagan Building, 1300 Pennsylvania Avenue NW., Room B 1.5-10, Washington, DC 20004.

For information on facilities or services for individuals with disabilities, or to request special assistance at the meeting, contact Shannon Ballard, Designated Federal Officer, DHS Data Privacy and Integrity Advisory Committee, as soon as possible.

To facilitate public participation, we invite public comment on the issues to be considered by the Committee as listed in the "SUPPLEMENTARY INFORMATION" section below. A public comment period will be held during the meeting from 4 p.m. to 4:30 p.m., and speakers are requested to limit their comments to three minutes. If you would like to address the Committee at the meeting, we request that you register in advance by contacting Shannon Ballard at the address provided below or sign up at the registration desk on the day of the meeting. The names and affiliations, if any, of individuals who address the Committee are included in the public record of the meeting. Please note that the public comment period may end before the time indicated, following the last call for comments. Written comments should be sent to Shannon Ballard, Designated Federal Officer, DHS Data Privacy and Integrity Advisory Committee, by October 29, 2012. Persons who wish to submit comments and who are not able to attend or speak at the meeting may submit comments at any time. All submissions must include the Docket Number (DHS-2012-0052) and may be submitted by any one of the following methods:

- *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the instructions for submitting comments.

- *Email:* PrivacyCommittee@hq.dhs.gov. Include the Docket Number (DHS-2012-0052) in the subject line of the message.

- *Fax:* (202) 343-4010.
- *Mail:* Shannon Ballard, Designated Federal Officer, Data Privacy and Integrity Advisory Committee, Department of Homeland Security, 245 Murray Lane SW., Mail Stop 0655, Washington, DC 20528.

Instructions: All submissions must include the words "Department of Homeland Security Data Privacy and Integrity Advisory Committee" and the Docket Number (DHS-2012-0052). Comments received will be posted without alteration at <http://www.regulations.gov>, including any personal information provided.

If you wish to attend the meeting, please plan to arrive at the Ronald Reagan Building no later than 12:45 p.m., so as to allow extra time to be processed through security, and bring a photo I.D. The DHS Privacy Office encourages you to register for the meeting in advance by contacting Shannon Ballard, Designated Federal Officer, DHS Data Privacy and Integrity Advisory Committee, at PrivacyCommittee@hq.dhs.gov. Advance registration is voluntary. The Privacy Act Statement below explains how DHS uses the registration information you may provide and how you may access or correct information retained by DHS, if any.

Docket: For access to the docket to read background documents or comments received by the DHS Data Privacy and Integrity Advisory Committee, go to <http://www.regulations.gov>.

FOR FURTHER INFORMATION CONTACT: Shannon Ballard, Designated Federal Officer, DHS Data Privacy and Integrity Advisory Committee, Department of Homeland Security, 245 Murray Lane SW., Mail Stop 0655, Washington, DC 20528, by telephone (202) 343-1717, by fax (202) 343-4010, or by email to PrivacyCommittee@hq.dhs.gov.

SUPPLEMENTARY INFORMATION: Notice of this meeting is given under the *Federal Advisory Committee Act* (FACA), 5 U.S.C. App. 2. The DHS Data Privacy and Integrity Advisory Committee provides advice at the request of the Secretary of Homeland Security and the DHS Chief Privacy Officer on programmatic, policy, operational, administrative, and technological issues within the DHS that relate to personally identifiable information, as well as data

integrity and other privacy-related matters. The committee was established by the Secretary of Homeland Security under the authority of 6 U.S.C. 451.

Agenda

During the meeting, the Acting Chief Privacy Officer will provide the Committee an update on the activities of the DHS Privacy Office.

During the meeting, the Committee plans to discuss and may vote on two draft subcommittee recommendation reports to the Department providing guidance on privacy protections for the collection and use of biometrics and for cybersecurity pilot programs. These draft reports will be posted on the Committee's Web site (www.dhs.gov/privacy) on or before October 31, 2012. If you wish to submit comments on the draft report, you may do so in advance of the meeting by forwarding them to the Committee at the locations listed under "ADDRESSES". The agenda will be posted on or before November 2, 2012, on the Committee's Web site at www.dhs.gov/privacy. Please note that the meeting may end early if all business is completed.

Privacy Act Statement: DHS's Use of Your Information

Authority: DHS requests that you voluntarily submit this information under its following authorities: the *Federal Records Act*, 44 U.S.C. 3101; the *FACA*, 5 U.S.C. App. 2; and the *Privacy Act of 1974*, 5 U.S.C. 552a.

Principal Purposes: When you register to attend a DHS Data Privacy and Integrity Advisory Committee meeting, DHS collects your name, contact information, and the organization you represent, if any. We use this information to contact you for purposes related to the meeting, such as to confirm your registration, to advise you of any changes in the meeting, or to assure that we have sufficient materials to distribute to all attendees. We may also use the information you provide for public record purposes such as posting publicly available transcripts and meeting minutes.

Routine Uses and Sharing: In general, DHS will not use the information you provide for any purpose other than the Principal Purposes, and will not share this information within or outside the agency. In certain circumstances, DHS may share this information on a case-by-case basis as required by law or as necessary for a specific purpose, as described in the DHS/ALL-002 Mailing and Other Lists System of Records Notice (November 25, 2008, 73 FR 71659).

Effects of Not Providing Information: You may choose not to provide the

requested information or to provide only some of the information DHS requests. If you choose not to provide some or all of the requested information, DHS may not be able to contact you for purposes related to the meeting.

Accessing and Correcting Information: If you are unable to access or correct this information by using the method that you originally used to submit it, you may direct your request in writing to the DHS Deputy Chief FOIA Officer at foia@hq.dhs.gov. Additional instructions are available at <http://www.dhs.gov/foia> and in the DHS/ALL-002 Mailing and Other Lists System of Records referenced above.

Dated: September 20, 2012.

Jonathan R. Cantor,

Acting Chief Privacy Officer, Department of Homeland Security.

[FR Doc. 2012-24167 Filed 10-1-12; 8:45 am]

BILLING CODE 9110-9L-P

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

Accreditation and Approval of Amspec Services LLC, as a Commercial Gauger and Laboratory

AGENCY: U.S. Customs and Border Protection, Department of Homeland Security.

ACTION: Notice of accreditation and approval of Amspec Services LLC, as a commercial gauger and laboratory.

SUMMARY: Notice is hereby given that, pursuant to 19 CFR 151.12 and 19 CFR 151.13, Amspec Services LLC, 4370 Oakes Road Unit 732, Davie, FL 33314, has been approved to gauge and accredited to test petroleum and petroleum products, organic chemicals and vegetable oils for customs purposes, in accordance with the provisions of 19 CFR 151.12 and 19 CFR 151.13. Anyone wishing to employ this entity to conduct laboratory analyses and gauger services should request and receive written assurances from the entity that it is accredited or approved by the U.S. Customs and Border Protection to conduct the specific test or gauger service requested. Alternatively, inquires regarding the specific test or gauger service this entity is accredited or approved to perform may be directed to the U.S. Customs and Border Protection by calling (202) 344-1060. The inquiry may also be sent to cbp.labhq@dhs.gov. Please reference the Web site listed below for a complete listing of CBP approved gaugers and accredited laboratories.

http://cbp.gov/linkhandler/cgov/trade/automated/labs_scientific_svcs/commercial_gaugers/gaulist.ctt/gaulist.pdf

DATES: The accreditation and approval of Amspec Services LLC, as commercial gauger and laboratory became effective on June 21, 2012. The next triennial inspection date will be scheduled for June 2015.

FOR FURTHER INFORMATION CONTACT: Christopher Mocella, Laboratories and Scientific Services, U.S. Customs and Border Protection, 1300 Pennsylvania Avenue NW., Suite 1500N, Washington, DC 20229, 202-344-1060.

Dated: September 25, 2012.

Ira S. Reese,

Executive Director.

[FR Doc. 2012-24228 Filed 10-1-12; 8:45 am]

BILLING CODE 9111-14-P

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

Agency Information Collection Activities; Crew Member's Declaration

AGENCY: U.S. Customs and Border Protection, Department of Homeland Security.

ACTION: 30-Day notice and request for comments; Extension of an existing information collection.

SUMMARY: U.S. Customs and Border Protection (CBP) of the Department of Homeland Security 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: Crew Member's Declaration (Form 5129). This is a proposed extension of an information collection that was previously approved. CBP is proposing that this information collection be extended with no change to the burden hours. This document is published to obtain comments from the public and affected agencies. This information collection was previously published in the **Federal Register** (77 FR 40892) on June 11, 2012, allowing for a 60-day comment period. This notice allows for an additional 30 days for public comments. This process is conducted in accordance with 5 CFR 1320.10.

DATES: Written comments should be received on or before November 1, 2012.

ADDRESSES: Interested persons are invited to submit written comments on this information collection to the Office of Information and Regulatory Affairs,

Office of Management and Budget. Comments should be addressed to the OMB Desk Officer for U.S. Customs and Border Protection, Department of Homeland Security, and sent via electronic mail to oir_submission@omb.eop.gov or faxed to (202) 395-5806.

FOR FURTHER INFORMATION CONTACT:

Requests for additional information should be directed to Tracey Denning, U.S. Customs and Border Protection, Regulations and Rulings, Office of International Trade, 799 9th Street, NW., 5th Floor, Washington, DC 20229-1177, at 202-325-0265.

SUPPLEMENTARY INFORMATION: CBP invites the general public and affected Federal agencies to submit written comments and suggestions on proposed and/or continuing information collection requests pursuant to the Paperwork Reduction Act (Pub. L. 104-13). Your comments should address one of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency/component, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agencies/components estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collections of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological techniques or other forms of information.

Title: Crew Member's Declaration.

OMB Number: 1651-0021.

Form Number: Form 5129.

Abstract: CBP Form 5129, *Crew Member's Declaration*, is a declaration made by crew members listing all goods acquired abroad which are in his/her possession at the time of arrival in the United States. The data collected on CBP Form 5129 are used for compliance with currency reporting requirements, supplemental immigration documentation, agricultural quarantine matters, and the importation of merchandise by crew members who complete the individual declaration. This form is authorized by 19 U.S.C. 1431 and provided for by 19 CFR 4.7, 4.81, 122.44, 122.46, 122.83, 122.84 and 148.61-148.67. CBP Form 5129 is accessible at http://forms.cbp.gov/pdf/CBP_Form_5129.pdf.

Current Actions: This submission is being made to extend the expiration date with no changes to the burden hours to allow or to the information being collected.

Type of Review: Extension (without change).

Affected Public: Businesses and Individuals.

Estimated Number of Respondents: 6,000,000.

Estimated Number of Annual Responses: 6,000,000.

Estimated Time per Response: 10 minutes.

Estimated Total Annual Burden Hours: 996,000.

Dated: September 27, 2012.

Tracey Denning,

Agency Clearance Officer, U.S. Customs and Border Protection.

[FR Doc. 2012-24245 Filed 10-1-12; 8:45 am]

BILLING CODE 9111-14-P

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

Agency Information Collection Activities: Deferral of Duty on Large Yachts Imported for Sale

AGENCY: U.S. Customs and Border Protection (CBP), Department of Homeland Security.

ACTION: 60-Day notice and request for comments; Extension of an existing collection of information.

SUMMARY: As part of its continuing effort to reduce paperwork and respondent burden, CBP invites the general public and other Federal agencies to comment on an information collection requirement concerning Deferral of Duty on Large Yachts Imported for Sale. This request for comment is being made pursuant to the Paperwork Reduction Act of 1995 (Pub. L. 104-13).

DATES: Written comments should be received on or before December 3, 2012, to be assured of consideration.

ADDRESSES: Direct all written comments to U.S. Customs and Border Protection, Attn: Tracey Denning, Regulations and Rulings, Office of International Trade, 799 9th Street NW., 5th Floor, Washington, DC 20229-1177.

FOR FURTHER INFORMATION CONTACT:

Requests for additional information should be directed to Tracey Denning, U.S. Customs and Border Protection, Regulations and Rulings, Office of International Trade, 799 9th Street NW., 5th Floor, Washington, DC 20229-1177, at 202-325-0265.

SUPPLEMENTARY INFORMATION: CBP invites the general public and other Federal agencies to comment on proposed and/or continuing information collections pursuant to the Paperwork Reduction Act of 1995 (Pub. L. 104-13). The comments should address: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimates of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden including the use of automated collection techniques or the use of other forms of information technology; and (e) the annual cost burden to respondents or record keepers from the collection of information (total capital/startup costs and operations and maintenance costs). The comments that are submitted will be summarized and included in the CBP request for Office of Management and Budget (OMB) approval. All comments will become a matter of public record. In this document CBP is soliciting comments concerning the following information collection:

Title: Deferral of Duty on Large Yachts Imported for Sale.

OMB Number: 1651-0080.

Form Number: None.

Abstract: This collection of information is required to ensure compliance with 19 USC 1484b which provides that an otherwise dutiable yacht that exceeds 79 feet in length, is used primarily for recreation or pleasure, and had been previously sold by a manufacturer or dealer to a retail customer, may be imported without the payment of duty if the yacht is imported with the intention to offer for sale at a boat show in the United States. The statute provides for the deferral of payment of duty until the yacht is sold but specifies that the duty deferral period may not exceed 6 months. This collection of information is provided for by 19 CFR 4.94 which requires the submission of information to CBP such as the name and address of the owner of the yacht, the dates of cruising in the waters of the United States, information about the yacht, and the ports of arrival and departure.

Action: CBP proposes to extend the expiration date of this information collection with a change to the estimated burden hours based on recent data on the number of respondents submitting information under this provision. There are no changes to the information collected.

Type of Review: Extension (with change).

Affected Public: Businesses and Individuals.

Estimated Number of Respondents: 50.

Estimated Number of Total Annual Responses: 50.

Estimated Time per Response: 1 hour.

Estimated Total Annual Burden Hours: 50.

Dated: September 27, 2012.

Tracey Denning,

Agency Clearance Officer, U.S. Customs and Border Protection.

[FR Doc. 2012-24234 Filed 10-1-12; 8:45 am]

BILLING CODE 9111-14-P

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

Agency Information Collection Activities: Exportation of Used Self-Propelled Vehicles

AGENCY: U.S. Customs and Border Protection, Department of Homeland Security.

ACTION: 30-Day Notice and request for comments; Extension of an existing collection of information.

SUMMARY: U.S. Customs and Border Protection (CBP) of the Department of Homeland Security 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: Exportation of Used Self-Propelled Vehicles. This is a proposed extension of an information collection that was previously approved. CBP is proposing that this information collection be extended with no change to the burden hours. This document is published to obtain comments from the public and affected agencies. This proposed information collection was previously published in the **Federal Register** (76 FR 44258) on June 27, 2012, allowing for a 60-day comment period. One comment was received. This notice allows for an additional 30 days for public comments. This process is conducted in accordance with 5 CFR 1320.10.

DATES: Written comments should be received on or before November 1, 2012.

ADDRESSES: Interested persons are invited to submit written comments on this proposed information collection to the Office of Information and Regulatory Affairs, Office of Management and Budget. Comments should be addressed

to the OMB Desk Officer for Customs and Border Protection, Department of Homeland Security, and sent via electronic mail to oir_submission@omb.eop.gov or faxed to (202) 395-5806.

FOR FURTHER INFORMATION CONTACT:

Requests for additional information should be directed to Tracey Denning, U.S. Customs and Border Protection, Regulations and Rulings, Office of International Trade, 799 9th Street NW., 5th Floor, Washington, DC 20229-1177, at 202-325-0265.

SUPPLEMENTARY INFORMATION: CBP

invites the general public and other Federal agencies to comment on proposed and/or continuing information collections pursuant to the Paperwork Reduction Act of 1995 (Pub. L. 104-13; 44 U.S.C. 3505(c)(2)). The comments should address: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimates of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden including the use of automated collection techniques or the use of other forms of information technology; and (e) the annual costs burden to respondents or record keepers from the collection of information (a total capital/startup costs and operations and maintenance costs). The comments that are submitted will be summarized and included in the CBP request for Office of Management and Budget (OMB) approval. All comments will become a matter of public record. In this document CBP is soliciting comments concerning the following information collection:

Title: Exportation of Used-Propelled Vehicles.

OMB Number: 1651-0054.

Form Number: None.

Abstract: The U.S. Customs and Border Protection (CBP) regulations require an individual attempting to export a used self propelled vehicle to furnish documentation to CBP at the port of export. Exportation of a vehicle is permitted only upon compliance with these requirements. The required documentation includes, but is not limited to, a Certificate of Title or a Salvage Title, the Vehicle Identification Number (VIN), a Manufacturer's Statement of Origin, etc. CBP will accept originals or certified copies of Certificate of Title. The purpose of this information is to help ensure that stolen

vehicles or vehicles associated with other criminal activity are not exported.

Collection of this information is authorized by 19 U.S.C.1627a which provides CBP with authority to impose export reporting requirements on all used self-propelled vehicles. It is also authorized by Title IV, Section 401 of the Anti-Car Theft Act of 1992, 19 U.S.C. 1646(c) which requires all persons or entities exporting a used self-propelled vehicle to provide to CBP, at least 72 hours prior to export, the VIN and proof of ownership of each automobile. This information collection is provided for by 19 CFR Part 192. Further guidance regarding these requirements is provided at: http://www.cbp.gov/xp/cgov/trade/basic_trade/export_docs/motor_vehicle.xml.

Action: CBP proposes to extend the expiration date of this information collection with no change to the burden hours or to the information collected.

Type of Review: Extension (without change).

Affected Public: Individuals and Businesses.

Estimated Number of Respondents: 750,000.

Estimated Number of Total Annual Responses: 750,000.

Estimated Time per Response: 10 minutes.

Estimated Total Annual Burden Hours: 125,000.

Dated: September 27, 2012.

Tracey Denning,

Agency Clearance Officer, U.S. Customs and Border Protection.

[FR Doc. 2012-24238 Filed 10-1-12; 8:45 am]

BILLING CODE 9111-14-P

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

Agency Information Collection Activities; Application for Identification Card

AGENCY: U.S. Customs and Border Protection, Department of Homeland Security.

ACTION: 30-Day notice and request for comments; Extension of an existing information collection.

SUMMARY: U.S. Customs and Border Protection (CBP) of the Department of Homeland Security 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: Application for

Identification Card (CBP Form 3078). This is a proposed extension of an information collection that was previously approved. CBP is proposing that this information collection be extended with no change to the burden hours. This document is published to obtain comments from the public and affected agencies. This information collection was previously published in the **Federal Register** (77 FR 42753) on June 20, 2012, allowing for a 60-day comment period. This notice allows for an additional 30 days for public comments. This process is conducted in accordance with 5 CFR 1320.10.

DATES: Written comments should be received on or before November 1, 2012.

ADDRESSES: Interested persons are invited to submit written comments on this information collection to the Office of Information and Regulatory Affairs, Office of Management and Budget. Comments should be addressed to the OMB Desk Officer for U.S. Customs and Border Protection, Department of Homeland Security, and sent via electronic mail to oir_submission@omb.eop.gov or faxed to (202) 395-5806.

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to Tracey Denning, U.S. Customs and Border Protection, Regulations and Rulings, Office of International Trade, 799 9th Street NW., 5th Floor, Washington, DC 20229-1177, at 202-325-0265.

SUPPLEMENTARY INFORMATION: CBP invites the general public and affected Federal agencies to submit written comments and suggestions on proposed and/or continuing information collection requests pursuant to the Paperwork Reduction Act (Pub. L. 104-13). Your comments should address one of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency/component, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agencies/components estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collections of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological techniques or other forms of information.

Title: Application for Identification Card.

OMB Number: 1651-0008.

Form Number: CBP Form 3078.

Abstract: CBP Form 3078, *Application for Identification Card*, is filled out in order to obtain an Identification Card which is used to gain access to CBP security areas. This form is usually completed by licensed Cartmen or Lightermen whose duties require receiving, transporting, or otherwise handling imported merchandise which has not been released from CBP custody. CBP Form 3078 is provided for by 19 CFR Part 112 and is accessible at: http://forms.cbp.gov/pdf/CBP_Form_3078.pdf.

Action: CBP proposes to extend the expiration date of this information collection with no change to the burden hours or to CBP Form 3078.

Type of Review: Extension (without change).

Affected Public: Businesses.

Estimated Number of Respondents: 150,000.

Estimated Number of Total Annual Responses: 150,000.

Estimated Time per Response: 17 minutes.

Estimated Total Annual Burden Hours: 42,450.

Dated: September 27, 2012.

Tracey Denning,

Agency Clearance Officer, U.S. Customs and Border Protection.

[FR Doc. 2012-24243 Filed 10-1-12; 8:45 am]

BILLING CODE 9111-14-P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS-R4-R-2012-N067;
FXRS1265040000S3-123-FF04R02000]

St. Johns National Wildlife Refuge, FL; Final Comprehensive Conservation Plan and Finding of No Significant Impact for the Environmental Assessment

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability.

SUMMARY: We, the Fish and Wildlife Service (Service), announce the availability of the final comprehensive conservation plan (CCP) and finding of no significant impact for the environmental assessment for St. Johns National Wildlife Refuge (NWR) in Brevard County, Florida. In the final CCP, we describe how we will manage this refuge for the next 15 years.

ADDRESSES: You may obtain a copy of the CCP by writing to: Ms. Layne

Hamilton, c/o Merritt Island National Wildlife Refuge Complex, P.O. Box 2683, Titusville, FL 32781. Alternatively, you may download the document from our Internet Site: <http://southeast.fws.gov/planning> under "Final Documents."

FOR FURTHER INFORMATION CONTACT: Ms. Layne Hamilton, at 321/861-0667 (telephone).

SUPPLEMENTARY INFORMATION:

Introduction

With this notice, we finalize the CCP process for St. Johns NWR. We started the process through a notice in the **Federal Register** on December 14, 2009 (74 FR 66147). For more about the process, see that notice.

St. Johns NWR is a unit of and administered through the Merritt Island National Wildlife Refuge Complex.

St. Johns NWR was established in August 1971, to provide protection for threatened and endangered species and to enhance native diversity. The refuge contains two units totaling approximately 6,422 acres. The southern or Bee Line Unit occurs about a mile west of Port St. John, Florida, while the northern or State Road 50 Unit occurs about 5 miles to the north, roughly 5 miles west of Titusville, Florida. St. Johns NWR is closed to public use, except for those uses permitted through the special use permit process. St. Johns NWR contains some of the last vestiges of inland salt pan habitat known in Florida—a habitat dominated by cordgrass, but disconnected from tidewaters. Saltwater upwellings, along with periodic fires and floods, maintain this unique habitat, which exists as part of a network of preserves within the Upper St. Johns River Basin, including natural areas managed by the State of Florida and Brevard County.

The refuge was home to the last remaining families of the dusky seaside sparrow (*Ammodramus maritimus nigrescens*), a species that despite Federal protection and the best efforts of a consortium of partners was declared extinct in 1990. Today, the refuge is home to four federally listed species, including the wood stork (*Mycteria americana*), the eastern indigo snake (*Drymarchon couperi*), the crested caracara (*Caracara cheriway*), and the American alligator (*Alligator mississippiensis*). As a result of the refuge's importance to resident and migratory birds, seven species of birds have been designated species of management concern, including the black rail (*Laterallus jamaicensis*) and the eastern meadowlark (*Sturnella*

magna). The refuge is also home to a host of State-listed species and offers refugia and prey opportunities for wading birds, including the little blue heron (*Egretta caerulea*), snowy egret (*Egretta thula*), and tri-colored heron (*Egretta tricolor*).

We announce our decision and the availability of the final CCP and FONSI for St. Johns NWR in accordance with the National Environmental Policy Act (NEPA) (40 CFR 1506.6(b)) requirements. We completed a thorough analysis of impacts on the human environment, which we included in the draft comprehensive conservation plan and environmental assessment (Draft CCP/EA).

The CCP will guide us in managing and administering St. Johns NWR for the next 15 years. Alternative C is the foundation for the CCP.

The compatibility determinations for research, environmental education and interpretation, wildlife observation and photography, bicycling, commercial photography, and commercial tours and guiding are included in the CCP.

Background

The CCP Process

The National Wildlife Refuge System Administration Act of 1966 (16 U.S.C. 668dd–668ee) (Administration Act), as amended by the National Wildlife Refuge System Improvement Act of 1997, requires us to develop a CCP for each national wildlife refuge. The purpose for developing a CCP is to provide refuge managers with a 15-year plan for achieving refuge purposes and contributing toward the mission of the National Wildlife Refuge System, consistent with sound principles of fish and wildlife management, conservation, legal mandates, and our policies. In addition to outlining broad management direction on conserving wildlife and their habitats, CCPs identify wildlife-dependent recreational opportunities available to the public, including opportunities for hunting, fishing, wildlife observation, wildlife photography, and environmental education and interpretation. We will review and update the CCP at least every 15 years in accordance with the Administration Act.

Comments

We made copies of the Draft CCP/EA available for a 30-day public review and comment period via a **Federal Register** notice on July 7, 2011 (76 FR 39890). We provided more than 60 copies of the Draft CCP/EA to those individuals or organizations that requested a copy. A total of ten individuals, organizations,

and government agencies provided comments on the Draft CCP/EA by U.S. mail or email. Comments were received from the St. Johns River Water Management District, Brevard County Environmentally Endangered Lands Program, Florida Fish and Wildlife Conservation Commission, Defenders of Wildlife, Space Coast Audubon, Modern, Inc., and local citizens.

Selected Alternative

After considering the comments we received and based on our professional judgment, we selected Alternative C for implementation. This alternative will focus on enhancing all native wildlife and habitat diversity on the refuge. We will determine our role in regional and national species conservation plans. Concerning the suite of residing, wintering, and summering birds on the refuge, Alternative C will represent an expansion of management. Through prescribed burning and utilizing ecological indicators, we will promote an ecologically based fire return interval to maintain early successional ecological stages of all fire-maintained habitats. In addition, the hydrologic setting will be restored to as close to pre-drainage conditions as possible to benefit refuge wildlife. Under Alternative C, we will expand management of wood storks and State-listed wading birds. In conjunction with State-listed wading bird nesting surveys, we will opportunistically remove fill and dike features from peninsulas in the State Road 50 Unit borrow ponds, to provide additional artificial islands. On behalf of the northern crested caracara, Alternative C will maintain open habitat with a minimum of woody vegetation. We will also evaluate the use of mowing, grazing, and/or other forms of vegetation control to help maintain open prairie for crested caracara at the Bee Line Unit, while minimizing impacts to secretive marsh birds. Through discussions with the State, we will stay abreast of Cape Sable seaside sparrow reintroduction.

Under Alternative C, management of hydrology, including groundwater, surface water, and water quality, will be expanded. We will coordinate with the St. Johns River Water Management District (SJRWMD) to develop a better understanding of the hydrology of the refuge. To help fill in the information gaps, and by utilizing experts, we will develop a hydrologic study to understand the relationships of water quality, water quantity, and timing of flows within and across the refuge. We will increase control of invasive/feral animals and will reduce invasive plants to a maintenance level. We will

coordinate with local cooperative invasive species management areas to develop an early detection and alert network to help control invasive animals. We will use permittees and partners for the feral hog control effort, but may also use public hunts if, after evaluation, hunting is determined to be an effective tool to control feral hog populations. Under Alternative C, management of all vegetation communities on the refuge will expand. We will focus habitat management on maintaining and supporting a wide array of native wildlife using the refuge. Overall, however, in Alternative C, the relative percentages and composition of major habitat types on the refuge will not change; the aim will be to increase the quality rather than quantity of the various habitat types. Management of mammals will expand. We will strive to maintain emergent marsh and open waters for a diversity of mammals, such as white-tailed deer and round-tailed muskrat. We will also conduct a mammal inventory during the 15-year life of the CCP.

With regard to climate change, we will partner with SJRWMD in adaptive management efforts to manage habitats, ecosystems, and wildlife affected by climate change. We will investigate opportunities to participate in regional climate change initiatives to better understand the role climate change may have on refuge resources, and will adapt management based on discovery of climate change-related impacts.

Under the preferred alternative, we will work with partners to consolidate and secure ownership in the checkerboard area of the Bee Line Unit to create functional management areas. We will consider fee-title acquisitions based on a willing-seller approach, land swaps, management agreements, and conservation easements to protect these sites. We will work with Brevard County to vacate or abandon rights-of-way, as well as add right-of-way access to accommodate public use. Additionally, the preferred alternative identifies a minor expansion proposal of less than 10 percent (625 acres) of the refuge's approved acquisition boundary, to connect lands and develop natural-area corridors to the State Road 50 Unit. We will increase our law enforcement staff and coordinate with governmental partners and landowners to increase the number of patrols to deter and prevent destructive illegal activities. With regard to cultural, historical, and archaeological resources, we will continue to implement Section 106 of the National Historic Preservation Act to provide protection for these resources. In addition, we will complete and begin

to implement a Cultural Resources Management Plan within the 15-year period of the CCP.

One of the centerpieces of the preferred alternative includes expanding visitor services and public use. To expand opportunities for interpretation, we will work with partners to evaluate a range of access alternatives for the refuge. Working with Brevard County, we will seek to develop facilities such as a trailhead and kiosk from the county's Fay Lake Park to our Bee Line Unit, and will consider developing an interpretive trail and kiosk on the State Road 50 Unit. We will explore opportunities, based on potential and varied acquisition opportunities from willing sellers, to provide public access to the State Road 50 Unit from the county's Fox Lake Park Sanctuary through the Fox Lake tract. In conducting outreach, this alternative will expand with a wildlife and habitat diversity focus and will include messaging that targets ethical behavior. Alternative C will expand environmental education efforts. We will work with partners to develop curriculum-based environmental education programs related to wildlife and climate change. We will also work with local schools to conduct on-site environmental education. In addition, we will open the refuge to wildlife observation and photography, and will provide facilities to enhance the visitor experience (e.g., marked foot trails, kiosks at trailheads, and a safe parking area). We will establish foot traffic on existing dikes and roads and will evaluate potential connectivity to regional trail networks. The refuge and any future trails will remain subject to closure for administrative purposes. Commercial photography and tours/guides will be available on a case-by-case basis, permitted through the special use permit process. Access for uses determined to be appropriate and compatible will be by walking, hiking, and bicycling. Bicycling that does not support appropriate and compatible uses, such as mountain biking and off-trail biking, will not be considered an appropriate form of access. Staff will work with partners to evaluate the potential for a primitive weapons' hunt (e.g., bow and muzzle-loader) and for a youth hunt. Species to be considered for hunts will include white-tailed deer and feral hogs.

Administration will expand under the preferred alternative. When the preferred alternative is fully implemented, it will provide for new shared positions with Merritt Island NWR, including a law enforcement officer, maintenance worker, and a

ranger. A full-time biological technician will be hired, for a total of 2.5 new positions. The volunteer program will expand as we will utilize volunteers for environmental education and interpretation activities and programs, trail maintenance, outreach, wildlife surveys, expanded exotic control, and cleanups. Facilities and equipment will be added and we will consider developing kiosks, trails, and associated parking to provide safe and secure access from existing county parks to refuge lands. We will also add one or two vehicles and more equipment for exotic plant control activities.

Authority

This notice is published under the authority of the National Wildlife Refuge System Improvement Act of 1997 (16 U.S.C. 668dd *et seq.*).

Dated: June 22, 2012.

Mark J. Musaus,

Acting Regional Director.

[FR Doc. 2012-24272 Filed 10-1-12; 8:45 am]

BILLING CODE 4310-55-P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS-R6-2012-N197; FF06R06000-FXRS1265066CCP0S2-123]

Lee Metcalf National Wildlife Refuge, Ravalli County, MT; Final Comprehensive Conservation Plan and Finding of No Significant Impact for Environmental Assessment

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), announce the availability of our final comprehensive conservation plan (CCP) and finding of no significant impact (FONSI) for the environmental assessment (EA) for Lee Metcalf National Wildlife Refuge Complex (refuge), Stevensville, MT. In this final CCP, we describe how we will manage this refuge for the next 15 years.

ADDRESSES: You may view or obtain copies of the final CCP and FONSI/EA by any one of the following methods.

Agency Web Site: Download a copy of the document at from <http://mountain-prairie.fws.gov/planning>;

Email: leemetcalf@fws.gov. Include "Lee Metcalf final CCP" in the subject line of the message;

U.S. mail: U.S. Fish and Wildlife Service, Division of Refuge Planning, P.O. Box 25486, Denver Federal Center, Denver, CO 80225; or

In-Person Viewing or Pickup: Call 406-777-5552 to make an appointment during regular business hours at 4567 Wildfowl Lane, Stevensville, MT.

FOR FURTHER INFORMATION CONTACT: Laura King, 406-644-2211, ext. 210; leemetcalf@fws.gov (email).

SUPPLEMENTARY INFORMATION:

Introduction

With this notice, we finalize the CCP process for Lee Metcalf National Wildlife Refuge. We started this process through a notice in the **Federal Register** (74 FR 50235; September 30, 2009). We released the draft CCP and the EA to the public, announcing and requesting comments in a notice of availability in the **Federal Register** (77 FR 18852; March 28, 2012).

Lee Metcalf National Wildlife Refuge was established February 4, 1964, and has two purposes:

(1) "[F]or use as an inviolate sanctuary, or for any other management purpose, for migratory birds" (Migratory Bird Conservation Act); and

(2) "for (a) incidental fish and wildlife oriented recreational development, (b) the protection of natural resources, [and] (c) the conservation of endangered species or threatened species" (Refuge Recreation Act).

This refuge is located in Ravalli County, one of the fastest growing counties in the State of Montana, 2 miles north of Stevensville and 25 miles south of Missoula. Although it is one of the nation's smaller refuges, encompassing 2,800 acres, it is one of the few remaining undeveloped areas in the Bitterroot Valley. The refuge lies along the meandering Bitterroot River and is comprised of wet meadow and gallery and riverfront forest habitats and has created and modified wetlands.

Riverfront forest includes early succession tree species such as black cottonwood and sandbar willow that are present near the active channel of the Bitterroot River and next to floodplain drainages. Gallery forest is dominated by cottonwood and ponderosa pine and is present on higher floodplain elevations along natural levees. Over 140,000 visitors come to this refuge annually to view and photograph wildlife, archery deer hunt, walk the refuge trails, or participate in interpretive programs in the indoor and outdoor classrooms. The Refuge provides habitat for raptors, including ospreys, and numerous songbird and waterbird species.

We announce our decision and the availability of the FONSI for the final CCP for Lee Metcalf National Wildlife Refuge in accordance with National

Environmental Policy Act (NEPA) (40 CFR 1506.6(b)) requirements. We completed a thorough analysis of impacts on the human environment, which we included in the EA that accompanied the draft CCP. The CCP will guide us in managing and administering Lee Metcalf National Wildlife Refuge for the next 15 years. Alternative B, as we described in the final CCP, is the foundation for the CCP with two modifications.

Background

The National Wildlife Refuge System Administration Act of 1966 (16 U.S.C. 668dd–668ee) (Refuge Administration Act), as amended by the National Wildlife Refuge System Improvement Act of 1997, requires us to develop a CCP for each national wildlife refuge. The purpose for developing a CCP is to provide refuge managers with a 15-year plan for achieving refuge purposes and contributing toward the mission of the National Wildlife Refuge System, consistent with sound principles of fish and wildlife management, conservation, legal mandates, and our policies. In addition to outlining broad management direction on conserving wildlife and their habitats, CCPs identify wildlife-dependent recreational opportunities available to the public, including opportunities for hunting, fishing, wildlife observation and photography, and environmental education and interpretation. We will review and update the CCP at least every 15 years in accordance with the Refuge Administration Act.

Comments

We solicited comments on the draft CCP and the EA for Lee Metcalf National Wildlife Refuge from March 28, 2012 to April 30, 2012 (77 FR 18852; March 28, 2012). During the review period a public meeting was held in Stevensville, Montana, on April 9, 2012. In addition to comments received at this meeting, 33 individual letters and emails were received. The Service reviewed all comments and made two modifications to the final CCP, in addition to clarifying or expanding existing information or recommendations. The responses to all substantive public comments can be found in the appendix of the final CCP.

Selected Alternative

The draft CCP and final EA included the analyses of three alternatives. After considering the comments we received, we have selected Alternative B for implementation, with the following modifications (beyond clarifying or

expanding existing information or recommendations):

- The Kenai Nature Trail will be kept along its current path. However, visitors will have the option of remaining on a more level walking surface on a path above a steeper portion of the trail.

- We will determine if there are viable options for reducing the erosion along the Wildlife Viewing Area, a popular area for visitors. The decision to move forward will be based on cost, the effectiveness on reducing erosion, and impacts on the resource, including the Bitterroot River system.

This preferred alternative will serve as the final plan. The final plan identifies goals, objectives, and strategies that describe the future management of the Lee Metcalf National Wildlife Refuge, such as the expansion and restoration of native plant communities including grasslands, shrublands, and riparian forests. Some areas of wetland impoundments would be restored to native communities, including forest and shrubland. Refuge staff would manage and, where appropriate, restore the natural topography, water movements, and physical integrity of surface water flow patterns across the Bitterroot River floodplain. Unimpeded flow from North Burnt Fork Creek would be reconnected with flow pathways into the Bitterroot River to reduce creek water temperature, improve water and nutrient flow, and create habitat conditions conducive to native cold-water species. Additionally, a channel to the Bitterroot River would be reestablished that mimics the historical flow pattern of Three Mile Creek to create habitat conditions supporting native cold-water species and the restoration of riparian habitat. A significant focus of any restoration proposal would be controlling invasive species and preventing further spread. Grasses and shrubs native to the uplands, including the alluvial fans (that is, areas of sedimentary deposits where fast-flowing streams have flown into flatter plains), would begin to be restored to provide habitat for native wildlife, including grassland-dependent migratory birds. Some wetland impoundments and U.S. Fish and Wildlife Service (nonpublic) roads would be removed or reduced in size to allow for river migration and to restore native gallery and riverfront forest for riparian-dependent wildlife. The remaining impoundments would be managed to mimic natural conditions for wetland-dependent migratory birds.

The U.S. Fish and Wildlife Service would expand and improve the refuge's compatible wildlife-dependent public

use programs, in particular the wildlife observation, environmental education, and interpretation programs. The visitor contact area would be expanded into a visitor center with new displays and a combination conference room and environmental education classroom. The refuge would work with Ravalli County staff to designate the county road in the refuge as an auto tour route, which would include pulloffs and some form of interpretation. A seasonal hiking trail would be added, and current trails would be improved for wildlife observation and photography. Interpretation and environmental education programs would be expanded using added staff and volunteers. All public use programs would provide visitors with a consistent message about the purposes and values of the refuge and the mission of the National Wildlife Refuge System.

The refuge staff would be expanded by 3.5 individuals to include an assistant refuge manager (one full-time equivalent), a full-time and a career-seasonal biological science technician (1.5 full-time equivalents), and a visitor services specialist (one full-time equivalent) who would serve as a visitor center manager and volunteer coordinator. Increased research and monitoring, staff, funding, infrastructure, and partnerships would be required to accomplish the goals, objectives, and strategies associated with this alternative. Additional staff and funding would be added depending on the regional priorities for those funds allocated to the U.S. Fish and Wildlife Service for management of lands and waters within the Refuge System.

Dated: August 29, 2012.

Matt Kales,

Acting, Deputy, Regional Director, Mountain-Prairie Region, U.S. Fish and Wildlife Service.

[FR Doc. 2012–24262 Filed 10–1–12; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

**[FWS–R8–FHC–2012–N222;
FXFR1334088TWG0W4–123–FF08EACT00]**

Trinity Adaptive Management Working Group; Public Teleconference/Web-Based Meeting

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice.

SUMMARY: We, the U.S. Fish and Wildlife Service, announce a public teleconference/web-based meeting of

the Trinity Adaptive Management Working Group (TAMWG).

DATES: *Teleconference/web-based meeting:* Wednesday October 17, 2012, from 9 a.m. to 11 a.m. Pacific time. *Deadlines:* For deadlines and directions on registering to listen to the meeting by phone, listening and viewing on the Internet, submitting written material, or giving an oral presentation by phone, please see "Public Input" under **SUPPLEMENTARY INFORMATION.**

ADDRESSES: You may participate in the teleconference/web-based meeting from your home computer or phone or in person at one of the following locations:

- U.S. Fish and Wildlife, Arcata Office, 1655 Heindon Road, Arcata, CA 95521 Telephone (707) 822-7201; or

- TRRP Office, 1313 South Main Street, Weaverville, CA 96093 Telephone (530) 623-1800.

FOR FURTHER INFORMATION CONTACT: Elizabeth W. Hadley, Redding Electric Utility, 777 Cypress Avenue, Redding, CA 96001; telephone: 530-339-7327; email: ehadley@reupower.com.

SUPPLEMENTARY INFORMATION: In accordance with the requirements of the Federal Advisory Committee Act, 5 U.S.C. App., we announce that the Trinity Adaptive Management Working Group (TAMWG) will hold a teleconference/web-based meeting.

Background

The TAMWG affords stakeholders the opportunity to give policy, management, and technical input concerning Trinity River (California) restoration efforts to

the Trinity Management Council (TMC). The TMC interprets and recommends policy, coordinates and reviews management actions, and provides organizational budget oversight.

Meeting Agenda

- Draft FY 13 Budget,
- Science Program,
- Overview of Peer Review Report,
- Implementation Program,
- Administration, and
- Reconsideration of September 10, 2012, TAMWG meeting issues (see Sept. 10, 2012, agenda at <http://www.fws.gov/arcata> for items potentially to be discussed).

The final agenda will be posted on the Internet at <http://www.fws.gov/arcata>.

Public Input

If you wish to	You must contact Elizabeth Hadley (FOR FURTHER INFORMATION CONTACT) no later than—
Listen to the teleconference/web-based meeting via telephone or Internet.	October 10, 2012.
Give an oral presentation by phone	October 10, 2012.
Submit written information or questions for the TAMWG to consider during the teleconference.	October 10, 2012.

Submitting Written Information or Questions

Interested members of the public may submit relevant information or questions for the TAMWG to consider during the teleconference. Written statements must be received by the date listed in "Public Input," so that the information may be available to the TAMWG for their consideration prior to this teleconference. Written statements must be supplied to Elizabeth Hadley in one of the following formats: One hard copy with original signature, and one electronic copy with original signature, and one electronic copy via email (acceptable file formats are Adobe Acrobat PDF, MS Word, PowerPoint, or rich text file).

Registered speakers who wish to expand on their oral statements, or those who wished to speak but could not be accommodated on the agenda, may submit written statements to Elizabeth Hadley up to 7 days after the teleconference.

As time permits, the public may also speak after each agenda item after the chair opens the floor for comment period. No registration beyond initial meeting registration is required for this.

Meeting Minutes

Summary minutes of the teleconference will be maintained by Elizabeth Hadley (see **FOR FURTHER INFORMATION CONTACT**). The minutes will

be available for public inspection within 90 days after the meeting, and will be posted on the TAMWG Web site at <http://www.fws.gov/arcata>.

Dated: September 25, 2012.

Joe Polos,
Supervisory, Fish Biologist, Arcata Fish and Wildlife Office, Arcata, California.

[FR Doc. 2012-24158 Filed 10-1-12; 8:45 am]

BILLING CODE 4310-55-P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Draft Environmental Impact Statement for the Proposed Pueblo of Jemez 70.277-Acre Fee-to-Trust Transfer and Casino Project, Doña Ana County, NM

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice.

SUMMARY: This notice announces that the Bureau of Indian Affairs (BIA) as lead agency, in cooperation with the Pueblo of Jemez, intends to cancel all work on an Environmental Impact Statement (EIS) for the BIA Federal action of approving a 70.277 acre fee-to-trust transfer and casino project located within Doña Ana County, New Mexico.

DATES: This cancellation is effective October 2, 2012.

FOR FURTHER INFORMATION CONTACT: William Walker, Regional Director, (505) 563-3103 or Priscilla Wade, Regional Environmental Protection Specialist, (505) 563-3417, Bureau of Indian Affairs, Southwest Regional Office, 1001 Indian School Road NW., Albuquerque, New Mexico 87104.

SUPPLEMENTARY INFORMATION: The BIA is canceling work on the EIS because the Department of the Interior has denied the application to take the land into trust on September 1, 2011. The Notice of Intent to prepare the Draft EIS, which included a description of the proposed action, was published in the **Federal Register** on March 1, 2005 (70 FR 9963-9964). A public scoping meeting was held on March 16, 2005 and a public hearing was held on April 4, 2011; both were held in Anthony, New Mexico. The Notice of Availability of the Draft EIS was published in the **Federal Register** on April 8, 2011 (76 FR 19783-19784). A Final EIS for this project has not been completed.

Authority

This notice is published pursuant to section 1503.1 of the Council of Environmental Quality Regulations (40 CFR parts 1500 through 1508) and Department of the Interior Regulations (43 CFR part 46), implementing the procedural requirements of the National Environmental Policy Act of 1969, as amended (42 U.S.C. 4371 *et seq.*), and

is in the exercise of authority delegated to the Assistant Secretary—Indian Affairs by 209 DM 8.

Dated: September 20, 2012.

Donald E. Laverdure,

Acting Assistant Secretary—Indian Affairs.

[FR Doc. 2012-24267 Filed 10-1-12; 8:45 am]

BILLING CODE 4310-W7-P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLMT926000-L1910000-BJ0000-LRCMELR05171]

Notice of Filing of Plats of Survey; Montana

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of filing of plats of survey.

SUMMARY: The Bureau of Land Management (BLM) will file the plat of survey of the lands described below in the BLM Montana State Office, Billings, Montana, on November 1, 2012.

DATES: Protests of the survey must be filed before November 1, 2012 to be considered.

ADDRESSES: Protests of the survey should be sent to the Branch of Cadastral Survey, Bureau of Land Management, 5001 Southgate Drive, Billings, Montana 59101-4669.

FOR FURTHER INFORMATION CONTACT:

Marvin Montoya, Cadastral Surveyor, Branch of Cadastral Survey, Bureau of Land Management, 5001 Southgate Drive, Billings, Montana 59101-4669, telephone (406) 896-5124 or (406) 896-5009, *Marvin_Montoya@blm.gov*.

Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1-800-877-8339 to contact the above individual during normal business hours. The FIRS is available 24 hours a day, 7 days a week, to leave a message or question with the above individual. You will receive a reply during normal business hours.

SUPPLEMENTARY INFORMATION: This survey was executed at the request of the Regional Director, Bureau of Indian Affairs, Rocky Mountain Region, Billings, Montana, and was necessary to determine boundaries of Federal (Bureau of Land Management) and trust lands.

The lands we surveyed are:

Principal Meridian, Montana

T. 25 N., R. 24 E.

The plat, in one sheet, representing the dependent resurvey of the south boundary of

the Fort Belknap Indian Reservation, through Township 25 North, Range 24 East, Principal Meridian, Montana, was accepted September 18, 2012.

We will place a copy of the plat, in one sheet, and related field notes we described in the open files. They will be available to the public as a matter of information. If the BLM receives a protest against this survey, as shown on this plat, in one sheet, prior to the date of the official filing, we will stay the filing pending our consideration of the protest. We will not officially file this plat, in one sheet, until the day after we have accepted or dismissed all protests and they have become final, including decisions or appeals.

Authority: 43 U.S.C. Chap. 3.

Steve L. Toth,

Acting Chief Cadastral Surveyor, Division of Resources.

[FR Doc. 2012-24208 Filed 10-1-12; 8:45 am]

BILLING CODE 4310-DN-P

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

Notice of Proposed Information Collection; Request for Comments

AGENCY: Office of Surface Mining Reclamation and Enforcement.

ACTION: Notice and request for comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995, the Office of Surface Mining Reclamation and Enforcement (OSM) is announcing its intention to request renewed approval for the collection of information for two technical training program course effectiveness evaluation forms. This collection request has been forwarded to the Office of Management and Budget (OMB) for review and approval. The information collection request describes the nature of the information collection and the expected burden and cost.

DATES: OMB has up to 60 days to approve or disapprove the information collections but may respond after 30 days. Therefore, public comments should be submitted to OMB by November 1, 2012, in order to be assured of consideration.

ADDRESSES: Submit comments to the Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Department of Interior Desk Officer, by telefax at (202) 395-5806 or via email to *OIRA.Docket@omb.eop.gov*. Also, please send

a copy of your comments to the Information Collection Clearance Officer, Office of Surface Mining Reclamation and Enforcement, 1951 Constitution Ave. NW., Room 203—SIB, Washington, DC 20240, or electronically to *jtrelease@osmre.gov*.

FOR FURTHER INFORMATION CONTACT: To receive a copy of the information collection request contact John Trelease at (202) 208-2783, or electronically at *jtrelease@osmre.gov*. You may also review this information collection request on the Internet by going to <http://www.reginfo.gov> (Information Collection Review, Currently Under Review, Agency is Department of the Interior, DOI-OSMRE).

SUPPLEMENTARY INFORMATION: The Office of Management and Budget (OMB) regulations at 5 CFR 1320, which implement provisions of the Paperwork Reduction Act of 1995 (Pub. L. 104-13), require that interested members of the public and affected agencies have an opportunity to comment on information collection and recordkeeping activities [see 5 CFR 1320.8(d)]. OSM has submitted a request to OMB to renew its approval of the collection of information contained in two technical training program course effectiveness evaluation forms. OSM is requesting a 3-year term of approval for each information collection activity.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control number for this collection of information is 1029-0110. Completion and submission of these forms is voluntary.

As required by 5 CFR 1320.8(d), a **Federal Register** notice soliciting comments on this collection of information was published on June 22, 2012 (77 FR 37710). No comments were received. This notice provides the public with an additional 30 days in which to comment on the following information collection activities:

Title: Technical Training Program Course Effectiveness Evaluations.

OMB Control Number: 1029-0110.

Summary: Executive Order 12862 requires agencies to survey customers to determine the kind and quality of services they want and their level of satisfaction with existing services. The information supplied by this evaluation will determine customer satisfaction with OSM's training program and identify needs of respondents.

Bureau Form Number: None.

Frequency of Collection: Once.

Description of Respondents: State regulatory authority and Tribal employees and their supervisors.

Total Annual Responses: 310.

Total Annual Burden Hours: 52 hours.

Send comments on the need for the collections of information for the performance of the functions of the agency; the accuracy of the agency's burden estimates; ways to enhance the quality, utility and clarity of the information collections; and ways to minimize the information collection burdens on respondents, such as use of automated means of collections of the information, to the following addresses. Please refer to OMB control number 1029-0110.

Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Dated: September 24, 2012.

Andrew F. DeVito,

Chief, Division of Regulatory Support.

[FR Doc. 2012-24034 Filed 10-1-12; 8:45 am]

BILLING CODE 4310-05-M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

Notice of Proposed Information Collection; Request for Comments

AGENCY: Office of Surface Mining Reclamation and Enforcement.

ACTION: Notice and request for comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995, the Office of Surface Mining Reclamation and Enforcement (OSM) is announcing its intention to seek renewed authority to collect information for surface coal mining and reclamation operations on Federal lands. This collection request has been forwarded to the Office of Management and Budget (OMB) for review and comment. The information collection request describes the nature of the information collection and the expected burden and cost.

DATES: OMB has up to 60 days to approve or disapprove the information collection request but may respond after 30 days. Therefore, public comments

should be submitted to OMB by November 1, 2012, in order to be assured of consideration.

ADDRESSES: Comments may be submitted to the Office of Information and Regulatory Affairs, Office of Management and Budget, Department of the Interior Desk Officer, via email at OIRA_Docket@omb.eop.gov, or by facsimile to (202) 395-5806. Also, please send a copy of your comments to John A. Trelease, Office of Surface Mining Reclamation and Enforcement, 1951 Constitution Ave. NW., Room 203-SIB, Washington, DC 20240, or electronically to jtrelease@osmre.gov. Please reference 1029-0027 in your correspondence.

FOR FURTHER INFORMATION CONTACT: To receive a copy of the information collection request contact John Trelease at (202) 208-2783, or electronically at jtrelease@osmre.gov. You may also review this information collection request on the Internet by going to <http://www.reginfo.gov> (Information Collection Review, Currently Under Review, Agency is Department of the Interior, DOI-OSMRE).

SUPPLEMENTARY INFORMATION: The Office of Management and Budget (OMB) regulations at 5 CFR 1320, which implement provisions of the Paperwork Reduction Act of 1995 (Pub. L. 104-13), require that interested members of the public and affected agencies have an opportunity to comment on information collection and recordkeeping activities [see 5 CFR 1320.8(d)]. OSM has submitted a request to OMB to renew its approval of the collections of information contained in 30 CFR Part 740, Surface Coal Mining and Reclamation Operations on Federal Lands. OSM is requesting a 3-year term of approval for this information collection activity. Responses are required to obtain a benefit.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control number for this collection of information is 1029-0027.

As required under 5 CFR 1320.8(d), a **Federal Register** notice soliciting comments on this collection of information was published on July 6, 2012 (77 FR 40081). No comments were received. This notice provides the public with an additional 30 days in which to comment on the following information collection activity:

Title: 30 CFR Part 740—General requirements for surface coal mining and reclamation operations on Federal lands.

OMB Control Number: 1029-0027.

Summary: Section 523 of the Surface Mining Control and Reclamation Act of 1977 requires that a Federal lands program be established to govern surface coal mining and reclamation operations on Federal lands. The information requested is needed to assist the regulatory authority determine the eligibility of an applicant to conduct surface coal mining operations on Federal lands.

Frequency of Collection: Once.

Description of Respondents: Applicants for surface coal mine permits on Federal lands, and State Regulatory Authorities.

Total Annual Responses: 10.

Total Annual Burden Hours for Applicants: 645.

Total Annual Burden Hours for States: 280.

Total Annual Burden for All Respondents: 925.

Send comments on the need for the collection of information for the performance of the functions of the agency; the accuracy of the agency's burden estimates; ways to enhance the quality, utility and clarity of the information collection; and ways to minimize the information collection burden on respondents, such as use of automated means of collection of the information, to the places listed under **ADDRESSES**. Please refer to control number 1029-0027 in all correspondence.

Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Dated: September 24, 2012.

Andrew F. DeVito,

Chief, Division of Regulatory Support.

[FR Doc. 2012-24033 Filed 10-1-12; 8:45 am]

BILLING CODE 4310-05-M

INTERNATIONAL TRADE COMMISSION

Notice of Receipt of Complaint; Solicitation of Comments Relating to the Public Interest

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has received a complaint entitled *Certain Cases for Portable Electronic Devices*, DN 2917 the Commission is soliciting comments on any public interest issues raised by the complaint or complainant's filing under section 210.8(b) of the Commission's Rules of Practice and Procedure (19 CFR 210.8(b)).

FOR FURTHER INFORMATION CONTACT: Lisa R. Barton, Acting Secretary to the Commission, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone (202) 205-2000. The public version of the complaint can be accessed on the Commission's electronic docket (EDIS) at <http://edis.usitc.gov>, and will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone (202) 205-2000.

General information concerning the Commission may also be obtained by accessing its Internet server (<http://www.usitc.gov>). The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at <http://edis.usitc.gov>. Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205-1810.

SUPPLEMENTARY INFORMATION: The Commission has received a complaint and a submission pursuant to section 210.8(b) of the Commission's Rules of Practice and Procedure filed on behalf of Speculative Product Design, LLC on September 26, 2012. The complaint alleges violations of section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) in the importation into the United States, the sale for importation, and the sale within the United States after importation of certain cases for portable electronic devices. The complaint names as respondents Anbess Electronics Co. Ltd. of China; Alibaba.com, Limited of China; Alibaba.com, Inc. of Santa Clara, CA; Aliexpress, Ltd. of Santa Clara, CA; Biying Trading Co., Ltd of Santa Clara, CA; BodyGlove International, LLC of Redondo Beach, CA; Fellowes, Inc. of Itsaca, IL; Jie Sheng Technology of China; JWIN Electronics Corp., dba iLuv of Port Washington, NY; Project Horizon, Inc. dba InMotion Entertainment of Jacksonville, FL; ROCON Digital Technology Corp. of China; Shenzhen Huafeng Technology Co., Ltd. of China; Superior

Communications, Inc., dba PureGear of Irwindale, CA; SW-Box.com aka Cellphonezone Limited of Hong Kong; Trait Technology (Shenzhen) Co., Limited dba Trait-Tech of China and Hongkong Wexun Ltd., Wexun Tech (Hong Kong) Co., Ltd. of China.

Proposed respondents, other interested parties, and members of the public are invited to file comments, not to exceed five (5) pages in length, inclusive of attachments, on any public interest issues raised by the complaint or section 210.8(b) filing. Comments should address whether issuance of the relief specifically requested by the complainant in this investigation would affect the public health and welfare in the United States, competitive conditions in the United States economy, the production of like or directly competitive articles in the United States, or United States consumers.

In particular, the Commission is interested in comments that:

- (i) Explain how the articles potentially subject to the requested remedial orders are used in the United States;
- (ii) Identify any public health, safety, or welfare concerns in the United States relating to the requested remedial orders;
- (iii) Identify like or directly competitive articles that complainant, its licensees, or third parties make in the United States which could replace the subject articles if they were to be excluded;
- (iv) Indicate whether complainant, complainant's licensees, and/or third party suppliers have the capacity to replace the volume of articles potentially subject to the requested exclusion order and/or a cease and desist order within a commercially reasonable time; and
- (v) Explain how the requested remedial orders would impact United States consumers.

Written submissions must be filed no later than by close of business, eight calendar days after the date of publication of this notice in the **Federal Register**. There will be further opportunities for comment on the public interest after the issuance of any final initial determination in this investigation.

Persons filing written submissions must file the original document electronically on or before the deadlines stated above and submit 8 true paper copies to the Office of the Secretary by noon the next day pursuant to section 210.4(f) of the Commission's Rules of Practice and Procedure (19 CFR 210.4(f)). Submissions should refer to

the docket number ("Docket No. 2917") in a prominent place on the cover page and/or the first page. (See Handbook for Electronic Filing Procedures, http://www.usitc.gov/secretary/fed_reg_notices/rules/handbook_on_electronic_filing.pdf). Persons with questions regarding filing should contact the Secretary (202-205-2000).

Any person desiring to submit a document to the Commission in confidence must request confidential treatment. All such requests should be directed to the Secretary to the Commission and must include a full statement of the reasons why the Commission should grant such treatment. See 19 CFR 201.6. Documents for which confidential treatment by the Commission is properly sought will be treated accordingly. All nonconfidential written submissions will be available for public inspection at the Office of the Secretary and on EDIS.

This action is taken under the authority of section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and of sections 201.10 and 210.8(c) of the Commission's Rules of Practice and Procedure (19 CFR 201.10, 210.8(c)).

By order of the Commission.

Issued: September 27, 2012.

Lisa R. Barton,

Acting Secretary to the Commission.

[FR Doc. 2012-24209 Filed 10-1-12; 8:45 am]

BILLING CODE 7020-02-P

DEPARTMENT OF JUSTICE

Notice of Lodging of Proposed Consent Decree Under the Clean Air Act

On September 25, 2012, the Department of Justice lodged a proposed Consent Decree with the United States District Court for the District of Arizona in the lawsuit entitled *United States v. CEMEX Construction Materials South, LLC*, Civil Action No. CV-12-02020-PHX-DKD.

The United States filed this lawsuit under the Clean Air Act. The United States' complaint seeks injunctive relief and civil penalties for violations of regulations promulgated by the Maricopa County Air Quality Department concerning fugitive dust emissions. The complaint alleges that the violations occurred at the defendant's aggregate mining and processing and concrete production facility in Mesa, Arizona. The Consent Decree requires the defendant to pay a \$90,000 civil penalty and to implement injunctive relief at similar, active

facilities that are owned or operated by the defendant in Maricopa County, Arizona. The Consent Decree resolves the civil claims alleged in the complaint and in the Finding and Notice of Violation issued to the defendant in September 2010.

The publication of this notice opens a period for public comment on the Consent Decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, and should refer to *United States v. CEMEX Construction Materials South, LLC*, D.J. Ref. No. 90–5–2–1–10139. All comments must be submitted no later than thirty (30) days after the publication date of this notice. Comments may be submitted either by email or by mail:

To submit comments:	Send them to:
By email	<i>pubcomment-ees.enrd@usdoj.gov</i> .
By mail	Assistant Attorney General, U.S. DOJ—ENRD, P.O. Box 7611, Washington, DC 20044–7611.

During the public comment period, the Consent Decree may be examined and downloaded at this Justice Department Web site: http://www.usdoj.gov/enrd/Consent_Decrees.html. We will provide a paper copy of the Consent Decree upon written request and payment of reproduction costs. Please mail your request and payment to: Consent Decree Library, U.S. DOJ—ENRD, P.O. Box 7611, Washington, DC 20044–7611.

Please enclose a check or money order for \$10.25 (25 cents per page reproduction cost) payable to the United States Treasury.

Maureen Katz,

Assistant Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 2012–24162 Filed 10–1–12; 8:45 am]

BILLING CODE 4410–15–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Importer of Controlled Substances; Notice of Application; Fisher Clinical Services, Inc.

Pursuant to Title 21 Code of Federal Regulations 1301.34(a), this is notice that on July 18, 2012, Fisher Clinical Services, Inc., 7554 Schantz Road, Allentown, Pennsylvania 18106, made application by renewal to the Drug

Enforcement Administration (DEA) for registration as an importer of Noroxymorphone (9668), a basic class of controlled substance in schedule II.

The company plans to import the listed substance for analytical research and clinical trials.

The import of the above listed basic class of controlled substance would be granted only for analytical testing and clinical trials. This authorization does not extend to the import of a finished FDA approved or non-approved dosage form for commercial distribution in the United States.

Any bulk manufacturer who is presently, or is applying to be, registered with DEA to manufacture such basic class of controlled substance listed in schedules I or II, which fall under the authority of section 1002(a)(2)(B) of the Act [21 U.S.C. 952(a)(2)(B)] may, in the circumstances set forth in 21 U.S.C. 958(i), file comments or objections to the issuance of the proposed registration and may, at the same time, file a written request for a hearing on such application pursuant to 21 CFR 1301.43 and in such form as prescribed by 21 CFR 1316.47.

Any such written comments or objections should be addressed, in quintuplicate, to the Drug Enforcement Administration, Office of Diversion Control, Federal Register Representative (ODL), 8701 Morrisette Drive, Springfield, Virginia 22152; and must be filed no later than November 1, 2012.

This procedure is to be conducted simultaneously with, and independent of, the procedures described in 21 CFR 1301.34(b), (c), (d), (e), and (f). As noted in a previous notice published in the **Federal Register** on September 23, 1975, 40 FR 43745–46, all applicants for registration to import a basic class of any controlled substance in schedules I or II are, and will continue to be, required to demonstrate to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, that the requirements for such registration pursuant to 21 U.S.C. 958(a); 21 U.S.C. 823(a); and 21 CFR 1301.34(b), (c), (d), (e), and (f) are satisfied.

Dated: September 20, 2012.

Joseph T. Rannazzisi,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 2012–24191 Filed 10–1–12; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Importer of Controlled Substances; Notice of Registration; Cody Laboratories, Inc.

By Notice dated July 17, 2012, and published in the **Federal Register** on July 26, 2012, 77 FR 43861, Cody Laboratories, Inc., 601 Yellowstone Avenue, Cody, Wyoming 82414–9321, made application by renewal to the Drug Enforcement Administration (DEA) to be registered as an importer of the following basic classes of controlled substances:

Drug	Schedule
Opium, raw (9600)	II
Concentrate Poppy Straw (9670)	II
Tapentadol (9780)	II

The company plans to import narcotic raw materials for manufacturing and further distribution to its customers.

The company is registered with DEA as a manufacturer of several controlled substances that are manufactured from opium raw, and poppy straw concentrate.

The company plans to import an intermediate form of Tapentadol (9780) to bulk manufacture Tapentadol for distribution to its customers.

Comments and requests for hearings on applications to import narcotic raw material are not appropriate, 72 FR 3417 (2007). Regarding Tapentadol, no comments or objections have been received. DEA has considered the factors in 21 U.S.C. 823(a) and 952(a) and determined that the registration of Cody Laboratories, Inc., to import the basic classes of controlled substances is consistent with the public interest and with United States obligations under international treaties, conventions, or protocols in effect on May 1, 1971.

DEA has investigated Cody Laboratories, Inc., to ensure that the company's registration is consistent with the public interest. The investigation has included inspection and testing of the company's physical security systems, verification of the company's compliance with state and local laws, and a review of the company's background and history.

Therefore, pursuant to 21 U.S.C. 952(a) and 958(a), and in accordance with 21 CFR 1301.34, the above named company is granted registration as an importer of the basic classes of controlled substances listed.

Dated: September 25, 2012.

Joseph T. Rannazzisi, Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 2012-24195 Filed 10-1-12; 8:45 am]

BILLING CODE 4410-09-P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Importer of Controlled Substances; Notice of Registration; United States Pharmacopeial Convention

By Notice dated July 2, 2012, and published in the Federal Register on July 11, 2012, 77 FR 40911, United States Pharmacopeial Convention, 12601 Twinbrook Parkway, Rockville, Maryland 20852, made application by renewal to the Drug Enforcement Administration (DEA) to be registered as an importer of the following basic classes of controlled substances:

Table with 2 columns: Drug and Schedule. Lists various controlled substances such as Cathinone, Methaqualone, Lysergic acid diethylamide, Marijuana, Tetrahydrocannabinols, etc., and their corresponding schedules (I, II).

The company plans to import reference standards for sale to researchers and analytical labs.

No comments or objections have been received. DEA has considered the factors in 21 U.S.C. 823(a) and 952(a), and determined that the registration of United States Pharmacopeial Convention to import the basic classes of controlled substances is consistent with the public interest and with United States obligations under international treaties, conventions, or protocols in effect on May 1, 1971.

DEA has investigated United States Pharmacopeial Convention to ensure that the company's registration is consistent with the public interest. The investigation has included inspection, and testing of the company's physical security systems, verification of the company's compliance with state and local laws, and a review of the company's background and history.

Therefore, pursuant to 21 U.S.C. 952(a) and 958(a), and in accordance with 21 CFR 1301.34, the above named company is granted registration as an importer of the basic classes of controlled substances listed.

Dated: September 20, 2012.

Joseph T. Rannazzisi, Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 2012-24192 Filed 10-1-12; 8:45 am]

BILLING CODE 4410-09-P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances; Notice of Application; Chemic Laboratories, Inc.

Pursuant to 1301.33(a), Title 21 of the Code of Federal Regulations (CFR), this is notice that on July 26, 2012, Chemic Laboratories, Inc., 480 Neponset Street, Building 7, Canton, Massachusetts 02021, made application by renewal to the Drug Enforcement Administration (DEA) to be registered as a bulk manufacturer of Cocaine (9041), a basic class of controlled substance listed in schedule II.

The company plans to manufacture small quantities of the above listed controlled substance for distribution to its customers for the purpose of research.

Any other such applicant, and any person who is presently registered with DEA to manufacture such substance, may file comments or objections to the issuance of the proposed registration pursuant to 21 CFR 1301.33(a).

Any such written comments or objections should be addressed, in quintuplicate, to the Drug Enforcement Administration, Office of Diversion Control, Federal Register Representative (ODL), 8701 Morrisette Drive, Springfield, Virginia 22152; and must be filed no later than December 3, 2012.

Dated: September 25, 2012.

Joseph T. Rannazzisi, Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 2012-24182 Filed 10-1-12; 8:45 am]

BILLING CODE 4410-09-M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances; Notice of Application; Morton Grove Pharmaceuticals

Pursuant to 1301.33(a), Title 21 of the Code of Federal Regulations (CFR), this is notice that on July 12, 2012, Morton Grove Pharmaceuticals, 6451 Main Street, Morton Grove, Illinois 60053-2633, made application by letter to the Drug Enforcement Administration (DEA) to be registered as a bulk manufacturer of Gamma Hydroxybutyric Acid (2010), a basic class of controlled substance listed in schedule I.

The company plans to manufacture the listed controlled substance for distribution to its customers.

Any other such applicant, and any person who is presently registered with DEA to manufacture such substance, may file comments or objections to the issuance of the proposed registration pursuant to 21 CFR 1301.33(a).

Any such written comments or objections should be addressed, in quintuplicate, to the Drug Enforcement Administration, Office of Diversion Control, Federal Register Representative (ODL), 8701 Morrisette Drive, Springfield, Virginia 22152; and must be filed no later than December 3, 2012.

Dated: September 25, 2012.

Joseph T. Rannazzisi, Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 2012-24184 Filed 10-1-12; 8:45 am]

BILLING CODE 4410-09-P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances; Notice of Application; Sigma Aldrich Research Biochemicals, Inc.

Pursuant to 1301.33(a), Title 21 of the Code of Federal Regulations (CFR), this is notice that on August 2, 2012, Sigma Aldrich Research Biochemicals, Inc., 1-3 Strathmore Road, Natick, Massachusetts 01760-2447, made application by letter to the Drug Enforcement Administration (DEA) to be registered as a bulk manufacturer of the following basic classes of controlled substances:

Drug	Schedule
4-Methyl-2,5-dimethoxyamphetamine (7395).	I
Dimethyltryptamine (7435)	I

The company plans to manufacture reference standards. Any other such applicant, and any person who is presently registered with DEA to manufacture such substances, may file comments or objections to the issuance of the proposed registration pursuant to 21 CFR 1301.33(a).

Any such written comments or objections should be addressed, in quintuplicate, to the Drug Enforcement Administration, Office of Diversion Control, Federal Register Representative (ODL), 8701 Morrisette Drive, Springfield, Virginia 22152; and must be filed no later than December 3, 2012.

Dated: September 20, 2012.

Joseph T. Rannazzisi,
Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 2012-24186 Filed 10-1-12; 8:45 am]

BILLING CODE 4410-09-P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances; Notice of Application; AMPAC Fine Chemicals, LLC

Pursuant to 1301.33(a), Title 21 of the Code of Federal Regulations (CFR), this is notice that on July 10, 2012, AMPAC Fine Chemicals, LLC., Highway 50 and Hazel Avenue, Building 05001, Rancho Cordova, California 95670, made application by letter to the Drug Enforcement Administration (DEA) to be registered as a bulk manufacturer of Tapentadol (9780), a basic class of

controlled substance listed in schedule II.

The company plans to manufacture the listed controlled substance for distribution to its customers.

Any other such applicant, and any person who is presently registered with DEA to manufacture such substance, may file comments or objections to the issuance of the proposed registration pursuant to 21 CFR 1301.33(a).

Any such written comments or objections should be addressed, in quintuplicate, to the Drug Enforcement Administration, Office of Diversion Control, Federal Register Representative (ODL), 8701 Morrisette Drive, Springfield, Virginia 22152; and must be filed no later than December 3, 2012.

Dated: September 20, 2012.

Joseph T. Rannazzisi,
Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 2012-24189 Filed 10-1-12; 8:45 am]

BILLING CODE 4410-09-P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances ISP, Inc.; Notice of Registration

By Notice dated June 18, 2012, and published in the **Federal Register** on June 26, 2012, 77 FR 38087, ISP, Inc., 238 South Main Street, Assonet, Massachusetts 02702, made application by renewal to the Drug Enforcement Administration (DEA) to be registered as a bulk manufacturer of the following basic classes of controlled substances:

Drug	Schedule
2,5-Dimethoxyamphetamine (7396).	I
Amphetamine (1100)	II
Phenylacetone (8501)	II

The company plans to manufacture bulk API, for distribution to its customers. The bulk 2,5-Dimethoxyamphetamine will be used for conversion into non-controlled substances.

No comments or objections have been received. DEA has considered the factors in 21 U.S.C. 823(a) and determined that the registration of ISP, Inc., to manufacture the listed basic classes of controlled substances is consistent with the public interest at this time. DEA has investigated ISP, Inc., to ensure that the company's registration is consistent with the public interest.

The investigation has included inspection and testing of the company's physical security systems, verification of the company's compliance with state and local laws, and a review of the company's background and history.

Therefore, pursuant to 21 U.S.C. 823(a), and in accordance with 21 CFR 1301.33, the above named company is granted registration as a bulk manufacturer of the basic classes of controlled substances listed.

Dated: September 25, 2012.

Joseph T. Rannazzisi,
Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 2012-24193 Filed 10-1-12; 8:45 am]

BILLING CODE 4410-09-P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances; Notice of Registration; Apertus Pharmaceuticals, LLC

By Notice dated June 4, 2012, and published in the **Federal Register** on June 12, 2012, 77 FR 35058, Apertus Pharmaceuticals, LLC., 331 Consort Drive, St Louis, Missouri 63011, made application to the Drug Enforcement Administration (DEA) to be registered as a bulk manufacturer of the following basic classes of controlled substances:

Drug	Schedule
Alfentanil (9737)	II
Remifentanil (9739)	II
Sufentanil (9740)	II
Fentanyl (9801)	II

The company plans to manufacture small quantities of the listed controlled substances to make reference standards for distribution to their customers.

No comments or objections have been received. DEA has considered the factors in 21 U.S.C. 823(a), and determined that the registration of Apertus Pharmaceuticals, LLC., to manufacture the listed basic classes of controlled substances is consistent with the public interest at this time.

DEA has investigated Apertus Pharmaceuticals, LLC., to ensure that the company's registration is consistent with the public interest. The investigation has included inspection and testing of the company's physical security systems, verification of the company's compliance with state and local laws, and a review of the company's background and history.

Therefore, pursuant to 21 U.S.C. 823, and in accordance with 21 CFR 1301.33,

the above named company is granted registration as a bulk manufacturer of the basic classes of controlled substances listed.

Dated: September 25, 2012.

Joseph T. Rannazzisi,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 2012-24194 Filed 10-1-12; 8:45 am]

BILLING CODE 4410-09-P

NATIONAL LABOR RELATIONS BOARD

Sunshine Act Meetings

TIME AND DATES: All meetings are held at 2:30 p.m.

Tuesday, October 2;

Wednesday, October 3;

Thursday, October 4;

Tuesday, October 9;

Wednesday, October 10;

Thursday, October 11;

Tuesday, October 16;

Wednesday, October 17;

Thursday, October 18;

Tuesday, October 23;

Wednesday, October 24;

Thursday, October 25;

Tuesday, October 30;

Wednesday, October 31.

PLACE: Board Agenda Room, No. 11820, 1099 14th St. NW., Washington DC 20570.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Pursuant to 102.139(a) of the Board's Rules and Regulations, the Board or a panel thereof will consider "the issuance of a subpoena, the Board's participation in a civil action or proceeding or an arbitration, or the initiation, conduct, or disposition * * * of particular representation or unfair labor practice proceedings under section 8, 9, or 10 of the [National Labor Relations] Act, or any court proceedings collateral or ancillary thereto." See also 5 U.S.C. 552b(c)(10).

CONTACT PERSON FOR MORE INFORMATION: Lester A. Heltzer, Executive Secretary, (202) 273-1067.

Dated: September 28, 2012.

Lester A. Heltzer,

Executive Secretary.

[FR Doc. 2012-24399 Filed 9-28-12; 4:15 pm]

BILLING CODE 7545-01-P

NATIONAL TRANSPORTATION SAFETY BOARD

SES Performance Review Board

AGENCY: National Transportation Safety Board.

ACTION: Notice.

SUMMARY: Notice is hereby given of the appointment of members of the National Transportation Safety Board, Performance Review Board (PRB).

FOR FURTHER INFORMATION CONTACT:

Emily T. Carroll, Chief, Human Resources Division, Office of Administration, National Transportation Safety Board, 490 L'Enfant Plaza SW., Washington, DC 20594-0001, (202) 314-6233.

SUPPLEMENTARY INFORMATION: Section 4314(c)(1) through (5) of Title 5, United States Code requires each agency to establish, in accordance with regulations prescribed by the Office of Personnel Management, one or more SES Performance Review Boards. The board reviews and evaluates the initial appraisal of a senior executive's performance by the supervisor and considers recommendations to the appointing authority regarding the performance of the senior executive.

The following have been designated as members of the Performance Review Board of the National Transportation Safety Board:

The Honorable Christopher A. Hart, Vice Chairman, National Transportation Safety Board; PRB Chair

The Honorable Earl F. Weener, Member, National Transportation Safety Board

David K. Tochen, General Counsel, National Transportation Safety Board

Florence Carr, Deputy Managing Director, Federal Maritime Commission

Dr. John Cavolowsky, Director, Airspace Systems Program Office, Aeronautics Research Mission Directorate, National Aeronautics and Space Administration

David L. Mayer, Managing Director, National Transportation Safety Board (substitute only for Mr. Tochen's rating review)

Sarah Bonilla, Deputy Chief Human Capital Officer, Department of Energy (Alternate)

Jerold Gidner, Deputy Director, Office of Strategic Employee and Organizational Development, Department of the Interior (Alternate)

Dated: September 26, 2012.

Candi Bing,

Federal Register Coordinator.

[FR Doc. 2012-24168 Filed 10-1-12; 8:45 am]

BILLING CODE P

NUCLEAR REGULATORY COMMISSION

[NRC-2012-0226]

Biweekly Notice: Applications and Amendments to Facility Operating Licenses and Combined Licenses Involving No Significant Hazards Considerations

Background

Pursuant to Section 189a. (2) of the Atomic Energy Act of 1954, as amended (the Act), the U.S. Nuclear Regulatory Commission (the Commission or NRC) is publishing this regular biweekly notice. The Act requires the Commission publish notice of any amendments issued, or proposed to be issued and grants the Commission the authority to issue and make immediately effective any amendment to an operating license or combined license, as applicable, upon a determination by the Commission that such amendment involves no significant hazards consideration, notwithstanding the pendency before the Commission of a request for a hearing from any person.

This biweekly notice includes all notices of amendments issued, or proposed to be issued from September 6, 2012, to September 19, 2012. The last biweekly notice was published on September 14, 2012 (77 FR 56877).

ADDRESSES: You may access information and comment submissions related to this document, which the NRC possesses and are publicly available, by searching on <http://www.regulations.gov> under Docket ID NRC-2012-0226. You may submit comments by any of the following methods:

- *Federal rulemaking Web site:* Go to <http://www.regulations.gov> and search for Docket ID NRC-2012-0226. Address questions about NRC dockets to Carol Gallagher; telephone: 301-492-3668; email: Carol.Gallagher@nrc.gov.

- *Mail comments to:* Cindy Bladley, Chief, Rules, Announcements, and Directives Branch (RADB), Office of Administration, Mail Stop: TWB-05-B01M, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001.

- *Fax comments to:* RADB at 301-492-3446.

For additional direction on accessing information and submitting comments, see "Accessing Information and Submitting Comments" in the **SUPPLEMENTARY INFORMATION** section of this document.

SUPPLEMENTARY INFORMATION:

I. Accessing Information and Submitting Comments

A. Accessing Information

Please refer to Docket ID NRC–2012–0226 when contacting the NRC about the availability of information regarding this document. You may access information related to this document, which the NRC possesses and are publicly available, by any of the following methods:

- *Federal Rulemaking Web site*: Go to <http://www.regulations.gov> and search for Docket ID NRC–2012–0226.

- *NRC's Agencywide Documents Access and Management System (ADAMS)*: You may access publicly available documents online in the NRC Library at <http://www.nrc.gov/reading-rm/adams.html>. To begin the search, select "ADAMS Public Documents" and then select "Begin Web-based ADAMS Search." For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by email to pdr.resource@nrc.gov. Documents may be viewed in ADAMS by performing a search on the document date and docket number.

- *NRC's PDR*: You may examine and purchase copies of public documents at the NRC's PDR, Room O1–F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.

B. Submitting Comments

Please include Docket ID NRC–2012–0226 in the subject line of your comment submission, in order to ensure that the NRC is able to make your comment submission available to the public in this docket.

The NRC cautions you not to include identifying or contact information in comment submissions that you do not want to be publicly disclosed. The NRC posts all comment submissions at <http://www.regulations.gov> as well as entering the comment submissions into ADAMS, and the NRC does not edit comment submissions to remove identifying or contact information. If you are requesting or aggregating comments from other persons for submission to the NRC, then you should inform those persons not to include identifying or contact information in their comment submissions that they do not want to be publicly disclosed. Your request should state that the NRC will not edit comment submissions to remove such information before making the comment submissions available to the public or entering the comment submissions into ADAMS.

Notice of Consideration of Issuance of Amendments to Facility Operating Licenses and Combined Licenses, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The Commission has made a proposed determination that the following amendment requests involve no significant hazards consideration. Under the Commission's regulations in section 50.92 of Title 10 of the *Code of Federal Regulations* (10 CFR), this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. The basis for this proposed determination for each amendment request is shown below.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendment until the expiration of 60 days after the date of publication of this notice. The Commission may issue the license amendment before expiration of the 60-day period provided that its final determination is that the amendment involves no significant hazards consideration. In addition, the Commission may issue the amendment prior to the expiration of the 30-day comment period should circumstances change during the 30-day comment period such that failure to act in a timely way would result, for example in derating or shutdown of the facility. Should the Commission take action prior to the expiration of either the comment period or the notice period, it will publish in the **Federal Register** a notice of issuance. Should the Commission make a final No Significant Hazards Consideration Determination, any hearing will take place after issuance. The Commission expects that the need to take this action will occur very infrequently.

Within 60 days after the date of publication of this notice, any person(s) whose interest may be affected by this action may file a request for a hearing and a petition to intervene with respect to issuance of the amendment to the subject facility operating license or combined license. Requests for a

hearing and a petition for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. Interested person(s) should consult a current copy of 10 CFR 2.309, which is available at the NRC's PDR, located at One White Flint North, Room O1–F21, 11555 Rockville Pike (first floor), Rockville, Maryland 20852. The NRC regulations are accessible electronically from the NRC Library on the NRC's Web site at <http://www.nrc.gov/reading-rm/doc-collections/cfr/>. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or a presiding officer designated by the Commission or by the Chief Administrative Judge of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the Chief Administrative Judge of the Atomic Safety and Licensing Board will issue a notice of a hearing or an appropriate order.

As required by 10 CFR 2.309, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following general requirements: (1) The name, address, and telephone number of the requestor or petitioner; (2) the nature of the requestor's/petitioner's right under the Act to be made a party to the proceeding; (3) the nature and extent of the requestor's/petitioner's property, financial, or other interest in the proceeding; and (4) the possible effect of any decision or order which may be entered in the proceeding on the requestor's/petitioner's interest. The petition must also identify the specific contentions which the requestor/petitioner seeks to have litigated at the proceeding.

Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the requestor/petitioner shall provide a brief explanation of the bases for the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the requestor/petitioner intends to rely in proving the contention at the hearing. The requestor/petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the requestor/petitioner intends to rely to establish those facts or expert opinion. The petition must include

sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the requestor/petitioner to relief. A requestor/petitioner who fails to satisfy these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held. If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment. If the final determination is that the amendment request involves a significant hazards consideration, then any hearing held would take place before the issuance of any amendment.

All documents filed in the NRC adjudicatory proceedings, including a request for hearing, a petition for leave to intervene, any motion or other document filed in the proceeding prior to the submission of a request for hearing or petition to intervene, and documents filed by interested governmental entities participating under 10 CFR 2.315(c), must be filed in accordance with the NRC's E-Filing rule (72 FR 49139; August 28, 2007). The E-Filing process requires participants to submit and serve all adjudicatory documents over the internet, or in some cases to mail copies on electronic storage media. Participants may not submit paper copies of their filings unless they seek an exemption in accordance with the procedures described below.

To comply with the procedural requirements of E-Filing, at least 10 days prior to the filing deadline, the participant should contact the Office of the Secretary by email at *hearing.docket@nrc.gov*, or by telephone at 301-415-1677, to request (1) a digital identification (ID) certificate, which allows the participant (or its counsel or representative) to digitally sign

documents and access the E-Submittal server for any proceeding in which it is participating; and (2) advise the Secretary that the participant will be submitting a request or petition for hearing (even in instances in which the participant, or its counsel or representative, already holds an NRC-issued digital ID certificate). Based upon this information, the Secretary will establish an electronic docket for the hearing in this proceeding if the Secretary has not already established an electronic docket.

Information about applying for a digital ID certificate is available on the NRC's public Web site at <http://www.nrc.gov/site-help/e-submittals/apply-certificates.html>. System requirements for accessing the E-Submittal server are detailed in the NRC's "Guidance for Electronic Submission," which is available on the agency's public Web site at <http://www.nrc.gov/site-help/e-submittals.html>. Participants may attempt to use other software not listed on the Web site, but should note that the NRC's E-Filing system does not support unlisted software, and the NRC Meta System Help Desk will not be able to offer assistance in using unlisted software.

If a participant is electronically submitting a document to the NRC in accordance with the E-Filing rule, the participant must file the document using the NRC's online, Web-based submission form. In order to serve documents through the Electronic Information Exchange System, users will be required to install a Web browser plug-in from the NRC's Web site. Further information on the Web-based submission form, including the installation of the Web browser plug-in, is available on the NRC's public Web site at <http://www.nrc.gov/site-help/e-submittals.html>.

Once a participant has obtained a digital ID certificate and a docket has been created, the participant can then submit a request for hearing or petition for leave to intervene. Submissions should be in Portable Document Format (PDF) in accordance with the NRC guidance available on the NRC's public Web site at <http://www.nrc.gov/site-help/e-submittals.html>. A filing is considered complete at the time the documents are submitted through the NRC's E-Filing system. To be timely, an electronic filing must be submitted to the E-Filing system no later than 11:59 p.m. Eastern Time on the due date. Upon receipt of a transmission, the E-Filing system time-stamps the document and sends the submitter an email notice confirming receipt of the document. The E-Filing system also distributes an email

notice that provides access to the document to the NRC's Office of the General Counsel and any others who have advised the Office of the Secretary that they wish to participate in the proceeding, so that the filer need not serve the documents on those participants separately. Therefore, applicants and other participants (or their counsel or representative) must apply for and receive a digital ID certificate before a hearing request/petition to intervene is filed so that they can obtain access to the document via the E-Filing system.

A person filing electronically using the agency's adjudicatory E-Filing system may seek assistance by contacting the NRC Meta System Help Desk through the "Contact Us" link located on the NRC's Web site at <http://www.nrc.gov/site-help/e-submittals.html>, by email at *MShD.Resource@nrc.gov*, or by a toll-free call at 1-866 672-7640. The NRC Meta System Help Desk is available between 8 a.m. and 8 p.m., Eastern Time, Monday through Friday, excluding government holidays.

Participants who believe that they have a good cause for not submitting documents electronically must file an exemption request, in accordance with 10 CFR 2.302(g), with their initial paper filing requesting authorization to continue to submit documents in paper format. Such filings must be submitted by: (1) First class mail addressed to the Office of the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, Attention: Rulemaking and Adjudications Staff; or (2) courier, express mail, or expedited delivery service to the Office of the Secretary, Sixteenth Floor, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852, Attention: Rulemaking and Adjudications Staff. Participants filing a document in this manner are responsible for serving the document on all other participants. Filing is considered complete by first-class mail as of the time of deposit in the mail, or by courier, express mail, or expedited delivery service upon depositing the document with the provider of the service. A presiding officer, having granted an exemption request from using E-Filing, may require a participant or party to use E-Filing if the presiding officer subsequently determines that the reason for granting the exemption from use of E-Filing no longer exists.

Documents submitted in adjudicatory proceedings will appear in the NRC's electronic hearing docket which is available to the public at <http://ehd1.nrc.gov/ehd/>, unless excluded pursuant

to an order of the Commission, or the presiding officer. Participants are requested not to include personal privacy information, such as social security numbers, home addresses, or home phone numbers in their filings, unless an NRC regulation or other law requires submission of such information. With respect to copyrighted works, except for limited excerpts that serve the purpose of the adjudicatory filings and would constitute a Fair Use application, participants are requested not to include copyrighted materials in their submission.

Petitions for leave to intervene must be filed no later than 60 days from the date of publication of this notice. Requests for hearing, petitions for leave to intervene, and motions for leave to file new or amended contentions that are filed after the 60-day deadline will not be entertained absent a determination by the presiding officer that the filing demonstrates good cause by satisfying the following three factors in 10 CFR 2.309(c)(1): (i) The information upon which the filing is based was not previously available; (ii) the information upon which the filing is based is materially different from information previously available; and (iii) the filing has been submitted in a timely fashion based on the availability of the subsequent information.

For further details with respect to this license amendment application, see the application for amendment which is available for public inspection at the NRC's PDR, located at One White Flint North, Room O1-F21, 11555 Rockville Pike (first floor), Rockville, Maryland 20852. Publicly available documents created or received at the NRC are accessible electronically through ADAMS in the NRC Library at <http://www.nrc.gov/reading-rm/adams.html>. Persons who do not have access to ADAMS or who encounter problems in accessing the documents located in ADAMS, should contact the NRC's PDR Reference staff at 1-800-397-4209, 301-415-4737, or by email to pdr.resource@nrc.gov.

Duke Energy Carolinas, LLC, Docket Nos. 50-269, 50-270, and 50-287, Oconee Nuclear Station, Units 1, 2, and 3, Oconee County, South Carolina

Date of amendment request: November 8, 2010, with a supplement dated June 28, 2012.

Description of amendment request: The proposed amendments would approve revisions to the updated final safety analysis report to incorporate the licensee's reactor vessel internals inspection plan.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration. The NRC staff's analysis is presented below:

1. Does the proposed amendment involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The proposed license amendment request provides the report which describes the reactor vessel internals inspection plan. The report also provides a description of the inspection plan as it relates to the management of aging effects consistent with previous commitments. The inspection plan is based on technical report MRP-227, Revision 0, "Pressurized Water Reactors Internals Inspection and Evaluation Guidelines" and the additional criteria stated in the NRC staff's safety evaluation of this technical report. The inspection plan contains a discussion of operational experience, time-limited aging analyses, and relevant existing programs.

The licensee's Reactor Vessel Internals Aging Management Program includes the inspection plan and demonstrates that the program adequately manages the effects of aging for reactor vessel internal components and establishes the basis for providing reasonable assurance that the reactor vessel internal components will remain functional through the license renewal period of extended operation.

This license amendment request provides an inspection plan based on industry work and experiences as agreed to in Duke Energy's license renewal commitments for reactor vessel internals inspection. It is not an accident initiator.

Therefore, the probability or consequences of an accident previously evaluated is not significantly increased.

2. Does the proposed amendment create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The proposed reactor vessel internals inspection plan does not change the methods governing normal plant operation, nor are the methods utilized to respond to plant transients altered. The revised inspection plan is not an accident initiator or event initiator. No new initiating events or transients result from the use of the reactor vessel internals inspection plan.

Therefore, the possibility of a new or different kind of accident from any kind of accident previously evaluated is not created.

3. Does the proposed amendment involve a significant reduction in a margin of safety?

Response: No.

The proposed safety limits have been preserved. The license amendment request is for review and approval for the reactor vessel internals inspection plan that Duke Energy committed to provide prior to commencing inspections.

Therefore, this request does not involve a significant reduction in a margin of safety.

The NRC staff has determined that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Lara S. Nichols, Deputy General Counsel, Duke Energy Corporation, 526 South Church Street—EC07H, Charlotte, NC 28202—1802.

NRC Branch Chief: Robert J. Pascarelli.

Duke Energy Carolinas, LLC, Docket Nos. 50-269, 50-270, and 50-287, Oconee Nuclear Station, Units 1, 2, and 3, Oconee County, South Carolina

Date of amendment request: June 27, 2012.

Description of amendment request: The proposed amendments would revise the Technical Specifications to allow each Keowee Hydro Unit to be inoperable for an extended period of time in order to perform major refurbishment work.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed amendment involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

This change involves the temporary addition of a 75-day Completion Time for Technical Specification (TS) 3.8.1 Required Action C.2.2.5 associated with restoring compliance with TS Limiting Condition for Operation (LCO) 3.8.1.C. During the time that one Keowee Hydroelectric Unit (KHU) is inoperable for > 72 hours, a Lee Combustion Turbine (LCT) will be energizing both standby buses, two offsite power sources will be maintained available, and maintenance on electrical distribution systems will not be performed unless necessary. In addition, risk significant systems (Emergency Feedwater System [EFW] and Standby Shutdown Facility [SSF]) will be verified operable prior to entry into the 75-day Completion Time. The temporary 75-day Completion Time will decrease the likelihood of an unplanned forced shutdown of all three Oconee Units and the potential safety consequences and operational risks associated with that action. Avoiding this risk offsets the risks associated with having a design basis event during the temporary 75-day completion time for having one KHU inoperable.

The temporary addition of the 75-day Completion Time does not involve:

(1) A physical alteration to the Oconee Units; (2) the installation of new or different equipment; (3) operating any installed equipment in a new or different manner; or (4) a change to any set points for parameters which initiate protective or mitigation action.

There is no adverse impact on containment integrity, radiological release pathways, fuel design, filtration systems, main steam relief valve set points, or radwaste systems. No new radiological release pathways are created.

The consequences of an event occurring during the temporary 75-day Completion Time are the same as those that would occur during the existing Completion Time. Duke Energy reviewed the Probabilistic Risk Assessment (PRA) to gain additional insights concerning the configuration of ONS with one KHU. The results of the risk analysis show a risk improvement if no maintenance is performed on the SSF, EFW System, and AC Power System. The results of the risk analysis show a small risk increase using the average nominal maintenance unavailability values for the SSF, EFW System, and AC Power System. By limiting maintenance, the risk results are expected to be between these two extremes (*i.e.*, small risk impact).

Therefore, the probability or consequences of an accident previously evaluated is not significantly increased.

2. Does the proposed amendment create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

This change involves the temporary addition of a 75-day Completion Time for TS 3.8.1 Required Action C.2.2.5 associated with restoring compliance with TS LCO 3.8.1.C. During the time period that one KHU is inoperable, the redundancy requirement for the emergency power source will be fulfilled by an LCT. Compensatory measures previously specified will be in place to minimize electrical power system vulnerabilities.

The temporary 75-day Completion Time does not involve a physical effect on the Oconee Units, nor is there any increased risk of an Oconee Unit trip or reactivity excursion. No new failure modes or credible accident scenarios are postulated from this activity.

Therefore, the possibility of a new or different kind of accident from any kind of accident previously evaluated is not created.

3. Does the proposed amendment involve a significant reduction in a margin of safety?

Response: No.

This change involves the temporary addition of a 75-day Completion Time for TS 3.8.1 Required Action C.2.2.5 associated with restoring compliance with TS LCO 3.8.1.C. During the time period that one KHU is inoperable, the redundancy requirement for the emergency power source will be fulfilled by an LCT. Compensatory measures previously specified will be in place to minimize electrical power system vulnerabilities.

The proposed TS change does not involve: (1) A physical alteration of the Oconee Units; (2) the installation of new or different equipment; (3) operating any installed equipment in a new or different manner; (4) a change to any set points for parameters which initiate protective or mitigation action; or (5) any impact on the fission product barriers or safety limits.

Therefore, this request does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Lara S. Nichols, Deputy General Counsel, Duke Energy Corporation, 526 South Church Street—EC07H, Charlotte, NC 28202—1802.

NRC Branch Chief: Robert J. Pascarelli.

Entergy Nuclear Vermont Yankee (VY), LLC and Entergy Nuclear Operations, Inc., Docket No. 50-271, Vermont Yankee Nuclear Power Station, Vernon, Vermont

Date of amendment request: April 17, 2012.

Description of amendment request: The proposed amendment would revise Technical Specification (TS) 3.5.A.5 and TS 4.5.A.5 to change the normal position of the recirculation pump discharge bypass valves from "open" to "closed," and therefore, the safety function to close in support of accident mitigation would be eliminated. The TSs would be revised to require the valves to remain closed; their position would be verified once per operating cycle.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration which is presented below:

1. Does the proposed amendment involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The proposed amendment does not significantly increase the probability or consequences of an accident. The recirculation system discharge bypass valve normal position has been changed from "open" to "closed." The safety function of the discharge bypass valves is to be closed to support accident mitigation. Placing the discharge bypass valves in the normally closed position is consistent with station safety analysis and therefore does not have a significant impact on the probability or consequence of an accident.

Therefore, the proposed amendment does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed amendment create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The proposed change does not involve any new modes of operation. The recirculation system discharge bypass valve normal

position has been changed from "open" to "closed." The valves previously had a safety function to close and are designed to meet all code requirements in the closed position. No new accident precursors are introduced. Recirculation pump operating procedures have been revised consistent with vendor guidance. No new or different types of equipment will be installed. The methods governing plant operation remain bounded by current safety analysis assumptions.

Therefore, the proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the proposed amendment involve a significant reduction in a margin of safety?
Response: No.

The recirculation system discharge bypass valve normal position has been changed from "open" to "closed." With the valves normally in the closed position safety margins are maintained. The station safety analysis results are unchanged and margin to regulatory limits is not affected. Therefore, the proposed amendment will not involve a significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Mr. William C. Dennis, Assistant General Counsel, Entergy Nuclear Operations, Inc., 440 Hamilton Avenue, White Plains, NY 10601.

NRC Branch Chief: George Wilson.

Exelon Generation Company, LLC, and PSEG Nuclear LLC, Docket Nos. 50-277 and 50-278, Peach Bottom Atomic Power Station, Units 2 and 3, York and Lancaster Counties, Pennsylvania

Date of application for amendments: August 29, 2012.

Description of amendment request: The proposed amendment would modify the Technical Specification (TS) requirements for inoperable snubbers by adding Limiting Condition for Operation 3.0.8. This change is based on the Nuclear Regulatory Commission (NRC) approved Technical Specification Task Force (TSTF) standard TS change TSTF-372, Revision 4. A notice of availability for this TS improvement using the consolidated line item improvement process was published by the NRC staff in the **Federal Register** on May 4, 2005 (70 FR 23252).

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The proposed change allows a delay time before declaring supported Technical Specification (TS) systems inoperable when the associated snubber(s) cannot perform its required safety function. Entrance into Actions or delaying entrance into Actions is not an initiator of any accident previously evaluated. Consequently, the probability of an accident previously evaluated is not significantly increased. The consequences of an accident while relying on the delay time allowed before declaring a TS supported system inoperable and taking its Conditions and Required Actions are no different than the consequences of an accident under the same plant conditions while relying on the existing TS supported system Conditions and Required Actions. Therefore, the consequences of an accident previously evaluated are not significantly increased by this change.

Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The proposed change allows a delay time before declaring supported TS systems inoperable when the associated snubber(s) cannot perform its required safety function. The proposed change does not involve a physical alteration of the plant (no new or different type of equipment will be installed) or a change in the methods governing normal plant operation.

Therefore, the proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the proposed change involve a significant reduction in a margin of safety?

Response: No.

The proposed change allows a delay time before declaring supported TS systems inoperable when the associated snubber(s) cannot perform its required safety function. The proposed change restores an allowance in the pre-Improved Standard Technical Specifications (ISTS) conversion TS that was unintentionally eliminated by the conversion. The pre-ISTS TS were considered to provide an adequate margin of safety for plant operation, as does the post-ISTS conversion TS.

Therefore, the proposed change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for Licensee: Mr. J. Bradley Fewell, Assistant General Counsel, Exelon Generation Company, LLC, 200 Exelon Way, Kennett Square, PA 19348.
NRC Branch Chief: Meena K. Khanna.

Florida Power and Light Company, Docket Nos. 50-250 and 50-251, Turkey Point Nuclear Plant, Units 3 and 4, Miami-Dade County, Florida

Date of amendment request: August 16, 2012.

Description of amendment request: The proposed amendments would modify Technical Specification (TS) 3/4.7.5, "Control Room Emergency Ventilation System," to correct a clerical error identified in the issued TS involving TS 3.7.5 Action "c" for Modes 5 and 6 that omitted an applicable footnote.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed amendment involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The proposed amendments do not change or modify the fuel, fuel handling processes, fuel storage racks, number of fuel assemblies that may be stored in the spent fuel pool (SFP), decay heat generation rate, or the spent fuel pool cooling and cleanup system. The proposed TS change will allow core alterations, fuel movement, and positive reactivity changes in Modes 5 and 6 subject to the conditions specified in the footnote that actions have been taken to permit indefinite system/component operation and the system is in recirculation mode. The proposed change corrects a clerical error by annotating TS 3.7.5 Action "c" with a modified footnote consistent with the stated intent of the original license submittals. The proposed amendments do not cause any physical change to the existing spent fuel storage configuration or fuel makeup. The proposed amendments do not affect any precursors to any accident previously evaluated or do not affect any known mitigation equipment or strategies.

Therefore, the proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed amendment create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The proposed amendments do not change or modify the fuel, fuel handling processes, fuel racks, number of fuel assemblies that may be stored in the pool, decay heat generation rate, or the spent fuel pool cooling and cleanup system. The proposed TS change will allow core alterations, fuel

movement, and positive reactivity changes in Modes 5 and 6 subject to the conditions specified in the footnote that actions have been taken to permit indefinite system/component operation and the system is in recirculation mode. The proposed change corrects a clerical error by annotating TS 3.7.5 Action "c" with a modified footnote consistent with the stated intent of the original license submittals.

Therefore, it is concluded that this change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the proposed amendment involve a significant reduction in a margin of safety?

Response: No.

The proposed amendments do not change or modify the fuel, fuel handling processes, fuel racks, number of fuel assemblies that may be stored in the pool, decay heat generation rate, or the spent fuel pool cooling and cleanup system. Therefore, the proposed amendments have no impact to the existing margin of safety for subcriticality required by 10 CFR 50.68(b)(4).

Therefore, it is concluded that the proposed change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: M.S. Ross, Attorney, Florida Power & Light, P.O. Box 14000, Juno Beach, Florida 33408-0420.

NRC Acting Branch Chief: Jessie F. Quichocho.

NextEra Energy Duane Arnold, LLC, Docket No. 50-331, Duane Arnold Energy Center (DAEC), Linn County, Iowa

Date of amendment request: August 5, 2011.

Description of amendment request: The proposed amendment would transition the DAEC fire protection program to a new risk-informed, performance-based alternative per 10 CFR 50.48(c) which incorporates by reference the National Fire Protection Association (NFPA) Standard 805 (NFPA 805), "Performance-Based Standard for Fire Protection for Light Water Reactor Electric Generating Plants—2001."

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed amendment involve a significant increase in the probability or

consequences of an accident previously evaluated?

Response: No.

Operation of DAEC in accordance with the proposed amendment does not increase the probability or consequences of accidents previously evaluated. The Updated Final Safety Analysis Report (UFSAR) documents the analyses of design basis accidents (DBAs) at DAEC. The proposed amendment does not adversely affect accident initiators nor alter design assumptions, conditions, or configurations of the facility and does not adversely affect the ability of structures, systems, and components (SSCs) to perform their design function. SSCs required to safely shutdown the reactor and to maintain it in a safe shutdown (SSD) condition will remain capable of performing their design functions.

The purpose of this amendment is to permit DAEC to adopt a new fire protection licensing basis which complies with the requirements in 10 CFR 50.48(a) and (c) and the guidance in Revision 1 of Regulatory Guide (RG) 1.205. The NRC considers that National Fire Protection Association (NFPA) 805 provides an acceptable methodology and performance criteria for licensees to identify fire protection systems and features that are an acceptable alternative to the 10 CFR Part 50, Appendix R fire protection features (69 FR 33536, June 16, 2004). Engineering analyses, in accordance with NFPA 805, have been performed to demonstrate that the risk-informed, performance-based (RI-PB) requirements per NFPA 805 have been met.

NFPA 805, taken as a whole, provides an acceptable alternative to 10 CFR 50.48(b), satisfies 10 CFR 50.48(a) and General Design Criterion (GDC) 3 of Appendix A to 10 CFR Part 50, and meets the underlying intent of the NRC's existing fire protection regulations and guidance, and achieves defense-in-depth (DID) and the goals, performance objectives, and performance criteria specified in Chapter 1 of the standard. The small increase in the net core damage frequency associated with this LAR submittal is consistent with the Commission's Safety Goal Policy. Additionally, 10 CFR 50.48(c) allows self approval of fire protection program changes post-transition. If there are any increases post-transition in core damage frequency (CDF) or risk, the increase will be small and consistent with the intent of the Commission's Safety Goal Policy.

Based on this, the implementation of this amendment does not significantly increase the probability of any accident previously evaluated. Equipment required to mitigate an accident remains capable of performing the assumed function. Therefore, the consequences of any accident previously evaluated are not significantly increased with the implementation of this amendment.

2. Does the proposed amendment create the possibility of a new or different kind of accident from any kind of accident previously evaluated?

Response: No.

Operation of DAEC in accordance with the proposed amendment does not create the possibility of a new or different kind of accident from any accident previously evaluated. Any scenario or previously analyzed accident with offsite dose was

included in the evaluation of DBAs documented in the UFSAR. The proposed change does not alter the requirements or function for systems required during accident conditions. Implementation of the new fire protection licensing basis which complies with the requirements in 10 CFR 50.48(a) and (c) and the guidance in Revision 1 of RG 1.205 will not result in new or different accidents.

The proposed amendment does not adversely affect accident initiators nor alter design assumptions, conditions, or configurations of the facility. The proposed amendment does not adversely affect the ability of SSCs to perform their design function. SSCs required to safely shut down the reactor and maintain it in a safe shutdown condition remain capable of performing their design functions.

The purpose of this amendment is to permit DAEC to adopt a new fire protection licensing basis which complies with the requirements in 10 CFR 50.48(a) and (c) and the guidance in Revision 1 of RG 1.205. The NRC considers that NFPA 805 provides an acceptable methodology and performance criteria for licensees to identify fire protection systems and features that are an acceptable alternative to the 10 CFR Part 50, Appendix R fire protection features (69 FR 33536, June 16, 2004).

The requirements in NFPA 805 address only fire protection and the impacts of fire on the plant that have already been evaluated. Based on this, the implementation of this amendment does not create the possibility of a new or different kind of accident from any kind of accident previously evaluated. The proposed changes do not involve new failure mechanisms or malfunctions that can initiate a new accident.

Therefore, the possibility of a new or different kind of accident from any kind of accident previously evaluated is not created with the implementation of this amendment.

3. Does the proposed amendment involve a significant reduction in the margin of safety?

Response: No.

Operation of DAEC in accordance with the proposed amendment does not involve a significant reduction in the margin of safety. The proposed amendment does not alter the manner in which safety limits, limiting safety system settings or limiting conditions for operation are determined. The safety analysis acceptance criteria are not affected by this change. The proposed amendment does not adversely affect existing plant safety margins or the reliability of equipment assumed to mitigate accidents in the UFSAR. The proposed amendment does not adversely affect the ability of SSCs to perform their design function. SSCs required to safely shut down the reactor and to maintain it in a safe shutdown condition remain capable of performing their design function.

The purpose of this amendment is to permit DAEC to adopt a new fire protection licensing basis which complies with the requirements in 10 CFR 50.48(a) and (c) and the guidance in Revision 1 of RG 1.205. The NRC considers that NFPA 805 provides an acceptable methodology and performance criteria for licensees to identify fire

protection systems and features that are an acceptable alternative to the 10 CFR Part 50, Appendix R fire protection features (69 FR 33536, June 16, 2004). Engineering analyses, which may include engineering evaluations, probabilistic safety assessments, and fire modeling calculations, have been performed to demonstrate that the performance-based methods do not result in a significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Mr. Mitchell S. Ross, P.O. Box 14000, Juno Beach, FL 33408-0420.

NRC Acting Branch Chief: Istvan Frankl.

Southern Nuclear Operating Company, Inc., Docket No. 50-364, Joseph M. Farley Nuclear Plant, Unit 2, Houston County, Alabama

Date of amendment request: January 18, 2012.

Description of amendment request:

On June 13, 2003, the NRC issued Amendment No. 151 for FNP Unit 2 which added Note 3 to Surveillance Requirement (SR) 3.4.11.1 and created new SR 3.4.11.4. Note 3 to SR 3.4.11.1 eliminated the requirement to cycle the Unit 2 Pressurizer Power Operated Relief Valve (PORV) 02B31 MOV8000B during the remainder of operating Cycle 16. This amendment also added SR 3.4.11.4 as a compensatory action for the block valve while SR 3.4.11.1 was suspended. This license amendment request proposes to delete Note 3 from SR 3.4.11.1 and delete SR 3.4.11.4 entirely from the FNP Unit 2 TS. This change is administrative in nature, because Cycle 16 for FNP Unit 2 has been completed; FNP Unit 2 is currently operating in Cycle 22. Therefore, SR 3.4.11.1 Note 3 and SR 3.4.11.4 are no longer applicable.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed amendment involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The proposed change will remove Note 3 from Surveillance Requirement (SR) 3.4.11.1 and delete SR 3.4.11.4 from the Joseph M. Farley Nuclear Plant (FNP) Unit 2 Technical Specifications (TS). SR 3.4.11.1 Note 3 was

incorporated into the FNP Unit 2 TS as a result of a license amendment request granted to SNC on June 3, 2003, which allowed SNC to suspend cycling the Unit 2 Pressurizer Power Operated Relief Valve (PORV) Q2B31 MOV8000B during the remainder of operating cycle 16.

Additionally, TS SR 3.4.11.4 was added to provide a compensatory action for the block valve while SR 3.4.11.1 was suspended.

SR 3.4.11.1 Note 3 and SR 3.4.11.1 were applicable for the remainder of operating Cycle 16 which has been completed; FNP Unit 2 is currently operating in Cycle 22. Note 3 to SR 3.4.11.1 and SR 3.4.11.4 are no longer applicable; therefore, this proposed change is administrative in nature.

This proposed administrative license amendment does not impact any accident initiators, analyzed events, or assumed mitigation of accident or transient events. The proposed change does not involve the addition or removal of any equipment or any design changes to the facility. The proposed change does not affect any plant operations, design function, or analysis that verifies the capability of structures, systems, and components (SSCs) to perform a design function. The proposed change does not change any of the accidents previously evaluated in the Updated Final Safety Analysis Report (UFSAR). The proposed change does not affect SSCs, operating procedures, and administrative controls that have the function of preventing or mitigating any of these accidents.

Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed amendment create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

This proposed administrative license amendment does not affect actual plant equipment or accident analyses. The proposed change will not change the design function or operation of any SSCs nor result in any new failure mechanisms, malfunctions, or accident initiators not considered in the design and licensing bases. The proposed amendment does not impact any accident initiators, analyzed events, or assumed mitigation of accident or transient events.

Therefore, the proposed change does not create the possibility of a new or different kind of accident from any previously evaluated.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: M. Stanford Blanton, Esq., Balch and Bingham, Post Office Box 306, 1710 Sixth Avenue North, Birmingham, Alabama 35201.

NRC Branch Chief: Robert J. Pascarelli.

Southern Nuclear Operating Company, Inc., Docket Nos. 50-348 and 50-364, Joseph M. Farley Nuclear Plant, Units 1 and 2, Houston County, Alabama

Date of amendment request: August 15, 2012.

Description of amendment request: The proposed amendments would amend the Technical Specifications (TS) associated with the Low Temperature Overpressure Protection (LTOP) System and the Pressure and Temperature Limits Report (PTLR) for Joseph M. Farley Nuclear Plant (FNP).

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

As required by 10 CFR 50.91(a), Southern Nuclear Operating Company (SNC) has evaluated the proposed changes to the FNP TS using the criteria in 10 CFR 50.92 and has determined that the proposed changes do not involve a significant hazards consideration. An analysis of the issue of no significant hazards consideration is below:

1. Does the proposed amendment involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The proposed amendment involves changes to the TS requirements to incorporate new pressure and temperature limit curves that were determined with an NRC approved methodology for the LTOP system, as well as incorporating that methodology into the TS. The pressure and temperature limit curves preserve the integrity of the reactor vessel. The LTOP System provides overpressure protection during operation at low RCS temperatures. In addition, this amendment proposes to adopt the NRC approved and TSTF 213-A and TSTF-419-A. Adoption of these TSTFs will relocate the LTOP applicability temperature from the TS to the PTLR and will eliminate redundant references in Sections 1.1 and 5.6.6 of the TS. Lastly, the proposed change includes clarifications to the LTOP System TS requirements that are consistent with the FNP design and preserve the applicable safety analyses. The proposed changes are based on NRC approved methods, and NRC approved changes to the Standard TS for Westinghouse Plants.

The proposed change to the TS does not affect the initiators of any analyzed accident. In addition, operation in accordance with the proposed TS change ensures that the previously evaluated accidents will continue to be mitigated as analyzed. Thus, the proposed change does not adversely affect the design function or operation of any structures, systems, and components important to safety.

Therefore, it is concluded that the proposed not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed amendment create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The proposed amendment involves changes to the TS requirements to incorporate new pressure and temperature limit curves that were determined with an NRC approved methodology for the LTOP system, as well as incorporating that methodology into the TS. The pressure and temperature limit curves preserve the integrity of the reactor vessel. The LTOP System provides overpressure protection during operation at low RCS temperatures. In addition, this amendment proposes to adopt the NRC approved TSTF-233-A and TSTF-419-A. Adoption of these TSTFs will relocate the LTOP applicability temperature from the TS to the PTLR and will eliminate redundant references in Sections 1.1 and 5.6.6 of the TS. Lastly, the proposed change includes clarifications to the LTOP System TS requirements that are consistent with the FNP design and preserve the applicable safety analyses. The proposed changes are based on NRC approved methods and NRC approved changes to the Standard TS for Westinghouse Plants. The proposed change does not involve a physical alteration of the plant (no new or different type of equipment will be installed). The proposed change does not create any new failure modes for existing equipment or any new limiting single failures. Additionally the proposed change does not involve a change in the methods governing normal plant operation and all safety functions will continue to perform as previously assumed in accident analyses. The pressure and temperature limit curves will continue to preserve the integrity of the reactor vessel. The LTOP System will continue to ensure that the appropriate fracture toughness margins are maintained to protect against reactor vessel failure during low temperature operation. Thus, the proposed change does not adversely affect the design function or operation of any structures, systems, and components important to safety.

Therefore, it is concluded that the proposed change does not create the possibility of a new or different kind of accident from any previously evaluated.

3. Does the proposed amendment involve a significant reduction in a margin of safety?

Response: No.

The proposed amendment involves changes to the TS requirements to incorporate new pressure and temperature limit curves that were determined with an NRC approved methodology for the LTOP system, as well as incorporating that methodology into the TS. The pressure and temperature limit curves preserve the integrity of reactor vessel. The LTOP System provides overpressure protection during operation at low RCS temperatures. In addition, this amendment proposes to adopt the NRC approved TSTF-233-A and TSTF-419-A. Adoption of these TSTFs will relocate the LTOP applicability temperature from the TS to the PTLR and will eliminate redundant references in Sections 1.1 and 5.6.6 of the TS. Lastly, the proposed change

includes clarifications to the LTOP System TS requirements that are consistent with the FNP design and preserve the applicable safety analyses. The proposed changes are based on NRC approved methods and NRC approved changes to the Standard TS for Westinghouse Plants.

The proposed change will not adversely affect the operation of plant equipment or the function of equipment assumed in the accident analysis. The pressure-temperature limit curves and LTOP System applicability temperature have been determined in accordance with NRC approved methodologies. The proposed changes to the LTOP System TS requirements remain consistent with the applicable LTOP System design, and preserve the applicable safety analysis assumptions. Additionally, no changes are made to the LTOP System function as assumed in the applicable safety analysis.

Therefore, it is concluded that proposed change does not involve a significant reduction in a margin of safety.

Based upon the above analysis, SNC concludes that the proposed amendment does not involve a significant hazards consideration, under the standards set forth in 10 CFR 50.92(c), "Issuance of Amendment," and accordingly, a finding of "no significant hazards consideration" is justified.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: M. Stanford Blanton, Esq., Balch and Bingham, Post Office Box 306, 1710 Sixth Avenue North, Birmingham, Alabama 35201.
NRC Branch Chief: Robert J. Pascarelli.

STP Nuclear Operating Company, Docket Nos. 50-498 and 50-499, South Texas Project, Units 1 and 2, Matagorda County, Texas

Date of amendment request: August 1, 2012.

Description of amendment request: The proposed license amendment would revise Technical Specification (TS) Table 3.3-10, "Accident Monitoring Instrumentation," with respect to the required actions and allowed outage times for inoperable instrumentation for Neutron Flux (Extended Range) and Neutron Flux—Startup Rate (Extended Range) (Instrument Nos. 19 and 23). The required actions will be revised to enhance plant reliability by reducing exposure to unnecessary shutdowns and increase operational flexibility by allowing more time to implement required repairs for inoperable instrumentation. The proposed changes

are consistent with requirements generically approved as part of NUREG-1431, Standard Technical Specifications, Westinghouse Plants, Revision 4 (TS 3.3.3, "Post Accident Monitoring (PAM) Instrumentation").

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The proposed changes revise the actions and allowed outage times of the neutron flux (extended range) and neutron flux—startup rate (extended range) accident monitoring instrumentation. The instrumentation is not an initiator of any accident previously evaluated. As a result, the probability of any accident previously evaluated is not significantly increased by these proposed changes. The Technical Specifications continue to require the instrumentation to be operable. Therefore, the neutron flux (extended range) and neutron flux—startup rate (extended range) instrumentation will continue to provide sufficient information on selected plant parameters to monitor and assess these variables following an accident. The consequences of an accident during the extended allowed outage times are the same as the consequences during the current allowed outage time. As a result, the consequences of any accident previously evaluated are not significantly increased by these proposed changes.

Therefore, the proposed changes do not increase the probability or consequences of an accident previously evaluated.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The proposed changes do not alter the design, physical configuration, or mode of operation of the plant. The neutron flux (extended range) and neutron flux—startup rate (extended range) accident monitoring instrumentation is not an initiator of any accident previously evaluated. No changes are being made to the plant that would introduce any new accident causal mechanisms. The proposed changes do not affect any other plant equipment.

Therefore, the proposed changes do not create the possibility of a new or different kind of accident from any accident previously analyzed.

3. Does the proposed change involve a significant reduction in a margin of safety?

Response: No.

The proposed changes do not change the operation, function, or modes of the plant or equipment operation. The proposed changes do not change the level of assurance that the neutron flux (extended range) and neutron flux—startup rate (extended range) accident

monitoring instrumentation will be available to perform its function. The proposed changes provide a more appropriate time to restore the inoperable channel(s) to operable status, and only apply when one or more channels of the required instrument are inoperable. The additional time to restore an inoperable channel to operable status is appropriate based on the low probability of an event requiring a neutron flux (extended range) accident monitoring instrument during the interval, providing a reasonable time for repair, and other means which may be available to obtain the required information.

Therefore, the proposed changes do not result in a reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the request for amendments involves no significant hazards consideration.

Attorney for licensee: A. H. Gutterman, Esq., Morgan, Lewis & Bockius, 1111 Pennsylvania Avenue NW., Washington, DC 20004.

NRC Branch Chief: Michael T. Markley.

Tennessee Valley Authority (TVA), Docket Nos. 50-327 and 50-328, Sequoyah Nuclear Plant (SQN), Units 1 and 2, Hamilton County, Tennessee

Date of amendment request: August 10, 2012 (SQN-TS-12-02).

Description of amendment request: The proposed amendments would revise the Updated Final Safety Analysis Report (UFSAR) to adopt a revised hydrologic analysis for the SQN, Units 1 and 2 sites. These proposed changes are consistent with the latest approved hydrology calculations. The proposed changes in the updated hydrologic analysis include updated input information, and updates to methodology that includes use of the U.S. Army Corps of Engineers Hydrologic Modeling System and River Analysis System software. As a result of these proposed changes, the design basis flood (DBF) elevations are revised. These changes are determined to impact existing flooding protection requirements for several safety-related systems, structures, or components (SSCs), which include the spent fuel pit cooling pump motors and applicable equipment required for flood mode operation located in the diesel generator building. To restore margin for the spent fuel pit cooling pump motors, the spent fuel pit cooling pump enclosure caps are required to be in place in the event of a stage 1 flood warning as a compensatory measure. For the diesel generator building, staged sandbags to be constructed into a berm at any time

prior to or during the event of a stage 1 flood warning has been established as a compensatory measure.

TVA will implement a documentation change to require the spent fuel pit cooling pump enclosure caps as a permanent plant feature for flooding protection, and will install permanent plant modifications to provide adequate flooding protection with respect to the DBF level for the diesel generator building, by March 31, 2013.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed amendment involve a significant increase in the probability or consequence of an accident previously evaluated?

Response: No.

Although the proposed changes require some documentation and physical changes to plant systems, structures, or components to add flooding protection features to restore or gain additional margin between the revised DBF elevations and limiting safety-related systems, structures, and components; implementation of these changes does not (1) prevent the safety function of any safety-related system, structure, or component during an external flood; (2) alter, degrade, or prevent action described or assumed in any accident described in the SQN Units 1 and 2 UFSAR from being performed since the safety-related systems, structures, or components remain adequately protected from the effects of external floods; (3) alter any assumptions previously made in evaluating radiological consequences; or (4) affect the integrity of any fission product barrier.

Therefore, this proposed amendment does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed amendment create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The proposed changes do not introduce any new accident causal mechanisms, nor do they impact any plant systems that are potential accident initiators.

Therefore, the proposed amendment does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the proposed amendment involve a significant reduction in a margin of safety?

Response: No.

The proposed changes do not alter the permanent plant design, including instrument set points, that is the basis of the assumptions contained in the safety analyses. However, documentation changes and permanent plant modifications are planned to restore or gain additional margin between the revised DBF elevations and limiting safety-related systems, structures, and

components. Although the results of the updated hydrologic analysis increase the DBF elevations required to be considered in the flooding protection of safety-related systems, structures, or components during external flooding events, the proposed changes do not prevent any safety-related SSCs from performing their required functions during an external flood considering the temporary compensatory measures in place and upon completion of planned documentation changes and permanent plant modifications. Consistent with existing regulatory guidance, including regulatory recommendations and discussions regarding calibration of hydrology models using historical flood data and consideration of sensitivity analyses, the hydrologic analysis is considered to be a reasonable best estimate that has accounted for uncertainties using the best data available.

Therefore, the proposed changes do not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: General Counsel, Tennessee Valley Authority, 400 West Summit Hill Drive, ET 11A, Knoxville, Tennessee 37902.

NRC Acting Branch Chief: Jessie F. Quichocho.

Virginia Electric and Power Company, Docket Nos. 50-338 and 50-339, North Anna Power Station, Units 1 and 2, Louisa County, Virginia

Date of amendment request: July 30, 2012.

Description of amendment request: The proposed amendment would revise the Technical Specification (TS) requirements regarding steam generator tube inspections and reporting as described in TSTF-510, Revision 2, "Revision to Steam Generator Program Inspection Frequencies and Tube Sample Selection."

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

Criterion 1

Does the change involve a significant increase in the probability or consequences of an accident previously evaluated?

The proposed change revises the Steam Generator (SG) Program to modify the frequency of verification of SG tube integrity and SG tube sample selection. A steam generator tube rupture (SGTR) event is one of the design basis accidents that are analyzed

as part of a plant's licensing basis. The proposed SG tube inspection frequency and sample selection criteria will continue to ensure that the SG tubes are inspected such that the probability of an SGTR is not increased. The consequences of an SGTR are bounded by the conservative assumptions in the design basis accident analysis. The proposed change will not cause the consequences of an SGTR to exceed those assumptions. The proposed change to reporting requirements and clarifications of the existing requirements have no effect on the probability or consequences of SGTR.

Therefore, it is concluded that this change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

Criterion 2

Does the change create the possibility of a new or different kind of accident from any accident previously evaluated?

The proposed changes to the Steam Generator Program will not introduce any adverse changes to the plant design basis or postulated accidents resulting from potential tube degradation. The proposed change does not affect the design of the SGs or their method of operation. In addition, the proposed change does not impact any other plant system or component.

Therefore, the possibility for a new or different kind of accident from any accident previously evaluated is not created.

Criterion 3

Does this change involve a significant reduction in a margin of safety?

The SG tubes in pressurized water reactors are an integral part of the reactor coolant pressure boundary and, as such, are relied upon to maintain the primary system's pressure and inventory. As part of the reactor coolant pressure boundary, the SG tubes are unique in that they are also relied upon as a heat transfer surface between the primary and secondary systems such that residual heat can be removed from the primary system. In addition, the SG tubes also isolate the radioactive fission products in the primary coolant from the secondary system. In summary, the safety function of an SG is maintained by ensuring the integrity of its tubes. Steam generator tube integrity is a function of the design, environment, and the physical condition of the tube. The proposed change does not affect tube design or operating environment. The proposed change will continue to require monitoring of the physical condition of the SG tubes such that there will not be a reduction in the margin of safety compared to the current requirements.

Therefore, it is concluded that this change does not involve a significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Lillian M. Cuoco, Senior Counsel, Dominion Resources Services, Inc., 120 Tredegar Street, RS-2, Richmond, VA 23219.

NRC Branch Chief: Robert J. Pascarelli.

Wolf Creek Nuclear Operating Corporation (WCNOC), Docket No. 50-482, Wolf Creek Generating Station, Coffey County, Kansas

Date of amendment request: June 13, 2012.

Description of amendment request: The amendment would change the implementation schedule milestone scope and revise the renewed facility operating license physical protection license condition (Paragraph 2.E of the Renewed Facility Operating License No. NPF-42).

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The proposed change to the WCNOC Cyber Security Plan Implementation Schedule is administrative in nature. This change does not alter accident analysis assumptions, add any initiators, or affect the function of plant systems or the manner in which systems are operated, maintained, modified, tested, or inspected. The proposed change does not require any plant modifications which affect the performance capability of the structures, systems, and components (SSCs) relied upon to mitigate the consequences of postulated accidents, and has no impact on the probability or consequences of an accident previously evaluated.

Therefore, the proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The proposed change to the WCNOC Cyber Security Plan Implementation Schedule is administrative in nature. This proposed change does not alter accident analysis assumptions, add any initiators, or affect the function of plant systems or the manner in which systems are operated, maintained, modified, tested, or inspected. The proposed change does not require any plant modifications which affect the performance capability of the SSCs relied upon to mitigate the consequences of postulated accidents, and does not create the possibility of a new or different kind of accident from any accident previously evaluated.

Therefore, the proposed change does not create the possibility of a new or different kind of accident from any previously evaluated.

3. Does the proposed change involve a significant reduction in a margin of safety?

Response: No.

Plant safety margins are established through limiting conditions for operation, limiting safety system settings, and safety limits specified in the technical specifications. The proposed change to the WCNOC Cyber Security Plan Implementation Schedule is administrative in nature. Since the proposed change is administrative in nature, there is no change to these established safety margins.

Therefore the proposed change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Jay Silberg, Esq., Pillsbury Winthrop Shaw Pittman LLP, 2300 N Street NW., Washington, DC 20037.

NRC Branch Chief: Michael T. Markley.

Notice of Issuance of Amendments to Facility Operating Licenses and Combined Licenses

During the period since publication of the last biweekly notice, the Commission has issued the following amendments. The Commission has determined for each of these amendments that the application complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment.

A notice of consideration of issuance of amendment to facility operating license or combined license, as applicable, proposed no significant hazards consideration determination, and opportunity for a hearing in connection with these actions, was published in the **Federal Register** as indicated.

Unless otherwise indicated, the Commission has determined that these amendments satisfy the criteria for categorical exclusion in accordance with 10 CFR 51.22. Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared for these

amendments. If the Commission has prepared an environmental assessment under the special circumstances provision in 10 CFR 51.22(b) and has made a determination based on that assessment, it is so indicated.

For further details with respect to the action see (1) the applications for amendment, (2) the amendment, and (3) the Commission's related letter, Safety Evaluation and/or Environmental Assessment as indicated. All of these items are available for public inspection at the NRC's Public Document Room (PDR), located at One White Flint North, Room O1-F21, 11555 Rockville Pike (first floor), Rockville, Maryland 20852. Publicly available documents created or received at the NRC are accessible electronically through the Agencywide Documents Access and Management System (ADAMS) in the NRC Library at <http://www.nrc.gov/reading-rm/adams.html>. If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the PDR's Reference staff at 1-800-397-4209, 301-415-4737 or by email to pdr.resource@nrc.gov.

Exelon Generation Company, LLC, Docket No. 50-289, Three Mile Island Nuclear Station, Unit 1 (TMI-1), Dauphin County, Pennsylvania

Date of application for amendment: March 26, 2012, supplemented by letter dated April 2, 2012.

Brief description of amendment: The amendment revises Technical Specification (TS) Limiting Condition for Operation 3.1.1.2, TS Surveillance Requirement 4.19.2, TS 6.9.6, "Steam Generator Tube Inspection Report," and TS 6.19, "Steam Generator (SG) Program," changing certain inspection periods and making other administrative changes and clarifications. These changes are consistent with Technical Specification Task Force (TSTF) Traveler, TSTF-510, Revision 2, "Revision to Steam Generator Program Inspection Frequencies and Tube Sample Selection."

Date of issuance: September 4, 2012.

Effective date: Immediately, and shall be implemented within 60 days.

Amendment No.: 279.

Renewed Facility Operating License No. DPR-50: Amendment revised the license and the technical specifications.

Date of initial notice in Federal Register: May 15, 2012 (77 FR 28631).

The supplement dated April 2, 2012, provided an application-specific no significant hazards determination which was incorporated into the U.S. Nuclear Regulatory Commission (NRC) staff's original proposed no significant hazards

consideration determination, as published in the **Federal Register** on May 15, 2012.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated September 4, 2012.

No significant hazards consideration comments received: No.

NextEra Energy Seabrook, LLC, Docket No. 50-443, Seabrook Station, Unit 1, Rockingham County, New Hampshire

Date of amendment request: April 10, 2012.

Description of amendment request: The proposed amendment revises the Seabrook Station Technical Specifications (TSs). The proposed change revises TS 6.7.6.k, Steam Generator (SG) Program, to exclude a portion of the tubes below the top of the SG tube sheet from periodic tube inspections and plugging. The proposed change also establishes permanent reporting requirements in TS 6.8.1.7, Steam Generator Tube Inspection Report, that were previously implemented on a temporary basis.

Date of issuance: September 10, 2012.

Effective date: As of its date of issuance and shall be implemented within 30 days.

Amendment No.: 131.

Facility Operating License No. NPF-86: The amendment revised the TS and the License.

Date of initial notice in Federal Register: June 5, 2012 (77 FR 33248).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated September 10, 2012.

No significant hazards consideration comments received: No.

Northern States Power Company—Minnesota (NSPM), Docket No. 50-263, Monticello Nuclear Generating Plant, Wright County, Minnesota

Date of application for amendment: April 5, 2012.

Brief description of amendment: The amendment revises Technical Specifications to eliminate the lower allowable value limit of "≥ 18 minutes" for Functions 1.e and 2.e, "Reactor Steam Dome Pressure Permissive—Bypass Timer (Pump Permissive)," in Table 3.3.5.1-1, "Emergency Core Cooling System Instrumentation."

Date of issuance: September 7, 2012.

Effective date: This license amendment is effective as of the date of its issuance, and shall be implemented within 14 days of issuance.

Amendment No.: 170.

Facility Operating License No. DPR-22. Amendment revised the Renewed Facility Operating License.

Date of initial notice in Federal Register: May 1, 2012 (77 FR 25759).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated September 7, 2012.

No significant hazards consideration comments received: No.

Southern Nuclear Operating Company, Inc., Docket Nos. 50-424 and 50-425, Vogtle Electric Generating Plant, Units 1 and 2, Burke County, Georgia

Date of application for amendments: March 22, 2012.

Brief description of amendments: The amendments revised the Technical Specifications for the steam generator tube inspection program. Specifically, the amendments establish alternate SG tube repair criteria for tubing flaws in the lower region of the tubesheet.

Date of Issuance: September 10, 2012.

Effective date: As of the date of issuance and shall be implemented within 30 days from the date of issuance.

Amendment Nos.: Unit 1-167 and Unit 2-149.

Facility Operating License Nos. NPF-68 and NPF-81: Amendments revised the licenses and the technical specifications.

Date of initial notice in Federal Register: May 25, 2012.

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated September 10, 2012.

No significant hazards consideration comments received: No.

Tennessee Valley Authority, Docket No. 50-327, Sequoyah Nuclear Plant, Unit 1, Hamilton County, Tennessee

Date of application for amendment: September 29, 2011, as supplemented on February 10, March 5, April 5, and May 22, 2012 (TS-SQN-2011-05).

Brief description of amendment: During Sequoyah Nuclear Plant (SQN), Unit 2, fall 2012 refueling outage (RFO), the replacement steam generators will be installed. To support this activity, heavy load lifts will be conducted. The proposed amendment added a one-time license condition to the SQN, Unit 1 operating license for the conduct of heavy load lifts for the Unit 2 steam generator replacement project (SGRP). The one-time license condition established special provisions and requirements for the safe operation of Unit 1, while large heavy load lifts are performed on Unit 2. In addition, a one-time change to Unit 1 Technical Specification (TS) 3.7.5, "Ultimate Heat Sink," is also proposed to implement additional restrictions with respect to

maximum average Essential Raw Cooling Water System supply header water temperature during large heavy load lifts performed to support the Unit 2 SGRP during the fall 2012 RFO.

Date of issuance: September 6, 2012.

Effective date: As of the date of issuance and shall be implemented within 60 days of issuance.

Amendment No.: 330.

Facility Operating License No. DPR-77: Amendment revised the TSs.

Date of initial notice in Federal Register: December 27, 2011 (76 FR 80977). The supplement letters dated February 10, March 5, April 5, and May 22, 2012, provided additional information that clarified the application, did not expand the scope of the application as originally noticed, and did not change the staff's original proposed no significant hazards consideration determination.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated September 6, 2012.

No significant hazards consideration comments received: No.

Notice of Issuance of Amendments to Facility Operating Licenses and Combined Licenses and Final Determination of No Significant Hazards Consideration and Opportunity for a Hearing (Exigent Public Announcement or Emergency Circumstances)

During the period since publication of the last biweekly notice, the Commission has issued the following amendments. The Commission has determined for each of these amendments that the application for the amendment complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment.

Because of exigent or emergency circumstances associated with the date the amendment was needed, there was not time for the Commission to publish, for public comment before issuance, its usual notice of consideration of issuance of amendment, proposed no significant hazards consideration determination, and opportunity for a hearing.

For exigent circumstances, the Commission has either issued a **Federal Register** notice providing opportunity for public comment or has used local media to provide notice to the public in

the area surrounding a licensee's facility of the licensee's application and of the Commission's proposed determination of no significant hazards consideration. The Commission has provided a reasonable opportunity for the public to comment, using its best efforts to make available to the public means of communication for the public to respond quickly, and in the case of telephone comments, the comments have been recorded or transcribed as appropriate and the licensee has been informed of the public comments.

In circumstances where failure to act in a timely way would have resulted, for example, in derating or shutdown of a nuclear power plant or in prevention of either resumption of operation or of increase in power output up to the plant's licensed power level, the Commission may not have had an opportunity to provide for public comment on its no significant hazards consideration determination. In such case, the license amendment has been issued without opportunity for comment. If there has been some time for public comment but less than 30 days, the Commission may provide an opportunity for public comment. If comments have been requested, it is so stated. In either event, the State has been consulted by telephone whenever possible.

Under its regulations, the Commission may issue and make an amendment immediately effective, notwithstanding the pendency before it of a request for a hearing from any person, in advance of the holding and completion of any required hearing, where it has determined that no significant hazards consideration is involved.

The Commission has applied the standards of 10 CFR 50.92 and has made a final determination that the amendment involves no significant hazards consideration. The basis for this determination is contained in the documents related to this action. Accordingly, the amendments have been issued and made effective as indicated.

Unless otherwise indicated, the Commission has determined that these amendments satisfy the criteria for categorical exclusion in accordance with 10 CFR 51.22. Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared for these amendments. If the Commission has prepared an environmental assessment under the special circumstances provision in 10 CFR 51.12(b) and has made a determination based on that assessment, it is so indicated.

For further details with respect to the action see (1) the application for amendment, (2) the amendment to Facility Operating License or Combined License, as applicable, and (3) the Commission's related letter, Safety Evaluation and/or Environmental Assessment, as indicated. All of these items are available for public inspection at the NRC's Public Document Room (PDR), located at One White Flint North, Room O1-F21, 11555 Rockville Pike (first floor), Rockville, Maryland 20852. Publicly available documents created or received at the NRC are accessible electronically through the Agencywide Documents Access and Management System (ADAMS) in the NRC Library at <http://www.nrc.gov/reading-rm/adams.html>. If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the PDR Reference staff at 1-800-397-4209, 301-415-4737 or by email to pdr.resource@nrc.gov.

The Commission is also offering an opportunity for a hearing with respect to the issuance of the amendment. Within 60 days after the date of publication of this notice, any person(s) whose interest may be affected by this action may file a request for a hearing and a petition to intervene with respect to issuance of the amendment to the subject facility operating license or combined license. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. Interested person(s) should consult a current copy of 10 CFR 2.309, which is available at the NRC's PDR, located at One White Flint North, Room O1-F21, 11555 Rockville Pike (first floor), Rockville, Maryland 20852, and electronically on the Internet at the NRC Web site, <http://www.nrc.gov/reading-rm/doc-collections/cfr/>. If there are problems in accessing the document, contact the PDR's Reference staff at 1-800-397-4209, 301-415-4737, or by email to pdr.resource@nrc.gov. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or a presiding officer designated by the Commission or by the Chief Administrative Judge of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the Chief Administrative Judge of the Atomic Safety and Licensing Board will issue a notice of a hearing or an appropriate order.

As required by 10 CFR 2.309, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and

how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following general requirements: (1) The name, address, and telephone number of the requestor or petitioner; (2) the nature of the requestor's/petitioner's right under the Act to be made a party to the proceeding; (3) the nature and extent of the requestor's/petitioner's property, financial, or other interest in the proceeding; and (4) the possible effect of any decision or order which may be entered in the proceeding on the requestor's/petitioner's interest. The petition must also identify the specific contentions which the requestor/petitioner seeks to have litigated at the proceeding.

Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the requestor/petitioner shall provide a brief explanation of the bases for the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. The petition must include sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A requestor/petitioner who fails to satisfy these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing. Since the Commission has made a final determination that the amendment involves no significant hazards consideration, if a hearing is requested, it will not stay the effectiveness of the amendment. Any hearing held would take place while the amendment is in effect.

All documents filed in the NRC adjudicatory proceedings, including a request for hearing, a petition for leave to intervene, any motion or other document filed in the proceeding prior to the submission of a request for

hearing or petition to intervene, and documents filed by interested governmental entities participating under 10 CFR 2.315(c), must be filed in accordance with the NRC E-Filing rule (72 FR 49139; August 28, 2007). The E-Filing process requires participants to submit and serve all adjudicatory documents over the internet, or in some cases to mail copies on electronic storage media. Participants may not submit paper copies of their filings unless they seek an exemption in accordance with the procedures described below.

To comply with the procedural requirements of E-Filing, at least 10 days prior to the filing deadline, the participant should contact the Office of the Secretary by email at hearing.docket@nrc.gov, or by telephone at 301-415-1677, to request (1) a digital identification (ID) certificate, which allows the participant (or its counsel or representative) to digitally sign documents and access the E-Submittal server for any proceeding in which it is participating; and (2) advise the Secretary that the participant will be submitting a request or petition for hearing (even in instances in which the participant, or its counsel or representative, already holds an NRC-issued digital ID certificate). Based upon this information, the Secretary will establish an electronic docket for the hearing in this proceeding if the Secretary has not already established an electronic docket.

Information about applying for a digital ID certificate is available on the NRC's public Web site at <http://www.nrc.gov/site-help/e-submittals/apply-certificates.html>. System requirements for accessing the E-Submittal server are detailed in NRC's "Guidance for Electronic Submission," which is available on the agency's public Web site at <http://www.nrc.gov/site-help/e-submittals.html>. Participants may attempt to use other software not listed on the Web site, but should note that the NRC's E-Filing system does not support unlisted software, and the NRC Meta System Help Desk will not be able to offer assistance in using unlisted software.

If a participant is electronically submitting a document to the NRC in accordance with the E-Filing rule, the participant must file the document using the NRC's online, Web-based submission form. In order to serve documents through the Electronic Information Exchange System, users will be required to install a Web browser plug-in from the NRC's Web site. Further information on the Web-based submission form, including the

installation of the Web browser plug-in, is available on the NRC's public Web site at <http://www.nrc.gov/site-help/e-submittals.html>.

Once a participant has obtained a digital ID certificate and a docket has been created, the participant can then submit a request for hearing or petition for leave to intervene. Submissions should be in Portable Document Format (PDF) in accordance with the NRC guidance available on the NRC's public Web site at <http://www.nrc.gov/site-help/e-submittals.html>. A filing is considered complete at the time the documents are submitted through the NRC's E-Filing system. To be timely, an electronic filing must be submitted to the E-Filing system no later than 11:59 p.m. Eastern Time on the due date. Upon receipt of a transmission, the E-Filing system time-stamps the document and sends the submitter an email notice confirming receipt of the document. The E-Filing system also distributes an email notice that provides access to the document to the NRC's Office of the General Counsel and any others who have advised the Office of the Secretary that they wish to participate in the proceeding, so that the filer need not serve the documents on those participants separately. Therefore, applicants and other participants (or their counsel or representative) must apply for and receive a digital ID certificate before a hearing request/petition to intervene is filed so that they can obtain access to the document via the E-Filing system.

A person filing electronically using the agency's adjudicatory E-Filing system may seek assistance by contacting the NRC Meta System Help Desk through the "Contact Us" link located on the NRC's Web site at <http://www.nrc.gov/site-help/e-submittals.html>, by email at MSHD.Resource@nrc.gov, or by a toll-free call at 1-866-672-7640. The NRC Meta System Help Desk is available between 8 a.m. and 8 p.m., Eastern Time, Monday through Friday, excluding government holidays.

Participants who believe that they have a good cause for not submitting documents electronically must file an exemption request, in accordance with 10 CFR 2.302(g), with their initial paper filing requesting authorization to continue to submit documents in paper format. Such filings must be submitted by: (1) First class mail addressed to the Office of the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, Attention: Rulemaking and Adjudications Staff; or (2) courier, express mail, or expedited delivery

service to the Office of the Secretary, Sixteenth Floor, One White Flint North, 11555 Rockville Pike, Rockville, Maryland, 20852, Attention: Rulemaking and Adjudications Staff. Participants filing a document in this manner are responsible for serving the document on all other participants. Filing is considered complete by first-class mail as of the time of deposit in the mail, or by courier, express mail, or expedited delivery service upon depositing the document with the provider of the service. A presiding officer, having granted an exemption request from using E-Filing, may require a participant or party to use E-Filing if the presiding officer subsequently determines that the reason for granting the exemption from use of E-Filing no longer exists.

Documents submitted in adjudicatory proceedings will appear in the NRC's electronic hearing docket which is available to the public at <http://ehd1.nrc.gov/ehd/>, unless excluded pursuant to an order of the Commission, or the presiding officer. Participants are requested not to include personal privacy information, such as social security numbers, home addresses, or home phone numbers in their filings, unless an NRC regulation or other law requires submission of such information. With respect to copyrighted works, except for limited excerpts that serve the purpose of the adjudicatory filings and would constitute a Fair Use application, participants are requested not to include copyrighted materials in their submission.

Dominion Nuclear Connecticut, Inc., Docket No. 50-336, Millstone Power Station, Unit 2, New London County, Connecticut

Date of application for amendment: July 17, 2011, as supplemented by two letters dated August 9, 2012.

Brief description of amendment: The amendment revises Final Safety Analysis Report (FSAR) Section 9.7.2.1.2, and Appendix B to provide additional operating margin for measurement of the Ultimate Heat Sink (UHS) temperature. The proposed change to Appendix B is to remove a license condition that is no longer needed.

Date of issuance: August 10, 2012.

Effective date: As of the date of issuance, and shall be implemented within 30 days. *Amendment No.:* 311.

Renewed Facility Operating License No. DPR-65: Amendment revised the License and Appendix B.

Public comments requested as to proposed no significant hazards consideration (NSHC): No.

The Commission's related evaluation of the amendment, finding of emergency circumstances, and final determination of no significant hazards consideration are contained in a Safety Evaluation dated August 10, 2012.

Attorney for licensee: Lillian M. Cuoco, Senior Counsel, Dominion Resources Services, Inc., 120 Tredegar Street, RS-2, Richmond, VA 23219.

NRC Branch Chief: George A. Wilson.

For The Nuclear Regulatory Commission.

Dated at Rockville, Maryland, this 24th day of September 2012.

Michele G. Evans,

Director, Division of Operating Reactor Licensing, Office of Nuclear Reactor Regulation.

[FR Doc. 2012-24285 Filed 10-1-12; 8:45 am]

BILLING CODE 7590-01-P

OVERSEAS PRIVATE INVESTMENT CORPORATION

Submission for OMB Review

AGENCY: Overseas Private Investment Corporation (OPIC).

ACTION: Request for approval.

SUMMARY: Under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35), agencies are required to publish a Notice in the **Federal Register** notifying the public that the agency has prepared an information collection for OMB review and approval. Comments were solicited in the 60 day notice, posted on June 6, 2012 and no comments were received.

DATES: This 30 day notice is to inform the public, that this collection is being submitted to OMB for approval.

ADDRESSES: Copies of the subject form may be obtained from the Agency submitting officer.

FOR FURTHER INFORMATION CONTACT: OPIC Agency Submitting Officer: Essie Bryant, Record Manager, Overseas Private Investment Corporation, 1100 New York Avenue NW., Washington, DC 20527; (202) 336-8563.

Summary Form Under Review

Type of Request: Reinstatement.

Title: Project Information Report.

Form Number: OPIC 71.

Frequency of Use: No more than once per contract.

Type of Respondents: Business or other institution (except farms); individuals.

Standard Industrial Classification Codes: All.

Description of Affected Public: U.S. companies or citizens investing overseas.

Reporting Hours: 15 hours per project.

Number of Responses: 30 per year.

Federal Cost: \$3,024.60.

Authority for Information Collection: Title 22 U.S.C. 2191(k)(2) and 2199(h) of the Foreign Assistance Act of 1961, as amended.

Abstract (Needs and Uses): The Project Information Report is necessary to elicit information on the developmental, environmental, and U.S. economic effects of OPIC assisted projects. The information will be used by OPIC's staff and management solely as a basis for monitoring these projects and reporting the results in aggregate form, as required by Congress.

Dated: September 26, 2012.

Nichole Cadiente,

Administrative Counsel, Department of Legal Affairs.

[FR Doc. 2012-24157 Filed 10-1-12; 8:45 am]

BILLING CODE P

OFFICE OF PERSONNEL MANAGEMENT

Submission for Review: Presidential Management Fellows (PMF) Application

AGENCY: U.S. Office of Personnel Management.

ACTION: 30-Day Notice and request for comments.

SUMMARY: The Office of Personnel Management (OPM) offers the general public and other Federal agencies the opportunity to comment on a revised information collection request (ICR) 3206-0082, Presidential Management Fellows (PMF) Application. As required by the Paperwork Reduction Act of 1995 (Pub. L. 104-13, 44 U.S.C. chapter 35), as amended by the Clinger-Cohen Act (Pub. L. 104-106), OPM is soliciting comments for this collection on behalf of the Office of Management and Budget. The information collection was previously published in the **Federal Register** on June 28, 2012, at Volume 77 FR 38681 allowing for a 60-day public comment period. There were 5 requests for the ICR; 2 requests for the date of the application period; and 1 inquiring about the type of resume that would be accepted. One individual provided specific recommendations for edits to the questions and the way the information is being collected. We appreciate the suggestions and will consider the changes for the next iteration of the application; however, we don't believe the proposed changes

would alter the estimated burden of the current application, or significantly improve the quality and clarity of the information collected. The Office of Management and Budget is particularly interested in comments that:

1. Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

2. Evaluate the accuracy of the 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 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.

DATES: Comments are encouraged and will be accepted until November 1, 2012. This process is conducted in accordance with 5 CFR 1320.1.

ADDRESSES: A copy of this ICR, with applicable supporting documentation, may be obtained by contacting the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street NW., Room 10235, Washington, DC 20503, Attention: OPM Desk Officer or sent via electronic mail to oir_submission@omg.eop.gov.

FOR FURTHER INFORMATION CONTACT: A copy of this ICR, with applicable supporting documentation, may be obtained by contacting the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street NW., Room 10235, Washington, DC 20503, Attention: OPM Desk Officer or sent via electronic mail to oir_submission@omg.eop.gov.

SUPPLEMENTARY INFORMATION: Executive Order 13562, Recruiting and Hiring Students and Recent Graduates, and implementing regulations increased the applicant window of eligibility and removed the school nomination requirement. Students seeking advanced degrees and those who completed an advanced degree within the previous two years will use the application to apply for the Presidential Management Fellows Program. They will no longer be required to have a school nomination. OPM expects this will increase the number of applicants from years past.

Information on the PMF Program can be found at www.pmf.gov.

Analysis

Agency: Employee Services, U.S. Office of Personnel Management.

Title: Presidential Management Fellows (PMF) Application.

OMB Number: 3206-0082.

Affected Public: Current graduate students and individuals who obtained an advanced degree within the previous two years.

Number of Respondents: 25,000.

Estimated Time per Respondent: 13 minutes.

Total Burden Hours: 5,417 hours.

U.S. Office of Personnel Management.

John Berry,

Director.

[FR Doc. 2012-24176 Filed 10-1-12; 8:45 am]

BILLING CODE 6325-38-P

POSTAL SERVICE

Board of Governors; Sunshine Act Meeting

DATES AND TIMES: October 15, 2012, at 4:00 p.m., and October 16, 2012, at 8:00 a.m.

PLACE: New York, New York.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

Monday, October 15, 2012 at 4:00 p.m.

1. Strategic Issues.

Tuesday, October 16, 2012 at 8:00 a.m.

1. Strategic Issues, continued.
2. Financial Matters.
3. Pricing.
4. Personnel Matters and Compensation Issues.
5. Governors' Executive Session—Discussion of prior agenda items and Board Governance.

CONTACT PERSON FOR MORE INFORMATION:

Julie S. Moore, Secretary of the Board, U.S. Postal Service, 475 L'Enfant Plaza SW., Washington, DC 20260-1000. Telephone (202) 268-4800.

Julie S. Moore,

Secretary.

[FR Doc. 2012-24279 Filed 9-28-12; 11:15 am]

BILLING CODE 7710-12-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 4, 2012 at 2:00 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 Walter, 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 4, 2012 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: September 27, 2012.

Elizabeth M. Murphy,

Secretary.

[FR Doc. 2012-24247 Filed 9-28-12; 11:15 am]

BILLING CODE 8011-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-67928; File No. SR-CBOE-2012-090]

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Relating to Codification of a Fee Schedule for the Sale by Market Data Express, LLC, an Affiliate of CBOE, of a Data Product That Includes Option Valuations

September 26, 2012.

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

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

September 14, 2012, the Chicago Board Options Exchange, Incorporated (the "Exchange" or "CBOE") 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 the Substance of the Proposed Rule Change

This proposal submitted by Chicago Board Options Exchange, Incorporated ("CBOE" or "Exchange") is to codify a fee schedule for the sale by Market Data Express, LLC ("MDX"), an affiliate of CBOE, of a data product that includes option valuations. The text of the proposed rule change is available on the Exchange's Web site (<http://www.cboe.com/AboutCBOE/CBOELegalRegulatoryHome.aspx>), at the Exchange's Office of the Secretary, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

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 establish fees that MDX will charge for a new market data product, referred to as the CBOE Customized Option Valuation Service (the "Service"). The Service would provide subscribers with an "end-of-day" file³ of valuations for Flexible Exchange ("FLEX")⁴ options and certain over-the-

³ An end of day file refers to data that is distributed prior to the opening of the next trading day.

⁴ FLEX options are exchange traded options that provide investors with the ability to customize basic option features including size, expiration date, exercise style, and certain exercise prices.

counter (“OTC”) options (the “Data”). The Data would be available for internal use and distribution by subscribers. MDX would offer the Data for sale to CBOE Trading Permit Holders (“TPHs”) and non-TPHs.

The Data would consist of indicative⁵ values for three categories of “customized” options. The first category of options is all open series of FLEX options listed on any exchange that offers FLEX options for trading.⁶ The second category is OTC options that have the same degree of customization as FLEX options. The third category includes options with strike prices expressed in percentage terms. Values for such options would be expressed in percentage terms and would be theoretical values.⁷

A small number of market data vendors produce option value data that is similar to the Data.⁸ The Options Clearing Corporation (“OCC”) also produces FLEX option value data that is similar to the FLEX option value data that would be included in the Service.⁹ These vendors and the OCC use model-driven processes to produce their data. Instead of using a model-driven process, CBOE would use values produced by CBOE registered market-makers to produce the Data. Participating CBOE market-makers would submit values to MDX on options series specified by MDX on a daily basis. These values would be generated by the market-maker’s internal pricing models. The valuations that MDX would ultimately publish would be an average of multiple contributions of values from participating CBOE market-makers.¹⁰ For each value provided by MDX through the Service, MDX would

include a corresponding indication of the number of market-maker contributors that factored into that value.¹¹

The fees that MDX would assess for the Data are set forth in the following table which would be included on the Price List on the MDX Web site (www.marketdataexpress.com).

Number of options	Per option/per day
0–50	\$1.25
51–100	1.00
101–500	0.75
500+	0.50

MDX would charge a fee per option per day for the Data. The amount of the fee would be reduced based on the number of options purchased. A subscriber would pay \$1.25 per option per day for each option purchased up to 50 options, \$1.00 per option per day for each option purchased from 51 to 100 options, \$0.75 per option per day for each option purchased from 101 to 500 options, and \$.050 [sic] per option per day for each option purchased over 500 options. For example, a subscriber that purchases values for 150 options per day would pay \$1.25 per option per day for the first 50 options (\$62.50), \$1.00 per option per day for the next 50 options (\$50.00) and \$0.75 per option per day for the remaining 50 options (\$37.50) for a total of \$150 per day.

Subscribers would be able to purchase options daily, weekly, monthly or quarterly through the MDX Web site. TPHs and non-TPHs would be charged the same fees for the Data. The Data would be delivered to subscribers via File Transfer Protocol (FTP) or secure copy shortly after the close of trading each day. MDX expects to launch the Service during the fourth quarter of 2012.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the provisions of Section 6 of the Securities Exchange Act of 1934 (the “Act”)¹² in general and with Sections 6(b)(4) and 6(b)(5) of the Act¹³ in particular in that it provides for an equitable allocation of reasonable dues, fees and other charges among users and recipients of the Data and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers. The Exchange believes the proposed fees are

equitable and not unfairly discriminatory in that the fees charged would be the same for all market participants. In addition, the Exchange believes the fees are equitable because the Service would be purely optional. Only those subscribers that deem the product to be of sufficient overall value and usefulness would purchase it. The Exchange believes the proposed fees are reasonable because potential customers of the Service have indicated to the Exchange that the proposed fees compare favorably to fees that competing market data vendors charge for similar data.

B. Self-Regulatory Organization’s Statement on Burden on Competition

CBOE does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. To the contrary, the Exchange believes the proposed rule change is pro-competitive in that it would allow the Exchange, through MDX, to disseminate a new data service on a voluntary basis. The Service is voluntary on the part of the Exchange, which is not required to offer such services, and voluntary on the part of prospective subscribers that are not required to use it. The Exchange believes that the Service would help attract new users and new order flow to the Exchange, thereby improving the Exchange’s ability to compete in the market for options order flow and executions.

The Exchange also believes that the proposed fees for the Data are consistent with the requirements of the Act because competition provides an effective constraint on the market data fees that the Exchange, through MDX, has the ability and the incentive to charge. CBOE has a compelling need to attract order flow from market participants in order to maintain its share of trading volume. This compelling need to attract order flow imposes significant pressure on CBOE to act reasonably in setting its fees for market data, particularly given that the market participants that will pay such fees often will be the same market participants from whom CBOE must attract order flow. These market participants include broker-dealers that control the handling of a large volume of customer and proprietary order flow. Given the portability of order flow from one exchange to another, any exchange that sought to charge unreasonably high data fees would risk alienating many of the same customers on whose orders it depends for competitive survival. CBOE currently competes with eight options

⁵ “Indicative” values are indications of potential market prices only and as such are neither firm nor the basis for a transaction.

⁶ Current FLEX options open interest spans over 2,000 series on over 300 different underlying securities.

⁷ These values would be theoretical in that they would be indications of potential market prices for options that have not traded (*i.e.*, do not yet exist). Market participants sometimes express option values in percentage terms rather than in dollar terms because they find it is easier to assess the change, or lack of change, in the marketplace from one day to the next when values are expressed in percentage terms.

⁸ These vendors include SuperDerivatives, Markit, Prism, and Bloomberg’s BVAL service.

⁹ The OCC makes this data available on its Web site at <http://www.theocc.com/webapps/flex-reports>.

¹⁰ The Exchange has filed a proposed rule change describing in detail the Service, the qualification criteria that a CBOE market-maker must meet in order to be allowed to contribute values to MDX for purposes of producing Data for the Service, and the compensation MDX will pay to participating market-makers. See Securities Exchange Act Release No. 67813 (September 10, 2012) [77 FR 56903 (September 14, 2012)] (SR–CBOE–2012–083).

¹¹ MDX would publish on its Web site a description of the methodology used for averaging the values submitted by market-makers to produce a single publishable value.

¹² 15 U.S.C. 78ff(b).

¹³ 15 U.S.C. 78ff(b)(4) and (5).

exchanges (this number does not include CBOE's affiliate, C2 Options Exchange) for order flow.¹⁴

CBOE is constrained in pricing the Data by the availability to market participants of alternatives to purchasing the Data. CBOE must consider the extent to which market participants would choose one or more alternatives instead of purchasing the exchange's data. As noted above, SuperDerivatives, Markit, Prism, and Bloomberg are some of the market data vendors that offer market data products that would compete with the Service. Also, OCC makes similar data available at no cost, thus constraining CBOE's ability to price the Data. The vendor proprietary data and the OCC data are significant alternatives to the MDX Data. Further, other self-regulatory organizations as well as broker-dealers and alternative trading systems can potentially produce their own option valuation products and thus are sources of potential competition for MDX.

The number of market data vendors that sell valuations is relatively limited. The Exchange believes that MDX can be a low cost provider of valuations in this competitive environment.

For the reasons cited above, the Exchange believes the CBOE Customized Option Valuation Service offering, including the proposed fees, is equitable, reasonable and not unfairly discriminatory. In addition, the Exchange believes that no substantial countervailing basis exists to support a finding that the proposed terms and fees for the Service fails to meet the requirements of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange neither solicited nor received comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)¹⁵ of the Act and paragraph (f) of Rule 19b-4¹⁶ thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission

¹⁴ The Commission has previously made a finding that the options industry is subject to significant competitive forces. See e.g., Securities Exchange Act Release No. 59949 (May 20, 2009), 74 FR 25593 (May 28, 2009) (SR-ISE-2009-97) (order approving ISE's proposal to establish fees for a real-time depth of market data offering).

¹⁵ 15 U.S.C. 78s(b)(3)(A).

¹⁶ 17 CFR 240.19b-4(f).

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 email to rule-comments@sec.gov. Please include File Number SR-CBOE-2012-090 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.

All submissions should refer to File Number SR-CBOE-2012-090. This file number should be included on the subject line if email 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-CBOE-

2012-090 and should be submitted on or before October 23, 2012.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁷

Kevin M. O'Neill,
Deputy Secretary.

[FR Doc. 2012-24169 Filed 10-1-12; 8:45 am]

BILLING CODE 8011-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-67929; File No. SR-C2-2012-034]

Self-Regulatory Organizations; C2 Options Exchange, Incorporated; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Related to AIM and SAM

September 26, 2012.

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 21, 2012, the C2 Options Exchange, Incorporated ("Exchange" or "C2") filed with the Securities and Exchange Commission (the "Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Exchange has designated the proposal as a "non-controversial" proposed rule change pursuant to Section 19(b)(3)(A) of the Act³ 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 is proposing to make amendments to its rules pertaining to certain auction mechanisms. The text of the proposed rule change is available on the Exchange's Web site (<http://www.c2exchange.com/Legal/RuleFilings.aspx>), at the Exchange's Office of the Secretary and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements

¹⁷ 17 CFR 200.30-3(a)(12).

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).

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 the Statutory Basis for, the Proposed Rule Change

1. Purpose

Under Rule 6.51, *Automated Improvement Mechanism* ("AIM"), a Trading Permit Holder that represents agency orders may electronically execute an order it represents as agency (an "Agency Order") against principal interest and/or against solicited orders provided it submits the Agency Order for execution into the AIM auction process. Under Rule 6.52, *Solicitation Auction Mechanism* ("SAM"), a Trading Permit Holder that represents agency orders may electronically execute an Agency Order against solicited orders provided it submits the Agency Order for electronic execution into the SAM auction process, under which both the Agency Order and the solicited order will be designated in the C2 System as all-or-none. The Exchange is proposing to make certain changes detailed below to these auction trading rules.

First, currently the AIM and SAM auctions each in relevant part provide that auction responses may be modified or canceled during the auction response period. The only way to modify a response would be for a Trading Permit Holder to cancel a prior response then submit a new response. As a result, the Exchange believes that the references to modifying responses in the rule text are unnecessary. Therefore, the Exchange is proposing to delete references to modifying responses in Rules 6.51(b)(1) and 6.52(b)(1), respectively.

Second, normally an auction would conclude after 1 second in the case of an AIM or SAM auction. In addition, respective AIM and SAM auction provisions set out various circumstances during which an auction would conclude early. Currently, the provisions are silent on what would happen in the event the option series is subject to a trading halt while an auction is ongoing. In such an event, the relevant auction would conclude early and the Agency Order would execute (or not execute) in accordance with the allocation provisions set out in the relevant rules. Therefore, the Exchange

is proposing to amend Rules 6.51(b)(2) and 6.52(b)(2), respectively, to indicate that an auction would conclude early in the event of a trading halt in the series on the Exchange and the Agency Order would execute (or not execute) in accordance with the allocation provisions set out in the relevant rules.⁵

(b) Statutory Basis⁶

The Exchange believes the proposed rule change is consistent with Section 6(b) of the Act⁷ in general and furthers the objectives of Section 6(b)(5) of the Act⁸ in particular in that it should promote just and equitable principles of trade, serve to remove impediments to and perfect the mechanism of a free and open market and a national market system, and protect investors and the public interest. In particular, the Exchange believes that the refinements being proposed in this rule change filing should serve to further those objectives by more clearly and fully describing certain aspects of the operation of the AIM and SAM auction processes.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with Section 6(b) of the Act⁹ in general and furthers the objectives of Section 6(b)(5) of the Act¹⁰ in particular in that it should promote just and equitable principles of trade, serve to remove impediments to and perfect the mechanism of a free and open market and a national market system, and protect investors and the public interest. In particular, the Exchange believes that the refinements being proposed in this rule change filing should serve to further those objectives by more clearly and fully describing certain aspects of the operation of the AIM and SAM auction processes.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

⁵ The Exchange notes that NASDAQ OMX PHLX LLC ("Phlx") has a similar provision within its electronic auction rules related to the early conclusion of an auction due to a trading halt. See Phlx Rule 1080(n).

⁶ The Commission notes that the Exchange has repeated this paragraph under Section I.A.2 (Statutory Basis).

⁷ 15 U.S.C. 78f(b).

⁸ 15 U.S.C. 78f(b)(5).

⁹ 15 U.S.C. 78f(b).

¹⁰ 15 U.S.C. 78f(b)(5).

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange neither solicited nor received comments on the proposal.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days after the date of the filing, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act¹¹ and Rule 19b-4(f)(6)¹² thereunder.

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 email to rule-comments@sec.gov. Please include File Number SR-C2-2012-034 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-C2-2012-034. This file number should be included on the subject line if email 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

¹¹ 15 U.S.C. 78s(b)(3)(A).

¹² 17 CFR 240.19b-4(f)(6).

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 10:00 a.m. and 3:00 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-C2-2012-034 and should be submitted on or before October 23, 2012.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹³

Kevin M. O'Neill,
Deputy Secretary.

[FR Doc. 2012-24170 Filed 10-1-12; 8:45 am]

BILLING CODE 8011-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-67931; File No. SR-FICC-2012-06]

Self-Regulatory Organizations; Fixed Income Clearing Corporation; Order Approving Proposed Rule Change to Move the Time at Which the Mortgage-Backed Securities Division Runs Its Daily Morning Pass

September 26, 2012.

I. Introduction

On August 6, 2012, the Fixed Income Clearing Corporation ("FICC") filed with the Securities and Exchange Commission ("Commission") proposed rule change SR-FICC-2012-06 pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),¹ and Rule 19b-4 thereunder.² The proposed rule change was published for comment in the **Federal Register** on August 20, 2012.³ The Commission received no

comment letters regarding the proposal. For the reasons discussed below, the Commission is granting approval of the proposed rule change.

II. Description

FICC proposes to move the time at which its Mortgage-Backed Securities Division ("MBS") runs its first processing pass of the day from 2:00 p.m. to 4:00 p.m. Eastern Standard Time. The proposed change does not require revisions to MBS's rules because those rules do not address the times of MBS's processing passes.

MBS currently runs its first processing pass of the day (historically referred to as the "AM Pass") at 2:00 p.m. Eastern Standard Time. MBS also executes an evening pass (referred to as the "PM Pass") at 8:00 p.m. Eastern Standard Time, which will remain unchanged. On days when MBS executes its to-be-announced netting cycle, this cycle immediately follows the completion of the first pass of the day. The proposed change to 4:00 p.m. for the first pass of the day will allow more trades to be included in the to-be-announced net, which will assist in reducing both the amount of fails in the market and the related operational risk. The proposed change is being made at the request of the Securities Industry and Financial Markets Association ("SIFMA") MBS Operations Committee. MBS advised members of the proposed change via an Important Notice dated August 1, 2012.

III. Discussion

Section 19(b)(2)(C) of the Act⁴ directs the Commission to approve a self-regulatory organization's proposed rule change if it determines that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to such organization. Section 17A(b)(3)(F) of the Act⁵ requires, among other things, that the rules of a clearing agency be designed to promote the prompt and accurate clearance and settlement of security transactions, and to assure the safeguarding of securities and funds that are in the custody or control of such clearing agency, or for which it is responsible.

The Commission concludes that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to FICC. The proposed rule change will help to maximize the number of trades that are included in the to-be-announced netting process.

This, in turn, should reduce the number of trades that ultimately fail, and will temper the attendant operational risk, as well. The proposed change will therefore foster the prompt and accurate clearance and settlement of security transactions, and assure the safeguarding of securities and funds in FICC's custody or control, or for which FICC is responsible.

IV. Conclusion

On the basis of the foregoing, the Commission finds that the proposal is consistent with the requirements of the Act, in particular with the requirements of Section 17A of the Act⁶ and the rules and regulations thereunder.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,⁷ that the proposed rule change (File No. SR-FICC-2012-06) be and hereby is APPROVED.⁸

For the Commission by the Division of Trading and Markets, pursuant to delegated authority.⁹

Kevin M. O'Neill,
Deputy Secretary.

[FR Doc. 2012-24171 Filed 10-1-12; 8:45 am]

BILLING CODE 8011-01-P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Agency Information Collection Activities: Requests for Comments; Clearance of Renewed Approval of Information Collection: Flight Operational Quality Assurance (FOQA) Program

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, FAA invites public comments about our intention to request the Office of Management and Budget (OMB) approval to renew an information collection. Flight Operational Quality Assurance (FOQA) is a program for the routine collection and analysis of digital flight data from airline operations, including but not limited to digital flight data currently collected pursuant to existing regulatory provisions. The FAA requires certificate holders who

⁶ 15 U.S.C. 78q-1.

⁷ 15 U.S.C. 78s(b)(2).

⁸ In approving the proposed rule change, the Commission considered the proposal's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

⁹ 17 CFR 200.30-3(a)(12).

¹³ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ Securities Exchange Act Release No. 67653 (August 14, 2012), 77 FR 50198 (August 20, 2012).

⁴ 15 U.S.C. 78s(b)(2)(C).

⁵ 15 U.S.C. 78q-1(b)(3)(F).

voluntarily establish approved FOQA programs to periodically provide aggregate trend analysis information from such programs to the FAA.

DATES: Written comments should be submitted by December 3, 2012.

FOR FURTHER INFORMATION CONTACT: Kathy DePaepe at (405) 954-9362, or by email at: Kathy.A.DePaepe@faa.gov.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 2120-0660.

Title: Flight Operational Quality Assurance (FOQA) Program.

Form Numbers: There are no FAA forms associated with this collection.

Type of Review: Renewal of an information collection.

Background: The purpose of collecting, analyzing, aggregating, and reporting this information is to identify potential threats to safety, and to enable early corrective action before such threats lead to accidents. FOQA can provide an objective source of information for FAA decision making, including identification of the need for new rulemaking based on observed trends in FOQA data. Title 14, Code of Federal Regulations (14 CFR), Subpart 13.401, stipulates that the FAA does not use FOQA information in punitive enforcement action against an air carrier or its employees, when that air carrier has an FAA approved FOQA program. There are no legal or administrative requirements that necessitate this rule. The rule is intended to encourage the voluntary implementation of FOQA programs in the interest of safety enhancement.

Respondents: 60 airline operators.

Frequency: Information is collected monthly.

Estimated Average Burden per Response: 1 hour.

Estimated Total Annual Burden: 720 hours.

ADDRESSES: Send comments to the FAA at the following address: Ms. Kathy DePaepe, Room 126B, Federal Aviation Administration, AES-200, 6500 S. MacArthur Blvd., Oklahoma City, OK 73169.

Public Comments Invited: You are asked to comment on any aspect of this information collection, including (a) Whether the proposed collection of information is necessary for FAA's performance; (b) the accuracy of the estimated burden; (c) ways for FAA to enhance the quality, utility and clarity of the information collection; and (d) ways that the burden could be minimized without reducing the quality of the collected information. The agency will summarize and/or include your comments in the request for OMB's clearance of this information collection.

Issued in Washington, DC, on September 25, 2012.

Albert R. Spence,

FAA Assistant Information Collection Clearance Officer, IT Enterprises Business Services Division, AES-200.

[FR Doc. 2012-24188 Filed 10-1-12; 8:45 am]

BILLING CODE 4910-13-P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Agency Information Collection Activities: Requests for Comments; Clearance of Renewed Approval of Information Collection: Certification Procedures for Products and Parts

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, FAA invites public comments about our intention to request the Office of Management and Budget (OMB) approval to renew an information collection. 14 CFR part 21 prescribes certification standards for aircraft, aircraft engines, propellers appliances and parts. The information collected is used to determine compliance and applicant eligibility. The respondents are aircraft parts designers, manufacturers, and aircraft owners.

DATES: Written comments should be submitted by December 3, 2012.

FOR FURTHER INFORMATION CONTACT: Kathy DePaepe at (405) 954-9362, or by email at: Kathy.A.DePaepe@faa.gov.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 2120-0018.

Title: Certification Procedures for Products and Parts.

Form Numbers: FAA Forms 8110-12, 8130-1, 8130-6, 8130-9, 8130-12.

Type of Review: Renewal of an information collection.

Background: 14 CFR Part 21 prescribes certification standards for aircraft, aircraft engines, propellers appliances and parts. The information collected is used to determine compliance and applicant eligibility. FAA Airworthiness inspectors, designated inspectors, engineers, and designated engineers review the required data submittals to determine that aviation products and articles and their manufacturing facilities comply with the applicable requirements, and that the products and articles have no unsafe features.

Respondents: Approximately 13,339 aircraft parts designers, manufacturers, and aircraft owners.

Frequency: Information is collected on occasion.

Estimated Average Burden per Response: 30 minutes.

Estimated Total Annual Burden: 19,487 hours.

ADDRESSES: Send comments to the FAA at the following address: Ms. Kathy DePaepe, Room 126B, Federal Aviation Administration, AES-200, 6500 S. MacArthur Blvd., Oklahoma City, OK 73169.

Public Comments Invited: You are asked to comment on any aspect of this information collection, including (a) whether the proposed collection of information is necessary for FAA's performance; (b) the accuracy of the estimated burden; (c) ways for FAA to enhance the quality, utility and clarity of the information collection; and (d) ways that the burden could be minimized without reducing the quality of the collected information. The agency will summarize and/or include your comments in the request for OMB's clearance of this information collection.

Issued in Washington, DC on September 25, 2012.

Albert R. Spence,

FAA Assistant Information Collection Clearance Officer, IT Enterprises Business Services Division, AES-200.

[FR Doc. 2012-24271 Filed 10-1-12; 8:45 am]

BILLING CODE 4910-13-P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Agency Information Collection Activities: Requests for Comments; Clearance of Renewed Approval of Information Collection: Application for Employment With the Federal Aviation Administration

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, FAA invites public comments about our intention to request the Office of Management and Budget (OMB) approval to renew an information collection. The information collected will be used to evaluate the qualifications of applicants for a variety of positions within the FAA.

DATES: Written comments should be submitted by December 3, 2012.

FOR FURTHER INFORMATION CONTACT: Kathy DePaepe at (405) 954-9362, or by email at: Kathy.A.DePaepe@faa.gov.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 2120–0597.
Title: Application for Employment with the Federal Aviation Administration.

Form Numbers: There are no FAA forms associated with this collection. Information is collected via the Office of Personnel Management (OPM) online USAJOBS system and the FAA's Automated Vacancy Information Access Tool for Online Referral (AVIATOR) staffing tool.

Type of Review: Renewal of an information collection.

Background: Under the provisions of Public Law 104–50, the Federal Aviation Administration (FAA) was given the authority and the responsibility for developing and implementing its own personnel system. The agency requests certain information needed to determine basic eligibility for employment and potential eligibility for veteran's preference and Veteran's Readjustment Act appointments. In addition, occupation specific questions assist us in determining candidates' qualifications so that we may hire only the best-qualified candidates for our many aviation safety-related occupations.

Respondents: Approximately 118,000 applicants annually.

Frequency: Information is collected on occasion.

Estimated Average Burden per Response: 1.5 hours.

Estimated Total Annual Burden: 177,000 hours.

ADDRESSES: Send comments to the FAA at the following address: Ms. Kathy DePaepe, Room 126B, Federal Aviation Administration, AES–200, 6500 S. MacArthur Blvd., Oklahoma City, OK 73169.

Public Comments Invited: You are asked to comment on any aspect of this information collection, including (a) Whether the proposed collection of information is necessary for FAA's performance; (b) the accuracy of the estimated burden; (c) ways for FAA to enhance the quality, utility and clarity of the information collection; and (d) ways that the burden could be minimized without reducing the quality of the collected information. The agency will summarize and/or include your comments in the request for OMB's clearance of this information collection.

Issued in Washington, DC, on September 25, 2012.

Albert R. Spence,

FAA Assistant Information Collection Clearance Officer, IT Enterprises Business Services Division, AES–200.

[FR Doc. 2012–24190 Filed 10–1–12; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Agency Information Collection Activities: Requests for Comments; Clearance of Renewed Approval of Information Collection: Damage Tolerance and Fatigue Evaluation of Composite Rotorcraft Structures

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, FAA invites public comments about our intention to request the Office of Management and Budget (OMB) approval to renew an information collection. The **Federal Register** Notice with a 60-day comment period soliciting comments on the following collection of information was published on July 19, 2012, vol. 77, no. 139, page 42547–42548. To obtain type certification of a rotorcraft, applicants must submit substantiating data to show that the rotorcraft complies with specific certification requirements.

DATES: Written comments should be submitted by November 1, 2012.

FOR FURTHER INFORMATION CONTACT: Kathy DePaepe at (405) 954–9362, or by email at: *Kathy.A.DePaepe@faa.gov*.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 2120–0753.

Title: Damage Tolerance and Fatigue Evaluation of Composite Rotorcraft Structures.

Form Numbers: There are no FAA forms associated with this collection.

Type of Review: Renewal of an information collection.

Background: A final rule (76 FR 74655) revised parts 27 and 29 of Title 14 of the Code of Federal Regulations to add new certification standards for normal and transport category rotorcraft to address advances in structural damage tolerance and fatigue substantiation technology for composite rotorcraft structures. In order to show compliance and obtain type certification, applicants must submit substantiating data which is reviewed by the FAA to determine if the rotorcraft complies with the applicable minimum safety requirements for damage tolerance and fatigue evaluation of composite structures and that the rotorcraft has no unsafe features in the composite structures.

Respondents: 10.5 applicants for part 27 rotorcraft and 6 applicants for part 29 rotorcraft over 27 years.

Frequency: Information is collected on occasion.

Estimated Average Burden per Response: 178 hours.

Estimated Total Annual Burden: 109 hours annually over a 27 year period.

ADDRESSES: Interested persons are invited to submit written comments on the proposed information collection to the Office of Information and Regulatory Affairs, Office of Management and Budget. Comments should be addressed to the attention of the Desk Officer, Department of Transportation/FAA, and sent via electronic mail to *oira_submission@omb.eop.gov*, or faxed to (202) 395–6974, or mailed to the Office of Information and Regulatory Affairs, Office of Management and Budget, Docket Library, Room 10102, 725 17th Street NW., Washington, DC 20503.

Public Comments Invited: You are asked to comment on any aspect of this information collection, including (a) Whether the proposed collection of information is necessary for FAA's performance; (b) the accuracy of the estimated burden; (c) ways for FAA to enhance the quality, utility and clarity of the information collection; and (d) ways that the burden could be minimized without reducing the quality of the collected information. The agency will summarize and/or include your comments in the request for OMB's clearance of this information collection.

Issued in Washington, DC, on September 25, 2012.

Albert R. Spence,

FAA Assistant Information Collection Clearance Officer, IT Enterprises Business Services Division, AES–200.

[FR Doc. 2012–24187 Filed 10–1–12; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Public Notice For Waiver of Aeronautical Land-Use Assurance; Former Willmar Municipal Airport, Willmar, MN

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of intent of waiver with respect to land.

SUMMARY: The Federal Aviation Administration (FAA) is considering a proposal to authorize the release of 138.33 acres of airport property at the former Willmar Municipal Airport, Willmar, MN. The land will be used for an industrial park. The FAA issued a

Categorical Exclusion on August 8, 2012.

The City of Willmar built a new airport in 2006, therefore the acreage being released is not needed for aeronautical use. The 138.33 acres are on the east side of the former Willmar Municipal Airport, more specifically west of County Road 5 and north of Willmar Avenue SW. The acreage was originally acquired with City of Willmar funds. There are no impacts to the airport by allowing the airport to dispose of the property. The fair market value of this land is \$729,100 and will be applied to the new Willmar Municipal Airport for operating and maintaining the airport. Approval does not constitute a commitment by the FAA to financially assist in the disposal of the subject airport property nor a determination of eligibility for grant-in-aid funding from the FAA.

In accordance with section 47107(h) of title 49, United States Code, this notice is required to be published in the **Federal Register** 30 days before modifying the land-use assurance that requires the property to be used for an aeronautical purpose.

DATES: Comments must be received on or before November 1, 2012.

ADDRESSES: Ms. Nancy M. Nistler, Program Manager, Federal Aviation Administration, Airports District Office, 6020 28th Avenue South, Room 102, Minneapolis, MN 55450-2706. Telephone Number (612) 253-4638/ FAX Number (612) 253-4611.

Documents reflecting this FAA action may be reviewed at this same location or at the Willmar City Offices, 333 6th Street SW., Willmar, MN 56201.

FOR FURTHER INFORMATION CONTACT: Ms. Nancy M. Nistler, Program Manager, Federal Aviation Administration, Airports District Office, 6020 28th Avenue South, Room 102, Minneapolis, MN 55450-2706. Telephone Number (612) 253-4638/FAX Number (612) 253-4611. Documents reflecting this FAA action may be reviewed at this same location or at the Willmar City Offices, 333 6th Street SW., Willmar, MN 56201.

SUPPLEMENTARY INFORMATION: The following is a legal description of the subject airport property to be released at the former Willmar Municipal Airport in Willmar, Minnesota:

That part of the West Half of the West Half of Section 16, and also that part of the East Half of Section 17, all in Township 119 North, Range 35 West of the Fifth Principal Meridian, Willmar Township, Kandiyohi County, Minnesota, described as follows;

Beginning at the southwest corner of the said Section 16; thence on a geodetic

bearing of South 89 degrees 36 minutes 20 seconds East, along the south line of said Section 16, a distance of 90.98 feet; thence on a bearing of North 00 degrees 57 minutes 01 seconds West a distance of 816.83 feet; thence on a bearing of North 44 degrees 37 minutes 57 seconds East a distance of 139.98 feet; thence on a bearing of North 00 degrees 57 minutes 01 seconds West a distance of 100.02 feet; thence on a bearing of North 45 degrees 22 minutes 03 seconds West a distance of 142.85 feet; thence on a bearing of North 00 degrees 57 minutes 01 seconds West a distance of 750.79 feet; thence northerly, a distance of 321.10 feet, along a curve, which is concave to the east, having a radius of 11359.16 feet, a central angle of 1 degree 37 minutes 11 seconds, and a chord bearing of North 00 degrees 08 minutes 26 seconds West; thence on a bearing of North 00 degrees 40 minutes 09 seconds East a distance of 2181.18 feet; thence on a bearing of North 70 degrees 01 minutes 19 seconds West a distance of 96.74 feet to the west line of said Section 16; thence on a bearing of South 00 degrees 29 minutes 48 seconds West, along the west line of said Section 16, a distance of 431.32 feet to the northeast corner of the Southeast Quarter of the Northeast Quarter of said Section 17; thence on a bearing of South 89 degrees 02 minutes 46 seconds West, along the north line of the Southeast Quarter of the Northeast Quarter of said Section 17, a distance of 760.32 feet; thence on a bearing of South 00 degrees 40 minutes 09 seconds West a distance of approximately 162 feet to the center of a ditch; thence southwesterly, along the centerline of the ditch to its intersection with the west line of the east 132.00 feet of the Southwest Quarter of the Northeast Quarter of said Section 17; thence on a bearing of South 00 degrees 32 minutes 42 seconds West, along the west line of the east 132.00 feet of the Southwest Quarter of the Northeast Quarter of said Section 17, a distance of approximately 897.00 feet to north line of the Southeast Quarter of said Section 17; thence on a bearing of South 00 degrees 03 minutes 55 seconds West, along the west line of the east 132.00 feet of the West Half of the Southeast Quarter of said Section 17, a distance of 2651.65 feet to the south line of said Section 17; thence on a bearing of North 88 degrees 41 minutes 00 seconds East, along the south line of said Section 17, a distance of 1490.16 feet to the point of beginning.

Issued in Minneapolis, MN on September 10, 2012.

Laurie J. Suttmeier,

Acting Manager, Minneapolis Airports District Office, FAA, Great Lakes Region.

[FR Doc. 2012-24273 Filed 10-1-12; 8:45 am]

BILLING CODE 4910-13-P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Environmental Impact Statement: San Joaquin and Stanislaus Counties, CA

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Rescind Notice of Intent to prepare an Environmental Impact Statement.

SUMMARY: The FHWA, on behalf of the California Department of Transportation (Caltrans), is issuing this notice to advise the public that the Notice of Intent (NOI) published on June 03, 2002, to prepare an Environmental Impact statement (EIS) for the proposed highway project in San Joaquin and Stanislaus counties, California, is being rescinded.

FOR FURTHER INFORMATION CONTACT: Scott Smith, Senior Environmental Planner, Central Sierra Environmental Analysis Branch, Caltrans, 855 M. Street, Suite 200, Fresno, California 93721 or call (559) 445-6172.

SUPPLEMENTARY INFORMATION: Effective July 1, 2007, the FHWA assigned, and Caltrans assumed, environmental responsibilities for this project pursuant to 23 U.S.C. 327. Caltrans, in cooperation with San Joaquin and Stanislaus counties, is rescinding the NOI to prepare an EIS for the Vernalis Expressway project along State Route 132.

The proposed project included improvements to State Route 132 from the State Route 132/33 Separation Overhead (Bridge 29-167L) in San Joaquin County to 0.16 km (0.1 mile) west of the San Joaquin Bridge (Bridge 38-45) in Stanislaus County. The project is approximately 5.63 km (3.5 miles) in length. The project was anticipated to improve traffic safety and operations by reducing congestion and accidents. Since the NOI to prepare an EIS was published in the **Federal Register** on June 3, 2002, Caltrans has conducted public involvement and agency coordination, developed a purpose and need for the project, and developed preliminary alternatives to be examined. Preliminary screenings identified sensitive environmental features associated with the proposed

alternatives that could result in potentially significant adverse impacts. Due to the extent of analysis required on these resources and the lack of financial resources needed to complete the project, representatives from Caltrans, Stanislaus County, and San Joaquin County determined to no longer spend resources to obtain Project Acceptance & Environmental Document (PA&ED) for the project. No further Federal resources will be expended on the project; the environmental review process has been terminated. Comments and questions concerning the proposed action should be directed to Caltrans at the address provided above.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.)

Issued on: September 25, 2012.

Dominic Hoang,

Transportation Engineer, Federal Highway Administration, Sacramento, California.

[FR Doc. 2012-24274 Filed 10-1-12; 8:45 am]

BILLING CODE 4910-22-P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

[Docket Number FRA-2012-0056]

Petition for Waiver of Compliance

In accordance with Part 211 of Title 49 Code of Federal Regulations (CFR), this document provides the public notice that by a document dated June 27, 2012, New Jersey Transit (NJT) has petitioned the Federal Railroad Administration (FRA) for a waiver of compliance from certain provisions of the Federal railroad safety regulations contained at 49 CFR 242.403(b), (c)(1)-(3), (d), (e)(1)-(4), (e)(6)-(11), (e)(13) and f(1)-(2). FRA assigned the petition Docket Number FRA-2012-0056.

NJT is filing this request for extension in order to continue its participation in the Confidential Close Call Reporting System (C3RS) Demonstration Pilot Project. NJT and the employees of all NJT-owned and/or -operated territory, including the Southern Tier and Pascack Valley Line (excluding Conrail and Amtrak territories not covered by C3RS), represented by the Brotherhood of Locomotive Engineers and Trainmen, the United Transportation Union, and the American Train Dispatchers Association, are participating in the C3RS Demonstration Pilot Project sponsored by FRA's Offices of Safety

and Railroad Policy and Development. The C3RS Demonstration Pilot Project for NJT was initially approved by FRA on November 18, 2009. In Docket Number FRA-2009-0096, NJT requested and received a waiver from compliance of certain provisions of 49 CFR Part 240, which governs the certification of locomotive engineers to support the C3RS Demonstration Pilot Project. NJT, BLET, and UTU now desire to have a similar waiver from certain conductor certification requirements found at 49 CFR part 242 in order to shield the reporting employees and the railroad from punitive sanctions that would otherwise arise. A copy of the petition, as well as any written communications concerning the petition, is available for review online at www.regulations.gov and in person at the U.S. Department of Transportation's (DOT) Docket Operations Facility, 1200 New Jersey Avenue SE., W12-140, Washington, DC 20590. The Docket Operations Facility is open from 9 a.m. to 5 p.m., Monday through Friday, except Federal Holidays. If you do not have access to the Internet, please contact FRA's Docket Clerk at 202-493-6030, who will provide necessary information concerning the contents of the petition.

Interested parties are invited to participate in these proceedings by submitting written views, data, or comments. FRA does not anticipate scheduling a public hearing in connection with these proceedings since the facts do not appear to warrant a hearing. If any interested party desires an opportunity for oral comment, they should notify FRA, in writing, before the end of the comment period and specify the basis for their request.

All communications concerning these proceedings should identify the appropriate docket number and may be submitted by any of the following methods:

- *Web site:* <http://www.regulations.gov>. Follow the online instructions for submitting comments.
- *Fax:* 202-493-2251.
- *Mail:* Docket Operations Facility, U.S. Department of Transportation, 1200 New Jersey Avenue SE., W12-140, Washington, DC 20590.
- *Hand Delivery:* 1200 New Jersey Avenue SE., Room W12-140, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays.

Communications received within November 16, 2012 of the date of this notice will be considered by FRA before final action is taken. Comments received after that date will be considered as far as practicable.

Anyone is able to search the electronic form of any written communications and comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477-78), or online at <http://www.dot.gov/privacy.html>.

Issued in Washington, DC, on September 25, 2012.

Ron Hynes,

Director, Office of Safety Assurance and Compliance.

[FR Doc. 2012-24219 Filed 10-1-12; 8:45 am]

BILLING CODE 4910-06-P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

Safety Advisory 2012-04; Worn Rail Conditions

AGENCY: Federal Railroad Administration (FRA), Department of Transportation (DOT).

ACTION: Notice of Safety Advisory.

SUMMARY: FRA is issuing Safety Advisory 2012-04 to remind track owners, railroads, and their track inspectors of the importance of complying with the applicable rail management programs and engineering procedures that address rail with severe rail head wear and rolling contact fatigue (RCF) conditions. FRA is issuing this notice in response to a July 11, 2012, derailment in Ohio that a preliminary investigation indicates was likely caused by the failure of multiple defects involving detail fractures in rail exhibiting significant vertical head loss (rail head wear) and gage-side-oriented RCF. This notice contains recommendations to track owners to ensure that their employees and other entities performing track inspections comply with the requirements of the applicable engineering procedures that address critical rail head wear, particularly if the track under inspection exhibits significant RCF or a sudden increase in localized rail failure.

FOR FURTHER INFORMATION CONTACT: Carlo M. Patrick, Staff Director, Rail and Infrastructure Integrity Division, Office of Railroad Safety, FRA, 1200 New Jersey Avenue SE., Washington, DC 20590, telephone (202) 493-6399; or Elisabeth Galotto, Trial Attorney, Office of Chief Counsel, FRA, 1200 New Jersey

Avenue SE., Washington, DC 20590, telephone (202) 493-0270.

SUPPLEMENTARY INFORMATION:

Background

A recent accident has highlighted the need for additional action by track owners and other entities and individuals responsible for compliance with the Track Safety Standards (49 CFR part 213). The following discussion provides a brief summary of the circumstances surrounding a recent train derailment, which appears to have involved a rail with severe rail head wear. Information regarding this incident is based on FRA's preliminary investigation and findings to date. The probable causes and contributing factors, if any, have not yet been determined by FRA. Therefore, nothing in this safety advisory is intended to attribute a cause to this incident or place responsibility for this incident on the acts or omissions of any person or entity.

On July 11, 2012, an eastbound Norfolk Southern Railway Company (NS) freight train, traveling at 23 mph, derailed in Columbus, OH. Of the 13 cars that derailed, 3 contained hazardous materials. Two of the cars, which contained ethanol, a flammable liquid, were compromised, causing a fire near the Columbus Fairgrounds. Residents and businesses within a 1-mile radius of the accident were evacuated. In addition to the damages to the track and to equipment in the train, CSX Transportation, Inc.'s Columbus Line (which runs parallel to the NS track in this area) was shut down due to heat from the fire.

FRA's preliminary investigation indicates that the derailment may have occurred because of accelerated defect development in the rail. During the derailment investigation process, FRA discovered that five rail failures had occurred on various portions of the track subsequent to the last nondestructive rail inspection at this location. FRA believes that this accelerated defect development was possibly influenced by the significant rail head wear, and attributed to the presence of the RCF.

Given this accident, FRA recommends that each entity responsible for the inspection and maintenance of track review, reemphasize, and adhere to the requirements of the track owner's (1) engineering instructions concerning rail wear limits that address inspecting track to identify internal rail flaws; and (2) programs for the management of rail that exhibits severe rail head wear and RCF. As the discussion above indicates, this is especially critical for track over

which large quantities of hazardous materials or passengers are transported due to the potential catastrophic impacts that can result from a derailment of these types of trains.

Rail head wear occurs primarily on the gage-side face when the rail is located on the high side of a curve, due to the exertion of wheel flange forces. Vertical rail head wear occurs on the rail head running surface from wheel/rail interaction during cyclical loading. The development of internal rail defects is an inevitable consequence of the accumulation and effects of fatigue under repeated loading. In practice, the growth rate of rail defects is considered highly variable and unpredictable. Moreover, heavy axle loading on worn rail can lead to the accelerated development of rail surface fatigue, and this may prevent detection of an underlying rail flaw by test equipment during the rail inspection process.

Under 49 CFR 213.237(a), FRA requires all Class 4 and 5 track, as well as Class 3 track over which passenger trains operate, to be tested for internal rail defects at least once after every accumulation of 40 mgt of traffic or once a year, whichever is shorter. Class 3 track, over which passenger trains do not operate, is required to be tested at least once after every accumulation of 30 mgt of traffic or once a year, whichever is longer. However, as a result of the unpredictability of defect development, many railroads test for internal rail defects using a performance-based method that focuses on the rate of defect development, which typically results in testing for internal defects at a frequency shorter than required by FRA regulation. Yet, a nondestructive test system is typically designed to perform optimally on an ideal test specimen surface. Conditions, such as extreme cyclical loading, can result in rail head wear and RCF and thus affect the integrity of these rail flaw inspections.

Recommended Action: In light of the above, FRA recommends that each track owner:

1. Review with its employees the circumstances of the derailment identified above and ensure that the employees report any incidents where a sudden increase of rail failure occurs in a localized area.
2. Discuss with its employees the requirements of its own engineering instructions and ensure that the employees can identify locations that exhibit excessive rail head wear and RCF.
3. Review its current engineering instructions to ensure that the

procedures are consistent with the industry standard for rail replacement.

4. Ensure that its employees responsible for the rail inspection process have been adequately trained and are capable of performing proper inspection procedures.

5. Consider and use, as appropriate, recently developed rail inspection technology that is more capable of identifying transverse-oriented defects under RCF.

6. Review recent rail inspection records to identify any incidents involving sudden or accelerated broken rail for future inspection or replacement focus.

7. Apply appropriate slow orders at locations that exhibit rail head wear approaching the limits specified in its own respective engineering instructions until the rail is replaced.

8. Develop an internal software program on rail management that will assist in the identification of sudden or accelerated rail failure incidents, if such a program is not already in place.

FRA encourages railroad industry members and other track owners to take actions that are consistent with the preceding recommendations and to take other actions to help ensure the safety of the Nation's railroads, its employees, and the general public. FRA may modify this Safety Advisory 2012-04, issue additional safety advisories, or take other appropriate actions it deems necessary under its rail safety authority to ensure the highest level of safety on the Nation's railroads.

Issued in Washington, DC, on September 26, 2012.

Jo Strang,

Associate Administrator for Railroad Safety/Chief Safety Officer.

[FR Doc. 2012-24266 Filed 10-1-12; 8:45 am]

BILLING CODE 4910-06-P

DEPARTMENT OF TRANSPORTATION

Federal Transit Administration

[Docket No. FTA-2012-0045]

**Americans With Disabilities Act:
Proposed Circular Chapter, Vehicle
Acquisition**

AGENCY: Federal Transit Administration (FTA), DOT.

ACTION: Notice of availability of proposed circular chapter and request for comments.

SUMMARY: The Federal Transit Administration (FTA) has placed in the docket and on its Web site proposed guidance in the form of a circular chapter to help transportation providers

ensure that the buses and rail cars they acquire meet the requirements of the U.S. Department of Transportation's (DOT) Americans with Disabilities Act (ADA) regulations. This proposed chapter on vehicle acquisition is the first in a series of approximately 12 chapters that will compose a complete ADA circular. By public notice, FTA invites public comment on this proposed circular chapter and suggestions for specific issues to cover in future chapters.

DATES: Comments must be submitted by December 3, 2012. Late-filed comments will be considered to the extent practicable.

ADDRESSES: You may submit comments to Docket No. FTA-2012-0045 by any of the following methods:

Federal eRulemaking Portal: Go to www.regulations.gov and follow the online instructions for submitting comments.

Mail: Docket Management Facility: U.S. Department of Transportation, 1200 New Jersey Avenue SE., West Building, Ground Floor, Room W12-140, Washington, DC 20590-0001.

Hand Delivery or Courier: West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue SE., between 9 a.m. and 5 p.m. Eastern time, Monday through Friday, except Federal holidays. *Fax:* (202) 493-2251.

Instructions: You must include the agency name (Federal Transit Administration) and Docket number FTA-2012-0045 for this notice at the beginning of your comments. You should submit two copies of your comments if you submit them by mail. If you wish to receive confirmation that FTA received your comments, you must include a self-addressed stamped postcard. Note that all comments received will be posted without change to www.regulations.gov including any personal information provided and will be available to Internet users. You may review DOT's complete Privacy Act Statement published in the **Federal Register** on April 11, 2000 (65 FR 19477). *Docket:* For access to the docket to read background documents and comments received, go to www.regulations.gov at any time or to the U.S. Department of Transportation, 1200 New Jersey Avenue SE., Docket Operations, M-30, West Building Ground Floor, Room W12-140, Washington, DC 20590 between 9:00 a.m. and 5:00 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: For program questions, Dawn Sweet, Office of Civil Rights, Federal Transit Administration, 1200 New Jersey

Avenue SE, Room E54-437, Washington, DC 20590, phone: (202) 366-4018, or email, dawn.sweet@dot.gov. For legal questions, Bonnie Graves, Office of Chief Counsel, same address, Room E56-306, phone: (202) 366-4011, or email, bonnie.graves@dot.gov.

SUPPLEMENTARY INFORMATION:

I. Introduction

The U.S. Department of Transportation (DOT) issues regulations implementing the transportation and related provisions of the Americans with Disabilities Act (ADA) of 1990 and Section 504 of the Rehabilitation Act of 1973, as amended. The regulations at 49 CFR parts 27, 37, 38, and 39 set specific requirements transportation providers must follow to ensure their services, vehicles, and facilities are accessible to and useable by people with disabilities. The body of regulations is vast, covering multiple modes of public transportation, including fixed route bus and rail (e.g., rapid, commuter, and light rail); ADA complementary paratransit; general public demand responsive service; and ferry service. The Federal Transit Administration (FTA), as an agency within DOT, is charged with ensuring that providers of public transportation comply with the regulations.

In 2010, FTA initiated a comprehensive management review of the agency's core guidance to transit grantees on ADA and other civil rights requirements. A primary goal of the review was to assess whether FTA was providing sufficient, proactive assistance to grantees in meeting civil rights requirements, as opposed to reacting to allegations of failure to comply with the requirements. Based on the review, FTA identified the need to develop an ADA circular similar to the circulars long in place for other programs. The current body of statutes and regulations in the ADA area can be imposing, and in some cases, extremely technical. FTA recognized value to the transit industry and other stakeholders in compiling and organizing information by topic into a plain English, easy-to-use format. A circular does not alter, amend, or otherwise affect the DOT ADA regulations themselves or replace the need for detailed information in the regulations. Its format, however, can provide a helpful outline of basic requirements with references to the applicable regulatory sections, along with examples of practices used by transit providers to meet the requirements. Simply stated, a circular can be a starting point for understanding

ADA requirements in the transit environment.

Therefore, FTA is proposing the phased development of a new circular, FTA C 4710.1, with the initial chapter focused on vehicle acquisition. This notice provides a summary of the proposed chapter. The chapter does not contain any new requirements, policies, or directives. The chapter itself is not included in this notice; an electronic version may be found on FTA's Web site, at www.fta.dot.gov. Paper copies of the circular may be obtained by contacting FTA's Administrative Services Help Desk, at (202) 366-4865. After the summary of the current chapter, this notice describes FTA's approach for publishing subsequent chapters and seeks suggestions on specific issues to address in those chapters. FTA encourages stakeholders to provide comments on the content of the initial chapter on vehicle acquisition and suggestions for future chapters.

II. Summary of Current Chapter

The "Vehicle Acquisition" chapter begins with an introductory section that provides a brief background on the purpose of the circular and this chapter specifically. The chapter is designed to be a reference document for public entities acquiring vehicles to ensure these vehicles meet the requirements of the DOT ADA regulations in 49 CFR part 37, subpart D, and 49 CFR part 38. Importantly, this section also states what this circular project is not intended to accomplish—the circular is not a substitute for the DOT ADA regulations; public transportation providers are advised in this section to use this circular in addition to (not in lieu of) the regulations. The section then introduces in broad terms the DOT ADA regulations applicable to vehicle acquisition, explaining that 49 CFR part 38 sets the technical design specifications for accessible vehicles, while Part 37 defines the conditions under which vehicles must be purchased as accessible or made accessible. The section ends by emphasizing that although a public entity may use a contractor to provide service, it cannot contract away its ADA responsibility; the contractor "stands in the shoes" of the public entity and must meet the same requirements that would apply if the public entity were acquiring or remanufacturing its own vehicles.

After the introductory section, the chapter moves onto Section 2, "Acquisition Requirements for Public Entities." This section explains how the acquisition requirements vary in Part 37 depending upon the following factors: (1) Vehicle type (rail and non-rail); (2)

service type (fixed route bus, light or rapid rail, commuter rail, and demand responsive); and (3) vehicle condition (new, used, or remanufactured). In table and narrative format, the section explains that all new fixed route buses and all new light, rapid, and commuter rail cars must be accessible; that is, they must meet all the applicable specifications in Part 38. Certain exceptions to acquiring an accessible vehicle apply to used and remanufactured buses and rail cars, as well as to new buses and vans operating in a general public demand responsive system. These exceptions are likewise outlined in the section.

Section 3 is titled "The Main Elements of Accessible Vehicles" and summarizes the required design specifications in Part 38 by vehicle type. The section begins by emphasizing that an accessible bus or rail car involves much more than features for boarding and alighting individuals who use wheelchairs, which is how accessibility is commonly envisioned. Handrails, slip-resistant flooring, public address systems, and sufficient lighting, for example, are all part of an accessible vehicle, in addition to lifts, ramps, and securement systems. The section does not attempt to restate all of the Part 38 specifications but rather highlights the main points by vehicle type with accompanying photographs and diagrams, and refers the reader to the appropriate part of the regulations for more detail. For rail cars, the section highlights four areas that have been of particular interest to transit systems and members of the public: The platform gap, mobility aid accessibility, priority seating, and between-car barriers.

Section 4, "Ensuring that Vehicles Are Compliant," addresses ways a transportation provider can ensure that the vehicles it plans to acquire are accessible under Part 38 and useable to individuals with disabilities. Strategies presented include ensuring that bid packages spell out specific accessibility requirements in detail, seeking public input to ensure that the solicited vehicles can be used by as many persons with disabilities as possible, and inspecting the vehicles at the appropriate time in the procurement cycle.

Complementing Section 4 is an attachment titled "Sample Bus and Van Specification Checklist" that lists the design elements in Part 38 applicable to non-rail vehicles. It is a document FTA uses in its compliance reviews when assessing whether a transportation provider's buses comply with Part 38. The checklist is provided here as an example of a tool a transportation

provider could replicate to use in its factory inspections to ensure the vehicles it plans to acquire are compliant long before delivery. A grantee may decide to develop similar checklists to inspect rail cars.

The chapter ends with a list of definitions taken from the DOT ADA regulations, a list of statutory and regulatory authorities, and a reference list.

III. Publication Approach

The Vehicle Acquisition chapter is the first in approximately 12 chapters that will compose FTA's ADA circular. Because of the breadth of the ADA, FTA is developing this circular in segments. The next chapter currently under development is "Equivalent Facilitation," which will outline how a grantee can depart from the regulations by demonstrating to FTA that an alternative design or technology provides individuals with disabilities equivalent or greater access to a vehicle or facility. FTA anticipates that the topics of subsequent chapters will largely mirror the major provisions in the DOT ADA regulations, for example: General nondiscrimination requirements, facility construction and alteration, fixed route bus and rail service, ADA complementary paratransit (eligibility and service delivery), general public demand responsive service, and ferries and other modes.

When issued in its final form, the circular is intended to provide guidance specifically for recipients of FTA financial assistance that provide public transit. As such, requirements found in the DOT ADA regulations, for example, related to intercity rail (i.e., Amtrak), private motor coach service (e.g., Greyhound), taxi service, and airport transportation will not be covered in the circular.

Going forward, it is anticipated that the chapters will be issued in groups. All chapters will be announced in the **Federal Register** for public notice and comment.

IV. Conclusion

FTA seeks comments on the scope and content of the first chapter of the circular, "Vehicle Acquisition," specifically as to whether there are areas that need more clarification or explanation or topics that were overlooked. The chapter includes a section on practices a transit provider can use to help ensure the vehicles it acquires are compliant and useable. FTA seeks comment on whether there are other practices that have proven

effective that would be worth describing in the circular.

FTA also seeks suggestions on specific issues to cover in future chapters and which topics should be a priority to cover early on in the process of developing the ADA circular. For example, FTA seeks comments on which issues within the broad topic areas mentioned above (e.g., general nondiscrimination, facility construction and alterations, fixed route services, and ADA complementary paratransit) are most challenging to address by the industry. Further, FTA is interested in knowing in what areas guidance would be the most valuable to transportation providers.

Issued in Washington, DC, this 25th day of September 2012.

Peter Rogoff,
Administrator.

[FR Doc. 2012-24185 Filed 10-1-12; 8:45 am]

BILLING CODE P

DEPARTMENT OF TRANSPORTATION

Federal Transit Administration

Clean Fuels Grant Program, Augmented With Discretionary Bus and Bus Facilities Program Funds

AGENCY: Federal Transit Administration (FTA), DOT.

ACTION: Clean Fuels Grant Program: Announcement of Project Selections.

SUMMARY: The U.S. Department of Transportation's (DOT) Federal Transit Administration (FTA) announces the selection of projects for the Clean Fuels Grant program enhanced with Section 5309 Bus and Bus Facilities program funds. On February 7, 2012, FTA published a Notice of Funding Availability (NOFA) for its Clean Fuels Grant program (77 FR 6178). The NOFA explained the requirements and procedures for eligible applicants to apply for the funds made available by the Surface and Air Transportation Programs Extension Act of 2011. In sum, the FY 2012 Clean Fuels Grant Program made available approximately \$51.5 million in unallocated Section 5308 Clean Fuels Grant Program funds. As outlined in the NOFA, the Section 5308 funds would be awarded to fund projects in non-attainment and maintenance areas in achieving or maintaining the National Ambient Air Quality Standards for ozone and carbon monoxide and supports emerging clean fuel and advanced propulsion technologies for transit buses and markets for those technologies. Projects in attainment areas were also eligible to

apply and if funding was available, would be funded with Section 5309 Bus and Bus Facilities funds.

FOR FURTHER INFORMATION CONTACT:

Successful applicants should contact the appropriate FTA Regional office for specific information regarding applying for the funds. A list of Regional offices can be found at www.fta.dot.gov. Unsuccessful applicants may contact Vanessa Williams, Office of Program Management at (202) 366-4818, email: vanessa.williams@dot.gov to arrange a proposal debriefing within 30 days of this announcement. For general program information on the Clean Fuels Grant Program, contact Vanessa Williams, a TDD is available at 1-800-877-8339 (TDD/FIRS).

SUPPLEMENTARY INFORMATION:

In response to the NOFA, FTA received 146 eligible proposals requesting \$516 million in federal funds, indicating significant demand for funds. Of the proposals submitted, 46 were from attainment areas requesting \$124 million and were only considered for Bus and Bus Facilities program funds. Project proposals were evaluated based on the criteria detailed in the February 7, 2012 NOFA. FTA is funding 21 projects in non-attainment and maintenance areas as shown in Table 1

for a total of \$51.5 million, and 6 projects in attainment areas as shown in Table 2 for a total of \$7.8 million with prior year Section 5309 funds.

Grantees selected for competitive discretionary funding should work with their FTA regional office to finalize the grant application in FTA's Transportation Electronic Award Management system (TEAM) so that funds can be obligated expeditiously. Grant applications must only include eligible activities applied for in the original project application. Funds must be used consistent with the competitive proposal and for the eligible purposes defined under 49 U.S.C. 5308(a)(2) and 5309. In cases where the allocation amount is less than the proposer's requested amount, grantees should work with the regional office to reduce scope or scale the project such that a complete phase or project is accomplished. Grantees are reminded that the 90% provision for biodiesel buses is not available this year, as the language permitting this higher federal share was not included in the 2012 appropriations bill. This change was highlighted in *FTA's January 2012 Apportionment Notice*, Section III (C). Biodiesel buses remain eligible for an 83% Federal share. A discretionary project identification number has been assigned

to each project for tracking purposes and must be used in the TEAM application. Selected projects have pre-award authority no earlier than September 14, 2012. Pre-award authority is also contingent upon other requirements, such as planning and environmental, having been met. For more about FTA's policy on pre-award authority, please see the FTA Fiscal Year 2012 Apportionments, Allocations, and Program notice found in 77 FR 1785 (January 11, 2012). Post-award reporting requirements include submission of the Federal Financial Report and Milestone reports in TEAM as appropriate (see FTA.C.5010.1D). The grantee must comply with all applicable Federal statutes, regulations, executive orders, FTA circulars, and other Federal administrative requirements in carrying out the project supported by the FTA grant. FTA emphasizes that grantees must follow all third-party procurement guidance, as described in FTA.C.4220.1F. Funds allocated in this announcement must be obligated in a grant by September 30, 2014.

Issued in Washington, DC, this 26th day of September, 2012.

Peter Rogoff,
Administrator.

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Table 1
FY 2012 Clean Fuels Project Selections

State	Recipient	Project ID	Project Description	Allocation
AL	Birmingham-Jefferson County Transit Authority	D2012-CLNF-001	Compressed Natural Gas (CNG) Replacement of Buses	\$2,500,000
CA	Metropolitan Transportation Commission (MTC)	D2012-CLNF-002	Replace Diesel Trolleys with Electric Trolley Buses	\$4,320,000
CA	Riverside Transit Agency	D2012-CLNF-003	Heavy-Duty CNG Bus Replacement	\$2,400,000
CO	Colorado Department of Transportation	D2012-CLNF-004	Via Mobility Services (formerly Special Transit) - CNG-Fueled Universal Design Paratransit Vehicles Purchase	\$136,950
CT	Greater Hartford Transit District	D2012-CLNF-005	Alternative Fuel Vehicle Purchase	\$165,000
FL	Miami-Dade County	D2012-CLNF-006	Transit Electric Engine Cooling System	\$2,512,500
GA	Metropolitan Atlanta Rapid Transit Authority	D2012-CLNF-007	Vehicle Replacements	\$3,896,160
IL	Chicago Transit Authority	D2012-CLNF-008	Sixty-foot Diesel-Electric Hybrid Articulated Bus Purchase	\$4,725,000
KY	Transit Authority of River City	D2012-CLNF-009	TARC Historic Replica Trolley Replacement	\$4,369,000
MA	Worcester Regional Transit Authority	D2012-CLNF-010	WRTA "Green Fleet" Electric Bus Procurement Project	\$4,464,000

Table 1
FY 2012 Clean Fuels Project Selections

State	Recipient	Project ID	Project Description	Allocation
MD	Maryland Transit Administration	D2012-CLNF-011	Hybrid Bus Battery Replacements	\$402,500
MN	St. Cloud Metropolitan Transit Commission	D2012-CLNF-012	Operations Center building renovation and CNG fueling station construction	\$3,354,335
MO	Kansas City Area Transportation Authority	D2012-CLNF-013	CNG Vehicle Purchase	\$1,394,400
NY	Niagara Frontier Transportation Authority (NFTA)	D2012-CLNF-014	Compressed Natural Gas fueling station at the Frontier Bus Facility in Buffalo, New York	\$1,960,808
OH	Central Ohio Transit Authority	D2012-CLNF-015	CNG Monitoring System for McKinley Avenue facility renovation	\$1,023,000
OR	City of Wilsonville -- SMART Transit	D2012-CLNF-016	SMART Bus Replacements	\$1,058,250
PA	Pennsylvania Dept of Transportation	D2012-CLNF-017	Butler Transit Authority CNG Retrofits	\$2,400,000
PA	Southeastern Pennsylvania Transportation Authority (SEPTA)	D2012-CLNF-018	60-foot Hybrid Bus Replacements	\$3,000,000
TN	Nashville Metropolitan Transit Authority	D2012-CLNF-019	MTA Electric Bus Purchase and Wayside Inductive Power Transfer System Implementation	\$3,043,200
TX	City of El Paso	D2012-CLNF-020	Sun Metro - Bus Replacements for Paratransit	\$1,225,246

Table 1
FY 2012 Clean Fuels Project Selections

State	Recipient	Project ID	Project Description	Allocation
WA	King County Department of Transportation	D2012-CLNF-021 (\$3,149,651) D2012- CLNF-10001 (\$349)	Bus Hybrid Electric Cooling System for Engine Radiators - Retrofit to existing hybrid buses	\$3,150,000
Total Allocation				\$ 51,500,349

Table 2
FY 2012 Clean Fuels Project Selections
in Attainment Areas

State	Recipient	Project ID	Project Description	Allocation
AZ	Northern Arizona Intergovernmental Public Transportation	D2012-BUSP-93001	Vehicle Replacements	\$1,029,200
CA	Monterey-Salinas Transit	D2012-BUSP-93002	WAVE-MST Trolley Electrification	\$1,674,270
IL	Springfield Mass Transit District	D2012-BUSP-93003	CNG Vehicle Replacements	\$3,075,000
KY	Transit Authority of the LFUCG	D2012-BUSP-93004	Integrated thermal management Brushless Alternator retrofit project	\$34,000
PA	River Valley Transit (RVT)	D2012-BUSP-93005	Compressed Natural Gas (CNG) Garage Modifications & Fueling Addition	\$1,500,000
WA	Washington State Department of Transportation	D2012-BUSP-93006	Pullman Transit Heavy Duty Bus Replacement with Low Floor Hybrid Bus	\$535,350
Total Allocation				\$ 7,847,820

[FR Doc. 2012-24178 Filed 10-1-12; 8:45 am]

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DEPARTMENT OF THE TREASURY**Senior Executive Service; Financial Management Service Performance Review Board (PRB)****AGENCY:** Financial Management Service, Treasury.**ACTION:** Notice.**SUMMARY:** This notice announces the appointment of members to the Financial Management Service (FMS) Performance Review Board (PRB).**DATES:** This notice is effective on October 2, 2012.**FOR FURTHER INFORMATION CONTACT:**

Wanda J. Rogers, Deputy Commissioner, Financial Management Service, 401 14th Street SW., Washington, DC; (202) 874-7000.

SUPPLEMENTARY INFORMATION: Pursuant to 5 U.S.C. 4314(c) (4), this notice is given of the appointment of individuals to serve as members of the FMS PRB. This Board reviews the performance appraisals of career senior executives below the Assistant Commissioner level and makes recommendations regarding ratings, bonuses, and other personnel actions. Four voting members constitute a quorum. The names and titles of the FMS PRB members are as follows:**Primary Members**

Wanda J. Rogers, Deputy Commissioner
 Kristine S. Conrath, Assistant
 Commissioner, Federal Finance
 Jeffrey Schramek, Assistant
 Commissioner, Debt Management
 Services
 Sheryl R. Morrow, Assistant
 Commissioner, Payment Management
 Patricia M. Greiner, Assistant
 Commissioner, Management/CFO

Dated: September 24, 2012.

Wanda J. Rogers,*Deputy Commissioner.*

[FR Doc. 2012-24154 Filed 10-1-12; 8:45 am]

BILLING CODE 4810-35-M

DEPARTMENT OF THE TREASURY**Office of Foreign Assets Control****Unblocking of Two Specially Designated Nationals and Blocked Persons Pursuant to Executive Order****AGENCY:** Office of Foreign Assets Control, Treasury.**ACTION:** Notice.**SUMMARY:** The Treasury Department's Office of Foreign Assets Control ("OFAC") is publishing the names of two individuals whose property and interests in property have been unblocked pursuant to Executive Order 13310 of July 28, 2003, "Blocking Property of the Government of Burma and Prohibiting Certain Transactions."**DATES:** The unblocking and removal from the list of Specially Designated Nationals and Blocked Persons ("SDN List") of the individuals identified in this notice whose property and interests in property were blocked pursuant to Executive Order 13310 of July 28, 2003, is effective on September 19, 2012.**FOR FURTHER INFORMATION CONTACT:**

Assistant Director, Sanctions Compliance and Evaluation, Office of Foreign Assets Control, Department of the Treasury, Washington, DC 20220, tel.: 202/622-2490.

SUPPLEMENTARY INFORMATION:**Electronic and Facsimile Availability**This document and additional information concerning OFAC are available from OFAC's web site (www.treasury.gov/ofac) or via facsimile through a 24-hour fax-on demand service tel.: (202) 622-0077.**Background**

On May 20, 1997, President Clinton issued Executive Order 13047, "Prohibiting New Investment in Burma," and declared a national emergency to deal with the unusual and extraordinary threat to the national security and foreign policy of the United States posed by the Government of

Burma's actions and policies. In order to take additional steps with respect to the Government of Burma's continued repression of the democratic opposition in Burma, President Bush issued Executive Order 13310, "Blocking Property of the Government of Burma and Prohibiting Certain Transactions" ("the Order" or "E.O. 13310"). E.O. 13310 imposes economic sanctions on persons listed in the Annex to the Order. The Order also authorizes the Secretary of the Treasury, in consultation with the Secretary of State, to designate additional persons determined to meet the criteria set forth in E.O. 13310.

On September 27, 2007, the Director of OFAC, in consultation with the Secretary of State, designated, pursuant to one or more of the criteria set forth in subparagraphs (b)(i) through (b)(ii) of Section 1 of the Order, the individuals listed below, whose property and interests in property were blocked pursuant to the Order.

On September 19, 2012, the Director of OFAC removed and unblocked from the SDN List the two individuals listed below, whose property and interests in property were blocked pursuant to E.O. 13310.

1. SEIN, THEIN; DOB 20 Apr 1945; POB Patheingyi, Irrawaddy Division, nationality Burma; citizen Burma; Adjutant General; First Secretary, State Peace and Development Council (individual) [BURMA]

2. MANN, THURA SHWE (a.k.a. MANN, SHWE); DOB 11 Jul 1947; nationality Burma; citizen Burma; Joint Chief of Staff; Member, State Peace and Development Council (individual) [BURMA]

Dated: September 24, 2012.

Adam J. Szubin,*Director, Office of Foreign Assets Control.*

[FR Doc. 2012-24180 Filed 10-1-12; 8:45 am]

BILLING CODE 4810-AL-P



FEDERAL REGISTER

Vol. 77

Tuesday,

No. 191

October 2, 2012

Part II

Department of the Interior

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; 12-Month Petition Finding, Listing of the Spring Pygmy Sunfish as Threatened, and Designation of Critical Habitat; Proposed Rule

DEPARTMENT OF THE INTERIOR**Fish and Wildlife Service****50 CFR Part 17**

[Docket No. FWS-R4-ES-2012-0068;
4500030113]

RIN 1018-AY19

Endangered and Threatened Wildlife and Plants; 12-Month Petition Finding, Listing of the Spring Pygmy Sunfish as Threatened, and Designation of Critical Habitat

AGENCY: Fish and Wildlife Service, Interior.

ACTION: 12-Month finding; proposed rule.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), announce a 12-month finding on a petition to list the spring pygmy sunfish (*Elassoma alabamae*) as threatened under the Endangered Species Act of 1973, as amended (Act), and to designate critical habitat. After review of all available scientific and commercial information, we find that listing the spring pygmy sunfish as a threatened species under the Act is warranted. Accordingly, we propose to list the spring pygmy sunfish as a threatened species throughout its range and designate critical habitat for the species under the Act. In total, we propose approximately 8 stream miles (mi) (12.9 kilometers (km)) and 1,617 acres (ac) (654.4 hectares (ha)) of spring pool and spring-influenced wetland in Limestone County, Alabama, for designation as critical habitat.

DATES: We will consider comments received or postmarked on or before December 3, 2012. We must receive requests for a public hearing, in writing, at the address shown in the **FOR FURTHER INFORMATION CONTACT** section by November 16, 2012. Comments submitted electronically using the Federal eRulemaking Portal (see **ADDRESSES** section, below) must be received by 11:59 p.m. Eastern Time on the closing date.

ADDRESSES:

(1) *Electronically:* Go to the Federal eRulemaking Portal: <http://www.regulations.gov>. Search for Docket No. FWS-R4-ES-2012-0068, which is the docket number for this rulemaking.

(2) *By hard copy:* Submit by U.S. mail or hand-delivery to: Public Comments Processing, Attn: FWS-R4-ES-2012-0068; Division of Policy and Directives Management, U.S. Fish and Wildlife Service, 4401 N. Fairfax Drive, MS 2042-PDM; Arlington, VA 22203.

We request that you send comments only by the methods described above.

We will post all comments on <http://www.regulations.gov>. This generally means that we will post any personal information you provide us (see the Information Requested section below for more details).

The coordinates or plot points or both from which the maps are generated are included in the administrative record for this critical habitat designation and are available at <http://www.fws.gov/mississippiES/>, <http://www.regulations.gov> at Docket No. FWS-R4-ES-2012-0068, and at the Mississippi Ecological Services Field Office (see **FOR FURTHER INFORMATION CONTACT**). Any additional tools or supporting information that we may develop for this critical habitat designation will also be available at the above locations.

FOR FURTHER INFORMATION CONTACT: Stephen Ricks, Field Supervisor, Mississippi Ecological Services Field Office, 6578 Dogwood View Parkway, Jackson, MS 39213; by telephone (601-321-1122); or by facsimile (601-965-4340). If you use a telecommunications device for the deaf (TDD), please call the Federal Information Relay Service (FIRS) at 800-877-8339.

SUPPLEMENTARY INFORMATION: This document consists of: (1) A 12-month petition finding that listing the spring pygmy sunfish under the Act is warranted; (2) a proposed rule to list the spring pygmy sunfish as threatened; and (3) a proposed rule to designate critical habitat for this species.

Executive Summary

Why we need to publish a rule. Under the Endangered Species Act, 16 U.S.C. 1531 *et seq.*, a species or subspecies may warrant protection through listing if it is endangered or threatened throughout all or a significant portion of its range. We are proposing to list the spring pygmy sunfish as threatened under the Act because of current and future threats, and listing can only be done by issuing a rule. The spring pygmy sunfish no longer occurs at two of the three spring systems in which it historically was found, and faces a variety of threats in the Beaverdam Spring/Creek System, the only location where it currently occurs. We are also proposing to designate critical habitat under the Act. Critical habitat represents geographical areas that are essential to a species' conservation, and is designated on the basis of the best scientific information available after taking into consideration the economic impact, impact on national security, and any other relevant impact of specifying any particular area as critical habitat.

The basis for our action. Under the Act, a species may be determined to be endangered or threatened based on any of five factors: (A) Destruction, modification, or curtailment of its habitat or range; (B) overutilization for commercial, recreational, scientific, or educational purposes; (C) disease or predation; (D) the inadequacy of existing regulatory mechanisms; or (E) other natural or manmade factors affecting its continued existence. The spring pygmy sunfish is facing threats due to three of these five factors (A, D, and E), and potentially faces threats under a fourth (Factor C.) The Act also requires that the Service designate critical habitat at the time of listing provided that it is prudent and determinable. We have determined that it is both prudent and determinable (see Critical Habitat section below) and are proposing approximately 8 stream mi (12.9 km) and 1,617 ac (654.4 ha) of spring system habitat and adjacent upland buffers for designation as critical habitat.

Peer review is important. In addition to seeking public comments, we will solicit peer review of this proposal from at least three experts knowledgeable in spring pygmy sunfish biology and basic conservation biology principles and concepts.

Information Requested

We intend that any final action resulting from this proposed rule will be based on the best scientific and commercial data available and be as accurate and as effective as possible. Therefore, we request comments or information from other concerned Federal and State agencies, the scientific community, or any other interested party concerning this proposed rule. We particularly seek comments concerning:

(1) Additional information concerning the historical and current status, range, distribution, and population size of the spring pygmy sunfish, including the locations of any additional populations.

(2) Any information on the biological or ecological requirements of the species and ongoing conservation measures for the species and its habitat.

(3) Biological, commercial trade, or other relevant data concerning any threats (or lack thereof) to this species and regulations that may be addressing those threats.

(4) Current or planned activities in the areas occupied by the species and possible impacts of these activities on this species.

(5) Additional information regarding the threats to the species under the five listing factors, which are:

(a) The present or threatened destruction, modification, or curtailment of its habitat or range;

(b) Overutilization for commercial, recreational, scientific, or educational purposes;

(c) Disease or predation;

(d) The inadequacy of existing regulatory mechanisms; and

(e) Other natural or manmade factors affecting its continued existence.

(6) Any information regarding ongoing conservation activities for the spring pygmy sunfish, including the Belle Mina Farm, Ltd., candidate conservation agreement with assurances (CCAA), and their effect on the status of the species.

(7) The reasons why areas should or should not be designated as critical habitat as provided by section 4 of the Act, including the possible risks or benefits of designating critical habitat, including risks associated with publication of maps designating any area on which this species may be located, now or in the future, as critical habitat.

(8) The following specific information on:

(a) The amount and distribution of habitat for spring pygmy sunfish;

(b) What areas, that would be occupied at the time of listing (i.e., are currently occupied) and that contain the physical and biological features essential to the conservation of this species, should be included in a critical habitat designation and why;

(c) Special management considerations or protection that may be needed for the essential features in critical habitat areas, including managing for the potential effects of climate change; and

(d) What areas not occupied at the time of listing are essential for the conservation of this species and why.

(9) Information on the projected and reasonably likely impacts of changing environmental conditions resulting from climate change on the species and its habitat.

(10) Information on groundwater aquifer or recharge areas for spring systems that support the spring pygmy sunfish, and the possible implications of extracting ground and surface water and its impact on the spring pygmy sunfish and its habitat.

(11) Any probable economic, national security, or other relevant impacts of designating any area that may be included in the final designation; in particular, we seek information on any impacts on small entities or families, and the benefits of including or excluding areas that exhibit these impacts.

(12) Information on whether the benefits of the exclusion of lands covered by the Belle Mina Farm, Ltd., CCAA, or any other particular area, outweigh the benefits of inclusion under section 4(b)(2) of the Act.

(13) Whether we could improve or modify our approach to designating critical habitat in any way to provide for greater public participation and understanding, or to better accommodate public concerns and comments.

Please note that submissions merely stating support for or opposition to the action under consideration without providing supporting information, although noted, will not be considered in making a determination, as section 4(b)(1)(A) of the Act directs that determinations as to whether any species is an endangered or threatened species must be made “solely on the basis of the best scientific and commercial data available,” and section 4(b)(2) directs that critical habitat designations be made based on the best scientific data available and after consideration of economic and other relevant impacts.

You may submit your comments and materials concerning this proposed rule by one of the methods listed in **ADDRESSES**. We request that you send comments only by the methods described in **ADDRESSES**.

If you submit information via <http://www.regulations.gov>, your entire submission—including any personal identifying information—will be posted on the Web site. If your submission is made via a hardcopy that includes personal identifying information, such as your address, phone number, and email address, you may request at the top of your document that we withhold this information from public review. However, we cannot guarantee that we will be able to do so. We will post all hardcopy submissions on <http://www.regulations.gov>. Please include sufficient information with your comments to allow us to verify any scientific or commercial information you include.

Comments and materials we receive, as well as supporting documentation we used in preparing this proposed rule, will be available for public inspection on <http://www.regulations.gov>, or by appointment, during normal business hours, at the U.S. Fish and Wildlife Service, Mississippi Ecological Services Field Office (see **FOR FURTHER INFORMATION CONTACT**).

Background

Section 4(b)(3)(B) of the Act requires that, for any petition to revise the

Federal Lists of Threatened and Endangered Wildlife and Plants (Lists) that contains substantial scientific or commercial information that listing a species may be warranted, we make a finding within 12 months of the date of receipt of the petition that the petitioned action is either: (a) Not warranted; (b) warranted; or (c) warranted, but the immediate proposal of a regulation implementing the petitioned action is precluded by other pending proposals to determine whether any species is endangered or threatened, and expeditious progress is being made to add or remove qualified species from the Lists. With this publication, we have determined that the petitioned action to list spring pygmy sunfish is warranted, and we are proposing to list the species and to designate critical habitat for the species.

Previous Federal Actions

The spring pygmy sunfish was proposed for listing as endangered with critical habitat on November 29, 1977 (42 FR 60765). The critical habitat portion of the proposal was withdrawn on March 6, 1979 (44 FR 12382), in order to make a new critical habitat proposal that conformed to new, more prescriptive provisions for critical habitat made in the 1978 amendments to the Act. The Service proposed critical habitat again for the species on July 27, 1979 (44 FR 44418). The pending proposal to list the spring pygmy sunfish, along with the proposed critical habitat designation, were withdrawn effective November 29, 1979, as announced in the **Federal Register** on January 24, 1980 (45 FR 5782).

The spring pygmy sunfish was included in the December 30, 1982, notice of review (47 FR 58454) as a category 2 candidate species for listing. Category 2 status was given to those species for which the Service possessed information indicating that proposing to list as endangered or threatened was possibly appropriate, but for which conclusive data on biological vulnerability and threats were not currently available to support proposed rules. Subsequently, in the September 18, 1985 (50 FR 37958); January 6, 1989 (54 FR 554); and November 15, 1994 (59 FR 58982) notices of review, the spring pygmy sunfish was identified as a category 1 candidate species for listing. Category 1 status was given to those species for which the Service had on file sufficient information on biological vulnerability and threat(s) to support a proposal to list as endangered or threatened but for which a proposal had not yet been issued because of other listing actions. On February 28, 1996 (61

FR 7457), the Service published a notice of review removing the spring pygmy sunfish from the candidate list because of successful introduction, increased distribution (outside of the range of the introduction), and the discovery of additional populations, including one on Wheeler National Wildlife Refuge. At that time, we reported that the known populations, each exceeding 1,000 individuals, were increasing.

On November 24, 2009, we received a petition from the Center for Biological Diversity (CBD) and Michael Sandel of the University of Alabama, requesting that the spring pygmy sunfish be listed as endangered under the Act. In a December 17, 2009, letter to the petitioners, we responded that we reviewed the information presented in the petition, and we outlined the petition process and timelines. In July 2010, we received letters from the North American Native Fishes Association (NANFA) and Dr. Bruce Stallsmith (University of Alabama at Huntsville) requesting that we emergency list the species under section 4(b)(7) of the Act. Following review of the petition, the letters, and information in our files, we determined that issuing an emergency regulation temporarily listing the species was not warranted. We notified NANFA and Dr. Stallsmith of our determination on July 21, 2010.

On April 1, 2011, we published in the **Federal Register** (76 FR 18138) our 90-day finding that the petition to list the spring pygmy sunfish as endangered presented substantial information indicating that the requested action may be warranted, and we initiated a status review of the species.

Since 2010, Belle Mina Farms, the owner of Beaverdam Spring, Moss Spring, and the upper reach of Beaverdam Creek, in Limestone County, Alabama, and the Service have been engaged in drafting a candidate conservation agreement with assurances (CCAA) for a population of spring pygmy sunfish. The CCAA outlines a variety of conservation measures that will be implemented to benefit the species (see "Conservation Efforts to Reduce Habitat Destruction, Modification, or Curtailment" under the Factor A discussion, below). On September 14, 2010, we received the completed application from the landowner for an enhancement of survival permit for the spring pygmy sunfish under section 10(a)(1)(A) of the Act along with a draft CCAA. The CCAA, the permit application, and the environmental action statement (EAS) were made available for public comment for a 30-day period beginning on February 21, 2012 (77 FR 9958). The

CCAA and EAS were finalized in April 2012, and the associated permit was issued on June 7, 2012. If the spring pygmy sunfish is listed under the Act, the permit authorizes incidental take of the spring pygmy sunfish due to otherwise lawful activities (e.g., crop cultivation, livestock grazing, silviculture, vegetation management, water usage, road maintenance, fencerow maintenance, etc.) in accordance with the terms of the CCAA.

Species Information

Taxonomy and Description

The spring pygmy sunfish (*Elassoma alabamae*) was discovered in 1937, but not described until 1993 (Mayden 1993, pp.1–14). This species is the smallest member of the genus *Elassoma*. Males are normally smaller than females and are very dark to black with iridescent blue-green color on their sides, cheeks, and gill covers (Boschung and Mayden 2004, pp. 614–615). The maximum standard length (distance from tip of snout to the end of the last vertebrae) for adult males is 0.80 in (20.4 mm) and for adult females it is 0.96 in (24.5 mm) (Boschung and Mayden 2004, pp. 614–615). Both sexes have broad vertical and narrow bars on their flanks. We accept the characterization of the spring pygmy sunfish as a valid species based on the taxonomic characters distinguishing the species from other members of the *Elassoma* genus (Mayden 1993, p.4). Its uniqueness is widely accepted by the scientific community, and there has been no discrepancy concerning its distinctiveness as a separate taxonomic entity (Boschung *et al.* 2004, p. 614).

Current Distribution

The range of the spring pygmy sunfish is very restricted. The species currently occupies about 5.9 mi (9.5 km) and 1,435 ac (580.6 ha) of four spring pools and associated features confluent with the middle to upper Beaverdam Spring/Creek watershed. These spring pools, which include Moss, Beaverdam, Thorsen, and Horton springs, all in Limestone County, Alabama, along with associated spring runs and wetlands, are collectively referred to as the Beaverdam Spring/Creek system. The greatest concentration of spring pygmy sunfish occurs within the Beaverdam Spring site, which comprises 24 percent of the total occupied habitat for the species.

Life History

The spring pygmy sunfish has high fecundity (reproductive capacity) and quickly populates areas of available habitat (Sandel pers. obs. 2004 through

2009). Adults reproduce from January to October. Spawning occurs in March and April, when water quality parameters are within a suitable range (pH of 6.0 to 7.7 and water temperatures of 57.2 to 68 degrees Fahrenheit (°F) (15 to 20 degrees Celsius (°C)). Spring pygmy sunfish produce about 65 eggs, and hatching occurs from April to September (Sandel pers. obs. 2004 through 2009). Two spawning attempts per year have been reported in captivity (Petty *et al.* 2011, p. 4). In captivity, the spring pygmy sunfish may live slightly longer than 2 years, but normally their life span is 1 year or less (Boschung and Mayden 2004, pp. 614–615).

Habitat

The spring pygmy sunfish is a spring-associated (Warren 2004, p.185) and groundwater-dependent (Jandebeur, pers. comm., 2011) fish endemic to the Tennessee River drainage in the Eastern Highland Rim physiographic province and Dissected Tablelands (Marbut *et al.* 1913, p. 53) of Lauderdale and Limestone Counties in northern Alabama. The preferred habitat for the spring pygmy sunfish is colorless to slightly stained spring water, occurring within several components of spring geomorphology including the spring head (where water emerges from the ground), spring pool (water pool at spring head), spring run (stream or channel downstream of spring pool), and associated spring-fed wetlands (Warren 2004, pp. 184–185). No contemporary water flow rates characterizing groundwater flow from the springs are available. However, historical flow rates for Pryor Spring (where the species once occurred) and Moss Spring of 800 to 5,000 gallons per minute (gpm) (3,000 to 19,000 liters per minute (lpm))(tabulated from Chandler and Moore 1987, pp. 3–4), respectively, indicate that the spring pygmy sunfish is associated with moderately flowing springs of the second to fourth order (after Meinzer 1923, in Chandler and Moore 1987, p. 5; McMaster and Harris 1963, p. 28).

Natural spring pool habitats are typically static, persisting without disruption for long periods, even during droughts, in the absence of water extraction. The species is most abundant at the spring outflow or emergence (spring head) and spring pool area. The spring pygmy sunfish is typically found at water depths from 5 to 40 inches (in) (13 to 102 centimeters (cm)) and rarely in the upper 5 inches (13 cm) of the water column. Species of submergent and emergent vegetation providing important habitat for the spring pygmy sunfish include clumps

and stands of *Sparganium* sp. (bur reed), *Ceratophyllum* sp. (coontail), *Nasturtium officinale* (watercress), *Juncus* sp. (rush), *Carex* sp. (sedges), *Nuphar luteum* (yellow pond lily), *Myriophyllum* sp. (parrot feather), *Utricularia* sp. (bladderwort), *Polygonum* sp. (smartweed), *Lythrum salicaria* (purple loosestrife), and *Callitriche* sp. (water starwort) (Mayden 1993, p. 11; Jandebour 1997, pp. 42–44; Sandel 2011, pp. 3–5, 9–11). The species is also associated with certain animal species such as amphipods, isopods, spring salamanders, crayfish, and snails (Sandel 2011, pp. 11–12; Mayden 1993, p. 11).

Historical Distribution and Status

The spring pygmy sunfish was known to have historically occurred at two other sites. This species was initially discovered in 1938, in Cave Springs, Lauderdale County, Alabama, where it was extirpated about a year later due to inundation from the formation of Pickwick Reservoir. In 1941, this species was also discovered in Pryor Spring within the Swan Creek watershed in Limestone County, Alabama, by Tarzwell and Bretton, where it was noted to be common (Jandebour 2011a, pp. 1–5). Limited sampling efforts in the Pryor Springs complex between 1966 and 1979 indicated a sparse population of spring pygmy sunfish west of, and none east of, Highway 31. The exact location of the original collection in Pryor Spring is uncertain, but Jandebour (2011a, pp. 1–5) speculates the original site to be solely west of Highway 31, within the Pryor Spring Branch (spring-fed wetlands) and not in Pryor Spring proper (spring head and pool), east of the highway. However, in 1984, in an effort to enhance this population in Pryor Spring, fish were moved from Moss Spring (Beaverdam Spring/Creek System) into Pryor Spring on both sides of Highway 31 (Mettee *et al.* 1986, pp. 14–15). Reintroduction efforts continued into 1986 and 1987 (Mettee *et al.* 1986, pp. 6–7). However, by 2007, the population was determined to be extirpated due to impaired water quality and quantity, likely attributable to contaminants from agricultural runoff (Sandel 2008, p. 2; 2011, pp. 3, 6).

The spring pygmy sunfish exhibits metapopulation (a group of individual populations that have some level of gene flow between them) structure by occupying all suitable spring habitats where there is flowing spring water and connectivity. Migration and continuity of the species between spring pools is very important in maintaining the genetic diversity of species within these

sections of the Beaverdam Spring/Creek system. Sandel (2008, pp. 15–16; 2011, p. 8) suggests that the spring pygmy sunfish population in Beaverdam Spring/Creek is a single, structured, continuous group of breeding individuals, genetically identifiable with limited gene flow from each springhead subpopulation, and that the loss of many subpopulations could cause extinction of the metapopulation. However, Jandebour (2011b, pp. 1–13) speculates that these populations of spring pygmy sunfish evolved with beaver ecology and that during migration of spring pygmy sunfish from beaver pond habitats, the species may colonize or recolonize existing habitat downstream, even though individual subpopulations may be extirpated due to drought or other ecological issues.

Summary of Information Pertaining to the Five Factors

Section 4 of the Act and its implementing regulations (50 CFR part 424) set forth the procedures for adding species to the Federal Lists of Endangered and Threatened Wildlife and Plants. A species may be determined to be an endangered or threatened species due to one or more of the following five factors described in section 4(a)(1) of the Act:

- (A) The present or threatened destruction, modification, or curtailment of its habitat or range;
- (B) Overutilization for commercial, recreational, scientific, or educational purposes;
- (C) Disease or predation;
- (D) The inadequacy of existing regulatory mechanisms; and
- (E) Other natural or manmade factors affecting its continued existence.

Listing actions may be warranted based on any of the above threat factors, singly or in combination. Each of these factors is discussed below.

In considering what factors might constitute threats to a species, we must look beyond the exposure of the species to a particular factor to evaluate whether the species may respond to that factor in a way that causes actual impacts to the species. If there is exposure to a factor and the species responds negatively, the factor may be a threat. The factor is a threat if it drives, or contributes to, the risk of extinction of the species such that the species warrants listing as endangered or threatened as those terms are defined in the Act. However, the identification of factors that could impact a species negatively may not be sufficient to compel a finding that the species warrants listing. The information must include evidence sufficient to suggest

that these factors are operative threats that act on the species to the point that the species may meet the definition of endangered or threatened under the Act.

Factor A: The Present or Threatened Destruction, Modification, or Curtailment of Its Habitat or Range

Increased human population growth, and the accompanying demand for water, will likely alter the Beaverdam Spring/Creek system and its recharge areas through increased water extraction (pumping), diversion, and retention (Erman 2002, p. 8). Because springs provide shelter, thermal refuge, breeding sites, movement corridors, and prey source habitat for the spring pygmy sunfish, the species is dependent on water quantities sufficient to provide spring habitat that is stable and permanent (Erman 2002, p. 8).

Urban and Industrial Development

Urban development adjacent to the Beaverdam Spring/Creek system would likely fragment and directly impact suitable spring pygmy sunfish habitat by decreasing water quality and quantity, and by limiting the species' movement throughout the system. When an area is urbanized, many impermeable surfaces are constructed such as roofs, pavements, and road surfaces. All are intentionally constructed to be far less permeable than natural soils and to remove stormwater quickly, which results in a reduction in direct recharge into the aquifer, increased stormwater runoff (Younger 2007, p. 39), immediate changes in water quality parameters such as decreased oxygen levels and increased temperature, and increased water quantity and flow velocity (Field *et al.* 2003, pp. 326–333). The stormwater flow velocity carries sediments that may scarify (make scratches or cuts in) rock and gravel substrates (Waters 1995, pp. 57, 66) and uproot aquatic vegetation, thereby destroying important foraging, spawning, and refuge habitat for the species (Field *et al.* 2003, pp. 326–333).

The spring pygmy sunfish is currently facing threats from planned large-scale residential and industrial projects and ongoing development within the vicinity of the Beaverdam Spring/Creek watershed. Sandel (2011, p. 11) observed declines in the species' population and attributed it to sedimentation from two nearby construction activities: the construction of a new sewer line adjacent to the spring system and the construction of the Ashbury subdivision 2.3 mi (3.7 km) northeast of the species' habitat. The Ashbury subdivision, adjacent to Hardeman Branch and draining into the

upper Beaverdam Spring/Creek watershed, filled adjacent wetlands when residential housing, roads, utility crossings, and stormwater drains were constructed (U.S. Army Corps of Engineers 2011, pp. 1–6).

The City of Huntsville's Master Plan for Western Annexed Land (Sasaki 2011, pp. 1–83) proposes developing a total of 10,823 ac (4,379.9 ha) adjacent to spring pygmy sunfish habitat. More than 68 percent of the proposed development site is adjacent to the Beaverdam Spring/Creek watershed. The restricted-use area for subdivision development, within the City of Huntsville, is a minimum of 25 feet (7.6 meters) from the perimeter of a perennial spring. However, no restrictions are set forth for ephemeral springs or seasonal groundwater seepages (City of Huntsville 2007, p. 28), which include many of the ephemeral springs, seepages, and streams draining into the Beaverdam Spring/Creek watershed. These features are necessary for maintenance of seasonal flow rates. Filling them or converting them to developed areas could therefore adversely affect the spring pygmy sunfish. In addition, there are roads proposed to connect the planned developments with the Interstate 65 and Interstate 565 corridors (Sasaki 2011, pp. 1–83), along with feeder roads and improvements on primary and secondary existing roadways in support of new residential and industrial projects (Sasaki 2011, pp. 1–83). Developed, paved-over areas (impervious substrate) promote runoff and inhibit infiltration, changing water flow rates from slow and incremental to fast and localized, because stormwater is directed via surface routes into specific areas of the receiving stream, rather than infiltrating into the soil or draining naturally into surface water.

Pumping or diversion of springs creates unstable conditions for spring-dependent species such as the spring pygmy sunfish through fluctuating water levels and temperature changes. The incremental and cumulative groundwater recharge effects on the habitat of the spring pygmy sunfish may not become evident for years (Likens 2009, p. 90). Within north Alabama, the availability of large quantities of groundwater from springs has been an important factor in industrial and urban development (Warman and Causey 1963, p. 93). It is estimated that, by 2015, the population in Limestone and Lauderdale Counties will increase dramatically (Roop 2010, p. 1), along with expanding urbanization and industrialization (Sasaki 2011, pp. 1–83).

The Fort Payne Chert of the Early Mississippian Age is the principal aquifer of spring pygmy sunfish habitat and provides groundwater to all of Limestone County (McMaster and Harris, Jr. 1963, p. 1). Groundwater in the County is ultimately derived from percolation of precipitation (McMaster and Harris, Jr. 1963, p. 17) into the aquifer system. In urban settings, percolation of rainwater to the aquifer may be disrupted due to less pervious zones and more shunting of rainfall into stormwater systems (Healy 2010, pp. 70–72; Younger 2007, pp. 117–121). Change in land use from rural to urban/industrial within the Beaverdam Spring/Creek area will be detrimental to the spring pygmy sunfish due to changes in the water quality parameters such as oxygen and temperature, along with changes in water quantity, such as increased stream flow and velocity, due to increased amounts of impervious materials and associated stormwater runoff in the watershed. This may be coupled with a subsequent reduction in precipitation infiltrating through the soil surface to the aquifer, which will ultimately reduce spring baseflow (Field et al. 2003, pp. 326–333; Healy 2010, p. 3).

Water Quantity

Excessive groundwater extraction from the aquifer supplying Beaverdam Spring/Creek is a threat to the spring pygmy sunfish (Drennen, pers. obsv. 2007–2011; Sandel 2011, pp. 3–6; National Water Quality Assessment (NAWQA) program, <http://tn.water.usgs.gov/lten/lten.html>) because of the reduction of the water levels in the aquifer and resultant decreased spring outflow (Cook, Geological Survey of Alabama (GSA), pers. comm., 2011). Sandel (in Kuhajda et al. 2009, p. 19; 2011, pp. 3–6) documented a relationship between pumping activities in Moss, Horton, and Thorsen Springs and degraded spring pygmy sunfish habitat. Specifically, in Thorsen Spring, during 2007, water was extracted to a level that destroyed vegetation and decreased the abundance of the spring pygmy sunfish by 99 percent (Sandel, pers. obs., 2004 through 2009; Sandel 2011, p. 6). The proximity of the spring pygmy sunfish's habitat to agricultural land throughout its range makes it vulnerable to impacts due to the extraction of groundwater for agricultural uses. Sandel (in Kuhajda et al. 2009, p. 19) estimated that up to 16,000 gpm (62,000 lpm) of water was extracted from the Beaverdam Spring/Creek watershed for agricultural purposes during drought conditions during the 2008 growing season. He

further estimated that this level of withdrawal desiccated and killed aquatic vegetation necessary for the spawning, foraging, and shelter of the species.

Commercial water withdrawal from this same aquifer by the Limestone County pumping station, between 2006 and 2011, was over 1 billion gallons (3.9 billion liters) at an estimated flow rate of 450 gpm (1,740 lpm) (Holland, pers. comm., 2011). Heavy groundwater withdrawal by the cities of Huntsville and Madison (east of the spring pygmy sunfish habitat), and the adjacent rural population, is estimated at 16 million gallons per day (62 million liters per day) (U.S. Geological Survey National Aquatic Water Quality Assessment 2001, 2009; Sandel, pers. comm., 2007–2009; Kingsbury 2003, p. 2; Hoos et al. 2001, p. 1). Withdrawal of groundwater by pumping, at high levels such as those above, especially during drought conditions, can cause changes to water budgets (Healy 2010, p. 15) and the natural flow of spring systems (Alley in Likens 2009, p. 91). Pumping from wells beside streams also lowers groundwater levels and reduces surface water flow within streams and spring runs. In smaller streams, decreased flow caused by pumping can be large enough to create harmful effects upon the stream and its wildlife (Hunt 1999, pp. 98–102). Water extraction by pumping also causes a loss of aquifer storage and lowers the pressure in the aquifer (Theis 1935, p. 519), resulting in decreased spring flow velocity and quantity to adjacent streams. These reductions in the natural flow regime can adversely affect the spring pygmy sunfish.

In several large springs in the United States, groundwater extraction for public consumption and agricultural use has impacted listed fish species by decreasing groundwater levels. Examples include the endangered Devil's Hole pupfish (*Cyprinodon diabolis*) (Hoffman et al. 2003, p. 1248) and the endangered fountain darter (*Etheostoma fonticola*) (Service 1996, p. 19). Water extraction in spring pygmy sunfish habitat is causing desiccation and reduction of the aquatic vegetation, and concentrating pollutants.

The effects on stream flow after water extraction stops may be greater due to the overall decrease in water quantity in the stream. Decreased water levels after pumping in the spring pool correspond to decreased aquatic vegetation in the system; less water quantity increases the desiccation of vegetation, which may negatively impact the species (Jandebeur 1979, pp. 4–8; Mayden 1993, pp. 11–12) by reducing the vegetative cover and contributing to eutrophication

of the water, as demonstrated with spring pygmy sunfish habitat impacts and subsequent population declines in Moss, Horton, and Thorsen Springs (Sandel pers. obs. 2004 through 2009; 2011, pp. 3–6).

Water Quality

The heavy use of chemicals within spring pygmy sunfish habitat and the recharge areas of occupied spring systems is a potential threat to the species. The intensive agricultural practices and proposed urbanization and industrialization plans within the immediate area of the watershed threaten to contaminate the groundwater in the aquifer supplying the Beaverdam Spring/Creek site (Healy 2010, p. 70). Transportation of contaminants to the aquifer by recharge water can be slow and steady or highly episodic over time (Healy 2010, p. 75). In a similar spring system in northeast Alabama, the threatened pygmy sculpin (*Cottus paulus*) is believed to be impacted by the increased concentration of toxins entering the aquifer from a nearby military base (Thomas, pers. comm., 2009).

Fertilizers and pesticides are transported to the aquifer by recharge, or into surface water routes, where they eventually enter springs and are a threat to the survival of fishes found there (Hoffman *et al.* 2003, p. 1248; U.S. Fish and Wildlife Service 1996, pp. 35–36). Toxins can concentrate when spring flow is reduced, posing an even greater threat to spring fishes. The Beaverdam Spring/Creek watershed has the highest annual crop harvest, the highest total annual nitrogen use, and second highest annual phosphorus use, along with elevated pesticide usages detected in groundwater, within the Eastern Highland Rim (Mooreland 2011, p. 2; NAWQA 2009, <http://water.usgs.gov/nawqa/digmap.html>; Kingsbury 2003, p. 20). Both the historic and extant spring pygmy sunfish populations in Limestone County (Beaverdam Spring/Creek, Pryor Springs) are within the Wheeler Lake Basin (southern boundary of Limestone County), where Tsegaye *et al.* (2006, pp. 175–176) found that rapid urbanization with associated decrease in agricultural land cover is likely responsible for water quality degradation in streams from non-point source phosphorus pollution. Phosphorus content of groundwater is generally low (Wetzel 1983, p. 281). However, urbanization increases the amount of phosphorus from residential fertilizers and storm sewer drainage (Wetzel 1983, p. 281) that may enter groundwater recharge areas. Phosphorus limits biological productivity (Wetzel

1983, p. 255) by impacting organismal metabolism. Nitrogen also impacts aquatic life. For instance, un-ionized ammonia (which contains nitrogen) is highly toxic to fish (Hoffman *et al.* 2003, p. 681). The planned development adjacent to spring pygmy sunfish habitat is likely to increase phosphorus and nitrogen levels in the future.

Aquatic plants, which the spring pygmy sunfish uses for spawning, shelter, and foraging, are also impacted by indiscriminate use of chemicals (Jandebeur 2012, p. 2; Sandel 2011, pp. 1–5, 8–9). Since 1945, herbicide usage, cattle grazing, and irrigation have occurred throughout the spring systems and waterways that are habitat for this species (Jandebeur 1979, pp. 4–8). Aquatic vegetation management within Thorsen Spring, Horton Spring, and the Pryor Spring/Branch system has removed the spring pygmy sunfish's shelter vegetation, egg substrate, and food sites (Jandebeur 1979, pp. 4–8; Mayden 1993, p. 9; Jandebeur 2012, p. 2). Agricultural chemical contamination results in sublethal toxic effects in fish species, affecting the immune system, hormone regulation, reproduction, and developmental stages (Hoffman *et al.* 2003, pp. 1056–1063, 1242). The spring pygmy sunfish's negative response to herbicides (Hoffman *et al.* 2003, p. 1242) is documented by the subsequent reduction and eventual loss of the population in Pryor Branch after the application of 2, 4-dichlorophenoxyacetic acid (2,4-D) to that area in the 1940s (Jandebeur 2012, pp. 1–18). This herbicide is toxic to fish and aquatic invertebrates, and has properties and characteristics associated with chemicals generally detected in groundwater contamination. Decaying vegetation caused by the application of this herbicide also impacts fishes by reducing dissolved oxygen levels (Environmental Protection Agency (EPA) Material Safety Data Sheet, pp. 1–13).

Many of the same chemicals used in large-scale agricultural practices are also used by municipal entities including urban and rural households. Stormwater runoff from city streets, construction sites, and storm sewers; household wastes; and leachate from septic tanks and landfills alter the sediment load in aquatic systems and deposit contaminants into surface and groundwater sources (Likens 2009, p. 90). Water quality degradation from chemicals will increase with the expected increase in urbanization and industrialization of the area.

Overgrazing by livestock is a major threat to springs, especially where animals have free range through spring

systems and wetlands. Cows tend to congregate in wetland areas, where they consume and trample vegetation, thereby reducing shade around the spring and increasing the water temperature. Livestock also trample banks in springs and spring runs, leading to increased stormwater and sediment runoff, which eliminates habitat for invertebrate prey species (Erman 2002, p. 8; Sada *et al.* 2001, pp. 14–16). Excessive sediment runoff during stormwater events decreases water clarity, which reduces light penetration needed for plant growth and results in impacts to the spring pygmy sunfish's spawning and feeding sites.

Timber harvesting and land clearing can also have impacts on spring water quality and associated spring species. Recent tree removal along the boundary of the Wheeler National Wildlife Refuge, which is spring pygmy sunfish habitat and part of the Beaverdam Spring/Creek system, highlights the need for careful management of spring habitats (Hurt, pers. comm., 2012). The removal of the trees greatly reduced the buffer along the Beaverdam Spring/Creek system and will likely increase sedimentation into the stream during stormwater runoff. An appropriate mixture of shade and sunlight is needed for the proper growth and maintenance of vegetation in the spring environment. This vegetation is important to maintaining a stable water temperature and habitat for an invertebrate prey base. Reducing shade by mechanical logging and clearing can increase atypical spring flow, lead to greater spring run flow variability, and increase sedimentation (Erman 2002, p. 9) by altering the existing geomorphology and enhancing stormwater runoff.

Conservation Efforts To Reduce Habitat Destruction, Modification, or Curtailment

When considering whether or not to list a species under the Act, we must identify existing conservation efforts and their effect on the species. Under the Act and our policy implementing this provision, known as the Policy for Evaluation of Conservation Efforts When Making Listing Decisions (PECE) (68 FR 15100; March 28, 2003), we must evaluate the certainty of an effort's effectiveness on the basis of whether the effort or plan: Establishes specific conservation objectives; identifies the necessary steps to reduce threats or factors for decline; includes quantifiable performance measures for the monitoring of compliance and effectiveness; incorporates the principles of adaptive management; is likely to be implemented; and is likely

to improve the species' viability at the time of the listing determination. In general, in order to meet these standards for the spring pygmy sunfish, conservation efforts must, at minimum, report data on existing populations, describe activities taken toward conservation of the species, demonstrate either through data collection or best available science how these measures will alleviate threats, provide for a mechanism to integrate new information (adaptive management), and provide information regarding certainty of the implementation (e.g., funding and staffing mechanisms).

The Service entered into a CCAA for the benefit of the spring pygmy sunfish with Belle Mina Farms, Ltd., and the Land Trust of Huntsville and North Alabama (Land Trust) on June 7, 2012. The area covered under the CCAA is approximately 3,200 acres and encompasses the upper 24 percent of habitat occupied by the Beaverdam Spring/Creek metapopulation, which is currently the only known population for the species. Under the CCAA, the landowner agrees to implement conservation measures to address known threats to the species. These measures will help protect the species on his property in the near term and also minimize any incidental take of the species that might occur as a result of conducting other covered activities, if the species becomes federally listed in the future. Conservation measures to be implemented by the landowner on this property will assist in the reduction of chemical usage and stormwater runoff from agricultural fields by establishing and maintaining vegetated buffer zones around Moss and Beaverdam Spring. The landowner also agrees to restrict timber harvest and cattle grazing within the Beaverdam Spring/Creek and Moss Spring habitats, and to refrain from any deforestation, industrial/residential development, aquaculture, temporary or permanent ground water removal installations, and other potentially damaging actions without prior consultation with the Service and the Service's written agreement. These actions will minimize impacts and help to maintain groundwater recharge of the aquifer and adequate spring flow. The Land Trust will conduct monitoring on the progress of the conservation actions and annual habitat analyses.

The CCAA and associated enhancement of survival permit have a duration of 20 years; however, under a special provision of this CCAA, if at any time a 15 percent decline in the status of the spring pygmy sunfish is determined, there will be a reevaluation of the conservation measures set forth in

the CCAA. If such a reevaluation reflects a need to change the conservation measures, the amended measure(s) will be implemented or the CCAA will be terminated and the permit surrendered.

Conservation efforts set forth in this CCAA are a positive step toward the conservation of the spring pygmy sunfish. These conservation actions will reduce the severity of some of the threats to the species outlined under Factor A within the upper portion of the Beaverdam Spring/Creek and Moss Spring sites. However, these conservation measures and the CCAA are restricted to only the upper 24 percent of occupied habitat in the Beaverdam Spring/Creek complex. There is no protection for the 24 percent of the species' habitat within the middle reach of the Beaverdam Spring/Creek System. The remaining 52 percent of the species' habitat, although it is federally owned and protected, is considered marginal habitat in the lower reach of the Beaverdam Spring/Creek System. In the middle and non-protected area below the CCAA protected site, land use practices continue to contribute to water quantity and water quality degradation. In addition, the large-scale development planned adjacent to this species' habitat, and outside the boundaries of the land enrolled in the CCAA, continues to pose a threat to the spring pygmy sunfish and its habitat. Furthermore, since this CCAA has been just recently enacted, there has yet to be long-term monitoring, which is needed to evaluate the overall effectiveness of these efforts.

Summary of Factor A

As discussed above, the spring pygmy sunfish and its habitat are currently facing the threats of both declining water quality and quantity. Excessive groundwater usage, and the resultant reduction of the water levels in the aquifer/recharge areas and decreased spring outflow in the Beaverdam Spring/Creek system, is believed to have negatively impacted the spring pygmy sunfish and its habitat. Contamination of the recharge area and aquifer from the intensive use of chemicals (i.e., herbicides, pesticides, fertilizers) within the spring pygmy sunfish's habitat poses a threat to the species' survival. Stormwater discharge from agricultural lands and urban sites compounds the water quality degradation by increasing sediment load and depositing contaminants into surface and groundwater sources. In addition, the large-scale residential and industrial development planned adjacent to the Beaverdam Spring/Creek system will exacerbate the decreasing water quantity and quality issues within the habitat of

the spring pygmy sunfish's single metapopulation. Overgrazing by livestock and land clearing near and within the spring systems reduces the vegetation in the spring and increases stormwater and sediment runoff, posing a threat to the single spring pygmy sunfish population, particularly in the middle and lower portions of its range.

Based on our review of the best commercial and scientific data available, we conclude that the present or threatened destruction, modification, and curtailment of its habitat or range is currently a threat to the spring pygmy sunfish and is expected to persist and possibly escalate in the future, particularly in light of the increasing demands for groundwater and large-scale development that is planned near this species' habitat. While the CCAA has reduced some of the threats under this factor, it only covers a portion of the extant range of the species, and will not ameliorate all threats of ongoing and potential water quantity and water quality degradation.

Factor B: Overutilization for Commercial, Recreational, Scientific, or Educational Purposes

The spring pygmy sunfish is not a commercially valuable species. However, this species has been actively sought by researchers since its discovery in 1937. Overcollecting may have been a localized factor in the historical decline of this species, particularly within the introduced population in Pryor Spring/Branch (Jandebour 2012, p. 14); however, the overall impact of collection on the spring pygmy sunfish population is unknown (Jandebour 2012, p. 14). The localized distribution and small size of known populations renders them vulnerable to overzealous recreational or scientific collecting. However, at this time we have no specific information indicating that overcollection rises to the level to pose a threat to the species now or in the future. Therefore, we find that overutilization for commercial, recreational, scientific, or educational purposes does not constitute a threat to the spring pygmy sunfish at this time.

Factor C: Disease or Predation

Diseases of the spring pygmy sunfish are poorly known, and we have no specific information indicating that disease occurs within spring pygmy sunfish populations or poses a threat to the species. Eggs, juveniles, and adult spring pygmy sunfish are preyed upon by some invertebrate species, parasites, and vertebrate species such as frogs, snakes, turtles, other fish, and piscivorous (fish-eating) birds. It is

possible that predation increases when fish are concentrated in smaller areas when groundwater is depleted through water extraction. However, we have no evidence of any specific declines in the spring pygmy sunfish due to predation.

In summary, we conclude that the best scientific and commercial information available indicates, at the present time, that diseases or predation are not threats to the spring pygmy sunfish.

Factor D: The Inadequacy of Existing Regulatory Mechanisms

The spring pygmy sunfish and its habitat are afforded some protection from surface water quality and habitat degradation under the Clean Water Act (33 U.S.C. 1251 *et seq.*), and the Alabama Water Pollution Control Act (Code of Alabama, sections 22–22–1 *et seq.*) and regulations promulgated by the Alabama Department of Environmental Management (Maynard and Gale 1995, pp. 20–28). While these laws have resulted in some improvement in water quality and stream habitat for aquatic life, such as requiring landowners engaged in agricultural practices to have an erosion prevention component within their farm plan, alone they have not been fully adequate to protect this species due to inconsistent implementation, monitoring, and enforcement. Furthermore, habitat degradation is ongoing despite the protection afforded by these laws.

The State of Alabama maintains water-use classifications through issuance of National Pollutant Discharge Elimination System (NPDES) permits to industries, municipalities, and others; these permits set maximum limits on certain pollutants or pollutant parameters. For water bodies on the Clean Water Act's section 303(d) List of Impaired Water Bodies, States are required under the Clean Water Act to establish a total maximum daily load (TMDL) for the pollutants of concern that will bring water quality into the applicable standard. Many of the water bodies within the occupied range of the spring pygmy sunfish do not meet Clean Water Act standards (Alabama 2008 section 303(d) List of Impaired Water Bodies).

The State of Alabama's surface water quality standards, adopted from the national standards set by the EPA, were established with the intent to protect all aquatic resources within the State of Alabama. These water quality regulations appear to be protective of the spring pygmy sunfish as long as discharges are within permitted limits and are enforced according to the

provisions of the Clean Water Act. Unregulated and indiscriminate groundwater and surface water extraction has been identified as a threat to spring species (see Factor A discussion above). Within the State of Alabama, regulations concerning groundwater issues are limited (Alabama Law Review 1997, p. 1). Alabama common law follows a "reasonable use rule" for the extraction of groundwater, and there is a statutory framework that regulates and governs groundwater extraction (Chapman *et al.* 2005, p. 9; Alabama Water Resources Act, Code of Alabama, sections 9–10B–1 *et seq.*). Water users must file a declaration of beneficial use, be issued a certificate of use, and be permitted and monitored periodically. The Alabama Water Commission can place restrictions on certificates of use in certain designated water capacity stressed areas; however, the Alabama Water Commission has not identified any stressed groundwater areas in or near spring pygmy sunfish habitat. Large volumes of groundwater continue to be extracted in areas not identified as "stressed groundwater areas" such as the Beaverdam Spring/Creek watershed, and this likely depresses water levels in nearby wells (Hairston *et al.* 1990, p. 7) and springs (Younger 2007, p. 162). Such groundwater extraction has likely depleted the aquifer that supplies water to Beaverdam Spring and the spring pygmy sunfish. Thus, water use restrictions under common law (Chapman *et al.* 2005, p. 10) provide marginal protection for the species.

Summary of Factor D

The spring pygmy sunfish and its habitat are afforded limited protection from surface water quality and habitat degradation under Federal and State regulations. Notwithstanding this limited protection, large volumes of groundwater are continually extracted, and these extractions likely threaten the aquifer that supplies water to spring pygmy sunfish habitat. Degradation of habitat within the current range of this species is ongoing despite the protections afforded by these existing laws. Therefore, based on the best scientific and commercial information available, we consider the inadequacy of existing regulatory mechanisms to be a threat to spring pygmy sunfish.

Factor E: Other Natural or Manmade Factors Affecting Its Continued Existence

Impediments to migration, connectivity, and gene flow between or within spring systems are threats to maintaining genetic diversity in the

spring pygmy sunfish. Habitat connectivity is critical to maintaining heterozygosity (genetic diversity) within populations of the species and reducing inbreeding, thereby maintaining the integrity of the population (Hallerman 2003, pp. 363–364). Connectivity of spring pygmy sunfish habitats is also necessary for improvement in water quality through flushing and diluting pollutants and increasing water quantity, and by linking spring segments together. Connectivity maintains water flow between Beaverdam Spring/Creek habitats and allows for potential colonization of unoccupied areas when conditions become favorable for the species. Mechanical fragmentation of the habitat has formed smaller, isolated subpopulations of spring pygmy sunfish. Localized environmental changes caused by agriculture, urbanization, and other anthropogenic disturbances of the spring systems throughout the watersheds of the Eastern Highland Rim have exacerbated fragmentation of spring habitat (Sandel 2011, pp. 3–6; 2008, pp. 2–4, 13). Over time, this fragmentation of the spring pygmy sunfish's habitat will impose negative selective pressures on the species' populations, such as genetic isolation; reduction of space for rearing, recruitment, and reproduction; reduction of adaptive capabilities; and increased likelihood of local extinctions (Sandel 2011, pp. 8–10; Burkhead *et al.* 1997, pp. 397–399).

Climate Change

"Climate" refers to an area's long-term average weather statistics (typically for at least 20- or 30-year periods), including the mean and variation of surface variables such as temperature, precipitation, and wind; "climate change" refers to a change in the mean or variability or both of climate properties that persists for an extended period (typically decades or longer), whether due to natural processes or human activity (Intergovernmental Panel on Climate Change (IPCC) 2007a, p. 26). Although changes in climate occur continuously over geological time, changes are now occurring at an accelerated rate. For example, at continental, regional, and ocean basin scales, recent observed changes in long-term trends include: A substantial increase in precipitation in eastern parts of North America and South America, northern Europe, and northern and central Asia, and an increase in intense tropical cyclone activity in the North Atlantic since about 1970 (IPCC 2007a, p. 30); and an increase in annual average temperature of more than 2 °F

(1.1 °C) across United States since 1960 (Global Climate Change Impacts in the United States (GCCIOUS) 2009, p. 27). Examples of observed changes in the physical environment include: An increase in global average sea level, and declines in mountain glaciers and average snow cover in both the northern and southern hemispheres (IPCC 2007a, p. 30); substantial and accelerating reductions in Arctic sea-ice (e.g., Comiso *et al.* 2008, p. 1); and a variety of changes in ecosystem processes, the distribution of species, and the timing of seasonal events (e.g., GCCIOUS 2009, pp. 79–88).

The IPCC used Atmosphere-Ocean General Circulation Models and various greenhouse gas emissions scenarios to make projections of climate change globally and for broad regions through the 21st century (Randall *et al.* 2007, pp. 596–599), and reported these projections using a framework for characterizing certainty (Solomon *et al.* 2007, pp. 22–23). For example: (1) It is virtually certain there will be warmer and more frequent hot days and nights over most of the earth's land areas; (2) it is very likely there will be increased frequency of warm spells and heat waves over most land areas, and the frequency of heavy precipitation events will increase over most areas; and (3) it is likely that increases will occur in the incidence of extreme high sea level (excludes tsunamis), intense tropical cyclone activity, and the area affected by droughts (IPCC 2007b, p. 8, Table SPM.2). More recent analyses using a different global model and comparing other emissions scenarios resulted in similar projections of global temperature change across the different approaches (Prinn *et al.* 2011, pp. 527, 529).

All models (not just those involving climate change) have some uncertainty associated with projections due to assumptions used, data available, and features of the models; with regard to climate change this includes factors such as assumptions related to emissions scenarios, internal climate variability, and differences among models. Despite this, however, under all global models and emissions scenarios, the overall projected trajectory of surface air temperature is one of increased warming compared to current conditions (Meehl *et al.* 2007, p. 762; Prinn *et al.* 2011, p. 527). Climate models, emissions scenarios, and associated assumptions, data, and analytical techniques will continue to be refined, as will interpretations of projections, as more information becomes available. For instance, some changes in conditions are occurring more rapidly than initially projected,

such as melting of Arctic sea-ice (Comiso *et al.* 2008, p. 1; Polyak *et al.* 2010, p. 1797), and since 2000, the observed emissions of greenhouse gases, which are a key influence on climate change, have been occurring at the mid-to higher levels of the various emissions scenarios developed in the late 1990s and used by the IPCC for making projections (e.g., Raupach *et al.* 2007, Figure 1, p. 10289; Manning *et al.* 2010, Figure 1, p. 377; Pielke *et al.* 2008, entire). Also, the best scientific and commercial data available indicate that average global surface air temperature is increasing and several climate-related changes are occurring and will continue for many decades even if emissions are stabilized soon (e.g., Meehl *et al.* 2007, pp. 822–829; Church *et al.* 2010, pp. 411–412; Gillett *et al.* 2011, entire).

Changes in climate can have a variety of direct and indirect impacts on species, and can exacerbate the effects of other threats. Rather than assessing “climate change” as a single threat in and of itself, we examine the potential consequences to species and their habitats that arise from changes in environmental conditions associated with various aspects of climate change. For example, climate-related changes to habitats, predator-prey relationships, disease and disease vectors, or conditions that exceed the physiological tolerances of a species, occurring individually or in combination, may affect the status of a species. Vulnerability to climate change impacts is a function of sensitivity to those changes, exposure to those changes, and adaptive capacity (IPCC 2007, p. 89; Glick *et al.* 2011, pp. 19–22). As described above, in evaluating the status of a species, the Service uses the best scientific and commercial data available, and this includes consideration of direct and indirect effects of climate change. As is the case with all potential threats, if a species is currently affected or is expected to be affected by one or more climate-related impacts, this does not necessarily mean the species is an endangered or threatened species as defined under the Act. If a species is listed as endangered or threatened, this knowledge regarding its vulnerability to, and impacts from, climate-associated changes in environmental conditions can be used to help devise appropriate strategies for its recovery.

While we do not have specific information concerning the effect of climate change on spring pygmy sunfish and its habitat, we do know that climate affects groundwater budgets (inflow and outflow) by influencing precipitation and evaporation and, therefore, the rates

and distribution of recharge of the aquifer. Climate also affects human demands for groundwater and affects plant transpiration from shallow groundwater in response to solar energy and changing depths to the water table (Likens 2009, p. 91). Chronic regional drought between 2000 and 2005 within the Tennessee Valley decreased rates of surface water flow and aquifer recharge. Water extraction (of both groundwater and surface water) during drought periods exacerbated damage to the spring pygmy sunfish and its habitat (Sandel 2009, p. 15).

Long-term droughts have impacts on groundwater by increasing groundwater extraction for public consumption and agriculture, which in turn does not replenish surface waters (Likens 2009, p. 91). The prolonged drought within northern Alabama during 2006 to 2008 was exceptional (Jandebeur 2012, p. 13) and, along with the severe drought of 1950 to 1963 (Jandebeur 2012, p. 13), may have contributed to the demise of the Pryor Spring/Branch population of the spring pygmy sunfish by increasing toxic concentrations of herbicides and by increasing the desiccation of aquatic vegetation.

Conservation Efforts To Reduce or Eliminate Other Natural or Manmade Factors

The CCAA will likely reduce some of the threats to groundwater caused by climate change within the upper portion of the species' range by minimizing impacts and helping to maintain groundwater recharge of the aquifer, protecting surface water flow, and limiting groundwater extraction. Under the CCAA, the Service will provide technical assistance and groundwater management advice. Additionally, adaptive management measures of the CCAA concern groundwater usage, including pumping from the aquifer and avoidance of temporary or permanent ground water removal installations. Also under the CCAA, the landowner will not engage in practices that may disturb water quality during low water levels in drought periods, such as pesticide and herbicide use, stock farm ponds, and aquaculture, within the designated protected area. These conservation measures will help protect the species on this property in the near term and also minimize any incidental take of the species that might occur as a result of conducting other covered activities, should the species become listed in our final determination. However, because of anthropogenic factors such as urbanization or intensive agriculture, these conservation measures may be inadequate during drought

periods caused by climate change or other natural phenomena.

Summary of Factor E

In summary, habitat fragmentation and its resulting effects on gene flow and potential demographic impacts within the population is a substantial threat and is affecting the spring pygmy sunfish's continued existence. Climate change, in particular drought, affects groundwater budgets (inflow and outflow) by influencing the rates and distribution of recharge of the aquifer, affects human demands for groundwater, and affects plant transpiration from shallow groundwater reserves. Based on the best available information, we conclude that the spring pygmy sunfish faces threats from other natural or manmade factors affecting its continued existence. These threats continue despite the beneficial effects of the CCAA.

Finding

As required by the Act, we conducted a review of the status of the species and considered the five factors in assessing whether the spring pygmy sunfish is endangered or threatened throughout all or a significant portion of its range. We examined the best scientific and commercial information available regarding the past, present, and future threats faced by the spring pygmy sunfish. We reviewed the petition, information available in our files, and other available published and unpublished information, and we consulted with recognized spring pygmy sunfish experts and other Federal and State agencies.

The identified threats to the spring pygmy sunfish are attributable to Factors A, D, and E, as described in more detail in the Summary of Information Pertaining to the Five Factors section above. The primary threat to the species is from habitat modification (Factor A) in the form of planned urban and industrial development of land adjacent to spring pygmy sunfish habitat and the resultant impacts to the surrounding aquifer recharge area, coupled with ongoing threats associated with ground and surface water withdrawal and water quality within the spring systems where this species currently occurs and historically occurred. We find that this threat of increased urban and industrial development and the associated infrastructure, along with the current human use of the area, is a threat to the spring pygmy sunfish, causing direct mortality as well as permanent loss, fragmentation, or alteration of its habitat.

The degradation of habitat throughout the species' range is ongoing despite the protections afforded by existing Federal and State laws and policies (Factor D). Habitat fragmentation and its resulting effects on gene flow and potential demographic impacts within the population is a threat (Factor E) and is affecting the spring pygmy sunfish's continued existence. The recently established CCAA provides a measure of protection for the species in the upper reach of the population, with the implementation of conservation measures that increase or preserve water quantity and reduce water quality degradation and prohibit any potentially damaging land use actions in that area (Factor A). However, these conservation measures only extend to that portion of the population enrolled in the CCAA, which protects 24 percent of the total occupied habitat. Although this CCAA reduces some of the threats under Factors A and E, the CCAA is not able to ameliorate all of the threat factors to this species rangewide.

Based on our evaluation of the best scientific and commercial information available regarding the past, present, and future threats faced by the spring pygmy sunfish, we have determined the continued existence of the spring pygmy sunfish is under threat from: Ongoing and planned urban and industrial development and associated activities; ongoing agricultural practices, including water extraction from groundwater and surface water; the reduction of aquifer recharge, resulting in changes in hydrology; surface and groundwater pollution; past and present use of fertilizers and pesticides; climate change; inadequate regulatory mechanisms; and habitat fragmentation and resultant interruption in gene flow. These threats exist despite the beneficial effects of the CCAA. Because the species faces these threats throughout its extremely limited range, we find that the spring pygmy sunfish is warranted for listing throughout its range.

Status Evaluation

The Act defines an endangered species as any species that is in danger of extinction throughout all or a significant portion of its range, and a threatened species as one that is likely to become endangered in the foreseeable future throughout all or a significant portion of its range. In this proposal of the status of the spring pygmy sunfish, we take into account the protection afforded to the springhead and upper portion of the population through the established CCAA (helping to moderate threats under Factors A and E), and look carefully at future potential threats,

especially the potential impact of residential and commercial development, which is currently only in the planning stage. Based on our evaluation of the best available scientific and commercial information related to the extremely restricted range of the species, threats to it and its habitat, future potential threats, and conservation measures currently underway through an established CCAA, we have determined that the species is threatened by multiple factors (Factors A, D, and E) throughout all of its range. Specifically, we have determined that the species is likely to become endangered in the foreseeable future, and therefore meets the definition of a threatened species. Threatened status was determined to be proposed for the spring pygmy sunfish because it is not considered to be in immediate danger of extinction primarily due to the ongoing conservation measures in the CCAA, which offers protection to the Beaverdam springhead and the most robust portion of the population. In addition, impacts to the species from large-scale industrial and residential development adjacent to the spring are not imminent, as developments are still in the planning stage. The species is not endangered, because it is not currently in immediate danger of extinction, but as noted, we find that it is likely to become in danger of extinction throughout its range in the foreseeable future, which is the definition of a threatened species. Because the range of the species consists of a single occurrence location, and we have determined that the species is at risk of becoming endangered in that location, we do not need to further analyze whether there may be a significant portion of the range of the species that has a different status.

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain practices. Recognition of a species through listing results in increased public awareness and more focused conservation efforts by Federal, State, Tribal, and local agencies; private organizations; and individuals. The Act encourages cooperation with the States and requires that recovery actions be carried out for all listed species. The protection measures required of Federal agencies and the prohibitions against certain activities involving listed wildlife are discussed, in part, below, and

additionally in the Effects of Critical Habitat Designation section of this proposed rule below.

The primary purpose of the Act is the conservation of endangered and threatened species and the ecosystems upon which they depend. The ultimate goal of such conservation efforts is the recovery of these listed species, so that they no longer need the protective measures of the Act. Subsection 4(f) of the Act requires the Service to develop and implement recovery plans for the conservation of endangered and threatened species. The recovery planning process involves the identification of actions that are necessary to halt or reverse the species' decline by addressing the threats to its survival and recovery. The goal of this process is to restore listed species to a point where they are secure, self-sustaining, and functioning components of their ecosystems.

Recovery planning includes the development of a recovery outline shortly after a species is listed, preparation of a draft and final recovery plan, and revisions to the plan as significant new information becomes available. The recovery outline guides the immediate implementation of urgent recovery actions and describes the process to be used to develop a recovery plan. The recovery plan identifies site-specific management actions that will achieve recovery of the species, measurable criteria that determine when a species may be downlisted or delisted, and methods for monitoring recovery progress. Recovery plans also establish a framework for agencies to coordinate their recovery efforts and provide estimates of the cost of implementing recovery tasks. Recovery teams (comprised of species experts, Federal and State agencies, nongovernment organizations, and stakeholders) are often established to develop recovery plans. When completed, the recovery outline, draft recovery plan, and the final recovery plan will be available on our Web site (<http://www.fws.gov/angered>), or from our Mississippi Ecological Services Field Office (see **FOR FURTHER INFORMATION CONTACT**).

Implementation of recovery actions generally requires the participation of a broad range of partners, including other Federal agencies, States, Tribal, nongovernmental organizations, businesses, and private landowners. Examples of recovery actions include habitat restoration (e.g., restoration of native vegetation), research, captive propagation and reintroduction, and outreach and education. The recovery of many listed species cannot be accomplished solely on Federal lands

because their range may also occur on non-Federal lands. To achieve recovery of these species requires cooperative conservation efforts on private, State, and Tribal lands. The CCAA between the Service, Belle Mina Farms Ltd., and the Land Trust identifies several strategies that will support recovery efforts, including: (1) Maintenance of vegetation buffer zones along the springs; (2) prohibition of cattle within the spring; (3) prohibition of deforestation, land clearing, industrial development, residential development, aquaculture, temporary or permanent ground water removal installations, stocked farm ponds, pesticide and herbicide use, and impervious surface installation within the protected area of the CCAA; and (4) establishment of a biological monitoring program for the spring pygmy sunfish and its habitat.

If this species is listed, funding for recovery actions will become available from a variety of sources, including Federal budgets, State programs, and cost share grants for non-Federal landowners, the academic community, and nongovernmental organizations. In addition, under section 6 of the Act, the State of Alabama would be eligible for Federal funds to implement management actions that promote the protection and recovery of the spring pygmy sunfish. Information on our grant programs that are available to aid species recovery can be found at: <http://www.fws.gov/grants>.

Although the spring pygmy sunfish is only proposed for listing under the Act at this time, please let us know if you are interested in participating in recovery efforts for this species. Additionally, we invite you to submit any new information on this species whenever it becomes available and any information you may have for recovery planning purposes (see **FOR FURTHER INFORMATION CONTACT**).

Section 7(a) of the Act requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened and with respect to its critical habitat, if any is designated. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR part 402. Section 7(a)(4) of the Act requires Federal agencies to confer with the Service on any action that is likely to jeopardize the continued existence of a species proposed for listing or result in destruction or adverse modification of proposed critical habitat. If a species is listed subsequently, 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 destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency must enter into formal consultation with the Service.

Federal agency actions within the species' habitat that may require conference or consultation or both as described in the preceding paragraph include Federal activities that may affect spring pygmy sunfish, including, but not limited to: The carrying out or the issuance of permits for discharging fill material on wetlands for road or highway construction; installation of utility easements; development of residential, industrial, and commercial facilities; unsustainable farming practices, including indiscriminate use of chemicals, and decreasing buffers around fields and drainage ditches and swales; channeling or other stream geomorphic changes; discharge of contaminated or sediment laden waters; wastewater facility development; and excessive groundwater and surface water extraction. Additional actions that may require conference or consultation or both include:

(1) Actions that would significantly alter the structure and function of the spring system. Such actions or activities could include, but are not limited to, the filling or excavation of spring heads, spring pools, spring-fed wetlands, and spring runs. The filling or excavation of the spring system would alter the hydrology of the site and would destroy the vegetation, water quality, and water quantity where spring pygmy sunfish spends all of its life stages. The filling or excavation of the spring systems could result in the direct mortality of the species where the species is known to occur.

(2) Actions that would significantly alter the aquatic vegetation structure in and around the spring associated wetland. Such actions or activities could include, but are not limited to, vegetation cutting or herbicide usage for expanding or maintaining roads, construction of new roads, maintenance of agricultural fields, construction of new agricultural fields, development of new residences, development of new commercial establishments, or industrial development. Alteration of the vegetation structure would likely change the spring-fed wetland characteristics by changing the microhabitat (e.g., change in temperature and humidity levels) and could result in direct mortality of individuals and egg clutches through desiccation from sun exposure.

(3) Actions that may alter the natural outflow and quantity of water from the spring head and through the spring run into the stream channels. Such actions or activities could include, but are not limited to, changes in the hydrology of Beaverdam Spring/Creek and related recharge area and aquifer. These actions include, but are not limited to, excessive water extraction for public, municipal, industrial, and agricultural usages.

(4) Actions that would significantly degrade water quality parameters such as pH, alkalinity, conductivity, turbidity, and others (i.e., contaminants, excess nutrients). Stormwater discharge laden with chemicals and sediments can enter groundwater and surface water systems. Decreasing water quantity concentrates chemicals and also encourages eutrophic (nutrient rich) conditions.

The Act and its implementing regulations set forth a series of general prohibitions and exceptions that apply to all endangered wildlife. The prohibitions of section 9(a)(1) of the Act, and its implementing regulations at 50 CFR 17.21, make it illegal for any person subject to the jurisdiction of the United States to take (which includes harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt any of these), import, export, ship in interstate commerce in the course of commercial activity, or sell or offer for sale in interstate or foreign commerce any listed species. The regulations at 50 CFR 17.31 extend the prohibitions listed above to threatened species, with certain exceptions. Under the Lacey Act (18 U.S.C. 42–43; 16 U.S.C. 3371–3378), it is also illegal to possess, sell, deliver, carry, transport, or ship any such wildlife that has been taken illegally. Certain exceptions apply to agents of the Service and State conservation agencies.

We may issue permits to carry out otherwise prohibited activities involving endangered and threatened wildlife species under certain circumstances. Regulations governing permits are codified at 50 CFR 17.22 for endangered species, and at 17.32 for threatened species. With regard to endangered wildlife, a permit must be issued for take for the following purposes: for scientific purposes, to enhance the propagation or survival of the species, and for incidental take in connection with otherwise lawful activities.

It is our policy, as published in the *Federal Register* on July 1, 1994 (59 FR 34272), to identify, to the maximum extent practicable at the time a species is listed, those activities that would or would not constitute a violation of section 9 of the Act. The intent of this

policy is to increase public awareness of the effect of a proposed listing on proposed and ongoing activities within the range of the species proposed for listing. The following activities could potentially result in a violation of section 9 of the Act; this list is not comprehensive:

(1) Unauthorized collecting, handling, possessing, selling, delivering, carrying, or transporting of the species, including import or export across State lines and international boundaries, except for properly documented antique specimens of these taxa at least 100 years old, as defined by section 10(h)(1) of the Act;

(2) Introduction of species that compete with or prey upon the spring pygmy sunfish;

(3) The unauthorized release of biological control agents that attack this species' habitat or any of its life stages;

(4) Unauthorized modification of the vegetation composition or hydrology, or violation of any discharge or water withdrawal permit that results in harm or death to any individuals of this species or that results in degradation of its occupied habitat to an extent that essential behaviors such as breeding, feeding, and sheltering are impaired;

(5) Unauthorized destruction or alteration of their habitats (such as channelization, dredging, sloping, removing of substrate, or discharge of fill material) that impairs essential behaviors, such as breeding, feeding, or sheltering, or that results in killing or injuring spring pygmy sunfish; and

(6) Unauthorized discharges or dumping of toxic chemicals or other pollutants into the aquifer directly through wells or into the spring system or indirectly into recharge areas supporting spring pygmy sunfish that kills or injures the species or that otherwise impairs essential life-sustaining requirements, such as breeding, feeding, or sheltering (destruction of vegetation and substrate).

Questions regarding whether specific activities would constitute a violation of section 9 of the Act should be directed to the Mississippi Ecological Services Field Office (see **FOR FURTHER INFORMATION CONTACT**). Requests for copies of the regulations concerning listed animals and general inquiries regarding prohibitions and permits may be addressed to the U.S. Fish and Wildlife Service, Endangered Species Permits, 1875 Century Blvd. NE., Atlanta, GA 30345 (telephone 404–679–7313; facsimile 404–679–7081).

Critical Habitat

Background

It is our intent to discuss below only those topics directly relevant to the designation of critical habitat for the spring pygmy sunfish in this section of the proposed rule.

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 that such areas are essential for the conservation of the species.

Conservation, as defined under section 3 of the Act, means to use and the use of all methods and procedures that are necessary to bring an endangered or threatened species to the point at which the measures provided under the Act are no longer necessary. Such methods and procedures include, but are not limited to, all activities associated with scientific resources management such as research, census, law enforcement, habitat acquisition and maintenance, propagation, live trapping, and transplantation, and, in the extraordinary case where population pressures within a given ecosystem cannot be otherwise relieved, may include regulated taking.

Critical habitat receives protection under section 7 of the Act through the requirement that Federal agencies ensure, in consultation with the Service, that any action they authorize, fund, or carry out is not likely to result in the destruction or adverse modification of 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 obligation of the Federal action agency and the landowner is not to restore or recover the species, but to implement reasonable and prudent alternatives to avoid destruction or adverse modification of critical habitat.

Under the first prong of the Act's definition of critical habitat, areas within the geographic area occupied by the species at the time it is listed are included in a critical habitat designation if they contain physical or biological features (1) which are essential to the conservation of the species and (2) which may require special management considerations or protection. In identifying those physical and biological features within an area, we focus on the principal biological or physical constituent elements (primary constituent elements (PCEs) such as roost sites, nesting grounds, seasonal wetlands, water quality, tide, soil type) that are essential to the conservation of the species. Primary constituent elements are the elements of physical or biological features that, when laid out in the appropriate quantity and spatial arrangement to provide for a species' life-history processes, are essential to the conservation of the species.

Under the second prong of the Act's definition of critical habitat, we can designate critical habitat in areas outside the geographic area occupied by the species at the time it is listed, upon a determination that such areas are essential for the conservation of the species. We designate critical habitat in areas outside the geographic area occupied by a species only when a designation limited to occupied habitat would be inadequate to ensure the conservation of the species.

Section 4 of the Act requires that we designate critical habitat on the basis of the best scientific and commercial data available. Further, our Policy on Information Standards under the Endangered Species Act (published in the **Federal Register** on July 1, 1994 (59 FR 34271)), the Information Quality Act (section 515 of the Treasury and General Government Appropriations Act for Fiscal Year 2001 (Pub. L. 106-554; H.R. 5658)), and our associated Information Quality Guidelines provide criteria, establish procedures, and provide guidance to ensure that our decisions are based on the best scientific data available. They require our biologists, to the extent consistent with the Act and with the use of the best scientific data available, to use primary and original sources of information as the basis for recommendations to designate critical habitat.

When we are determining which areas should be designated as critical habitat, our primary source of information is generally the information developed during the listing process for the species. Additional information sources may include the recovery plan for the species, articles in peer-reviewed journals, conservation plans developed by States and counties, scientific status surveys and studies, biological assessments, other unpublished materials, or experts' opinions or personal knowledge.

Habitat is dynamic, and species may move from one area to another over time. We recognize that critical habitat designated at a particular point in time may not include all of the habitat areas that we may later determine are necessary for the recovery of the species. For these reasons, a critical habitat designation does not signal that habitat outside the designated area is unimportant or may not be needed for recovery of the species. If we list the spring pygmy sunfish and designate critical habitat for the species, areas that are important to the conservation of the species, both inside and outside the critical habitat designation, would continue to be subject to: (1) Conservation actions implemented under section 7(a)(1) of the Act, (2) regulatory protections afforded by the requirement in section 7(a)(2) of the Act for Federal agencies to ensure their actions are not likely to jeopardize the continued existence of any endangered or threatened species, and (3) the prohibitions of section 9 of the Act if actions occurring in these areas may affect the species. Federally funded or permitted projects affecting listed species outside their designated critical habitat areas may still result in jeopardy findings in some cases. These protections and conservation tools would continue to contribute to recovery of this species. Similarly, critical habitat designations made on the basis of the best available information at the time of designation would not control the direction and substance of future recovery plans, habitat conservation plans (HCPs), or other species conservation planning efforts if new information available at the time of these planning efforts calls for a different outcome.

Prudency Determination

Section 4(a)(3) of the Act, as amended, and implementing regulations (50 CFR 424.12) require that the Secretary designate critical habitat at the time the species is determined to be endangered or threatened to the maximum extent prudent and

determinable. These regulations (50 CFR 424.12(a)(1)) state that the designation of critical habitat is not prudent when one or both of the following situations exist: (1) The species is threatened by taking or other human activity, and identification of critical habitat can be expected to increase the degree of threat to the species; or (2) such designation of critical habitat would not be beneficial to the species.

As we have discussed above under the Factor B analysis, there is currently no imminent threat of take attributed to collection (for commercial, recreational, scientific, or educational purposes) of this species. Moreover, there is no information to indicate that identification of critical habitat is expected to create such a threat to the species. In the absence of a finding that the designation of critical habitat would increase threats to a species, then a prudent finding is warranted if there are any benefits to a critical habitat designation. Potential benefits of designation include: (1) Triggering consultation under section 7 of the Act, in new areas for actions in which there may be a Federal nexus where it would not otherwise occur because, for example, it is or has become unoccupied or the occupancy is in question; (2) focusing conservation activities on the most essential features and areas; (3) providing educational benefits to State or county governments or private entities; and (4) preventing people from causing inadvertent harm to the species.

The primary regulatory effect of critical habitat is the section 7(a)(2) requirement that Federal agencies refrain from taking any action that destroys or adversely modifies critical habitat. Lands proposed for designation as critical habitat would be subject to Federal actions that trigger section 7 consultation requirements. These include land management planning and Federal agency actions. There may also be educational or outreach benefits to the designation of critical habitat. Critical habitat designation identifies those physical and biological features of the habitat essential to the conservation of spring pygmy sunfish and that may require special management and protection. Accordingly, this designation would provide information to individuals, local and State governments, and other entities engaged in activities or long-range planning in areas essential to the conservation of the species. Conservation of the spring pygmy sunfish and the essential features of its habitat requires habitat management, protection, and restoration, which would be facilitated

by knowledge of habitat locations and the physical and biological features of the habitat. Based on this information, we believe critical habitat would be beneficial to this species. Therefore, we have determined that the designation of critical habitat for spring pygmy sunfish is prudent.

Determinability

Our regulations (50 CFR 424.12(a)(2)) state that critical habitat is not determinable when one or both of the following situations exist: (1) Information sufficient to perform required analysis of the impacts of the designation is lacking, or (2) the biological needs of the species are not sufficiently well known to permit identification of an area as critical habitat.

Delineation of critical habitat requires identification of the physical and biological habitat features that are essential to the conservation of the species. We have reviewed the available information pertaining to the known distribution of spring pygmy sunfish and the characteristics of the habitat currently occupied. This information represents the best scientific and commercial data available and leads us to conclude that, although available information is limited, it is sufficient to identify specific areas that meet the definition of critical habitat. Therefore, we have found that critical habitat is determinable for spring pygmy sunfish.

Physical or Biological Features

In accordance with section 3(5)(A)(i) and 4(b)(1)(A) of the Act and regulations at 50 CFR 424.12, in determining which areas within the geographical area occupied by the species at the time of listing to designate as critical habitat, we consider the physical or biological features essential to the conservation of the species and which may require special management considerations or protection. These include, but are not limited to:

- (1) Space for individual and population growth and for normal behavior;
- (2) Food, water, air, light, minerals, or other nutritional or physiological requirements;
- (3) Cover or shelter;
- (4) Sites for breeding, reproduction, 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.

We derive the specific physical and biological features required for the spring pygmy sunfish from studies of

this species' habitat, ecology, and life history as described in the Background section of this proposed rule and information presented below. There is limited information on this species' specific habitat requirements, other than it requires springs and connecting spring-fed reaches and wetlands; an adequate groundwater and surface water hydrology; and clean, cool water and the associated vegetation and invertebrates. To identify the physical and biological needs of the species, we have relied on current conditions at the locations where the species exists today and the limited information we have on historical sites, limited information available on this species and its close relatives, and factors associated with the decline and extirpation of this and other spring-associated fish species.

Space for Individual and Population Growth and for Normal Behavior

Spring pygmy sunfish depend on geomorphically stable spring systems including the spring head, spring run, and spring pools. The spring systems used by the species also include transition zones between these features on moderately low-gradient topographic slopes that feather out into spring-fed wetland pools. The spring pygmy sunfish inhabits spring pools, spring runs, and spring-fed streams and pools with substrates of silt, sand, and gravel.

The current range of the spring pygmy sunfish is reduced to localized sites due to fragmentation of the spring systems on which it depends. Fragmentation of the species' habitat has isolated populations and reduced available space for spawning, rearing of young, concealment, and foraging. As a result, the spring pygmy sunfish's adaptive capability has been reduced, and the likelihood of local extinctions has increased (Burkhead *et al.* 1997, pp. 397–399; Hallerman 2003, pp. 363–364). Connectivity of spring systems maintains spawning, foraging, and resting sites, and allows for gene flow throughout the population. Genetic variation and diversity within a species are essential for recovery, adaptation to environmental changes, and long-term viability (capability to live, reproduce, and develop) (Harris 1984, pp. 93–107; Noss and Cooperrider 1994, pp. 282–297; Fluker *et al.* 2007, p. 2). Long-term viability is founded on space for numerous interbreeding, local populations throughout the range (Harris 1984, pp. 93–107).

Therefore, based on the information above, we identify springs and connecting spring-fed reaches and wetlands of geomorphically stable, relatively low-gradient, headwater

springs with spring heads, spring runs, and spring pools that filter into shallow vegetated wetlands to be an essential physical or biological feature for the spring pygmy sunfish. The connectivity of these habitats is essential in accommodating feeding, breeding, growth, and other normal behaviors of the spring pygmy sunfish and in promoting gene flow within the population.

Food, Water, Air, Light, Minerals, or Other Nutritional or Physiological Requirements

Water Quality

Exceptional water quality at the spring heads and pools, and adequate water quality throughout the habitat, maintained by unobstructed water flow through connected spring habitats, are essential for normal behavior, growth, and viability during all life stages of the spring pygmy sunfish. Suitable habitat conditions for the spring pygmy sunfish have not been investigated thoroughly; however, some data specific to the species are available for the following water quality parameters: pH, water temperature, specific conductivity (ability of water to conduct an electric current, based on dissolved solids in the water), and alkalinity (capacity of solutes in an aqueous system to neutralize acid as HCO₃). Spring pygmy sunfish males establish territories and spawn in late February through April, when water quality parameters are within a suitable pH range of 6.0 to 7.7, and water temperatures are between 57.2 and 68 °F (14 and 20 °C) (Mettee 2008, p. 36; Sandal, 2007, p. 2; Rakes *et al.* 2011, p. 4). A specific conductivity of 5.5 to 14.2 micro Siemens per centimeter at 61 °F (16 °C) and alkalinity of 20 to 66 milligrams per liter (mg/l) have been reported from habitat occupied by spring pygmy sunfish (Jandebeur 1997, p. 34).

Essential water quality attributes for the spring pygmy sunfish may be inferred from those of other fish species living in medium water flow streams along with baseline spring and subsurface water quality information obtained from systems within Limestone County, adjacent counties, and elsewhere. Based on yearly averages, these include: (1) Dissolved oxygen levels greater than 6 parts per million (ppm); (2) temperatures between 45 and 80 °F (7.2 and 26.7 °C), with spring egg incubation temperatures from 54 to 65 °F (12.2 to 18.3 °C); (3) specific conductivity of less than approximately 300 micro Siemens per centimeter at 80 °F (26.7 °C); and (4) concentrations of free or suspended solids (organic and

inorganic sediments) less than 15 Nephelometric Turbidity Units (NTU; units used to measure sediment discharge) and 20 mg/L total suspended solids (TSS; measured as mg/L of sediment in water) (Teels *et al.* 1975, pp. 8–9; Ultschet *et al.* 1978, pp. 99–101; Ingersoll *et al.* 1984, pp. 131–138; Chandler *et al.* 1987, pp. 56–57; Kundell and Rasmussen 1995, pp. 211–212; Henley *et al.* 2000, pp. 125–139; Meyer and Sutherland 2005, pp. 43–64; McGregor *et al.* 2008, pp. 7–9; Knight 2011, pp. 3–8).

Nonpoint and point sources of ammonia and chlorine from commercial water extraction facilities and agricultural fields may be primary factors in reducing the quality of spring run waters for spring pygmy sunfish. Agricultural withdrawals can reduce or eliminate the volume of groundwater that is being discharged into the species' habitat and affect water temperatures and other physical parameters.

Temperature greatly influences the form and toxicity of ammonia and chlorine. Higher temperatures result in a shift from the nontoxic ammonium ion (NH₄⁺) to highly toxic ammonia (NH₃). Chlorine is also more toxic at higher temperatures (Hoffman *et al.* 2003, p. 681). Thus, higher temperatures during the summer, along with drought and reduced spring flows, may intensify impacts from these two chemicals on the life stages and habitats of the spring pygmy sunfish.

Therefore, we identify the following water quality parameters to be an essential physical or biological feature for the spring pygmy sunfish, based on yearly averages: Optimal temperatures of 57.2 to 68 °F (14 to 20 °C) and not exceeding 80 °F (26.7 °C); pH of 6.0 to 7.7; dissolved oxygen of 6.0 ppm or greater; specific conductivity no greater than 300 micro Siemens per centimeter at 80 °F (26.7 °C); and low concentrations of free or suspended solids with turbidity measuring less than 15 NTU and 20 mg/L TSS.

Water Quantity

Water flow and water quantity may also vary according to season, precipitation events, and human activities, such as groundwater and surface water extraction, within the recharge area of the spring system. Agriculture, industrial or human consumption, silviculture, maintenance of roadways and utilities, and urbanization and industrialization projects are activities that may use water that would otherwise recharge spring systems. Connectivity of spring systems is also important for maintaining water quality. Adequate groundwater and

recharge rates, and spring water outflow, are important to the conservation of the spring pygmy sunfish.

Therefore, based on the information above, we identify a hydrologic flow regime (magnitude, frequency, duration, and seasonality of discharge overtime) necessary to maintain spring habitats to be an essential physical or biological feature for the spring pygmy sunfish. The instream flow from groundwater sources (spring and seep) maintains a velocity and a continuous daily discharge from the aquifer that allows for connectivity between habitats. Instream flow is stable and does not vary during water extraction, and the aquifer recharge maintains adequate levels to supply water flow to the spring head. The flow regime does not significantly change during storm events.

Food

All pygmy sunfish species stalk invertebrates by using the dense submergent vegetation within the spring system to conceal their foraging activity (Walsh and Burr 1984, pp. 45–46). The aquatic vegetation provides a ready source of food (Petty *et al.* 2011, p. 2) and habitat for invertebrates. Daphnia, amphipods, chironomid larvae, and small snails are the major components of the spring pygmy sunfish's diet (Slate 1993, p. 3; Sandel 2009, p. 9).

Cover or Shelter and Sites for Breeding, Reproduction, or Rearing

The spring pygmy sunfish relies heavily on aquatic and emergent vegetation in the shallow water along the margins of the runs and pools of the spring systems where the fish occurs. The vegetation provides cover and shelter necessary for breeding, reproduction and growth of offspring, concealment from predators, and foraging. Species of submergent and emergent vegetation providing important habitat for the spring pygmy sunfish include clumps and stands of *Sparganium* spp. (bur reed), *Ceratophyllum* spp. (coontail), *Nasturtium officinale* (watercress), *Juncus* spp. (rush), *Carex* spp. (sedges), *Nuphar luteum* (yellow pond lily), *Myriophyllum* spp. (parrot feather), *Utricularia* sp. (bladderwort), *Polygonum* spp. (smartweed), *Lythrum salicaria* (purple loosestrife), and *Callitriche* spp. (water starwort) (Mayden 1993, p. 11; Jandebour 1997, pp. 42–44; Sandel 2011, pp. 3–5, 9–11). Sandel (2009, p. 14) suggested that concentration of spring pygmy sunfish may be associated with thick and abundant *Ceratophyllum echinatum* and

that the species decreases as distances increase from spring pools.

Therefore, based on the information above, we identify aquatic, emergent and semi-emergent vegetation along the margins of spring runs and submergent vegetation that is adequate for breeding, reproducing, and rearing young; providing cover and shelter from predators; and supporting the prey base of aquatic macroinvertebrates eaten by spring pygmy sunfish to be an essential physical or biological feature for the spring pygmy sunfish.

Primary Constituent Elements for the Spring Pygmy Sunfish

Under the Act and its implementing regulations, we are required to identify the physical and biological features essential to the conservation of the spring pygmy sunfish in areas occupied at the time of listing (i.e., areas that are currently occupied), focusing on the features' primary constituent elements. We consider primary constituent elements (PCEs) to be the elements of physical and biological features that provide for a species' life-history processes and that are essential to the conservation of the species.

Based on our current knowledge of the physical or biological features and habitat characteristics required to sustain the species' life-history processes, as discussed above, we determine that the PCEs specific to the spring pygmy sunfish are:

(1) *Spring system*. Springs and connecting spring-fed reaches and wetlands that are geomorphically stable and relatively low-gradient. This includes headwater springs with spring heads, spring runs, and spring pools that filter into shallow, vegetated wetlands.

(2) *Water quality*. Yearly averages of water quality with optimal temperatures of 57.2 to 68 °F (14 to 20 °C) and not exceeding 80 °F (26.7 °C); pH of 6.0 to 7.7; dissolved oxygen of 6.0 ppm or greater; specific conductivity no greater than 300 micro Siemens per centimeter at 80 °F (26.7 °C); and low concentrations of free or suspended solids with turbidity measuring less than 15 NTU and 20 mg/L TSS.

(3) *Hydrology*. A hydrologic flow regime (magnitude, frequency, duration, and seasonality of discharge over time) necessary to maintain spring habitats. The instream flow from groundwater sources (springs and seeps) maintains an adequate velocity and a continuous daily discharge from the aquifer that allows for connectivity between habitats. Instream flow is stable and does not vary during water extraction, and the aquifer recharge maintains

adequate levels to supply water flow to the spring head. The flow regime does not significantly change during storm events.

(4) *Vegetation and Prey Base.* Aquatic, emergent and semi-emergent vegetation along the margins of spring runs and submergent vegetation that is adequate for breeding, reproducing, and rearing young; providing cover and shelter from predators; and supporting the prey base of aquatic macroinvertebrates eaten by spring pygmy sunfish. Important species of submergent and emergent vegetation include clumps and stands of *Spartanium* spp. (bur reed), *Ceratophyllum* spp. (coontail), *Nasturtium officinale* (watercress), *Juncus* spp. (rush), *Carex* spp. (sedges), *Nuphar luteum* (yellow pond lily), *Myriophyllum* spp. (parrot feather), *Utricularia* spp. (bladderwort), *Polygonum* spp. (smartweed), *Lythrum salicaria* (purple loosestrife), and *Callitriche* spp. (water starwort).

Special Management Considerations or Protections

When designating critical habitat, we assess whether the specific areas within the geographical area occupied by the species at the time of listing contain features which are essential to the conservation of the species and which may require special management considerations or protection.

We find that the essential features within the area occupied at the time of listing may require special management consideration or protection due to threats to spring pygmy sunfish and its habitat. The sole proposed unit that is occupied is adjacent to roads, homes, or other manmade structures in which various activities in or adjacent to the critical habitat unit may affect one or more of the physical and biological features. The features essential to the conservation of this species are the spring systems that may require special management considerations or protection to reduce the following threats or potential threats: Reduction of water quantity of the groundwater/surface hydrology by water extraction from springs or the aquifer that provides water to the spring, and surface flow to Beaverdam Creek and Pryor Branch; changes in the composition and abundance of vegetation in the spring; alteration of the bottom substrate and normal sinuosity of the system from fill material within the spring systems and spring-fed wetlands for development projects; degradation of water quality from uncontrolled discharge of stormwater draining agricultural fields, roads, bridges, and urban areas; careless agricultural practices including

unmanaged livestock grazing; and road, bridge, and utility easement maintenance (e.g., use of herbicides and resurfacing or sealant materials).

Management activities that could ameliorate these threats or potential threats include, but are not limited to: Establishing permanent conservation easements or land acquisition to protect the species on private lands; establishing additional conservation agreements on private lands to identify and reduce threats to the species and its features; minimizing habitat disturbance, fragmentation, and destruction by maintaining suitable fish passage structures under roads; providing significant buffers around the spring components such as the spring head, spring pool, and spring run; monitoring and regulating the withdrawal and use of groundwater and surface water of the Beaverdam Spring/Creek system; preventing the diminishing of the aquifer recharge area by increasing the pervious area for percolation of rainfall back into the aquifer; limiting impervious substrates; and minimizing water quality degradation by stormwater runoff with catchment basins, vegetated bioswales, and other appropriate best management practices.

Criteria Used To Identify Critical Habitat

As required by section 4(b)(2) of the Act, in developing this proposed rule, we used the best scientific data available to propose critical habitat for the spring pygmy sunfish. We reviewed available information that pertains to the habitat requirements of the species. In accordance with the Act and its implementing regulation at 50 CFR 424.12(e), we considered whether designating additional areas outside those currently occupied (which would mean occupied at the time of listing) is necessary to ensure the conservation of the species. We are proposing to designate critical habitat in areas within the geographic area currently occupied by the species (i.e., that would be considered occupied at the time of listing). We are also proposing to designate specific areas outside the geographic area currently occupied by the species but that were historically occupied, because such areas are essential for the conservation of the species.

We began our determination of which areas to propose for critical habitat with an assessment of the critical life-history components of the spring pygmy sunfish, as they relate to habitat. We then evaluated current and historical sites to establish what areas are

currently occupied and contain the physical and biological features that are essential to the conservation of the species and that may require special management considerations or protection, as well as unoccupied sites that might be essential for the conservation of the species. We reviewed the available information pertaining to historic and current distributions, life histories, and habitat requirements of this species. Our sources included surveys, unpublished reports, and peer-reviewed scientific literature prepared by the Alabama Department of Conservation and Natural Resources, Alabama Geological Survey, Athens State University, University of Alabama, the Service, spring pygmy sunfish researchers and others, as well as Geographic Information System (GIS) data (such as species occurrence data, habitat data, land use topography, digital aerial photography, and ownership maps).

Currently, occupied habitat is confined to a single population consisting of four spring pools within the upper Beaver Dam Spring/Creek complex in Limestone County, Alabama. We believe that this area contains all PCEs to support life-history functions essential to the conservation of the species. However, this single population is at risk of extirpation from stochastic events such as periodic droughts and from existing or potential human-induced events (i.e., development, excessive water extraction, chemical contamination). To reduce the risk of losing this single population through these processes, it is important to establish additional populations in areas where suitable habitat exists. Therefore, in identifying unoccupied spring/stream reaches that could be essential for the conservation of the spring pygmy sunfish, we first considered the availability of potential habitat throughout the historical range that may be suitable for the survival and persistence of the species. We eliminated from consideration spring/stream reaches without any historical records of spring pygmy sunfish occurrences. We identified two sites with recorded historical occurrences of the spring pygmy sunfish: one in Pryor Springs in Limestone County, Alabama, and a second in Cave Springs in Lauderdale County, Alabama. The Cave Spring site was excluded from consideration because it was inundated with the formation of Wheeler Reservoir in 1939. However, the Pryor Spring/Branch site, which supported a population of spring pygmy sunfish prior to 2007 west of Highway 31, was

determined to have portions of the PCEs sufficient to support the life-history functions of the species. This currently unoccupied stream will provide habitat for population reintroduction into a separate stream system and reduce the level of stochastic threats to the species' survival, decrease the risk of extinction for the species, and contribute to the species' eventual recovery. Accordingly, we determined that it is essential for the conservation of the species, and therefore propose to designate it as critical habitat.

We delineated the critical habitat unit boundaries by determining the appropriate length within these streams by identifying the upper spring head (water source), spring pool, spring run, spring-fed wetlands, seeps, and ephemeral streams draining into the spring systems. We digitized the area boundary based upon visual interpretation of wetland vegetation using ARCGIS. The high water line in springs indicates stable flow under normal conditions. As defined at 33 CFR 329.11, the ordinary high water line on nontidal rivers and streams is the line on the shore established by the fluctuations of water and indicated by physical characteristics such as a clear, natural water line impressed on the bank; shelving; changes in the character of soil; destruction of terrestrial vegetation; the presence of litter and debris; or other appropriate means that consider the characteristics of the surrounding areas. For the spring pools and associated spring-fed wetlands, the

area was determined and delineated by the presence of emergent vegetation patterns and topography as noted on aerial photographs and topographical maps, and during field visits. In order to set the upstream and downstream limits of these critical habitat units, we used the spring head as the uppermost point, identified by topographic maps, field visits, and available landmarks (i.e., bridges and road crossings). Locations of the spring pygmy sunfish below or downstream of the spring head were included in order to ensure incorporation of all potential sites of occurrence. These stream reaches were then digitized using 7.5' topographic maps and ARCGIS to produce the critical habitat maps.

When determining proposed critical habitat boundaries, 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 spring pygmy sunfish. The scale of the map 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 proposed rule have been excluded by text in the proposed rule and are not proposed for designation as critical habitat. Therefore, if the critical habitat is finalized as proposed, a Federal action involving these lands would not trigger a section 7

consultation with respect to critical habitat and the requirement of no adverse modification unless the specific action would affect the physical or biological features in the adjacent critical habitat.

The critical habitat designation is defined by the map or maps, as modified by any accompanying regulatory text, presented at the end of this document in the rule portion. We include more detailed information on the boundaries of the critical habitat designation in this preamble. We will make the coordinates or plot points or both on which each map is based available to the public on <http://www.regulations.gov> at Docket No. FWS-R4-ES-2012-0068, on our Web site <http://www.fws.gov/mississippiES/>, and at the Mississippi Ecological Services Field Office (see **FOR FURTHER INFORMATION CONTACT** above).

Proposed Critical Habitat Designation

We are proposing two units as critical habitat for spring pygmy sunfish. The critical habitat areas described below constitute our current best assessment of the areas that meet the definition of critical habitat for spring pygmy sunfish. The two areas proposed as critical habitat are as follows: (1) Beaverdam Spring/Creek, which is currently occupied; and (2) Pryor Spring/Branch, which is currently unoccupied. Table 1 shows the occupancy of the units and ownership of the proposed critical habitat units for the spring pygmy sunfish.

TABLE 1—OCCUPANCY AND OWNERSHIP OF THE PROPOSED CRITICAL HABITAT UNITS FOR THE SPRING PYGMY SUNFISH IN LIMESTONE COUNTY, ALABAMA

[Area estimates reflect all land within the critical habitat unit boundary.]

Unit	Location	Occupied	Private ownership km (mi); ha (ac)	Federal ownership km (mi); ha (ac)	Total length km (mi)	Total area ha (ac)
1	Beaverdam Spring/Creek	Yes	5.9 (3.7); 237 (586)	3.5 (2.21); 344 (849)	9.5 (5.9)	580.7 (1,435)
2	Pryor Spring/Branch	No	0.2 (0.15); 8.1 (20)	3.1 (1.95); 65.6 (162)	3.4 (2.1)	73.6 (182)
Total ..	.....	.....	6.1 (3.8); 245 (606)	6.6 (4.16); 409.6 (1,011)	12.9 (8.0)	654.3 (1,617)

* Totals may not sum due to rounding.

We present brief descriptions of each unit and reasons why they meet the definition of critical habitat below. The proposed critical habitat units include the spring systems, which are composed of the spring heads and the flooded spring pools and spring-fed wetlands within Beaverdam Spring/Creek and Pryor Spring/Branch.

Unit 1: Beaverdam Spring/Creek, Limestone County, Alabama

Unit 1 includes a total of 9.5 km (5.9 mi) of Beaverdam Spring/Creek, northeast of Greenbrier, Alabama, from the spring head, 5.6 km (3.5 mi) north of Interstate 565, to 3.9 km (2.4 mi) south of Interstate 565. Unit 1 encompasses Moss, Horton, and Thorsen springs. This includes a total of 580.7 hectares (1,435 acres).

Almost 5.9 km (3.7 mi), or 63 percent of the stream reach, and 237 ha (586 ac) (41 percent) of the area are privately owned. The remaining 3.5 km (2.21 mi), or 37 percent of the stream reach, and 344 ha (849 ac) of the area (59 percent) are owned by the Service as part of the Wheeler National Wildlife Refuge.

Unit 1 is currently occupied and contains the only known metapopulation of the species. Unit 1 contains all elements of the essential physical or biological features of the

species needed for its eventual recovery. This unit provides habitat for the spring pygmy sunfish with adequate numbers of small pools, spring runs (PCE 1), and emergent vegetation (PCE 4). These geomorphic structures provide substrate for aquatic vegetation that is used by the species for spawning, foraging, and other processes of the species natural history (PCE 4) along with good water quality (PCE 2), quantity, and flow (PCE 3), which supports the normal life stages and behavior of the spring pygmy sunfish, and the species' prey sources (PCE 4).

Threats to the spring pygmy sunfish and its habitat in Unit 1 that may require special management of the physical and biological features include the potential of increased agriculture, urbanization, and industrialization activities (such as channel modification for flood control, construction of impoundments, and water extraction) that could result in increased stormwater runoff and erosion; significant changes in the existing spring flow regime due to water extraction, inadequate stormwater management, and water diversion; significant alteration of water quality and quantity; and significant changes in streambed material composition and quality as a result of construction projects and maintenance activities, resulting in the destruction of emergent and aquatic vegetation; off-road vehicle use; sewer, gas, and water easements; bridge and road construction and maintenance; culvert and pipe installation; and other watershed and floodplain disturbances that release sediments or nutrients into the water.

There are three paved road crossings over this unit, one unpaved dirt road, and one railroad. Spring pygmy sunfish movement might be limited due to changes in flow regime and habitat including changes in emergent vegetation, water quality, and water quantity, and due to stochastic events such as drought. Populations of spring pygmy sunfish are small and isolated from one another due to the non-homogeneous habitats within Unit 1.

Unit 2: Pryor Spring/Pryor Branch, Limestone County, Alabama

Unit 2 includes 3.4 km (2.1 mi) of Pryor Spring and Pryor Branch from the spring head, about 3.7 mi (5.9 km) south of Tanner, Alabama, and just east of Highway 31, downstream to the bridge where it intersects with Harris Station/Thomas L. Hammons Road. This also includes a total of 73.6 ha (182 ac) in area.

Almost 3.1 km (1.95 mi), or 93 percent of the stream reach, and 65.6 ha

(162 ac) of the land area (89 percent) are federally owned by the Tennessee Valley Authority and managed by the State as the Swan Creek Wildlife Management Area. The remaining 0.2 km (0.15 mi) of stream reach (7 percent) and 8.1 ha (20 ac) (11 percent) of the land area are privately owned.

Unit 2 is currently unoccupied but is a historical location for the spring pygmy sunfish, and is essential for its conservation and eventual recovery. The Pryor Spring/Branch system contains scattered spring-influenced wetlands of aquatic and emergent vegetation in spring pools, spring runs, and shallow water wetlands on the margins of the small tributaries. Populations of spring pygmy sunfish were historically noted as small and isolated within specific habitat sites of Pryor Spring/Branch. An attempt to reintroduce the species back into Pryor Springs (east of Highway 31) was unsuccessful in the 1980s.

A portion of the spring head has been mechanically deepened and the banks steepened in order to promote water extraction for cropland irrigation. Nevertheless, there is a significant seasonal flow of groundwater entering the system throughout the year from the springhead (portions of PCEs 1, 2, and 3). Adequate aquatic vegetation (PCE 4) occurs in areas throughout this spring system, providing potential habitat for the normal life stages and behavior of the spring pygmy sunfish and the species' prey sources. Water flow (PCE 3) from the main springhead, along with other unidentified springs and seeps within the system, provides sufficient water quantity to allow for connectivity between spawning, rearing, foraging, and resting sites, promoting gene flow throughout the spring system. While the existence of PCEs is not necessary for the designation of unoccupied habitat, their presence in Unit 2 only reinforces the value of the Pryor Spring/Branch to the conservation of the spring pygmy sunfish.

As this species is only known from a single population, it is important that additional populations be established to buffer against extirpation of the one known site from stochastic events, such as drought. Therefore, we have determined this unit is essential for the conservation of the species because it provides potential for the establishment of an additional population of the spring pygmy sunfish, thereby reducing this species' risk of extinction, and would contribute to the species' eventual recovery.

In summary, we propose designating critical habitat in two areas, one which is occupied and which contains sufficient primary constituent elements

to support the life-history functions essential to the conservation of the species and that require special management, and one which is currently unoccupied, which historically supported the species and has been determined to be essential for the conservation of the species.

As discussed in the Critical Habitat section above, we recognize that designation of critical habitat may not include all habitat areas that we may eventually determine are necessary for the recovery of the species and that, for this reason, a critical habitat designation does not signal that habitat outside the designated area is unimportant or may not promote the recovery of the species.

Effects of Critical Habitat Designation

Section 7 Consultation

Section 7(a)(2) of the Act requires Federal agencies, including the Service, to ensure that any action they fund, authorize, or carry out is not likely to jeopardize the continued existence of any endangered species or threatened species or result in the destruction or adverse modification of designated critical habitat of such species. In addition, section 7(a)(4) of the Act requires Federal agencies to confer with the Service on any agency action which is likely to jeopardize the continued existence of any species proposed to be listed under the Act or result in the destruction or adverse modification of proposed critical habitat.

Decisions by the 5th and 9th Circuit Courts of Appeals have invalidated our regulatory 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 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 continue to serve its intended conservation role for the species.

If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency (action agency) must enter into consultation with us. Examples of actions that are subject to the section 7 consultation process are actions on State, tribal, local, or private lands that require 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 the Service under section 10 of the Act) or that involve some other Federal action (such as funding from the Federal Highway Administration, Federal Aviation Administration, or the Federal Emergency Management Agency). Federal actions not affecting listed species or critical habitat, and actions on State, tribal, local, or private lands that are not federally funded or authorized do not require section 7 consultation.

As a result of section 7 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, or are likely to adversely affect, listed species or critical habitat.

When we issue a biological opinion concluding that a project is likely to jeopardize the continued existence of a listed species and/or destroy or adversely modify critical habitat, we provide reasonable and prudent alternatives to the project, if any are identifiable, that would avoid the likelihood of jeopardy and/or destruction or adverse modification of critical habitat. 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 the likelihood of jeopardizing the continued existence of the listed species and/or avoid the likelihood of 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 sometimes may need to request reinitiating 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.

Application of the "Adverse Modification" Standard

The key factor related to the adverse modification determination is whether, with implementation of the proposed Federal action, the affected critical habitat would continue to serve its intended conservation role for the species. Activities that may destroy or adversely modify critical habitat are those that alter the physical or biological features to an extent that appreciably reduces the conservation value of critical habitat for the spring pygmy sunfish. As discussed above, the role of critical habitat is to support life-history needs of the species and provide for the conservation of the species.

Section 4(b)(8) of the Act requires us to briefly evaluate and describe, in any proposed or final regulation that designates critical habitat, activities involving a Federal action that may destroy or adversely modify such habitat, or that may be affected by such designation. Activities that may affect critical habitat, when carried out, funded, or authorized by a federal agency, should result in consultation for the spring pygmy sunfish. These activities include, but are not limited to:

(1) Actions that would alter the geomorphology of the spring system and its associated habitats. Such activities could include, but are not limited to, instream excavation or dredging, impoundment, channelization, and discharge of fill materials. These activities could cause aggradation or degradation of the channel bed elevation or significant bank erosion and result in entrainment or burial of this species, destruction of the associated aquatic vegetation, and other direct or cumulative adverse effects to this species and its life cycle.

(2) Actions that would significantly alter the existing flow regime, related aquifer, and recharge areas. Such activities could include, but are not limited to, impoundments, water diversion, channel constriction or widening, placement of pipes, culverts or bridges, and groundwater and surface water extraction. These activities could eliminate or reduce the habitat necessary for growth, reproduction, and

connectivity of spring pygmy sunfish populations.

(3) Actions that would significantly alter water chemistry or water quality (for example, temperature, pH, contaminants, and excess nutrients). Such activities could include, but are not limited to, the unsustainable use or release of chemicals, such as pesticides and fertilizers and biological pollutants, into surface water or groundwater. These activities could alter water conditions that are beyond the tolerances of this species and result in direct or cumulative adverse effects to the species and its life cycle.

(4) Actions that would significantly alter streambed material composition and quality by increasing sediment deposition or filamentous algal growth. Such activities could include, but are not limited to, construction and maintenance projects of subdivisions, roads, bridges, stormwater systems and utility easements; unsustainable livestock grazing and timber harvest; off-road vehicle use; and other watershed and floodplain disturbances that release sediments or nutrients into the water through stormwater runoff. These activities could eliminate or reduce habitats necessary for the growth and reproduction of the spring pygmy sunfish by causing excessive sedimentation and a decrease in water quality for the species and associated vegetation and prey base by nitrification, leading to excessive filamentous algal growth, turbidity, and an increase in water temperatures.

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:

(1) An assessment of the ecological needs on the installation, including the need to provide for the conservation of listed species;

(2) A statement of goals and priorities;

(3) A detailed description of management actions to be implemented to provide for these ecological needs; and

(4) A monitoring and adaptive management plan.

Among other things, each INRMP must, to the extent appropriate and applicable, provide for fish and wildlife management; fish and wildlife habitat enhancement or modification; wetland protection, enhancement, and restoration where necessary to support fish and wildlife; and enforcement of applicable natural resource laws.

The National Defense Authorization Act for Fiscal Year 2004 (Pub. L. 108–136) amended the Act to limit areas eligible for designation as critical habitat. Specifically, section 4(a)(3)(B)(i) of the Act (16 U.S.C. 1533(a)(3)(B)(i)) now provides: “The Secretary shall not designate as critical habitat any lands or other geographical areas owned or controlled by the Department of Defense, or designated for its use, that are subject to an integrated natural resources management plan prepared under section 101 of the Sikes Act (16 U.S.C. 670a), if the Secretary determines in writing that such plan provides a benefit to the species for which critical habitat is proposed for designation.”

There are no Department of Defense lands with a completed INRMP within the proposed critical habitat designation. Therefore, we are not exempting any lands owned or managed by the DOD from this designation of critical habitat for the spring pygmy sunfish under section 4(a)(3)(B)(i) of the Act.

Exclusions

Application of Section 4(b)(2) of the Act

Section 4(b)(2) of the Act states that the Secretary must designate or make revisions to critical habitat on the basis of the best available scientific data after taking into consideration the economic impact, national security impact, and any other relevant impact of specifying any particular area as critical habitat. The Secretary may exclude an area from critical habitat if he determines that the benefits of such exclusion outweigh the benefits of specifying such area as part of the critical habitat, unless he determines, based on the best scientific data available, that the failure to designate such area as critical habitat will result in the extinction of the species. In making that determination, the statute on its face, as well as the legislative history, are clear that the Secretary has broad discretion regarding which factor(s) to use and how much weight to give to any factor.

Under section 4(b)(2) of the Act, we may exclude an area from designated critical habitat based on economic impacts, impacts on national security, and any other relevant impacts. In considering whether to exclude a

particular area from the designation, we identify the benefits of including the area in the designation, identify the benefits of excluding the area from the designation, and evaluate whether the benefits of exclusion outweigh the benefits of inclusion. If the analysis indicates that the benefits of exclusion outweigh the benefits of inclusion, the Secretary may exercise his discretion to exclude the area only if such exclusion would not result in the extinction of the species.

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 are preparing an analysis of the economic impacts of the proposed critical habitat designation and related factors.

During the development of our proposed rule, we have identified certain sectors and activities that may potentially be affected by a designation of critical habitat for spring pygmy sunfish. These sectors include commercial development and urbanization, along with the accompanying infrastructure associated with such projects such as road, storm water drainage, bridge, and culvert construction and maintenance. As part of our economic analysis, we are collecting information and initiating our analysis to determine (1) which of these sectors or activities are or involve small business entities and (2) to what extent the effects are related to the spring pygmy sunfish being listed as a threatened species under the Act (baseline effects) or are attributable to the designation of critical habitat (incremental effects). We believe that the potential incremental effects resulting from a designation would be small. However, one purpose of the economic analysis will be to determine if this is the case. Accordingly, we are requesting any specific economic information related to small business entities that may be affected by this designation and how the designation may impact small businesses.

We will announce the availability of the draft economic analysis as soon as it is completed. At that time, copies of the draft economic analysis will be available for downloading from the Internet at <http://www.regulations.gov>, or by contacting the Mississippi Ecological Services Field Office (see **FOR FURTHER INFORMATION CONTACT** section). During the development of a final designation, we will consider economic impacts, public comments, and other new information, and areas may be

excluded from the final critical habitat designation under section 4(b)(2) of the Act and our implementing regulations at 50 CFR 424.19.

National Security Impacts

Under section 4(b)(2) of the Act, we consider whether there are lands owned or managed by the Department of Defense (DOD) where a national security impact might exist. In preparing this proposal, we have determined that none of the lands within the proposed designation of critical habitat for the spring pygmy sunfish are lands owned or managed by the DOD, and, therefore, we anticipate no impact on national security. Consequently, the Secretary does not intend to exercise his discretion to exclude any areas from the final designation based on impacts on national security.

Other Relevant Impacts

Under section 4(b)(2) of the Act, we consider any other relevant impacts, in addition to economic and national security impacts. 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.

In preparing this proposal, we have determined that there are currently no HCPs for the spring pygmy sunfish, and the proposed designation does not include any tribal lands or trust resources. The CCAA between the Service, the Land Trust, and Belle Mina Farms, Ltd., covers the upper 24 percent of the Beaverdam Spring/Creek complex (Unit 1). This management plan contains numerous conservation measures protective of the spring pygmy sunfish. It provides a measure of protection for the species in the upper portion of the only currently occupied site. However, although this CCAA reduces some of threats and is one of the reasons the species is proposed for listing as threatened rather than endangered, the magnitude of this threat reduction is not at the level to ameliorate threats to this species throughout its range (see Finding section, above, for additional discussion). Thus, the CCAA alone is not sufficient to preclude the need to list the species as threatened. We also anticipate no impact on tribal lands, partnerships, or HCPs from this

proposed critical habitat designation. Accordingly, at this time the Secretary does not propose to exert his discretion to exclude any areas from the final designation based on other relevant impacts. However, we recognize that exclusion from critical habitat of the area covered by the CCAA may encourage partnerships with other landowners in the spring complex that would help address additional threats under Factors A and E. Therefore, as indicated in the Information Requested section, we are requesting information on whether the benefits of the exclusion of lands covered by the CCAA may outweigh the benefits of inclusion under section 4(b)(2) of the Act, and the Secretary may reconsider exclusion in the final rule.

Peer Review

In accordance with our joint policy on peer review published in the **Federal Register** on July 1, 1994 (59 FR 34270), we will seek the expert opinions of at least three appropriate and independent specialists regarding this proposed rule. The purpose of peer review is to ensure that our determination of status for this species and critical habitat designation is based on scientifically sound data, assumptions, and analyses. We will invite these peer reviewers to comment during this public comment period on our specific assumptions and conclusions in this proposed listing determination and designation of critical habitat.

We will consider all comments and information we receive during this comment period on this proposed rule during our preparation of a final determination. Accordingly, the final decision may differ from this proposal.

Public Hearings

The Act provides for one or more public hearings on this proposal, if requested. Requests must be received within 45 days after the date of publication of this proposed rule in the **Federal Register**. Such requests must be sent to the address shown in the **FOR FURTHER INFORMATION CONTACT** section. We will schedule public hearings on this proposal, if any are requested, and announce the dates, times, and places of those hearings, as well as how to obtain reasonable accommodations, in the **Federal Register** and local newspapers at least 15 days before the hearing.

Required Determinations

Regulatory Planning and Review—Executive Order 12866 and 13563

Executive Order 12866 provides that the Office of Information and Regulatory

Affairs (OIRA) will review all significant rules. The Office of Information and Regulatory Affairs has determined that this rule is not significant.

Executive Order 13563 reaffirms the principles of E.O. 12866 while calling for improvements in the nation's regulatory system to promote predictability, to reduce uncertainty, and to use the best, most innovative, and least burdensome tools for achieving regulatory ends. The executive order directs agencies to consider regulatory approaches that reduce burdens and maintain flexibility and freedom of choice for the public where these approaches are relevant, feasible, and consistent with regulatory objectives. E.O. 13563 emphasizes further that regulations must be based on the best available science and that the rulemaking process must allow for public participation and an open exchange of ideas. We have developed this rule in a manner consistent with these requirements.

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 the agency certifies the rule will not have a significant economic impact on a substantial number of small entities. The SBREFA amended the RFA to require Federal agencies to provide a 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.

According to the Small Business Administration, small entities include small organizations such as independent nonprofit organizations; small governmental jurisdictions, including school boards and city and town governments that serve fewer than 50,000 residents; and small businesses (13 CFR 121.201). Small businesses include such businesses as 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 forestry and logging operations with fewer than 500 employees and annual business less than \$7 million. To determine whether small entities may be affected, we will consider the types of activities that might trigger regulatory impacts under this designation as well as types of project modifications that may result. In general, the term "significant economic impact" is meant to apply to a typical small business firm's business operations.

Importantly, the incremental impacts of a rule must be both significant and substantial to prevent certification of the rule under the RFA and to require the preparation of an initial regulatory flexibility analysis. If a substantial number of small entities are affected by the proposed critical habitat designation, but the per-entity economic impact is not significant, the Service may certify. Likewise, if the per-entity economic impact is likely to be significant, but the number of affected entities is not substantial, the Service may also certify.

Under the RFA, as amended, and following recent court decisions, Federal agencies are only required to evaluate the potential incremental impacts of rulemaking on those entities directly regulated by the rulemaking itself, and not the potential impacts to indirectly affected entities. The regulatory mechanism through which critical habitat protections are realized is section 7 of the Act, which requires Federal agencies, in consultation with the Service, to ensure that any action authorized, funded, or carried by the Agency is not likely to adversely modify critical habitat. Therefore, only Federal action agencies are directly subject to the specific regulatory requirement (avoiding destruction and adverse modification) imposed by critical habitat designation. Under these circumstances, it is our position that only Federal action agencies will be directly regulated by this designation. Therefore, because Federal agencies are not small entities, the Service may certify that the proposed critical habitat rule will not have a significant economic impact on a substantial number of small entities.

We acknowledge, however, that in some cases, third-party proponents of the action subject to permitting or funding may participate in a section 7 consultation, and thus may be indirectly affected. We believe it is good policy to assess these impacts if we have sufficient data before us to complete the

necessary analysis, whether or not this analysis is strictly required by the RFA. While this regulation does not directly regulate these entities, in our draft economic analysis we will conduct a brief evaluation of the potential number of third parties participating in consultations on an annual basis in order to ensure a more complete examination of the incremental effects of this proposed rule in the context of the RFA.

In conclusion, we believe that, based on our interpretation of directly regulated entities under the RFA and relevant case law, this designation of critical habitat will only directly regulate Federal agencies, which are not by definition small business entities. As such, we certify that, if promulgated, this designation of critical habitat would not have a significant economic impact on a substantial number of small business entities. Therefore, an initial regulatory flexibility analysis is not required. However, although not necessarily required by the RFA, in our draft economic analysis for this proposal we will consider and evaluate the potential effects to third parties that may be involved with consultations with Federal action agencies related to this action.

Energy Supply, Distribution, or Use—Executive Order 13211

Executive Order 13211 requires agencies to prepare Statements of Energy Effects when undertaking certain actions. We do not expect the designation of critical habitat for the spring pygmy sunfish to significantly affect energy supplies, distribution, or use. The proposed critical habitat units are remote from energy supply, distribution, or use activities. We are not aware of any oil and gas exploration or development within the region to date, and the area has not been identified as a shale play for oil and gas extraction (hydraulic fracturing) (Satterfield 2011, p. 3). Therefore, this action is not a significant energy action, and no Statement of Energy Effects is required. However, we will further evaluate this issue as we conduct our economic analysis, and review and revise this assessment as warranted.

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 would not produce a Federal mandate. In general, a Federal mandate is a provision in legislation, statute, or regulation that would impose an enforceable duty upon State, local,

tribal governments, or the private sector and includes both “Federal intergovernmental mandates” and “Federal private sector mandates.” These terms are defined in 2 U.S.C. 658(5)–(7). “Federal intergovernmental mandate” includes a regulation that “would impose an enforceable duty upon State, local, or tribal governments” with two exceptions. It excludes “a condition of Federal assistance.” It also excludes “a duty arising from participation in a voluntary Federal program,” unless the regulation “relates to a then-existing Federal program under which \$500,000,000 or more is provided annually to State, local, and tribal governments under entitlement authority,” if the provision would “increase the stringency of conditions of assistance” or “place caps upon, or otherwise decrease, the Federal Government’s responsibility to provide funding,” and the State, local, or tribal governments “lack authority” to adjust accordingly. At the time of enactment, these entitlement programs were: Medicaid; 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. 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, and critical habitat would not shift the costs of the large entitlement

programs listed above on to State governments.

(2) We do not believe that this rule would significantly or uniquely affect small governments because it 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. In addition, adjacent upland properties are owned by private entities or State partners. Therefore, a Small Government Agency Plan is not required. However, we will further evaluate this issue as we conduct our economic analysis and revise this assessment if appropriate.

Takings—Executive Order 12630

In accordance with Executive Order 12630 (Government Actions and Interference with Constitutionally Protected Private Property Rights), we have analyzed the potential takings implications of designating critical habitat for spring pygmy sunfish 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 proposed designation of critical habitat for the spring pygmy sunfish does not pose significant takings implications for lands within or affected by the designation.

Federalism—Executive Order 13132

In accordance with Executive Order 13132 (Federalism), the proposed rule does not have significant Federalism effects. A federalism impact summary statement is not required. In keeping with Department of the Interior and Department of Commerce policy, we requested information from, and coordinated development of, this proposed critical habitat designation with appropriate State resource agencies in Alabama. The designation of critical habitat in areas currently occupied by the spring pygmy sunfish (i.e., Unit 1: Beaverdam Spring/Creek) would impose few if any additional restrictions to those put in place through listing, and, therefore, has would have little incremental impact on State and local governments and their activities. There may be a slight impact on State and local government and their activities if critical habitat is designated in Unit 2: Pryor Spring/Pryor Branch, because this

is unoccupied critical habitat. However, critical habitat designation may have some benefit for these governments because the areas that contain the physical or biological features essential to the conservation of the species are more clearly defined, and the elements of the features 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).

Where State and local governments require approval or authorization from a Federal agency for actions that may affect critical habitat, consultation under section 7(a)(2) would be required. 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.

Civil Justice Reform—Executive Order 12988

In accordance with Executive Order 12988 (Civil Justice Reform), the Office of the Solicitor has determined that the rule does not unduly burden the judicial system and that it meets the requirements of sections 3(a) and 3(b)(2) of the Order. We have proposed designating critical habitat in accordance with the provisions of the Act. This proposed rule uses standard property descriptions and identifies the elements of physical or biological features essential to the conservation of the spring pygmy sunfish within the designated areas to assist the public in understanding the habitat needs of the species.

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.)

We have determined that environmental assessments and environmental impact statements, as defined under the authority of the National Environmental Policy Act of 1969 (NEPA), need not be prepared in connection with listing a species as endangered or threatened under the Act. We published a notice outlining our reasons for this determination in the **Federal Register** on October 25, 1983 (48 FR 49244).

It is also 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 under 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 (9th Cir. 1995), cert. denied 516 U.S. 1042 (1996)).

Clarity of the Rule

We are required by Executive Orders 12866 and 12988 and by the Presidential Memorandum of June 1, 1998, to write all rules in plain language. This means that each rule we publish must:

- (1) Be logically organized;
- (2) Use the active voice to address readers directly;
- (3) Use clear language rather than jargon;
- (4) Be divided into short sections and sentences; and
- (5) Use lists and tables wherever possible.

If you feel that we have not met these requirements, send us comments by one of the methods listed in the **ADDRESSES** section. To better help us revise the rule, your comments should be as specific as possible. For example, you should tell us the numbers of the sections or paragraphs that are unclearly written, which sections or sentences are too long, the sections where you feel lists or tables would be useful, etc.

Government-to-Government Relationship With Tribes

In accordance with the President's memorandum of April 29, 1994, (Government-to-Government Relations with Native American Tribal Governments; 59 FR 22951), Executive Order 13175 (Consultation and Coordination With Indian Tribal Governments), and the Department of Interior's manual at 512 DM 2, we

readily acknowledge our responsibility to communicate meaningfully with recognized Federal Tribes on a government-to-government basis. In accordance with Secretarial Order 3206 of June 5, 1997 (American Indian Tribal Rights, Federal-Tribal Trust Responsibilities, and the Endangered Species Act), we readily acknowledge our responsibilities to work directly with tribes in developing programs for healthy ecosystems, to acknowledge that tribal lands are not subject to the same controls as Federal public lands, to remain sensitive to Indian culture, and to make information available to tribes.

The State of Alabama does contain tribal lands, however, none occur within the proposed critical habitat designation. Therefore, we are not proposing to designate critical habitat for spring pygmy sunfish on tribal lands.

References Cited

A complete list of all references cited in this rulemaking is available on the Internet at <http://www.regulations.gov> and upon request from the Deputy Field Supervisor, Mississippi Ecological Services Field Office (see **FOR FURTHER INFORMATION CONTACT**).

Authors

The primary authors of this package are the staff members of the Mississippi Ecological Services Field Office (see **FURTHER INFORMATION CONTACT**).

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, Transportation.

Proposed Regulation Promulgation

Accordingly, we propose to amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, as set forth below:

PART 17—[AMENDED]

1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500; unless otherwise noted.

2. Amend § 17.11(h) by adding an entry for “Sunfish, spring pygmy” to the List of Endangered and Threatened Wildlife in alphabetical order under FISHES to read as follows:

§ 17.11 Endangered and threatened wildlife.

* * * * *
(h) * * *

Species		Historic range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Common name	Scientific name						
*	*	*	*	*	*	*	*
FISHES	.....	.....	.....	
Sunfish, spring pygmy.	<i>Elassoma alabamae</i>	U.S.A. (AL)	Entire	T		17.95(e)	NA
*	*	*	*	*	*	*	*

2. In § 17.95, amend paragraph (e) by adding an entry for “Spring Pygmy Sunfish (*Elassoma alabamae*),” in the same alphabetical order that the species appears in the table at § 17.11(h), to read as follows:

§ 17.95 Critical habitat—fish and wildlife.

* * * * *
 (e) *Fishes.*
 * * * * *

Spring Pygmy Sunfish (*Elassoma alabamae*)

(1) Critical habitat units are depicted for Limestone County, Alabama, on the maps below.

(2) Within these areas, the primary constituent elements of the physical and biological features essential to the conservation of spring pygmy sunfish are:

(i) *Spring system.* Springs and connecting spring-fed reaches and wetlands that are geomorphically stable and relatively low-gradient. This includes headwater springs with spring heads, spring runs, and spring pools that filter into shallow, vegetated wetlands.

(ii) *Water quality.* Yearly averages of water quality with optimal temperatures of 57.2 to 68 °F (14 to 20 °C) and not exceeding 80 °F (26.7 °C); pH of 6.0 to 7.7; dissolved oxygen of 6.0 parts per million (ppm) or greater; specific conductivity no greater than 300 micro Siemens per centimeter at 80 °F (26.7 °C); low concentrations of free or suspended solids with turbidity measuring less than 15 Nephelometric Turbidity Units (NTU) and 20

milligrams per liter (mg/l) total suspended solids (TSS).

(iii) *Hydrology.* A hydrologic flow regime (magnitude, frequency, duration, and seasonality of discharge over time) necessary to maintain spring habitats. The instream flow from groundwater sources (springs and seeps) maintains an adequate velocity and a continuous daily discharge from the aquifer that allows for connectivity between habitats. Instream flow is stable and does not vary during water extraction, and the aquifer recharge maintains adequate levels to supply water flow to the spring head. The flow regime does not significantly change during storm events.

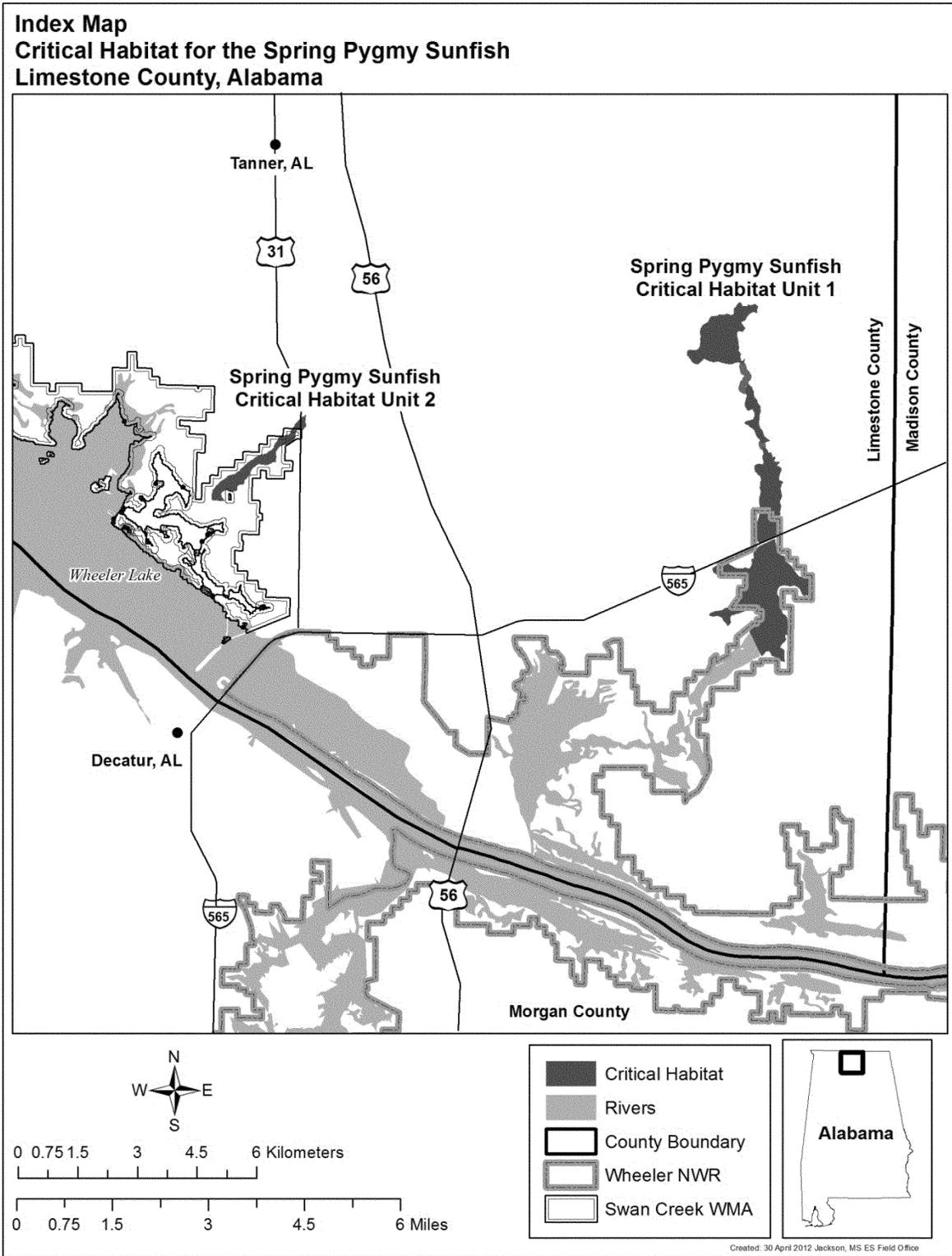
(iv) *Vegetation and Prey Base.* Aquatic, emergent and semi-emergent vegetation along the margins of spring runs and submergent vegetation that is adequate for breeding, reproducing, and rearing young; providing cover and shelter from predators; and supporting the prey base of aquatic macroinvertebrates eaten by spring pygmy sunfish. Important species of submergent and emergent vegetation include clumps and stands of *Sparganium* spp. (bur reed), *Ceratophyllum* spp. (coontail), *Nasturtium officinale* (watercress), *Juncus* spp. (rush), *Carex* spp. (sedges), *Nuphar luteum* (yellow pond lily), *Myriophyllum* spp. (parrot feather), *Utricularia* spp. (bladderwort), *Polygonum* spp. (smartweed), *Lythrum salicaria* (purple loosestrife), and *Callitriche* spp. (water starwort).

(3) Critical habitat does not include manmade structures (such as buildings, aqueducts, runways, roads, and other paved areas) and the land on which they are located existing within the legal boundaries on the effective date of this rule.

(4) *Critical habitat unit maps.* Data layers defining the map unit were created by delineating habitats that contained at least one or more of the primary constituent elements defined in paragraph (2) of this entry, over a base of USGS digital topographic map quadrangle (Greenbrier and Mason Ridge) and a USDA 2007 digital orthophoto mosaic, in addition to the National Wetland Inventory Maps. The resulting critical habitat unit was then mapped using State Plane North American Datum (NAD) 83 coordinates. The maps in this entry, as modified by any accompanying regulatory text, establish the boundaries of the critical habitat designation. The coordinates or plot points or both on which each map is based are available to the public at the Service’s internet site, <http://www.fws.gov/mississippiES/>; at <http://www.regulations.gov> at Docket No. FWS-R4-ES-2012-0068; and at the field office responsible for this designation. You may obtain field office location information by contacting one of the Service regional offices, the addresses of which are listed at 50 CFR 2.2.

(5) Index map of critical habitat for the spring pygmy sunfish follows:

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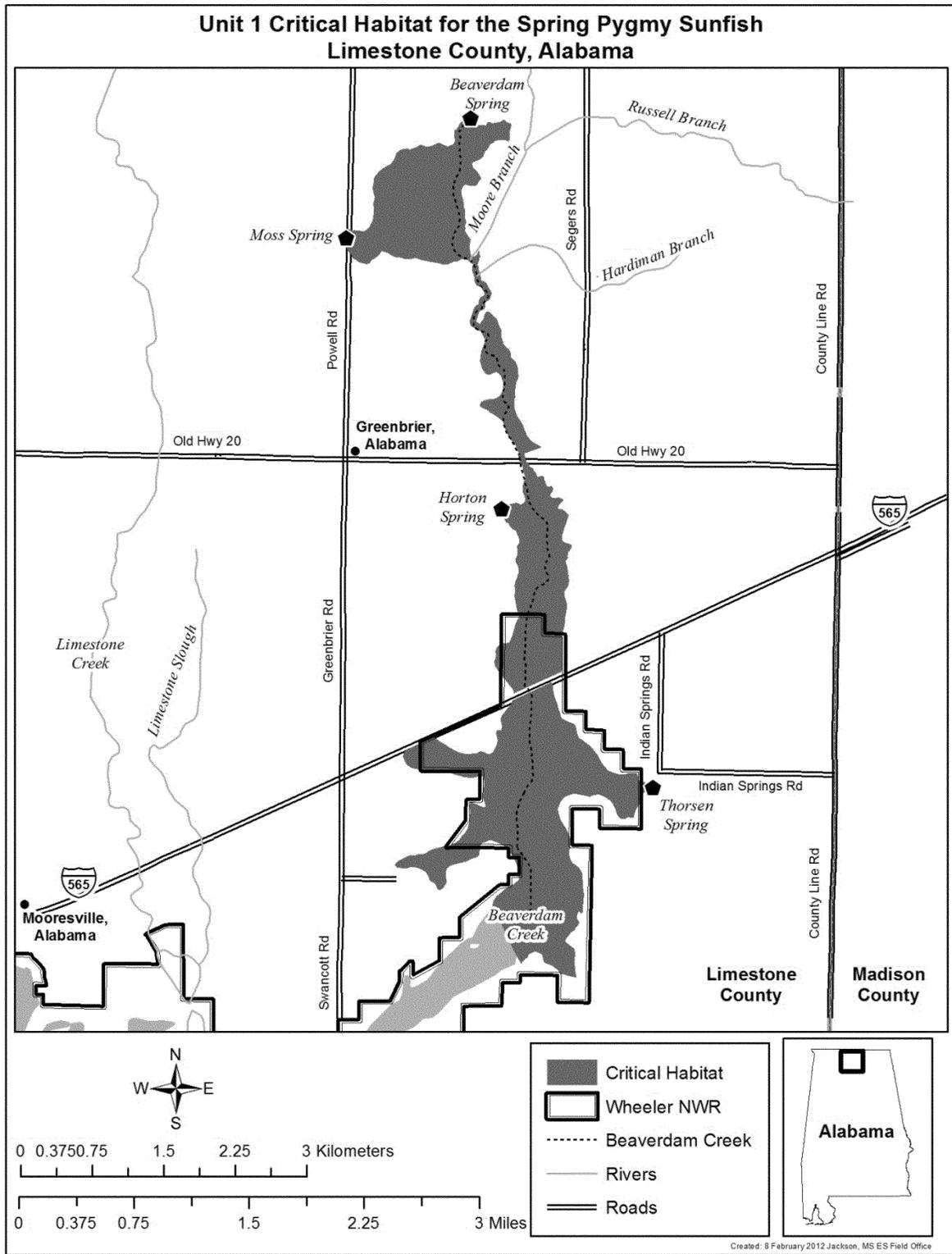
(6) Unit 1: Beaverdam Spring/Creek, Limestone County, Alabama.

(i) *General Description:* Unit 1 includes a total of 9.5 km (5.9 mi) of Beaverdam Spring/Creek, northeast of

Greenbrier, Alabama, from the spring head, 5.6 km (3.5 mi) north of Interstate 565 (Lat. 34.703162, Long. -86.82899) to 3.9 km (2.4 mi) south of Interstate 565 (Lat. 34.625896, Long. -86.82505). Unit

1 encompasses Moss, Horton, and Thorsen springs. This includes a total of 580.7 hectares (1,435 acres).

(ii) Map of Unit 1 follows:



Created: 6 February 2012 Jackson, MS ES Field Office

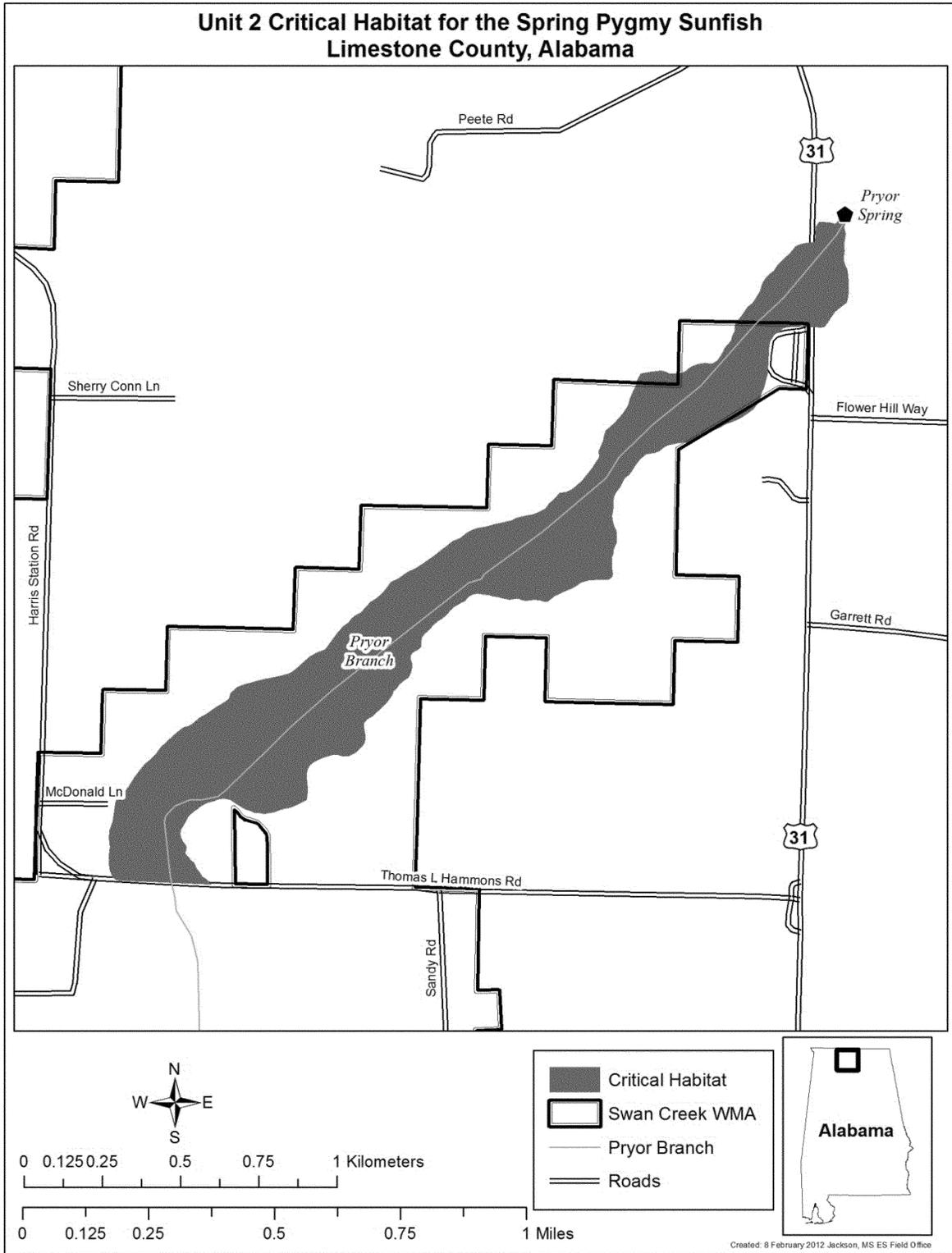
(7) Unit 2: Pryor Spring/Pryor Branch, Limestone County, Alabama.

(i) *General Description.* Unit 2 includes 3.4 km (2.1 mi) of Pryor Spring

and Pryor Branch from the spring head, about 3.7 mi (5.9 km) south of Tanner, Alabama, and just east of Highway 31, downstream to the bridge where it

intersects with Harris Station/Thomas L. Hammons Road. This also includes a total of 73.6 ha (182 ac) in area.

(ii) Map of Unit 2 follows:



* * * * *

Dated: September 13, 2012.
Michael J. Bean,
*Assistant Secretary for Fish and Wildlife and
Parks.*
[FR Doc. 2012-23854 Filed 10-1-12; 8:45 am]
BILLING CODE 4310-55-C



FEDERAL REGISTER

Vol. 77

Tuesday,

No. 191

October 2, 2012

Part III

Department of the Interior

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Proposed Threatened Status for Coral Pink Sand Dunes Tiger Beetle and Designation of Critical Habitat; Proposed Rule

DEPARTMENT OF THE INTERIOR**Fish and Wildlife Service****50 CFR Part 17**

[FWS-R6-ES-2012-0053; 4500030113]

RIN 1018-AY11

Endangered and Threatened Wildlife and Plants; Proposed Threatened Status for Coral Pink Sand Dunes Tiger Beetle and Designation of Critical Habitat**AGENCY:** Fish and Wildlife Service, Interior.**ACTION:** Proposed rule.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service) propose to list the Coral Pink Sand Dunes tiger beetle, *Cicindela albissima*, as a threatened species under the Endangered Species Act of 1973, as amended (Act); and propose to designate critical habitat for the species. In total, approximately 921 hectares (2,276 acres) are being proposed for designation as critical habitat. The proposed critical habitat is located in Kane County, Utah.

DATES: We will accept comments received or postmarked on or before December 3, 2012. Comments submitted electronically using the Federal eRulemaking Portal (see **ADDRESSES** section, below) must be received by 11:59 p.m. Eastern Time on the closing date. We must receive requests for public hearings, in writing, at the address shown in **FOR FURTHER INFORMATION CONTACT** by November 16, 2012.

ADDRESSES: You may submit comments by one of the following methods:

(1) *Electronically:* Go to the Federal eRulemaking Portal: <http://www.regulations.gov>. Search for Docket No. FWS-R6-ES-2012-0053.

(2) *By hard copy:* Submit by U.S. mail or hand-delivery to: Public Comments Processing, Attn: FWS-R6-ES-2012-0053; Division of Policy and Directives Management; U.S. Fish and Wildlife Service; 4401 N. Fairfax Drive, MS 2042-PDM; Arlington, VA 22203.

We will not accept email or faxes. We will post all comments on <http://www.regulations.gov>. This generally means that we will post any personal information you provide us (see the Information Requested section below for more information).

The coordinates or plot points or both from which the maps of the specific areas proposed as critical habitat are generated are included in the administrative record for this rulemaking and are available at <http://www.fws.gov/utahfieldoffice/>, at www.regulations.gov in Docket No. FWS-R6-ES-2012-0053, and at the Utah Field Office (see **FOR FURTHER INFORMATION CONTACT**). Any additional tools or supporting information that we may develop for this rulemaking will also be available at the Fish and Wildlife Service Web site and Field Office set out above, and may also be included in the preamble and/or at www.regulations.gov.

FOR FURTHER INFORMATION CONTACT: Larry Crist, Field Supervisor, U.S. Fish and Wildlife Service, Utah Field Office, Ecological Services Field Office, 2369 West Orton Circle, Suite 50, West Valley City, Utah 84119; telephone 801-975-3330; or facsimile 801-975-3331. Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 800-877-8339.

SUPPLEMENTARY INFORMATION: This document consists of: (1) A proposed rule to list the Coral Pink Sand Dunes (CPSD) tiger beetle as threatened; and (2) a proposed critical habitat designation for the CPSD tiger beetle.

Executive Summary

Why we need to publish a rule. Under the Act, if a species is determined to be an endangered or threatened species throughout all or a significant portion of its range, we are required to promptly publish a proposed rule in the **Federal Register** and make a determination on our proposal within one year. Critical habitat shall be designated, to the maximum extent prudent and determinable, for any species determined to be an endangered or threatened species under the Act. Listing a species as an endangered or threatened species and designations and revisions of critical habitat can only be completed in a rule making process.

What This Rule Will Do

- We are proposing to list the CPSD tiger beetle as a threatened species.
- We also are proposing to designate 921 hectares (2,276 acres) of the Coral Pink Sand Dunes (CPSD) Geologic Feature in Kane County as critical habitat.

The basis for our action. Under the Act, we can determine that a species is an endangered or threatened species based on any of five factors: (A) The present or threatened destruction, modification, or curtailment of its habitat or range; (B) Overutilization for commercial, recreational, scientific, or educational purposes; (C) Disease or predation; (D) The inadequacy of existing regulatory mechanisms; or (E)

Other natural or manmade factors affecting its continued existence.

We propose to list the CPSD tiger beetle as a threatened species because of the following threats:

- Habitat loss and degradation caused by off-road vehicle use.
- Small population effects, such as vulnerability to random chance events.
- Other natural or manmade factors, including climate change and drought.
- Cumulative interaction of individual factors such as off-road vehicle use, climate change, and drought.

We have also determined that existing regulatory mechanisms are not adequately addressing the threats to the species.

Under the Act, any species that is determined to be a threatened or endangered species shall, to the maximum extent prudent and determinable, have habitat designated that is considered to be critical habitat. Section 4(b)(2) of the Endangered Species Act states that the Secretary shall designate 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.

We propose to designate a 921-hectare (2,276-acre) area as critical habitat for the CPSD tiger beetle. The critical habitat area we propose in this rule constitutes our current best assessment of the specific areas that meet the definition of critical habitat for the CPSD tiger beetle.

We are preparing an economic analysis of the proposed designation of critical habitat. In order to consider economic impacts, we are preparing an analysis of the potential economic impacts of the proposed critical habitat designations. We will use the information from the draft economic analysis to inform the development of the final designation of critical habitat for this species.

We are preparing an environmental assessment of the proposed designation of critical habitat. Based on a relevant court decision in the Tenth Circuit, we shall evaluate the potential environmental impacts of a designation of critical habitat for any species whose range overlaps the geographic area governed by the Federal Tenth Circuit Court under the National Environmental Policy Act (NEPA). We will use the results of the draft environmental assessment to inform the development of our final designation of critical habitat.

We will seek peer review. We are seeking the expert opinions of appropriate and independent specialists regarding this proposed rule to ensure that our decisions are based on scientifically sound data, assumptions, and analysis. We have invited these peer reviewers to comment during the proposed rule's public comment period. We will consider all comments and information received during the comment period in our preparation of the final determinations. Accordingly, the final decisions may differ from this proposal.

Information Requested

We intend that any final action resulting from this proposed rule will be based on the best scientific and commercial data available and be as accurate and as effective as possible. Therefore, we request comments or information from the public, other concerned governmental agencies, Native American Tribes, the scientific community, industry, or any other interested parties concerning this proposed rule. We particularly seek comments concerning:

- (1) The species' biology, range, and population trends, including:
 - (a) Habitat requirements for feeding, breeding, and sheltering;
 - (b) Genetics and taxonomy;
 - (c) Historical and current range including distribution patterns;
 - (d) Historical and current population levels, and current and projected trends; and
 - (e) Past and ongoing conservation measures for the species, its habitat or both.
- (2) The factors that are the basis for making a listing determination for a species under section 4(a) of the Act (16 U.S.C. 1531 *et seq.*), which are:
 - (a) The present or threatened destruction, modification, or curtailment of its habitat or range;
 - (b) Overutilization for commercial, recreational, scientific, or educational purposes;
 - (c) Disease or predation;
 - (d) The inadequacy of existing regulatory mechanisms; or
 - (e) Other natural or manmade factors affecting its continued existence.
- (3) Biological, commercial, or other relevant data concerning any threats (or lack thereof) to this species and existing regulations that may be addressing those threats.
- (4) Additional information concerning the historical and current status, range, distribution, and population size of this species, including the locations of any additional populations of this species.
- (5) The reasons why we should or should not designate specific areas as

“critical habitat” under section 4 of the Act (16 U.S.C. 1531 *et seq.*) including whether the degree of threats would be expected to increase due to the designation, and whether that increase in threat outweighs the benefit of designation such that the designation of critical habitat may not be prudent.

(6) Specific information on our proposed critical habitat designation:

- (a) The amount and distribution of CPSD tiger beetle habitat;
- (b) What may constitute “physical or biological features essential to the conservation of the species,” within the geographical range currently occupied by the species;
- (c) Where these features are currently found;
- (d) Whether any of these features may require special management considerations or protection;
- (e) What areas, that were occupied at the time of listing (or are currently occupied) and that contain features essential to the conservation of the species, should be included in the designation and why;
- (f) What areas not occupied at the time of listing are essential for the conservation of the species and why.

(7) Land use designations and current or planned activities in the areas occupied by the species or proposed to be designated as critical habitat, and possible impacts of these activities on this species and proposed critical habitat.

(8) Information on the projected and reasonably likely impacts of climate change on the CPSD tiger beetle and proposed critical habitat.

(9) Any foreseeable economic, national security, or other relevant impacts that may result from designating any area that may be included in the final designation. We are particularly interested in any impacts on small entities, and the benefits of including or excluding areas from the proposed designation that are subject to these impacts.

(10) Whether our approach to designating critical habitat could be improved or modified in any way to provide for greater public participation and understanding, or to assist us in accommodating public concerns and comments.

(11) The likelihood of adverse social reactions to the designation of critical habitat and how the consequences of such reactions, if likely to occur, would relate to the conservation and regulatory benefits of the proposed critical habitat designation.

Please include sufficient information with your submission (such as scientific journal articles or other publications) to

allow us to verify any scientific or commercial information you include.

Please note that submissions merely stating support for or opposition to the action under consideration without providing supporting information, although noted, will not be considered in making a determination, as section 4(b)(1)(A) of the Act directs that determinations as to whether any species is an endangered or threatened species must be made “solely on the basis of the best scientific and commercial data available.”

You may submit your comments and materials concerning this proposed rule by one of the methods listed in the **ADDRESSES** section.

If you submit information via <http://www.regulations.gov>, your entire submission—including any personal identifying information—will be posted on the Web site. If your submission is made via a hardcopy that includes personal identifying information, you may request at the top of your document that we withhold this information from public review. However, we cannot guarantee that we will be able to do so. We will post all hardcopy submissions on <http://www.regulations.gov>. Please include sufficient information with your comments to allow us to verify any scientific or commercial information you include.

Comments and materials we receive, as well as supporting documentation we used in preparing this proposed rule, will be available for public inspection on <http://www.regulations.gov>, or by appointment, during normal business hours, at the U.S. Fish and Wildlife Service, Utah Field Office (see **FOR FURTHER INFORMATION CONTACT**).

Previous Federal Actions

In 1984, we published our Invertebrate Notice of Review classifying the CPSD tiger beetle as a Category 2 species (49 FR 21664, May 22, 1984). Category 2 status included those taxa for which information in the Service's possession indicated that a proposed rule was possibly appropriate, but for which sufficient data on biological vulnerability and threats were not available to support a proposed listing rule. In 1994, the Southern Utah Wilderness Alliance petitioned us to list the CPSD tiger beetle as an endangered species and to designate critical habitat. In our 90-day petition finding (59 FR 47293, September 15, 1994), we indicated the petition presented substantial information in support of listing, and later that year we changed the CPSD tiger beetle's status from Category 2 to Category 1 (59 FR 58982, November 15, 1994). Category 1 status

included those taxa for which the Service had sufficient information on biological vulnerability and threats to support proposals to list them as endangered or threatened species. On December 5, 1996 (61 FR 64481), we published our decision to discontinue candidate categories and to restrict candidate status to those taxa for which we have sufficient information to support issuance of a proposed rule. As a result, the CPSD tiger beetle remained a candidate species (62 FR 49398, September 19, 1997).

In 1997, the Service, Bureau of Land Management (BLM), Utah Department of Natural Resources (UDNR), and Kane County signed a Candidate Conservation Agreement (CCA) and formed a conservation committee with the dual goals of protecting CPSD tiger beetle habitat and balancing the needs of this rare species with off-road vehicle (ORV) use in the area (Conservation Committee 1997, pp. 4–5). These agencies renewed the CCA in 2009 (Conservation Committee 2009, entire). Coordination under the CCA resulted in the establishment of two Conservation Areas that protect the CPSD tiger beetle from ORV use—Conservation Areas A and B (see *Habitat* and *Factor A* for more information on the Conservation Areas).

In our 2010 Candidate Notice of Review, we identified the CPSD tiger beetle as a species for which listing as an endangered or threatened species was warranted (with a listing priority number of 2) but precluded by our work on higher priority listing actions (75 FR 69222, November 10, 2010). In the 2011 Candidate Notice of Review, we announced that we were not updating our assessment for this species, because we received funding to develop this proposed listing rule (76 FR 66370, October 26, 2011).

Background

Taxonomy and Species Description

The CPSD tiger beetle is a member of the family Cicindelidae and genus *Cicindela*. There are 109 species of tiger beetles in the genus *Cicindela* in the United States and Canada (Pearson *et al.* 2006, p. 4). The CPSD tiger beetle occurs only at the CPSD geologic feature in southern Utah and is separated from its closest related subspecies, *C. theatina*, by over 600 kilometers (km) (378 miles (mi)) (Rumpp 1961, p. 182). It shares the typical characteristics of other members of the maritima group (a group of closely related species of sand dune tiger beetles) and is most similar in morphology to other subspecies of *Cicindela limbata* (no common name). It

was originally described as *C. limbata albissima* (Rumpp 1961, p. 181). However, more recent genetic analysis revealed that the CPSD tiger beetle is different from all other members in the maritima group; consequently, we now consider it a distinct species, CPSD tiger beetle (Morgan *et al.* 2000, p. 1111). This is the accepted taxonomic classification (Pearson *et al.* 2006, p. 77).

CPSD tiger beetle adults are 11 to 15 millimeters (0.4 to 0.6 inches (in)) in size and have striking coloration. The large wing cases (known as elytra) are predominantly white except for a thin reddish band that runs down the length of the center. Much of the body and legs are covered in white hairs. The upper thorax (middle region) has a metallic sheen, and the eyes are particularly large (Pearson *et al.* 2006, p. 77).

Habitat

Tiger beetle species occur in many different habitats, including riparian habitats, beaches, dunes, woodlands, grasslands, and other open areas (Pearson *et al.* 2006, p. 177). Most tiger beetle species are habitat-specific and consequently are useful as indicators of habitat quality (Knisley and Hill 1992, p. 140). The CPSD tiger beetle, like its close relatives from the Great Sand Dunes of Colorado (*Cicindela theatina*) and the St. Anthony Dunes of Idaho (*C. arenicola*), is restricted to sand dune habitat.

The species' current range extends along the CPSD geologic feature. The CPSD is a geologic feature named for the deep pink color of its sand dunes (Ford *et al.* 2010, p. 380). The CPSD are located 5 km (3.1 mi) north of the Utah-Arizona state line and 43 km (27 mi) west of Kanab, Utah (see Figure 1 below in *Population Distribution*). The CPSD are about 13 km (8 mi) long, averaging 1.1 km (0.7 mi) in width, and 1,416 ha (3,500 ac) in surface area.

The CPSD consist of a series of high, mostly barren, dry dune ridges separated by lower, moister, and more vegetated interdunal swales (low places between sand dune crests) (Romey and Knisley 2002, p. 170). Wind action, primarily blowing from south to north, created and continues to shape the CPSD, utilizing sand from nearby eroding Navajo sandstone (Doelling *et al.* 1989, p. 3). Wind velocity decreases as it moves across the sand dunes (from south to north), resulting in a dynamic and less vegetated south CPSD area that transitions to a less dynamic, more heavily vegetated, higher elevation northern CPSD area (Ford *et al.* 2010, pp. 387–392).

The CPSD are in a semiarid climatic zone (Ford *et al.* 2010, p. 381). The nearest weather station, in Kanab, has a mean annual temperature of 12.4 °Celsius (°C) (54.4 °Fahrenheit (°F)) and mean annual precipitation of 33.8 centimeters (cm) (13.3 in) (Ford *et al.* 2010, p. 381). The northern 607 ha (1,500 ac) of CPSD is Federal land managed by the BLM. The southern 809 ha (2,000 ac) of the CPSD is within Utah's CPSD State Park.

Adult CPSD tiger beetles use most of the dune areas from the swales to the upper dune slopes. Larval CPSD tiger beetles are more restricted to vegetated swale areas (Knisley and Hill 2001, p. 386), where the vegetation supports the larval prey base of flies, ants, and other prey (Conservation Team 2009, p. 14). Larval CPSD tiger beetle habitat is typically dominated by the leguminous plants *Sophora stenophylla* (silvery sophora) and *Psoralidium lanceolatum* (dune scurfpea), and several grasses, including *Sporobolus cryptandrus* (sand dropseed) and *Achnatherum hymenoides* (Indian ricegrass). Larvae also are closely associated with a federally threatened plant species, *Asclepius welshii* (Welsh's milkvetch) (Knisley and Hill 2001, p. 385) for which the entire CPSD area is designated critical habitat (52 FR 41435, October 28, 1987).

Rainfall and associated soil moisture is a critical factor for CPSD tiger beetles (Knisley and Juliano 1988, entire) and is likely the most important natural environmental factor affecting population dynamics of the species. Rainfall and the associated increase in soil moisture have a positive effect on CPSD tiger beetle oviposition (egg depositing) and survivorship (Knisley and Hill 2001, p. 391). The areas in the dune field with the highest level of soil moisture and where soil moisture is closer to the surface contain the highest densities of CPSD tiger beetle larvae (Knisley and Gowan 2011, p. 22), indicating that both proximity to moisture and overall soil moisture are important to the CPSD tiger beetle's life cycle. Experimental supplemental watering has resulted in significantly more adults and larvae, more oviposition events, increased larval survival, and faster larval development compared to unwatered control plots (Knisley and Gowan 2011, pp. 18–22).

Population Distribution

The CPSD tiger beetle (*Cicindela albissima*) occurs sporadically throughout the CPSD geologic feature, but only consistently exists in two populations—central and northern—which are separated by 4.8 km (3 mi)

(Figure 1; Knisley 2012, pers. comm.). The two populations occupy a total area approximately 202 ha (500 ac) in size (Morgan *et al.* 2000, p. 1109).

The central population is the largest and is self-sustaining, but at relatively low numbers (see *Population Size and Dynamics*, below). The northern population is not considered self-sustaining and comprises only a small number of adults and larvae (Knisley 2001, p. 9). The northern population

likely persists because of adults dispersing from the central population (Knisley and Gowan 2011, p. 9).

Low densities of adult CPSD tiger beetles also occur in the dune area between the central and northern populations (Figure 1; Hill and Knisley 1993, p. 9; Knisley 2012, pers. comm.), and suitable swale habitat likely exists in this area. This area has not been extensively surveyed in the past 20 years, and observations of the species in

this area are from opportunistic and inconsistent surveys. Because the northern population likely is dependent upon adults dispersing from the central population (Knisley and Gowan 2011, p. 9), the 4.8-km (3-mi) long area of dune between the two populations is likely an important dispersal corridor for the species (see *Adult Dispersal* below).

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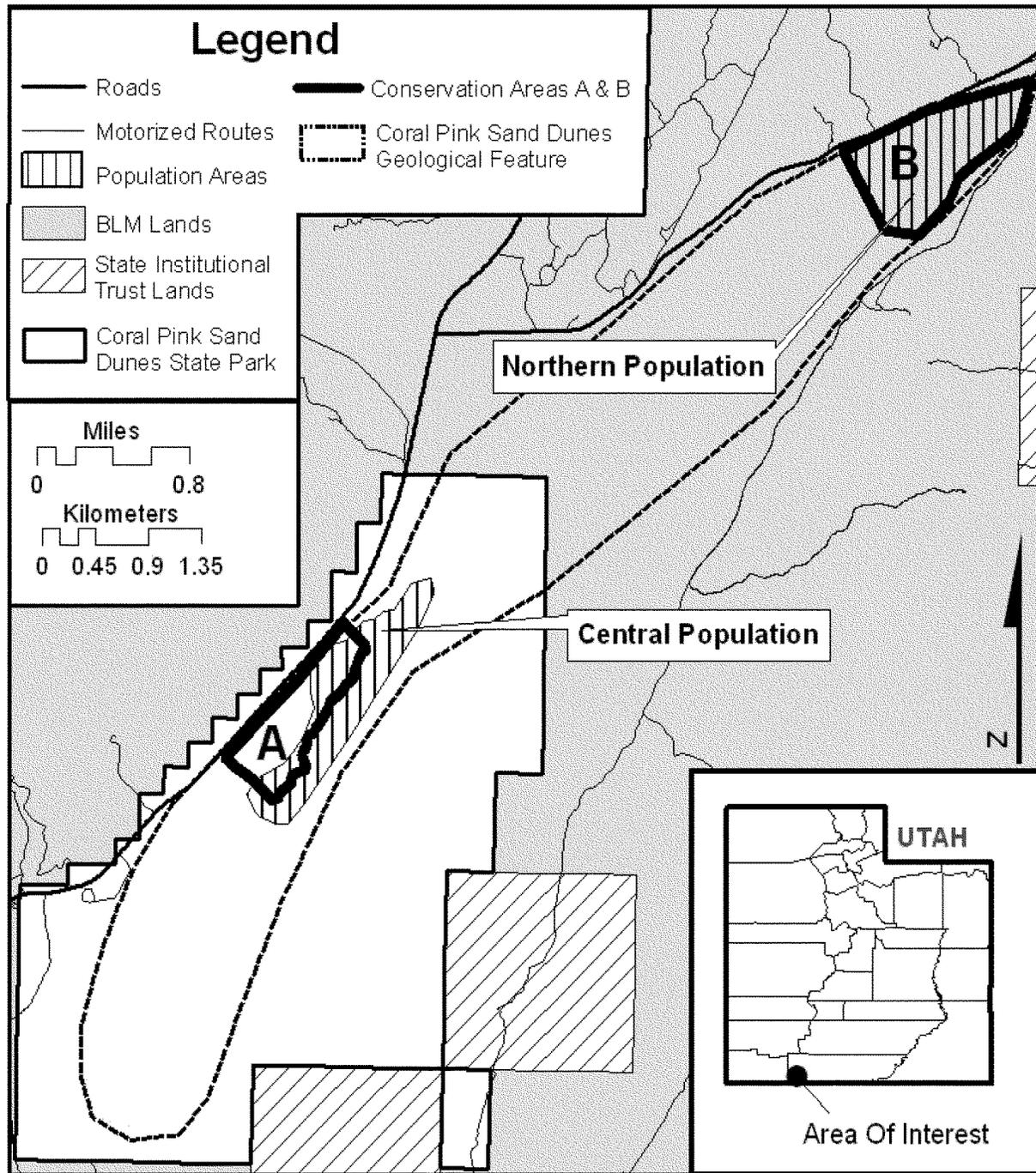


FIGURE 1. Coral Pink Sand Dunes tiger beetle populations and Conservation Areas.

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As previously mentioned (see Previous Federal Actions), an interagency CCA established Conservation Areas A and B to protect the CPSD tiger beetles from ORV use (see *Factor A, The Present or Threatened Destruction, Modification, or Curtailment of its Habitat or Range*

for more information). These Conservation Areas generally overlap the central and northern populations of CPSD tiger beetles (see Figure 1). However, the central population does not occupy the entirety of Conservation Area A, and also extends outside of it. We do not have occupied swale

information for the northern population, so for purposes of this rule, we will assume that the northern population, during most years, occupies some swale habitat in an area that overlaps Conservation Area B entirely. Conservation Area A is 84 ha (207 ac) in size, and Conservation Area B is 150

ha (370 ac) in size (Knisley and Gowan 2011, pp. 7, 9).

We do not have comprehensive analysis or occupancy modeling that predicts the habitat preferences of the CPSD tiger beetle. However, a preliminary habitat assessment indicated that the beetle exists where there is abundant prey and larvae, large swale areas capable of supporting the appropriate vegetation, swale sediment characteristics appropriate for vegetation and larval burrows, dune migration characteristics that permit vegetation to develop and persist within dune swales, proper sediment supply, and a proper wind regime (Fenster *et al.* 2012, pp. 2–4). The presence of CPSD tiger beetles in the northern and eastern portions of Conservation Area A, to the east and outside of Conservation Area A (despite the lack of protection from ORV traffic), and in limited swales in Conservation Area B, indicate that many or all of these habitat conditions occur in these areas. See the *Factor A* section, and other subsections in *Background* for more information on CPSD tiger beetle preferred habitat characteristics.

The same preliminary habitat assessment indicated that CPSD tiger beetles do not exist where there is a lack of prey, small swale areas incapable of supporting the appropriate vegetation, swale sediment characteristics not conducive for vegetation nor suitable for larval burrows, dune migration characteristics that do not permit vegetation to develop and persist within dune swales, low sediment supply, and wind velocities that are too high or too low to maintain proper dune form and vegetation densities (Fenster *et al.* 2012, pp. 4–5). The general absence of CPSD tiger beetles in the south-central and southeastern portions of Conservation Area A and the general area south of Conservation Area A, indicate that many of these habitat conditions occur in these areas. See the *Factor A* section, and other subsections in *Background* for more information on CPSD tiger beetle preferred habitat characteristics.

Life History

Similar to other tiger beetles, the CPSD tiger beetle goes through several developmental stages. These include an egg, three larval stages (known as “instars,” with each instar separated by molting), pupa, and adult (Knisley and Shultz 1997, p. 13). First instar larvae appear in late spring after hatching from eggs that were oviposited in sand the previous late summer or fall (Hill and Knisley 1997, p. 2). The first instar larvae dig small vertical burrows from the sand surface down 6 to 9 cm (2.4 to 3.5 in.) into the sand substrate

(Conservation Committee 2009, p. 14). After several weeks of feeding at the surface, the first instar larva plugs its burrow opening, sheds its skin (molts), and becomes a larger second instar larva (Conservation Committee 1997, p. 2). The second instar stage lasts several months (again emerging from its burrow and feeding at the surface for a brief period) before developing into a third instar, with most reaching this stage by mid- to late summer (Conservation Committee 1997, p. 2). Larvae continue as second or third instars into fall, and then hibernate in burrows during the winter (Conservation Committee 1997, p. 3). The third instar stage can take 9 months to over a year to reach full development (Conservation Committee 1997, p. 3). After the third instar is fully developed, the CPSD tiger beetle plugs its burrow opening and transforms into a pupa (Pearson and Vogler 2001, p. 34). During the pupal period (stage between third instar and adult emergence), the beetle undergoes a metamorphosis where many of the adult physical structures develop (*i.e.*, wings and flight muscles) (Pearson and Vogler 2001, p. 34). Adults emerge soon after this metamorphosis. The CPSD tiger beetle completes its entire life cycle from egg to adult reproduction to death within 2 or 3 years (Hill and Knisley 1997, p. 3).

Adult Behavior and Ecology

Adults are active on sunny days along the dunes and swale edges. The majority of recently metamorphosed adult CPSD tiger beetles emerge from their burrows in late March to early April, reach peak abundance by May, begin declining in June, and die by August (Knisley and Hill 2001, p. 387). A small proportion of a second adult cohort emerges in early September and remains active into October before digging overwintering burrows (Knisley and Hill 2001, pp. 387–388).

Adult tiger beetles are active predators, attacking and eating prey with their large and powerful mandibles (mouthparts). They can run or fly rapidly over the sand surface to capture or scavenge for prey arthropods. Adults feed primarily on ants, flies, and other small arthropods (Knisley and Hill 1993, p. 13).

CPSD tiger beetle behavior and distribution, like other tiger beetles, is largely determined by their thermoregulation needs. Adult tiger beetles dedicate up to 56 percent of their daily activity towards behavior that controls their internal body temperature (Pearson and Vogler 2001, p. 135). These behaviors include basking (positioning the body to maximize exposure to solar radiation);

seeking out wet, cool substrate or shade; and burrowing (Pearson and Vogler 2001, p. 136). Tiger beetles with low body temperatures are sluggish; tiger beetles require a high body temperature for maximal predatory activity (Pearson and Vogler 2001, p. 131). Thus, the numbers of adult CPSD tiger beetles observed on rainy or cool, cloudy days are very low (Knisley and Hill 2001, p. 388). Tiger beetles maintain body temperatures near their lethal limits of 47 to 49 °C (116 to 120 °F) (Pearson and Vogler 2001, p. 131), so heat refuge is important (Shultz and Hadley 1987, p. 363). During peak spring and fall activity, when it is sunny, adult CPSD tiger beetles are usually active early (9 a.m.–2 p.m.) and again in late afternoon (4 p.m.–7 p.m.) (Knisley and Hill 1993, pp. 13–14). They dig and reside in burrows to avoid unfavorable weather conditions such as hot mid-afternoons or cool or rainy daytime conditions (Knisley and Hill 1993, p. 14). Shade provided by vegetative cover is important for CPSD tiger beetle thermoregulation during warm periods (Knisley 2012, pers. comm.).

Adult Dispersal

Dispersal is the movement of individuals from one habitat area to another. The ability to disperse is often important to tiger beetle species because many species inhabit areas such as sand dunes or riverbanks that are prone to disturbance and physical change (Pearson and Vogler 2001, pp. 130–142) (see *Factor E (Sand Dune Movement)* below). We do not have information on the dispersal habits of the CPSD tiger beetle, so we evaluated information for surrogate species that occupy unstable habitats similar to those of the CPSD geologic formation. The Maricopa tiger beetle, *Cicindela oregona maricopa*, is an example of a species that persists in an unstable environment because of dispersal. The Maricopa tiger beetle inhabits moist sandy habitat on the banks of small streams and creeks (Pearson and Vogler 2001, p. 141). Flash flooding periodically scours away this sandy habitat and most of the existing population (Pearson and Vogler 2001, p. 141). These floods redistribute the scoured sand elsewhere, and surviving adult tiger beetles quickly disperse and colonize the newly available habitat (Pearson and Vogler 2001, p. 141). Similarly for the CPSD tiger beetle, the CPSD geologic formation is continually changing as winds redistribute the sands, both creating and destroying swale habitat and dispersal habitat within and between Conservation Areas A and B (see *Factor E Sand Dune Movement* below).

Often, tiger beetle populations depend upon dispersal among separated populations for the survival of individual populations and the species (Knisley *et al.* 2005, p. 557). The extirpation of at least one population of the Northeastern Beach tiger beetle, *Cicindela dorsalis dorsalis*, (federally listed as a threatened species) is partially attributed to the lack of nearby populations and associated dispersal habitats (Knisley *et al.* 2005, p. 557). Similarly, in CPSD the northern population of the CPSD tiger beetle likely persists because of dispersal from the central population, across the CPSD (Knisley and Gowan 2011, p. 9). In like fashion, the resilience of the central population would be greatly increased if the northern population became self-sustaining and could contribute to the central population by dispersing across the CPSD.

Larval Behavior and Ecology

Larval CPSD tiger beetles are ambush predators that wait at their burrow mouth to capture small arthropod prey when it passes nearby. The daily period of activity is highly variable and influenced by temperature, moisture levels, and season (Knisley and Hill 2001, p. 388; Knisley and Gowan 2008, p. 20). Larvae can be active much of the day during cool or cloudy spring and fall days, except during high wind

periods (Conservation Committee 2009, p. 14). Maximal activity occurs in early mornings before the soil becomes dry and warm from the sun and again in late afternoon and evening after the soil has cooled (Conservation Committee 2009, p. 14).

Adult females determine the larval microhabitat by their selection of an oviposition site (Knisley and Gowan 2011, p. 6). Recently hatched larvae construct burrows in the sand at the site of oviposition and subsequently pass through three larval stages before pupating and then emerging to the adult form (Conservation Committee 2009, p. 14). Most larvae occur within the swale bottoms and up the lower slopes of the dunes, particularly where the soil or subsoil is moist most of the time (Hill and Knisley 1996, p. 11; Knisley and Gowan 2011, p. 22). The swale vegetation supports the larval prey base of ants, flies, and other prey (Conservation Committee 2009, p. 14). Larvae most often remain in the same burrow throughout their development and only rarely move outside of their burrow to dig a new burrow in a more favorable location (Knisley and Hill 1996, p. 11).

Population Size and Dynamics

Substantial year-to-year population variation is typical of many desert arthropods that are greatly affected by

climatic factors such as rainfall (Knisley and Hill 2001, p. 391). Adult abundance in any year is a result of many interacting factors that affect recruitment of the cohort oviposited 2 or 3 years previous (because of a 2- or 3-year life cycle), and also the survivorship of the developmental stages of that year's cohort (Knisley 2001, p. 10).

The central and northern populations were monitored for the last 20 and 14 years (respectively) to yield a yearly adult CPSD tiger beetle population size estimate (monitoring did not take place outside of these populations) (Figure 2). The adult population size estimate is based solely on data collected from the central population from 1992 to 1997, and after 1997 the adult population size estimate is based on both populations. Population numbers fluctuated greatly over this time, ranging from a low of 558 in 2005 to a high of 2,944 in 2002 (Figure 2). The total adult population size estimate in 2011 was 1,116 (Knisley and Gowan 2011, p. 7). Population monitoring results indicate a low, yet stable to increasing population size since 2003 that contrasts with highly variable population estimates in previous periods (Knisley and Gowan 2011, pp. 7–8; Figure 2); however, the overall trend since 1992 suggests that the population is in decline.

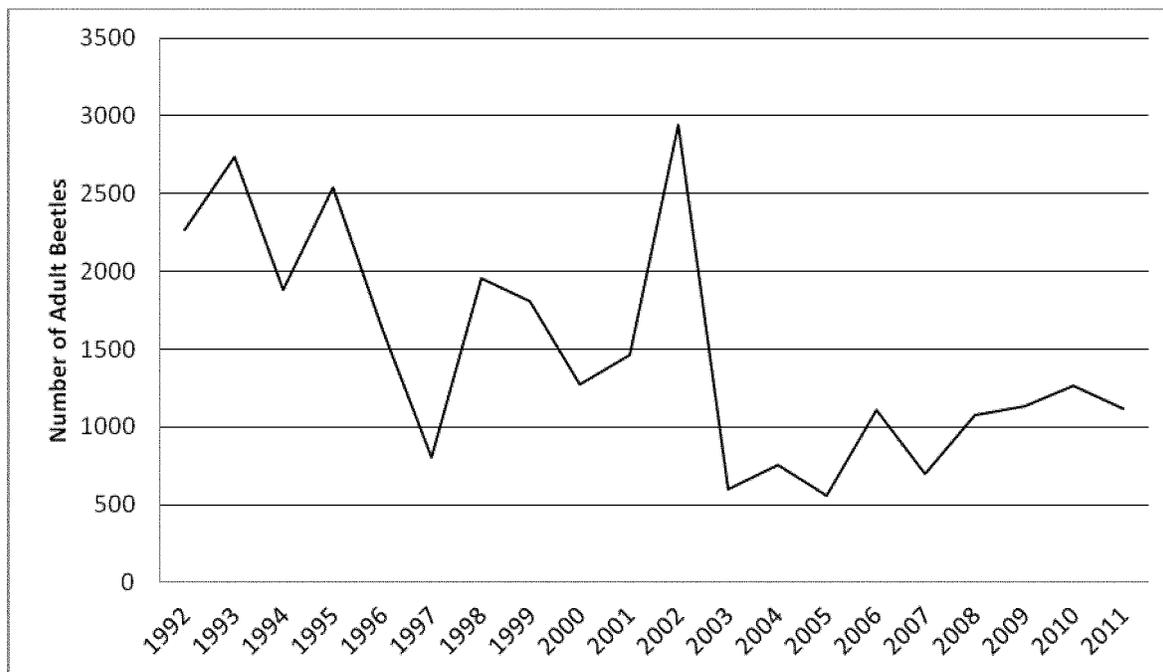


Figure 2. Adult CPSD tiger beetle population size estimate at Coral Pink Sand Dunes from 1992 to 2011 (modified from Knisley and Gowan 2011, p. 8).

Population Viability Analysis

Population viability analysis (PVA) is a way to predict the population dynamics of a species under various management alternatives (Brook *et al.* 2000, p. 385). PVAs generate future predictions for a given species based upon past and present population, environmental data, and selected management alternatives. Two PVAs are available for the CPSD tiger beetle using the same methods, one from 1998 using adult population counts from 1992 through 1998, and the other from 2008 using adult counts from 1999 through 2008 (Knisley and Gowan 2009, pp. 17–18).

Both PVAs only consider adult beetles from the Conservation Area A population because Conservation Area B population numbers are extremely low and the population is not considered self-sustaining (Knisley 2001, p. 9). The PVA authors caution that the CPSD tiger beetle PVA should only be used in a comparative way, to evaluate the effectiveness of different management options (Knisley 2012, pers. comm.). They add that the PVA predictions may not be quantitatively reliable for predicting the absolute extinction probability of the species (Knisley 2012, pers. comm.). For these reasons, we do not base our status determination for this rulemaking on the PVA and instead use the PVA to evaluate existing threats and potential conservation measures.

The PVA models do not directly account for current or future threats and are entirely based on four demographic variables:

1. Starting population size;
2. Population growth rate (increase in population size year-to-year);
3. Stochasticity (variation in yearly population growth rate); and
4. Carrying capacity (number of beetles that the habitat can sustain).

The results of the two PVAs were generally similar in that growth rate and stochasticity tend to control extinction probability. The most recent PVA indicated a 32 percent chance of extinction and an 87 percent chance that the species would decline to 50 individuals within the next 100 years (Knisley and Gowan 2009, p. 17). The first PVA was based on only 7 years of data and predicted extremely variable extinction probabilities (2 percent to 96 percent in 100 years); however, the data were based on very rough estimates of population growth rates (Knisley and Gowan 1999, pp. 5–6). Increases or decreases in carrying capacity would have only a modest effect on the risk of extinction, whereas decreasing stochasticity or increasing population

growth rate would greatly reduce the chance of extinction (Knisley and Gowan 2009, p. 18). The authors of the PVA study recommended two management actions to reduce the extinction probability. Their first recommendation was to expand both Conservation Areas to include several important swales that are believed to have suitable habitat, but are being impacted by heavy ORV use, thus preventing successful colonization and recruitment of CPSD tiger beetles (Knisley and Gowan 2009, p. 23). Expanding the size of both Conservation Areas would likely increase the population growth rate because the protections would improve overall habitat quality and lead to greater reproductive success (*e.g.*, Klok and de Roos 1998, pp. 205–206). Their second suggestion was to translocate beetles and establish a self-sustaining population in Conservation Area B (Knisley and Gowan 2009, p. 23), although this would likely require improvements (*e.g.*, vegetation removal or watering during key development stages) to the existing habitat (Knisley 2012, pers. comm.). The establishment of a self-sustaining population in Conservation Area B, or elsewhere in the CPSD, would change the dynamics of the PVA model by introducing the possibility that a second self-sustaining population could “rescue” or recolonize the central population (and vice versa) in the event that one of them were extirpated.

Summary of Factors Affecting the Species

Section 4 of the Act (16 U.S.C. 1533), and its implementing regulations at 50 CFR part 424, set forth the procedures for adding species to the Federal Lists of Endangered and Threatened Wildlife and Plants. Under section 4(a)(1) of the Act, we may list a species based on any of the following five factors: (A) The present or threatened destruction, modification, or curtailment of its habitat or range; (B) overutilization for commercial, recreational, scientific, or educational purposes; (C) disease or predation; (D) the inadequacy of existing regulatory mechanisms; and (E) other natural or manmade factors affecting its continued existence. Listing actions may be warranted based on any of the above threat factors, singly or in combination. Each of these factors is discussed below.

Factor A. The Present or Threatened Destruction, Modification, or Curtailment of Its Habitat or Range

Loss of habitat is the leading cause of species extinction (Pimm and Raven

2000, p. 843). Insects are highly vulnerable to extinction through habitat loss (McKinney 1997, pp. 501–507). ORV use significantly impacts the CPSD tiger beetle’s habitat, range, and the beetle itself by directly killing beetles, damaging vegetation that supports prey items, directly killing prey items, and reducing soil moisture.

Nationwide, ORV use has drastically reduced or extirpated several tiger beetle populations. For example, ORV use and pedestrian traffic extirpated the Northeastern Beach tiger beetle, *Cicindela dorsalis dorsalis*, in several localities (Knisley 2011, p. 45). Similarly, within several years of the Assateague Island National Seashore (Maryland, USA) opening for ORV use, the White Beach tiger beetle, *C. d. media*, was extirpated from all but those areas where ORVs were restricted (Knisley and Hill 1992, pp. 138–139). Additionally, ORV use is responsible for eliminating tiger beetle populations in coastal southern California (Hairy-necked tiger beetle, *C. hirticollis gravida*), Oregon and Washington (Siuslaw hairy-necked tiger beetle, *C. h. siuslawensis*), and Idaho (St. Anthony Dune tiger beetle, *C. arenicola*) (Knisley 2011, p. 45).

As previously described (see Previous Federal Actions, *Population Distribution*, and Figure 1), in 1997, the Service, BLM, Utah State Parks and Recreation, and Kane County developed and signed a CCA and formed a conservation committee to protect the CPSD tiger beetle within an ORV-use area (Conservation Committee 1997). The CCA established Conservation Areas A and B (see Figure 1 in *Population Distribution* above) to protect CPSD tiger beetle habitat from ORV use: Conservation Area A—84 ha (207 ac) are closed to ORV use within the CPSD State Park; and Conservation Area B—150 ha (370 ac) are closed to ORV use on BLM land.

Because we do not have survey information to determine the extent of occupied swale habitat in the northern population (see *Population Distribution*) and because the entirety of the northern population occurs within Conservation Area B (protected from ORV use), the below analysis is specific to the central population and Conservation Area A. Conservation Area A protects 48 percent of the swale habitat occupied by the CPSD tiger beetle in the central population, as well as 73 to 88 percent of CPSD tiger beetle adults and the vast majority of larvae from ORV activities. ORV use still occurs in 52 percent of occupied CPSD tiger beetle swale habitat in the central population (Figure

3, adapted from Knisley and Gowan 2009, p. 8).

Available information shows the effects of ORV use on current population numbers. For example, swales adjacent to but outside of

Conservation Area A are similar in all apparent environmental conditions to swales within Conservation Area A with the exception of ORV impacts. However, CPSD tiger beetle abundance in ORV-

impacted occupied swales is consistently lower than adjacent protected occupied swales, potentially because of ORV impacts (Figure 3).

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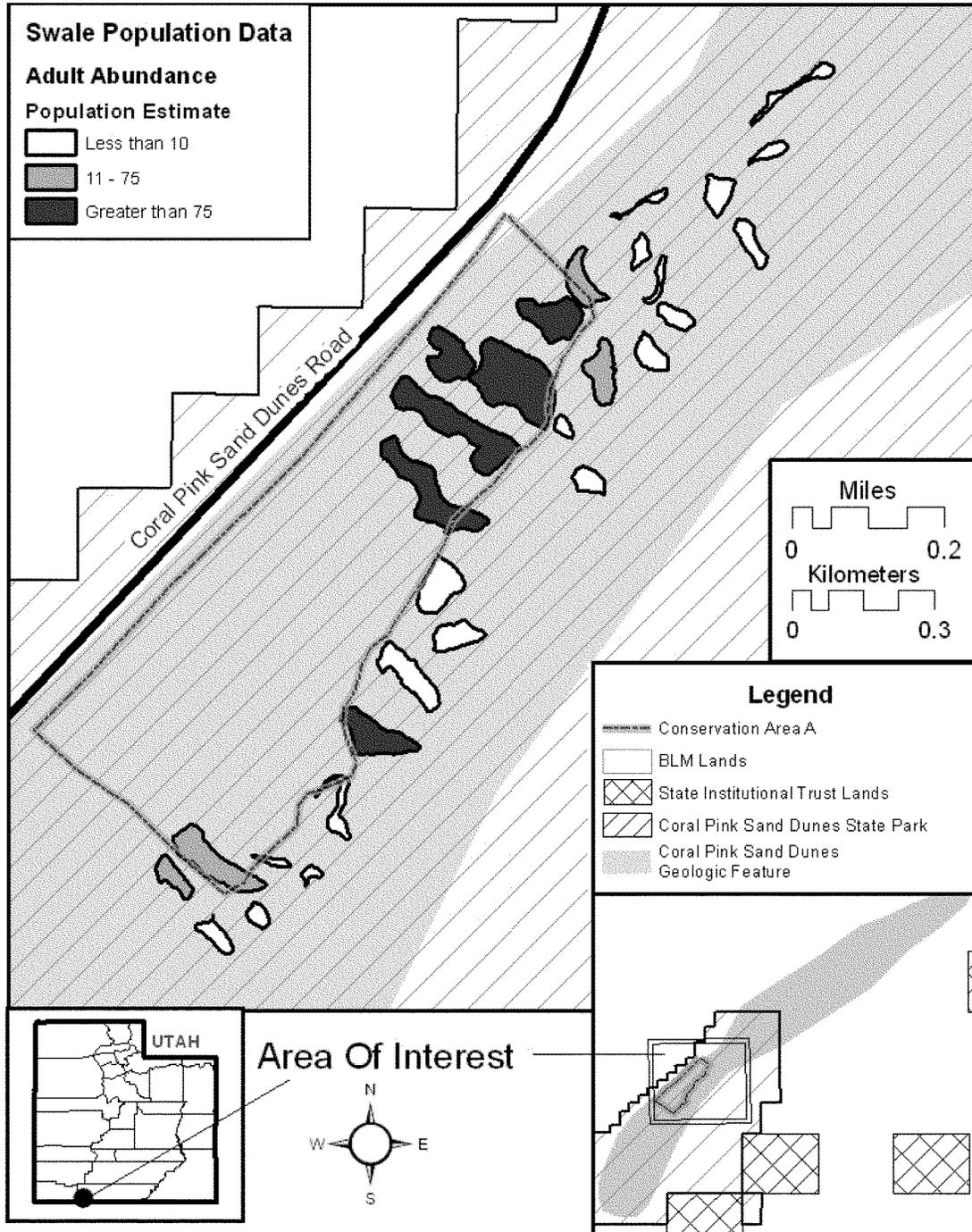


FIGURE 3. Adult abundance in 2006 for occupied swales within and outside Conservation Area A.

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For example, one swale with ORV use had population counts of 60 or more CPSD tiger beetles in most years (Knisley and Gowan 2011, p. 11). Utah State Park staff, at the recommendation of the conservation committee, protected this swale from ORV use in 2010 (Knisley and Gowan 2011, p. 11). The year following removal of ORV use, the tiger beetle density on this swale more than doubled to 150 beetles, which also is the highest number recorded for the swale (Knisley and Gowan 2011, p. 11). This action

provides an example of how the conservation committee has used adaptive management to benefit the CPSD tiger beetle and demonstrates a rapid population response to removed ORV disturbance.

ORVs run over and thereby kill and injure CPSD tiger beetles (Knisley and Hill 1993, p. 14; Knisley and Gowan 2008, p. 23). The likelihood of being injured or killed increases if adult CPSD tiger beetle are run over on wet or compact substrates (*e.g.*, moist swales) as compared to soft sands (*e.g.*, dune

faces) (Knisley and Hill 2001, p. 390). The likelihood of being hit by ORVs also increases based on the level of ORV use. For example, the numbers of adult CPSD tiger beetles found injured or killed by ORVs increases substantially during periods of heavy use, such as during the Memorial Day holiday (Table 1; Knisley and Hill 2001, p. 390). We have no information quantifying the direct injury or mortality that ORVs cause to eggs or larval CPSD tiger beetle because these stages are underground and not easily monitored.

TABLE 1—A COMPARISON OF THE NUMBER OF ADULT CORAL PINK SAND DUNES TIGER BEETLES FOUND INJURED OR KILLED (BY OFF-ROAD VEHICLES) BEFORE AND AFTER A HIGH ORV USE HOLIDAY WEEKEND (MEMORIAL DAY) FROM 1993 TO 1998 (NO SURVEY CONDUCTED IN 1995) (KNISLEY AND HILL 2001, P. 390).

Year	Before Memorial Day weekend		After Memorial Day weekend	
	Total number observed	Number observed killed or injured	Total number observed	Number observed killed or injured
1993	(¹)	(¹)	179	14
1994	363	0	125	6
1996	231	2	287	41
1997	256	2	64	6
1998	168	1	278	8

(¹) No data.

We do not have specific data regarding the level of impact ORVs have on CPSD tiger beetles in the unprotected area between Conservation Areas A and B. It is likely that many of the beetles run over by ORVs in the dispersal corridor will be injured or killed. Thus, the ability of adults to disperse between the central population and the northern population is likely negatively impacted by ORVs. The result of these ORV impacts is that the habitat between the central and northern populations does not provide a sufficient dispersal corridor for beetles to the northern population. Current levels of dispersal are likely not adequate for the northern population to be self-sustaining (see *Population Viability Analysis*). Thus, BLM protection of only Conservation Area B, and the absence of protection in the dispersal corridor, results in the continued threat of ORV use to the CPSD tiger beetle.

Food limitation has a significant impact on tiger beetle growth, survival, and fecundity, especially for desert species. Adult CPSD tiger beetles are, in some years, extremely food limited and exhibit reduced fecundity (Knisley and Gowan 2008, p. 19). Food limitation is at least partly caused by ORV use. ORVs reduce CPSD tiger beetle prey density and prey species diversity in CPSD (Knisley and Gowan 2006, p. 19). Ants,

a primary prey item, occur in much lower densities in areas frequented by ORVs than in areas with no ORV traffic (Knisley and Gowan 2008, p. 23). In addition, low ORV use areas in CPSD have a higher diversity of prey species and higher numbers of prey items than high ORV use areas (Knisley and Hill 2001, p. 389).

Prey availability significantly affects the number of larvae produced by adult tiger beetles (Pearson and Knisley 1995, p. 165) and the survival of larval tiger beetles (Knisley and Juliano 1988, p. 1990). Low prey densities can result in prolonged development and decreased survivorship in larval tiger beetles and reduced size in adults, which lowers fecundity in females (Pearson and Knisley 1985, p. 165; Knisley and Juliano 1988, p. 1990). Also, low prey densities require larval and adult tiger beetles to spend more time searching for food. For larval tiger beetles, this means more time near burrow entrances searching for prey, resulting in increased susceptibility to parasitism and predators (Pearson and Knisley 1985, p. 166). Similarly, adults that spend more time out of their burrows searching for food have an increased susceptibility to predation.

ORV use degrades larval habitat by reducing soil moisture. ORV use can reduce soil moisture by churning up

soils and exposing the moisture that is locked between soil particles (beneath the surface) to greater evaporative pressure (Shultz 1988, p. 28; Knisley and Gowan 2008, p. 10). It also reduces soil moisture by increasing soil compaction (Adams *et al.* 1982, p. 167). Compaction reduces water infiltration and reduces moisture retention in soils (Belnap 1995, p. 39).

As we discussed earlier (see *Habitat*), soil moisture is essential to the CPSD tiger beetle's life history. Extreme drying or desiccation kills tiger beetles (Knisley and Juliano 1998, p. 1990). In a dry environment, such as the CPSD geologic feature, organisms are constantly struggling to acquire and maintain enough water to survive. Water is limiting to tiger beetles in CPSD, and this is evidenced by the fact that experimental water supplementation increased larval CPSD tiger beetle survival by 10 percent (Knisley and Gowan 2008 p. 20). CPSD areas protected from ORV use have significantly higher soil moistures and higher numbers of CPSD tiger beetles than adjacent ORV use areas (Knisley and Gowan 2008, pp. 10–11).

Overall, ORV use reduces available habitat and the CPSD tiger beetle population size. This results in a population that is at risk of endangerment in the face of minor

stochastic events and minor environmental perturbations (see *Factor E. Small Population Effects*).

Summary of Factor A

ORV use is a threat to the CPSD tiger beetle through direct mortality and injury, and by reducing prey base and soil moisture. ORV use substantially reduces habitat qualities essential to the CPSD tiger beetle's life cycle (e.g., soil moisture and prey availability) (Knisley and Hill 2001, p. 389; Knisley and Gowan 2008, pp. 10–11). Reduction in habitat quality reduces reproductive success and the tiger beetle population growth rate (e.g., Klok and de Roos 1998, pp. 205–206). We acknowledge the very important protections of Conservation Areas A and B from ORV use. However, despite these conservation efforts, 52 percent of occupied swale habitat, which occurs outside of the Conservation Areas, is currently unprotected (Figure 3, Knisley and Gowan 2009, p. 8) and the degradation of habitat (both occupied and potential) by ORV use reduces the ability of the population to expand or disperse in areas outside of the Conservation Areas and thereby reduces the population's carrying capacity. As the PVA demonstrates (see *Population Viability Analysis* above), reductions in growth rate and carrying capacity (albeit a moderate effect on PVA compared to growth rate) increase the probability of extinction for this species. Based on current ORV use and CPSD tiger beetle population levels, there is a 32 percent probability that the species will go extinct in the next 100 years, and the PVA does not consider future threats (see *Population Viability Analysis* above). As we will discuss in Factor E, environmental effects from climate change and drought conditions will likely exacerbate reductions in soil moisture associated with ORV use, thus increasing the extinction risk even further. The best scientific and commercial information available indicates that the destruction, modification, or curtailment of the CPSD tiger beetle's habitat or range due to ORV use is a threat to the species now and in the future.

Factor B. Overutilization for Commercial, Recreational, Scientific, or Educational Purposes

Tiger beetles are one of the most sought-after groups of insects by amateur collectors because of the unique metallic colors and patterns present in the various species and subspecies, as well as their fascinating habits (Pearson *et al.* 2006, pp. 3–5). Interest in the genus *Cicindela* is

reflected in the scientific journal entitled "Cicindela," which is published quarterly (since 1969) and is exclusively devoted to the genus. In certain circumstances, collection of these insects can add valuable information regarding biogeography, taxonomy, and life history of the species. However, some collection is purely recreational and adds little to no value to the scientific understanding or conservation of tiger beetles.

Collection of adult CPSD tiger beetles, before they mate and lay their eggs, may result in reduced population size of subsequent generations. The magnitude of recreational collection cannot be accurately determined for the CPSD tiger beetle, but it is likely that some number of adults were taken in the past. However, CPSD State Park and BLM personnel now enforce restrictions on recreational collecting of CPSD tiger beetles, and consequently, collection levels are low (Conservation Committee 2009, p. 17). Although scientific collection is not restricted by any formal permitting process, only one researcher has collected CPSD tiger beetles in approximately the last 14 years. Over this time period, approximately 70 adults were collected (Knisley 2012, pers. comm.). The adults were collected in late May after they had mated and oviposited eggs (Knisley 2012, pers. comm.).

Summary of Factor B

CPSD tiger beetles are not overutilized for commercial, recreational, scientific, or educational purposes. A limited number of CPSD tiger beetles are likely collected from wild populations for recreational purposes; however, CPSD State Park and BLM personnel enforce restrictions on recreational collecting. Collection of CPSD tiger beetles for scientific investigation purposes occurs on occasion, but the level of collection is very small. The best scientific and commercial information available indicates that overutilization for commercial, recreational, scientific, or educational purposes is not a threat to the CPSD tiger beetle now nor will be in the future.

Factor C. Disease or Predation

We know of no diseases that are a threat to the CPSD tiger beetle. Natural mortality through predation and parasitism accounts for some individual loss of adult and larval CPSD tiger beetles (Knisley and Hill 1994, p. 16). Known predators of adult tiger beetles include birds, shrews (Soricidae), raccoons (*Procyon lotor*), lizards (Lacertilia), toads (Bufonidae), ants (Formicidae), robber flies (Asilidae), and

dragonflies (Anisoptera) (Knisley and Shultz 1997, pp. 57–59). Despite a documented level of natural predation of CPSD tiger beetles, effects to the species are low and not likely to limit the CPSD tiger beetle population (Conservation Committee 2009, p. 17).

Known tiger beetle parasites include ant-like wasps of the family Typhiidae, especially the genera *Mathoca*, *Karlissa*, and *Pterombrus*, and flies of the genus *Anthrax* (Knisley and Shultz 1997, pp. 53–57). Parasites predominantly target larval tiger beetles (Pearson and Vogler 2001, pp. 170–171). There are two known natural parasites of larval CPSD tiger beetles. Bee flies (Bombyliidae) are known to flick their eggs into beetle burrows (Knisley and Hill 1995, p. 14). When these eggs hatch, the larval parasite feeds on beetle bodily fluids, often resulting in death of the tiger beetle larvae. Wasps of the genus *Methoca* also can parasitize CPSD tiger beetle larvae (Knisley and Hill 1995, p. 14). These wasps deposit their larvae in the burrows of larval tiger beetles. The wasp larvae then consume the tiger beetle larvae. Despite documented parasitism to larval CPSD tiger beetle, effects to the species are low and not likely to limit the CPSD tiger beetle population (Conservation Committee 1997, p. 7).

Summary of Factor C

We have found no information that indicates that disease is a threat to the CPSD tiger beetle. There is some information documenting mortality of CPSD tiger beetles by natural predators and parasites; however, not to a level that significantly affects the species. Thus, we have no information that disease, parasites, or predation is a threat to the species now or is likely to become so in the future.

Factor D. The Inadequacy of Existing Regulatory Mechanisms

The Act requires us to examine the inadequacy of existing regulatory mechanisms with respect to extant threats that place CPSD tiger beetle in danger of becoming either an endangered or threatened species. Regulatory mechanisms affecting the species fall into three general categories: (1) Land management; (2) State mechanisms; and (3) Federal mechanisms.

Land Management

The CPSD geologic feature is approximately 1,416 ha (3,500 ac). The southern 809 ha (2,000 ac) of the CPSD is within the CPSD State Park and is categorized as public land with a recreational emphasis (Conservation

Committee 2009, p. 17). The State Park's mission, as described in the most recent general management plan (Franklin *et al.* 2005, p. 3), is "to provide visitors [* * *] recreation experiences while preserving and interpreting the park's natural, scenic, and recreation resources." The northern 607 ha (1,500 ac) is Federal land managed by the BLM's Kanab Field Office (BLM 2000, p. 14). The northern area is partly within the Moquith Mountain Wilderness Study Area (WSA). Public education for both areas includes signage, brochures, and interpretive programs.

As stated previously (see *Factor A*), the UDNR (which oversees the Utah Division of State Parks and Recreation), the BLM, the Service, and Kane County developed and signed a CCA in 1997 (Conservation Committee 1997), and renewed the agreement in 2009 (Conservation Committee 2009, entire). The CCA recommends conservation objectives and actions designed to protect and conserve the CPSD tiger beetle. Although the CCA is not a regulatory mechanism in and of itself, the agencies have implemented specified conservation actions, including the protection of Conservation Areas A and B that are regulatory mechanisms. These mechanisms are Utah Administrative Code R651-633 and the BLM's Kanab RMP. The degree to which the CCA has ameliorated the threats is discussed below.

Protection for the tiger beetle in Conservation Area A is enforced according to the CPSD State Park's special closure (Conservation Committee 1997, p. 13) and Utah's Administrative Code (R 651-633). Conservation Area A protects some of the central population of CPSD tiger beetle. Of the 809-ha (2,000-ac) State Park, 84 ha (207 ac) (10 percent) are closed to ORV use to provide protection for CPSD tiger beetle habitat. Conservation Area A prohibits the use of ORVs in 48 percent of the species' known occupied swale habitat in the central population, thereby protecting 73 to 88 percent of CPSD tiger beetle adults and the vast majority of larvae (Figure 3, adapted from Knisley and Gowan 2009, p. 8).

Conservation Area B provides protection to all of the northern population's habitat as we have defined its boundary (see Figure 1), realizing that we do not have good survey information in this area. In this area, 150 ha (370 ac) is closed to ORV use to protect a small population of CPSD tiger beetle. Approximately 445 ha (1,100 ac) is available for ORV use outside of the Conservation Area B on BLM lands, but with the stipulation that ORVs stay on

open dunes and maintain a 3-m (10-ft) buffer around vegetation. Enforcement is minimal and primarily relies on voluntary compliance (Conservation Committee 1997, p. 13). We have no record of enforcement effort or success of the closures at either Conservation Area A or B.

Despite the designation and management of the Conservation Areas, at least 52 percent of known occupied swale habitat in the central population adjacent to Conservation Area A is open to ORV use, and an unknown amount of habitat could be affected in the northern population (Knisley and Gowan 2009, p. 8). As previously described, unprotected but occupied swales have lower CPSD tiger beetle densities than nearby protected swales that are occupied (see Figure 3).

In addition to the lack of any protection for about 52 percent of occupied swale habitat that is outside of Conservation Area A, there is no protection from ORV use for the CPSD tiger beetle in the dispersal corridor between Conservation Areas A and B. As explained above (see *Adult Dispersal*), this area is important for dispersal of tiger beetles from Conservation Area A to Conservation Area B and likely is necessary to maintain the northern CPSD tiger beetle population in Conservation Area B.

We acknowledge the very important protections of Conservation Areas A and B from ORV use. However, outside of the two Conservation Areas, at least 52 percent of occupied swale habitat is currently unprotected and the degradation of habitat (both occupied and potential) by ORV use reduces the ability of the CPSD tiger beetle population to expand in areas outside of protected Conservation Areas and reduces the population's carrying capacity. The dispersal habitat between Conservation Areas A and B is managed by the Utah Division of State Parks and Recreation and the BLM, and used largely for OHV recreation; no regulatory mechanisms protect the CPSD tiger beetle in this area.

At current levels of regulatory protection, CPSD tiger beetle habitat is small and isolated in the two Conservation Areas, and the population size is extremely small, making the species more susceptible to other threats such as climate change and drought, demographic and environmental stochasticity, and catastrophic events (see *Factor E. Climate Change and Drought and Small Population Effects*). As explained previously (see the *Background: Population Distribution*), the central population of CPSD tiger beetle only occupies a portion of

Conservation Area A, and based on population and habitat sampling results to date, we believe it is not likely that the species will expand to other areas in Conservation Area A due to insufficient habitat conditions. Instead we believe that Conservation Area A should be expanded (using regulatory mechanisms) to protect occupied habitat that is already being used by the species but currently is at levels that are artificially low due to the effects of ORVs (see *Population Viability Analysis and Factor A*).

In addition, the population at Conservation Area B should be managed such that it becomes self-sustaining (see *Population Viability Analysis and Factor A*). However, at this point in time it is unclear from a regulatory perspective what will be necessary to achieve this. It is possible that by expanding Conservation Area A, the central population will increase such that it will be sufficient to provide adequate numbers of dispersers to bolster the population at Conservation Area B, thus making it self-sustaining. There may need to be additional regulatory measures put in place to protect the dispersal corridor between Conservation Areas A and B to allow for a safe and sufficient level of CPSD tiger beetle dispersal between the two areas.

State Mechanisms

Utah's Administrative Code (R 651-633) prohibits motorized vehicle use in designated nonmotorized sand dune areas of CPSD State Park. Conservation Area A is a designated nonmotorized sand dune area, and thus the State Code protects tiger beetle habitat in this area. CPSD State Park's dual purpose mission statement of providing recreational experiences while preserving natural resources (Franklin *et al.* 2005, p. 3) has assisted with the conservation of CPSD tiger beetle to some extent because the State Park has closed areas (Conservation Area A) to ORV use to protect CPSD tiger beetle. However, the State Park also promotes recreational use; in this case, extensive ORV use is still permitted across the majority of the State Park, which is ultimately detrimental to maintaining a self-sustaining population of CPSD tiger beetles in the central area in the future (see *Factor A* for an analysis of ORV impacts).

Federal Mechanisms

As mentioned previously, Conservation Area B and the northern population are on BLM-administered land. The Federal Land Policy and Management Act of 1976 (FLPMA) (43 U.S.C. 1701 *et seq.*) is the primary

Federal law governing most land uses on BLM-administered lands. Section 102(a)(8) of FLPMA specifically recognizes wildlife and fish resources as being among the uses for which these lands are to be managed. Regulations pursuant to FLPMA and the Mineral Leasing Act (30 U.S.C. 181 *et seq.*) that address wildlife habitat protection on BLM-administered land include 43 CFR 3162.3–1 and 43 CFR 3162.5–1; 43 CFR 4120 *et seq.*; and 43 CFR 4180 *et seq.*

The BLM manages the CPSD tiger beetle as a “sensitive species,” and as stated above, BLM manages a 150-ha (370-ac) Conservation Area for the species. The management guidance afforded sensitive species under BLM Manual 6840—Special Status Species Management (BLM 2008, entire) states that “Bureau sensitive species will be managed consistent with species and habitat management objectives in land use and implementation plans to promote their conservation and to minimize the likelihood and need for listing under the ESA” (BLM 2008, p. 05V). The BLM Manual 6840 further requires that Resource Management Plans (RMPs) should address sensitive species, and that implementation “should consider all site-specific methods and procedures needed to bring species and their habitats to the condition under which management under the Bureau sensitive species policies would no longer be necessary” (BLM 2008, p. 2A1). As a designated sensitive species under BLM Manual 6840, CPSD tiger beetle conservation must be addressed in the development and implementation of RMPs on BLM lands.

The RMPs are the basis for all actions and authorizations involving BLM-administered lands and resources. They establish allowable resource uses, resource condition goals and objectives to be attained, program constraints and general management practices needed to attain the goals and objectives, general implementation sequences, and intervals and standards for monitoring and evaluating the plan to determine its effectiveness and the need for amendment or revision (43 CFR 1601 *et seq.*).

The RMPs provide a framework and programmatic guidance for activity plans, which are site-specific plans written to implement decisions made in an RMP. Activity plan decisions normally require additional planning and National Environmental Policy Act (NEPA) analysis (see below). If an RMP contains specific direction regarding sensitive species habitat, conservation, or management, it represents an enforceable regulatory mechanism to

ensure that the species and its habitats are considered during permitting and other decision-making regarding BLM lands.

The 2008 Kanab RMP establishes guidance and objectives for the management of the northern portion of CPSD (BLM 2008, entire). In the RMP, the BLM commits to “implement conservation actions identified in the Conservation Agreement and Strategy for the Coral Pink Sand Dunes tiger beetle, including maintaining the established 370-acre conservation area” (BLM 2008, p. 32). In addition to maintaining Conservation Area B, the BLM has funded and continues to fund CPSD tiger beetle monitoring and research activities. While these BLM-implemented conservation actions (as outlined in the RMP) have benefitted the CPSD tiger beetle, remaining threats (such as climate change and drought, demographic and environmental stochasticity, and catastrophic events (see *Factor E. Climate Change and Drought and Small Population Effects*) and ORVs (see *Population Viability Analysis* and *Factor A*)) continue to negatively affect the species.

BLM manual 6840 establishes management policy and direction for BLM’s involvement in the CCA and its membership on the Conservation Committee (Conservation Committee 2009, p. 7). Conservation Area B was established on BLM lands as part of the CCA and was a result of adult and larval CPSD tiger beetle discovered in this area during a 1996 monitoring effort (Knisley and Hill 1997, p. 11; Conservation Committee 1997, entire). BLM land management practices are intended to avoid negative effects whenever possible, while also providing for multiple-use mandates; therefore, maintaining or enhancing CPSD tiger beetle habitat is considered in conjunction with other agency priorities.

The BLM protects the entirety of the northern CPSD tiger beetle population in Conservation Area B; however, this population is not self-sustaining (see *Population Distribution*). As we discuss previously, the northern population likely persists because of dispersal from the central population (see *Adult Dispersal*). However, current levels of dispersal are likely not adequate for the northern population to be self-sustaining (see *Population Viability Analysis*). The habitat between the central and northern populations (between Conservation Areas A and B) is managed by the BLM and Utah Division of State Parks and Recreation and is not protected from ORV use (see Figure 2). The ORV use in this

unprotected zone results in habitat degradation and loss of beetles that are injured or killed by ORVs. The result of these ORV impacts is that the habitat between the central and northern populations does not provide a sufficient dispersal corridor for beetles to the northern population (see *Factor A* for effects of ORVs in CPSD tiger beetle habitat). Thus, BLM protection of only Conservation Area B, and the absence of protection in the dispersal corridor, results in the continued threat of ORV use to the CPSD tiger beetle (see *Factor A*).

On December 15, 2009, the Environmental Protection Agency (EPA) published in the **Federal Register** (74 FR 66496) a rule titled, “Endangerment and Cause or Contribute Findings for Greenhouse Gases Under Section 202(a) of the Clean Air Act.” In this rule, the EPA Administrator found that the current and projected concentrations of the six long-lived and directly emitted greenhouse gases (GHGs)—carbon dioxide, methane, nitrous oxide, hydrofluorocarbons, perfluorocarbons, and sulfur hexafluoride—in the atmosphere threaten the public health and welfare of current and future generations; and that the combined emissions of these GHGs from new motor vehicles and new motor vehicle engines contribute to the GHG pollution that threatens public health and welfare (74 FR 66496). In effect, the EPA has concluded that the GHGs linked to climate change are pollutants, whose emissions can now be subject to the Clean Air Act (42 U.S.C. 7401 *et seq.*) (see 74 FR 66496). However, specific regulations to limit GHG emissions were only proposed in 2010 and, therefore, cannot be considered an existing regulatory mechanism. At present, we have no basis to conclude that implementation of the Clean Air Act in the future (40 years, based on global climate projections) will substantially reduce the current rate of global climate change through regulation of GHG emissions.

A Federal statute that may provide protection to CPSD tiger beetle and its habitat is the NEPA. As explained previously, Federal land management agencies, such as the BLM, have legislation that specifies how their lands are managed for sensitive species. The NEPA provides authority for the Service to assume a cooperating agency role for Federal projects undergoing evaluation for significant impacts to the human environment. This includes participating in updates to RMPs. As a cooperating agency, we have the opportunity to provide recommendations to the action agency

to avoid impacts or enhance conservation for CPSD tiger beetle and its habitat where it occurs on Federal land. For projects where we are not a cooperating agency, we often review proposed actions and provide recommendations to minimize and mitigate impacts to fish and wildlife resources. However, acceptance of our NEPA recommendations is not required and is at the discretion of the action agency.

Summary of Factor D

State and federally managed lands in Conservation Areas A and B provide some protection to the CPSD tiger beetle. The northern portion of CPSD is Federal land managed by the BLM and the southern portion of the CPSD is within the CPSD State Park. These land management agencies provide protection to the CPSD tiger beetle through the establishment and regulation of the ORV restricted Conservation Areas A and B. Utah's Administrative Code (R 651-633) prohibits motorized vehicle use in designated nonmotorized sand dune areas of CPSD State Park (Conservation Area A) and the BLM protects Conservation Area B. However, as discussed under *Factor A*, ORV use is the primary threat to the beetle, and this threat is not being addressed with any existing regulatory mechanisms in the area between Conservation Areas A and B (managed by BLM and Utah Division of State Parks and Recreation) and to the east of Conservation Area A (managed by CPSD State Park). As a result, the habitat quality is negatively affected, and tiger beetles that disperse outside of the two Conservation Areas can be injured or killed by ORVs.

The Clean Air Act gives the EPA authority to limit GHGs linked to climate change; however, our analysis concludes that current regulation of these gases is not adequate to reduce the current rate of global climate change.

As evidenced by the discussion above, the species is not adequately protected by existing regulatory mechanisms.

Factor E. Other Natural or Manmade Factors Affecting Its Continued Existence

Natural and manmade factors affecting the CPSD tiger beetle include: (1) Sand dune movement; (2) Climate change and drought; (3) Small population effects; and (4) Cumulative effects of all threats that may impact the species.

Sand Dune Movement

Movement of the swales due to sand dune movement naturally occurs in this system as wind action continues to shape the dunes. Major dune ridgelines moved close to 22 m (72 ft) (Knisley and Gowan 2005, p. 4) between 2001 and 2002, and most ridgelines moved over 45 m (150 ft) between 2002 and 2010 (Knisley and Gowan 2011, p. 25). Dune movement can result in a change in suitable habitat conditions (Knisley and Gowan 2008, pp. 21-22). For example, dune movement simultaneously buries and uncovers trees in CPSD (Gregory 1950, p. 188). Similarly, we know that dune movement is burying some previously occupied swale habitat (Knisley and Gowan 2008, pp. 21-22). It is likely that dune movement is uncovering potential habitat as well; however, comprehensive surveys to determine this have not been conducted (Knisley 2012, pers. comm.). Wind action created and continues to shape the current CPSD (Ford et al. 2010, p. 387), and we have no evidence to suggest that the rate of dune movement is increasing. Because CPSD tiger beetle presumably evolved in this environment, it is likely that the species is adapted to the continual movement of dunes. We have no evidence demonstrating that dune movement is a threat to the species now or is likely to become so in the future; however, additional study of dune movement is recommended.

Climate Change and Drought

Our analyses under the Act include consideration of environmental changes resulting from ongoing and projected changes in climate. The terms "climate" and "climate change" are defined by the Intergovernmental Panel on Climate Change (IPCC). "Climate" refers to the mean and variability of different types of weather conditions over time, with 30 years being a typical period for such measurements, although shorter or longer periods also may be used (IPCC 2007a, p. 78). The term "climate change" thus refers to a change in the mean or variability of one or more measures of climate (e.g., temperature or precipitation) that persists for an extended period, typically decades or longer, whether the change is due to natural variability, human activity, or both (IPCC 2007a, p. 78).

Scientific measurements spanning several decades demonstrate that changes in climate are occurring, and that the rate of change has been faster since the 1950s. Based on extensive analyses of global average surface air temperature, the most widely used

measure of change, the IPCC concluded that warming of the global climate system over the past several decades is "unequivocal" (IPCC 2007a, p. 2). In other words, the IPCC concluded that there is no question that the world's climate system is warming.

Examples of other changes include substantial increases in precipitation in some regions of the world and decreases in other regions (for these and additional examples, see IPCC 2007a, p. 30; Solomon et al. 2007, pp. 35-54, 82-85). Various environmental changes (e.g., shifts in the ranges of plant and animal species, increasing ground instability in permafrost regions, conditions more favorable to the spread of invasive species and of some diseases, changes in amount and timing of water availability) are occurring in association with changes in climate (see IPCC 2007a, pp. 2-4, 30-33; and Global Climate Change Impacts in the United States 2009, pp. 27, 79-88).

Results of scientific analyses presented by the IPCC show that most of the observed increase in global average temperature since the mid-20th century cannot be explained by natural variability in climate and is "very likely" (defined by the IPCC as 90 percent or higher probability) due to the observed increase in GHG concentrations in the atmosphere as a result of human activities, particularly carbon dioxide emissions from fossil fuel use (IPCC 2007a, pp. 5-6 and figures SPM.3 and SPM.4; Solomon et al. 2007, pp. 21-35). Further confirmation of the role of GHGs comes from analyses by Huber and Knutti (2011, p. 4), who concluded it is extremely likely that approximately 75 percent of global warming since 1950 has been caused by human activities.

Scientists use a variety of climate models, which include consideration of natural processes and variability, as well as various scenarios of potential levels and timing of GHG emissions, to evaluate the causes of changes already observed and to project future changes in temperature and other climate conditions (e.g., Meehl et al. 2007, entire; Ganguly et al. 2009, pp. 11555, 15558; Prinn et al. 2011, pp. 527, 529). All combinations of models and emissions scenarios yield very similar projections of average global warming until about 2030. Although projections of the magnitude and rate of warming differ after about 2030, the overall trajectory of all the projections is one of increased global warming through the end of this century, even for projections based on scenarios that assume that GHG emissions will stabilize or decline. Thus, there is strong scientific support

for projections that warming will continue through the 21st century, and that the magnitude and rate of change will be influenced substantially by the extent of GHG emissions (IPCC 2007a, pp. 44–45; Meehl *et al.* 2007, pp. 760–764; Ganguly *et al.* 2009, pp. 15555–15558; Prinn *et al.* 2011, pp. 527, 529).

In addition to basing their projections on scientific analyses, the IPCC reports projections using a framework for treatment of uncertainties (*e.g.*, they define “very likely” to mean greater than 90 percent probability, and “likely” to mean greater than 66 percent probability; see Solomon *et al.* 2007, pp. 22–23). Some of the IPCC’s key projections of global climate and its related effects include: (1) It is virtually certain there will be warmer and more frequent hot days and nights over most of the earth’s land areas; (2) it is very likely there will be increased frequency of warm spells and heat waves over most land areas; (3) it is very likely that the frequency of heavy precipitation events, or the proportion of total rainfall from heavy falls, will increase over most areas; and (4) it is likely the area affected by droughts will increase, that intense tropical cyclone activity will increase, and that there will be increased incidence of extreme high sea level (IPCC 2007b, p. 8, Table SPM.2). More recently, the IPCC published additional information that provides further insight into observed changes since 1950, as well as projections of extreme climate events at global and broad regional scales for the middle and end of this century (IPCC 2011, entire).

Various changes in climate may have direct or indirect effects on species. These may be positive, neutral, or negative, and they may change over time, depending on the species and other relevant considerations, such as interactions of climate with other variables such as habitat fragmentation (for examples, see Franco *et al.* 2006; IPCC 2007, pp. 8–14, 18–19; Forister *et al.* 2010; Galbraith *et al.* 2010; Chen *et al.* 2011). In addition to considering individual species, scientists are evaluating possible climate change-related impacts to, and responses of, ecological systems, habitat conditions, and groups of species; these studies include acknowledgement of uncertainty (*e.g.*, Deutsch *et al.* 2008; Berg *et al.* 2009; Euskirchen *et al.* 2009; McKechnie and Wolf 2009; Sinervo *et al.* 2010; Beaumont *et al.* 2011; McKelvey *et al.* 2011; Rogers and Schindler 2011).

Many analyses involve elements that are common to climate change vulnerability assessments. In relation to climate change, vulnerability refers to

the degree to which a species (or system) is susceptible to, and unable to cope with, adverse effects of climate change, including climate variability and extremes. Vulnerability is a function of the type, magnitude, and rate of climate change and variation to which a species is exposed, its sensitivity, and its adaptive capacity (IPCC 2007a, p. 89; see also Glick *et al.* 2011, pp. 19–22). There is no single method for conducting such analyses that applies to all situations (Glick *et al.* 2011, p. 3). We use our expert judgment and appropriate analytical approaches to weigh relevant information, including uncertainty, in our consideration of various aspects of climate change.

As is the case with all stressors that we assess, even if we conclude that a species is currently affected or is likely to be affected in a negative way by one or more climate-related impacts, it does not necessarily follow that the species meets the definition of an “endangered species” or a “threatened species” under the Act. If a species is listed as an endangered or threatened species, knowledge regarding its vulnerability to, and known or anticipated impacts from, climate-associated changes in environmental conditions can be used to help devise appropriate strategies for its recovery.

The IPCC predicts that the resiliency of many ecosystems is likely to be exceeded this century by an unprecedented combination of climate change, associated disturbances (*e.g.*, flooding, drought, wildfire, and insects), and other global drivers (IPCC 2007, pp. 31–33). With medium confidence, IPCC predicts that approximately 20 to 30 percent of plant and animal species assessed by the IPCC so far are likely to be at an increased risk of extinction if increases in global average temperature exceed 1.5 to 2.5 °C (3 to 5 °F) (IPCC 2007, p. 48).

Regional projections indicate the Southwest, including southern Utah, may experience the greatest temperature increase of any area in the lower 48 States (IPCC 2007, p. 30). Drought probability is predicted to increase in the Southwest (Karl *et al.* 2009, pp. 129–134), with summers warming more than winters, and annual temperature increasing approximately 2.2 °C (4 °F) by 2050 (Ray *et al.* 2008, p. 29). Additionally, the number of days over 32 °C (90 °F) could double by the end of the century (Karl *et al.* 2009, p. 34). Projections also show declines in snowpack across the West, with the most dramatic declines at lower elevations (below 2,500 m (8,200 ft)) (Ray *et al.* 2008, p. 29). A 10 to 30 percent decrease in precipitation in

mid-latitude western North America is projected by the year 2050, based on an ensemble of 12 climate models (Milly *et al.* 2005, p. 1). Overall, future projections for the Southwest include increased temperatures; more intense and longer-lasting heat waves; and increased probability of drought exacerbated by higher temperatures, heavier downpours, increased flooding, and increased erosion (Karl *et al.* 2009, pp. 129–134).

Utah is projected to warm more than the average for the entire globe (Governor’s Blue Ribbon Advisory Council on Climate Change (GBRAC) 2008, p. 14). The expected consequences of this warming are fewer frost days, longer growing seasons, and more heat waves (GBRAC 2008, p. 14). For Utah, the projected increase in annual mean temperature by year 2100 is about 4.5 °C (8 °F) (GBRAC 2008, p. 14). Because of increased temperature, Utah soils are expected to dry more rapidly (GBRAC 2008, p. 20); this is likely to result in reduced soil moisture levels in CPSD tiger beetle habitat.

Utah is projected to have more frequent heavy precipitation events, separated by longer dry spells as a result of climate change (GBRAC 2008, p. 15). Drought is a localized dry spell. Drought conditions are a threat to the CPSD tiger beetle, as rainfall indirectly controls population size and the changing dynamics of the species (Knisley and Gowan 2009, p. 8).

Previous drought-like conditions have resulted in drastic CPSD tiger beetle population declines. For example, low rainfall amounts from 2001 to 2003 resulted in reduced adult numbers in 2004 and 2005 (Knisley and Gowan 2008, p. 8). Conversely, high adult numbers in 1996 and 2002 followed several years of higher than average rainfall (Knisley and Gowan 2008, p. 8). These observed population responses to rainfall are most likely caused by reductions and increases in prey and soil moisture. Prey is more abundant during wet years, and this reduces the effects of starvation, decreases development time, and increases fecundity (Knisley and Hill 2001, p. 391). Soil moisture seems to have the greatest effect on oviposition and larval survival. As stated in Factor A, water is limiting to tiger beetles in CPSD, and this is evidenced by the fact that in one experiment water supplementation increased larval CPSD tiger beetle survival by 10 percent (Knisley and Gowan 2006, p. 7).

In summary, the limited geographic range of CPSD tiger beetle to high-elevation sand dunes and swales within the CPSD geologic feature limits the

ability of the species to adapt by shifting its range in response to changing climatic conditions. CPSD tiger beetle survival and reproduction, as described above, are highly dependent upon soil moisture, which in turn is dependent upon climatic conditions (precipitation and temperature). Climate change is predicted to increase temperatures and increase the likelihood and duration of drought conditions in Utah. Both of these effects will reduce soil moisture in CPSD and impact CPSD tiger beetle, and for this reason, we conclude that environmental changes resulting from climate change, including drought, will be a threat to this species in the future.

Small Population Effects

Under this factor we consider the small population size of CPSD tiger beetle has one of the smallest geographical ranges of any known insect (Romey and Knisley 2002, p. 170). It is restricted to the CPSD and occupies only 202 ha (500 ac) (Morgan *et al.* 2000, p. 1109).

A species may be considered rare because of a limited geographical range, specialized habitat, or small population size (Primack 1998, p. 176). In the absence of information identifying threats to a species and linking those threats to the rarity of a species, we do not consider rarity alone to be a threat. A species that has always been rare, yet continues to survive, could be well equipped to continue to exist into the future. Many naturally rare species have persisted for long periods within small geographic areas, and many naturally rare species exhibit traits that allow them to persist despite their small population sizes. Consequently, the fact that a species is rare does not necessarily indicate that it may be in danger of extinction.

CPSD tiger beetle has a very limited occupied range and a very small population size (558 adults in 2005 to a high of 2,944 adults in 2002). It has several characteristics typical of species vulnerable to extinction including: (1) A very narrow geographic range; (2) only one known self-sustaining population; and (3) a small population size.

Extinction may be caused by demographic stochasticity due to chance realizations of individual probabilities of death and reproduction, particularly in small populations (Shaffer 1981, p. 131; Lande 1993, pp. 911–912). Environmental stochasticity can result in extinction through a series of small or moderate perturbations that affect birth and death rates within a population (Shaffer 1981, p. 131; Lande 1993, p. 912). Lastly, extinction can be caused by random catastrophes (Shaffer

1981, p. 131; Lande 1993, p. 912). CPSD tiger beetle is vulnerable to extinction due to: (1) Demographic stochasticity due to its small population size; (2) environmental stochasticity due to continued small perturbations caused by ongoing modification and curtailment of its habitat and range from ORV use; and (3) the chance of random catastrophe such as an extended drought.

Small populations also can be vulnerable due to a lack of genetic diversity (Shaffer 1981, p. 132). We have no information regarding genetic diversity of CPSD tiger beetle. A minimum viable population (MVP) will vary depending on the species. An MVP of 1,000 may be adequate for species of normal genetic variability, and an MVP of 10,000 should permit long-term persistence and continued genetic diversity (Thomas 1990, p. 325). These estimates should be increased by at least 1 order of magnitude (to 10,000 and 100,000) for insects, because they usually have greater population variability (Thomas 1990, p. 326). Based upon available information, CPSD tiger beetle likely does not meet these minimum population criteria for maintaining genetic diversity because the estimated population size ranges from 558 to 2,944 individuals.

We do not believe that small population size on its own would be a threat to CPSD tiger beetle. However, the species' small population size makes it more vulnerable to extinction due to demographic stochasticity, environmental stochasticity, and random catastrophe when combined with the specific threats of ORV use, drought and climate change. Thus, we consider small population size a threat to the species, now and is likely to become so in the future, as is discussed in more detail below.

Cumulative Impacts

Some of the threats discussed in Factors A through E can work in concert with one another to cumulatively create conditions that will impact CPSD tiger beetle beyond the scope of each individual threat. ORV use and the drought-related effects of climate change can reduce soil moisture. Rainfall and associated soil moisture is a critical factor for desert tiger beetles (Knisley and Juliano 1988, entire) and is likely the most important natural factor affecting population dynamics of CPSD tiger beetle. Currently, water availability limits the tiger beetle population in the CPSD (Knisley and Gowan 2006, p. 7).

As explained in previous sections (see *Factor A*), reduced precipitation reduces soil moisture directly, and drought and

effects of climate change result in increased temperatures which dry soils more quickly. ORV use can reduce soil moisture by churning up soils and exposing the moisture that is locked up between soil particles, and it can also compact soil, which reduces water infiltration and reduces moisture retention in soils. Cumulatively, reduced precipitation and increased evaporation (caused by the drought-related effects of climate change), and soil compaction and soil exposure (caused by ORV use) will further dry soils that are already moisture limited. This drying could result in a further shrinking of available CPSD tiger beetle habitat and thus decrease population size, because less habitat will be suitable for larval tiger beetles and because drying of habitat reduces prey abundance. For these reasons, we find that ORV use and drought-related effects of climate change are a threat to the species both independently (presently in the case of ORV use) and cumulatively in the future.

Summary of Factor E

Wind action created and continues to shape the CPSD (Ford *et al.* 2010, p. 387). Sand dune movement naturally occurs in this system as wind action continues to shape the dunes. Dune movement can result in a change in suitable habitat conditions (Knisley and Gowan 2008, pp. 21–22); however, it is likely that dune movement is uncovering potential habitat as well as covering previously occupied habitat (*e.g.*, Gregory 1950, p. 188). CPSD tiger beetle evolved in a dynamic dune-dominated system, and we have no evidence to suggest that the rate of dune movement is increasing or decreasing. Thus, we have no information indicating that dune movement is a threat to this species, now or is likely to become so in the future.

Utah is predicted to have increased temperatures and more frequent heavy precipitation events, separated by longer dry spells, as a result of climate change (GBRAC 2008, p. 15). Utah soils are expected to dry more rapidly as a result of increased temperatures (GBRAC 2008, p. 20). Drought duration and intensity in CPSD will likely increase in the future, magnifying the soil moisture reductions expected from temperature increases alone. Precipitation and soil moisture levels currently limit the CPSD tiger beetle population in CPSD (Knisley and Gowan 2006, p. 7), and reductions in soil moisture associated with climate change and drought will further reduce the CPSD tiger beetle population size. Based on the analysis in *Factor E*, we find environmental changes resulting

from climate change and drought, will become threats to the CPSD tiger beetle in the future.

The restricted range of the species does not constitute a threat in itself. However, the species' small population size makes the species more vulnerable to extinction due to demographic stochasticity, environmental stochasticity, and random catastrophe, when combined with the specific threats of ORV use, drought, and climate change. Therefore, we consider its small population size to be a threat to the species when combined with other stressors and threats.

Threats can work in concert with one another to cumulatively create conditions that will impact CPSD tiger beetle beyond the scope of each individual threat. Climate change, drought, and ORV use all act upon CPSD tiger beetle through a similar mechanism: The drying of soils. As we discussed, soil moisture is a critical factor for desert tiger beetles (Knisley and Juliano 1988, entire) and water and soil moisture are both currently limiting CPSD tiger beetle (Knisley and Gowan 2006, p. 7). Reduced precipitation, increased evaporation, soil compaction, and soil exposure act cumulatively on CPSD tiger beetle and its habitat. For these reasons, we find ORV use, environmental changes resulting from climate change, and drought are threats to the species both independently (presently in the case of ORV use) and cumulatively. The best scientific and commercial information available indicates that other natural or manmade factors affecting its continued existence are a threat the CPSD tiger beetle, now and are likely to continue to be so in the future.

Determination

We have carefully assessed the best scientific and commercial information available regarding the past, present, and future threats to CPSD tiger beetle. The Act defines an endangered species as any species that is "in danger of extinction throughout all or a significant portion of its range" and a threatened species as any species "that is likely to become endangered throughout all or a significant portion of its range within the foreseeable future." Under the Act and our implementing regulations, a species may warrant listing if it is in danger of extinction or likely to become so throughout all or a significant portion of its range. CPSD tiger beetle is highly restricted in its range, threats occur throughout its range, and are not restricted to any particular significant portion of that range. Accordingly, our

assessment and determination applies to the species throughout its entire range.

CPSD tiger beetle has one of the smallest geographical ranges of any known insect (Romey and Knisley 2002, p. 170). It is restricted to the CPSD geologic feature and occupies only 202 ha (500 ac) (Morgan *et al.* 2000, p. 1109). Within CPSD, CPSD tiger beetle occur sporadically throughout the dunes, but only consistently exist in two populations that are separated by 4.8 km (3 mi). The northern population is not self-sustaining (Knisley 2001, p. 9) and likely persists because of periodic dispersal from the central population. Extremely low numbers and a highly restricted geographic range make CPSD tiger beetle particularly susceptible to becoming in danger of extinction due to existing threats and threats in the foreseeable future.

ORV use and small population effects, in combination with other stressors, are threats to the species (see *Factors A, D, and E*). These factors pose immediate threats to the species because they are ongoing. ORV use, small population effects, climate change and drought, and the cumulative impacts of ORV use and climate change and drought will threaten the species in the foreseeable future (see *Factors A, D, and E*).

Despite ongoing threats, the adult CPSD tiger beetle population size has shown a stable or slightly increasing trend since 2003, but overall trend since 1992 suggests that the population is in decline.

Recreational ORV use has reduced the amount of habitat available to CPSD tiger beetle and in this way suppresses the species population size. However, as the past 9 years of population data suggest, it is unlikely that the threat of ORV use will cause imminent extinction for the species. It is more likely that, absent the protections of the Act, ORV use will continue to suppress the CPSD tiger beetle population size, and future drought conditions associated with climate change would act cumulatively with ORV use upon an extremely small population, causing endangerment. Because endangerment in this case is "in the foreseeable future" and the species is currently (over about the last 5 years) experiencing a stable or increasing population trend, we do not consider CPSD tiger beetle to be presently on the brink of extinction, but likely to become so in the future (Capone 2012, entire).

Therefore, on the basis of the best available scientific and commercial information, we propose listing CPSD tiger beetle as a threatened species in accordance with sections 3(6) and 4(a)(1) of the Act. Because threats are

distributed across the limited range of the species, we have determined that the CPSD tiger beetle is a threatened species throughout all of its range.

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain practices. Listing results in public awareness and conservation by Federal, State, Tribal, and local agencies, private organizations, and individuals. The Act encourages cooperation with the States and requires that recovery actions be carried out for all listed species. The protection required by Federal agencies and the prohibitions against certain activities are discussed, in part, below.

The primary purpose of the Act is the conservation of endangered and threatened species and the ecosystems upon which they depend. The ultimate goal of such conservation efforts is the recovery of these listed species, so that they no longer need the protective measures of the Act. Subsection 4(f) of the Act requires the Service to develop and implement recovery plans for the conservation of endangered and threatened species. The recovery planning process involves the identification of actions that are necessary to halt or reverse the species' decline by addressing the threats to its survival and recovery. The goal of this process is to restore listed species to a point where they are secure, self-sustaining, and functioning components of their ecosystems.

Recovery planning includes the development of a recovery outline shortly after a species is listed, preparation of a draft and final recovery plan, and revisions to the plan as significant new information becomes available. The recovery outline guides the immediate implementation of urgent recovery actions and describes the process to be used to develop a recovery plan. The recovery plan identifies site-specific management actions that will achieve recovery of the species, measurable criteria that determine when a species may be downlisted or delisted, and methods for monitoring recovery progress. Recovery plans also establish a framework for agencies to coordinate their recovery efforts and provide estimates of the cost of implementing recovery tasks. Recovery teams (comprising species experts, Federal and State agencies, nongovernmental organizations, and stakeholders) are often established to develop recovery plans. When completed, the recovery

outline, draft recovery plan, and the final recovery plan will be available on our Web site (<http://www.fws.gov/ endangered>), or from our Utah Field Office (see **FOR FURTHER INFORMATION CONTACT**).

Implementation of recovery actions generally requires the participation of a broad range of partners, including other Federal agencies, States, Tribes, nongovernmental organizations, businesses, and private landowners. Examples of recovery actions include habitat restoration (e.g., restoration of native vegetation), research, captive propagation and reintroduction, and outreach and education. The recovery of many listed species cannot be accomplished solely on Federal lands because their range may occur primarily or solely on non-Federal lands. To achieve recovery of these species requires cooperative conservation efforts on private, State, and Tribal lands.

If this species is listed, funding for recovery actions will be available from a variety of sources, including Federal budgets, State programs, and cost share grants for non-Federal landowners, the academic community, and nongovernmental organizations. In addition, pursuant to section 6 of the Act, the State of Utah would be eligible for Federal funds to implement management actions that promote the protection and recovery of CPSD tiger beetle. Information on our grant programs that are available to aid species recovery can be found at: <http://www.fws.gov/grants>.

Although CPSD tiger beetle is only proposed for listing under the Act at this time, please let us know if you are interested in participating in recovery efforts for this species. Additionally, we invite you to submit any new information on this species whenever it becomes available and any information you may have for recovery planning purposes (see **FOR FURTHER INFORMATION CONTACT**).

Section 7(a) of the Act requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened and with respect to its critical habitat, if any is designated. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR part 402. Section 7(a)(4) of the Act requires Federal agencies to confer with the Service on any action that is likely to jeopardize the continued existence of a species proposed for listing or result in destruction or adverse modification of proposed critical habitat. If a species is listed subsequently, 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 destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency must enter into formal consultation with the Service.

Federal agency actions within the species' habitat that may require conference or consultation or both as described in the preceding paragraph include management and any other landscape altering activities on Federal lands administered by the BLM; construction and management of gas pipeline and power line rights-of-way by the Federal Energy Regulatory Commission; and construction and maintenance of roads or highways by the Federal Highway Administration.

We may issue permits to carry out otherwise prohibited activities involving endangered and threatened wildlife species under certain circumstances. Regulations governing permits are codified at 50 CFR 17.32 for threatened species. With regard to endangered wildlife, a permit must be issued for the following purposes: For scientific purposes, to enhance the propagation or survival of the species, and for incidental take in connection with otherwise lawful activities.

Questions regarding whether specific activities would constitute a violation of section 9 of the Act should be directed to the U.S. Fish and Wildlife Service, Utah Field Office (see **FOR FURTHER INFORMATION CONTACT**). Requests for copies of the regulations concerning listed animals and general inquiries regarding prohibitions and permits may be addressed to the U.S. Fish and Wildlife Service, Endangered Species Permits, 134 Union Boulevard, Suite 650, Lakewood, CO 80228; Telephone 303-236-4256.

Proposed Critical Habitat Designation for the Coral Pink Sand Dunes Tiger Beetle

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 that such areas are essential for the conservation of the species.

Conservation, as defined under section 3 of the Act, means to use 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 requirement that Federal agencies ensure, in consultation with the Service, that any action they authorize, fund, or carry out is not likely to result in the destruction or adverse modification of 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) would apply, but even in the event of a destruction or adverse modification finding, the obligation of the Federal action agency and the landowner is not to restore or recover the species, but to implement reasonable and prudent alternatives to avoid destruction or adverse modification of critical habitat.

Under the first prong of the Act's definition of critical habitat, areas within the geographical area occupied by the species at the time it was listed are included in a critical habitat designation if they contain physical or biological features (1) which are essential to the conservation of the species and (2) which may require special management considerations or protection. For these areas, critical habitat designations identify, to the extent known using the best scientific and commercial data available, those physical or biological features that are essential to the conservation of the

species (such as space, food, cover, and protected habitat). In identifying those physical and biological features within an area, we focus on the Primary Constituent Elements (PCEs), such as roost sites, nesting grounds, seasonal wetlands, water quality, tide, and soil type, that are essential to the conservation of the species.

Under the second prong of the Act's definition of critical habitat, we can designate critical habitat in areas outside the geographical area occupied by the species at the time it is listed, upon a determination that such areas are essential for the conservation of the species. For example, an area currently occupied by the species but that was not occupied at the time of listing may be essential to the conservation of the species and may be included in the critical habitat designation. We designate critical habitat in areas outside the geographical area occupied by a species only when a designation limited to its range would be inadequate to ensure the conservation of the species.

Section 4 of the Act requires that we designate critical habitat on the basis of the best scientific data available. Further, our Policy on Information Standards under the 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, other unpublished materials, or experts' opinions or personal knowledge.

Habitat is dynamic, and species may move from one area to another over time. We recognize that critical habitat designated at a particular point in time may not include all of the habitat areas

that we may later determine are necessary for the recovery of the species. For these reasons, a critical habitat designation does not signal that habitat outside the designated area is unimportant or may not be needed for recovery of the species. Areas that are important to the conservation of the species, both inside and outside the critical habitat designation, will continue to be subject to: (1) Conservation actions implemented under section 7(a)(1) of the Act, (2) regulatory protections afforded by the requirement in section 7(a)(2) of the Act for Federal agencies to ensure their actions are not likely to jeopardize the continued existence of any endangered or threatened species, and (3) the prohibitions of section 9 of the Act if actions occurring in these areas may affect the species. Federally funded or permitted projects affecting listed species outside their designated critical habitat areas may still result in jeopardy findings in some cases. These protections and conservation tools will continue to contribute to recovery of this species. Similarly, critical habitat designations made on the basis of the best available information at the time of designation will not control the direction and substance of future recovery plans, Habitat Conservation Plans (HCPs), or other species conservation planning efforts if new information available at the time of these planning efforts calls for a different outcome.

Physical or Biological Features

In accordance with section 3(5)(A)(i) and 4(b)(1)(A) of the Act and regulations at 50 CFR 424.12, in determining which areas within the geographical area occupied by the species at the time of listing to designate as critical habitat, we consider the physical or biological features essential to the conservation of the species and which may require special management considerations or protection. These include, but are not limited to:

- (1) Space for individual and population growth and for normal behavior;
- (2) Food, water, air, light, minerals, or other nutritional or physiological requirements;
- (3) Cover or shelter;
- (4) Sites for breeding, reproduction, 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.

We derive the specific physical or biological features required for CPSD

tiger beetle from studies of this species' habitat, ecology, and life history as described below. We have determined that CPSD tiger beetle requires the following physical or biological features:

Space for Individual and Population Growth

Dune System—CPSD consists of a series of high, mostly barren, dry dune ridges separated by lower, moister, and more vegetated interdunal swales (Romey and Knisley 2002, p. 170). The CPSD tiger beetle requires interconnected dune and swale habitats for thermoregulation, foraging, reproduction, and larval development. Adult CPSD tiger beetles use most of the dune area from the swales (low place between sand dunes) to the upper dune slope for foraging and thermoregulation. Larval CPSD tiger beetles are more restricted to moist, vegetated swale areas (Knisley and Hill 2001, p. 386). Therefore, based on the information above we identify sand dunes and swales within the CPSD geologic feature as an essential physical or biological feature for this species.

Climate—The CPSD tiger beetle occurs only at the CPSD geologic feature in southern Utah. CPSD elevation ranges from a low of 1,710 m (5,620 ft) to a high of 2,090 m (6,850 ft) (Ford *et al.* 2010, p. 381). The nearest weather station, in Kanab, Utah, has a mean annual temperature of 12.4 °C (54.4 °F) and mean annual precipitation of 33.8 cm (13.3 inches) with winter-summer precipitation peaks and spring-autumn drought (Ford *et al.* 2010, p. 381). These climatic conditions are influenced, in part, by elevation. Rainfall and the associated increase in soil moisture have a positive effect on CPSD tiger beetle oviposition and survivorship (Knisley and Hill 2001, p. 391) and the areas in the dune field with the highest soil moisture contain the highest densities of larvae (Knisley and Gowan 2011, p. 22). Because the CPSD tiger beetle has evolved in these climatic conditions and because precipitation and moisture are important to survival, we identify suitable precipitation regimes, a dry spring and fall, and winter and summer precipitation as essential physical or biological features for this species.

Food, Water, Air, Light, Minerals, or Other Nutritional or Physiological Requirements

Food—CPSD tiger beetle are predatory insects. Adults are active, visual hunters that use their large mandibles to capture and eat small arthropods. Adults primarily forage on dune faces and

swale edges (Hill and Knisley 1996, p. 9). Adults are food limited in some years, which results in reduced fecundity (Knisley and Gowan 2008, p. 19). Larvae are sedentary predators that live in permanent burrows in the ground and use large mandibles to capture small arthropods that pass near their burrow. CPSD tiger beetle feed primarily on ants, flies, and other small arthropods (Knisley and Hill 1993, p. 13).

In summary, CPSD tiger beetle is food limited in some years. Both adults and larvae use their large mandibles to capture arthropods. Their primary prey are ants, flies, and other small arthropods. Therefore, based on the information above, we identify an abundant and diverse arthropod prey base to be an essential physical or biological feature for this species.

Cover or Shelter

Adult Burrows—Adult CPSD tiger beetle use cover or shelter to help maintain internal body temperatures (thermoregulation). During peak spring and fall activity, when it is sunny, adults are usually active early (9 a.m.–2 p.m.) and again in late afternoon (4 p.m.–7 p.m.) (Knisley and Hill 1993, pp.13–14). They dig and reside in the sand in burrows to avoid unfavorable weather conditions such as hot mid-afternoons or daytime conditions that are cool or rainy (Knisley and Hill 1993, p. 14). Shade provided by vegetative cover also is important for thermoregulation during warmer periods (Knisley 2012, pers. comm.). Therefore, based on the information above, we identify sand dunes and vegetation as an essential physical or biological feature for this species.

Sites for Breeding, Reproduction, or Rearing (or Development) of Offspring

Larval Beds—Adult females determine the larval microhabitat by their selection of an oviposition site (Knisley and Gowan 2011, p. 6). Newly hatched larvae construct burrows in sand soils at the site of oviposition and subsequently pass through three larval stages (each stage is called an “instar”) before pupating and then emerging to the adult form. Larvae remain in the same burrow throughout their development and only rarely move outside of their burrow to dig a new burrow in a more favorable location (Knisley and Hill 1996, p. 11).

Most larvae occur within the swale bottoms and up the lower slopes of the dunes, particularly where the soil or subsoil is moist most of the time (Knisley and Hill 1996, p. 11; Knisley and Gowan 2011, p. 22). Larvae

primarily inhabit areas with 3 to 25 percent soil moisture (Romney and Knisley 2002, p. 172). Soil moisture is critical to larval CPSD tiger beetle survival. Drying or desiccation can kill tiger beetles (Knisley and Juliano 1998, p. 1990), and almost no larvae survive below 3 percent soil moisture (Romen and Knisley 2002, p. 172). Water tends to be so limiting in CPSD that water supplementation increases larval CPSD tiger beetle survival by 10 percent (Knisley and Gowan 2006, p. 7). We are not aware of an upper limit, in terms of soil moisture, where increases in soil moisture are detrimental to larval CPSD tiger beetle survival.

Larvae are most common in swales with a relatively high total percent vegetation cover (means of 23 to 57 percent) (Knisley and Hill 2001, p. 389). The swale vegetation supports the prey base of ants, flies, and other prey upon which larvae depend. Low or no vegetation results in a reduced prey base. Vegetative cover above 57 percent tends to stabilize sediments too much and may prevent adults from ovipositing (Knisley 2012, pers. comm.).

In summary, adult ovipositing determines the habitats used by larval CPSD tiger beetle. Soil moisture and prey availability are essential for larval growth and survival. Vegetation supports the prey base; however, too much vegetation cover can make habitat unsuitable for ovipositing. Therefore, based on the information above, we identify swale habitat, soil moisture, an abundant and diverse prey base, and 23 to 57 percent vegetation cover as the essential physical or biological features for this species.

Primary Constituent Elements for CPSD Tiger Beetle

Under the Act and its implementing regulations, we are required to identify the physical or biological features essential to the conservation of CPSD tiger beetle in areas occupied at the time of listing, focusing on the features’ PCEs. We consider PCEs to be the elements of physical or biological features that are all needed to provide for a species’ life-history processes and are essential to the conservation of the species.

Based on our current knowledge of the physical or biological features and habitat characteristics required to sustain the species’ life-history processes, we determine that the PCEs specific to CPSD tiger beetle are: Dynamic sand dunes and swales within the Coral Pink Sand Dunes geologic feature that have:

- Elevations from 1,710 to 2,090 m;

- Appropriate levels of moisture and compaction to allow for burrowing (greater than 3 percent); and

- Vegetative cover of 23–57% that allows for ovipositing, adult thermoregulation, and abundant prey.

With this proposed designation of critical habitat, we intend to identify the physical or biological features essential to the conservation of the species, through the identification of PCEs sufficient to support the life-history processes of the species. All units and subunits proposed for designation as critical habitat are currently occupied by CPSD tiger beetle and contain the PCEs sufficient to support the life-history needs of the species.

Special Management Considerations or Protection

When designating critical habitat, we assess whether the specific areas within the geographical area occupied by the species at the time of listing contain features which are essential to the conservation of the species and which may require special management considerations or protection. A detailed discussion of threats to CPSD tiger beetle and its habitat can be found in the Summary of Factors Affecting the Species section.

The primary threats impacting the physical and biological features essential to the conservation of CPSD tiger beetle that may require special management considerations or protection within the proposed critical habitat include, but are not limited to, ORV use, drought, and climate change, and the cumulative effects of all of these threats.

The features essential to the conservation of this species (sand dunes, moist and vegetated swales, and prey species) may require special management considerations or protection to reduce threats. Extremely low numbers and a highly restricted geographic range make CPSD tiger beetle particularly susceptible to extinction in the foreseeable future. Special management considerations or protections are required within critical habitat areas to address threats. Management activities that could ameliorate threats include (but are not limited to): The establishment of a second self-sustaining population; regulations and/or agreements that balance conservation with ORV use in areas that would affect the species; the designation of additional protected areas with specific provisions and protections for the species; and the elimination or avoidance of activities that alter the soil moisture, vegetation community, or prey base in swale

habitat. These management activities would protect the PCEs for the species by preventing the loss of habitat and individuals, protecting dune and swale habitat, and managing for appropriate levels and types of disturbance.

Criteria Used To Identify Critical Habitat

As required by section 4(b)(1)(A) of the Act, we use the best scientific and commercial data available to designate critical habitat. We review available information pertaining to the habitat requirements of the species. In accordance with the Act and its implementing regulation at 50 CFR 424.12(e), we consider whether designating additional areas—outside those currently occupied as well as those occupied at the time of listing—are necessary to ensure the conservation of the species. We are proposing to designate critical habitat concurrent with listing in areas within the geographical area occupied by the species.

We are proposing to designate all currently occupied habitat as critical habitat—any degradation of existing occupied habitat would further increase CPSD tiger beetle’s susceptibility to extinction. CPSD tiger beetle primarily occurs in two populations that are separated by 4.8 km (3 mi) of dunes. We include the 4.8-km (3-mi) dune segment that separates the two populations because dispersal is likely important for the long term-survival of the species (see *Habitat*, above), and this central dune segment is used by dispersing adults. Comprehensive surveys have not been conducted in this area for 20 years,

and we have no information to confirm the present occurrence of larval CPSD tiger beetles and swale habitat.

We delineated the critical habitat unit boundaries for CPSD tiger beetle using the following steps:

(1) In determining what areas were occupied by CPSD tiger beetle, we used data collected by Dr. Barry Knisley (Hill and Knisley 1993 pp. 7–10; Knisley and Hill 1994 pp. 5–10; Knisley and Gowan 2005, pp. 7–8; Knisley and Gowan 2011 p. 29) to map the central and northern populations of CPSD tiger beetle using ArcMap 9.3.1.

(2) We delineated proposed critical habitat areas by creating polygons around each population. Because of the narrowness of the actual CPSD area (less than 1.6 km (1 mi)) and the shifting and movement of habitat within the CPSD system, we included the entire width of the CPSD area surrounding each population.

(3) We then included a dispersal corridor, the dune area between the central and northern populations. We delineated the dispersal corridor as the entirety of the dune area between the central and northern populations because the entirety of the dune area could be used by dispersing adults.

When determining proposed critical habitat boundaries, 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 CPSD tiger beetle. 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 proposed rule have been excluded by text in the proposed rule and are not proposed for designation as critical habitat. Therefore, if the critical habitat is finalized as proposed, 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 or biological features in the adjacent critical habitat.

We are proposing for designation of critical habitat lands that we have determined are occupied at the time of listing and contain sufficient elements of physical or biological features to support life-history processes essential for the conservation of the CPSD tiger beetle.

One unit is proposed for designation based on sufficient elements of physical or biological features being present to support CPSD tiger beetle life-history processes. This unit contains all of the identified elements of physical or biological features and supports multiple life-history processes.

Proposed Critical Habitat Designation

We are proposing one unit as critical habitat for CPSD tiger beetle. The critical habitat area we describe below constitutes our current best assessment of the area that meets the definition of critical habitat for CPSD tiger beetle. The unit will be occupied at the time of any listing and is currently occupied. The approximate area of the proposed critical habitat unit is shown in Table 2.

TABLE 2—PROPOSED CRITICAL HABITAT UNIT FOR CPSD TIGER BEETLE
[Area estimates reflect all land within critical habitat unit boundaries]

Critical habitat unit	Land management by type	Size of area
CPSD Unit	CPSD State Park (UDNR)	310 ha (767 ac).
	BLM	610 ha (1,508 ac).
Total .....	.....	921 ha (2,276 ac).

Note: Area sizes may not sum due to rounding.

We present brief descriptions of the unit, and reasons why it meets the definition of critical habitat for CPSD tiger beetle, below.

CPSD Unit

The Unit consists of 921 ha (2,276 ac) of dune habitat and is located entirely within the CPSD geologic feature (see Proposed Regulation Promulgation, below). The southern 310 ha (767 acres) are located within CPSD State Park. The

northern 610 ha (1,508 ac) are located on BLM land.

CPSD State Park is categorized as public land with a recreational emphasis. The State Park encompasses the southern 809 ha (2,000 ac) of the CPSD geologic feature. The habitat consists of a series of high, mostly barren, dry dune ridges separated by lower, moister, and more vegetated interdunal swales (Romey and Knisley 2002, p. 170). The proposed unit

overlaps an existing 84 ha (207 ac) of State Park nonmotorized area (Conservation Area A). The remaining 227 ha (560 ac) of the State Park are open to ORV use.

The BLM Kanab Resource Area manages the northern 610 ha (1,508 ac) of the CPSD geologic feature (BLM 2000, p. 14). The BLM portion of the proposed Unit is characterized by dunes and swales that contain dense pockets of vegetation. In general, dunes and swales

in this unit are more stable and more highly vegetated than those in the State Park (Ford *et al.* 2010, pp. 387–392). The proposed unit overlaps an existing 150 ha (370 ac) of BLM nonmotorized area (Conservation Area B). The remaining 460 ha (1,138 ac) of BLM land are open to ORV use.

This unit currently has all the physical and biological features essential to the conservation of the species. This unit requires special management considerations or protections from the threats of ORV use, drought, and climate change. It is located within the appropriate elevation range, and it contains numerous moist and vegetated swales near dunes. Adult and larval CPSD tiger beetle have occurred throughout the proposed State Park owned portion of the Unit continuously for the past 20 years (Knisley and Gowan 2011, p. 8), and small numbers of adult and larval CPSD tiger beetles occupy the northern extent within the BLM Conservation Area B habitat (Knisley and Gowan 2011, p. 9). The central portion of the proposed unit between Conservation Areas A and B may contain suitable swale habitat and larval beetles; however, comprehensive surveys have not been conducted in the past 20 years, and we have no information to confirm the present occurrence of larval CPSD tiger beetles. However, the central portion of the proposed unit is used by dispersing adult beetles, and likely serves as a link between the two known populations.

Areas Outside Proposed Critical Habitat

As stated previously, we recognize that critical habitat designated at a particular point in time may not include all of the habitat areas that we may later determine are necessary for the recovery of the species. For these reasons, a critical habitat designation does not signal that habitat outside the designated area is unimportant or may not be needed for recovery of the species.

Only areas within the historical distribution of CPSD tiger beetle were considered for proposed critical habitat because areas outside of the historical distribution do not contain the requisite PCEs for the species. For this reason, we did not consider unoccupied areas outside of the CPSD geologic feature.

We did consider the 227 ha (560 ac) of sand dunes within CPSD State Park that exist south of our proposed critical habitat unit (see Figure 4 below). However, we have no information suggesting that this dune area was historical habitat, or is now suitable habitat for CPSD tiger beetle. Unlike the areas included within the proposed

critical habitat unit, this southern area has no record of CPSD tiger beetle larval presence nor is there record of regular adult occurrence. As we described previously (see *Habitat*), wind action in the dunes primarily blows from south to north, and wind velocity decreases as it moves across the sand dunes (from south to north). This results in a dynamic and less vegetated south Dune area that transitions to a less dynamic and more heavily vegetated and higher northern Dune area (Ford *et al.* 2010, pp. 387–392). The dynamic southern area has less vegetation cover (Ford *et al.* 2010, pp. 387–392) and the high wind energy likely reduces soil moisture levels (*e.g.*, Lortie and Cushman 2007, pp. 478–479). We believe the lack of PCEs (vegetative cover and appropriate soil moisture) make the south Dune area unsuitable as critical habitat (see *Factor A* for a discussion of the importance of soil moisture and vegetation).

Effects of Critical Habitat Designation

Section 7 Consultation

Section 7(a)(2) of the Act requires Federal agencies, including the Service, to ensure that any action they fund, authorize, or carry out is not likely to jeopardize the continued existence of any endangered species or threatened species or result in the destruction or adverse modification of designated critical habitat of such species. In addition, section 7(a)(4) of the Act requires Federal agencies to confer with the Service on any agency action that is likely to jeopardize the continued existence of any species proposed to be listed under the Act or result in the destruction or adverse modification of proposed critical habitat.

Decisions by the 5th and 9th Circuit Courts of Appeals have invalidated our regulatory 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 continue to serve its intended conservation role for the species.

If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency (action

agency) must enter into consultation with us. Examples of actions that are subject to the section 7 consultation process are actions on State, Tribal, local, or private lands that require 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 the Service under section 10 of the Act) or that involve some other Federal action (such as funding from the Federal Highway Administration, Federal Aviation Administration, or the Federal Emergency Management Agency). Federal actions not affecting listed species or critical habitat, and actions on State, Tribal, local, or private lands that are not federally funded or authorized, do not require section 7 consultation.

As a result of section 7 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, or are likely to adversely affect, listed species or critical habitat.

When we issue a biological opinion concluding that a project is likely to jeopardize the continued existence of a listed species and/or destroy or adversely modify critical habitat, we provide reasonable and prudent alternatives to the project, if any are identifiable, that would avoid the likelihood of jeopardy and/or destruction or adverse modification of critical habitat. 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 the likelihood of jeopardizing the continued existence of the listed species and/or avoid the likelihood of 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 sometimes may need to request reinitiation of consultation with us on actions for which formal consultation has been completed, if those actions with discretionary involvement or control may affect subsequently listed species or designated critical habitat.

Application of the "Adverse Modification" Standard

The key factor related to the adverse modification determination is whether, with implementation of the proposed Federal action, the affected critical habitat would continue to serve its intended conservation role for the species. Activities that may destroy or adversely modify critical habitat are those that alter the physical or biological features to an extent that appreciably reduces the conservation value of critical habitat for CPSD tiger beetle. As discussed above, the role of critical habitat is to support life-history needs of the species and provide for the conservation of the species.

Section 4(b)(8) of the Act requires us to briefly evaluate and describe, in any proposed or final regulation that designates critical habitat, activities involving a Federal action that may destroy or adversely modify such habitat, or that may be affected by such designation.

Activities that may affect critical habitat, when carried out, funded, or authorized by a Federal agency, should result in consultation for the CPSD tiger beetle. These activities include, but are not limited to:

(1) Actions that would reduce soil moisture or vegetative cover in swale habitats. Such activities could include, but are not limited to, continued or increased vehicular access or pedestrian traffic in or adjacent to occupied habitats. These activities could reduce soil moisture by churning up soils and exposing the moisture that is locked up between soil particles (beneath the surface) to greater evaporative pressure (Shultz 1988, p. 28) and by increasing soil compaction (Adams *et al.* 1982, p. 167). These activities also could reduce vegetative cover by trampling and subsequently injuring or killing plants.

Reduced soil moisture may lead to death of some CPSD tiger beetle larvae, as soil moisture is the most important factor determining larval tiger beetle survival (Knisley and Juliano 1988, entire). Reduced vegetative cover adversely impacts CPSD tiger beetle ovipositioning, adult thermoregulation, and prey base. Low prey densities can result in prolonged development and decreased survivorship in larval tiger beetles and reduced size in adults, which lowers fecundity in females (Pearson and Knisley 1985, p. 165; Knisley and Juliano 1988, p. 1990).

(2) Actions that would significantly affect dune morphology or dynamics. Such activities could include road or campground construction within or adjacent to the dunes. CPSD is a dynamic system where wind action continues to shape the dunes and redistribute sediment. Any significant alteration to dune morphology or dynamics may alter the arrangement and amount of swale and dune habitat available to CPSD tiger beetle.

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:

- (1) An assessment of the ecological needs on the installation, including the need to provide for the conservation of listed species;
- (2) A statement of goals and priorities;
- (3) A detailed description of management actions to be implemented to provide for these ecological needs; and
- (4) A monitoring and adaptive management plan.

Among other things, each INRMP must, to the extent appropriate and applicable, provide for fish and wildlife management; fish and wildlife habitat enhancement or modification; wetland protection, enhancement, and restoration where necessary to support fish and wildlife; and enforcement of applicable natural resource laws.

The National Defense Authorization Act for Fiscal Year 2004 (Pub. L. 108–136) amended the Act to limit areas eligible for designation as critical

habitat. Specifically, section 4(a)(3)(B)(i) of the Act (16 U.S.C. 1533(a)(3)(B)(i)) now provides: "The Secretary shall not designate as critical habitat any lands or other geographical areas owned or controlled by the Department of Defense, or designated for its use, that are subject to an integrated natural resources management plan prepared under section 101 of the Sikes Act (16 U.S.C. 670a), if the Secretary determines in writing that such plan provides a benefit to the species for which critical habitat is proposed for designation."

There are no Department of Defense lands within the proposed critical habitat designation. Thus, we are not proposing any exemptions based on section 4(a)(3)(B)(i).

Exclusions

Application of Section 4(b)(2) of the Act

Section 4(b)(2) of the Act states that the Secretary shall designate and make revisions to critical habitat on the basis of the best available scientific data after taking into consideration the economic impact, national security impact, and any other relevant impact of specifying any particular area as critical habitat. The Secretary may exclude an area from critical habitat if he determines that the benefits of such exclusion outweigh the benefits of specifying such area as part of the critical habitat, unless he determines, based on the best scientific data available, that the failure to designate such area as critical habitat will result in the extinction of the species. In making that determination, the statute on its face, as well as the legislative history, are clear that the Secretary has broad discretion regarding which factor(s) to use and how much weight to give to any factor.

Under section 4(b)(2) of the Act, 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 identify the benefits of including the area in the designation, identify the benefits of excluding the area from the designation, and evaluate whether the benefits of exclusion outweigh the benefits of inclusion. If the analysis indicates that the benefits of exclusion outweigh the benefits of inclusion, the Secretary may exercise his discretion to exclude the area only if such exclusion would not result in the extinction of the species.

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 are preparing an analysis of the economic impacts of the proposed critical habitat designation and related factors.

Upon completion, copies of the draft economic analysis will be available for downloading from the Internet at <http://www.regulations.gov>, or by contacting the Utah Fish and Wildlife Office directly (see **FOR FURTHER INFORMATION CONTACT** section). During the development of a final designation, we will consider economic impacts, public comments, and other new information. Areas may be excluded from the final critical habitat designation under section 4(b)(2) of the Act and our implementing regulations at 50 CFR 424.19.

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.

In preparing this proposal, we have determined that the lands within the proposed designation of critical habitat for CPSD tiger beetle are not owned or managed by the Department of Defense, and, therefore, we anticipate no impact on national security. Consequently, the Secretary does not propose to exercise his discretion to exclude any areas from the final designation based on impacts on national security.

Exclusions Based on Other Relevant Impacts

Under section 4(b)(2) of the Act, we consider any other relevant impacts, in addition to economic impacts and impacts on 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.

In preparing this proposal, we have determined that there are currently no HCPs for CPSD tiger beetle, and the proposed designation does not include any Tribal lands or trust resources. We anticipate no impact on Tribal lands, partnerships, or HCPs from this proposed critical habitat designation. As we described previously, a CCA exists

for CPSD tiger beetle (see *Factor A* and *D*). However, we determined in *Factor A* and *D* that this agreement is not adequately reducing threats to the species. Accordingly, the Secretary does not propose to exercise his discretion to exclude any areas from the final designation based on other relevant impacts.

Peer Review

In accordance with our joint policy on peer review published in the **Federal Register** on July 1, 1994 (59 FR 34270), we will seek the expert opinions of at least three appropriate and independent specialists regarding this proposed rule. The purpose of peer review is to ensure that our listing and critical habitat designation is based on scientifically sound data, assumptions, and analyses. We have invited these peer reviewers to comment during this public comment period on this proposed rule to list the species as threatened and the designation of critical habitat.

We will consider all comments and information received during this comment period on this proposed rule during our preparation of a final determination. Accordingly, the final decision may differ from this proposal.

Public Hearings

Section 4(b)(5) of the Act provides for one or more public hearings on this proposal, if requested. Requests must be received within 45 days after the date of publication of this proposed rule in the **Federal Register**. Such requests must be sent to the address shown in **FOR FURTHER INFORMATION CONTACT**. We will schedule public hearings on this proposal, if any are requested, and announce the dates, times, and places of those hearings, as well as how to obtain reasonable accommodations, in the **Federal Register** and local newspapers at least 15 days before the hearing.

Required Determinations

Regulatory Planning and Review—Executive Orders 12866 and 13563

Executive Order 12866 provides that the Office of Information and Regulatory Affairs (OIRA) in the Office of Management and Budget will review all significant rules. The Office of Information and Regulatory Affairs has determined that this rule is not significant.

Executive Order 13563 reaffirms the principles of E.O. 12866 while calling for improvements in the nation's regulatory system to promote predictability, to reduce uncertainty, and to use the best, most innovative, and least burdensome tools for

achieving regulatory ends. The executive order directs agencies to consider regulatory approaches that reduce burdens and maintain flexibility and freedom of choice for the public where these approaches are relevant, feasible, and consistent with regulatory objectives. E.O. 13563 emphasizes further that regulations must be based on the best available science and that the rulemaking process must allow for public participation and an open exchange of ideas. We have developed this rule in a manner consistent with these requirements.

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 the agency certifies the rule will not have a significant economic impact on a substantial number of small entities. The SBREFA amended the RFA to require Federal agencies to provide a 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.

At this time, we lack the available economic information necessary to provide an adequate factual basis for the required RFA finding. Therefore, we defer the RFA finding until completion of the draft economic analysis. This draft economic analysis will provide the required factual basis for the RFA finding. Upon completion of the draft economic analysis, we will announce availability of the draft economic analysis of the proposed designation in the **Federal Register** and reopen the public comment period for the proposed designation. We will include with this announcement, as appropriate, an initial regulatory flexibility analysis or a certification that the rule will not have a significant economic impact on a substantial number of small entities accompanied by the factual basis for that determination.

Land use sectors that could be affected by this proposed rule include: BLM land managers, CPSD State Park land managers, and ORV users that may

be or are utilizing the proposed critical habitat unit.

We have concluded that deferring the RFA finding until completion of the draft economic analysis is necessary to meet the purposes and requirements of the RFA. Deferring the RFA finding in this manner will ensure that we make a sufficiently informed determination based on adequate economic information and provide the necessary opportunity for public comment.

Energy Supply, Distribution, or Use—Executive Order 13211

Executive Order 13211 (Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use) requires agencies to prepare Statements of Energy Effects when undertaking certain actions. We do not expect the designation of this proposed critical habitat to significantly affect energy supplies, distribution, or use as there is no energy supply or distribution infrastructure near the proposed critical habitat. Therefore, this action is not a significant energy action, and no Statement of Energy Effects is required. However, we will further evaluate this issue as we conduct our economic analysis, and review and revise this assessment as warranted.

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 tribal governments” with two exceptions. It excludes “a condition of Federal assistance.” It also excludes “a duty arising from participation in a voluntary Federal program,” unless the regulation “relates to a then-existing Federal program under which \$500,000,000 or more is provided annually to State, local, and tribal governments under entitlement authority,” if the provision would “increase the stringency of conditions of assistance” or “place caps upon, or otherwise decrease, the Federal Government’s responsibility to provide funding,” and the State, local, or Tribal governments “lack authority” to adjust

accordingly. At the time of enactment, these entitlement programs were: Medicaid; Aid to Families with Dependent Children work programs; Child Nutrition; Food Stamps; Social Services Block Grants; Vocational Rehabilitation State Grants; Foster Care, Adoption Assistance, and Independent Living; Family Support Welfare Services; and Child Support Enforcement. “Federal private sector mandate” includes a regulation that “would impose an enforceable duty upon the private sector, except (i) a condition of Federal assistance or (ii) a duty arising from participation in a voluntary Federal program.”

The designation of critical habitat does not impose a legally binding duty on non-Federal Government entities or private parties. Under the Act, the only regulatory effect is that Federal agencies must ensure that their actions do not destroy or adversely modify critical habitat under section 7. While non-Federal entities that receive Federal funding, assistance, or permits, or that otherwise require approval or authorization from a Federal agency for an action, may be indirectly impacted by the designation of critical habitat, the legally binding duty to avoid destruction or adverse modification of critical habitat rests squarely on the Federal agency. Furthermore, to the extent that non-Federal entities are indirectly impacted because they receive Federal assistance or participate in a voluntary Federal aid program, the Unfunded Mandates Reform Act would not apply, nor would critical habitat shift the costs of the large entitlement programs listed above onto State governments.

(2) We do not believe that this rule will significantly or uniquely affect small governments because the lands being proposed for critical habitat designation are owned by the State of Utah, and the BLM. None of these government entities fit the definition of “small governmental jurisdiction.” Therefore, a Small Government Agency Plan is not required. However, we will further evaluate this issue as we conduct our economic analysis, and review and revise this assessment as warranted.

Takings—Executive Order 12630

In accordance with Executive Order 12630 (Government Actions and Interference with Constitutionally Protected Private Property Rights), we have analyzed the potential takings implications of designating critical habitat for CPSD tiger beetle 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 CPSD tiger beetle does not pose significant takings implications for lands within or affected by the designation.

Federalism—Executive Order 13132

In accordance with Executive Order 13132 (Federalism), this proposed 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 proposed critical habitat designation with, appropriate State resource agencies in Utah. The designation of critical habitat in areas currently occupied by CPSD tiger beetle 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 because the areas that contain the physical or biological features essential to the conservation of the species are more clearly defined, and the elements of the features 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).

Where State and local governments require approval or authorization from a Federal agency for actions that may affect critical habitat, consultation under section 7(a)(2) would be required. 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.

Civil Justice Reform—Executive Order 12988

In accordance with Executive Order 12988 (Civil Justice Reform), the Office of the Solicitor has determined that the rule does not unduly burden the judicial

system and that it meets the requirements of sections 3(a) and 3(b)(2) of the Order. We have proposed designating critical habitat in accordance with the provisions of the Act. This proposed rule uses standard property descriptions and identifies the elements of physical or biological features essential to the conservation of the CPSD tiger beetle within the designated areas to assist the public in understanding the habitat needs of the species.

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 pursuant to the NEPA (42 U.S.C. 4321 et seq.) in connection with designating critical habitat under the Act. We published a notice outlining our reasons for this determination in the **Federal Register** on October 25, 1983 (48 FR 49244). This position was upheld by the U.S. Court of Appeals for the Ninth Circuit (*Douglas County v. Babbitt*, 48 F.3d 1495 (9th Cir. 1995), cert. denied 516 U.S. 1042 (1996)).

However, when the range of the species includes States within the Tenth Circuit, such as that of CPSD tiger beetle, under the Tenth Circuit ruling in *Catron County Board of Commissioners v. U.S. Fish and Wildlife Service*, 75 F.3d 1429 (10th Cir. 1996), we will undertake a NEPA analysis for critical habitat designation and notify the public of the availability of the draft

environmental assessment for this proposal when it is finished.

Government-to-Government Relationship With Tribes

In accordance with the President's memorandum of April 29, 1994 (Government-to-Government Relations with Native American Tribal Governments; 59 FR 22951), Executive Order 13175 (Consultation and Coordination With Indian Tribal Governments), 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 Act), we readily acknowledge our responsibilities to work directly with Tribes in developing programs for healthy ecosystems, to acknowledge that Tribal lands are not subject to the same controls as Federal public lands, to remain sensitive to Indian culture, and to make information available to Tribes.

We determined that there are no Tribal lands that were occupied by CPSD tiger beetle at the time of listing that contain the features essential for conservation of the species, and no Tribal lands unoccupied by the CPSD tiger beetle that are essential for the conservation of the species. Therefore, we are not proposing to designate critical habitat for CPSD tiger beetle on Tribal lands.

Clarity of the Rule

We are required by Executive Orders 12866 and 12988 and by the Presidential Memorandum of June 1, 1998, to write all rules in plain language. This means that each rule we publish must:

- (1) Be logically organized;
- (2) Use the active voice to address readers directly;
- (3) Use clear language rather than jargon;
- (4) Be divided into short sections and sentences; and

(5) Use lists and tables wherever possible.

If you feel that we have not met these requirements, send us comments by one of the methods listed in the **ADDRESSES** section. To better help us revise the rule, your comments should be as specific as possible. For example, you should tell us the numbers of the sections or paragraphs that are unclearly written, which sections or sentences are too long, the sections where you feel lists or tables would be useful, etc.

References Cited

A complete list of references cited in this rulemaking is available on the Internet at <http://www.regulations.gov> and upon request from the Utah Field Office (see **FOR FURTHER INFORMATION CONTACT**).

Authors

The primary authors of this package are the staff members of the Utah Field Office.

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, Transportation.

Proposed Regulation Promulgation

Accordingly, we propose to amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, as set forth below:

PART 17—[AMENDED]

1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500; unless otherwise noted.

2. Amend § 17.11(h) by adding an entry for “Beetle, Coral Pink Sand Dunes tiger” in alphabetical order under “Insects” to the List of Endangered and Threatened Wildlife to read as follows:

§ 17.11 Endangered and threatened wildlife.

* * * * *
(h) * * *

Species		Historical range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Common name	Scientific name						
*	*	*	*	*	*	*	*
INSECTS							
*	*	*	*	*	*	*	*
Beetle, Coral Pink Sand Dunes tiger.	<i>Cicindela albissima</i> ..	U.S.A. (UT)	NA	T	.....	17.95(i)	NA
*	*	*	*	*	*	*	*

3. In § 17.95, amend paragraph (i) by adding an entry for “Coral Pink Sand Dunes Tiger Beetle (*Cicindela albissima*),” in the same alphabetical order that the species appears in the table at § 17.11(h), to read as follows:

§ 17.95 Critical habitat—fish and wildlife.

* * * * *

(i) *Insects.*

* * * * *

Coral Pink Sand Dunes Tiger Beetle (*Cicindela albissima*)

(1) A single critical habitat unit is depicted for Kane County, Utah on the map below.

(2) Within this area, the primary constituent elements of the physical or biological features essential to the conservation of the Coral Pink Sand Dunes tiger beetle consist of:

(i) Dynamic sand dunes and swales within the Coral Pink Sand Dunes geologic feature that have:

(A) Elevations from 1,710 to 2,090 m;
 (B) Appropriate levels of moisture and compaction to allow for burrowing (greater than 3 percent); and

(C) Vegetative cover of 23–57 percent that allows for ovipositing, adult thermoregulation, and abundant prey.

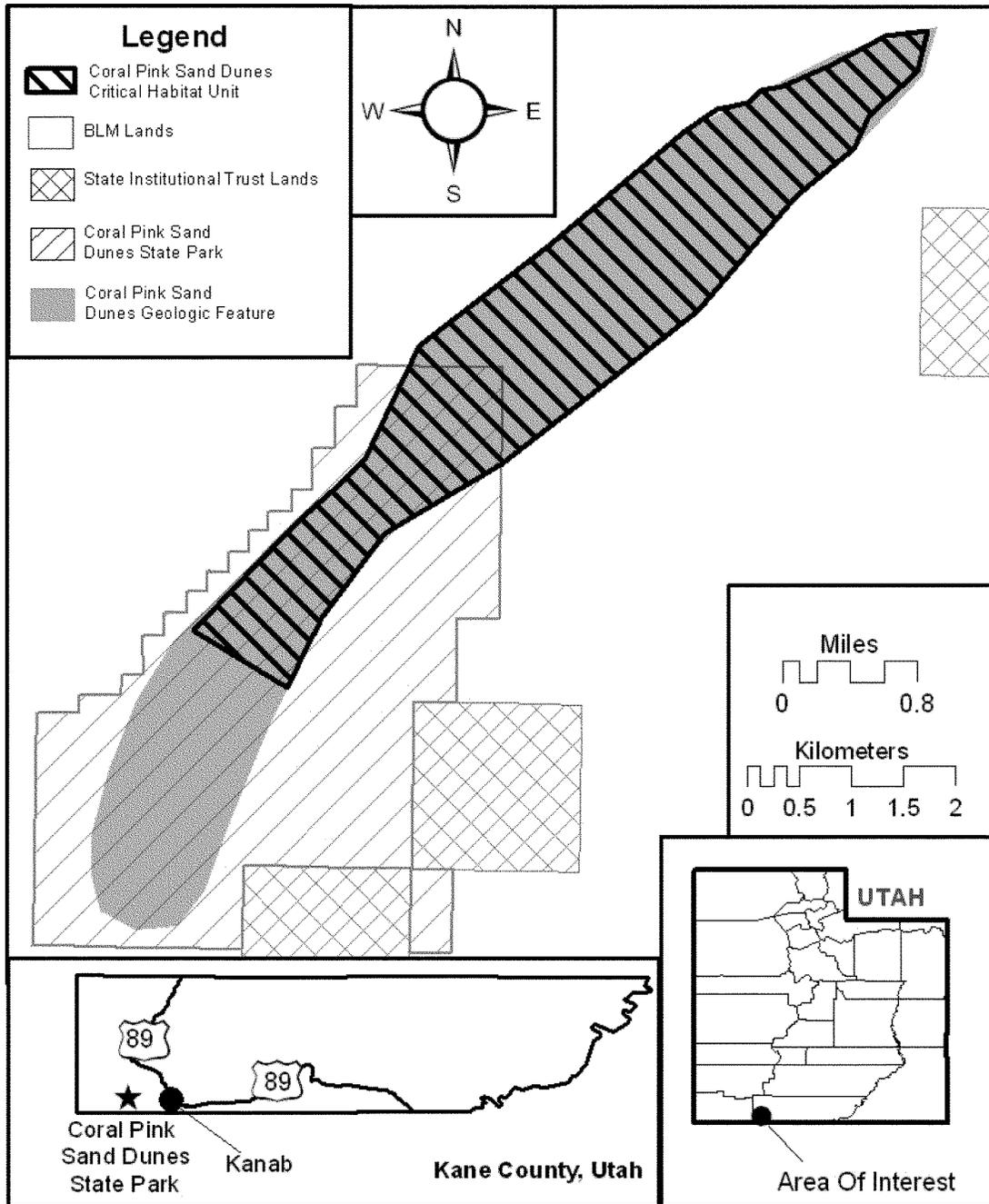
(3) Critical habitat does not include manmade structures (such as buildings, aqueducts, runways, roads, and other paved areas) and the land on which they are located existing within the legal boundaries on the effective date of this rule.

(4) *Critical habitat map unit.* Data layers defining the map unit were created on a base of both satellite imagery (NAIP 2009) as well as USGS geospatial quadrangle maps and were mapped using NAD 83 Universal

Transverse Mercator (UTM), zone 13N coordinates. Location information came from a wide array of sources. The maps in this entry, as modified by any accompanying regulatory text, establish the boundaries of the critical habitat designation. The coordinates or plot points or both on which the map is based are available to the public at the Service’s internet site, <http://www.fws.gov/utahfieldoffice/>, at <http://www.regulations.gov> in Docket No. FWS–R6–ES–2012–0053 and at the field office responsible for the designation. You may obtain field office location information by contacting one of the Service regional offices, the addresses of which are listed at 50 CFR 2.2.

(5) Unit 1: Coral Pink Sand Dunes Tiger Beetle, Kane County, Utah. *Note:* Map of Unit 1 follows:

BILLING CODE P



* * * * *

Dated: September 14, 2012.
*Acting Principal Deputy Assistant Secretary
for Fish and Wildlife and Parks.*
[FR Doc. 2012-23741 Filed 10-1-12; 8:45 am]
BILLING CODE C



FEDERAL REGISTER

Vol. 77

Tuesday,

No. 191

October 2, 2012

Part IV

Department of the Interior

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Removal of the Valley Elderberry Longhorn Beetle From the Federal List of Endangered and Threatened Wildlife; Proposed Rule

DEPARTMENT OF THE INTERIOR**Fish and Wildlife Service****50 CFR Part 17**

[Docket No. FWS-R8-ES-2011-0063;
FXES11130900000C6-123-FF09E32000]

RIN 1018-AV29

Endangered and Threatened Wildlife and Plants; Removal of the Valley Elderberry Longhorn Beetle From the Federal List of Endangered and Threatened Wildlife

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule; 12-month petition finding.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), propose to remove the valley elderberry longhorn beetle (*Desmocerus californicus dimorphus*) from the Federal List of Endangered and Threatened Wildlife. This action is based on a review of the best available scientific and commercial data, which indicates that the subspecies no longer meets the definition of endangered or threatened under the Endangered Species Act of 1973, as amended (Act). This proposed rule, if made final, would remove the valley elderberry longhorn beetle as a threatened species from the List of Endangered and Threatened Wildlife, and would remove the designation of critical habitat for the subspecies. This document also constitutes our 12-month finding on a petition to delist the valley elderberry longhorn beetle.

DATES: We will accept comments until December 3, 2012. We must receive requests for public hearings, in writing, at the address shown in **FOR FURTHER INFORMATION CONTACT** by November 16, 2012.

ADDRESSES: You may submit comments by one of the following methods:

(1) *Electronically:* Go to the Federal eRulemaking Portal: <http://www.regulations.gov>. In the Search field, enter FWS-R8-ES-2011-0063, which is the docket number for this rulemaking. On the search results page, under the Comment Period heading in the menu on the left side of your screen, check the box next to "Open" to locate this document. Please ensure you have found the correct document before submitting your comments. If your comments will fit in the provided comment box, please use this feature of <http://www.regulations.gov>, as it is most compatible with our comment review procedures. If you attach your comments as a separate document, our

preferred file format is Microsoft Word. If you attach multiple comments (such as form letters), our preferred format is a spreadsheet in Microsoft Excel.

(2) *By hard copy:* Submit by U.S. mail or hand-delivery to: Public Comments Processing, Attn: FWS-R8-ES-2011-0063; Division of Policy and Directives Management; U.S. Fish and Wildlife Service; 4401 N. Fairfax Drive, MS 2042-PDM; Arlington, VA 22203.

We request that you send comments only by the methods described above. We will post all comments on <http://www.regulations.gov>. This generally means that we will post any personal information you provide us (see Public Comments below for more information).

FOR FURTHER INFORMATION CONTACT:

Susan Moore, Field Supervisor, Sacramento Fish and Wildlife Office, 2800 Cottage Way, Suite W-2605, Sacramento, CA 95825; telephone 916-414-6600; facsimile 916-414-6712. If you use a telecommunications device for the deaf (TDD), call the Federal Information Relay Service (FIRS) at 800-877-8339.

SUPPLEMENTARY INFORMATION:

Executive Summary

This document contains: (1) A 12-month finding in response to a petition to delist the valley elderberry longhorn beetle (beetle); and (2) a proposed rule to remove the valley elderberry longhorn beetle as a threatened species from the List of Endangered and Threatened Wildlife, and to remove the designation of critical habitat.

Species addressed. The valley elderberry longhorn beetle (*Desmocerus californicus dimorphus*), is found within the Central Valley of California. At listing, it was known from 10 occurrence records at 3 locations: Merced County, Sacramento County, and Yolo County. Currently, it is known from 201 occurrence records at 26 locations, including much of the San Joaquin and Sacramento Valleys from Shasta County in the northern Sacramento Valley to Kern County in the southern San Joaquin Valley. This subspecies is a wood borer that is dependent on its host plant, the elderberry (*Sambucus* species), which is a common shrub component of riparian forests and adjacent upland vegetation along river corridors of the Central Valley.

Purpose of the Regulatory Action. Under the Endangered Species Act of 1973, as amended (Act), we may be petitioned to list, delist, or reclassify a species. In 2010, we received a petition from the Pacific Legal Foundation requesting that the Service remove the

valley elderberry longhorn beetle, which is currently listed as a threatened species under the Act, from the Federal List of Endangered and Threatened Wildlife. In 2011, we published our 90-day finding on the petition, which concluded that the petition contained substantial information that delisting the beetle may be warranted. Therefore, we also announced that we were initiating a status review for this subspecies as required under the Act. As the result of that status review, we find that delisting the valley elderberry longhorn beetle is warranted, and we propose to remove the beetle from the List of Endangered and Threatened Wildlife, and remove designated critical habitat.

Basis for the Regulatory Action.

Under the Act, a species may be determined to be endangered or threatened based on any of five factors: (A) The present or threatened destruction, modification, or curtailment of its habitat or range; (B) overutilization for commercial, recreational, scientific, or educational purposes; (C) disease or predation; (D) the inadequacy of existing regulatory mechanisms; or (E) other natural or manmade factors affecting its continued existence.

We reviewed all available scientific and commercial information pertaining to the five threat factors in our status review of the valley elderberry longhorn beetle. The results of our status review are summarized below.

- While there are minimal surveys to comprehensively evaluate current presence or population trends over time, we believe the available data are sufficient to conclude that the beetle persists in several more locations that were not known at the time of listing under the Act, some of which are either restored or protected, or both. Records since listing show the beetle may currently occupy most of the 26 locations identified and continues to persist in these locations, as is expected for some period of time into the future.

- Notwithstanding data uncertainties and the absence of protections or enhancements at many locations, we believe sufficient habitat will remain within this range into the foreseeable future, and the subspecies no longer meets the definition of endangered or threatened under the Act. Varying levels of protections have been applied to 15 of the 23 locations discovered since listing (10 locations contain well-protected lands and portions of 5 other locations are managed for natural and open space values), and management is being applied to occupied and unoccupied sites within these locations

(including habitat restoration to increase the amount of suitable habitat for potential use by the beetle).

Additionally, we believe the beetle will continue to persist based on: (1) The increase in number of beetle occurrence records; (2) increase in number of locations where the beetle is found, including over a larger range than what was known at the time of listing; (3) past and ongoing riparian vegetation restoration; and (4) persistence of elderberry shrubs in restored areas, as well as on a variety of public lands managed for natural values as open space.

Public Comments

We intend any final action resulting from this proposal to be based on the best scientific and commercial data available, and be as accurate and as effective as possible. Therefore, we request comments or information from other governmental agencies, tribes, the scientific community, industry, or other interested parties concerning this proposed rule. We particularly seek comments concerning:

(1) Location-specific information concerning the cause and extent of past, recent, and projected future losses of total riparian vegetation and elderberry shrubs within the 26 individual river or watershed systems (referred to hereafter as locations) considered in this document to be, or to have previously been, occupied by the beetle, including the north Central Valley (Sacramento River; Thomes, Stony, Big Chico, Butte, Putah, and Cache Creeks; Feather, Yuba, Bear, and lower American Rivers; and the upper American River vicinity and the Ulatris-Green Valley Creeks vicinity) and the south Central Valley (Cosumnes River and vicinity, including Laguna and Dry Creek; Mokelumne River and vicinity, including Bear River; the lower Stanislaus River; upper Stanislaus hills vicinity, including the foothill systems between and around New Melones and Don Pedro Reservoirs; the Calaveras, Tuolumne, Merced, Kings, Kaweah, Tule, Kern, and San Joaquin Rivers; and Caliente Creek).

(2) Location-specific information (including Geographic Information System (GIS) data or tabular geographic coordinate data) on the range, distribution, population size, or population trends of the valley elderberry longhorn beetle, with particular emphasis on data collected since, or not included in, our 2006 5-year review.

(3) Location-specific information on protections in each of the above-mentioned locations (river systems or watersheds) with emphasis on

discerning the geographic locations and extent of protected and unprotected areas, including, but not limited to: vegetative allowances, vegetative maintenance, monitoring programs with adaptive management actions, conservation easements, public land ownership and associated permanent protections, and any other form of location-specific protection.

(4) Location-specific information regarding male specimen observation and subspecies identification, with particular interest in recently reported locations in the eastern portion of the range in foothill elevations.

(5) Location-specific information on future anticipated level of threat of additional habitat loss, and the source of such loss (such as agricultural and urban development, or flood control). Where threats are not yet elevated in the absence of formal protection, we seek information on rationales for why threats may or may not be elevated in the future. We also seek information on future reduction in threats of habitat loss, where appropriate.

(6) Information, including geographic coordinates of the locations, about any additional populations of the valley elderberry longhorn beetle in other locations not considered in this proposed rule, or regarding the loss of previously existing populations.

(7) Information on all other threats, such as from scientific study of the valley elderberry longhorn beetle, inferred from study of a similar species, or location-specific threats information, including potential impacts from predators such as the Argentine ant, effects of small population size, and pesticides.

(8) New information and data on the projected and reasonably likely impacts to valley elderberry longhorn beetle associated with climate change.

(9) Documentation of the effectiveness (or lack thereof) of current mitigation, habitat restoration, and other conservation measures, particularly those mentioned in Talley *et al.* 2006a, pp. 46–48, tables 2.3.1.1–2.3.1.2 (available at <http://www.regulations.gov> and http://www.fws.gov/sacramento/es/documents/VELB_5yr_review_Talley_et_al.pdf); and, specifically, location-specific quantities of riparian vegetation (length, area, and proportion of the overall location conserved or restored), beetle habitat (elderberry shrubs) in particular, and occupancy of that habitat by the subspecies.

(10) Information on the spatial extent of occupation within locations at which the beetle has been observed in relation to habitat and threats within these areas.

(11) Location-specific information on the present quantity of riparian vegetation, elderberry within riparian vegetation, and elderberry within the watershed or vicinity, but not associated with riparian vegetation.

(12) Information regarding how best to conduct post-delisting monitoring, should the proposed delisting lead to a final delisting rule (see Post-Delisting Monitoring Plan Overview section below, which briefly outlines the goals of the draft plan that is available for public comment concurrent with publication of this proposed rule). Such information might include suggestions regarding the draft objectives, monitoring procedures for establishing population and habitat baselines, or for detecting variations from those baselines over the course of at least 10 years.

You may submit your comments and materials concerning this proposed rule (and associated draft post-delisting monitoring (PDM) plan) by one of the methods listed in **ADDRESSES**. We will not accept comments sent by email or fax or to an address not listed in **ADDRESSES**. If you submit a comment via <http://www.regulations.gov>, we will post your entire comment—including your personal identifying information—on <http://www.regulations.gov>. If your written comments provide personal identifying information, you may request at the top of your document that we withhold this information from public review. However, we cannot guarantee that we will be able to do so. We will post all hardcopy comments on <http://www.regulations.gov>. Please include sufficient information with your comment to allow us to verify any scientific or commercial data you submit.

Comments and materials we receive, as well as supporting documentation we used in preparing this proposed rule, will be available for public inspection on <http://www.regulations.gov>, or by appointment, during normal business hours, at the U.S. Fish and Wildlife Service, Sacramento Fish and Wildlife Office (see **FOR FURTHER INFORMATION CONTACT**).

Public Hearings

Section 4(b)(5) of the Act provides for one or more public hearings on this proposal, if requested. We must receive your request within 45 days after the date of this **Federal Register** publication. Send your request to the address shown in **FOR FURTHER INFORMATION CONTACT**. We will schedule public hearings on this proposal, if any are requested, and announce the dates, times, and places of those hearings, as

well as how to obtain reasonable accommodations, in the **Federal Register** and local newspapers at least 15 days before the hearing.

Peer Review

In accordance with our joint policy on peer review published in the **Federal Register** on July 1, 1994 (50 FR 34270), we will seek the expert opinions of at least three appropriate and independent specialists regarding this proposed rule and the draft PDM plan. The purpose of peer review is to ensure that decisions are based on scientifically sound data, assumptions, and analyses. A peer review panel will conduct an assessment of the proposed rule and draft PDM plan, and the specific assumptions and conclusions regarding the proposed delisting. This assessment will be completed during the public comment period.

We will consider all comments and information we receive during the comment period on this proposed rule as we prepare the final determination. Accordingly, the final decision may differ from this proposal.

Background

Previous Federal Actions

The valley elderberry longhorn beetle was proposed as a threatened species with critical habitat on August 10, 1978 (43 FR 35636). A rule re-proposing critical habitat was issued on May 2, 1980 (45 FR 29373), to comply with amendments made to the Act. A final rule listing the beetle as threatened and designating critical habitat was published in the **Federal Register** on August 8, 1980 (45 FR 52803). A final Recovery Plan was approved for the beetle on June 28, 1984 (Service 1984, pp. 1–62). On July 7, 2005, we announced in the **Federal Register** that we were initiating 5-year reviews for 31 listed species, including the beetle (70 FR 39327). Information from the public was accepted until September 6, 2005. On November 3, 2005, we announced in the **Federal Register** an extension of the period for submitting information to be considered in the 5-year review to January 3, 2006 (70 FR 66842). The Service completed a 5-year review on September 26, 2006, that recommended the Service delist the valley elderberry longhorn beetle. The 5-year review is available to the public on the Internet at <http://www.fws.gov/cno/es/VELB%205-year%20review.FINAL.pdf>.

Petition History

On September 13, 2010, we received a petition dated September 9, 2010, from the Pacific Legal Foundation, as

representative for Reclamation District Number 108, *et al.*, requesting that the valley elderberry longhorn beetle be removed from the Federal List of Endangered and Threatened Wildlife under the Act. The petition clearly identified itself as such, and included the requisite identification information for the petitioners, as required by 50 CFR 424.14(a). The petition included the Service's 5-year review as supporting information (Service 2006a). On August 19, 2011, we published a 90-day finding in response to the Pacific Legal Foundation's petition stating that the petition presented substantial scientific or commercial information indicating that delisting the valley elderberry longhorn beetle may be warranted (76 FR 51929). This proposed rule also constitutes our 12-month finding for the petition to delist the valley elderberry longhorn beetle. As the result of our status review, we find that delisting the valley elderberry longhorn beetle is warranted, and we propose to remove the beetle from the List of Endangered and Threatened Wildlife, and remove designated critical habitat.

Species Information

Description and Basic Biology

The valley elderberry longhorn beetle (beetle) (*Desmocerus californicus dimorphus*) is a medium-sized red and dark green (to red and black) insect approximately 0.8 inch (in) (2 centimeters (cm)) long. It is endemic to the Central Valley of California (Fisher 1921, p. 207; Doane *et al.* 1936, p. 178; Linsley and Chemsak 1972, p. 7). The similar-looking California elderberry longhorn beetle (*Desmocerus californicus californicus*) is primarily known from coastal regions of California (Collinge *et al.* 2001, p. 104). The two subspecies can be identified with certainty only by adult male coloration, where males of the listed subspecies have predominantly red elytra with four dark spots, whereas males of the common, unlisted subspecies (California elderberry longhorn beetle) have dark metallic green to black elytra with a red border. The ranges of the two subspecies may abut or overlap along the foothills of the eastern Coast Range and the southern San Joaquin Valley; dark males have also been noted in Placer and Yolo Counties (Talley *et al.* 2006a, pp. 5–6). Beetles meeting the description of the California elderberry longhorn beetle have also been recorded in the Sierra Nevada foothills as far north as Mariposa County (Halstead and Oldham 2000, pp. 74–75), suggesting

that the ranges of the two subspecies may also abut or overlap in that area.

The valley elderberry longhorn beetle is a wood borer, dependent on (and found only in association with) its host plant, the elderberry (*Sambucus* spp. of the Caprifoliaceae [honeysuckle] family) (Barr 1991, p. 4; Collinge *et al.* 2001, p. 104). The elderberry is a common shrub component of riparian forests and adjacent upland vegetation along river corridors of the Central Valley (Hickman 1993, pp. 474–475; Sawyer and Keeler-Wolf 1995, pp. 171, 229; Halstead and Oldham 2000, p. 74). Adult beetles feed on elderberry nectar, flowers, and foliage, and are generally active from March through June (Eng 1984, p. 916; Barr 1991, p. 4; Collinge *et al.* 2001, p. 105). They are uncommon (see “Occurrence Information and Population Size and Distribution” below) and rarely observed, despite their relatively large size and conspicuous coloration.

The females lay eggs, singly or in small groups, on the leaves or stems of living elderberry shrubs (Barr 1991, p. 4). The larvae hatch in a few days, and bore into living stems that are at least 1 in. (2.5 cm) in diameter. The larvae remain within the elderberry stem, feeding on the pith (dead woody material) until they complete their development. Each larva creates its own gallery (set of tunnels) within the stem by feeding (Talley *et al.* 2006a, pp. 8–9). The larva eventually cuts an exit hole out of the stem, but plugs the hole up again from within using wood shavings. This allows the beetle to eventually exit the stem after it becomes an adult, as the adults are not wood borers. The larva remains within the stem, becomes a pupa, and finally emerges from its single exit hole as an adult between mid-March and mid-June (Lang *et al.* 1989, p. 242; Barr 1991, p. 5; Talley *et al.* 2006a, p. 9). There is thus one exit hole per larva. The complete life cycle is thought to take either 1 or 2 years (depending on the amount of time the larva stays in the elderberry stem), with adults always emerging in the spring. Adults live from a few days to a few weeks after emerging, during which time they mate and lay their eggs (Talley *et al.* 2006a, p. 7). Shrub characteristics and other environmental factors appear to have an influence on use by the valley elderberry longhorn beetle in some recent studies, with more exit holes in shrubs in riparian, than nonriparian, scrub habitat types (Talley *et al.* 2006a, p. 18), and increased beetle colonization of larger shrubs (and greater beetle extinction from smaller shrubs) (Zisook 2007, p. 1).

Lost Historical Range

Although there are insufficient valley elderberry longhorn beetle records to directly assess changes in distribution from historical times to the present, it is probable that beetle habitat distribution was coarsely related to the extent of riparian forests of which the host plant, elderberry, is often a component. However, we note that elderberry does not occur in all areas where riparian vegetation exists. Thus, we are unable to provide an accurate assessment of potential lost historical range of valley elderberry longhorn beetle habitat; rather, estimates are based on historical losses of riparian vegetation.

Historically, California's Central Valley riparian forests have experienced extensive vegetation loss during the last 150 years due to expansive agricultural and urban development (Katibah 1984, p. 23). These Central Valley riparian forests include those along the Sacramento and San Joaquin Valleys that comprise the north and south range, respectively, of the valley elderberry longhorn beetle, as discussed in detail below in "Occurrence Information and Population Size and Distribution." Since colonization, these forests have been " * * * modified with a rapidity and completeness matched in few parts of the United States" (Thompson 1961, p. 294). As of 1849, the rivers and larger streams of the Central Valley were largely undisturbed (Thompson 1961, p. 305), supporting continuous bands of riparian woodland 4 to 5 mi (6.4 to 8 km) wide along some major drainages such as the lower Sacramento River, and generally about 2 mi (3.2 km) wide along the lesser streams (Thompson 1961, p. 307). Most of the riverine floodplains supported riparian vegetation to about the 100-year flood line (Katibah 1984, p. 25). A large human population influx occurred after 1849; however, much of the Central Valley riparian vegetation was rapidly converted to agriculture and used as a source of wood for fuel and construction to serve a wide area (Thompson 1961, p. 311). By as early as 1868, riparian woodland had been severely affected in the Central Valley, as evidenced by the following excerpt:

This fine growth of timber which once graced our river [Sacramento], tempered the atmosphere, and gave protection to the adjoining plains from the sweeping winds, has entirely disappeared—the woodchopper's axe has stripped the river farms of nearly all the hard wood timber, and the owners are now obliged to rely upon the growth of willows for firewood. (Cronise 1868 in Thompson 1961, p. 312).

Based on the historical riparian woodlands information summarized in the paragraph above, we conservatively estimate that over 90 percent of that riparian vegetation in the Central Valley has been converted to agriculture or urban development since the middle of the 1800s (Thompson 1961, pp. 310–311; Katibah *et al.* 1984, p. 314). We also note that estimates of historical riparian vegetation loss in the Central Valley and acreage of current riparian vegetation vary. Based on a California Department of Fish and Game (CDFG) riparian vegetation distribution map, about 102,000 ac (41,278 ha) out of an estimated 922,000 ac (373,120 ha) of Central Valley riparian forest remained at the turn of the century (Katibah 1984, p. 28). This represents a decline in acreage of approximately 89 percent as of 1979 (Katibah 1984, p. 28). Another source indicates that 132,586 ac (53,656 ha) of riparian vegetation remained across the Central Valley in 2003 (Geographic Information Center 2003, p. 14), which represents a 50 percent decline since 1960. More extreme figures are provided by Frayer *et al.* (1989, pp. ii), who reported that approximately 85 percent of all wetland acreage in the Central Valley was lost before 1939; and that from 1939 to the mid-1980s, the acreage of wetlands dominated by forests and other woody vegetation declined from 65,400 ac (26,466 ha) to 34,600 ac (14,002 ha). Differences in methodology may explain the differences between these estimates. In any case, the historical loss of riparian vegetation in the Central Valley strongly suggests that the range of the valley elderberry longhorn beetle has been reduced (because elderberry is a component of riparian vegetation), and its distribution has been fragmented.

For the purposes of this analysis, we are utilizing what we believe is a reliable estimate for remaining riparian vegetation within the Central Valley (i.e., 132,586 ac (53,656 ha) as reported by Geographic Information Center (2003)); this value will be used as a reference point when discussing impacts to remaining riparian vegetation in this document. The causes of this lost historical riparian vegetation are described in the following paragraphs as background information for this discussion on valley elderberry longhorn beetle's lost historical range. Causes of ongoing and future loss of riparian vegetation within the range of the beetle are discussed below in Summary of Factors Affecting the Species.

The historical clearing of riparian forests for fuel and construction in the Central Valley made this land available

for agriculture (Thompson 1961, p. 313). Natural levees bordering the rivers, which once supported vast tracts of riparian vegetation, became prime agricultural land (Thompson 1961, p. 313). As agriculture expanded in the Central Valley, needs for increased water supply and flood protection spurred water development and reclamation projects. Artificial levees, river channelization, dam building, water diversion, and heavy groundwater pumping have further reduced riparian vegetation to small, isolated fragments (Katibah 1984, p. 28). In recent decades, these riparian areas in the Central Valley have continued to decline as a result of ongoing agricultural conversion, urban development, and stream channelization. As of 1989, there were more than 100 dams within the Central Valley drainage basin, as well as thousands of miles of water delivery canals and stream bank flood control projects for irrigation, municipal and industrial water supplies, hydroelectric power, flood control, navigation, and recreation (Frayer *et al.* 1989, p. 5). Riparian forests in the Central Valley have dwindled to discontinuous strips of widths measurable in yards rather than miles.

Between 1980 and 1995, the human population in the Central Valley grew by 50 percent, while the rest of California grew by 37 percent (American Farmland Trust 2011). The Central Valley's population was 4.7 million in 1999, and it is expected to more than double by 2040 (American Farmland Trust 2011). The American Farmland Trust estimates that by 2040, more than one million cultivated acres will be lost and 2.5 million more put at risk (American Farmland Trust 2011). With this growing population in the Central Valley, increased development pressure could affect native vegetation communities.

A number of studies have focused on riparian vegetation loss along the Sacramento River, which supports some of the densest known populations of the beetle. Approximately 98 percent of the middle Sacramento River's historical riparian vegetation was believed to have been extirpated by 1977 (DWR 1979, entire). The State Department of Water Resources estimated that native riparian vegetation along the Sacramento River from Redding to Colusa decreased 34 percent from 27,720 ac (11,218 ha) to 18,360 ac (7,430 ha) between 1952 and 1972 (Conard *et al.* 1977, p. 47). The average rate of riparian loss on the middle Sacramento River was 430 ac (174 ha) per year from 1952 to 1972, and 410 ac (166 ha) per year from 1972 to 1977 (Conard *et al.* 1977, p. 47).

There is no comparable information on the historical loss of beetle habitat (i.e., the component of riparian vegetation that contains elderberry, which includes elderberry savanna and other vegetation communities where elderberry occurs, such as oak or mix-chaparral woodland, or grasslands adjacent to riparian vegetation). However, all natural habitats throughout the Central Valley have been heavily impacted within the last 200 years (Thompson 1961, pp. 294–295), and it can, therefore, be concluded that beetle habitat also has declined. Accordingly, loss of beetle habitat (also described in literature as nonriparian vegetation where elderberry occurs), and of specific areas where the beetle has been recorded (Barr 1991, entire), further suggests reduction of the beetle’s range and increased fragmentation of its upland habitat.

We cannot conclude that the losses of riparian and aquatic vegetation described in this section are representative of the lost historical habitat for the valley elderberry longhorn beetle, because we have no way of knowing which of these lost areas were actually historically occupied by the beetle.

Occurrence Information and Distribution

Historically and currently, the valley elderberry longhorn beetle is rarely observed (although we expect infrequent observations because there is infrequent survey data). For example, survey efforts conducted by Barr (1991, pp. 45–46), Collinge *et al.* (2001, p. 107), and Talley *et al.* (2006a, p. 11) have documented very few adult valley elderberry longhorn beetles.

Consequently, the past and current presence of beetles in a given area is usually established based on the presence of recent or old exit holes in elderberry stems (Jones & Stokes 1987, p. 2; Barr 1991, p. 12). Recent exit holes (made within the current year) are typically distinguishable from holes made in previous years by the presence of wood shavings and light-colored wood within the hole. Thus, trained surveyors are generally able to distinguish current beetle presence from presence of the beetle in previous years (Collinge *et al.* 2001, p. 105). Trained surveyors are also typically able to distinguish between exit holes made by the beetle and exit holes made by other species of wood borers (Talley *et al.* 2006a, pp. 9–10; River Partners 2007, p. 7). However, exit holes made by the valley elderberry longhorn beetle are not distinguishable from exit holes made by the California elderberry longhorn beetle, except by inference, based on where the observation occurred within the range of either beetle (River Partners 2007, p. 9).

When the valley elderberry longhorn beetle was listed in 1980, it was known from 10 occurrence records at three locations: the Merced River (Merced County), the American River (Sacramento County), and Putah Creek (Yolo County) (45 FR 52805, August 8, 1980; Service 2006a, p. 5; Talley *et al.* 2006a, p. 23). Subsequent survey efforts have expanded our knowledge of the beetle’s range to include much of the San Joaquin and Sacramento Valleys, from Shasta County in the northern Sacramento Valley to Kern County in the southern San Joaquin Valley, California. Currently, 201 beetle

occurrence records are identified in the California Natural Diversity Database (CNDDDB), in addition to some other records not yet reported to CNDDDB (CNDDDB 2010, pp. 1–202; Table 1). The CNDDDB is an electronic inventory of observation records for California’s rare plants, animals, and communities, managed by CDFG (CDFG 2009, p. 1).

In Table 1, we present information for 201 occurrence records representing 26 locations that we believe represent the best available data regarding the distribution of this subspecies. These selected records include all of the major riparian systems within the Central Valley proper and a few foothill systems immediately above major reservoirs. We do not include 12 occurrence records from other riparian systems (i.e., they are not included in Table 1 nor are they discussed further in this rule), because we do not regard them as verified for various reasons, including that they: Are isolated records that contain extremely limited habitat; occur exclusively at higher elevations adjacent to the range of the California elderberry longhorn beetle (Oakhurst vicinity, Auberry vicinity, North Fork Willow Creek, Mariposa Creek, Los Banos Creek, Lawrence Livermore National Laboratory, North Fork Feather River); are extirpated (Middle River); represent a single shrub in rural development (Dixon); contain records from dead wood or old exit holes only (Honcutt Creek, Paynes Creek); or occur in a location within heavily maintained channels (Chowchilla). Additionally, there are also locations (Deer Creek, Battle Creek) that are represented by a single non-CNDDDB report, and are not discussed.

TABLE 1—LOCATIONS AND OCCURRENCE RECORDS OF THE VALLEY ELDERBERRY LONGHORN BEETLE IN THE NORTH AND SOUTH CENTRAL VALLEY OF CALIFORNIA ¹

Locations (north to south) ²	Number of occurrence records ³	Years of occurrences ⁴
1.a. Sacramento River (SR), Redding-Red Bluff	10	87, 89, 91, 03A, 08A.
1.b. SR, Red Bluff-Chico	13(3)	85, 86, 87, 91, (00A), 01A, (03), (10).
1.c. SR, Chico-Colusa	18(1)	86, 87, 88, (03), 06.
1.d. SR, Colusa-American River confluence	7	85A.
1.e. SR, American River confluence south	2(1)	05A, 06A, (08).
2. Thomes Creek	1	91, absent 97.
3. Stony Creek	1	91, absent 97.
4. Big Chico Creek	2(1)	91, 97, (10).
5. Feather River	6(1)	85, 91, (07), 10A.
6. Butte Creek	4	93, absent 91, 95, absent 97.
7. Yuba River	7	98.
8. Bear River	4(2)	91, 98, 03, (04A, 10A).
9. Lower American River	11(4)	84A, 85A, 90A, 95A, 96, 00, 08A, (02, 03, 04, 10).
10. Upper American River vicinity (Miner and Secret Ravine, Coon, Anderson and Linda Creeks) (foothill location >1,000 ft elevation).	8	84, 91, 02, 10.
11. Putah Creek	4(2)	82A, 91A, 95, 00A, (04, 10).
12. Cache Creek	7	91, 01A, 07A.

TABLE 1—LOCATIONS AND OCCURRENCE RECORDS OF THE VALLEY ELDERBERRY LONGHORN BEETLE IN THE NORTH AND SOUTH CENTRAL VALLEY OF CALIFORNIA ¹—Continued

Locations (north to south) ²	Number of occurrence records ³	Years of occurrences ⁴
13. Ulatis-Green Valley Creeks	6	91, 02, 04, (08).
14. Cosumnes-Laguna-Dry Creeks	7(3)	64A, 84, 87, 91, (02, 03, 04).
15. Mokelumne-Bear Rivers	6	84, 91A, 06.
16. Stanislaus River	4(1)	84A, 85, 89, 91, (10).
17. Upper Stanislaus hills (vicinity above and between New Melones and Don Pedro Reservoirs, including Sullivan Creek) (foothill location >1,000 ft elevation).	6	99, 00, 02A, 07A.
18. Calaveras River-Stockton Diverting Canal	5	84A, 91, 00.
19. Tuolumne River	4	84, 91, 99.
20. Merced River	3(1)	85, 86, 90A, absent 91, (10).
21. Kings River	18	89A, 90A, 91, 94, 98A, absent 10.
22. Kaweah River	5	37, 86A, 91, 94.
23. Tule River-Deer Creek	5(1)	91A, 93, (10).
24. Kern River (excluding Caliente Creek)	1(2)	91, (08, 10).
25. Caliente Creek (foothill location >1,000 ft elevation)	3	91.
26. San Joaquin River	3(1)	84, 89, 92, 04

¹ Non-CNDDDB source information includes survey from review of a section 7 consultation, literature sources such as Holyoak and Graves 2010, River Partners 2007, Collinge *et al.* 2001, and Talley 2005, and other verified sources (such as information from scientific experts or Service biologists who have evaluated data for accuracy) compiled in a GIS database by the Service's Sacramento Fish and Wildlife Office.

² The locations presented in this table are based on available data that provide detailed information about valley elderberry longhorn beetle presence. Additional locations were not included in this table due to a lack of sufficient information that provides certainty on valley elderberry longhorn beetle presence (see preceding text for explanation).

³ Occurrence records are a combination of CNDDDB source data and non-CNDDDB source data, the latter of which is presented as a value between parentheses. For example, the Big Chico Creek location has a total of three occurrence records, including two from CNDDDB source data and one from non-CNDDDB source data.

⁴ Data provided in this column show: (1) Years when surveys were conducted and beetles were found (e.g., "99" indicates that beetle evidence was observed in the year 1999, or "90A" indicates adult beetles were observed in 1990), and (2) years when surveys were conducted and beetles or evidence of beetles were not found (e.g., "absent 91" indicates that a survey was conducted in 1991 but no beetles or evidence of beetles were observed). Additionally, there could be existing known locations, or new locations (in addition to the 26 locations listed in this table) where valley elderberry longhorn beetles occur today, but it is uncertain because we know of no recent surveys that have been conducted.

An occurrence (or "element occurrence") is a term used in the CNDDDB to refer to an observation at a location where a species has been documented to occur, such as a sighting of a valley elderberry longhorn beetle, or of an exit hole (recent or otherwise), that indicates possible presence of the subspecies. CNDDDB data do not represent the results of a systematic survey, but rather reflect a compilation of observations from multiple contributors and studies over time. Depending on information provided by contributors, many beetle occurrence records are merely points on the map, whereas others include information regarding the size of the occupied area. Beetle occurrences are distributed across the Central Valley, generally occurring singly and in small, relatively isolated clusters along river corridors. Noticeably larger clusters of beetle records occur along the northern portions of the Sacramento River (around Tehama, Glenn, and Butte Counties), along the lower American River (primarily in Sacramento County), and along the Kings River (in Fresno County). One hundred and twenty-five beetle occurrences have been recorded in the northern portion of the Central Valley (north of the line formed by the southern boundaries of Sacramento and

Amador Counties), as compared with 76 south of that line. CNDDDB presumes all 201 occurrences in the Central Valley are currently extant (CDFG 2007, p. 4). Based on this information, we understand these occurrences to be currently extant.

This rule uses the term "occurrence" to refer to the valley elderberry longhorn beetle observations reported in CNDDDB records. We use the terms "site" and "survey site" to refer to a specific local area that is surveyed for evidence of beetle presence (Barr 1991, pp. 9, 19; Collinge *et al.* 2001, p. 105). We use the term "location" to refer to the river system, major river reach, or watershed vicinity in which several records in general proximity to one another may occur.

The number and area of occurrences do not necessarily indicate the number and size of interbreeding populations (defined as groups of interbreeding valley elderberry longhorn beetles). This is because CNDDDB generally groups sightings of beetles or exit holes within 0.25 mi (0.4 km) of each other into the same occurrence (CDFG 2009, pp. 2–3). In addition, while beetle movement is restricted, dispersal is believed to occur over a scale of around 12 mi (20 km), and metapopulations (a set of partially isolated subpopulations between which dispersal is limited) form at a scale of

25 mi (40 km) or less, within which there can be many occurrences (Collinge *et al.*, 2001, p. 108; Talley *et al.* 2006a, pp. 10–11). Beetles may, or may not, persist in any given elderberry shrub within an occurrence, or may inhabit more or fewer elderberry shrubs over time, but there is rarely documentation of these temporal changes to an occurrence. Although CNDDDB presumes all occurrences in the Central Valley are extant, CNDDDB generally does not identify an occurrence as extirpated, or possibly extirpated, unless it receives positive information (such as complete loss of habitat) to indicate the population is no longer at the site (CDFG 2007, p. 4). Occurrence records are thus primarily useful for demonstrating the extent of a species' range, and the general distribution within that range, as well as for noting information such as the date the species was last seen at a given location.

The infrequency of sampling data, and particularly the lack of recent sampling, makes it difficult to precisely determine population size and distribution of this subspecies. Dates last seen range from 1937 to 2008, with the vast majority occurring in the late 1980s and early 1990s (Service 2007, p. 11). For most of these sites, the date the subspecies was last seen and the date

the site was last visited are the same, possibly because of the infrequency with which sites are resurveyed. Only 26 of the CNDDDB occurrence records are from 2000 or later. Regardless, data collected have shown a larger distributional range and a greater number of known occurrences when compared to the time of listing. We considered all information in the CNDDDB and other sources not yet reported to the CNDDDB to evaluate the subspecies' range and occurrences.

Although the majority of valley elderberry longhorn beetle occurrence records are those recorded in CNDDDB, other occurrence records (not necessarily reported to the CNDDDB) originate from projects reviewed under section 7 or section 10 of the Act, monitoring of elderberry plantings, and a few location-specific surveys (see below, this section). There are not a large number of records from any of these other sources. The most extensive of these other records are from National Wildlife Refuge (NWR) units along the Sacramento River north of Colusa. For example, in 2003, while monitoring elderberry shrubs planted at five Sacramento River NWR units, surveyors found 449 beetle exit holes in 299 (3.8 percent) of the 7,793 shrubs surveyed (River Partners 2004a, pp. 2–3; Talley *et al.* 2006a, p. 51), which were represented across all 5 refuge units surveyed. A greater percentage of beetle exit holes were found at sites with older elderberry plantings or near existing riparian vegetation (River Partners 2004a, pp. 4–5). Another example of beetle information beyond CNDDDB records includes section 7 consultations. A total of 500 section 7 consultations dating since 2000 have been conducted because project sites contained riparian vegetation that may support the beetle (and potentially beetle habitat); 13 were reported to contain exit holes. Only 1 of these 13 observations was in the south Central Valley (Kern River). Outside of CNDDDB, adult beetles have been observed six times at monitoring, restoration, or mitigation sites in the north Central Valley (Feather, Bear, and Sacramento River areas).

Within the range of the valley elderberry longhorn beetle, local beetle populations tend to be sporadic, small, and clustered, independent of the availability of larger areas of mature elderberry. For example, a study conducted in 1985–1987 focused on areas of native riparian vegetation along 183 mi (295 km) of the Sacramento River floodplain north of Sacramento. Researchers found that 95 percent of surveyed sites contained elderberries,

while exit holes (old and recent) occurred in 64 percent of surveyed sites (Lang *et al.* 1989, pp. 243, 246). Lang *et al.* (1989, pp. 243–245) also found that habitat occupancy was substantially higher at the northern end of the study area, which is consistent with the pattern of distribution in the occurrence records. In the 48 river miles north of Chico Landing, 94 percent of study sites were occupied, while occupancy declined to 28 percent for the 85-mi (137-km) reach between Colusa and Sacramento. The authors noted that this pattern reflected the fact that riparian vegetation below Colusa was confined by levees to narrow strips, whereas between Colusa and Chico Landing setback levees allowed wider areas of riparian vegetation, and above Chico Landing habitat was unconstrained by levees.

Barr (1991) conducted an extensive study of riparian vegetation in 1991 along major rivers and streams in both the Sacramento and San Joaquin Valleys, and the adjacent foothills. Barr (1991, pp. 15, 42) found evidence of valley elderberry longhorn beetle occupancy (recent and old exit holes) in 28 percent of surveyed sites (64 of 230 sites), and in about 20 percent of the 504 groups of elderberry shrubs examined at those sites (each site had one to several shrub groups). The author noted general observations (such as rarity of the beetle and clustered nature of occurrences (Barr 1991, p. 49)), and specific results that include recent exit holes occurring at only 14 percent of sites surveyed (33 of 230 sites). In 1997, Collinge *et al.* (2001, p. 105) resurveyed 65 of the 79 sites that Barr (1991) had surveyed (25 of which showed evidence of occupancy) in the Sacramento Valley portion of the 1991 study. Collinge *et al.* (2001, p. 105) found that 20 percent of surveyed sites (13 of 65 sites) had recent exit holes, while 46 percent (30 of 65 sites) had either recent or old holes (Collinge *et al.* 2001, p. 107). The repetition of the earlier study further supported the relatively rare and clustered nature of beetle presence. Because the two surveys were completed using the same methods, the study also allowed a limited assessment of temporal changes in beetle presence or absence (Collinge *et al.* 2001, p. 105), which is further discussed below under the "Population Status and Trends" section.

Evaluating available data on old and recent valley elderberry longhorn beetle exit holes to aid in the determination of current occupancy of locations and current distribution across the subspecies' range has proven difficult. For example, in the San Joaquin Valley

surveyors for two recent studies along the Stanislaus and San Joaquin Rivers found relatively recent beetle exit holes at six sites (Kucera *et al.* 2006, pp. 7–10, 12; River Partners 2007, pp. 9–11). Unfortunately, the two studies did not define "recent" the same way. One study (River Partners 2007, p. 8) included "old" recent holes with worn margins, while the other (Kucera *et al.* 2006, p. 4) followed the sampling methodology of Talley (2005, p. 14), which identifies "recent" holes as having crisp margins and minimal evidence of healing.

Beetle occupancy appears to be lower in the south Central Valley as compared to the north Central Valley. In the south Central Valley, Kucera *et al.* (2006, pp. 4–9) surveyed approximately 153 mi (246 km) of the San Joaquin River from Friant Dam to the confluence with the Merced River, and found 1 shrub with 6 recent exit holes and 16 shrubs with a total of 122 nonrecent holes. The recent holes, and all but three of the nonrecent holes, were located within 22 mi (35 km) of Friant dam (Kucera *et al.* 2006, pp. 8–9). Also in the south Central Valley, River Partners (2007, p. 1) surveyed 59 mi (95 km) of the Stanislaus River from Goodwin Dam to the confluence with the San Joaquin River, as well as 12 mi (19 km) of the San Joaquin River from the confluence with the Stanislaus River up to the confluence with the Tuolumne River. River Partners (2007, pp. 10, 26, 28, 38, 40, 42, 49) found one site with recent exit holes, four sites with both recent and nonrecent holes, and one site with nonrecent holes. However, two of the five sites with recent exit holes were high enough in elevation in the Sierra foothills that the surveyors considered it possible that the exit holes had been made by either valley elderberry longhorn beetles or California elderberry longhorn beetles (River Partners 2007, pp. 9, 26, 28). Numbers of recent exit holes at each site in the two studies ranged from 0 to 6 (Kucera *et al.* 2006, pp. 4, 8, 9) and 0 to 44 (River Partners 2007, pp. 10, 26, 28, 38, 40–43), showing the difficulty of comparing results across nonstandardized surveys.

In summary, multiple factors limit our ability to draw direct comparisons between all studies and over time, but, taken together, these studies consistently indicate a patchy distribution of the valley elderberry longhorn beetle throughout its range. As discussed above, the earliest study (Lang *et al.* 1989, pp. 242, 246) did not distinguish between old and new exit holes in determining that a site was actively occupied by beetles, while most of the later studies relied on the

presence of recent holes in determining occupancy of extant populations (Barr 1991, pp. 46, 47; Collinge *et al.* 2001, p. 107; Kucera *et al.* 2006, pp. 7–11; River Partners 2007, pp. 8, 11, 16). Additionally, survey timing varied between studies and often overlapped the beetle's emergence period. Despite these differences in survey methodology, species experts have determined that the beetle is patchily distributed throughout its range, even where suitable habitat is present (Barr 1991, p. 49; Collinge *et al.* 2001, p. 107; River Partners 2007, p. 23). The beetle occurs in clusters (Barr 1991, p. 49), with small populations everywhere that it occurs (Collinge *et al.* 2001, p. 107). Most occupied sites are located in the northern portion of the range along the Sacramento River (Collinge *et al.* 2001, p. 111). Site occupancy by the beetle appears to be higher in the northern Central Valley and lower in the south Central Valley (Kucera *et al.* 2006, pp. ii, 10). The reasons for patchy beetle distribution patterns and the low occupancy in the south Central Valley generally remain unclear, but appear to go beyond what may be explained by the simple presence or absence of elderberry shrubs. Thus, population characteristics such as patchy distribution and low occupancy in the south Central Valley, coupled with the infrequency of sampling data and, particularly, the lack of recent sampling, make it difficult to precisely determine population size and distribution of this subspecies.

Population Status and Trends

There are no long-term population data available for the valley elderberry longhorn beetle; rather, the only available data are the CNDDDB occurrence records and limited records from other sources (Table 1). The Collinge *et al.* (2001) study attempted to provide information relevant to population trends by surveying and comparing the same sites within the Sacramento Valley as had been surveyed 6 years earlier by Barr (1991), using the same survey methods. They found fewer occupied groups of elderberry shrubs at each site (on average) because the average density of elderberry shrubs had decreased (Collinge *et al.* 2001, pp. 108, 109; Talley *et al.* 2006a, p. 13). The authors did not offer reasons for the observed decrease of elderberry bush density.

For comparisons regarding valley elderberry longhorn beetle site occupancy, Collinge *et al.* (2001, pp. 106–107) identified four types of changes evident from comparison of the 1991 and 1997 surveys: short-term

extinctions (recent exit holes in 1991, no recent exit holes in 1997), short-term colonizations (no recent holes in 1991, recent holes in 1997), long-term extinctions (holes of any age in 1991, no holes in 1997), and long-term colonizations (no holes in 1991, holes of any age in 1997). Collinge *et al.* (2001, pp. 106–107) related findings on both short- and long-term changes because they felt that the long-term values tended to underestimate actual numbers of extinctions and colonizations, whereas the short-term values tended to overestimate them. For instance, they noted that a local extinction would not register as a long-term extinction if old holes remained in the area. Similarly, because the beetle can remain as a larva in an elderberry stem for up to 2 years, a survey for exit holes during a given year might miss its presence and thus register as a short-term extinction. We also note that the number of short-term extinctions and colonizations is subject to additional error based on timing of surveys, because the Barr (1991) and Collinge *et al.* (2001) surveys were conducted from April to July (Barr 1991) or April to June (Collinge *et al.* 2001, p. 105), while the adult beetles emerge (and thus create new exit holes) from mid-March to mid-June (Talley *et al.* 2006a, p. 9). In other words, an error documenting beetle presence could occur in a given year because (for example) beetles could potentially emerge in June after a survey is conducted in April.

The overall trend of valley elderberry longhorn beetle occupancy was moderately downward when comparing the 1991 and 1997 survey data (described above), as indicated by both short- and long-term extinctions and colonization sites with elderberry shrubs and by occupied shrub groups within each site (Talley *et al.* 2006a, p. 13). Collinge *et al.* (2001, pp. 107–108) reported that of 65 sites with mature elderberry visited in both surveys, 9 sites suffered short-term extinctions while 6 underwent short-term colonizations. They also related two long-term extinctions, as compared to four long-term colonizations. However, as Talley *et al.* (2006a, p. 13) noted, there were actually 9 long-term extinctions out of 72 sites that Barr had surveyed in 1991, because 7 of those sites had lost all their elderberry shrubs between studies (Collinge *et al.* 2001, p. 105), and so were not included in the statistics reported by Collinge *et al.* (2001, p. 107). According to Collinge *et al.* (2001, p. 110), the location discussed in this rule that exhibited no recent holes at any site in 1997, but did so in

1991, is Stony Creek. Several other entire watersheds with multiple elderberry sites examined revealed no beetles in either 1991 or 1997 (Paynes, Deer, and Butte Creeks). Collinge *et al.* (2001) did not identify the sites (or systems) lacking elderberry; however, Barr (1991, pp. 20–21, 25) did identify drainages without elderberries at any site examined (Cow, Battle, Cottonwood Creeks; Colusa and Sutter Basins). Barr (1991, p. 47) also noted eight localities where there was no sign of the beetle (exit holes or adults) where it had been previously reported.

Collinge *et al.* (2001) suggested that each drainage surveyed functions as a relatively isolated valley elderberry longhorn beetle metapopulation, separated from other such metapopulations by distances of 25 mi (40 km) or more (Collinge *et al.* 2001, pp. 108–110; Talley *et al.* 2006a, p. 10). Occupied sites within each metapopulation were found to be subject to extirpation, and also to recolonization from other occupied sites in the drainage within 12 mi (20 km) (Collinge *et al.*, 2001, p. 108). Accordingly, Collinge *et al.* (2001, p. 112) recommended that a proportion of occupied sites within a 12-mi (20-km) distance be considered in decisions regarding loss of riparian vegetation and placement of newly restored habitat for the beetle. Collinge *et al.* (2001, p. 110) concluded that, due to limited dispersal among metapopulations, when all the beetles in an entire drainage are extirpated, the drainage is unlikely to be naturally recolonized.

Of the 14 drainages surveyed by both Barr (1991) and Collinge *et al.* (2001), 7 were occupied by valley elderberry longhorn beetles in 1991. Six of those seven were found to still be occupied in 1997 (Collinge *et al.* 2001, pp. 106, 108; Talley *et al.* 2006a, p. 11). We note however that rather than surveying every elderberry shrub and branch, Collinge *et al.* (2001, p. 105) randomly selected distinct groups of elderberry shrubs to survey at each site.

In summary, minimal trend information exists related to valley elderberry longhorn beetle's rangewide population status. Collinge *et al.* (2001, pp. 106–107) identified four types of changes evident from comparison of the 1991 and 1997 surveys that included both short- and long-term extinctions and colonizations. Available survey data from Collinge *et al.* (2001) indicate that some river or watershed systems continue to harbor the beetle while others may not. However, because Collinge *et al.* (2001) did not survey all potential beetle habitat at each location, the beetle could still be present at

locations where it appears to be absent. Holyoak and Graves (2010, p. 20) found that because the beetle's local population levels and densities are typically very low, sampling levels must be very high in order to detect large population declines within a watershed. Regardless of extinctions or colonizations, each watershed system that is occupied by the beetle may serve as an isolated metapopulation with limited dispersal capabilities; thus the ability for natural recolonization (following an extirpation event) within an individual watershed system may be unlikely (Collinge *et al.* 2001, p. 110).

Recovery Planning and Implementation

Section 4(f) of the Act directs us to develop and implement recovery plans for the conservation and survival of endangered and threatened species unless we determine that such a plan will not promote the conservation of the species. The Act directs that, to the maximum extent practicable, we incorporate into each plan:

(1) Site-specific management actions that may be necessary to achieve the plan's goals for conservation and survival of the species;

(2) Objective, measurable criteria, which when met, would result in a determination, in accordance with the provisions of section 4 of the Act, that the species be removed from the list; and

(3) Estimates of the time required and cost to carry out the plan.

Revisions to the list (adding, removing, or reclassifying a species) must reflect determinations made in accordance with sections 4(a)(1) and 4(b) of the Act. Section 4(a)(1) that requires that the Secretary determine whether a species is endangered or threatened (or not) because of one or more of five threat factors. Objective, measurable criteria, or recovery criteria contained in recovery plans, must indicate when we would anticipate an analysis of the five threat factors under 4(a)(1) would result in a determination that a species is no longer endangered or threatened. Section 4(b) of the Act requires the determination made be "solely on the basis of the best scientific and commercial data available."

While recovery plans are intended to provide guidance to the Service, States, and other partners on methods of minimizing threats to listed species and on criteria that may be used to determine when recovery is achieved, they are not regulatory documents and cannot substitute for the determinations and promulgation of regulations required under section 4(a)(1) of the Act. Determinations to remove a species

from the list made under section 4(a)(1) of the Act must be based on the best scientific and commercial data available at the time of the determination, regardless of whether that information differs from the recovery plan.

In the course of implementing conservation actions for a species, new information is often gained that requires recovery efforts to be modified accordingly. There are many paths to accomplishing recovery of a species, and recovery may be achieved without all criteria being fully met. For example, one or more recovery criteria may have been exceeded while other criteria may not have been accomplished, yet the Service may judge that, overall, the threats have been minimized sufficiently, and the species is robust enough, that the Service may reclassify the species from endangered to threatened or perhaps delist the species. In other cases, recovery opportunities may have been recognized that were not known at the time the recovery plan was finalized. These opportunities may be used instead of methods identified in the recovery plan.

Likewise, information on the species may be learned that was not known at the time the recovery plan was finalized. The new information may change the extent that recovery criteria need to be met for recognizing recovery of the species. Overall, recovery of species is a dynamic process requiring adaptive management, planning, implementing, and evaluating the degree of recovery of a species that may, or may not, fully follow the guidance provided in a recovery plan.

Thus, while the recovery plan provides important guidance on the direction and strategy for recovery, and indicates when a rulemaking process may be initiated, the determination to remove a species from the Federal List of Endangered and Threatened Wildlife is ultimately based on an analysis of whether a species is no longer endangered or threatened.

When the Service completed the final Valley Elderberry Longhorn Beetle Recovery Plan (Recovery Plan) in 1984 (Service 1984, pp. 1–62), there was little information regarding the beetle's life history, distribution, and habitat requirements to develop specific recovery objectives (Service 1984, p. 21). The development of these objectives was left for a later date (Service 1984, p. 39), and the Recovery Plan instead described four primary interim objectives (Service 1984, pp. 22). This was followed by an outline and narrative (referred to as the Step-Down Outline that includes many discrete recovery actions), including

three of the four primary interim objectives, and four additional objectives that are interpreted as recovery actions (these latter four additional objectives are further described below in the section titled "Additional Recovery Objectives.") The determination of delisting criteria is considered a discrete action within the Recovery Plan's narrative, Step 3—Determine ecological requirements and management needs of VELB (Service 1984, pp. 35–39). The four primary interim objectives were (Service 1984, p. 22):

(1) Protect the three known locations of the beetle;

(2) Survey riparian vegetation along certain Central Valley rivers for the beetle and habitat;

(3) Protect remaining beetle habitat within its suspected historical range; and

(4) Determine the number of sites and populations necessary to eventually delist the species.

In the following paragraphs, we address the extent to which the four primary interim objectives (criteria) have been accomplished.

Primary Interim Objective 1—Protect the Three Localities of Valley Elderberry Longhorn Beetles

The intent of this primary interim objective was to ensure that the three localities of the valley elderberry longhorn beetle known at the time the Recovery Plan was written in 1984 (American River in Sacramento County, Putah Creek in Yolo and Solano Counties, and Merced River in Merced County) would continue to sustain the subspecies and the necessary habitat components on which the subspecies depends at those locations.

The Recovery Plan states that the American River sites may be adequately protected through provisions of the American River Parkway Plan (Service 1984, p. 32). The River Corridor Management Plan for the Lower American River (Lower American River Task Force 2002, p. 94) refers to a future funded action to develop a valley elderberry longhorn beetle management plan that would include mapping, identification of stressors, and management protocols to avoid impacts. More recently, the American River Parkway Plan (County of Sacramento 2008) refers to an Integrated Vegetation and Wildlife Management Plan as pending, and references the 2002 Lower American River Corridor Plan for interim guidance. It includes generalized measures to maintain the beetle and its habitat into the foreseeable future (Talley *et al.* 2006a, p.

61; County of Sacramento 2008, pp. 9, 17, 52). Habitat supporting the American River beetle population is intended by respective local jurisdictions to remain as open space in which natural values are maintained and enhanced. These areas are important public recreational areas, and so, are not without localized manmade disturbances such as trail maintenance and trampling, but overall are not presently at risk of loss to agricultural or urban development. However, the 2002 Lower American River Corridor Plan does not identify specific monitoring or reporting requirements, remedial actions to address remaining threats, or the mechanism by which the plan goals are to be funded and implemented over the long term.

Similar guiding documents have been developed for Putah Creek, which may (if implemented) maintain the valley elderberry longhorn beetle at publicly accessible locations, where management focuses on maintaining natural habitat rather than protecting the beetle specifically (University of California at Davis 2005, pp. 24–33, App. A, p. 1; Gates and Associates 2006, pp. 13–15; Talley *et al.* 2006a, p. 61; University of California at Davis 2009, pp. 24–29). Portions of Putah Creek are in parkland while the remaining privately owned areas are not currently developed. Similar to the American River Parkway Plan, the Putah Creek Management Plan lacks specificity on monitoring, reporting, and funding.

The Recovery Plan states that the beetle location on the Merced River is from the McConnell State Recreation Area (Service 1984, p. 31). Evidence of the beetle (exit holes) was not observed by Barr (1991), but was noted in a 2010 non-CNDDDB record (Table 1). We are unaware of the status of management of beetle habitat at this site.

Primary Interim Objective 1—Achievement Evaluation and Summary

Completion of Primary Interim Objective 1, with respect to the original intent of the Recovery Plan, would be represented by three locations that are preserved or protected with a reduction of threats to the valley elderberry longhorn beetle and its habitat. Threats would be addressed through ongoing management actions outlined in respective management plans. The Recovery Plan describes long-term administrative actions appropriate to protect and secure known colonies, to include coordinated long-term agreements (such as cooperative agreements, memoranda of understanding, or conservation easements) among primary resource

management agencies (such as California Department of Water Resources, California Water Resources Control Board, U.S. Bureau of Reclamation, U.S. Army Corps of Engineers, County governments, and private landowners) (Service 1984, p. 30).

This objective is partially met by management planning efforts along the American River and Putah Creek; we are uncertain of the status of protection and management planning and implementation at the Merced River location. The development of management plans that emphasize open space and natural values for riparian areas that support the valley elderberry longhorn beetle along the American River Parkway and Putah Creek are considered beneficial to the beetle and its habitat into the future. As we discuss in further detail below, parklands such as these are facing increased pressures from human use as population centers have expanded since listing, and management plans lack sufficient specificity with respect to the subspecies or its host plant to ensure long-term persistence. We are unaware of regular monitoring of beetles or elderberry shrubs in these areas, from which recovery might be assessed. While there is no monitoring of beetles or elderberry shrubs in these areas, nor funding targeted on restoration or enhancement specifically for the beetle and its habitat, the beetle derives long-term benefit and prospects for persistence at these sites from management emphasis on maintaining riparian vegetation on the American River and Putah Creek.

Primary Interim Objective 2—Survey Riparian Vegetation Along Certain Central Valley Rivers for Additional Valley Elderberry Longhorn Beetle Colonies and Habitat

As discussed throughout this document, the valley elderberry longhorn beetle was known at the time of listing from only three locations. Since listing, observations of the beetle have been recorded at 26 locations throughout the Central Valley (Table 1). The occurrence of additional populations was anticipated in both our listing rule and Recovery Plan (Service 1980, p. 52804; Service 1984, p. 32). The Recovery Plan recommended surveys within the suspected range of the beetle along portions of the Sacramento, Feather, Tuolumne, Stanislaus, Mokelumne, Calaveras, Cosumnes, and San Joaquin Rivers (Service 1984, pp. 23, 32–35). The intent of this interim objective was to document the existence of additional populations so that they

could then be protected as described in Primary Interim Objective 3.

Primary Interim Objective 2—Achievement Evaluation and Summary

Achievement of this objective with respect to the original intent of the Recovery Plan is represented by completion of surveys in the above-named locations that resulted in the reporting of 23 additional locations of the valley elderberry longhorn beetle throughout the Central Valley. Many of these surveys are old, and the subspecies would benefit from further survey information throughout the Central Valley to update information and provide guidance for additional protection and restoration actions, as was originally contemplated in the Recovery Plan. The subspecies is more widespread than had been documented at the time of listing. The cumulative increase in beetle occurrences and increase in the known range of the subspecies in the Central Valley is considered sufficient to meet the original intent of Primary Interim Objective 2.

Primary Interim Objective 3—Protect Remaining Beetle Habitat Within Its Suspected Historical Range

The intent of this recovery criterion was to ensure that newly discovered valley elderberry longhorn beetle habitat would be protected. The Recovery Plan (Service 1984, p. 40) describes administrative actions to protect newly discovered habitat, including a cooperative agreement or memorandum of understanding with the U.S. Army Corps of Engineers (Corps) to conduct surveys for valley elderberry longhorn beetle for activities they permit in riparian areas, as well the interagency consultation requirements of section 7 of the Act.

Of the 23 locations discovered since the Recovery Plan was prepared, 10 contain well-protected lands such as State or Federal wildlife areas, or areas with conservation easements (Bear River, Cosumnes River, Feather River, Sacramento River, Stony Creek, Big Chico Creek, Butte Creek, Tuolumne River, Kaweah River, and San Joaquin River). Portions of five locations are managed for natural and open space values, are partially on city parks or Forest Service lands, and have current protections against urban development, but no specific protections for the valley elderberry longhorn beetle or elderberry shrubs (Big Chico Creek, Lower Stanislaus River, Kings River, Upper Stanislaus Hills, and a portion of the Kaweah River upstream of Lake Isabella). The remaining locations, or

portions of locations, are on lands without protections, some of which are private lands or designated floodways that experience activities that may adversely affect the beetle (primarily vegetation suppression from bank protection and vegetation removal on levees and within floodway channels), or protections are unknown. This includes some sections of the Sacramento River from Colusa to the American River confluence, Thomes Creek, Yuba River, Upper American River, Cache Creek, Ulatis-Green Valley Creeks, Upper Stanislaus Hills, Calaveras River-Stockton Diverting Canal, Mokelumne-Bear Rivers, Kings River, Tule River-Deer Creek, Kern River, and Caliente Creek.

**Primary Interim Objective 3—
Achievement Evaluation and Summary**

Achievement of criterion 3 with respect to the original intent of the Recovery Plan would be represented by protection of the remaining suitable habitat at newly discovered occupied beetle locations. This criterion is considered partially met because the protections discussed in our Recovery Plan have been applied to all or portions of 13 of the 23 newly discovered locations. Protections at all or portions of 12 locations described above are either lacking or unknown. Some locations have varying degrees of protection in different areas and have been counted in more than one category. Several of the newly discovered localities are now preserved and managed for at least the conservation of natural values associated with riparian vegetation, including, if not specifically for, the beetle. Such management is being applied to occupied and unoccupied sites within these locations. Management activities at these locations include habitat restoration to increase the amount of suitable habitat for potential use by the beetle. We consider Primary Interim Objective 3 to be partially met.

Primary Interim Objective 4—Determine the Number of Sites and Populations Necessary To Eventually Delist the Species

The intent of this primary interim objective was to utilize the results of surveys and other information to determine the areal extent and number of populations of valley elderberry longhorn beetle that would be needed to delist the subspecies. Our 1984 Recovery Plan stated that this would be determined (Service 1984, p. 39) “in part * * * by the remaining habitat and beetles found during survey work.” Thus, the delisting criteria would not be

solely based on survey information, but also based on information derived from other actions described in the step-down narrative, including but not limited to, life history, population structure, limiting factors, adult behavior, site-specific management needs, tests of the effectiveness of various management practices, and other factors. To date, specific delisting recovery criteria have not been developed.

**Primary Interim Objective 4—
Achievement Evaluation and Summary**

A greater number of beetle occurrences have been discovered than we previously anticipated, which has resulted in a total of 26 locations known today compared to 3 locations known at the time of listing. The new detections of the beetle in riparian vegetation throughout the Central Valley (as compared to only Sacramento, Yolo, Solano, and Merced Counties at the time the Recovery Plan was written) have altered our understanding of the subspecies’ range and distribution. This improved understanding, together with restoration, habitat management, and protection implemented at various locations to date, have led us to determine that the beetle can persist without the protections of the Act. The status review and five-factor analysis contained in this proposed rule provide the information on which our delisting proposal is based.

Additional Recovery Objectives

As discussed above in this section, the Recovery Plan described four primary interim objectives (Service 1984, p. 22). The Recovery Plan also includes an outline and narrative (referred to as the Step-Down Outline), which contains four additional recovery objectives that are interpreted as recovery actions. These four additional recovery objectives (hereafter referred to as additional recovery actions) are a sample of the actions outlined in the narrative of the Recovery Plan that have been implemented for the benefit of the valley elderberry longhorn beetle. The four additional recovery actions summarized here are directly related to the primary interim objectives and include: (1) Determining the beetle’s ecological requirements and management needs, (2) reestablishing the beetle at rehabilitated sites, (3) increasing public awareness of the beetle, and (4) enforcing existing laws and regulations protecting the beetle (Service 1984, pp. 22–26). A summary of our evaluation of these additional recovery actions is shown in the following four paragraphs, thus

providing information for the public on the extent to which we have implemented and completed these actions.

1. Determine the valley elderberry longhorn beetle’s ecological requirements and management needs. Significant progress has been made in our understanding of the beetle’s autecology, life history, and habitat restoration, but aspects of the beetle’s population dynamics and dispersal remain less well understood (Talley *et al.* 2006a, p. 62). The draft PDM Plan includes monitoring that will help address deficiencies.

2. Reestablish the valley elderberry longhorn beetle at rehabilitated sites. Rehabilitated sites can be divided into those established in conjunction with incidental take of existing habitat under section 7 of the Act, and those established without associated incidental take. Approximately 400 to 1,900 ac (162 to 769 ha) of land fall into the first category (i.e., rehabilitated sites associated with section 7 consultation incidental take permits), based on a review of 110 out of 526 section 7 consultations involving the beetle (Service 2006a, p. 7). Of that restored habitat, about 43 to 53 percent (172 to 1,007 ac; 70 to 408 ha) has successfully been colonized by the beetle (Holyoak and Koch-Munz 2008, p. 1; Holyoak *et al.* 2010, p. 50). Approximately 4,000 ac (1,619 ha) of land fall into the second category of rehabilitated sites (i.e., rehabilitated sites that are not associated with incidental take permits) (see Factor A, “Conservation—Habitat Restoration and Protection” section below for additional information on restored beetle habitat). The extent of that restored habitat that has been colonized by the beetle remains unknown at this time (Talley 2006a, p. 50).

3. Increase public awareness of the valley elderberry longhorn beetle. We maintain information on the beetle at http://www.fws.gov/sacramento/es_species/Accounts/Invertebrates/es_species-accounts_invertebrates.htm, and the University of California at Berkeley maintains an informational Web site on the beetle (<http://essig.berkeley.edu/endins/desmocer.htm>). Additionally, organizations involved in habitat restoration for the beetle have occasionally published relevant information in newsletters, press releases, and Web sites (Community Business Bank 2008, p. 1; Environmental Defense 2010, pp. 1–2; River Partners 2010, p. 2).

4. Enforce existing laws and regulations protecting the valley elderberry longhorn beetle. As discussed below for current estimates under the

Factor A, “Conservation—Habitat Restoration and Protection” section, approximately 21,536 ac (8,715 ha) of riparian vegetation have been protected through either a conservation easement, riparian fee land managed by CDFG, or public land known to be managed for conservation values (such as Cosumnes River Preserve). Additionally, approximately 13,000 ac (5,261 ha) of riparian vegetation has been restored on predominantly Federal and State lands, and other areas have had beetle habitat restored, totaling approximately 12,400 ac (5,018 ha). Note, however, that there is significant, albeit incomplete, overlap among these vegetation estimates as further described in the current estimates section under Factor A, “Conservation—Habitat Restoration and Protection.” Regardless, these areas are subject to various laws or regulations. For example, conservation easements are held by qualified environmental protection organizations, and will be enforced under the terms of California Civil Code sections 815 through 816. Another example includes protection to riparian vegetation and beetle habitat on NWR lands as a result of the National Wildlife Refuge System Improvement Act of 1997 (see “Federal Protections” section under Factor D below). This refuge system legislation supports various management actions that benefit valley elderberry longhorn beetle through the mandatory development and implementation of Comprehensive Conservation Plans.

Results of Recovery Plan Review

The Recovery Plan did not include recovery criteria, but did include four primary interim objectives that were to be addressed initially and used to develop recovery criteria. Our review indicates that interim objective 1 is partially met by management and planning efforts at two of the three originally known locations of the valley elderberry longhorn beetle. Interim objective 2 is met because surveys were conducted throughout the range of the subspecies and identified 23 additional locations at which the valley elderberry longhorn beetle was present. However, much of this information is old, and additional surveys should be conducted at these locations and others. Interim objective 3 is considered partially met because the protections discussed in the Recovery Plan have been applied to all or portions of 13 of the 23 locations discovered since listing (or since the Recovery Plan was finalized). Interim objective 4 is considered partially met, noting that recovery of species is a dynamic process requiring adaptive management, planning, implementing,

and evaluating the degree of recovery of a species that may, or may not, fully follow the guidance provided in a recovery plan. Notwithstanding data uncertainties and the absence of protections or enhancements at some locations, there are a significantly greater number of known occurrences and locations of the beetle (resulting in a significantly greater range size as compared to the time of listing) across the Central Valley. Based on our review of the Recovery Plan for the subspecies and our review of the beetle’s status under section 4(a)(1) of the Act presented below, we are proposing to remove the valley elderberry longhorn beetle from the List of Endangered and Threatened Wildlife.

Summary of Factors Affecting the Species

Section 4 of the Act (16 U.S.C. 1533) and its implementing regulations (50 CFR part 424) set forth the procedures for adding species to, reclassifying species on, or removing species from the Federal List of Endangered and Threatened Wildlife (List). We may determine a species to be an endangered or threatened species due to one or more of the five factors described in section 4(a)(1) of the Act. The five listing factors are: (A) The present or threatened destruction, modification, or curtailment of its habitat or range; (B) overutilization for commercial, recreational, scientific, or educational purposes; (C) disease or predation; (D) the inadequacy of existing regulatory mechanisms; and (E) other natural or manmade factors affecting its continued existence. We must consider these same five factors in delisting a species. We may delist a species according to 50 CFR 424.11(d), if the best available scientific and commercial data indicate that the species is neither endangered nor threatened for the following reasons: (1) The species is extinct; (2) the species has recovered and is no longer endangered or threatened (as is the case with the valley elderberry longhorn beetle); or (3) the original scientific data used at the time the species was classified were in error.

We took the following steps in order to examine the scale of threats and potential for extinction for the valley elderberry longhorn beetle within the 26 known beetle locations and as a whole:

(1) We compiled a rangewide GIS spatial database that included all available information on beetle records, riparian vegetation, section 7 consultations, mitigation actions, conservation and other protection actions (including specific plantings of elderberry shrubs), current (year 2010)

aerial imagery, roadways, and near-term population growth (i.e., through the year 2020).

(2) We used the database (described in step 1 above) and supporting information to synthesize a best professional opinion of the prospectus for persistence with delisting at those locations, considering current habitat; occupation records by location (presented previously in Table 1); threats; protections and recovery actions; and studies needed to address uncertainties in species data, protections, threats, and prospectus for persistence.

The five factors listed under section 4(a)(1) of the Act and their analysis in relation to the beetle are presented below (additional discussion is presented in the Finding section below regarding these threats within the context of the north Central Valley, south Central Valley, and the subspecies as a whole across its range). This analysis of threats requires an evaluation of both the threats currently facing the subspecies and the threats that could potentially affect it in the foreseeable future, following the delisting and the removal of the Act’s protections. The Act defines an endangered species as a species that is in danger of extinction throughout all or a significant portion of its range (16 U.S.C. 1632(6)). A threatened species is one that is likely to become an endangered species in the foreseeable future throughout all or a significant portion of its range (16 U.S.C. 1632(20)).

In considering what factors might constitute threats, we must look beyond the exposure of the species to a particular factor to evaluate whether the species may respond to the factor in a way that causes actual impacts to the species. If there is exposure to a factor and the species responds negatively, the factor may be a threat, and during the status review, we attempt to determine how significant a threat it is. The threat is significant if it drives or contributes to the risk of extinction of the species, such that the species warrants listing as endangered or threatened as those terms are defined by the Act. However, the identification of factors that could impact a species negatively may not be sufficient to compel a finding that the species warrants listing. The information must include evidence sufficient to suggest that the potential threat is likely to materialize and that it has the capacity (i.e., it should be of sufficient magnitude and extent) to affect the species’ status such that it meets the definition of endangered or threatened under the Act.

Factor A. The Present or Threatened Destruction, Modification, or Curtailment of Its Habitat or Range

At the time of listing, habitat destruction was identified as one of the most significant threats to the valley elderberry longhorn beetle (45 FR 52805, August 8, 1980; Eng 1984, pp. 916–917). This section analyzes four threats that have been identified to impact, or potentially impact, the valley elderberry longhorn beetle under Factor A:

- (1) Agricultural and urban development;
- (2) Levees and flood protection;
- (3) Road maintenance and dust; and
- (4) Climate change.

We also include a discussion on the habitat restoration and protection efforts afforded the subspecies in response to Factor A threats (see “Conservation—Habitat Restoration and Protection” below). Finally, we note that Talley *et al.* (2006, pp. 44–46) also mentions pollution, competition with invasives, and grazing as potential factors affecting elderberry shrubs, which are both Factor A and E threats within the context of this five factor analysis; however, none of these appear to be well studied and are not identified as widespread threats.

Agricultural and Urban Development

As discussed above (“Lost Historical Range” section), a significant amount of riparian vegetation (of which a portion contained elderberry shrubs) has been converted to agriculture and urban development since the mid-1800s according to estimates by Thompson 1961 (pp. 310–311) and Katibah *et al.* 1984 (p. 314). For example, Lang *et al.* (1989, p. 243) observed less riparian vegetation (as well as significantly fewer sites occupied by the beetle) in the lower reach of the Sacramento River (between Sacramento and Colusa), than in the northern reach (Chico to Red Bluff). This decrease in riparian vegetation was attributed to extensive flood control activities (which are directly related to agricultural and urban development, and further discussed in the Factor A, “Threats—Levees and Flood Protection” section below), predominantly carried out prior to the valley elderberry longhorn beetle’s listing, but some such activities have occurred since listing and continue to occur today (CVFMPP 2010).

Although riparian vegetation in the Central Valley has been lost over time, a number of areas have been restored to accommodate the habitat needs and recovery of the valley elderberry longhorn beetle (riparian vegetation that specifically contains elderberry shrubs),

as described in detail in Factor A, “Conservation—Habitat Restoration and Protection” below. To provide an indication of the amount of beetle habitat lost and restored since the beetle’s listing in 1980, we reviewed Federal projects for which we conducted consultations for the beetle under section 7 of the Act. As part of these consultations, incidental take for the beetle was measured in terms of acres of habitat impacted, because incidental take of beetles themselves could not be determined due to the biology of the subspecies and difficulty in monitoring it. From 1983 to 2006, the incidental take we authorized amounted to roughly 10,000 to 20,000 ac (4,047 to 8,094 ha) of potential beetle habitat (both occupied and suitable; suitable is defined as habitat that contains mature elderberry shrubs with stems of at least 1 in. (2.5 cm) in diameter), primarily for projects associated with urbanization, transportation, water management, and flood control (Talley *et al.* 2006a, pp. 31–34). See the Factor A, “Levees and Flood Protection” section below for discussion of water management and flood control activities.

Although incidental take authorized by section 7 consultations has occurred throughout the current range of the subspecies, it has been concentrated in areas predominantly developed prior to the subspecies’ listing under the Act. Additionally, not all of the incidental take authorized by those section 7 consultations has been carried out, so the number of actual acres of habitat lost is some unknown degree less than the number of acres of habitat we anticipated (Talley *et al.* 2006a, p. 34). Incidental take authorized through the section 7 consultation process would have included elderberries associated with both riparian and upland vegetation, as well as stems with, and without, exit holes. Stems without exit holes are included because absence of the beetle in a specific shrub cannot be determined with 100 percent certainty due to the fact that use of the elderberry by the beetle is not always apparent (Talley *et al.* 2006a, p. 10).

In addition to evaluating section 7 Federal projects to provide an indication of the amount of elderberry shrubs lost or restored since the valley elderberry longhorn beetle’s listing, we reviewed the 20 incidental take permits issued to non-Federal entities (undertaking otherwise lawful projects that might result in the take of an endangered or threatened species) under section 10(a)(1)(B) of the Act. The majority of these permits minimally impacted the beetle or its habitat (elderberry shrubs), and only eight of

those permits are still active. We issue these permits only upon our approval of a habitat conservation plan (HCP) that is developed, funded, and implemented by the permittee, and that adequately minimizes and mitigates the effects of incidental take associated with the proposed activity. Incidental take associated with the 12 expired permits is estimated at less than 100 ac (40 ha) of beetle habitat. For the eight active permits, 4,808 ac (1,946 ha) of take is permitted, and all of the corresponding HCPs contain elderberry shrubs and evidence of at least past occupancy (exit holes) of the beetle within their boundaries (noting that at least one known beetle location is addressed by each HCP). Section 10(a)(2)(B)(ii) of the Act requires HCP applicants to agree to mitigate takings of identified species “to the maximum extent practicable.” These mitigation requirements are built into each HCP implementing agreement, so even if the beetle is delisted they will continue to apply within the bounds of the HCPs.

Unauthorized impacts to the beetle or elderberry host plant are likely to have occurred, and the Service is aware of examples. Talley *et al.* (2006, p. 34) report that most of this unauthorized activity is unmonitored; some settlements have occurred, and none of these has been pursued to the point of penalties or prosecution under the Act.

Conversion of agricultural lands to urban areas and direct urbanization of natural areas that include riparian vegetation continue to impact the valley elderberry longhorn beetle, because elderberry is a minor component of the vegetation that grows (in some areas) along existing irrigation channels, on hedgerows, and on, and adjacent to, levees that provide flood control to this agriculture. Existing agriculture continues to affect beetle habitat through suppression of vegetation in, what are now, channelized tributaries and split channels that function for drainage and irrigation. For example, vegetation suppression occurs in channelized tributaries or split channels at approximately two locations in the north Central Valley (Sacramento River-Chico to Colusa and the Ulatis-Green Valley Creeks locations) and more frequently at approximately six locations in the south Central Valley (Lower Stanislaus hills, Calaveras River-Stockton Diverting Channel, Merced River, Kings River, Kaweah River, and Caliente Creek). Agricultural lands provide the additional benefit of buffering natural lands, whereas urban land uses most often do not. Agricultural development has probably reached close to its maximum extent in

the Central Valley. However, conversion of agricultural lands into urban development continues at a significant rate (American Farmland Trust 2011), and as a consequence, continues to affect beetle habitat by eliminating elderberries along irrigation channels and hedgerows, eliminating the buffering effect, and precluding the potential to restore riparian forest vegetation (discussed further below). Current conversion of agricultural lands (and subsequent elimination of riparian vegetation and in some cases elderberry) is evident in the north Central Valley (such as along the Sacramento River between Red Bluff and Chico and the Yuba River) and south Central Valley (such as the Calaveras River-Stockton Diverting Channel and the Kaweah River).

During the 1990s, the Central Valley experienced a decline of about 223,000 ac (90,245 ha) of high-quality farmland (American Farmland Trust 2011). Although some of this is due to reclassification, about 100,000 ac (40,469 ha) is considered to have been urbanized (homes, businesses, impervious surfaces) (American Farmland Trust 2011). Between 2000 and 2002, 27,000 ac (10,926 ha) of farmland were urbanized (American Farmland Trust 2011). Examples of light residential or rural ranchette development since listing (most recent) are evident in areas along as the Cosumnes River (in the vicinity of the towns of Wilton and Rancho Murieta), Bear River (east of Lodi, with documented 1984 valley elderberry longhorn beetle record), Cache Creek (north and adjacent to the city of Woodland), the Kern River (expansion of Bakersfield), and many other locations throughout the State. Most of these developments have resulted in some direct loss of beetle habitat, as evidenced by consultation actions.

In sum, losses of valley elderberry longhorn beetle habitat associated with agricultural activities through conversion to urban uses is likely to occur to some extent because elderberry is a minor component of vegetation along irrigation channels, levees, and hedgerows, and agriculture is a major land use adjacent to the Sacramento and San Joaquin Rivers and their tributaries. Many of the 26 locations in both the Sacramento and San Joaquin Valleys, as well as to areas outside of the 26 locations are affected by this activity. However, compared to the past loss of beetle habitat that resulted from flood control and agricultural development, future losses are likely to result from progressive conversion of agriculture into urban growth.

The range of the valley elderberry longhorn beetle is now known to be greater than at the time of listing, and it is known from 26 locations throughout the Central Valley. The bulk of habitat protection and restoration activities have occurred in the northern Central Valley locations. In the south Central Valley, where historical habitat losses are believed to have been greater, a more limited quantity of protected and restored beetle habitat exists. Even with consideration of the restoration activities that have occurred in the subspecies' range (see the Factor A, "Conservation—Habitat Restoration and Protection" section below), the threat posed by agricultural and urban development (including activities that impact the vegetation that grows along existing irrigation channels, levees, etc.) may continue into the future in both the north and south Central Valley as urban growth places agricultural lands and associated riparian vegetation at further risk.

Levees and Flood Protection

The flood protection system in California's Central Valley includes about 1,600 mi (2,575 km) of Federal project levees, 1,200 mi (1,931 km) of designated floodways, 26 project channels covering several thousand acres, and 56 other major flood protection works. Projects that may have impacted, or could impact, valley elderberry longhorn beetle habitat include: levee construction; bank protection; channelization; facility improvements or ongoing maintenance activities, including clearing and snagging; construction of bypasses; and construction of ancillary features (such as overflow weirs and outfall gates). Some of these projects or facilities predate Federal authorization, and either meet, or are modified to meet (through current or future activities), Federal standards. Many predate listing, although some facilities have been constructed since listing, and additional projects are proposed for imminent construction.

Construction and maintenance of these flood protection systems and associated reservoir flood control facilities have resulted in direct losses of riparian vegetation within project impact areas, and indirect impacts in surrounding riparian vegetation due to agricultural and urban development that resulted from flood protection (see Factor A, "Agricultural and Urban Development" above). Flood control facilities are also subject to vegetative removal activities to maintain flood capacity or alleviate perceived levee risks (see below).

Examples of past major activities in the north Central Valley include the Sacramento River Flood Control Project (980 mi (1,577 km) of levees); Sacramento River Major and Minor Tributaries (channel enlargement of portions of Chico, Mud, Dandy Gulch, Butte, Little Chico, Elder, and Deer Creeks); American River Flood Control Project (18 mi (29 km) of levee); Sacramento River Chico Landing to Red Bluff (increased bank protection); Lake Oroville-New Bullards Bar (reservoir footprints); and the Sacramento River Bank Protection Project (915,000 linear feet (ft) (279 km) of bank protection in Phases I and II with Phase III not yet specified). Examples of past major activities in the south Central Valley include the Lower San Joaquin-River and Tributaries project (major flood control activities) and the Mormon Slough Project (levees, channel improvements, pumping plants). With the exception of the Cosumnes River, major multi-purpose dams exist on both north and south Central Valley mainstems and all major tributaries, including those at the following locations: Lake Shasta, Black Butte Lake, Folsom Lake, Lake Oroville, New Bullards Bar Reservoir, Lake McClure, Don Pedro Reservoir, New Melones Lake, Pardee Reservoir, Camanche Reservoir, New Hogan Lake, Bear River Reservoir, Owens Reservoir, Mariposa Reservoir, H.V. Eastman Lake, Hensley Lake, and Millerton Lake. Smaller dams exist in other locations within the range of the valley elderberry longhorn beetle. Tributaries in the southern portion of the south Central Valley (within the range of the beetle) have also been affected by major dams on the Kings River (Pine Flat Dam), Lake Success on the Tule River (Success Dam), and Kern River (Isabella Dam).

Flood control activities are evident as current threats and appear more frequently in the north Central Valley (such as the Lower American River and Cache Creek locations) and less frequently in the south Central Valley (such as Tule River-Deer Creek and San Joaquin River locations). Information presented in the following paragraphs is a more detailed account of potential impacts to remaining riparian vegetation (that may or may not contain elderberry shrubs) at existing facilities, including along levees, channels, etc., as previously introduced in the section above (Factor A, "Agricultural and Urban Development").

Currently, the State Plan of Flood Control (SPFC) in California's Central Valley is composed of 20 major projects along the Sacramento and San Joaquin Rivers and tributaries (CVFMPP 2010).

Projects within the Sacramento River basin include the following: Sacramento River Flood Control Project, Sacramento River and Major and Minor Tributaries Project, American River Flood Control Project, Sacramento River-Chico Landing to Red Bluff, Adin Project, Middle Creek Project, McClure Creek Project, Salt Creek Project, Lake Oroville Project, Sacramento River Bank Protection Project, and North Fork Feather River Project. Projects within the San Joaquin River basin include the following: Lower San Joaquin River and Tributaries Project, Buchanan Reservoir and Channel Improvement on Chowchilla River, Hidden and Hensley Lake Project, Merced County Streams Project, Bear Creek Project, Littlejohn Creek and Calaveras River Stream Group Project, Farmington Reservoir Project, and Mormon Slough Project. In addition to routine as-needed maintenance or improvements of the completed projects outlined above, other major activities or projects within the range of the valley elderberry longhorn beetle are expected, including:

- (1) Ongoing projects, such as the American River Watershed Investigation, the Natomas Levee Improvement, and the West Sacramento Levee Improvement Project;
- (2) Projects under other Corps authorities, such as RD 17 Phase III (San Joaquin River, north of Lathrop);
- (3) Projects in the planning phase, such as the Feather River West Levee Project (44 mi (71 km)) from Thermolito Afterbay to the Sutter Bypass; and
- (4) Projects under investigation but not yet authorized, such as the Sacramento River Bank Protection Project (SRBPP) Phase III.

Riparian vegetation losses from development projects have been compensated through a variety of restoration activities or protections of land, as described in various places throughout this document (for example, see the *Recovery Planning and Implementation* section (primary Interim Objective 3) above, or “Conservation—Habitat Restoration and Protection” below). It is likely that these activities have benefitted the valley elderberry longhorn beetle and its habitat.

We also anticipate that future actions will be implemented within the valley elderberry longhorn beetle’s range to treat areas for flood damage under emergency authority (Pub. L. 84–99) on an as-needed basis, such as flood damage repairs made in 1997 and 1999. Past emergency actions (often involving placement of rock revetment) and continued maintenance since construction (which precludes or

suppresses future vegetation growth) have affected hundreds of sites and many miles of river systems (such as the recent emergency levee repair conducted along the Sacramento River (American River confluence south). Maintenance practices are relatively frequent to achieve compliance with the Corp’s standard operating procedures (for processing Department of the Army permit applications) and vary with location, ranging from twice a year to once every 5 years, or more, depending on specific site characteristics and need. These activities can damage or remove vegetation that could potentially provide beetle habitat.

Trees and shrubs grow to a variable extent on most of the State-Federal levees in the Central Valley; this vegetation (which in some instances may include elderberry shrubs) provides an important remnant of the riparian forest that once lined the Sacramento and San Joaquin Rivers and tributaries. Currently, there is no estimate of the acreage of riparian vegetation on Central Valley levees and other flood facility lands, nor of what portion of the riparian vegetation contains elderberry shrubs. The California Department of Water Resources is in the process of determining the acreage of woody vegetation on levees using recent aerial photography of the entire flood control system. This information was not available to us for analysis and consideration in this proposed rule.

Ongoing and future maintenance of levees, channels, and other facilities for purposes of flood control and agriculture may result in future losses of riparian vegetation and associated valley elderberry longhorn beetle habitat, or at least prevent establishment of additional beetle habitat on, and immediately adjacent to, levees or within channels that otherwise could benefit the beetle. The effect of flood control and associated maintenance on riparian vegetation varies somewhat with the extent of setback (if present) of the levee from the water’s edge, and the magnitude of maintenance activities within the designated floodway. Although some locations do have vegetated areas on or adjacent to the floodway (such as the American River, unveeved portions of the Sacramento River from Red Bluff to Chico, Feather River portions of east bank), many do not. Flood control activities, combined with associated agricultural and urban development, are considered largely responsible for the loss of riparian vegetation throughout the beetle’s range before and since listing, and also for the presence of less riparian vegetation along the lower Sacramento River

compared to the upper Sacramento River. Specifically, the lower Sacramento River, Sacramento-San Joaquin Delta, and San Joaquin River contain areas that are constrained by flood control levees and areas of urban and agricultural development, thereby limiting future restoration opportunities in those areas.

The California Central Valley Flood Protection Board (Flood Protection Board; previously known as the Reclamation Board) oversees the Central Valley’s flood control system, and has jurisdiction over the floodplains and levees on both sides of the waterways. For more than a decade, the Flood Protection Board has generally denied permits for projects that involve planting elderberry shrubs in floodplain areas between levees, because the Board is concerned that additional beetle habitat could interfere with, or delay, flood prevention measures (Talley *et al.* 2006a, p. 46). The Flood Protection Board is also concerned that flood prevention measures might damage valley elderberry longhorn beetle habitat and thereby lead to costly impact minimization requirements, such as habitat restoration. To date, restoration of beetle habitat has not been allowed within their facilities (River Partners 2003, p. 4; 2004b, p. 4); however, restoration or other minimization measures for vegetation loss has occurred at other locations within the range of the beetle.

Since listing, there have been nationwide changes to Corps flood control system maintenance requirements. Specifically, on April 10, 2009, the Corps issued Engineering Technical Letter (ETL) 1110–2–571 (Guidelines For Landscape Planting and Vegetation Management at Levees, Floodwalls, Embankment Dams, and Appurtenant Structures). This ETL standard establishes a vegetation-free zone for the top of all levees and levee slopes, and 15 ft (4.5 m) on both the water and land sides of levees (which could potentially eliminate occupied or unoccupied elderberry shrubs that may be present). Currently, and in specific cases, the Corps provides for the potential issuance of variances from the standard vegetation guidelines in the ETL, which in turn provides opportunities to maintain or improve valley elderberry longhorn beetle habitat throughout its range. Variances may be issued to further enhance environmental values or meet State and Federal laws and regulations. The variance must be shown to be necessary, and to be the only feasible means to: (1) Preserve, protect, and enhance natural resources; or (2) protect the rights of Native

Americans, pursuant to treaty and statute. In major portions of some levee systems where vegetation is already limited or absent (such as the Sacramento River between Sacramento and Colusa), the variance process is a possible means by which some increment of beetle habitat may be restored. Following the Corps' recent proposal to revise the current process for requesting variances from the ETL (75 FR 6364; February 9, 2010), the Service has continued to work with the Corps and others to seek a collaborative solution where a vegetation variance, tailored to regional conditions, can be issued. This cooperative partnership regarding the specifics of granting variances remains valuable for the long-term conservation of the beetle and its habitat because granting a variance would allow some woody vegetation, including elderberry shrubs, to remain in place or be planted on levees.

We are not presently able to determine how many levee segments may be eligible for a variance. At the time of this proposal, the Service does not consider the variance process to be a reliable and consistent means of assuring the protection and persistence of beetle habitat where it is at risk of loss from flood control activities. We conclude this because a variance has been granted only once in the past. The Corps is currently preparing to issue a public draft of a new policy guidance letter for the variance process; thus, we do not know the extent to which the Corps may be willing to accommodate variances for woody vegetation that may include elderberry shrubs in the future variance process.

In addition to ongoing work with the Corps regarding the variances, some parts of the State-Federal flood protection system in the Central Valley currently meet the ETL standards for vegetation, and the State will enforce the standards in those areas in the future. New levees being added to a flood protection system (such as setback levees, backup levees, and ring levees) will also be designed, constructed, and maintained to ETL standards. This means the type and stature of vegetation that provides valley elderberry longhorn beetle habitat will continue to be suppressed, although additional habitat would be available off the levees within new levee areas. The older and original levees built immediately adjacent to California's major riverine systems present unique challenges that may require regional variances or other engineered alternatives if vegetation is to remain, or else they too may be required to establish and maintain the vegetation-free zones required by the

ETL (as described in the preceding paragraph).

The Sacramento Area Flood Control Association sponsored a symposium to discuss issues related to levees and vegetation in August 2007. The symposium led to formation of the California Levees Roundtable, a collaborative partnership of Federal, State, and local officials. A product of the Roundtable was the release of the *California's Central Valley Flood System Improvement Framework* document (Framework). Included in the Framework document are interim criteria for vegetation management on levees, which will be followed while the Central Valley Flood Protection Plan (CVFPP) is being developed. The CVFPP is a system-wide strategic plan for flood risk reduction in the Central Valley (scheduled for completion in July 2012) that would occur over several decades as funding allows.

The Framework has interim criteria that are currently being implemented for vegetation control on levees, which include requirements for tree branches (but not trunks) to be trimmed up to 5 ft (1.52 m) above the base and sides of the levee, and up to 12 ft (3.6 m) above the top of the levee. The interim criteria also call for enough thinning of vegetation to allow visibility and access to the levee. Thus, the interim criteria and the Framework allow properly trimmed elderberry shrubs to grow on and around levees, whereas the Corps' ETL standard vegetation guidelines (assuming no variance) currently do not.

The Framework interim criteria are in effect until the CVFPP plan is completed in 2012. It is not clear at this point whether the CVFPP will incorporate the ETL standards, the Framework interim criteria, or some other set of standards collaboratively developed by the agencies involved. Accordingly, the effect of the Framework document is to allow more vegetation to remain in place than would the ETL guidelines. Neither the Framework nor the ETL guidelines are currently structured to accommodate extensive riparian restoration that potentially could enable the valley elderberry longhorn beetle to be restored to river reaches from which it currently is absent due to lack of habitat. Therefore, where such additional vegetation may be deemed appropriate to benefit the beetle, a variance would be required.

The Framework identified a deadline of November 1, 2010, for Local Maintaining Agencies (LMAs) to be in compliance with the Framework interim criteria. The Department of Water Resources conducts levee inspections

twice a year, and reported that 86 of the 106 LMAs (81 percent) were in compliance with the interim criteria by the deadline (Eckman 2010, pers. comm.). Thirteen LMAs report they will not comply, and seven report they may comply. The most common reasons for not complying and for uncertainty about complying include cost, impact minimization requirements, and inconsistencies between agencies and issues relating to presence of elderberry shrubs. Thus, elderberry shrubs may persist in a portion of the 9 percent of LMAs where compliance is uncertain for a temporary and undetermined time period in part because some landowners or agencies think permits to cut or remove elderberries are difficult to obtain and they will be required to compensate for loss and damage. Additionally, landowners view the process of obtaining a permit to cut and remove elderberry as time-consuming. Currently, compliance with the interim criteria would result in impact minimization or compensation measures for any elderberry branches or shrubs removed, in accordance with the Service's conservation and mitigation guidelines (Service 1996, pp. 3, 4; Service 1999a, pp. 3, 4). These beneficial measures would no longer be required if the beetle is delisted.

Based on data compiled by the Department of Water Resources during their levee inspections (Eckman 2010, pers. comm.), about 91 mi (146 km) of the total 1,600 mi (2,575 km) of levees (6 percent) do not meet the Framework interim criteria requiring trimming of branches and thinning of brush. About 111 elderberry shrubs were estimated to be present on 2.5 miles (4 km) of those 91 miles (146 km), which is less than one percent of the total length of the levees (Eckman 2010, pers. comm.). Most, if not all, of the levee system locations are within the 26 locations described in Tables 1 and 2 of this proposed rule. Near-term impacts to remaining beetle habitat as a result of maintenance needed to comply with the Framework and interim criteria are considered relatively small compared to the suppression of vegetation from maintenance throughout the entire flood control system.

In summary, maintenance of the existing levee and flood protection facilities, ongoing projects, and potential future flood control activities or projects may include direct impacts in the form of temporary or permanent losses of existing riparian vegetation (including any associated elderberry shrubs and valley elderberry longhorn beetles). In some cases, there may also be permanent loss of riparian vegetation

from placement of hard rock bank protection that also precludes future restoration of beetle habitat. However, various interim measures are currently in place (i.e., the Framework document and its associated criteria) that limit further losses of riparian vegetation across the subspecies' range until the CVFPP is completed in 2012.

Flood control elements dominate the river systems that encompass most of the valley elderberry longhorn beetle's range in the Central Valley proper, measuring in the hundreds of miles and millions of linear feet of river bank. It is our judgment that the effect of flood control and associated land-uses resulting from this flood control on the beetle has been significant at certain localities in terms of habitat quantity, spatial distribution, and connectivity. Despite the increased number of occurrences of the subspecies and its larger range than was previously known, this range encompasses a number of other maintained floodways for which protections of beetle habitat have not been established. Levee and flood protection activities (both maintenance and new construction) remain an ongoing threat at some of the largest beetle locations or major portions thereof (such as the Sacramento and San Joaquin Rivers). Maintenance of these floodways can conflict with the recovery need to establish or protect riparian vegetation. Further, this maintenance can preclude opportunities to establish greater connectivity between beetle populations. Finalization of the CVFPP, the PGL, and implementation of the ETL will influence the nature and magnitude of impacts to riparian vegetation from flood control activities and the locations and size of potential riparian restoration throughout Central Valley streams and floodways.

Road Maintenance and Dust

The Recovery Plan for the valley elderberry longhorn beetle, section 7 biological opinions, and research results have identified roads and trail maintenance, and potentially dust, as threats capable of lowering the quality of valley elderberry longhorn beetle habitat (Service 1984, p. 41; Service 2002, p. 3; Huxel *et al.* 2003, p. 458). Machinery used in road maintenance activities can crush nearby elderberry shrubs, or stress them by compacting soil and raising dust. When dust is at moderate levels (defined as the amount occurring as a result of heavy vehicle traffic), it does not directly or indirectly affect the occupancy of shrubs by the beetle, although research results show a weak correlation with elderberry shrub

stress symptoms (Talley *et al.* 2006b, p. 653). In contrast to this weak correlation, Talley *et al.* (2006b, p. 647) also found that the distribution of elderberry shrubs along the American River Parkway was not negatively affected by the proximity to dirt surfaces, and that the presence of the beetle was neither positively nor negatively affected by the low amount of dust produced by normal parkway use. Currently available data indicate that road and trail maintenance activities are evident at only five locations in the north and south Central Valleys (including the Feather River, Lower American River, Upper American River vicinity, Kern River, and Caliente Creek).

There is no evidence to suggest that the proximity of conservation sites adjacent to dirt or paved trails and low-traffic roadways results in detrimental effects to the valley elderberry longhorn beetle or its habitat, as long as dust levels do not exceed the low levels found in the study (Talley *et al.* 2006b, p. 655). Although a rangewide study on the effects of dust has not been conducted, the amount of dust-causing traffic adjacent to beetle habitat elsewhere in the range of the beetle is expected to be low and occur only intermittently.

Climate Change

Consideration of climate change is a component of our analyses under the Act. In general terms, "climate" refers to the mean and variability of various weather conditions such as temperature or precipitation, over a long period of time (e.g. decades, centuries, or thousands of years). The term "climate change" thus refers to a change in the state of the climate (whether due to natural variability, human activity, or both) that can be identified by changes in the mean or variability of its properties and that persists for an extended period—typically decades or longer (Intergovernmental Panel on Climate Change (IPCC) 2007a, p. 78).

Changes in climate are occurring. The global mean surface air temperature is the most widely used measure of climate change, and based on extensive analyses, the IPCC concluded that warming of the global climate system over the past several decades is "unequivocal" (IPCC 2007a, p. 2). Other examples of climate change include substantial increases in precipitation in some regions of the world and decreases in other regions (for these and other examples, see IPCC 2007a, p. 30; Solomon *et al.* 2007, pp. 35–54, 82–85). Various environmental changes are occurring in association with changes in

climate (for global and regional examples, see IPCC 2007a, pp. 2–4, 30–33; for U.S. examples, see Global Climate Change Impacts in the United States by Karl *et al.* 2009, pp. 27, 79–88).

Most of the observed increase in global average temperature since the mid-20th century cannot be explained by natural variability in climate, and is very likely due to the observed increase in greenhouse gas concentrations in the atmosphere as a result of human activities, particularly emissions of carbon dioxide from fossil fuel use (IPCC 2007a, p. 5 and Figure SPM.3; Solomon *et al.* 2007, pp. 21–35). Therefore, to project future changes in temperature and other climate conditions, scientists use a variety of climate models (which include consideration of natural processes and variability) in conjunction with various scenarios of potential levels and timing of greenhouse gas emissions (such as Meehl *et al.* 2007 entire; Ganguly *et al.* 2009, pp. 11555, 15558; Prinn *et al.* 2011, pp. 527, 529).

The projected magnitude of average global warming for this century is very similar under all combinations of models and emissions scenarios until about 2030. Thereafter, the projections show greater divergence across scenarios. Despite these differences in projected magnitude, however, the overall trajectory is one of increased warming throughout this century under all scenarios, including those which assume a reduction of greenhouse gas emissions (Meehl *et al.* 2007, pp. 760–764; Ganguly *et al.* 2009, pp. 15555–15558; Prinn *et al.* 2011, pp. 527, 529). Some of the IPCC's other key global climate projections, which they expressed using a framework for treatment of uncertainties (such as "very likely" is greater than 90 percent probability; see Solomon *et al.* 2007, pp. 22–23) include the following: (1) It is virtually certain there will be warmer and more frequent hot days and nights over most of the earth's land areas; (2) it is very likely there will be increased frequency of warm spells and heat waves over most land areas; (3) it is very likely that the frequency of heavy precipitation events, or the proportion of total rainfall from heavy falls, will increase over most areas; and (4) it is likely the area affected by droughts will increase, that intense tropical cyclone activity will increase, and that there will be increased incidence of extreme high sea level (IPCC 2007b, p. 8, Table SPM.2).

Various types of changes in climate can have direct or indirect effects on species, and these may be positive or

negative depending on the species and other relevant considerations, including interacting effects with habitat fragmentation or other non-climate variables (such as Franco *et al.* 2006; Forister *et al.* 2010; Galbraith *et al.* 2010; Chen *et al.* 2011). Scientists are projecting possible impacts and responses of ecological systems, habitat conditions, groups of species, and individual species related to changes in climate (such as Deutsch *et al.* 2008; Berg *et al.* 2009; Euskirchen *et al.* 2009; McKechnie and Wolf 2009; Sinervo *et al.* 2010; Beaumont *et al.* 2011). These and many other studies generally entail consideration of information regarding the following three main components of vulnerability to climate change: exposure to changes in climate, sensitivity to such changes, and adaptive capacity (IPCC 2007, p. 89; Glick *et al.* 2011, pp. 19–22). Because aspects of these components can vary by species and situation, as can interactions among climate and non-climate conditions, there is no single way to conduct our analyses. We use the best scientific and commercial data available to identify potential impacts and responses by species that may arise in association with different components of climate change, including interactions with non-climate conditions as appropriate.

Projected changes in climate and related impacts can vary substantially across and within different regions of the world (such as IPCC 2007a, pp. 8–12). Thus, although global climate projections are informative and in some cases are the only or the best scientific information available, to the extent possible we use “downscaled” climate projections, which provide higher-resolution information that is more relevant to the spatial scales used to assess impacts to a given species (see Glick *et al.* 2011, pp. 58–61 for a discussion of downscaling). With regard to our analysis for the valley elderberry longhorn beetle, downscaled projections of climate in California are available.

Global climate change may have significant effects on plant species distributions in California over the next 100 years (Loarie *et al.* 2008, pp. 1, 3–5), and thus has the potential to negatively impact the valley elderberry longhorn beetle. Likely direct impacts of climate change in the region over that timeframe include an increase in annual mean temperatures ranging from 3.1 to 4.3 degrees Centigrade (C) (5.5 to 7.8 degrees Fahrenheit (F)) under assumptions geared to produce medium-level warming scenarios (Cayan *et al.* 2006, p. 38). However, one of the elderberry species on which the

beetle depends (*Sambucus mexicana*) is well adapted to warm temperatures, and extends its range into southern California and northern Mexico (Crane 1989, p. 2; Dempster 1993, p. 3). Higher temperatures are also not expected to produce large changes in total precipitation in California (Cayan *et al.* 2006, p. 39), although more precipitation is expected to fall in the nearby Sierra Nevada mountains as rain rather than snow, thereby lessening summer water availability in snowpack-dominated watersheds (Kapnick and Hall 2010, pp. 3446, 3448, 3454; van Mantgem *et al.* 2009, p. 523). Effects of climate change on the beetle, other than on habitat and plant species distribution, are mentioned below (Factor E).

Average temperatures have been rising in the Central Valley of California, and this trend will likely continue because of climate change. Climate change may also affect precipitation and the severity, duration, or periodicity of drought. However, there is a great deal of uncertainty as to the rate at which the average temperature may increase, and the effect of climate change on both precipitation and drought. In addition to the uncertainty associated with how the overall climate of the Central Valley may change, the impact of climate change on the valley elderberry longhorn beetle will depend on a complex array of other factors, including how the subspecies and its habitat respond to climate change. We know that one of the elderberry species on which the beetle depends is well adapted to warm temperatures, and extends its range into southern California and northern Mexico. We are not aware of information that would allow us to make a meaningful prediction that potential changes in temperature and precipitation patterns would significantly affect elderberry growth, or whether such changes may cause shifts in the timing of elderberry flowering relative to beetle emergence, or affect the relationship of these two species in any other way.

Conservation—Habitat Restoration and Protection

Estimates of Valley Elderberry Longhorn Beetle Conserved Areas

Former Estimate

The amount of riparian vegetation and associated beetle habitat considered conserved has been revised since our 5-year review (Service 2006a). According to the estimate used in our 5-year review, since the valley elderberry longhorn beetle was listed in 1980, approximately 45,000 ac (18,211 ha) of

existing riparian vegetation had been acquired or protected (Talley *et al.* 2006a, pp. 46–47), which is approximately 34 percent of the 132,586 ac (53,656 ha) of riparian vegetation estimated to remain in the Central Valley in 2003 (Geographic Information Center 2003). This estimate did not include the American River Parkway, much of which was considered protected at the time of listing, nor does it include protected areas established in accordance with the Service's guidelines under section 7 consultations (Service 1996, pp. 3, 4; Service 1999a, pp. 3, 4).

The estimate of 45,000 ac (18,211 ha) of acquired or protected habitat includes 6,600 ac (2,671 ha) of land in the San Joaquin River NWR, and assumes these lands could support the valley elderberry longhorn beetle under favorable management (Talley *et al.* 2006a, p. 47). However, most of the Refuge acreage is low in elevation and subject to flooding for longer periods than elderberry shrubs can survive (Griggs 2007, pers. comm.). As discussed below, numerous recently planted elderberry shrubs within this portion of the San Joaquin River NWR died due to flooding in 2006. Only about 120 ac (49 ha) of the 6,600 ac (2,671 ha) of the San Joaquin River NWR mentioned by Talley *et al.* (2006a, p. 47) are likely capable of supporting the beetle.

Some existing areas that are protected and currently provide a benefit to the valley elderberry longhorn beetle were not yet established at the time that Talley *et al.* (2006a, Table 2.3.1.1, p. 47) conducted an analysis of acquired or protected beetle habitat. For example, the Kern River Preserve (1,000 ac (405 ha)) was not yet established. Additionally, other currently protected areas acquired prior to listing were outside the known range of the beetle at the time of listing, such as the Bobelaine, Feather River Wildlife Area (2,900 ac (1,174 ha)). Other significant areas mentioned in Table 2.3.1.1 of Talley *et al.* (2006a, p. 47) could have some benefit to the beetle in a portion of the sites due to the mosaic of habitat types that are known to occur between wetland and upland areas (such as at the Consumnes River Preserve, 5,500 ac (2,226 ha)). Finally, the table did not specify areas where the beetle would benefit from conservation easements of 23+ mi (37+ km) of river frontage. In its proper context, Table 2.3.1.1 in Talley *et al.* (2006a, p. 47) was never intended as an estimate of protected beetle habitat, but rather, a list of some of the major habitat acquisition and protection efforts in the Central Valley that

contained some component of riparian vegetation with potential to benefit the beetle (Talley *et al.* 2006a, p. 46). Based on this interpretation, we do not use—or discuss—the 45,000-ac (18,211-ha) figure further in this proposed rule.

Current Estimate

For this proposed rule, we constructed a GIS database from several sources to provide a range of estimates of the current amount and distribution of protected riparian vegetation (which may or may not contain elderberry shrubs) in the range of the valley elderberry longhorn beetle, and the amount of beetle habitat restored or created. For reference and as stated previously in the “Lost Historical Range” section, 132,586 ac (53,656 ha) of riparian vegetation remained across the Central Valley in 2003 (Geographic Information Center 2003). Current range estimates are as follows:

(1) Protected Riparian Vegetation—Areas of land within the range of the beetle that is either subject to a conservation easement, is riparian land managed and held in fee by CDFG, or public land known to be managed for conservation (such as Cosumnes River Preserve). The amount of such protected riparian vegetation is 21,536 ac (8,715 ha). We used a GIS-layer of riparian vegetation from the Department of Water Resources to obtain this estimate.

(2) Restored Riparian Vegetation—Areas of predominantly Federal and State lands of any riparian type, including both beetle habitat and general riparian combined (approximately 13,000 ac (5,261 ha)).

(3) Restored Beetle Habitat—Areas with elderberry plantings and partially overlapping restoration lands where these have been planted, including various mitigation banks and excluding approximately 1,600 ac (648 ha) not yet planted. This estimate is approximately 12,400 ac (5,018 ha).

Each of these estimates should be interpreted with caution. The riparian vegetation GIS layer may include areas too wet for elderberry to grow, and may exclude small fragments, or some adjacent lands, where elderberry or other riparian could potentially grow. For the elderberry plantings total (with the exception of transplantings and plantings near occurrences), some elderberry has been planted too recently to expect the plants to be occupied by the valley elderberry longhorn beetle because occupancy increases as a function of time, particularly after 7 years (River Partners 2004a, p. 4). Some restoration has not been successful as noted above, and some is within mitigation banks intended to offset

losses of beetle habitat elsewhere. Finally, there is significant, albeit incomplete, overlap among these elderberry riparian vegetation estimates.

Discussion of Valley Elderberry Longhorn Beetle Conserved Areas

Eight agencies and private organizations have completed 26 projects to enhance or restore 4,950 ac (2,003 ha) by planting elderberry (Talley *et al.* 2006a, pp. 46–49). Most of these elderberry-specific restoration efforts are located within already protected riparian vegetation discussed above.

The largest effort to protect and restore beetle habitat (through elderberry plantings) is that at the Sacramento River NWR. Valley elderberry longhorn beetle habitat on this refuge currently totals more than 2,400 ac (974 ha). The Sacramento River NWR was established in 1989, with a focus on conserving the beetle as well as other native riparian species (Service 2006a, p. 9). Over 100,000 elderberry seedlings or transplanted shrubs have been planted at the refuge (Talley *et al.* 2006a, p. 51). If any significant number of elderberry shrubs were lost at this Refuge, they would be replanted as described in the Sacramento River NWR Comprehensive Conservation Plan (CCP), which identifies conservation of the beetle as one of its management goals (Service 2005, pp. 1–37). These areas are considered fully protected.

Unfortunately, in 2006, elderberry shrubs that had been planted on approximately 765 ac (310 ha) in the San Joaquin River NWR and 35 ac (14 ha) in the Mohler Tract of the Stanislaus River died due to flooding (Griggs 2007, pers. comm.; River Partners 2007, p. 47). The San Joaquin River NWR responded by planting elderberry on about 120 ac (49 ha) of higher elevation land. Additionally, drought at the San Luis and Merced National Wildlife Refuges killed all but about 100 elderberry shrubs out of the 250 ac (101 ha) planted at those sites (Woolington 2007, pers. comm.). The remaining total areas of restored valley elderberry longhorn beetle habitat (roughly 4,000 ac (1,619 ha), or the total restored acreage (4,950 ac) (2,003 ha)), less the 765 ac (310 ha) on San Joaquin NWR and 250 ac (101 ha) at San Luis/Merced NWR, are likely to remain viable for the beetle into the foreseeable future, as evidenced by the fact that the elderberry shrubs survived the flooding and droughts discussed above.

Seven agencies and private organizations have completed, or are completing, 19 projects restoring or enhancing riparian vegetation totaling approximately 1,592 ac (644 ha), but no

elderberry are being planted at these sites (Talley *et al.* 2006a, pp. 48–51). Over time, elderberry shrubs should naturally colonize riparian sites, as elderberry seeds are dispersed by many bird species that nest, forage, or transit riparian areas. A number of these restoration and enhancement projects (River Partners 2003, p. 4; 2004b, p. 4) may provide incidental benefits to the valley elderberry longhorn beetle by encouraging natural elderberry colonization of restored areas (Howe and Smallwood 1982, p. 216; NRCS 2006, p. 4).

Currently, of the 26 known locations of valley elderberry longhorn beetles, 4 include a significant component of well-protected lands with known beetle habitat mainly as State or Federal wildlife areas (Bear River, Cosumnes River, Feather River, Sacramento River), and portions of 6 others contain some well-protected lands (Stony Creek, Big Chico Creek, Butte Creek, Tuolumne River, Kaweah River, and San Joaquin River). The extent of protection and success as beetle habitat along the San Joaquin River is somewhat less than the others. Seven locations (Lower American River, Big Chico Creek, Putah Creek, Lower Stanislaus River, Kings River, Upper Stanislaus Hills, and portion of the Kaweah River upstream of Lake Isabella) are managed for natural and open space values, or are partially on city parks and Forest Service lands, where the land and management status protects against urban development, but with no specific protections for the beetle or elderberry shrubs in particular. The remaining locations or portions of the remaining locations are on lands without protections or are not known to have protections, some of which are private lands or designated floodways that may experience activities that affect elderberries (primarily through vegetation suppression from bank protection and vegetation removal on levees and within floodway channels). This includes (but is not limited to) some sections of the Sacramento River from Colusa to the American River confluence, portions of Big Chico and Butte Creeks, parts of the Feather, American, and Bear Rivers, Thomes Creek, Yuba River, former portions of Ulatis Creek (now a flood channel), Cache Creek, Upper Stanislaus Hills, the Calaveras River-Stockton Diverting Canal, Mokelumne-Bear Rivers, Merced River, Kings River, Tule River-Deer Creek, Kern River, and Caliente Creek.

Some locations (or portions thereof) on private lands throughout the Central Valley, despite lack of formal protections, are deemed less likely to be impacted due to the remote or rural

nature of the locations, or sometimes topography, that currently limits the threats of agriculture and urban development. The potential of future threat at these private ownership locations is unknown. These less threatened private areas include: Ulatis-Green Valley Creeks, Cache and Putah Creeks, portions of the Mokelumne and Calaveras Rivers, the Kaweah River upstream of Lake Isabella, Upper Stanislaus Hills, portions of the upper American River vicinity (i.e., between the north and south forks, but not northwest), and Caliente Creek. Of these, the Mokelumne location has a safe harbor agreement with limited participation at this time. It should be noted that the threat of habitat loss from development in these areas, while reduced, is not necessarily eliminated, and it is reasonable to anticipate some future loss. Some habitat losses have occurred in some of these remote sites, such as Upper Stanislaus Hills, and Ulatis-Green Valley Creeks, due to recent light residential or ranchette development.

In the south Central Valley, the occupied locations immediately south of Sacramento to Stanislaus County have a good potential to support populations of valley elderberry longhorn beetles; however, there are limited protections for this existing habitat. For example, the Cosumnes River Preserve covers only a portion (perhaps 20 percent of its length) of the Cosumnes River, but beetle records and habitat are largely outside of the Preserve. Much of the riparian area along the Cosumnes, Mokelumne, and Stanislaus Rivers, which appears on aerial photos as intact riparian vegetation, is privately owned and to our knowledge does not have protection. Additionally, most locations in the southern portion of the subspecies' range (as compared to the north Central Valley) harbor fewer occurrences in general, and display lower quality riparian vegetation (both major rivers and tributaries, particularly on the valley floor). Therefore, persistence and conservation of the valley elderberry longhorn beetle in the central and especially the northern portion of its range may provide more consistent support of the subspecies as a whole, both currently and in the foreseeable future. The likelihood of persistence of the subspecies is considered fair, average, or good at all south Central Valley locations with the exception of three locations that are uncertain due to lower quality beetle habitat and absence of protections as compared to the north Central Valley.

Additionally, in some south Central Valley areas where there is protected beetle habitat (Kings and San Joaquin Rivers), the subspecies has not been observed despite recent surveys.

Examples of protected lands in the southern Central Valley include about 5,500 ac (2,226 ha) of floodplain habitat suitable for the valley elderberry longhorn beetle in the Cosumnes River Preserve (Talley *et al.* 2006a, p. 47) and the San Joaquin River Parkway, which is being built in Fresno and Madera Counties as a result of Federal, State, and local efforts, including efforts at the San Joaquin NWR. As of May 2008, the San Joaquin River Parkway project has protected approximately 2,218 ac (898 ha) of riparian lands from future development (San Joaquin River Conservancy 2008, p. 1). Protected parkway land currently includes the entirety of one known beetle occurrence and overlaps the southern edge of a second (Greeninfo Trust 2007, p. 1; CNDDDB 2010a, pp. 118, 119).

Conservation Through Section 7 Consultations and Section 10 Habitat Conservation Plans

The Service has developed conservation guidelines to promote restoration and protection of valley elderberry longhorn beetle habitat (USFWS 1996, 1999a). Subsequent to the development of these guidelines, proponents of projects resulting in authorized habitat loss often conduct habitat restoration for the valley elderberry longhorn beetle as an impact minimization measure (Service 1996 pp. 3, 4; Service 1999a, pp. 3, 4). Since the 1996 and revised 1999 guidelines were implemented, the number of restoration and protection actions for beetle habitat has dramatically increased. As described above under the "Agricultural and Urban Development" section, we reviewed Federal projects for which we conducted section 7 consultations for the beetle between 1983 and 2006. We determined that the total amount of incidental take authorized amounted to roughly 10,000 to 20,000 ac (4,047 to 8,094 ha) of riparian vegetation, with actual acres lost an unknown amount less due to projects that were not implemented, and thus, for which habitat loss did not occur (Talley *et al.* 2006a, p. 34); however, this acreage range does not account for the conservation (such as restoration or protection of beetle habitat) that occurred as a result of these projects. Our files indicate that as a result of the conservation guidelines, project proponents established agreements to restore and protect (through conservation easements in perpetuity)

approximately 400 to 1,900 ac (162 to 769 ha) of beetle habitat (estimated based on extrapolations of relatively limited data) (Service 2006a, p. 7) in association with section 7 consultation activities. This habitat restoration and protection is in addition to conservation efforts unassociated with incidental take (see following paragraphs in this section).

The habitat restoration and protection agreements established under the guidelines require planting and maintenance of roughly 3.5 new elderberry shoots on protected land for every elderberry stem 1 in. (2.5 cm) in diameter or greater that is removed (Talley *et al.* 2006a, p. 29). They also include requirements that would result in approximately 76 percent of elderberry shrubs being transplanted rather than destroyed by a project. Elderberry shrub transplants have resulted in successful colonizations at 88 percent of the sites to which shrubs potentially containing beetle larvae were transplanted (Holyoak *et al.* 2010, p. 49).

The degree of success of the conservation guidelines (as discussed above) has been difficult to measure because many of the required monitoring reports were unavailable to the Service and Talley *et al.* (2006a, p. 29). However, based on best estimates from available reports, the conservation measures agreed to by project proponents may have offset the loss of elderberry shrubs caused by their projects, and even resulted in a net gain of shrubs (Holyoak *et al.* 2010, p. 51). Valley elderberry longhorn beetles were present at approximately 47 percent of pre-impact sites (based on recent exit holes), and have colonized approximately 43 percent of the restored and protected sites established as a result of consultations under section 7 of the Act (Holyoak *et al.* 2010, pp. 49, 50). Establishment of additional sites specifically designed to compensate for take of the beetle would cease if the beetle is delisted, but existing protected sites established under these agreements would continue to remain in place following delisting of the beetle, and compensation for riparian vegetation losses could likely continue in some circumstances.

Valley elderberry longhorn beetle habitat has also been protected or restored through the provisions of section 10 of the Act. Habitat conservation plans prepared for the beetle to offset the effects of a project, through some combination of habitat restoration and protection transplanting of occupied elderberry shrubs to a protected location, are accompanied by

a management plan that benefits the beetle. Twenty incidental take permits have been issued, totaling roughly 5,353 ac (2,166 ha) of incidental take authorized; the majority of these minimally impacted the beetle or its habitat.

Five conservation banks containing protected beetle habitat have been authorized to sell credits for the beetle as needed for project impacts associated with either section 7 or 10 of the Act. These banks protect approximately 242 ac (98 ha) of existing, restored, or created habitat for the beetle in Placer, Shasta, San Joaquin, Sacramento, and Yolo Counties (Talley 2006a, p. 55). A sixth bank in Yolo County supports some elderberry shrubs, but is not authorized to sell credits for the beetle.

Since 1996, our conservation and mitigation guidelines under sections 7 and 10 of the Act have required project proponents to establish preserves and conservation easements for the valley elderberry longhorn beetle to minimize the impacts of projects that may incidentally take beetles (Service 1996, p. 6; Service 1999a, p. 6). These protected areas of habitat total approximately 642 to 1,900 ac (260 to 769 ha), which are in addition to areas that have been restored for the beetle, all of which is described in further detail under the "Current Estimate" section above.

Summary of Factor A

Since the mid-1800s, riparian vegetation has been impacted throughout the Sacramento and San Joaquin Valleys as a result of agricultural and urban development, and associated flood control activities. At the time of listing, habitat loss was identified as one of the most significant threats to the valley elderberry longhorn beetle (45 FR 52805, August 8, 1980; Eng 1984, pp. 916–917). These impacts are expected to continue to affect the beetle as a result of some additional riparian vegetation (and specifically beetle habitat) loss across the subspecies' range. Cumulatively, this riparian vegetation loss and associated beetle habitat loss may limit the overall amount of beetle habitat, and in some cases cause the loss of connectivity between beetle locations. However, when examining the potential rangewide impacts across the subspecies' known current range that is now known to be greater in size than at the time of listing, we believe that those impacts are of a lower magnitude to the subspecies as a whole due to there being significantly more locations known today (26 locations), including protected areas, as compared to the level of

impacts affecting the 3 locations known at the time of listing.

Agricultural and urban development (including activities that impact vegetation that grows along existing irrigation channels, levees, etc.) throughout much of the range of the valley elderberry longhorn beetle is likely to continue to have some effect on the subspecies and its habitat.

The flood protection system throughout the valley elderberry longhorn beetle's range is fairly extensive, impacting most of the rivers or creeks where beetle occurrences are known. Many dams or other flood protection facilities (such as levees) predate listing of the beetle, but require ongoing maintenance or improvements currently and into the future, such as improvement projects completed through the Corps. Construction and maintenance of these flood protection and associated reservoir flood control facilities have resulted in direct losses of riparian vegetation within project impact areas, and indirect impacts in surrounding riparian vegetation areas, due to agricultural and urban development resulting from flood protection.

Although ongoing and future maintenance of levees, channels, and other facilities will likely result in future losses of valley elderberry longhorn beetle habitat at some locations, these impacts are currently limited by interim protection measures. The Corps has established a procedure for seeking a variance from the ETL (which can result in vegetation-free zones within riparian areas when implemented). Variances may be issued to provide opportunities for beetle habitat to remain. Also, the *California's Central Valley Flood System Improvement Framework* document is under development. Until this is finalized in 2012, interim criteria are being implemented that provide protection measures for beetle habitat. As a result of the Framework document and interim criteria, impacts to remaining beetle habitat along the majority of levees throughout the subspecies' range are likely to be insignificant in the near term. However, long-term effects are unknown as implementation of the ETL and variance process have not yet been finalized.

The Recovery Plan for the valley elderberry longhorn beetle, section 7 biological opinions, and research results have identified road or trail maintenance, and potentially dust, as threats capable of lowering the quality of valley elderberry longhorn beetle habitat (Service 1984, p. 41; Service 2002, p. 3; Huxel *et al.* 2003, p. 458).

However, recent studies have determined that as long as dust levels remain low, neither road maintenance, trail maintenance, nor dust appear to harm beetle populations or elderberry shrubs.

Although an unknown amount of habitat for the valley elderberry longhorn beetle has been lost since the time of listing, we now know that the range of the beetle is larger than was previously known. About 21,536 ac (8,715 ha) of lands containing riparian vegetation have been preserved, enhanced, or restored by many agencies and organizations across the subspecies' current range. This is a fraction of the roughly 132,586 ac (53,656 ha) of riparian vegetation (not necessarily all containing elderberry shrubs) estimated to remain in the Central Valley in 2003 (our most recent estimate) (Geographic Information Center 2003, p. 14). These estimates include approximately 18,000 ac (7,284 ha) of Central Valley Joint Venture conservation easements, approximately 13,000 ac (5,261 ha) of restoration lands predominantly on Federal and State areas, and approximately 12,400 ac (5,018 ha) of lands with elderberry plantings (the latter of which partially overlaps restoration lands, such as mitigation banks, and excludes approximately 1,600 ac (648 ha) that has not yet been planted). We note that each of these estimates should be interpreted with caution; only a portion of these conservation easements or restoration lands actually support riparian vegetation that could contain elderberry, or are dedicated specifically to elderberry plantings.

Habitat and valley elderberry longhorn beetle protection measures are also associated with section 7 consultations and mitigation occurring as a result of section 10 habitat conservation plans. Since the 1996 and revised 1999 guidelines were implemented, the number of restoration and protection actions that have occurred to benefit the beetle have dramatically increased. To date, project proponents have restored and protected (through conservation easements in perpetuity) approximately 642 to 1,900 ac (260 to 769 ha) of beetle habitat.

Finally, another large protected riparian area that provides habitat for the beetle is the 4,600-ac (1,862-ha) American River Parkway (Parkway) in Sacramento County, which includes important habitat for the beetle, part of which was designated critical habitat (45 FR 52803; August 8, 1980) (see *Recovery Planning and Implementation*, "Primary Interim Objective 1" above).

There is uncertainty as to the effect of climate change on precipitation and the severity, duration, or periodicity of drought in the Central Valley. The impact of climate change on the valley elderberry longhorn beetle will depend on many factors, including how the subspecies and its habitat respond to such change. We are not aware of information that would allow us to make a meaningful prediction that potential changes in temperature and precipitation patterns would significantly affect elderberry growth.

Overall, we consider the current and future impacts of habitat loss on the valley elderberry longhorn beetle to be different today than at the time of listing. There are a greater number of locations within the range of the subspecies (26 locations) known now compared to the time of listing (3 locations), and there have been conservation actions and protections at portions of those additional locations. Of the 26 known locations, all or portions of 10 are on State or Federal wildlife areas or other areas under conservation easement, and all or portions of 6 are partially on city parks or Forest Service lands, where the particular threat of habitat loss is reduced, but other threats from human use remain. All or portions of 7 other locations throughout the Central Valley include private lands where (despite lack of formal protections) threats are presently reduced due to their remote or rural nature, or due to topography that limits the more pervasive threats of agricultural and urban development. The majority of locations contain some lands without protections, some of which are private or designated as floodways that could experience activities that affect beetle habitat. These unprotected locations encompass most of the range of the subspecies, including riparian zones in major drainages. Therefore, we conclude that agricultural and urban development, levees, and flood control protection remain threats to the valley elderberry longhorn beetle now, and likely into the future, although these threats are not considered significant when taken within the context of the increased number of occurrences known today as compared to the time of listing.

Factor B. Overutilization for Commercial, Recreational, Scientific, or Educational Purposes

Collecting all species of longhorn beetles is popular among amateur entomologists. However, we are not aware of any evidence that commercial use or private trade of the valley elderberry longhorn beetle has been, or

is, a threat. We did not identify collecting or overutilization for any purpose as a threat to the beetle in the final listing rule or the Recovery Plan. Therefore, based on our review of the available scientific and commercial information, overutilization for any purpose is not currently considered a threat, and is not anticipated to emerge as a threat in the future.

Factor C. Disease or Predation

At the time of listing in 1980, we did not consider disease or predation as significant threats to the valley elderberry longhorn beetle. Given the available scientific and commercial information on the beetle, disease is not considered a threat. Since listing, however, several insect predators have been identified as potential threats to the beetle.

Predation

The invasive, nonnative Argentine ant (*Linepithema humile*) has been identified as a potential threat to the valley elderberry longhorn beetle (Huxel 2000, pp. 83–84). This ant is both an aggressive competitor with, and predator on, several species of native fauna, and is spreading throughout California riparian areas and displacing assemblages of native arthropods (Ward 1987, pp. 10–15; Holway 1995, pp. 1634–1637; Human and Gordon 1997, pp. 1243–1247; Holway 1998, pp. 254–257). The best available data indicate that Argentine ants are evident at approximately five locations in the north Central Valley (i.e., Sacramento River-Redding to Red Bluff, Sacramento River Red Bluff to Chico, Feather River, Lower American River, and Putah Creek) and 3 locations in the south Central Valley (i.e., Lower Stanislaus River, Merced River, and Tule River-Deer Creek).

The Argentine ant requires moisture, and may thrive in riparian or irrigated areas (Holway and Suarez 2006, p. 321). A negative association between the presence of the ant and valley elderberry longhorn beetle exit holes was observed along Putah Creek in Yolo and Solano Counties in 1997, causing the author to conclude that the spread of Argentine ants along permanent streams would likely have a significant impact on the long-term persistence of the beetle (Huxel 2000, pp. 83–84). Although Huxel's (2000) survey did not distinguish whether the observed negative association is due to direct effects of the ant on the beetle, or simply a result of different habitat preferences between the two species, a follow-up study (Klasson *et al.* 2005, pp. 7, 8) found that Argentine ants tend to co-

occur with the beetle on elderberry shrubs, and noted this was likely because both are attracted to the habitat provided by the shrub. The authors concluded that there were likely to be threshold densities of Argentine ants below which beetle populations could remain relatively unaffected, but they did not suggest what those densities might be. However, they did note that impact minimization and mitigation sites established for the beetle tended to have the highest densities of Argentine ants. It is possible that the ants may be imported on seedlings from nurseries, with irrigation of these impact minimization or mitigation areas potentially providing a dependable moisture source for the ant colonies.

A recently submitted preliminary report for a survey conducted 12 years after the survey reported by Huxel (2000) found that the valley elderberry longhorn beetle does continue to occupy at least three of six locations along Putah Creek (Holyoak and Graves 2010, p. 23). The same preliminary report suggests that the average number of recent beetle exit holes per elderberry shrub is lower for shrubs with Argentine ants (Holyoak and Graves 2010, p. 17). The authors did not conclude that this apparent difference was statistically significant, however, and noted that because the beetle is found at such low densities, sampling must be extensive to statistically confirm population declines as serious as 50 percent or higher (Holyoak and Graves 2010, p. 20). The study found Argentine ants to be present on 13 percent of shrubs overall, and present in 7 of 10 watersheds sampled from across the range of the beetle (Putah Creek, and American, Feather, Sacramento, Merced, Stanislaus, and Tule Rivers; Holyoak and Graves 2010, p. 16). This aggressive ant may potentially interfere with adult mating or feeding behavior, or prey on larvae (Way *et al.* 1992, pp. 427–431), but predation on eggs would be the most likely impact (Huxel *et al.* 2003, p. 459). In Portugal, Argentine ants have become significant predators on the eggs of another cerambycid beetle, the eucalyptus borer (*Phoracantha semipunctata*), which has a similar life history to the valley elderberry longhorn beetle (Huxel *et al.* 2003, p. 459).

Invasive ants, including the Argentine ants specifically, can cause severe ecological impacts, including documented threats to many other listed invertebrate species in the United States (Wagner and van Driesche 2010, p. 555). It is possible that the lack of demonstrated predation impact on the valley elderberry longhorn beetle could be due to small sample size, and similar

effects of nonnative ants on other species indicate that some effect on the beetle cannot be ruled out. However, based on our review of the best available information, particularly the co-occurrence of Argentine ants (and other ant species) and the beetle, we do not have sufficient information to demonstrate that such predation, if it occurs at all, constitutes a significant threat to the beetle.

The European earwig (*Forficula auricularia*) is a scavenger and omnivore that is often found on elderberry shrubs, and may feed opportunistically on exposed valley elderberry longhorn beetle larvae (Klasson *et al.* 2005, p. 8). Earwigs require moisture, and Klasson *et al.* (2005, p. 8) considered their densities to be higher in impact minimization or mitigation sites, due to irrigation. However, this hypothesis was not tested statistically. Klasson *et al.* (2005, p. 8) suggested that elevated earwig densities at impact minimization or mitigation sites could contribute directly to increased predation on the beetle in those areas, and could also attract lizards that could further increase predation pressure; they noted that such ideas need to be tested further. Thus, we have no information to suggest that earwig predation or presence constitutes a specific threat to the beetle.

The valley elderberry longhorn beetle is also likely prey of insectivorous birds. One study noted holes in elderberry stems created by foraging birds at nearly every site where beetle exit holes were found, suggesting that birds had been excavating holes to forage for beetle larvae in the pith (Lang *et al.* 1989, p. 246). The study also noted that beetle populations appeared to be limited at any one site by factors other than habitat availability, suggesting that predation by birds could be one such additional limiting factor (Lang *et al.* 1989, p. 246). However, we have no further information to indicate what level of impact, if any, bird predation imposes on beetle population levels.

Summary of Factor C

We have no information to indicate that the valley elderberry longhorn beetle is threatened by disease. The best available information indicates birds, lizards, European earwigs, and Argentine ants are potential predators of the valley elderberry longhorn beetle. Although predation likely causes some mortality of individual eggs, larvae, or adult beetles, we have no data that support the premise that predation is adversely affecting the subspecies as a whole. Beetles have coexisted with Argentine ants at Putah Creek and the

American River Parkway for over 10 years (Huxel 2000, p. 82; Holyoak and Graves 2010, pp. 16, 17, 30), although possibly not without some decrease in average adult beetle population size, as measured by recent exit holes (Holyoak and Graves 2010, p. 17). The question of the extent to which predation by Argentine ants could be lowering adult beetle populations is potentially important because Argentine ants have been found in 7 of the 26 beetle locations, but existing evidence suggests that ants need to be present above some as yet unknown density threshold. Based on review of the best available scientific and commercial information, we do not consider disease or predation to be of such significance that it could threaten the continued existence of the beetle currently or in the future.

Factor D. Inadequacy of Existing Regulatory Mechanisms

State and Federal laws provide some degree of protection for riparian vegetation and valley elderberry longhorn beetles, as discussed below. We did not research the extent to which county or city ordinances or regulations provide direct protection for the beetle, although the subspecies may benefit from some city and county open space designations that harbor beetle habitat. The beetle may also benefit from local impact minimization or mitigation plans for special status species that have been developed as part of city or county general plans. Conversely, other types of local zoning or changes in open space designations in the future could affect the beetle. For the purposes of this discussion, we assume that there are no local laws that provide protection for the subspecies.

State Laws

The California Endangered Species Act (CESA) does not provide protection to insects (sections 2062, 2067, and 2068, California Fish and Game Code). The Swainson's hawk (*Buteo swainsoni*) and bank swallow (*Riparia riparia*) are migratory birds listed as threatened under CESA that are known to seasonally inhabit riparian areas within the beetle's range. The CESA listing of these two bird species likely affords limited incidental protection to the beetle in instances where project proponents are encouraged to minimize habitat alteration associated with development activities. However, in general, neither the Swainson's hawk nor the bank swallow inhabit the Central Valley year round. Because the CESA prohibition against take does not generally include effects to a species resulting from loss of its habitat (there

is no prohibition against "harm" under CESA as there is under the Act), project proponents may destroy the hawk's and swallow's habitat once the birds have migrated south for the winter. In this sense, protections afforded the valley elderberry longhorn beetle by the CESA listing of these two bird species are limited and temporary.

The California Environmental Quality Act (CEQA) requires review of any project that is undertaken, funded, or permitted by the State or a local governmental agency. If significant effects are identified, the lead agency has the option of requiring mitigation through changes in the project or deciding that overriding considerations make mitigation infeasible (CEQA Sec. 21002). In the latter case, projects may be approved that cause significant environmental damage, such as destruction of wildlife species or their habitat. Species protection, including the valley elderberry longhorn beetle, through CEQA is therefore dependent upon the discretion of the lead agency.

Section 1600 of the California Fish and Game Code authorizes CDFG to regulate streambed alteration. CDFG must be notified of, and approve, any work that substantially diverts, alters, or obstructs the natural flow or substantially changes the bed, channel, or banks of any river, stream, or lake. If an existing fish or wildlife resource could be substantially adversely affected by a project, CDFG must provide the project applicant with a draft agreement within 60 days to protect the species (section 1602 of the California Fish and Game Code). However, if CDFG does not submit such a draft agreement within the required time, the applicant may proceed with the work. Mitigation under a streambed alteration agreement is entirely voluntary by a project applicant; thus, such agreements are typically only provided to applicants when the mitigation activities they identify are compatible with other mitigation activities required by another type of permit.

Section 815 of the California Civil Code establishes conservation easements as enforceable and perpetual interests in real property for purposes of retaining land in its natural state (Cal Civ Code, sections 815–815.3). Conservation easements can only be held by nonprofit environmental organizations, State or local governmental entities, or Native American tribes (Cal Civ Code, section 815.3). Conservation easements have been used to protect land for the beetle in mitigation banks and under the terms of permits granted under sections 7 and 10 of the Act. Although sections 7 and

10 would no longer protect the valley elderberry longhorn beetle if the subspecies were to be delisted, those conservation easements currently in existence would continue in perpetuity.

Federal Protections

The National Environmental Policy Act (NEPA; 42 U.S.C. 4321 *et seq.*) may provide some protection for the valley elderberry longhorn beetle to the degree its procedural requirements inform Federal agency decision-making. For activities undertaken, authorized, or funded by Federal agencies (activities with a Federal nexus), NEPA requires the lead agency to analyze the project for potential impacts to the human environment prior to implementation. If that analysis reveals significant environmental effects, the Federal agency includes a discussion of mitigation measures that could help offset those effects (40 CFR 1502.16). However, the agency need not actually implement the mitigation measures discussed. Agency actions potentially affecting the beetle and subject to NEPA review would include, but not be limited to, any Corps levee repair or restoration projects; activities affecting riparian vegetation conducted by the Bureau of Reclamation, the Bureau of Land Management, or the Environmental Protection Agency; and activities conducted by the Service within National Wildlife Refuges. In the event that the beetle is delisted, we do not anticipate substantial differences in NEPA review by Federal agencies.

Under section 404 of the Clean Water Act (CWA; 33 U.S.C. 1251 *et seq.*), the Corps regulates the discharge of dredge and fill material into waters of the United States, which include navigable waters and adjacent wetlands (33 U.S.C. 1344). In general, the term “wetland” refers to areas meeting the Corps criteria regarding soils, hydrology, and vegetation. Any action within the valley elderberry longhorn beetle’s habitat that has the potential to impact waters of the United States is reviewed by the Corps under the CWA for a permit determination. These reviews may require consideration of impacts to riparian species (including the valley elderberry longhorn beetle), as well as mitigation of significant impacts to fish and wildlife resources. To the extent riparian vegetation and consequently beetle habitat are associated with a CWA section 404 permitting action, mitigation for those effects could be provided.

The National Wildlife Refuge System Improvement Act of 1997 (Pub. L. 105–57) establishes the protection of biodiversity as the primary purpose of

the Service’s National Wildlife Refuge System. This legislation lends support to various management actions to benefit the valley elderberry longhorn beetle in refuges in the Sacramento and San Joaquin Valleys, as discussed under Factor A (see “Conservation—Habitat Restoration and Protection” above). The Sacramento River NWR was established to conserve and manage up to 18,000 ac (7,284 ha) of riparian or floodplain vegetation from Red Bluff to Colusa in Tehama, Glenn, and Colusa Counties. The Sacramento River NWR CCP identifies conservation of the beetle as one of its management goals (Service 2005, pp. 1–37). CCPs for the San Luis and Merced National Wildlife Refuges are not yet complete. The CCP for the San Joaquin River NWR calls for surveys for the beetle, but does not call for a management plan unless “deemed necessary” (Service 2006b, p. 64); however, the refuge is proceeding with conservation efforts for the beetle, as discussed under the Factor A, “Conservation—Habitat Restoration and Protection” above. We expect conservation efforts being developed by National Wildlife Refuges in the Sacramento and San Joaquin Valley to continue to assist in conservation of the beetle.

Federally Funded Restoration Programs

The Federal Government administers a variety of programs involving grants and loans through the Natural Resources Conservation Service (NRCS) and the Service for the express purpose of promoting habitat enhancement. Some of the actions within these programs could potentially benefit the valley elderberry longhorn beetle.

The Service’s Partners for Fish and Wildlife (PFW) Program works directly with private landowners to restore and enhance habitat for federally listed species on their lands through the use of small grants. However, private landowners contacted by the Service have expressed a preference not to have elderberry shrubs planted on their property (in spite of the value these shrubs provide for birds and other wildlife) due to a fear of restrictive regulations and impacts to their economic livelihood. NRCS reports that 22 of 210 easements held under its Wetland Reserve and Emergency Watershed Protection Programs support elderberries (NRCS 2011, p. 1). NRCS (2011, p. 2) indicates that elderberry plantings in its Hedgerow Planting Program are restricted to San Joaquin and Yolo Counties where safe harbor agreements are in place. Based on responses from landowners, NRCS believes that more elderberries would be

planted on easements if the valley elderberry longhorn beetle were delisted. The extent that such plantings have contributed to beetle recovery could not be assessed because no spatial data or other information are available for us to assess.

Summary of Factor D

If the valley elderberry longhorn beetle is delisted as a threatened species under the Act and removed from the List of Endangered and Threatened Wildlife, the greatest impact to the beetle would be loss of the protections provided by sections 4(d) and 7(a)(2) of the Act. Under regulations established under the authority of section 4(d), the Service has prohibited the take of the beetle (50 CFR 17.31(a)). Section 7(a)(2) of the Act requires all Federal agencies to insure that any action that it authorizes, funds, or carries out is not likely to jeopardize the continued existence of any listed species or cause the destruction or adverse modification of designated critical habitat. No other Federal or State law explicitly protects the beetle or its habitat. The Clean Water Act and National Environmental Policy Act may continue to provide incidental benefits to the beetle when riparian vegetation is impacted, but mitigation can meet the requirements of these laws without necessarily benefitting the beetle. State laws such as CESA and CEQA may continue to provide incidental protection as described above should the beetle be delisted. On the other hand, private landowners throughout the range of the beetle who participate in Federal or State riparian and other vegetation enhancement programs may be more inclined to plant elderberries on their properties.

As discussed above (Factor A), there are a number of ongoing and projected flood control actions, and vegetative maintenance of the existing flood control system, that may continue to affect valley elderberry longhorn beetle habitat, and hence the subspecies, if the beetle is removed from the List of Endangered and Threatened Wildlife. However, this relative lack of regulatory protection should be judged in light of the remaining presence of this threat.

Absent continued protection of the valley elderberry longhorn beetle under the Act, long-term protection would be most certain in areas where the subspecies currently receives some form of protection. As discussed above (see *Estimates of Valley Elderberry Longhorn Beetle Conserved Areas* section), 4 of the 26 locations of the valley elderberry longhorn beetle include a significant component of well-protected lands with

known beetle habitat, and portions of 6 others contain some well-protected lands. Seven locations (mostly in the north Central Valley) are managed for natural and open space values or are partially on city parks and Forest Service lands, where the land and management status protects against urban development, but with no specific protections for the beetle or elderberry shrubs in particular. These latter seven locations vary in extent from large sections of current habitat (such as the American River Parkway) to minor portions in parks or on Forest Service land. If the beetle were delisted, we consider the existing regulations for the beetle, coupled with the overall extent of habitat protection and restoration efforts discussed above, to sufficiently protect the beetle (i.e., ameliorate the threats) into the future in these areas. Elsewhere within the beetle's range where protections are less, the beetle's persistence ranges from fair to good (depending on the circumstances (see Table 2)), as well as uncertain at four locations (see Finding section below).

Factor E. Other Natural or Manmade Factors Affecting the Continued Existence of the Species

The final rule to list the valley elderberry longhorn beetle did not include any threats under Factor E. Since listing, we have learned that the following other factors may impact the valley elderberry longhorn beetle: climate change, pesticides, human uses other than those discussed under Factor B, small population size, and loss of beetle populations due to habitat fragmentation, which is a synergistic threat when combined with small population size (and thus a Factor E threat discussed in this section).

Climate Change

Climate change could affect the valley elderberry longhorn beetle in other ways besides the amount and distribution of habitat (see Factor A discussion on climate change above). Changes in temperature and precipitation patterns may cause shifts in the timing of elderberry flowering relative to beetle emergence, or affect the relationship of the host plant species or beetle subspecies in other ways. Talley *et al.* (2006, p. 6) believed that differences in seasonal climate between the Central Valley and coastal range encourage asynchronization of the phenology of the listed subspecies and the common subspecies. Talley *et al.* (2006, p. 15) also noted that the species (and variety) of elderberry varies with respect to drought tolerance and elevation. Therefore, it is possible that climate

change could affect the beetle. The magnitude of threat of climate change to the beetle in the future cannot be assessed further at this time due to taxonomic uncertainties within the host plant genus (*Sambucus*) and lack of genetic information about the two beetle subspecies (Talley *et al.*, 2006, pp. 7, 15). Therefore, based on the best available scientific and commercial info at this time, and absent any confirming information, we conclude that climate change is not a significant factor affecting the persistence of the valley elderberry longhorn beetle.

Pesticides

Since listing, we have learned that many pesticides are commonly used within the valley elderberry longhorn beetle's range. These pesticides include insecticides (most of which are broad-spectrum and likely toxic to the beetle) and herbicides (which may harm or kill its elderberry host plants). The California Department of Pesticide Regulation (CDPR) in 1997 listed 239 pesticide active ingredients applied in proximity to locations of the beetle (Marovich and Kishaba 1997, pp. 270–275). Four of the five California Counties (Fresno, Kern, Tulare, and Madera) that have the greatest pesticide use in California are in the San Joaquin Valley (CDPR 2010, p. 1), where approximately 33 percent of beetle occurrences are documented (CNDDDB 2010, pp. 1–201). Many pesticide applications likely coincide with the period when adult beetles are active, and when the beetle eggs and early larval stages occur (Talley *et al.* 2006a, p. 43). These are considered the life stages at which the beetle is most vulnerable to pesticide effects, as they occur on the outside of elderberry stems (Talley *et al.* 2006a, p. 43). The pesticides, although not applied directly to beetle habitat, may indirectly affect the beetle or its habitat if pesticides drift from nearby locations.

Although no major issues relating to drift from agricultural pesticides have been documented for riparian vegetation in general (Spotts 1989, p. 524), Barr (1991, p. 40, and citing Jones & Stokes 1987) noted yellowing of plants adjacent to cultivated fields along Middle River in San Joaquin County, and direct loss of elderberry from herbicides on the Cosumnes River. No sign of the valley elderberry longhorn beetle was observed near Middle River in 1991, although exit holes and an adult had been noted in 1984–1985 (Barr 1991, p. 27). Additionally, pesticide or herbicide use was specifically noted as a threat in 25 of 201 CNDDDB records (CNDDDB 2010, pp. 12, 33, 46, 86–87, 110, 114, 116,

121, 155–158, 160–165, 169, 173–174, 192–193, 195). Judging from the distribution of pesticide-affected locations identified in the CNDDDB, this threat can be considered widespread, rather than localized. In most cases, however, the CNDDDB notes appear to qualify the pesticide threat as one related to proximity to agricultural operations (a notable exception is CNDDDB occurrence number 16, whose notes state, “Many plants * * * were dead (herbicides) * * *.” CNDDDB 2010, p. 12). The sensitivity of valley elderberry longhorn beetles or its host plant to agricultural pesticides, and overall effect, is uncertain.

We consult with agencies on the potential effects of some pesticides on the valley elderberry longhorn beetle in the context of several national-level evaluations of pesticide effects on endangered and threatened species. For example, in 1999, the U.S. Environmental Protection Agency (EPA) entered into a section 7 consultation with the Service on the registration of 15 pesticides. In this consultation, the Sacramento Fish and Wildlife Office provided a memorandum to the Service's Region 1 Office in Portland, Oregon, regarding the use of these pesticides (Service 1999b). Our 5-year review mischaracterized the consultation (Service 2006a, p. 18), stating that a draft jeopardy opinion was prepared; however, the consultation was never completed and no jeopardy opinion was issued. In the memorandum, the Sacramento Fish and Wildlife Office provided its rationale for determining that the registration of 7 of the 15 pesticides, and their subsequent use as proposed by product labeling, would likely result in jeopardy to the beetle (Service 1999b). Service biologists noted that the primary threat to the beetle was the loss and alteration of habitat, but also noted that insecticide use and vegetation control in agricultural areas and along rights-of-way may be factors that could limit the beetle's abundance and distribution, although no data were available to allow an evaluation of potential effects (Service 1999b, pp. 77–83). Service biologists based their rationale for the draft jeopardy determinations on the beetle's small population status and the small, scattered habitat sites known at the time (Service 1999b, pp. 80–83).

Although several of the seven pesticides are still widely used in the Central Valley, the registered use of two of the seven pesticides (Bendiocarb and Fenthion) has been revoked by the EPA and the State of California (Kegley *et al.* 2008, pp. 1–46). No specific evaluation of exposure or response of the valley

elderberry longhorn beetle to any of these pesticides has been conducted.

Based on the information presented above, there is potential for agricultural pesticides to impact the valley elderberry longhorn beetle through drift in both the northern and southern Central Valley. However, the concerns expressed above were never confirmed by the Service in a final biological opinion and we otherwise lack any information confirming that pesticide use constitutes a significant threat to the subspecies.

Human Use

A number of the major occurrences of the valley elderberry longhorn beetle (such as American and Sacramento Rivers, Putah Creek, and the Feather, Stanislaus, and Kern Rivers) occur at least partially on publicly accessible areas that are subject to intended and unintended human uses, including biking (on and off-road), hiking, horseback riding, associated formal and informal trails, maintenance of such trails, camping (legal and illegal), pruning of trees (Barr 1991, pp. 40, 90–91), cutting of firewood generally, and related effects such as fires, which continue today. On September 15, 2011, for example, nine arson fires were set between River Bend and Hagan Parks in the American River Parkway. Alone or in combination with other threats, and depending on severity, these activities can, and do, kill elderberries or reduce their health (Barr 1991, pp. 40, 27, 31, 32, 92). In some cases, evidence of fire corresponds to negative surveys of beetles where they formerly occurred (such as the Merced River) (Barr 1991, p. 31). Evidence of fire is also mentioned in four CNDDDB records (CNDDDB 2010, pp. 70, 86, 115, 202), where it appears to be associated—in some cases—with proximity to roads and a greater perceived risk of fire associated with traffic or roadside mowing. Pruning is identified in five CNDDDB records (CNDDDB 2010, pp. 2, 12, 67, 99, 174), and several records identify maintenance around bike and equestrian trails (CNDDDB, pp. 121, 195). Overall, Barr (1991, p. 40) found that 38 out of 230 sites showed some damage from fire or cutting.

All intended and unintended human use effects may result in incremental losses or reduction in the amount or quality of valley elderberry longhorn beetle habitat. While evidence exists of sporadic and localized impacts to elderberry bushes from human uses, such as the arsons described above, we are not aware of similar reoccurring impacts throughout the beetle's range. Thus, based on review of the best

available scientific and commercial information, we do not expect losses associated with human use to be of such significance that they could threaten the continued existence of the beetle currently or in the future.

Small Population Size

Small population numbers of valley elderberry longhorn beetle host plants, and even lower numbers of occupied host plants, constitute a threat to the beetle at many locations, which, in turn, may result in small beetle population sizes. However, this potential threat can be true for many species. Additionally, Talley *et al.* (2006, p. 13) concludes that low mobility, very small local populations, and isolation of habitat patches renders beetle populations especially susceptible to extirpation with little chance of recolonization, such as was observed by Collinge *et al.* (2001) (discussed above in “Occurrence Information and Population Size and Distribution”).

Although we do not have data from which to draw conclusions regarding the rangewide valley elderberry longhorn beetle population size, we nonetheless considered whether rarity poses a potential threat to the subspecies. While small populations are generally at greater risk of extirpation from normal population fluctuations due to impacts such as predation, disease, changing food supply, and stochastic (random) events such as fire, corroborating information regarding threats beyond rarity is needed to meet the information threshold indicating that the beetle is endangered or threatened. Many species are naturally rare and in the absence of information identifying threats to the species and linking those threats to the rarity of the species, the Service does not consider rarity alone to be a threat. Further, a species that continues to survive could be well-equipped to continue to exist into the future even if it has always had small population sizes, has always been rare, or has always been patchily distributed (as is the case for the valley elderberry longhorn beetle).

Many naturally rare species have persisted for long periods within small geographic areas, and many naturally rare species exhibit traits that allow them to persist despite their small population sizes. Consequently, the fact that a species is rare or has small populations does not necessarily indicate that it may be in danger of extinction now or in the future. We need to consider specific potential threats that might be exacerbated by rarity or small population size (or patchy distribution such as with the

valley elderberry longhorn beetle). Although low genetic variability and reduced fitness from inbreeding could occur, at this time we have no evidence of such genetic problems with the valley elderberry longhorn beetle.

Based on our review of valley elderberry longhorn beetle occurrence records compared to aerial imagery and other documentation, small population size may potentially be the result of one or more threats (as evidenced by data showing that some locations may have experienced loss of elderberry shrubs over time). Small populations in general are particularly susceptible to extirpation as a result of localized stochastic events or local exposure to threats already discussed. Several records at the Sacramento River, Colusa to American River confluence, American River Confluence south to Delta, Bear River near Mokelumne, Calaveras River-Stockton Diverting Canal near Linden locations were associated with a few isolated elderberry plants or groups of plants that appear to have been completely lost since last observation or nearly so (i.e., since listing), and currently lack protections or enhancement measures that would allow regeneration or restore habitat (comparison of Service database described in the Finding section below and Barr (1991, pp. 24, 27, 29)). Other areas with elderberries lack beetles (see “Population Status and Trends” above). Talley *et al.* (2006a, p. 13) stated that low mobility, very small local populations, and isolation of habitat patches renders beetle populations especially susceptible to extirpation with little chance of recolonization. However, the best available information does not indicate small population size is a significant concern now, nor do we believe it will become a significant concern in the future. This assessment is based on our evaluation of the site-specific threats, protections, and recovery actions that exist at given locations throughout the species' range, and the prospectus for the beetle's persistence into the future at those locations (see Table 2 below and discussion in the Finding section). Additionally, we do not believe small population size is a significant concern given current data identifying increased number of occurrences known today as compared to the time of listing (i.e., 201 occurrence records at 26 locations compared to 10 occurrence records at 3 locations), as well as this subspecies' natural, patchy distribution (as described in the **Background** section above).

Loss of Populations Resulting From Habitat Fragmentation

As indicated under the "Population Status and Trends" section above, local valley elderberry longhorn beetle populations are subject to extirpation and subsequent recolonization, but recolonization is only likely if there are occupied areas within about 25 mi (40 km) from which colonizers can migrate (Collinge *et al.* 2001, pp. 108–110; Talley *et al.* 2006a, p. 10). Collinge *et al.* (2001, pp. 106, 108) has documented the long-term extirpation of the beetle from entire watersheds due to the apparent loss of the last occupied site within the specified distance. As previously noted, a comparison study between 1991 and 1997 data presented an overall moderately downward trend of valley elderberry longhorn beetle occupancy, as indicated by both short- and long-term extinctions and colonizations, by sites with elderberry shrubs, and by occupied shrub groups within each site (Talley *et al.* 2006a, p. 13). Although a downward trend was noted (Talley *et al.* 2006a), this conclusion is specific to the areas researched by Barr (1991) and Collinge *et al.* (2001). This observed trend should not necessarily be extrapolated to the long-term, rangewide status of the beetle due to the uncertainties involved in obtaining the results (e.g., all beetle habitat surveyed by Barr (1991) was not surveyed by Collinge *et al.* (2001), as further described in "Population Status and Trends" above).

At this time, we are unaware of any information that would support robust conclusions regarding the extent to which local beetle populations may become isolated from each other by distances of greater than 25 mi (40 km). We know that there are already discontinuities of more than this distance between some populations, especially in the south Central Valley, as well as within major corridors. We suspect that potential habitat fragmentation, in combination with small population size (discussed above), results in a greater combined threat of local extirpation in the south Central Valley. However, we have not censused all potential habitat in tributaries or uplands that may harbor the subspecies; additional populations not yet detected could increase the potential for recolonization.

It is possible that some level of threat from fragmentation and small population size (though we are uncertain of natural valley elderberry longhorn beetle population numbers) could have always existed. Nevertheless, our evaluation of the best

available scientific and commercial information indicate that fragmentation remains as a threat today, and may increase in the future. However, we note that our 1980 estimates of the beetle's range were underestimates. Given our knowledge today, the level of threat posed by fragmentation is much reduced.

Summary of Factor E

Since listing, potential Factor E threats that could affect the valley elderberry longhorn beetle include climate change, pesticides, human use, loss of beetle populations due to habitat fragmentation, and small population size.

Climate change might affect the valley elderberry longhorn beetle through effects other than habitat distribution, such as shifts in the timing of elderberry flowering relative to beetle emergence, or impacts to the relationship of the listed and common beetle subspecies in some other way. Based on the best available scientific and commercial information at this time and absent any confirming information, we conclude that climate change is not a significant factor affecting the persistence of the valley elderberry longhorn beetle.

The valley elderberry longhorn beetle has been reported from locations adjacent to agriculture where pesticide application occurs. Information from occurrence records and other sources indicate that drift of pesticides into beetle habitat is of concern. However, we have no information regarding exposure of the beetle to specific pesticides or potential impacts to beetle populations from exposure. Although some effects of pesticides on elderberry shrubs have been noted, no link has been established between persistence or occurrence of the beetle and adjacency to farmed lands that use pesticides.

Some valley elderberry longhorn beetle occurrences are at least partially on publicly accessible areas that are subject to intended and unintended human uses, the impacts of which could result in incremental losses or reduction in the amount or quality of beetle habitat. However, available information indicates losses would likely not be frequent; thus, significant losses are not expected. There is also evidence of a variety of human use impacts involving trails, cutting, pruning, and fire in occupied beetle locations.

Based on review of occurrence records compared to aerial imagery and other documentation, loss of valley elderberry longhorn beetle populations due to fragmentation (which alone, or in combination with, other threats has the potential to result in small population

size) remains a threat currently and potentially into the future. However, small population size is not considered a significant current or future threat, and the threat of fragmentation is not considered significant when taken within the context of the increased number of occurrences known today as compared to the time of listing. Additionally, we are unaware of any information that would support robust conclusions regarding frequent isolations of beetle populations across the subspecies' range, the extent to which local beetle populations may become isolated from each other by distances of greater than 25 mi (40 km), or whether any potential threats might be exacerbated by characteristics such as rarity or patchy distribution.

Finding

We have carefully assessed the best scientific and commercial data available regarding the past, present, and future threats faced by the valley elderberry longhorn beetle. As required by the Act, we considered the five potential threat factors to assess whether the beetle is endangered or threatened throughout all or a significant portion of its range. When considering the listing status of a species, the first step in the analysis is to determine whether it is in danger of extinction throughout all of its range. If this is the case, then the species is listed in its entirety. For instance, if the threats to a species are acting only on a portion of its range, but they are at such a large scale that they place the entire species in danger of extinction, we would continue to list the entire species.

When the valley elderberry longhorn beetle was listed in 1980, it was known from only the American River, Putah Creek, and the Merced River in the Central Valley of California. Its two primary threats were loss of habitat (Factor A) and inadequate regulatory mechanisms protecting the beetle (Factor D). Compared to the three locations known to support the beetle at the time of listing, surveys have identified at least 26 locations that support the beetle from Shasta County to Kern County (CNDDDB 2010, pp. 1–202; Table 1). This represents a significant increase of occurrences and a significant change in our understanding of the subspecies' range as compared to the time of listing.

As first introduced and described above in the Summary of Factors Affecting the Species section, in order to examine the scale of threats and potential for extinction for the valley elderberry longhorn beetle within these locations and as a whole, we first

compiled a rangewide GIS spatial database that included all available information on beetle records, riparian vegetation, section 7 consultations, mitigation actions, conservation and other protection actions (including specific plantings of elderberry shrubs), current (year 2010) aerial imagery, roadways, and near term growth (i.e., through the year 2020). For each of the 26 locations identified in this rule, we used this database and supporting information to synthesize a best professional opinion of the prospectus for persistence with delisting at those locations, considering: (1) Current habitat; (2) occupation records by location (presented previously in Table 1); (3) threats; (4) protections and recovery actions; and (5) studies needed to address uncertainties in species data, protections, threats, and prospectus for persistence.

Aerial imagery was used to generally assess quality of habitat and proximity

to disturbances or other threats (width, extent and continuity of riparian areas, disturbances such as trails and roads). We also considered GIS database entries and other literature descriptions on the size, number, and distribution of elderberry shrubs; trends over time; and other site-specific factors (see Table 2). Location specific threats are identified for the five-factors where appropriate or otherwise noted as pervasive threats that apply to all locations. Protections (conservation) and recovery actions we considered include known actions, the extent of assurance that those actions would be implemented and, where available, the documented effectiveness or failure of those recovery actions.

As presented in Table 2 below (Prospectus for Persistence with Delisting column), we did not formulate quantifiable measurable objectives for our determinations of persistence. Rather, the suite of information was considered together and given a

qualitative persistence determination of poor, fair, average, good, or best. Several determinations were deemed questionable due to high levels of data uncertainty and are noted as such (uncertain); these are to be considered a best-case scenario for the purpose of this analysis. Occupation records were considered in terms of number and constancy over time, with greater likelihood where such records were consistent, recent, regular, and of more certain species identification (Table 1). Species presence and persistence were considered less certain where species records and habitat surveys were older, and where elevations were higher (where the valley elderberry longhorn beetle and the nonlisted California elderberry longhorn beetle subspecies overlap) and there was no adult male specimen to confirm identity.

TABLE 2—LOCATIONS, THREATS, PROTECTIONS, AND SUMMARY SPECIES STATUS INFORMATION FOR THE VALLEY ELDERBERRY LONGHORN BEETLE IN THE NORTH CENTRAL AND SOUTH CENTRAL VALLEYS OF CALIFORNIA
[Acronyms are defined below] ¹

Locations ²	Site-specific threats (see below for pervasive threats under Factors C, D, and E that apply to all sites) ³	Protections and recovery actions	Prospectus for persistence with delisting	Study needs (to address uncertainties in species data, protections, threats, and hence prospectus for persistence)
NORTH CENTRAL VALLEY				
1.a. Sacramento River (SR), Redding-Red Bluff.	Factor A: limited habitat loss from urban development in city and associated bank protection (nonproject); additional habitat remains on some tributaries but not others. Factor C: Argentine ants. (Holyoak and Graves 2010). Factor E: human use (recreation, cutting).	One small restoration (Turtle Bay, 120 acres).	Average. Persists with modest threats. Occupation at Stillwater-Paynes Creeks, negative surveys on Cow-Cottonwood Creeks. Infrequent limited surveys.	Continued and expanded habitat or subspecies surveys to include more tributaries.
1.b. SR, Red Bluff-Chico	Factor A: relatively low past loss/current threat; localized extensive loss in vicinity of small city; some agricultural encroachment; some bank protection; narrow riparian corridor band on mainstem and tributaries. Factor C: Argentine ants (Holyoak and Graves 2010).	Significant conservation easements, some with restoration to lessen effects of adjacent agriculture.	Good. Habitat somewhat improved by protections. Status uncertain due to age of surveys and low frequency. Species probably persists.	Consistent habitat and subspecies monitoring.
1.c. SR, Chico-Colusa	Factor A: least habitat loss or threat in mainstem, tributary channelization but not to completion; some bank protection/flood control noted, but no levees.	Significant conservation easements, some with restoration, to lessen effects of adjacent agriculture.	Good. Habitat somewhat improved by protections. Status uncertain due to age of surveys and low frequency. Subspecies probably persists.	Consistent habitat and subspecies monitoring.
1.d. SR, Colusa-American River confluence.	Factor A: intensive agricultural conversion, resulting in complete riparian vegetation loss between Colusa and Knight's Landing, then sparse/limited to Sacramento, due to past and recent flood control, including confinement by levees.	None known	Poor. Remaining habitat at risk due to private ownership, and vegetative maintenance of flood control facilities. Presence questionable.	Assess enhancement opportunity. Limited potential absent levee reconstruction/setback. Easements for near term land-side elderberries may help connect populations.

TABLE 2—LOCATIONS, THREATS, PROTECTIONS, AND SUMMARY SPECIES STATUS INFORMATION FOR THE VALLEY ELDERBERRY LONGHORN BEETLE IN THE NORTH CENTRAL AND SOUTH CENTRAL VALLEYS OF CALIFORNIA—Continued
[Acronyms are defined below] ¹

Locations ²	Site-specific threats (see below for pervasive threats under Factors C, D, and E that apply to all sites) ³	Protections and recovery actions	Prospectus for persistence with delisting	Study needs (to address uncertainties in species data, protections, threats, and hence prospectus for persistence)
1.e. SR, American River confluence south.	Factor A: significant past and ongoing habitat loss due to flood control, bank protection, and upgrades; recent habitat loss associated with urban development and emergency levee repair; extensive flood control (confinement by levees, bank protection, devegetation); sparse/limited/intermittent riparian vegetation remaining.	Minimal trial areas of vegetation on levees, small fraction (estimated at less than 1% of bank length); not of vegetation type to benefit beetle (i.e., not elderberry).	Fair. Declining. Remaining habitat at high risk due to ongoing maintenance and uncertainties on future maintenance of flood control facilities.	Assess enhancement opportunity, especially regarding the limited vegetation potential due to enforcement of Corps ETL; potential for more levee vegetation allowance via relaxed maintenance.
2. Thomes Creek	Factor A: modest rangeland/agricultural use; current vegetation appears limited from unknown cause; possibly naturally limited elderberry to the west by soil/alluvium type, lack of water.	None known	Fair. Status uncertain due to lack of habitat and subspecies surveys.	Updated habitat and subspecies surveys to evaluate potential species protections.
3. Stony Creek	Factor A: More agriculture compared to other watersheds in immediate vicinity, but not adjacent to riparian, plus more persistent water, results in more riparian vegetation than Thomes but still limited/sparse; elderberry verified only near reservoir, more suspected habitat near DWR-mapped riparian area near Orland.	Some conservation easements. Elderberry plantings near mouth. Status elsewhere unknown.	Fair (perhaps better). Status uncertain due to lack of habitat and subspecies surveys.	Updated habitat and subspecies surveys to evaluate potential species protections.
4. Big Chico Creek	Factor A: significant past loss from urban development in Chico; agriculture downstream; agriculture present in lower creek resulting in narrow but continuous corridor there; elsewhere riparian remains in moderate-to-wider band (e.g., Bidwell Park); abundant known elderberry.	Some parkland, especially in Chico. Mitigation bank nearby (Bidwell Ranch) at least partially offsets continuing urban impacts.	Good. Persistence probable	Updated habitat and subspecies surveys. Evaluate threats and protection needs downstream of Chico.
5. Feather River	Factor A: past losses due to levees/bank protection; ongoing threats due to fix-in-place west levee proposal; future threats reduced by protection/recovery actions resulting in locally wider riparian band in portions, but narrow riparian elsewhere. Factor C: Argentine ants	Significant conservation easements, some with restoration to lessen effects of adjacent agriculture.	Good. Existing conservation easements and proximity to Bear setback, Wildlands bank, indicate probable persistence.	Regular surveys. Evaluate alternatives to in-place west levee improvements (ring/J ³) to avoid growth inducement and urban encroachment.
6. Butte Creek	Factor A: losses/devegetation downstream of Chico; some remnant habitat may remain in Butte Sink area; best riparian vegetation is in lower canyon (upstream area), but this is currently unoccupied/unsurveyed.	Central Valley Joint Venture easement in portion of canyon (a few elderberry plantings above it). Otherwise unknown.	Good (but uncertain). Pending habitat and subspecies surveys or resurveys; assessment of elderberry success in protected canyon area.	Updated habitat and subspecies surveys; evaluate threats and protection needs downstream of Chico, especially in formerly occupied sink area.
7. Yuba River	Factor A: flood control; aggregate/gold mining; agriculture; elderberry present but unsurveyed, suspected to be minor component of overall riparian.	None known. Nearly all private	Uncertain occurrence of subspecies and habitat, hence questioned presence/persistence. Single survey date/exit hole for power line area not near river (some from dead wood).	Habitat and subspecies surveys. Local threats and benefit evaluation. Protection and restoration opportunity ID as appropriate.
8. Bear River	Factor A: past losses due to levees/bank protection; associated agricultural development.	Setback levee project with elderberry plantings at mouth; wildlands bank nearby.	Good. Persistence probable	Habitat and subspecies surveys. Identify maintenance within levees, and evaluate protective measures such as relaxed maintenance.

TABLE 2—LOCATIONS, THREATS, PROTECTIONS, AND SUMMARY SPECIES STATUS INFORMATION FOR THE VALLEY ELDERBERRY LONGHORN BEETLE IN THE NORTH CENTRAL AND SOUTH CENTRAL VALLEYS OF CALIFORNIA—Continued
[Acronyms are defined below] ¹

Locations ²	Site-specific threats (see below for pervasive threats under Factors C, D, and E that apply to all sites) ³	Protections and recovery actions	Prospectus for persistence with delisting	Study needs (to address uncertainties in species data, protections, threats, and hence prospectus for persistence)
9. Lower American River	Factor A: some flood control ... Factor C: Argentine ants	Extensive riparian plantings, monitoring; setback levees; management plan (implementation uncertain).	Best. Extensive habitat, protections with minimal threats. High occupancy. Persistence likely.	Continued monitoring. Determine funding mechanism of management plan implementation.
10. Upper American River vicinity (Miner and Secret Ravine, Coon, Anderson and Linda Creeks).	Factor A: urban development .. Factor E: human use (trails)	None known. Status of undeveloped portions unknown.	Fair overall (some may be better or worse). Habitat limited; affected by adjacent development northwest to Interstate 80.	Habitat and subspecies surveys. Evaluate protections and development threats.
11. Putah Creek	Factor A: narrowed corridor in major private land nearby agriculture (general threat). Factor C: Argentine ants	Partly within park lands. Unknown in portions within private land. Management plans exist; assurances to implement unknown.	Good. Better habitat, less protection but reduced threats. Persistence likely.	Continued monitoring. Identify and evaluate protections in private areas.
12. Cache Creek	Factor A: Extensive past riparian vegetation loss due to adjacent agriculture, flood control, aggregate mining, resulting in limited habitat in the lower 2/3rds of creek.	None known	Good (at least partially). Persistence probable.	Habitat and subspecies surveys. Restoration and enhancement potential investigation.
13. Ulatis-Green Valley Creeks	Factor A: agriculture, flood control, channelization, suburban development; threat of habitat loss may be limited due to adjacent rugged terrain; some tributaries unchannelized.	None known	Good. Incremental losses due to urban development expected. Some decline, but persistence likely to occur somewhere in area.	Habitat and subspecies surveys. Identify current protections or needs in private areas.

SOUTH CENTRAL VALLEY

14. Cosumnes-Laguna-Dry Creeks.	Factor A: urban development at Rancho Murieta-Wilton-Galt; agriculture/urban threat partly offset by preservation on part of Cosumnes only, not Laguna-Dry or Cosumnes outside preserve; riparian corridors currently narrow, some devegetated and not yet restored. Preserve lands include some waterfowl management, but elderberry there is undetermined.	5,500 acres lower watershed preserve; 780 acres upper watershed Laguna Creek Mitigation Bank; existing beetle habitat (elderberry) unquantified. Protection in private land and developed corridors unknown.	Good. Expect improving habitat but not yet restored. Former records largely outside of preserved or protected lands.	Habitat and subspecies surveys. Evaluation of threats and protection needs outside preserve in private areas. Habitat potential within preserved area.
15. Mokelumne-Bear Rivers	Factor A: limited urban development (Lockeford-Lodi, concentrated subdivision); moderate agriculture; riparian vegetation remaining somewhat wider and more intact/mature on most of the Mokelumne (but not at Lockeford); Bear riparian looked better than most tributaries on aerials, but Barr (1991) found no elderberry in riparian vegetation.	Approximately 197 acres of restoration. SHA: one enrollee for 300 acres with 12 elderberry shrubs, of 3,500 acres allowed in SHA.	Good. Persistence likely if beetle is present and either protections exist or absence of elevated threat in the future.	Habitat and subspecies surveys. Updated evaluation of threats and protection needs.
16. Stanislaus River	Factor A: agriculture and urban losses. Moderate-to-thin riparian vegetation remains but varies with location. Tributaries channelized and devegetated. Factor C: Argentine ants	Two elderberry planting sites (Mohler, McHenry). Partial failure at Mohler. Some parks may have other protections but not much is known.	Good. However, low occupancy. Persistence deemed probable based on elderberry abundance. Subspecies ID questionable near Goodwin.	Comprehensive habitat and subspecies surveys. Identify further restoration and protection measures as appropriate.

TABLE 2—LOCATIONS, THREATS, PROTECTIONS, AND SUMMARY SPECIES STATUS INFORMATION FOR THE VALLEY ELDERBERRY LONGHORN BEETLE IN THE NORTH CENTRAL AND SOUTH CENTRAL VALLEYS OF CALIFORNIA—Continued
[Acronyms are defined below] ¹

Locations ²	Site-specific threats (see below for pervasive threats under Factors C, D, and E that apply to all sites) ³	Protections and recovery actions	Prospectus for persistence with delisting	Study needs (to address uncertainties in species data, protections, threats, and hence prospectus for persistence)
17. Upper Stanislaus hills (vicinity above and between New Melones and Don Pedro Reservoirs, including Sullivan Creek).	Factor A: urban development/ranchette, especially around Sullivan Creek; some significant habitat loss, but similar unsurveyed landscape appears to remain unperturbed, scattered in hills.	None known	Average. Recent adult sightings (exit holes) suggests persistence probable due to terrain, limited road access, and distance from population center.	More thorough habitat and subspecies surveys to verify extent outside of development. Species ID (adult sighting not yet verified) especially since at elevation, may be unlisted California elderberry longhorn beetle species.
18. Calaveras River-Stockton Diverting Canal.	Factor A: agriculture, flood control (diversion channel, levee, maintenance activities); some adjacent urban use; but habitat still present to a variable extent (good to thin); corridor narrowed, significant portion sparse.	None known, but likely completely unprotected, mostly private.	Fair. Presence possible but questionable. Old records and lack of habitat survey. Linden area had records but vegetation looks thin now (denser upstream, thinner or absent downstream).	Habitat and subspecies surveys throughout. Threat evaluation and protection in private areas as warranted.
19. Tuolumne River	Factor A: extensive aggregate mining, urban development, and agriculture depending on location. Mostly narrow habitat remaining, with some areas of better quality.	Several floodway restorations include conservation easements; one (mining reach—7/11 segment) has 87 acres, 160 elderberry plants; other reaches unknown.	Fair (or better). Uncertainty due to old subspecies surveys. No current beetle habitat (elderberry) information. Presence and persistence questionable.	Habitat and subspecies surveys. Identify restoration and protection opportunities specific to beetle.
20. Merced River	Factor A: extensive aggregate mining, intensive agriculture, caused losses; narrow mainstem riparian; split channels channelized and devegetated.	None for beetle. Channel restoration on less than 5% of length; protections unknown.	Fair. Old subspecies surveys. No current beetle habitat (elderberry) information. Presence and persistence questionable.	Habitat and subspecies surveys. Identify restoration and protection opportunities.
21. Kings River	Factor C: Argentine ants Factor A: extensive agriculture, resulting in narrow riparian corridor downstream and near dam; wider in split channel area; sparse but unimpacted upstream. Subspecies may be extirpated (negative 2010 survey) for unknown reasons.	None known	Uncertain. Depends on remaining habitat quantity/quality, subspecies resurvey, or recolonization event. Some adult IDs in this location have been questioned.	Habitat and species surveys. Assess potential causes of loss of species occupancy. Identify remedial measures specific to cause(s).
22. Kaweah River	Factor A: development variable (limited above Isabella; extensive agriculture and significant urban below Isabella), resulting in sparse/narrow/intermittent riparian corridor downstream in split channels; partially channelized/largely devegetated.	Some sites protected as mitigation for impacts of Corps dam works; other protections unknown.	Fair. Likely declining with growth of Visalia or increase in agricultural intensity. Persistence and presence uncertain. ID not confirmed.	Habitat and subspecies surveys. Identify restoration and protection opportunities.
23. Tule River-Deer Creek	Factor A: encroachment by agriculture/urban development; trails/human use in corridor; flood control activities; narrow sparse riparian vegetation.	None known	Uncertain due to age/infrequency of surveys, limited habitat, absence of adults to confirm ID.	Evaluate human usage and identify management needs. Habitat and subspecies surveys. Identify enhancement and restoration opportunities.
24. Kern River (excluding Caliente Creek).	Factor C: Argentine ants Factor A: urban/suburban development; roads and trails; vegetation clearing and diversion downstream. Factor E: human use (trails)	None known	Fair (and declining). Narrow intermittent corridor of questionable quality includes some elderberry, but heavily impacted. Persistence and presence (including species ID) uncertain.	Habitat and subspecies surveys. Assess and identify restoration and protection opportunities that could enhance habitat.
25. Caliente Creek	Factor A: nearby roadway; some trails in a portion of riparian vegetation; sparse residential and ranching use; completely channelized and devegetated in Central Valley; portion in foothills has intermittent riparian vegetation, infrequent elderberry on creek, and on nearby upland and entering tributary.	None known	Unknown due to suspect/old record (exit hole condition; 1,000–2,400 foot elevation). No information before 1991. ID questioned.	Conduct more thorough habitat and subspecies surveys to verify extent of elderberry, exit holes in mainstem, and tributaries. Adult ID especially since at elevation may be unlisted California elderberry longhorn beetle species.

TABLE 2—LOCATIONS, THREATS, PROTECTIONS, AND SUMMARY SPECIES STATUS INFORMATION FOR THE VALLEY ELDERBERRY LONGHORN BEETLE IN THE NORTH CENTRAL AND SOUTH CENTRAL VALLEYS OF CALIFORNIA—Continued
[Acronyms are defined below]¹

Locations ²	Site-specific threats (see below for pervasive threats under Factors C, D, and E that apply to all sites) ³	Protections and recovery actions	Prospectus for persistence with delisting	Study needs (to address uncertainties in species data, protections, threats, and hence prospectus for persistence)
26. San Joaquin River	Factor A: intensive agriculture; some urban development (Fresno); flood control throughout; portion nearest to Friant has riparian corridor, but much of this system is completely devegetated.	Parkway from Millerton to Fresno; some protections but not necessarily for the beetle. Limited Central Valley Joint Venture riparian easements, mostly not elderberry. Some elderberry plantings on NWRs.	Fair (in best areas), otherwise mostly poor. Sparse elderberry, low occupancy. May improve with planting age or other nonbeetle-specific restoration.	Conduct further habitat and subspecies surveys. Assess restoration opportunities for elderberry, including the addition of elderberry to ongoing or proposed restorations.

¹ Table acronyms: ID—taxonomic identification of the subspecies, whether listed or common beetle; ETL—Corps Engineering Technical Letter; DWR—Department of Water Resources; SHA—Safe Harbor Agreement; NWR—National Wildlife Refuge; J and ring—structural levee alternatives, sometimes located away from a floodway or riparian zone, as such these alternatives could provide local flood protection to higher value urban areas (such as communities of Live Oak and Gridley west of the Feather River), and avoid the impacts and need for vegetative maintenance associated with improving the levee in its current location (also known as “in place” levee improvements).

² The locations presented in this table are based on available data that provide detailed information about valley elderberry longhorn beetle presence. Additional locations were not included in this table due to a lack of sufficient information that provides certainty on valley elderberry longhorn beetle presence (areas with extremely limited habitat, locations that are exclusively at higher elevation that abut with the range of the California elderberry longhorn beetle, a record of a single shrub, etc.).

³ Pervasive threats (all sites): Factor C—The specific threat of Argentine ant denotes those sites with documented presence; there has been inadequate or no sampling at other sites to make a determination. However, based on the widespread infestation of Argentine ant in nursery stock and lack of control, we believe this threat applies to all sites until shown otherwise; Factor D—The inadequacies of regulatory mechanisms, as described in the text, applies to a variable extent to all sites; Factor E—The specific threats noted are instances of human use noted in literature or aerial imagery; however, human use likely applies to portions of other sites. Additionally, as described in the text, Factor E includes other factors such as habitat fragmentation, small population size, and climate change that apply to all sites, and pesticide effects that applies to all sites with the possible exception of some foothill areas.

The potential for valley elderberry longhorn beetle persistence varies among the 26 locations and especially between the north and south Central Valley. The following paragraphs provide a summary rangewide evaluation of the beetle and its habitat based on the five-factor analysis presented above.

Summary—North Central Valley

The north Central Valley has seven major locations, or portions thereof, where the beetle's persistence in the foreseeable future is likely due to a combination of: (1) Low threats and adequate protection measures; and (2) multiple and recent records, some with confirmation of adult beetles (Sacramento River north of Colusa, the lower American, Feather, and Bear Rivers, and Big Chico, Cache, and Putah Creeks). The protection measures include an array of existing and initially restored beetle habitat, and many have a wide or relatively unchanged riparian vegetation corridor with limited adjacent land-use, suggesting development or agriculture-related threats to these locations are reduced. Two additional locations in the north Central Valley were also deemed likely to persist, although both are smaller, and there is more uncertainty with respect to presence and threat due to the age of records, recent development, or uncertainties about threats and the need for protections (Butte Creek, Ulatis-Green Valley Creeks).

Even in these north Central Valley locations where valley elderberry

longhorn beetle persistence is most likely, the extent of elderberry shrubs has not yet been fully quantified nor consistently monitored. Threats, and the likelihood of valley elderberry longhorn beetle persistence, vary markedly along the Sacramento River. Threats are minimal and beetle persistence is considered at least average north of Colusa to Redding, where there is protected habitat on refuge lands and reports of beetle occupation (River Partners 2004a). Threats are increased and beetle persistence is considered fair to poor on the Sacramento River south of Colusa to its Delta confluence; most of this area has no woody vegetation of any kind due to extensive rock bank protection. As shown by confirmed adult male specimens (Table 1, location 1.e), a remnant population of the beetle persisted on the Sacramento River near West Sacramento until recently, when the remaining habitat was lost at the expense of recent flood control improvements. With the possible exceptions of the lower American River, the best known location of the beetle, every other location (including portions of locations in which we have deemed the beetle likely to persist) in the valley proper (the valley floor of the Sacramento and San Joaquin Valleys combined) has a major section lacking riparian vegetation that almost certainly does not support the beetle due to complete absence of habitat in that section (Table 2).

Finally, there are no systems in the north Central Valley that are completely free of threats. In the American River

and Putah Creek, for example, there are no, or limited, threats associated with development and agriculture; however, these areas continue to be subject to human use threats. There are management plans for the American River and Putah Creek locations (systems) that appear to be protected in their current ownership; however, the legal assurances for this protection and funding for implementation in perpetuity are unknown. Virtually all major rivers and tributaries in the Central Valley (both north and south) are subject to some level of effect from flood control operations and vegetative maintenance that affects or suppresses riparian vegetation (and associated beetle habitat if present), although this effect varies among locations and reaches within a location.

Summary—South Central Valley

In the south Central Valley, the locations considered to have a good or average potential for persistence of valley elderberry beetle populations are those immediately south of Sacramento to about Stanislaus County (Cosumnes-Laguna-Dry Creeks, Mokelumne-Bear Rivers, lower Stanislaus River, Upper Stanislaus hills). However, the protections of existing riparian vegetation (including beetle habitat) are not well known for many of these riparian corridors. The Cosumnes River Preserve mentioned elsewhere in this rule covers only a portion of the Cosumnes River (perhaps 20 percent of its length), yet beetle records and habitat are largely outside the Preserve. Much

of the apparently intact riparian vegetation the Service has identified on aerial photos along the Cosumnes, Mokelumne, and Stanislaus Rivers is of unknown ownership (public or private) and protective status. Additionally, the actual extent of elderberry shrubs and beetle occupancy has not, to our knowledge, been determined. Records of the beetle are known in each of these locations since listing, but are infrequent (5 to 6 occurrence years in the 30 years since listing; see Table 1). Even less is known about the beetle on the Calaveras River, where records (including an adult) were known from isolated habitat in largely devegetated portions of the river near Linden.

None of the other locations in the south Central Valley appear to have a good likelihood of beetle persistence (Table 2). This is because of the age of records, in combination with:

(1) Significant habitat loss (such as Kaweah, Merced, Tule, and Kern Rivers) since listing;

(2) Recent negative surveys (such as Kings River—Holyoak and Graves 2010, p. 8; San Joaquin River reaches 1B through 6—Kucera *et al.* 2006, p. 9 and River Partners 2007, p. 10);

(3) Low occupancy (Stanislaus River; Holyoak and Graves 2010 p. 7, River Partners 2007, p. 10);

(4) Absence of recent information (Calaveras River; exit hole last seen in 2000; adult in 1984) since listing;

(5) Limited overall riparian vegetation (most locations, especially lower rivers, which tend to be devoid of any woody vegetation); or

(6) Lack of protections or habitat quantification (most sites, except for San Luis NWR) (for additional location-specific rationales, see Table 2). Where there is habitat—often in higher elevations—there is a lack of positive subspecies identification via sightings of adult male specimens where the two subspecies likely overlap (higher elevation sites, such as Caliente Creek, upper American River vicinity, Kaweah River upstream of Lake Isabella). Even for the Stanislaus Hills location, which is a location that we presume the beetle persists, we have not been able to verify the identity of the adult sighting for this proposed rule.

According to Table 2, a prospectus for persistence that is considered poor, fair, average, or good (as compared to best) does not mean that the valley elderberry longhorn beetle is likely to be extirpated from the south Central Valley without continued protections of the Act. In those instances, a lower than best prospectus is usually due to the diminished condition of the riparian corridor, higher magnitude of threat,

lack of known protections, and lack of recent habitat or species information. Overall, there is not a significant difference in the prospects for persistence from north to south, with 88 percent of locations in the north having the prospect of fair, average, good, or best, and 77 percent of locations in the south habitat a prospect of fair, average, or good.

As a whole, the south Central Valley (as compared to the north Central Valley) exhibits reduced valley elderberry longhorn beetle presence, density, and quality of riparian vegetation on major rivers and tributaries, and largely channelized and devegetated tributaries, particularly on the valley floor. These characteristics may at least partially explain why the beetle occurrences are rarer in the south as compared to the northern portion of its range.

Accordingly, we believe the valley elderberry longhorn beetle populations in most areas in the south Central Valley are likely to be small and subject to occasional episodes of extirpation. Whether or not recolonization occurs would depend on proximity to other beetle populations within dispersal distance, which would be those in foothill habitats above and between the major reservoirs. Due to the lack of adult male specimens (or verification where such records exist) from these foothill areas, it is not known whether these foothill populations are the federally threatened valley elderberry longhorn beetle or the more common California elderberry longhorn beetle. However, the valley elderberry longhorn beetle's long-term persistence in the south Central Valley depends not only on recolonization from the nearest beetle population within dispersal distance, but also on the presence of habitat and protection of habitat from threats. In general, the amount of riparian vegetation and associated beetle habitat in the south Central Valley, particularly the valley floor, is much more limited than in the north, and habitat protections are largely unknown for most known beetle locations (Table 2).

Rangewide Discussion

Rangewide, we believe that valley elderberry beetle populations at 13 locations (or portions of these locations) have an average or better likelihood of persistence after delisting (9 in the Sacramento Valley; 4 in the San Joaquin Valley). The remaining 13 populations (4 in the Sacramento Valley; 9 in the San Joaquin Valley) are less likely to persist (deemed fair-to-poor, some currently declining, with many of questionable current existence due to

age of records, elevation and absence of confirming adult specimens, or apparent complete loss of habitat; see Table 2). Some of the locations in both the Sacramento and San Joaquin Valleys, where persistence is deemed likely in portions of the location (such as Sacramento River, Redding to Colusa), also have been determined to have major sections where persistence is unlikely due to habitat loss since listing or last observation of the beetle (such as Sacramento River, Colusa to American River and south to Delta; see Table 2 for other examples).

The uncertainties identified in this analysis can only be resolved through additional study. Valley elderberry longhorn beetle occurrence data (based on the CNDDDB data available) have some amount uncertainty due to:

(1) The difficulty in verifying the species (because it spends most of its life *inside* elderberry stems, identification is mostly by finding exit holes, which can be misidentified);

(2) The age of records (largely 1991 and earlier) and limited current and frequent surveys;

(3) The fact that some records that were based on exit holes occurred at higher elevations, which—in the absence of adult specimens—could also be the unlisted subspecies;

(4) The complete loss of elderberry shrubs from some of the 26 locations during the period since observations were recorded;

(5) In some of the 26 locations during the period since observations were made, more recent surveys did not find the beetle where elderberries still persist; and

(6) Detection is limited at locations with low or naturally low beetle population sizes. More data, over a longer time period, would improve our confidence in persistence determinations for locations with small population sizes.

Similarly, there is uncertainty as to the effectiveness of recent restoration efforts. Although approximately 21,536 ac (8,715 ha) of riparian vegetation have been protected through purchase or conservation easement, the proportion of this protected habitat that consists of elderberry shrubs, or would support elderberry, is unclear (i.e., beyond the 4,000 ac (1,619 ha) of existing plantings). Similarly, we still lack comprehensive information on the general effectiveness of habitat restoration and protection efforts, especially since the existing elderberry plantings are relatively recent and much is unoccupied. Even where plantings have resulted in beetle occupation, the rate of occupation varies (less than 0.1

percent to 7.9 percent of shrubs with exit holes; River Partners 2004a, pp. 2–3). The ability of these areas to support long-term populations of the beetle has yet to be established, largely because the restorations are still too young (at most 13 years old), and survey efforts too infrequent (1–2 times) to make a determination of long-term persistence or stability.

There is also uncertainty as it relates to the actual amount of riparian vegetation (or other upland vegetation type) within the valley elderberry longhorn beetle's range that can support elderberry and, potentially, the beetle. As presented above, only a portion of protected land is riparian, and only some supports (or has characteristics to support) elderberry. Central Valley-wide, about 1 million ac (404,686 ha) of riparian vegetation have been lost since the turn of the century, and about 132,000 ac (53,418 ha) of that has been relatively recent (since 1960) (Geographic Information Center 2003). Based on our evaluation of available information for this analysis, we determined that of the approximately 132,000 ac (53,418 ha) of riparian vegetation left, a small portion of which is protected (21,536 ac (8,715 ha)), and a subset of this amount is actually elderberry (at most 5,000 to 7,000 ac (2,023 to 2,833 ha), but likely less). Admittedly, elderberries do occur outside of true riparian vegetation, and both riparian and nonriparian vegetation may support the beetle in its range outside the Central Valley proper. However, the extent of the beetle in these other areas (i.e., uplands in the Central Valley, foothills outside the Central Valley) would require more study involving adult male collection and identification to resolve with certainty. Even if there were significant numbers of elderberry shrubs outside of riparian systems, the extent to which these are used by beetle compared to riparian systems, and the extent to which these would offset shrub losses within riparian areas, has not been ascertained. Since listing, the rate of loss of riparian vegetation has slowed compared to historical times.

Most valley elderberry longhorn beetle habitat, occurrences, and locations are outside of the 21,536 ac (8,715 ha) of protected habitat, and have no (or no known) protections. The restoration efforts and protected habitat are largely concentrated on refuge lands, which are a minority of the current range of the valley elderberry longhorn beetle. Of the 23 beetle locations discovered since listing, 12 include habitat that is unprotected or whose protections are unknown. Resolving the

uncertainties of the extent of threats and protections may be useful in identifying locations where additional protective measures would most benefit the beetle. Notwithstanding these uncertainties, it is clear that protections appear to be greatest in the north Central Valley where more occurrences are known.

Of the 26 known locations, four include a significant component of well-protected lands with known beetle habitat mainly as State or Federal wildlife areas, and portions of six others contain some well-protected lands. All or portions of seven locations are managed for open space or natural values, or are partially on city parks or Forest Service lands where the particular threat of habitat loss is reduced, but other threats from human use remain. All or portions of seven other locations throughout the Central Valley include private lands where (despite lack of formal protections) threats are presently reduced due to their remote or rural nature associated with topography, which limits the more pervasive threats of agricultural and urban development, or are currently the subject of a safe harbor agreement. The majority of locations contain some lands without protections, some of which are private or designated as floodways that could experience activities that affect beetle habitat. These unprotected locations encompass most of the range of the subspecies including riparian zones in major drainages. Therefore, we conclude that agricultural and urban development, levees, and flood control protection remain as threats to the valley elderberry longhorn beetle in relation to the present or threatened destruction, modification, or curtailment of its habitat or range, both currently and in the future (Factor A). However, these habitat-based threats are not considered significant when taken within the context of the increased number of beetle occurrences known today as compared to the time of listing.

We have found nothing to indicate that the valley elderberry longhorn beetle is threatened by overutilization, for any purpose (Factor B).

While the valley elderberry longhorn beetle may be preyed on by Argentine ants (Factor C), and there is some evidence to indicate that a negative association between presence of the beetle and presence of the ant at some local sites may be related to ant density, the beetle has persisted alongside the ant in larger areas, such as Putah Creek and the American River Parkway, for over 10 years. As there have been no dense concentrations of the ants reported, predation is not believed to be a significant threat.

In the absence of protection under the Act, the regulatory and other legal mechanisms protecting the valley elderberry longhorn beetle from habitat loss would be minimal, except in areas such as conservation easements, mitigation banks, and National Wildlife Refuges specifically managed for the protection of the beetle (Factor D). Riparian vegetation restoration on private lands is implemented under a variety of State and Federal programs. While we would not expect a delisting of the beetle to affect the amount of riparian vegetation restored under these programs. If the beetle were delisted, we anticipate future losses of beetle habitat due to loss of regulatory protection under the Act, especially under sections 7 and 10, but that loss may be offset to a small degree by an increased private landowner willingness to include elderberries in riparian vegetation restoration on their lands. However, removal of the protections of the Act could result in increased losses where the protective provisions of the Act serve to deter habitat modification or destruction on otherwise unprotected private lands. Based on the best available data, we believe it is possible that habitat losses of this type may increase if the subspecies were delisted; thus, there may need to be a commensurate increase in restoration and conservation efforts beyond the State and Federal programs mentioned above to offset this anticipated increased loss. We do not consider the inadequacy of existing regulatory mechanisms to be a threat currently nor in the future for the areas providing protection for the beetle and its habitat (such as portions of locations along the Sacramento River between Red Bluff-Chico and Chico-Colusa, the Feather River, and the Cosumnes-Laguna-Dry Creeks locations). For areas within the beetle's range where protections are less, the prospectus for persistence is considered poor at one location (the Colusa-American River confluence of the Sacramento River), uncertain at four locations (Yuba River in the north Central Valley and the Kings River, Tule River-Deer Creek, and Caliente Creek in the south Central Valley), and fair, average, good or best at all remaining locations (Table 2).

The valley elderberry longhorn beetle has been reported from locations adjacent to agriculture where pesticide application may occur. Pesticides are rarely applied directly to riparian vegetation or, if they are used within riparian vegetation, are believed to be normally applied in a highly controlled manner to target species. This reduces

some of the potential exposure of the beetle to pesticides. Because of the proximity of beetle habitat to agriculture, the potential for pesticide exposure through drift remains and has been noted in association with a number of occurrences of the beetle. However, the relationship of persistence or occurrence of the beetle to adjacency of farmed lands that utilize pesticides has not been thoroughly examined (Factor E).

Climate change might affect the valley elderberry longhorn beetle through habitat effects (i.e., potential changes in temperature and precipitation patterns that could affect elderberry growth; Factor A), or other direct and indirect impacts to the subspecies, such as shifts in the timing of elderberry flowering relative to beetle emergence, or affects to the relationship of the listed and common beetle subspecies in some other way. We are not aware of information that would allow us to make a meaningful prediction about the extent of threats related to climate change (Factors A and E).

Some valley elderberry longhorn beetle occurrences reside at least partially on publicly accessible areas that are subject to intended and unintended human uses, the impacts of which could result in incremental losses or reduction in the amount or quality of beetle habitat. Our evaluation suggests that this type of loss continues among the most important locations of the beetle such as the lower American River, Putah Creek, and other locations. However, available information indicates losses would likely not be frequent; thus, significant losses resulting from human use (including trails, cutting, pruning, and fire) in occupied locations of the beetle are not expected (Factor E).

The best available information suggests that many local beetle populations are isolated from others by distances of greater than the estimated 25 mi (40 km) dispersal distance needed for recolonization. Based on review of occurrence records compared to aerial imagery and other documentation, loss of populations due to fragmentation, and small population size as a result of potential threats to the subspecies, we anticipate these impacts may continue in the foreseeable future (Factor E), although they are not considered significant when taken within the context of the increased number of beetle occurrences known today as compared to the time of listing.

In this proposed rule, we have carefully assessed the best scientific and commercial data available regarding the past, present, and future threats faced by

the valley elderberry longhorn beetle, and conclude that the Act's threatened designation no longer correctly reflects the current status of this subspecies. While there are minimal surveys to comprehensively evaluate current presence or population trends over time, we believe the available data are sufficient to conclude that the beetle persists in several additional major locations that were not known at the time of listing, including some locations where habitat restoration and protection has taken place (i.e., Sacramento River, Feather River, and some adjacent tributaries). Records since listing show the beetle may currently occupy most of the 26 locations identified and continues to persist in these locations, as is expected for some period of time into the future.

This accumulation of records over the past 30 years establishes that the beetle's range is larger than was known at the time of listing, albeit patchily distributed in small populations. However, our listing anticipated the finding of additional populations in its determination of the threatened status (Service 1980, p. 52804) and identified these suspected locations in our Recovery Plan (Service 1984, pp. 32–34). Specifically, there are 26 locations that have been documented to have been occupied since the subspecies was listed compared to 3 locations known at the time of listing. These 26 locations occur throughout the Central Valley, compared to the 3 locations known only from the lower American River, Putah Creek, and the Merced River (Talley *et al.* 2006a, p. 23; Service 2006a, p. 5; CNDDDB 2010, pp. 1–202).

Notwithstanding data uncertainties and the absence of protections or enhancements at many locations, we believe sufficient habitat will remain within this range into the foreseeable future and the subspecies no longer meets the definition of endangered or threatened under the Act. Additionally, we believe the beetle will continue to persist based on: (1) The increase in number of beetle occurrence records; (2) increase in number of locations the beetle is found, including over a larger range than what was known at the time of listing; (3) past and ongoing riparian vegetation restoration; and (4) the persistence of elderberry shrubs in these restored areas, as well as a variety of public lands managed for natural values as open space.

Significant Portion of Its Range

The Act defines “endangered species” as any species which is “in danger of extinction throughout all or a significant portion of its range,” and “threatened

species” as any species which is “likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range.” The definition of “species” is also relevant to this discussion. The Act defines “species” as follows: “The term ‘species’ includes any subspecies of fish or wildlife or plants, and any distinct population segment [DPS] of any species of vertebrate fish or wildlife which interbreeds when mature.” The phrase “significant portion of its range” (SPR) is not defined by the statute, and we have never addressed in our regulations: (1) The consequences of a determination that a species is either endangered or likely to become so throughout a significant portion of its range, but not throughout all of its range; or (2) what qualifies a portion of a range as “significant.”

Two recent district court decisions have addressed whether the SPR language allows the Service to list or protect less than all members of a defined “species”: *Defenders of Wildlife v. Salazar*, 729 F. Supp. 2d 1207 (D. Mont. 2010), concerning the Service's delisting of the Northern Rocky Mountain gray wolf (74 FR 15123, April 2, 2009); and *WildEarth Guardians v. Salazar*, 2010 U.S. Dist. LEXIS 105253 (D. Ariz. Sept. 30, 2010), concerning the Service's 2008 finding on a petition to list the Gunnison's prairie dog (73 FR 6660, February 5, 2008). The Service had asserted in both of these determinations that it had authority, in effect, to protect only some members of a “species,” as defined by the Act (i.e., species, subspecies, or DPS), under the Act. Both courts ruled that the determinations were arbitrary and capricious on the grounds that this approach violated the plain and unambiguous language of the Act. The courts concluded that reading the SPR language to allow protecting only a portion of a species' range is inconsistent with the Act's definition of “species.” The courts concluded that once a determination is made that a species (i.e., species, subspecies, or DPS) meets the definition of “endangered species” or “threatened species,” it must be placed on the list in its entirety and the Act's protections applied consistently to all members of that species (subject to modification of protections through special rules under sections 4(d) and 10(j) of the Act).

Consistent with that interpretation, and for the purposes of this finding, we interpret the phrase “significant portion of its range” in the Act's definitions of “endangered species” and “threatened species” to provide an independent basis for listing; thus there are two

situations (or factual bases) under which a species would qualify for listing: a species may be endangered or threatened throughout all of its range; or a species may be endangered or threatened in only a significant portion of its range. If a species is in danger of extinction throughout an SPR, it, the species, is an “endangered species.” The same analysis applies to “threatened species.” Based on this interpretation and supported by existing case law, the consequence of finding that a species is endangered or threatened in only a significant portion of its range is that the entire species will be listed as endangered or threatened, respectively, and the Act’s protections will be applied across the species’ entire range.

We conclude, for the purposes of this finding, that interpreting the SPR phrase as providing an independent basis for listing is the best interpretation of the Act because it is consistent with the purposes and the plain meaning of the key definitions of the Act; it does not conflict with established past agency practice (i.e., prior to the 2007 Solicitor’s Opinion), as no consistent, long-term agency practice has been established; and it is consistent with the judicial opinions that have most closely examined this issue. Having concluded that the phrase “significant portion of its range” provides an independent basis for listing and protecting the entire species, we next turn to the meaning of “significant” to determine the threshold for when such an independent basis for listing exists.

Although there are potentially many ways to determine whether a portion of a species’ range is “significant,” we conclude, for the purposes of this finding, that the significance of the portion of the range should be determined based on its biological contribution to the conservation of the species. For this reason, we describe the threshold for “significant” in terms of an increase in the risk of extinction for the species. We conclude that a biologically based definition of “significant” best conforms to the purposes of the Act, is consistent with judicial interpretations, and best ensures species’ conservation. Thus, for the purposes of this finding, and as explained further below, a portion of the range of a species is “significant” if its contribution to the viability of the species is so important that without that portion, the species would be in danger of extinction.

We evaluate biological significance based on the principles of conservation biology using the concepts of redundancy, resiliency, and

representation. *Resiliency* describes the characteristics of a species and its habitat that allow it to recover from periodic disturbance. *Redundancy* (having multiple populations distributed across the landscape) may be needed to provide a margin of safety for the species to withstand catastrophic events. *Representation* (the range of variation found in a species) ensures that the species’ adaptive capabilities are conserved. Redundancy, resiliency, and representation are not independent of each other, and some characteristic of a species or area may contribute to all three. For example, distribution across a wide variety of habitat types is an indicator of representation, but it may also indicate a broad geographic distribution contributing to redundancy (decreasing the chance that any one event affects the entire species), and the likelihood that some habitat types are less susceptible to certain threats, contributing to resiliency (the ability of the species to recover from disturbance). None of these concepts is intended to be mutually exclusive, and a portion of a species’ range may be determined to be “significant” due to its contributions under any one or more of these concepts.

For the purposes of this finding, we determine if a portion’s biological contribution is so important that the portion qualifies as “significant” by asking whether *without that portion*, the representation, redundancy, or resiliency of the species would be so impaired that the species would have an increased vulnerability to threats to the point that the overall species would be in danger of extinction (i.e., would be “endangered”). Conversely, we would not consider the portion of the range at issue to be “significant” if there is sufficient resiliency, redundancy, and representation elsewhere in the species’ range that the species would not be in danger of extinction throughout its range if the population in that portion of the range in question became extirpated (extinct locally).

We recognize that this definition of “significant” (a portion of the range of a species is “significant” if its contribution to the viability of the species is so important that without that portion, the species would be in danger of extinction) establishes a threshold that is relatively high. On the one hand, given that the consequences of finding a species to be endangered or threatened in an SPR would be listing the species throughout its entire range, it is important to use a threshold for “significant” that is robust. It would not be meaningful or appropriate to establish a very low threshold whereby

a portion of the range can be considered “significant” even if only a negligible increase in extinction risk would result from its loss. Because nearly any portion of a species’ range can be said to contribute some increment to a species’ viability, use of such a low threshold would require us to impose restrictions and expend conservation resources disproportionately to conservation benefit: listing would be rangewide, even if only a portion of the range of minor conservation importance to the species is imperiled. On the other hand, it would be inappropriate to establish a threshold for “significant” that is too high. This would be the case if the standard were, for example, that a portion of the range can be considered “significant” only if threats in that portion result in the entire species’ being currently endangered or threatened. Such a high bar would not give the SPR phrase independent meaning, as the Ninth Circuit held in *Defenders of Wildlife v. Norton*, 258 F.3d 1136 (9th Cir. 2001).

The definition of “significant” used in this finding carefully balances these concerns. By setting a relatively high threshold, we minimize the degree to which restrictions will be imposed or resources expended that do not contribute substantially to species conservation. But we have not set the threshold so high that the phrase “in a significant portion of its range” loses independent meaning. Specifically, we have not set the threshold as high as it was under the interpretation presented by the Service in the *Defenders* litigation. Under that interpretation, the portion of the range would have to be so important that current imperilment there would mean that the species would be *currently* imperiled everywhere. Under the definition of “significant” used in this finding, the portion of the range need not rise to such an exceptionally high level of biological significance. (We recognize that if the species is imperiled in a portion that rises to that level of biological significance, then we should conclude that the species is in fact imperiled throughout all of its range, and that we would not need to rely on the SPR language for such a listing.) Rather, under this interpretation we ask whether the species would be endangered everywhere without that portion, *i.e.*, if that portion were completely extirpated. In other words, the portion of the range need not be so important that even the species being in danger of extinction in that portion would be sufficient to cause the species in the remainder of the range to be

endangered; rather, the *complete extirpation* (in a hypothetical future) of the species in that portion would be required to cause the species in the remainder of the range to be endangered.

The range of a species can theoretically be divided into portions in an infinite number of ways. However, there is no purpose to analyzing portions of the range that have no reasonable potential to be significant or to analyzing portions of the range in which there is no reasonable potential for the species to be endangered or threatened. To identify only those portions that warrant further consideration, we determine whether there is substantial information indicating that: (1) The portions may be "significant," and (2) the species may be in danger of extinction there or likely to become so within the foreseeable future. Depending on the biology of the species, its range, and the threats it faces, it might be more efficient for us to address the significance question first or the status question first. Thus, if we determine that a portion of the range is not "significant," we do not need to determine whether the species is endangered or threatened there; if we determine that the species is not endangered or threatened in a portion of its range, we do not need to determine if that portion is "significant." In practice, a key part of the determination that a species is in danger of extinction in a significant portion of its range is whether the threats are geographically concentrated in some way. If the threats to the species are essentially uniform throughout its range, no portion is likely to warrant further consideration. Moreover, if any concentration of threats to the species occurs only in portions of the species' range that clearly would not meet the biologically based definition of "significant," such portions will not warrant further consideration.

We consider the "range" of the valley elderberry longhorn beetle to be the Central Valley of California, from Shasta to Kern Counties. Because the beetle is dependent on the presence of elderberry shrubs, we consider suitable habitat within the range to be those areas currently supporting elderberry. We consider potentially suitable habitat within the range to be those areas likely to support elderberry shrubs within the foreseeable future. We base this on restoration or protection efforts for riparian vegetation, or on plans for future elderberry restoration efforts.

The valley elderberry longhorn beetle's range can naturally be divided into the Sacramento Valley to the north,

and the San Joaquin Valley to the south. In Table 2, we conducted a spatial evaluation of the level of threat and extent of protective measures at each of the 30 locations where the beetle is known to occur (which include 5 separate locales along the Sacramento River that when combined result in a total of 26 beetle locations) in order to determine if any portion of the range were at risk of local extinction. Based on this assessment, there does not appear to be a significant concentration of threats in any portion of the species range. Of the 30 locations, 17 locations occur in the north Central Valley, and 15 of those (88 percent) have a fair, average, good, or best likelihood of persistence. Thirteen locations occur in the south Central Valley, and 10 of those (77 percent) have a fair, average, or good likelihood of persistence. One location in the north Central Valley has a poor likelihood of persistence, and four locations (three in the south Central Valley) are uncertain due to the age of surveys, infrequency of surveys, limited habitat, or absence of adult beetles to confirm identification. Because high percentages of beetle locations in both the north and south Central Valleys have a fair, average, or good likelihood of persistence, this suggests no specific concentration of threats occur in the south Central Valley, nor within any given area within the range of the subspecies. Therefore, we conclude that no portion of the beetle's range is impacted to the extent that it warrants an analysis of its biological significance to the subspecies.

It is our conclusion, based on our evaluation of current and future threats to beetle in the north Central Valley and south Central Valley locations (see Summary of Factors Affecting the Species section and Table 2), that the subspecies no longer meets the definition of endangered or threatened under the Act. Our estimates of the persistence of the beetle in those locations (Table 2) confirm that while a variety of threats affect the beetle in all or parts of its range, it nevertheless is likely to persist throughout its range.

Summary of Finding

According to 50 CFR 424.11(d), a species may be delisted if the best scientific and commercial data available substantiate that the species is neither endangered nor threatened because of: (1) Extinction, (2) recovery, or (3) error in the original data for classification of the species. We consider "recovery" to apply to the valley elderberry longhorn beetle because habitat protection and restoration efforts in some areas provide assurance that the subspecies and its

habitat will continue to persist throughout its range, and additional discoveries of previously unknown beetle populations reduce the overall threat of extinction.

Based on our re-evaluation of the existing or potential threats to the valley elderberry longhorn beetle alone or in combination, we considered:

(1) The number and geographic range of additional locations throughout the Central Valley identified since the time of listing; and

(2) The amount of riparian vegetation restored and protected under numerous programs since the time of listing, again most particularly in the Sacramento Valley.

Based on these factors, we find the valley elderberry longhorn beetle no longer meets the Act's definition of a threatened (or endangered) species. Accordingly, we propose to remove it from the List of Endangered and Threatened Wildlife.

Effects of This Rule

This rule, if made final, would revise 50 CFR 17.11(h) to remove the valley elderberry longhorn beetle from the List of Endangered and Threatened Wildlife, and would also revise 50 CFR 17.95(i) to remove designated critical habitat for the beetle. The prohibitions and conservation measures provided by the Act, particularly section 7 and section 9, would no longer apply to the valley elderberry longhorn beetle. Removal of the valley elderberry longhorn beetle from the List of Endangered and Threatened Wildlife would not supersede any State regulations.

Post-Delisting Monitoring

Section 4(g)(1) of the Act requires the Secretary of the Interior, in cooperation with the States, to implement a system to monitor for not less than 5 years the status of all species that have recovered and been delisted. The purpose of this post-delisting monitoring (PDM) is to verify that a species delisted due to recovery remains secure from risk of extinction after it no longer has the protections of the Act. We are to make prompt use of the emergency listing authorities under section 4(b)(7) of the Act to prevent a significant risk to the well-being of any recovered species. Section 4(g) of the Act explicitly requires us to cooperate with the States in development and implementation of PDM programs, but we remain responsible for compliance with section 4(g) and, therefore, must remain actively engaged in all phases of PDM. We also seek active participation of other entities that are expected to assume

responsibilities for the species' conservation, post-delisting.

Post-Delisting Monitoring Plan Overview

The valley elderberry longhorn beetle's draft PDM plan, required under section 4 of the Act, is designed to monitor the threats to the valley elderberry longhorn beetle by detecting changes in its status and habitat throughout its known range. The draft PDM plan is available for public comment concurrent with publication of this proposed rule in the **Federal Register**. The primary goal of the final PDM Plan is to monitor the species to ensure that any substantial decline in the species occurrences or any increases in threats are detected, and to take measures to halt either so that re-proposing it as a threatened or endangered species is not needed. Both this proposed rule and the draft PDM Plan acknowledge the lack of information available in certain areas (biological and geographical) for this subspecies. Regardless, we are moving forward with a proposed delisting rule for the beetle because we believe sufficient habitat will remain within this range into the foreseeable future and the subspecies no longer meets the definition of endangered or threatened under the Act. Additionally, we believe the beetle will continue to persist based on: (1) The increase in number of beetle occurrence records; (2) increase in number of locations the beetle is found, including over a larger range than what was known at the time of listing; (3) past and ongoing riparian vegetation restoration; and (4) the persistence of elderberry shrubs in these restored areas, as well as a variety of public lands managed for natural values as open space (see the Rangewide Discussion under the Finding section above).

The draft PDM Plan provides information on the goals, duration, implementation, methods, and reporting schedule for monitoring the valley elderberry longhorn beetle. If the final determination is to delist the subspecies, upon publication of a final delisting rule, the Service will convene a Science Panel (see section 4.7 in the Draft PDM Plan) to help develop a detailed monitoring plan, which includes site-specific monitoring plans for each monitoring site established throughout the subspecies' range. This detailed monitoring plan will be developed based on site-specific parameters, including a standardized monitoring protocol. Additionally, there will be recognition of an adaptive management concept in the detailed

monitoring plan that outlines how we may potentially revise the monitoring protocols based on new information received. The draft PDM Plan provides direction for the following measures to be implemented for a minimum of 10 years following delisting:

(1) Identifying thresholds that trigger an extension of monitoring, adaptive management changes at protected sites, or a status review.

(2) Continued monitoring of currently known occurrences, and conducting additional surveys to identify occurrences in new locations.

(3) Refining the population and habitat baseline published at time of delisting against which subsequent increases or decreases in occurrences can be compared.

(4) Determining overall and rangewide trends over 10 years of monitoring (with at least 3 of those years consisting of normal rainfall and air temperatures, specifically including trends regarding persistence of the beetle within watersheds and within protected areas such as conservation banks, select established mitigation sites, CDFG Wildlife Areas, the Sacramento NWR, and the San Joaquin River NWR.

(5) Conducting studies to determine the continued amount (such as number of habitat acres or number of individual plants) and effectiveness of restoration efforts after delisting.

(6) Developing an adaptive management strategy.

(7) Creating a science panel to address issues that arise throughout the PDM process.

Examples of specific monitoring objectives or activities described in the draft PDM Plan that address threats discussed in this proposed delisting rule include:

(1) Collecting data variables that will indicate the abundance of suitable beetle habitat potentially available and occupied by the beetle (Factor A);

(2) Counting the number and condition of elderberry shrubs to determine the overall quality of the host plant for the beetle (Factor A);

(3) Monitoring management efforts by land owners to maximize efficiency of overall expenditures and help the Service, science experts, and cooperating partners reprioritize management efforts (Factors A, C, D, and E);

(4) Sampling potential presence of Argentine ants and European earwigs to determine potential site-specific impacts or an increase in magnitude of this potential threat (Factor C);

(5) Monitoring at known locations in addition to monitoring attempts to

locate new occurrences, particularly for expanding our knowledge of the subspecies in the southern portion of its range (Factor E);

(6) Determining effectiveness of riparian enhancement and restoration projects (Factor A); and

(7) Collecting data on potential threats, such as implementation or changes in agriculture or other land uses adjacent to the monitoring sites, signs of levee maintenance, changes or impacts from construction or use of roads and trails, fire and fire control, vegetation clearing or control, and herbicide use (Factors A, C, D, and E).

The loss of a valley elderberry longhorn beetle occurrence or location could be an indication of a problem. Therefore, if a beetle location or an important area (such as a large block of beetle habitat) is lost, the potential causes will be investigated and remedial action taken as outlined in the draft PDM Plan. The PDM Plan would accomplish the objectives through cooperation with the appropriate Federal, State, and local agencies; private partners; and species experts, thus fulfilling the goal to prevent the species from needing Federal protection once again, per the Act. We seek public and peer reviewer comments regarding the draft PDM Plan, including its objectives and procedures (see Public Comments section above).

Required Determinations

Regulatory Planning and Review (Executive Orders 12866 and 13563)

Executive Order 12866 provides that the Office of Information and Regulatory Affairs (OIRA) will review all significant rules. The Office of Information and Regulatory Affairs has determined that this rule is not significant.

Executive Order 13563 reaffirms the principles of E.O. 12866 while calling for improvements in the nation's regulatory system to promote predictability, to reduce uncertainty, and to use the best, most innovative, and least burdensome tools for achieving regulatory ends. The executive order directs agencies to consider regulatory approaches that reduce burdens and maintain flexibility and freedom of choice for the public where these approaches are relevant, feasible, and consistent with regulatory objectives. E.O. 13563 emphasizes further that regulations must be based on the best available science and that the rulemaking process must allow for public participation and an open exchange of ideas. We have developed this rule in a manner consistent with these requirements.

Paperwork Reduction Act

The OMB regulations at 5 CFR 1320 implement provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*). The OMB regulations at 5 CFR 1320.3(c) define a collection of information as the obtaining of information by or for an agency by means of identical questions posed to, or identical reporting, recordkeeping, or disclosure requirements imposed on, 10 or more persons. Furthermore, 5 CFR 1320.3(c)(4) specifies that “ten or more persons” refers to the persons to whom a collection of information is addressed by the agency within any 12-month period. For purposes of this definition, employees of the Federal Government are not included. We may not conduct or sponsor and you are not required to respond to, a collection of information unless it displays a currently valid OMB control number.

This proposed 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

We have determined that environmental assessments and environmental impact statements, as defined under the authority of the National Environmental Policy Act of

1969, need not be prepared in connection with regulations adopted pursuant to section 4(a) of the Endangered Species Act. We published a notice outlining our reasons for this determination in the **Federal Register** on October 25, 1983 (48 FR 49244; October 25, 1983).

Clarity of the Rule

We are required by Executive Orders 12866 and 12988 and by the Presidential Memorandum of June 1, 1998, to write all rules in plain language. This means that each rule we publish must: (a) Be logically organized; (b) Use the active voice to address readers directly; (c) Use clear language rather than jargon; (d) Be divided into short sections and sentences; and (e) Use lists and tables wherever possible. If you feel that we have not met these requirements, send us comments by one of the methods listed in the **ADDRESSES** section. To better help us revise the rule, your comments should be as specific as possible. For example, you should tell us the numbers of the sections or paragraphs that are unclearly written, which sections or sentences are too long, the sections where you feel lists or tables would be useful, etc.

References Cited

A complete list of all references cited in this rule is available on the Internet at <http://www.regulations.gov> or upon request from the Field Supervisor, Sacramento Fish and Wildlife Office (see **FOR FURTHER INFORMATION CONTACT**).

Authors

The primary authors of this document are the staff of the Sacramento Fish and

Wildlife Office (see **FOR FURTHER INFORMATION CONTACT**).

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, Transportation.

Proposed Regulation Promulgation

Accordingly, we propose to amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, as set forth below:

PART 17—ENDANGERED AND THREATENED WILDLIFE AND PLANTS

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.

§ 17.11 [Amended]

2. Amend § 17.11(h) by removing the entry “Beetle, valley elderberry longhorn” under “INSECTS” from the List of Endangered and Threatened Wildlife.

§ 17.95 [Amended]

3. Amend § 17.95(i) by removing the critical habitat entry for “Valley Elderberry Longhorn Beetle (*Desmocerus californicus dimorphus*).”

Dated: September 12, 2012.

David Cottingham,

Acting Director, U.S. Fish and Wildlife Service.

[FR Doc. 2012–23843 Filed 10–1–12; 8:45 am]

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H.R. 6336/P.L. 112-174

To direct the Joint Committee on the Library to accept a statue depicting Frederick

Douglass from the District of Columbia and to provide for the permanent display of the statue in Emancipation Hall of the United States Capitol. (Sept. 20, 2012; 126 Stat. 1311)

Last List August 20, 2012

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