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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 906

[Doc. No. AMS–FV–11–0057; FV11–906–1 FR]

Oranges and Grapefruit Grown in Lower Rio Grande Valley in Texas; Increased Assessment Rate

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This rule increases the assessment rate established for the Texas Valley Citrus Committee (Committee) for the 2011–12 and subsequent fiscal periods from $0.12 to $0.14 per 7/10-bushel carton or equivalent of oranges and grapefruit handled. The Committee locally administers the marketing order which regulates the handling of oranges and grapefruit grown in the Lower Rio Grande Valley in Texas. Assessments upon orange and grapefruit handlers are used by the Committee to fund reasonable and necessary expenses of the program. The fiscal period began on August 1 and ends July 31. The assessment rate will remain in effect indefinitely unless modified, suspended, or terminated.

DATES: *Effective Date:* October 5, 2011.

FOR FURTHER INFORMATION CONTACT: Belinda G. Garza, Regional Manager, Texas Marketing Field Office, Marketing Order and Agreement Division, Fruit and Vegetable Programs, AMS, USDA; *Telephone:* (956) 632–5330, Fax: (956) 632–5358, or *E-mail: Belinda.Garza@ams.usda.gov.*

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

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Agreement and Order No. 906, as amended (7 CFR part 906), regulating the handling of oranges and grapefruit grown in the Lower Rio Grande Valley in Texas, hereinafter referred to as the ''order.'' The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the ''Act.''

The Department of Agriculture (USDA) is issuing this rule in conformance with Executive Order 12866.

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. Under the marketing order now in effect, orange and grapefruit handlers in the Lower Rio Grande Valley are subject to assessments. Funds to administer the order are derived from such assessments. It is intended that the assessment rate as issued herein will be applicable to all assessable oranges and grapefruit beginning on August 1, 2011, and continue until amended, suspended, or terminated.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with USDA a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. Such handler is afforded the opportunity for a hearing on the petition. After the hearing, USDA would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction to review USDA's ruling on the petition, provided an action is filed not later than 20 days after the date of the entry of the ruling.

This rule increases the assessment rate established for the Committee for the 2011–12 and subsequent fiscal periods from $0.12 to $0.14 per 7/10-bushel carton or equivalent of oranges and grapefruit handled.

The Texas orange and grapefruit marketing order provides authority for the Committee, with the approval of USDA, to formulate an annual budget of expenses and collect assessments from handlers to administer the program. The members of the Committee are producers and handlers of Texas oranges and grapefruit. They are familiar with the Committee's needs and with the costs for goods and services in their local area and are thus in a position to formulate an appropriate budget and assessment rate. The assessment rate is formulated and discussed in a public meeting. Thus, all directly affected persons have an opportunity to participate and provide input.

For the 2004–05 and subsequent fiscal periods, the Committee recommended, and USDA approved, an assessment rate that would continue in effect from fiscal period to fiscal period unless modified, suspended, or terminated by USDA upon recommendation and information submitted by the Committee or other information available to USDA.

The Committee met on June 9, 2011, and unanimously recommended 2011–12 expenditures of $1,224,037 and an assessment rate of $0.14 per 7/10-bushel carton or equivalent of oranges and grapefruit handled. In comparison, last year's budgeted expenditures were $1,109,037. The assessment rate of $0.14 is $0.02 higher than the rate currently in effect. The Committee recommended a higher assessment rate due to an expected smaller crop and an increase in budgeted expenses. Budgeted expenses were increased to provide additional funding for the Committee's Mexican fruit fly program, and also to fund a Federal Agriculture Improvement Reform (FAIR) review analysis to be conducted next fiscal period. In 1996, Congress mandated that every five years commodity boards established under the oversight of the Secretary of Agriculture pursuant to a commodity promotion law should fund an independent evaluation of the effectiveness of their generic promotion program, which is now commonly known as a FAIR review.

The Committee projected a reduced crop of 8,750,000 7/10-bushel carton equivalents, which would be 289,137 7/10-bushel carton equivalents less than the 9,039,137 7/10-bushel carton equivalents handled during the 2010–11

fiscal period. Furthermore, due to severe cuts in the State of Texas' budget, the Texas Department of Agriculture requested the citrus industry's assistance in funding a Mexican fruit fly trapping program, which is essential to the industry's well-being. Based on a decreased crop estimate and anticipated expenditure increases, the Committee unanimously recommended that the assessment rate of $0.12 currently in effect be increased by $0.02. Income derived from handler assessments and interest should be adequate to cover budgeted expenses.

The major expenditures recommended by the Committee for the 2011–12 fiscal period include $479,000 for the Mexican fruit fly support, trapping, and bait spray programs; $425,000 for promotion; and $250,737 for management, administration, and compliance oversight. In comparison, major expenditures for these items in 2010–11 (last fiscal period) were $229,000, $600,000, and $246,737, respectively.

The assessment rate recommended by the Committee was derived by dividing anticipated expenditures by estimated shipments of Texas oranges and grapefruit. As mentioned earlier, orange and grapefruit shipments for the 2011–12 fiscal period are estimated at 8.75 million 7/10-bushel carton equivalents, which should provide $1,225,000 in assessment income. Income generated through the $0.14 assessment rate and interest would be more than sufficient to meet anticipated expenses ($1,224,037). Reserve funds at the end of 2011–12 are projected at $283,774, well below one fiscal period's expenses, which would be within the maximum reserve amount permitted under the order (§ 906.35).

The assessment rate established in this rule will continue in effect indefinitely unless modified, suspended, or terminated by USDA upon recommendation and information submitted by the Committee or other available information.

Although this assessment rate will be in effect for an indefinite period, the Committee will continue to meet prior to or during each fiscal period to recommend a budget of expenses and consider recommendations for modification of the assessment rate. The dates and times of Committee meetings are available from the Committee or USDA. Committee meetings are open to the public and interested persons may express their views at these meetings. USDA will evaluate Committee recommendations and other available information to determine whether modification of the assessment rate is needed. Further rulemaking will be undertaken as necessary. The Committee's 2011–12 budget and those for subsequent fiscal periods will be reviewed and, as appropriate, approved by USDA.

Final Regulatory Flexibility Analysis

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA) (5 U.S.C. 601–612), the Agricultural Marketing Service (AMS) has considered the economic impact of this rule on small entities. Accordingly, AMS has prepared this final regulatory flexibility analysis.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and the rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf.

There are approximately 177 producers of oranges and grapefruit in the production area and approximately 12 handlers subject to regulation under the marketing order. Small agricultural producers are defined by the Small Business Administration (SBA) (13 CFR 121.201) as those having annual receipts less than $750,000, and small agricultural service firms are defined as those whose annual receipts are less than $7,000,000.

An updated Texas citrus industry profile shows that 6 of the 12 handlers (50 percent) would be considered large businesses under SBA's definition, and the remaining 6 handlers (50 percent) would be considered small businesses. Of the approximately 177 producers within the production area, few have sufficient acreage to generate sales in excess of $750,000. Thus, half of the handlers and the majority of producers of Texas oranges and grapefruit may be classified as small entities.

This rule increases the assessment rate established for the Committee and collected from handlers for the 2011–12 and subsequent fiscal periods from $0.12 to $0.14 per 7/10-bushel carton or equivalent of oranges and grapefruit. The Committee unanimously recommended 2011–12 expenditures of $1,224,037 and an assessment rate of $0.14 per 7/10-bushel carton or equivalent handled. The quantity of assessable oranges and grapefruit for the 2011–12 fiscal period is estimated at 8.75 million 7/10-bushel carton equivalents. Thus, the $0.14 assessment rate should provide $1,225,000 in assessment income which should be sufficient to meet anticipated expenses.

The major expenditures recommended by the Committee for the 2011–12 fiscal period include $479,000 for the Mexican Fruit Fly support, trapping, and bait spray programs; $425,000 for promotion; and $250,737 for management, administration, and compliance oversight. Major expenditures for these items in 2010–11 were $229,000, $600,000, and $246,737, respectively.

The increased assessment rate recommended by the Committee was due to a reduced crop estimate (8.75 million 7/10-bushel carton equivalents of oranges and grapefruit), and an increase in budgeted expenditures to provide additional funding for the Mexican fruit fly program and a FAIR analysis. With anticipated assessment income of $1,225,000, and anticipated expenditures of $1,224,037, funds in the reserve would be kept within the maximum of one fiscal period's expenses permitted by the order (§ 906.35).

In arriving at its recommended budget, the Committee considered alternative expenditure levels based upon the relative need of the Mexican fruit fly trapping and promotion programs to the Texas citrus industry. The assessment rate of $0.14 per 7/10-bushel carton equivalent was then determined by dividing the total recommended budget by the quantity of assessable oranges and grapefruit, estimated at 8.75 million 7/10 bushel carton equivalents for the 2011–12 fiscal period. Considering assessment revenue and interest, total revenue would be approximately $2,463 above the anticipated expenses, which the Committee determined to be acceptable.

A review of historical information from recent seasons (2008–2010) and preliminary information pertaining to the current fiscal period indicates that the season average packinghouse door price for the 2011–12 fiscal period could likely range from $6.24 to $8.23 per 7/10-bushel carton equivalent of Texas oranges, and from $10.90 to $15.55 for Texas grapefruit. Therefore, the estimated assessment revenue for the 2011–12 fiscal period as a percentage of total grower (packinghouse door) revenue could range between 1.7 and 2.2 percent for oranges and between 0.9 and 1.3 percent for grapefruit.

This action increases the assessment obligation imposed on handlers. While assessments impose some additional costs on handlers, the costs are minimal and uniform on all handlers. Some of the additional costs may be passed on to producers. However, these costs are

offset by the benefits derived by the operation of the order. In addition, the Committee's meeting was widely publicized throughout the Texas orange and grapefruit industry and all interested persons were invited to attend the meeting and participate in Committee deliberations on all issues. Like all Committee meetings, the June 9, 2011, meeting was a public meeting and all entities, both large and small, were able to express views on this issue.

In accordance with the Paperwork Reduction Act of 1995, (44 U.S.C. chapter 35), the order's information collection requirements have been previously approved by the Office of Management and Budget (OMB) and assigned OMB No. 0581–0189 (Generic Fruit Crops—Mandatory). No changes in those requirements as a result of this action are necessary. Should any changes become necessary, they would be submitted to OMB for approval.

This rule imposes no additional reporting or recordkeeping requirements on either small or large Texas orange and grapefruit handlers. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies. As noted in the initial regulatory flexibility analysis, USDA has not identified any relevant Federal rules that duplicate, overlap, or conflict with this final rule.

AMS is committed to complying with the E-Government Act, to promote the use of the Internet and other information technologies to provide increased opportunities for citizen access to Government information and services, and for other purposes.

A proposed rule concerning this action was published in the **Federal Register** on August 10, 2011 (76 FR 49381). Copies of the proposed rule were also mailed or sent via facsimile to all orange and grapefruit handlers. Finally, the proposal was made available through the Internet by USDA and the Office of the Federal Register. A 10-day comment period ending August 22, 2011, was provided for interested persons to respond to the proposal. No comments were received.

A small business guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders may be viewed at: *http://www.ams.usda.gov/MarketingOrdersSmallBusinessGuide.* Any questions about the compliance guide should be sent to Laurel May at the previously mentioned address in the **FOR FURTHER INFORMATION CONTACT** section.

After consideration of all relevant material presented, including the information and recommendation submitted by the Committee and other available information, it is hereby found that this rule, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

Pursuant to 5 U.S.C. 553, it is also found and determined that good cause exists for not postponing the effective date of this rule until 30 days after publication in the **Federal Register** because: (1) The 2011–12 fiscal period began on August 1, 2011, and the marketing order requires that the rate of assessment for each fiscal period apply to all assessable oranges and grapefruit handled during such fiscal period; (2) the Committee needs to have sufficient funds to pay its expenses, which are incurred on a continuous basis; and (3) handlers are aware of this rule which was unanimously recommended by the Committee at a public meeting and is similar to other assessment rate actions issued in past years. Also, a 10-day comment period was provided for in the proposed rule.

List of Subjects in 7 CFR Part 906

Grapefruit, Marketing agreements, Oranges, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 906 is amended as follows:

PART 906—ORANGES AND GRAPEFRUIT GROWN IN LOWER RIO GRANDE VALLEY IN TEXAS

■ 1. The authority citation for 7 CFR part 906 continues to read as follows:

Authority: 7 U.S.C. 601–674.

■ 2. Section 906.235 is revised to read as follows:

§ 906.235 Assessment rate.

On and after August 1, 2011, an assessment rate of $0.14 per 7/10-bushel carton or equivalent is established for oranges and grapefruit grown in the Lower Rio Grande Valley in Texas.

Dated: September 29, 2011.

David R. Shipman,

Acting Administrator, Agricultural Marketing Service.

[FR Doc. 2011–25493 Filed 10–3–11; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Part 77

[Docket No. APHIS–2011–0093]

Tuberculosis in Cattle and Bison; State and Zone Designations; New Mexico

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Interim rule and request for comments.

SUMMARY: We are amending the bovine tuberculosis regulations regarding State and zone classifications by reclassifying a zone in New Mexico consisting of Curry and Roosevelt Counties. We have determined that the zone meets the criteria for accredited-free status. Since the remainder of the State is already classified as accredited free, the entire State of New Mexico is now classified as accredited free. This action relieves certain restrictions on the interstate movement of cattle and bison from Curry and Roosevelt Counties in New Mexico.

DATES: This interim rule is effective October 4, 2011. We will consider all comments that we receive on or before December 5, 2011.

ADDRESSES: You may submit comments by either of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov/#!documentDetail;D=APHIS-2011-0093-0001.*
- *Postal Mail/Commercial Delivery:* Send your comment to Docket No. APHIS–2011–0093, Regulatory Analysis and Development, PPD, APHIS, Station 3A–03.8, 4700 River Road Unit 118, Riverdale, MD 20737–1238.

Supporting documents and any comments we receive on this docket may be viewed at *http://www.regulations.gov/#!docketDetail;D=APHIS-2011-0093* or in our reading room, which is located in room 1141 of the USDA South Building, 14th Street and Independence Avenue, SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 690–2817 before coming.

FOR FURTHER INFORMATION CONTACT: Dr. Kathleen Orloski, Senior Staff Veterinarian, Ruminant Health Programs, Veterinary Services, APHIS, 2150 Centre Avenue, Building B3E20, Fort Collins, CO 80526; (970) 494–7221.

SUPPLEMENTARY INFORMATION:

Background

Bovine tuberculosis is a contagious and infectious granulomatous disease caused by the bacterium *Mycobacterium bovis.* Although commonly defined as a chronic debilitating disease, bovine tuberculosis can occasionally assume an acute, rapidly progressive course. While any body tissue can be affected, lesions are most frequently observed in the lymph nodes, lungs, intestines, liver, spleen, pleura, and peritoneum. Although cattle are considered to be the true hosts of *M. bovis,* the disease has been reported in several other species of both domestic and nondomestic animals, as well as in humans.

At the beginning of the past century, tuberculosis caused more losses of livestock than all other livestock diseases combined. This prompted the establishment in the United States of the National Cooperative State/Federal Bovine Tuberculosis Eradication Program for tuberculosis in livestock.

In carrying out the national eradication program, the Animal and Plant Health Inspection Service (APHIS) issues and enforces regulations. The regulations require the testing of cattle and bison for tuberculosis, define the Federal tuberculosis status levels for States or zones (accredited-free, modified accredited advanced, modified accredited, accreditation preparatory, and nonaccredited), provide the criteria for attaining and maintaining those status levels, and contain testing and movement requirements for cattle and bison leaving States or zones of a particular status level. These regulations are contained in 9 CFR part 77 and in the Bovine Tuberculosis Eradication Uniform Methods and Rules, 1999 (UMR), which is incorporated by reference into the regulations.

The status of a State or zone is based on its prevalence of tuberculosis in cattle and bison, the effectiveness of the State's tuberculosis eradication program, and the degree of the State's compliance with standards for cattle and bison contained in the UMR. The regulations provide that a State may request partitioning into specific geographic regions or zones with different status designations (commonly referred to as split-State status) if bovine tuberculosis is detected in a portion of a State and the State demonstrates that it meets certain criteria with regard to zone classification.

Request for Advancement of Modified Accredited Advanced Zone

In an interim rule effective and published in the **Federal Register** on March 23, 2009 (74 FR 12055–12058, Docket No. APHIS–2008–0124), we amended the tuberculosis regulations for cattle and bison by dividing New Mexico into two zones for tuberculosis. At the time, the entire State was classified as modified accredited advanced. The interim rule established all of New Mexico except Curry and Roosevelt Counties as an accredited-free zone. The area comprising Curry and Roosevelt Counties, along New Mexico's eastern border with Texas, was recognized as a separate zone that continued to have modified accredited advanced status.

We have received from the State of New Mexico a request to reclassify the modified accredited advanced zone. Based on the findings of a review of the tuberculosis eradication program in New Mexico conducted during May through July of 2011, APHIS has determined that the zone meets the criteria for advancement of status contained in the regulations.

State animal health officials in New Mexico have demonstrated that the State enforces and complies with the provisions of the UMR. The State of New Mexico has demonstrated that the modified accredited advanced zone has zero percent prevalence of cattle and bison herds affected with tuberculosis and has had no findings of tuberculosis in any cattle or bison in the zone since the last affected herd completed a test-and-remove herd plan and was released from quarantine in July 2009. Therefore, New Mexico has demonstrated that the zone within the State previously classified as modified accredited advanced meets the criteria for accredited-free status as set forth in the definition of *accredited-free State or zone* in § 77.5 of the regulations.

Based on our evaluation of New Mexico's request, we are classifying the zone composed of Curry and Roosevelt Counties as accredited free, which results in the entire State of New Mexico having an accredited-free classification.

Immediate Action

Immediate action is warranted to relieve restrictions on the interstate movement of cattle and bison from Curry and Roosevelt Counties in New Mexico. Under these circumstances, the Administrator has determined that prior notice and opportunity for public comment are contrary to the public interest and that there is good cause under 5 U.S.C. 553 for making this action effective less than 30 days after publication in the **Federal Register**.

We will consider comments we receive during the comment period for this interim rule (see **DATES** above). After the comment period closes, we will publish another document in the **Federal Register**. The document will include a discussion of any comments we receive and any amendments we are making to the rule.

Executive Order 12866 and Regulatory Flexibility Act

This interim rule is subject to Executive Order 12866. However, for this action, the Office of Management and Budget has waived its review under Executive Order 12866.

In accordance with the Regulatory Flexibility Act, we have analyzed the potential economic effects of this action on small entities. The analysis is summarized below. The full analysis may be viewed on the Regulations.gov Web site (see **ADDRESSES** above for instructions for accessing Regulations.gov) or obtained from the person listed under **FOR FURTHER INFORMATION CONTACT**.

Advancing the status of the former modified accredited advanced zone in New Mexico will reduce the interstate movement restrictions for cattle and bison originating from Curry and Roosevelt Counties. Herd owners in the area will no longer have to test their cattle and bison for bovine tuberculosis in order to move them interstate. Tuberculosis testing, including veterinary fees, costs about $10 to $15 per head. The annual cost savings associated with the removal of those tests for the 1,621 herds in the affected area are expected to be between $662,000 and $993,000, or from $408 to $613 per herd on average. In addition, tuberculosis testing costs represent no more than about 1.7 percent of the average value of the cattle tested ($870 per head on January 1, 2010).

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 7 CFR part 3015, subpart V.)

Executive Order 12988

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule has no retroactive effect and does not require administrative proceedings before

parties may file suit in court challenging this rule.

Paperwork Reduction Act

This rule contains no new information collection or recordkeeping requirements under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

List of Subjects in 9 CFR Part 77

Animal diseases, Bison, Cattle, Reporting and recordkeeping requirements, Transportation, Tuberculosis.

Accordingly, we are amending 9 CFR part 77 as follows:

PART 77—TUBERCULOSIS

■ 1. The authority citation for part 77 continues to read as follows:

Authority: 7 U.S.C. 8301–8317; 7 CFR 2.22, 2.80, and 371.4.

§ 77.7 [Amended]

■ 2. Section 77.7 is amended as follows:
■ a. In paragraph (a), by adding the words ''New Mexico,'' after the words ''New Jersey,''.
■ b. By removing and reserving paragraph (b)(2).

§ 77.9 [Amended]

■ 3. In § 77.9, paragraph (b)(3) is removed.

Done in Washington, DC, this 30th day of September 2011.

Gregory L. Parham,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 2011–25687 Filed 10–3–11; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Part 77

[Docket No. APHIS–2011–0100]

Tuberculosis in Cattle and Bison; State and Zone Designations; Minnesota

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Interim rule and request for comments.

SUMMARY: We are amending the bovine tuberculosis regulations regarding State and zone classifications by reclassifying a zone in Minnesota consisting of portions of Lake of the Woods, Roseau, Marshall, and Beltrami Counties. We have determined that the zone meets the criteria for accredited-free status. Since the remainder of the State is already classified as accredited free, the entire State of Minnesota is now classified as accredited free. This action relieves certain restrictions on the interstate movement of cattle and bison from the area of Minnesota that was previously classified as modified accredited advanced for tuberculosis.

DATES: This interim rule is effective October 4, 2011. We will consider all comments that we receive on or before December 5, 2011.

ADDRESSES: You may submit comments by either of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov/#!documentDetail;D=APHIS-2011-0100-0001.*
- *Postal Mail/Commercial Delivery:* Send your comment to Docket No. APHIS–2011–0100, Regulatory Analysis and Development, PPD, APHIS, Station 3A–03.8, 4700 River Road Unit 118, Riverdale, MD 20737–1238.

Supporting documents and any comments we receive on this docket may be viewed at *http://www.regulations.gov/#!docketDetail;D=APHIS-2011-0100* or in our reading room, which is located in room 1141 of the USDA South Building, 14th Street and Independence Avenue, SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 690–2817 before coming.

FOR FURTHER INFORMATION CONTACT: Dr. C. William Hench, Senior Staff Veterinarian, Ruminant Health Programs, Veterinary Services, APHIS, 2150 Centre Avenue, Building B–3E20, Fort Collins, CO 80526; (970) 494–7378.

SUPPLEMENTARY INFORMATION:

Background

Bovine tuberculosis is a contagious and infectious granulomatous disease caused by the bacterium *Mycobacterium bovis.* Although commonly defined as a chronic debilitating disease, bovine tuberculosis can occasionally assume an acute, rapidly progressive course. While any body tissue can be affected, lesions are most frequently observed in the lymph nodes, lungs, intestines, liver, spleen, pleura, and peritoneum. Although cattle are considered to be the true hosts of *M. bovis,* the disease has been reported in several other species of both domestic and nondomestic animals, as well as in humans.

At the beginning of the past century, tuberculosis caused more losses of livestock than all other livestock diseases combined. This prompted the establishment in the United States of the National Cooperative State/Federal Bovine Tuberculosis Eradication Program for tuberculosis in livestock.

In carrying out the national eradication program, the Animal and Plant Health Inspection Service (APHIS) issues and enforces regulations. The regulations require the testing of cattle and bison for tuberculosis, define the Federal tuberculosis status levels for States or zones (accredited-free, modified accredited advanced, modified accredited, accreditation preparatory, and nonaccredited), provide the criteria for attaining and maintaining those status levels, and contain testing and movement requirements for cattle and bison leaving States or zones of a particular status level. These regulations are contained in 9 CFR part 77 and in the Bovine Tuberculosis Eradication Uniform Methods and Rules, 1999 (UMR), which is incorporated by reference into the regulations.

The status of a State or zone is based on its prevalence of tuberculosis in cattle and bison, the effectiveness of the State's tuberculosis eradication program, and the degree of the State's compliance with standards for cattle and bison contained in the UMR. The regulations provide that a State may request partitioning into specific geographic regions or zones with different status designations (commonly referred to as split-State status) if bovine tuberculosis is detected in a portion of a State and the State demonstrates that it meets certain criteria with regard to zone classification.

Request for Advancement of Modified Accredited Advanced Zone

In an interim rule effective and published in the **Federal Register** on October 10, 2008 (73 FR 60099–60102, Docket No. APHIS–2008–0117), we amended the tuberculosis regulations for cattle and bison by dividing Minnesota into two zones for tuberculosis. We classified the zone in the northwest corner of the State consisting of portions of Lake of the Woods, Roseau, Marshall, and Beltrami Counties as modified accredited, and the remainder of the State as modified accredited advanced.

Subsequently, in an interim rule effective and published in the **Federal Register** on October 1, 2010 (75 FR 60586–60588, Docket No. APHIS–2010–0097), we reclassified the modified accredited zone as modified accredited advanced, and the remainder of the State as accredited free.

We have received from the State of Minnesota a request to reclassify the modified accredited advanced zone as

accredited free. Based on the findings of a review of the tuberculosis eradication program in Minnesota conducted during June and July 2011, APHIS has determined that the zone meets the criteria for advancement of status contained in the regulations.

State animal health officials in Minnesota have demonstrated that the State enforces and complies with the provisions of the UMR. The State of Minnesota has demonstrated that the modified accredited advanced zone has zero percent prevalence of cattle and bison herds affected with tuberculosis and has had no findings of tuberculosis in any cattle or bison in the zone since the last affected herd in the zone was depopulated in January 2009. Therefore, Minnesota has demonstrated that the zone within the State previously classified as modified accredited advanced meets the criteria for accredited-free status as set forth in the definition of *accredited-free State or zone* in § 77.5 of the regulations.

Based on our evaluation of Minnesota's request, we are classifying the zone consisting of portions of Lake of the Woods, Roseau, Marshall, and Beltrami Counties as accredited free, which results in the entire State of Minnesota having an accredited-free classification.

Immediate Action

Immediate action is warranted to relieve restrictions on the interstate movement of cattle and bison from portions of Lake of the Woods, Roseau, Marshall, and Beltrami Counties in Minnesota. Under these circumstances, the Administrator has determined that prior notice and opportunity for public comment are contrary to the public interest and that there is good cause under 5 U.S.C. 553 for making this action effective less than 30 days after publication in the **Federal Register**.

We will consider comments we receive during the comment period for this interim rule (see **DATES** above). After the comment period closes, we will publish another document in the **Federal Register**. The document will include a discussion of any comments we receive and any amendments we are making to the rule.

Executive Order 12866 and Regulatory Flexibility Act

This interim rule is subject to Executive Order 12866. However, for this action, the Office of Management and Budget has waived its review under Executive Order 12866.

In accordance with the Regulatory Flexibility Act, we have analyzed the potential economic effects of this action on small entities. The analysis is summarized below. The full analysis may be viewed on the Regulations.gov Web site (see **ADDRESSES** above for instructions for accessing Regulations.gov) or obtained from the person listed under **FOR FURTHER INFORMATION CONTACT**.

Advancing the status of the former modified accredited advanced zone in Minnesota will reduce the interstate movement restrictions for cattle and bison originating from portions of Lake of the Woods, Roseau, Marshall, and Beltrami Counties. Herd owners in the area will no longer have to test their cattle and bison for bovine tuberculosis in order to move them interstate. Tuberculosis testing, including veterinary fees, costs about $10 to $15 per head. The annual cost savings associated with the removal of those tests for the 254 herds in the affected area is expected to be between $110,280 and $165,420, or from $434 to $651 per herd on average. In addition, tuberculosis testing costs represent no more than about 1.7 percent of the average value of the cattle tested, which was $870 per head on January 1, 2010.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 7 CFR part 3015, subpart V.)

Executive Order 12988

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule has no retroactive effect and does not require administrative proceedings before parties may file suit in court challenging this rule.

Paperwork Reduction Act

This rule contains no new information collection or recordkeeping requirements under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

List of Subjects in 9 CFR Part 77

Animal diseases, Bison, Cattle, Reporting and recordkeeping requirements, Transportation, Tuberculosis.

Accordingly, we are amending 9 CFR part 77 as follows:

PART 77—TUBERCULOSIS

■ 1. The authority citation for part 77 continues to read as follows:

Authority: 7 U.S.C. 8301–8317; 7 CFR 2.22, 2.80, and 371.4.

§ 77.7 [Amended]

■ 2. Section 77.7 is amended as follows:
■ a. In paragraph (a), by adding the word ''Minnesota,'' after the word ''Massachusetts,''.
■ b. By removing paragraph (b)(3).

§ 77.9 [Amended]

■ 3. In § 77.9, paragraph (b)(2) is removed and reserved.

Done in Washington, DC, this 30th day of September 2011.

Gregory L. Parham,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 2011–25688 Filed 10–3–11; 8:45 am]

BILLING CODE 3410–34–P

FEDERAL ELECTION COMMISSION

11 CFR Parts 104 and 109

[Notice 2011–13]

Interpretive Rule on When Certain Independent Expenditures Are ''Publicly Disseminated'' for Reporting Purposes

AGENCY: Federal Election Commission.

ACTION: Notice of interpretive rule.

SUMMARY: The Federal Election Commission is issuing guidance on when independent expenditure communications that take the form of yard signs, mini-billboards, handbills, t-shirts, hats, buttons, and similar items are ''publicly disseminated'' for purposes of certain reporting requirements in Commission regulations.

DATES: Effective October 4, 2011.

FOR FURTHER INFORMATION CONTACT: Ms. Amy Rothstein, Assistant General Counsel, Ms. Cheryl A.F. Hemsley or Mr. Theodore M. Lutz, Attorneys, 999 E Street, NW., Washington, DC 20463, (202) 694–1650 or (800) 424–9530.

SUPPLEMENTARY INFORMATION: An independent expenditure is ''an expenditure by a person for a communication expressly advocating the election or defeat of a clearly identified candidate that is not made in cooperation, consultation, or concert with, or at the request or suggestion of, a candidate, a candidate's authorized committee, or their agents, or a political party committee or its agents.'' 11 CFR

100.16; *see also* 2 U.S.C. 431(17). Political committees and other persons making independent expenditures (''Filers'') must file reports disclosing their independent expenditures at certain regular intervals. *See* 2 U.S.C. 434(a)(4) and (c); 11 CFR 104.4 and 109.10(b). In addition, Filers must report all independent expenditures that aggregate more than certain dollar amounts during certain reporting periods within either 24 hours or 48 hours of the date on which the person makes or contracts to make independent expenditures. 2 U.S.C. 434(g). The Commission's regulation requires that Filers ''ensure that the Commission receives these reports by [either 24 hours or 48 hours] following the date on which a communication that constitutes an independent expenditure is publicly distributed or otherwise publicly disseminated.'' 11 CFR 104.4(b)(2); *see also* 11 CFR 104.4(c), and (f), and 109.10(c) and (d).

The actual public dissemination date of independent expenditure communications that take the form of items such as yard signs, mini-billboards, handbills, t-shirts, hats, and buttons may be difficult to ascertain, however, particularly where the items are disseminated in stages or where the Filer is an organization that purchases the items from a vendor, and then retains the items for a period of time before distributing them to affiliate or member organizations or to individuals, such as the organization's employees, members or customers, to wear or display in public. For this reason, the Commission is issuing this notice to clarify that a range of acceptable dates may be used as the public dissemination date [1] for these forms of independent expenditure communications for both individual and organizational Filers.

For purposes of the reporting requirements in 11 CFR 104.4(b)(2), (c), and (f), and 109.10(c) and (d), the Commission hereby clarifies that the Filer may report independent expenditure communications that take the form of items such as yard signs, mini-billboards, handbills, t-shirts, hats, buttons, as ''publicly disseminated'' on any reasonable date starting with the date the Filer receives or exercises control over the items in the usual and normal course of dissemination, up to and including the date that the communications are actually disseminated to the public.[2] Reasonable dates that may be treated as the date of public dissemination include, but are not limited to (1) The date that a Filer receives delivery of the communication, (2) the date that a Filer distributes the communication to its members or employees for later public dissemination, (3) the date that a Filer distributes the communications to its affiliate or member organizations for later public dissemination, (4) the date as of which the Filer authorizes its members or employees to display the communication, or (5) the date of actual public dissemination, if that date is known to the Filer.[3] In no event, however, may a Filer choose a date that is later than the actual date of dissemination. Similarly, in no event may a Filer choose a date that is subsequent to the date of the election to which the independent expenditure communication pertains.

The Commission believes that this interpretation of its regulations provides Filers with an administratively workable method for determining the date of dissemination for these types of independent expenditure communications, consistent with the ''[c]ongressional intent to emphasize and ensure timely disclosure'' of independent expenditures. Explanation and Justification for Final Rules on Independent Expenditure Reporting, 67 FR 12834, 12837 (Mar. 20, 2002).

This document is an interpretive rule announcing the general course of action that the Commission intends to follow. This interpretive rule does not constitute an agency action requiring notice of proposed rulemaking, opportunities for public participation, prior publication, or delay in effective date under 5 U.S.C. 553 of the Administrative Procedures Act. It does not bind the Commission or any members of the general public, nor does it create or remove any rights, duties, or obligations. The provisions of the Regulatory Flexibility Act, which apply when notice and comment are required by the Administrative Procedures Act or another statute, do not apply. *See* 5 U.S.C. 603(a).

Dated: September 29, 2011.

On behalf of the Commission.

Cynthia L. Bauerly,

Chair, Federal Election Commission.

[FR Doc. 2011–25568 Filed 10–3–11; 8:45 am]

BILLING CODE 6715–01–P

[1] This notice focuses on the date on which independent expenditures are ''publicly disseminated,'' rather than the date on which they are ''publicly distributed.'' Generally, independent expenditures that are made public by broadcast, cable or satellite are ''publicly distributed.'' *See* 11 CFR 100.29(b)(2); *see also* Explanation and Justification for Final Rules on Bipartisan Campaign Reform Act of 2002 Reporting, 68 FR 404, 407 (Jan. 3, 2003). In contrast, all other forms of independent expenditure communications, such as those made public in newspapers, magazines, or via handbills are considered to be ''publicly disseminated.'' *See* Explanation and Justification for Final Rules on Bipartisan Campaign Reform Act of 2002 Reporting, 68 FR 404, 407 (Jan. 3, 2003). This particular rule interprets ''publicly disseminated'' for those items that do not have an inherent date certain for public dissemination, such as yard signs, mini-billboards, handbills, t-shirts, hats, and buttons.

[2] Once the public dissemination date is established, independent expenditure communications must be reported pursuant to 11 CFR 104.4(b)(2), (c), and (f), and 109.10(c) and (d).

[3] The Commission notes that, for any given independent expenditure communication, Filers should list the same date of dissemination on their regularly scheduled FEC reports as the date they listed on their 24- and 48-Hour Independent Expenditure reports.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2011–0935; Directorate Identifier 2011–NE–28–AD; Amendment 39–16813; AD 2011–18–51R1]

RIN 2120–AA64

Airworthiness Directives; Honeywell International Inc. TPE331 Model Turboprop Engines With Certain Dixie Aerospace, LLC Main Shaft Bearings

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; request for comments.

SUMMARY: We are revising an existing emergency airworthiness directive (AD) for all Honeywell International Inc. TPE331 model turboprop engines with a part manufacturer approval (PMA) replacement Dixie Aerospace, LLC main shaft bearing part number (P/N) 3108098–1WD, installed. That emergency AD was not published in the **Federal Register**, but was sent to all known U.S. owners and operators of these engines. That AD currently requires an inspection of the airplane records to determine if a Dixie Aerospace, LLC main shaft bearing, P/N 3108098–1WD, is installed in the engine, and if installed, removal of that bearing from service, before further flight. This AD requires the same actions. This AD revision was prompted by the need to list the affected bearings by serial number (S/N) in the AD for clarification. We are issuing this AD to correct the unsafe condition on these products.

DATES: This AD is effective October 19, 2011.

We must receive comments on this AD by November 18, 2011.

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.

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 AD, the regulatory evaluation, any comments received, and other information. The street address for the Docket Operations 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: Juanita Craft, Aerospace Engineer, FAA, Atlanta Aircraft Certification Office, 1701 Columbia Avenue, College Park, GA 30337; phone: 404–474–5584; fax: 404–474–5606; e-mail: *juanita.craft@faa.gov.*

SUPPLEMENTARY INFORMATION:

Discussion

On August 17, 2011, we issued Emergency AD 2011–18–51, for all Honeywell International Inc. TPE331 model turboprop engines with a PMA replacement Dixie Aerospace, LLC main shaft bearing, P/N 3108098–1WD, installed. That AD requires inspection of the airplane records to determine if a Dixie Aerospace, LLC main shaft bearing, part number (P/N) 3108098–1WD, is installed in the engine, and if installed, removal of that bearing from service, before further flight. That emergency AD resulted from an excessive failure rate of PMA main shaft bearings, P/N 3108098–1WD, manufactured by Dixie Aerospace, LLC. That emergency AD was not published in the Federal Register, but was sent to all known U.S. owners and operators of these engines. This AD requires the same actions. We are issuing this AD to prevent engine main rotor seizure resulting in engine damage, shutdown, and damage to the airplane.

Under 14 CFR 39.1, the Engine & Propeller Directorate is only authorized to issue airworthiness directives that apply to aircraft engines, propellers, or appliances (hereinafter referred to in this AD as ''products'') when an unsafe condition exists in a product; and that unsafe condition is likely to exist or develop in other products of the same type design. Therefore, although the unsafe condition is caused by the failure of certain PMA parts manufactured by Dixie Aerospace, LLC, for the product affected, we must include the type certificate (TC) holder's legal name in the subject line of the AD. For this AD, the TC holder is Honeywell International Inc.

Actions Since AD 2011–18–51 Was Issued

We are revising Emergency AD 2011–18–51 with this final rule because we determined the need to list the affected bearings by serial number (S/N) in the AD for clarification.

FAA's Determination

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

AD Requirements

This AD requires an inspection of records to determine if certain S/N Dixie Aerospace, LLC main shaft bearings, P/N 3108098–1WD, are installed in Honeywell International Inc. TPE331 model turboprop engines. Within 10 operating hours, affected bearings must be removed from service.

FAA's Justification and Determination of the Effective Date

An unsafe condition exists that requires the immediate adoption of this AD. The FAA has found that the risk to the flying public justifies waiving notice and comment prior to adoption of this rule because the bearing failure mechanism is severe and sudden. Therefore, we find that notice and opportunity for prior public comment are impracticable and that good cause exists for making this amendment effective in less than 30 days.

Comments Invited

This AD is a final rule that involves requirements affecting flight safety and we did not provide you with notice and an opportunity to provide your comments before it becomes effective. However, we invite you to send any written data, views, or arguments about this AD. Send your comments to an address listed under the **ADDRESSES** section. Include the docket number FAA–2011–0935 and Directorate Identifier 2011–NE–28–AD at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this AD. We will consider all comments received by the closing date and may amend this AD because of those comments.

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

Costs of Compliance

We estimate that this AD will require 1,000 engines installed on airplanes of U.S. registry to have their records inspected, and the inspection will take about 0.5 hour per engine. We also estimate that one engine will require the affected main shaft bearing to be removed from service. We also estimate that it will take about 24 work-hours per engine to remove the bearing from service and that the average labor rate is $85 per work-hour. A replacement bearing will cost about $5,750. Based on these figures, we estimate the total cost of the AD to U.S. operators to be $50,290.

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

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

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

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

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

(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.

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by adding the following new airworthiness directive (AD):

2011–18–51R1 Honeywell International Inc.: Amendment 39–16813; Docket No. FAA–2011–0935; Directorate Identifier 2011–NE–28–AD.

Effective Date

(a) This AD is effective October 19, 2011.

Affected ADs

(b) This AD revises emergency AD 2011–18–51.

Applicability

(c) This AD applies to all Honeywell International Inc. TPE331 model turboprop engines with the serial numbers (S/Ns) of part manufacturer approval (PMA) replacement Dixie Aerospace, LLC main shaft bearings, part number (P/N) 3108098–1WD, listed by S/N in Table 1 of this AD, installed. Bearings having the P/N 3108098–1, but not the WD at the end of the P/N, are not affected by this AD.

TABLE 1—AFFECTED S/NS OF DIXIE AEROSPACE, LLC MAIN SHAFT BEARINGS, P/N 3108098–1WD

A10–1727	A10–1762	A10–1764	A10–1770	A10–1771
A10–1775	A10–1776	A10–1780	A10–1786	A10–1789
A10–1796	A10–1798	A10–1799	A10–1800	A10–1801
A10–1803	A10–1804	A10–1805	A10–1809	A10–1810
A10–1811	A10–1814	A10–1818	A10–1822	A10–1825

Unsafe Condition

(d) This AD revision was prompted by the need to list the affected bearings by S/N in the AD for clarification. We are issuing this AD to prevent engine main rotor seizure resulting in engine damage, shutdown, and damage to the airplane.

Compliance

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

(f) For all airplanes with a Honeywell International Inc. TPE331 model turboprop engine installed, where the engine was overhauled or replaced since February 1, 2010:

(1) Within 10 operating hours, inspect the airplane records to determine if any of the S/Ns of Dixie Aerospace, LLC main shaft bearing, P/N 3108098–1WD, listed in Table 1 of this AD, are installed in the engine.

(2) Remove all S/Ns of Dixie Aerospace, LLC main shaft bearings listed in Table 1 of this AD, from service, before further flight.

Installation Prohibition

(g) After the effective date of this AD, do not install any of the bearings listed in Table 1 of this AD into any engine.

Alternative Methods of Compliance (AMOCs)

(h) The Manager, Atlanta Aircraft Certification Office, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19.

Related Information

(i) For further information about this AD, contact: Juanita Craft, Aerospace Engineer, Atlanta Aircraft Certification Office, FAA, Atlanta Aircraft Certification Office, 1701 Columbia Avenue, College Park, GA 30337; phone: 404–474–5584; fax: 404–474–5606; e-mail: *juanita.craft@faa.gov.*

Issued in Burlington, Massachusetts, on September 16, 2011.

Peter A. White,

Manager, Engine & Propeller Directorate, Aircraft Certification Service.

[FR Doc. 2011–25481 Filed 10–3–11; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2011–1015; Airspace Docket No. 10–AWP–13]

Amendment to Description of VOR Federal Airway V–299; CA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; technical amendment.

SUMMARY: This action amends the description of VOR Federal airway V–299 by reinserting wording that excludes the airspace in restricted area R–2519 from the airway.

DATES: Effective date 0901 UTC October 4, 2011.

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

SUPPLEMENTARY INFORMATION:

Background

A review of the description of VOR Federal airway V–299 found that wording excluding the airspace within restricted area R–2519 from the airway was incorrectly deleted in a previous rule amending V–299 that removed reference to another restricted area, R–2520. See (52 FR 5947; February 27, 1987). The exclusionary wording had previously been included in the description of V–299 (45 FR 335; January 2, 1980).

The Rule

This action amends Title 14 Code of Federal Regulations (14 CFR) part 71 to amend the regulatory text of VOR Federal airway V–299 by inserting the words ''is excluded'' following the words ''* * * the airspace within R–2519 below 5,000 feet MSL. * * *''

This is an administrative change to insert wording inadvertently omitted from the airway description; therefore, notice and public procedures under 5 U.S.C. 533(b) are unnecessary.

VOR Federal airways are published in paragraph 6010 of FAA Order 7400.9V dated August 9, 2011, and effective September 15, 2011, which is incorporated by reference in 14 CFR 71.1. The VOR Federal airway listed in

this document will be subsequently published in the Order.

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

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. Subtitle I, section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority.

This rulemaking is promulgated under the authority described in subtitle VII, part A, subpart I, section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of the airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it amends an airway description in California to keep it current to ensure the safety of aircraft operations within the National Airspace System.

Environmental Review

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

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

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

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

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

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

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9V, Airspace Designations and Reporting Points, dated August 9, 2011, and effective September 15, 2011, is amended as follows:

Paragraph 6010 VOR Federal Airways

V–299 [Amended]

From Los Angeles, CA, INT Los Angeles 291° and Fillmore, CA, 163° radials; Ventura, CA; Fillmore; to Gorman, CA. The airspace within R–2519 more than 3 statute miles W of Ventura 155° and 331° radials, and the airspace within R–2519 below 5,000 feet MSL is excluded. The portion outside the United States has no upper limit.

Issued in Washington, DC, on September 27, 2011.

Gary A. Norek,

Acting Manager, Airspace, Regulations and ATC Procedures Group.

[FR Doc. 2011–25415 Filed 10–3–11; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2011–0756; Airspace Docket No. 11–AAL–09]

Revision of Class E Airspace; Allakaket, AK

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action revises Class E airspace at Allakaket, AK, to accommodate the amendment of one Standard Instrument Approach Procedure at the Allakaket Airport. The FAA is taking this action to enhance safety and management of Instrument Flight Rules (IFR) operations at the Allakaket Airport.

DATES: Effective 0901 UTC, December 15, 2011. The Director of the Federal Register approves this incorporation by reference action under title 1, Code of Federal Regulations, part 51, subject to the annual revision of FAA Order 7400.9 and publication of conforming amendments.

FOR FURTHER INFORMATION CONTACT: Martha Dunn, AAL–538G, Federal Aviation Administration, 222 West 7th Avenue, Box 14, Anchorage, AK 99513–7587; telephone number (907) 271–5898; fax: (907) 271–2850; e-mail: *Martha.ctr.Dunn@faa.gov.* Internet address: *http://www.faa.gov/about/office_org/headquarters_offices/ato/service_units/systemops/fs/alaskan/rulemaking/.*

SUPPLEMENTARY INFORMATION:

History

On Friday, July 29, 2011, the FAA published a notice of proposed rulemaking (NPRM) in the **Federal Register** to revise Class E airspace at Allakaket, AK (76 FR 45477).

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. A comment was received that reference to Class E2 airspace should be removed as it is not applicable to Allakaket. The FAA agrees and has removed those references.

Class E airspace areas are published in paragraph 6005 of FAA Order 7400.9V, *Airspace Designations and Reporting Points,* signed September 9, 2011, and effective September 15, 2011, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designations listed in this document will be published subsequently in the Order. With the exception of editorial changes, and the changes described above, this rule is the same as that proposed in the NPRM.

The Rule

This action amends Title 14 Code of Federal Regulations (14 CFR) part 71 by revising Class E airspace at the Allakaket Airport, Allakaket, AK, to accommodate the amendment of a standard instrument approach procedure. The additional Class E airspace provides adequate controlled airspace extending upward from 700 and 1,200 feet above the surface is necessary for the safety and management of IFR operations at the airport.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) Is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT

Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Because this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. Subtitle 1, section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority.

This rulemaking is promulgated under the authority described in subtitle VII, part A, subpart 1, section 40103, Sovereignty and use of airspace. Under that section, the FAA is charged with prescribing regulations to ensure the safe and efficient use of the navigable airspace. This regulation is within the scope of that authority because it creates Class E airspace sufficient in size to contain aircraft executing instrument procedures for the Allakaket Airport, AK and represents the FAA's continuing effort to safely and efficiently use the navigable airspace.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

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

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

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

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

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9V, *Airspace Designations and Reporting Points,* signed September 9, 2011, and effective September 15, 2011, is amended as follows:

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

* * * * *

AAL AK E5 Allakaket, AK [Revised]

Allakaket Airport, AK

(Lat. 66°33′07″ N., long. 152°37′20″ W.)

That airspace extending upward from 700 feet above the surface within an 8.6-mile radius of the Allakaket Airport, AK and that airspace extending upward from 1,200 feet above the surface within a 71-mile radius of the Allakaket Airport, AK.

Issued in Anchorage, AK, on September 21, 2011.

Marshall G. Severson,

Acting Manager, Alaska Flight Services.

[FR Doc. 2011–25160 Filed 10–3–11; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG–2011–0805]

RIN 1625–AA00

Safety Zone; Monte Foundation Fireworks Extravaganza, Aptos, CA

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone in the specified navigable waters near Seacliff State Beach Pier in Aptos, California in support of the Monte Foundation Fireworks Extravaganza. This safety zone is established to ensure the safety of participants and spectators from the dangers associated with the pyrotechnics. Unauthorized persons or vessels are prohibited from entering into, transiting through, or remaining in the safety zone without permission of the Captain of the Port or their designated representative.

DATES: This rule is effective from 9 p.m. through 10 p.m. on October 7, 2011.

ADDRESSES: Documents indicated in this preamble as being available in the docket are part of docket USCG–2011–0805 and are available online by going to *http://www.regulations.gov,* selecting the Advanced Docket Search option on the right side of the screen, inserting USCG–2011–0805 in the Docket ID box, pressing Enter, and then clicking the item in the Docket ID column. They are also available for inspection or copying at the Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this temporary rule, call or e-mail Ensign William Hawn, U.S. Coast Guard Sector San Francisco; telephone (415) 399–7442 or e-mail at *D11-PF-MarineEvents@uscg.mil.* If you have questions on viewing the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone (202) 366–9826.

SUPPLEMENTARY INFORMATION:

Regulatory Information

The Coast Guard is issuing this temporary final rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are ''impracticable, unnecessary, or contrary to the public interest.'' Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because the event would occur before the rulemaking process would be completed. Because of the dangers posed by the pyrotechnics used in this fireworks display, the safety zone is necessary to provide for the safety of event participants, spectators, spectator craft, and other vessels transiting the event area. For the safety concerns noted, it is impracticable to publish an NPRM prior to the event.

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**. Due to the need for immediate action, the safety zone is necessary to protect life, property and the environment; therefore, a 30-day notice is impracticable. Delaying the effective date would be contrary to the safety zone's intended objectives of protecting persons and vessels involved in the event, and enhancing public and maritime safety.

Basis and Purpose

Rudolph F. Monte Foundation will sponsor the Monte Foundation Fireworks Extravaganza on October 7, 2011, in the navigable waters around Seacliff State Beach Pier near Aptos, CA. During the fireworks display the safety zone will extend to 1,000 feet around the pier located at position 36°58′11.2″ N, 121°54′36.79″ W (NAD 83). The fireworks display is meant for entertainment purposes. This safety zone is issued to establish a temporary

restricted area on the waters surrounding the fireworks launch site during the fireworks display. This restricted area around the launch site is necessary to protect spectators, vessels, and other property from the hazards associated with the pyrotechnics. The Coast Guard has granted the event sponsor a marine event permit for the fireworks display.

Discussion of Rule

The fireworks display will occur from 9 p.m. until 9:25 p.m. on October 7, 2011, during which the safety zone will extend 1,000 feet from the nearest point of the pier at position 36°58′11.2″ N, 121°54′36.79″ W (NAD 83). At 10 p.m. on October 7, 2011 the safety zone shall terminate.

The effect of the temporary safety zone will be to restrict navigation in the vicinity of the fireworks site until the conclusion of the scheduled display. Except for persons or vessels authorized by the Coast Guard Patrol Commander, no person or vessel may enter or remain in the restricted area. These regulations are needed to keep spectators and vessels a safe distance from the fireworks display to ensure the safety of participants, spectators, and transiting vessels.

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 and executive orders.

Regulatory Planning and Review

This rule is not a significant regulatory action under section 3(f) of Executive Order 12866, Regulatory Planning and Review, 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 that Executive Order 12866 or under section 1 of Executive Order 13563. The Office of Management and Budget has not reviewed it under that those Orders.

Although this rule restricts access to the waters encompassed by the safety zone, the effect of this rule will not be significant because the local waterway users will be notified via public Broadcast Notice to Mariners to ensure the safety zone will result in minimum impact. The entities most likely to be affected are pleasure craft engaged in recreational activities.

Small Entities

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

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

This rule may affect owners and operators of pleasure craft engaged in recreational activities and sightseeing. This rule will not have a significant economic impact on a substantial number of small entities for several reasons: (i) Vessel traffic can pass safely around the area, (ii) vessels engaged in recreational activities and sightseeing have ample space outside of the effected portion of the areas off San Francisco, CA to engage in these activities, (iii) this rule will encompass only a small portion of the waterway for a limited period of time, and (iv) the maritime public will be advised in advance of this safety zone via Broadcast Notice to Mariners.

Assistance for Small Entities

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

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

Collection of Information

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

Federalism

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

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 (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.

Taking of Private Property

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

Civil Justice Reform

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

Protection of Children

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

Indian Tribal Governments

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

Energy Effects

We have analyzed this rule under Executive Order 13211, Actions Concerning Regulations That

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

Technical Standards

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

Environment

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

List of Subjects in 33 CFR Part 165

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

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

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

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

■ 2. Add temporary § 165.T11–437 to read as follows:

§ 165.T11–437 Safety zone; Monte Foundation Fireworks Extravaganza, Aptos, CA.

(a) *Location.* This temporary safety zone is established for the waters around Seacliff State Beach Pier near Aptos, CA. The fireworks launch site will be located at position 36°58′11.2″ N, 121°54′36.79″ W (NAD 83). The temporary safety zone applies to the nearest point of the Seacliff State Beach Pier at position 36°58′11.2″ N, 121°54′36.79″ W (NAD 83). From 9 p.m. until 10 p.m. on October 7, 2011, the area to which the temporary safety zone applies will encompass the navigable waters around the pier within a radius of 1,000 feet.

(b) *Definitions.* As used in this section, ''designated representative'' means a Coast Guard Patrol Commander, including a Coast Guard coxswain, petty officer, or other officer on a Coast Guard vessel or a Federal, State, or local officer designated by or assisting the Captain of the Port San Francisco (COTP) in the enforcement of the safety zone.

(c) *Regulations.* (1) Under the general regulations in 33 CFR part 165, subpart C, entry into, transiting, or anchoring within this safety zone is prohibited unless authorized by the COTP or the COTP's designated representative.

(2) The safety zone is closed to all vessel traffic, except as may be permitted by the COTP or a designated representative.

(3) Vessel operators desiring to enter or operate within the safety zone must contact the COTP or a designated representative to obtain permission to do so. Vessel operators given permission to enter or operate in the safety zone must comply with all directions given to them by the COTP or a designated representative. Persons and vessels may request permission to enter the safety zone on VHF–16 or through the 24-hour Command Center at (415) 399–3547.

(d) *Effective period.* This section is effective from 9 p.m. through 10 p.m. on October 7, 2011.

Dated: September 21, 2011.

Cynthia L. Stowe,

Captain, U.S. Coast Guard, Captain of the Port San Francisco.

[FR Doc. 2011–25545 Filed 10–3–11; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG–2011–0838]

RIN 1625–AA00

Safety Zone; IJSBA World Finals; Lower Colorado River, Lake Havasu, AZ

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone on the navigable waters of Lake Havasu on the lower Colorado River in support of the International Jet Sports Boating Association (IJSBA) World Finals. This temporary safety zone is necessary to provide for the safety of the participants, crew, spectators, participating vessels, and other vessels and users of the waterway. Persons and vessels are prohibited from entering into, transiting through, or anchoring within this temporary safety zone unless authorized by the Captain of the Port or his designated representative.

DATES: This rule is effective from 6 a.m. on October 1, 2011 through 7 p.m. on October 9, 2011.

ADDRESSES: Documents indicated in this preamble as being available in the docket are part of docket USCG–2011–0838 and are available online by going to *http://www.regulations.gov,* inserting USCG–2011–0838 in the ''Keyword'' box, and then clicking ''Search.'' They are also available for inspection or copying at the Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this temporary rule, call or e-mail Petty Officer Shane Jackson, Waterways Management, U.S. Coast Guard Sector San Diego, Coast Guard; telephone 619–278–7267, e-mail

Shane.E.Jackson@uscg.mil. If you have questions on viewing the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202–366–9826.

SUPPLEMENTARY INFORMATION:

Regulatory Information

The Coast Guard is issuing this temporary final rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are ''impracticable, unnecessary, or contrary to the public interest.'' Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because prior notice was impracticable. The logistical details of the marine event were not finalized or presented to the Coast Guard in enough time to draft and publish an NPRM. As such, the event will occur before the rulemaking process could be completed.

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

Basis and Purpose

The International Jet Sports Boating Association is sponsoring the IJSBA World Finals. The event will consist of 300 to 750 personal watercrafts racing in a circular course. The race will be broken down into heats of one to twenty. The sponsor will provide five course marshal and rescue vessels, as well as four perimeter safety boats for the duration of this event. This temporary safety zone is necessary to provide for the safety of the participants, crew, spectators, participating vessels, and other vessels and users of the waterway.

Discussion of Rule

The Coast Guard is establishing a temporary safety zone that will be enforced from 6 a.m. through 7 p.m. on October 1, 2011 through October 9, 2011.

The limits of the safety zone will be as follows:

34°28.49′ N, 114°21.33′ W;
34°28.55′ N, 114°21.56′ W;
34°28.43′ N, 114°21.81′ W;
34°28.32′ N, 114°21.71′ W; along the shoreline to
34°28.49′ N, 114°21.33′ W.

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

Regulatory Analyses

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

Regulatory Planning and Review

This rule is not a significant regulatory action under section 3(f) of Executive Order 12866, Regulatory Planning and Review, 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 that Executive Order 12866 or under section 1 of Executive Order 13563. The Office of Management and Budget has not reviewed it under those Orders.

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

Small Entities

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

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

This rule will affect the following entities, some of which might be small entities: the owners or operators of vessels intending to transit or anchor in a portion of the lower Colorado River at Lake Havasu from October 1, 2011 through October 9, 2011.

This safety zone will not have a significant economic impact on a substantial number of small entities for the following reasons. Vessel traffic can pass safely around the safety zone. Before the activation of the zone, the Coast Guard would publish a local notice to mariners (LNM).

Assistance for Small Entities

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

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

Collection of Information

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

Federalism

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

Unfunded Mandates Reform Act

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

Taking of Private Property

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

Civil Justice Reform

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

Protection of Children

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

Indian Tribal Governments

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

Energy Effects

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

Technical Standards

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

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

Environment

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

List of Subjects in 33 CFR Part 165

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

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

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

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

■ 2. Add temporary § 165.T11–438 to read as follows:

§ 165.T11–438 IJSBA World Finals; Lower Colorado River, Lake Havasu, AZ

(a) *Location.* The limits of the safety zone will be as follows:

34°28.49′ N, 114°21.33′ W;
34°28.55′ N, 114°21.56′ W;
34°28.43′ N, 114°21.81′ W;
34°28.32′ N, 114°21.71′ W; along the shoreline to
34°28.49′ N, 114°21.33′ W.

(b) *Enforcement Period.* This section will be enforced from 6 a.m. through 7 p.m. on October 1, 2011 through October 9, 2011. If the event concludes prior to the scheduled termination time, the Captain of the Port will cease enforcement of this safety zone and will announce that fact via Broadcast Notice to Mariners.

(c) *Definitions.* The following definition applies to this section: *designated representative,* means any commissioned, warrant, or petty officer of the Coast Guard on board Coast Guard, Coast Guard Auxiliary, and local, state, and federal law enforcement vessels who have been authorized to act on the behalf of the Captain of the Port.

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

(2) Mariners requesting permission to transit through the safety zone may request authorization to do so from the Patrol Commander (PATCOM). The PATCOM may be contacted on VHF–FM Channel 16.

(3) All persons and vessels shall comply with the instructions of the Coast Guard Captain of the Port or his designated representative.

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

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

Dated: September 17, 2011.

P.J. Hill,

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

[FR Doc. 2011–25547 Filed 9–29–11; 4:15 pm]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG–2010–0842]

RIN 1625–AA00

Safety Zones; Annual Firework Displays Within the Captain of the Port, Puget Sound Area of Responsibility

AGENCY: Coast Guard, DHS.

ACTION: Final rule.

SUMMARY: The Coast Guard is amending our regulations to correct the coordinates for four firework displays. This action is necessary to prevent injury and to protect life and property

of the maritime public from the hazards associated with the firework displays. During the enforcement periods, entry into, transit through, mooring, or anchoring within these zones is prohibited unless authorized by the Captain of the Port, Puget Sound or Designated Representative.

DATES: This rule is effective November 3, 2011.

ADDRESSES: Documents indicated in this preamble as being available in the docket are part of docket USCG–2010–0842 and are available online by going to *http://www.regulations.gov,* inserting USCG–2010–0842 in the ''Keyword'' box, and then clicking ''Search.'' They are also available for inspection or copying at the Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or e-mail Ensign Anthony P. LaBoy, USCG Sector Puget Sound Waterways Management Division, Coast Guard; telephone 206–217–6323, e-mail *SectorPugetSoundWWM@uscg.mil*. If you have questions on viewing the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202–366–9826.

SUPPLEMENTARY INFORMATION:

Regulatory Information

The Coast Guard is issuing this 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 it is unnecessary and contrary to the public interest. This action is a technical amendment to the rule to reflect the appropriate coordinates of these locations. The new coordinates listed below are the actual location that these displays have occurred without comment or objections from the maritime public in past years. This action is also necessary to prevent injury and to protect life and property of the maritime public from the hazards associated with the firework displays.

Basis and Purpose

The coordinates currently codified under this section do not correctly reflect the location of where the displays actually occur. The Coast Guard is amending the coordinates to list the correct coordinates for the locations.

Background

On February 25, 2010 we published a notice of proposed rulemaking (NPRM) entitled Safety Zones; Annual Firework Displays Within the Captain of the Port, Puget Sound Area of Responsibility in the **Federal Register** (75 FR 8566). We received 00 comments on the proposed rule. On June 15, 2010 the Coast Guard published a document in the **Federal Register** (75 FR 33700), establishing safety zones for fireworks displays within the Captain of the Port, Puget Sound Area of Responsibility. That notice provided a table which listed the coordinates of each firework display. The submitted coordinates differed from the actual coordinates for four of the fireworks displays. This rule changes the coordinates listed for four displays to the proper position. During the enforcement periods, entry into, transit through, mooring, or anchoring within these zones is prohibited unless authorized by the Captain of the Port, Puget Sound or Designated Representative.

Discussion of Rule

The Coast Guard is amending 33 CFR 165.1332 to correct coordinates listed for four firework displays that occur annually within the Captain of the Port, Puget Sound Area of Responsibility.

Regulatory Analyses

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

Regulatory Planning and Review

This rule is not a significant regulatory action under section 3(f) of Executive Order 12866, Regulatory Planning and Review, 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 that Executive Order 12866 or under section 1 of Executive Order 13563. The Office of Management and Budget has not reviewed it under that those Orders.

Small Entities

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

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. This rule would not affect any small entities since this rule does not involve creating any new safety zones but instead amends the current coordinates to reflect the appropriate coordinates of the locations.

Assistance for Small Entities

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

Collection of Information

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

Federalism

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

Unfunded Mandates Reform Act

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

Taking of Private Property

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

Civil Justice Reform

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

Protection of Children

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

Indian Tribal Governments

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

Energy Effects

We have analyzed this rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a ''significant energy action'' under that order because it is not a ''significant regulatory action'' under Executive Order 12866, as 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.

Technical Standards

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

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

Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023–01 and Commandant Instruction M16475.lD, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have concluded this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule is categorically excluded, under figure 2–1, paragraph (34)(g), of the Instruction. This rule involves amending the coordinates of four firework displays codified under 33 CFR 165.1332. An environmental analysis checklist and a categorical exclusion determination are available in the docket where indicated under **ADDRESSES**.

List of Subjects in 33 CFR Part 165

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

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

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

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

■ 2. In § 165.1332, revise the following entries in the table in (a)(1) to read as follows:

(a) * * *

(1) * * *

Event name	Event location	Latitude	Longitude
City of Anacortes	Fidalgo Bay	48°30.016′ N	122°36.154′ W
* * *	* *	*	*
City of Kenmore Fireworks	Lake Forest Park	47°45.25′ N	122°15.75′ W
* * *	* *	*	*
Vashon Island Fireworks	Quartermaster Harbor	47°24.0′ N	122°27.0′ W
* * *	* *	*	*
Friday Harbor Independence	Friday Harbor	48°32.255′ N	123°0.654′ W

* * * * *

Dated: *September 12, 2011.*

S.J. Ferguson,

Captain, U.S. Coast Guard, Captain of the Port, Puget Sound.

[FR Doc. 2011–25344 Filed 10–3–11; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF THE INTERIOR

National Park Service

36 CFR Part 7

RIN 1024–AD75

Special Regulations; Areas of the National Park System, Grand Teton National Park, Bicycle Routes, Fishing and Vessels

AGENCY: National Park Service, Interior.

ACTION: Final rule.

SUMMARY: This rule designates certain multi-use pathways in Grand Teton National Park (Park) as routes for bicycle use. National Park Service (NPS) regulations require issuance of a special regulation to designate bicycle routes that are located off park roads and outside developed areas. The first two segments of a planned multi-use pathway system have been constructed and are generally located within 50 feet of existing park roads. Separating bicycle traffic from lanes used for motor vehicle travel will reduce real and perceived safety hazards, which will enhance opportunities for non-motorized enjoyment of the park and encourage the use of alternate transportation. This rule also revises NPS special regulations regarding fishing and vessels in certain Park waters to reflect current operating practices and management objectives.

DATES: This regulation is effective November 3, 2011.

FOR FURTHER INFORMATION CONTACT: Gary M. Pollock, Management Assistant, Grand Teton National Park, 307–739–3428.

SUPPLEMENTARY INFORMATION:

Background

Grand Teton National Park is located in northwest Wyoming and encompasses approximately 310,000 acres. Located just south of Yellowstone National Park, Grand Teton is at the heart of the Greater Yellowstone Ecosystem, and includes the iconic mountains of the Teton Range, the broad valley of Jackson Hole, numerous lakes, and a 40-mile segment of the Snake River. The park was originally established in 1929, but at that time included only the mountains and several of the lakes at their base. In 1943, Jackson Hole National Monument was established by presidential proclamation, including much of the valley to the east of the mountains. In 1950, Congress combined the 1929 park and the national monument into the present-day national park.

The Park supports diverse and abundant populations of wildlife, and is world renowned for its opportunities to view elk, moose, bison, pronghorn, grizzly and black bears, grey wolves, and coyotes. Other species such as trumpeter swans, bald eagles, and many species of waterfowl and small mammals are also abundant.

Visitors to the Park typically participate in several types of activities, including: scenic touring, viewing wildlife, hiking, mountain climbing, fly fishing, float trips, bicycling, and other forms of recreation consistent with enjoyment of the Park's resources. The Park includes several major developed areas, five campgrounds, almost 200 miles of hiking trails, 140 miles of paved roads, and 70 miles of unpaved roads. Visitation to the Park has remained relatively constant over the last decade averaging approximately 2.5 million recreational visitors, mostly between the months of May and September.

In April 2000, the Park undertook a transportation study to collect basic information regarding transportation issues in the Park. The study subsequently served as a foundation for a transportation planning process that was initiated in September 2001. The Transportation Plan/Final Environmental Impact Statement (FEIS) was released in September 2006. A Record of Decision (ROD) selecting Alternative 3a was signed on March 12, 2007, and a notice of the decision was published in the **Federal Register** on April 24, 2007 (72 FR 20365). A full description of the alternatives that were considered, the environmental impacts associated with the project, and public involvement can be found online at *http://www.nps.gov/grte/parkmgmt/tranplan.*

Although the planning effort and ROD addressed a variety of transportation-related issues, a major focus was on the development of a system of multi-use pathways to improve opportunities for non-motorized activities within the Park. Bicycling has become increasingly popular in the Park, and many visitors and others who commented during the planning process expressed concerns over the risks that are present when bicycles and motor vehicles share the road. Commenters often noted that this was particularly true for families with young children and visitors who are not experienced bicyclists.

Among the issues that were raised during the planning process were the potential effects of the pathway system on the park's wildlife. Although wildlife is abundant and often visible from park roads, it is well documented that animals respond differently to the presence of pedestrians and bicyclists than they do to motor vehicle traffic. The potential for reducing the effectiveness of habitat and displacing wildlife from areas located near the pathways was a significant concern for many individuals and organizations that commented during the planning process. Furthermore, in light of the Park's abundant wildlife, concerns were raised regarding the potential for surprise and potentially dangerous encounters between bicyclists and large animals, including grizzly bears.

The ROD sets forth the Park's decision for the development of an extended system of multi-use pathways within the park. The system will include 39 miles of pathways between the south park boundary and Colter Bay via the Teton Park Road, as well as a 3-mile segment along the Moose-Wilson Road between the Granite Canyon Entrance and the Laurance S. Rockefeller Preserve. In general, pathways will be constructed within 50 feet of the road, except that the segments between North Jenny Lake Junction and Colter Bay, and along the Moose-Wilson Road will be constructed in very close proximity to the roads, generally within the existing engineered and previously disturbed road corridors.

The preferred alternative in the FEIS, subsequently adopted in the ROD, addressed the concerns regarding wildlife through a combination of research and monitoring, construction phasing, and the requirement that certain portions of the pathway system would be constructed within the existing road corridors. Specifically, the ROD includes a significant emphasis on wildlife research and monitoring to provide a detailed understanding of the effects of pathway development. Monitoring and research activities began in 2007 to provide a pre-construction baseline, and continued through 2010. The phased approach to construction of the pathway system will allow information obtained from the research and monitoring program to be integrated into the design and operation of future pathway segments.

The first phase of pathways was constructed during the summer and fall of 2008. These segments extend from

the Dornan's inholding near Park headquarters in Moose along the Teton Park Road to the South Jenny Lake area, a distance of approximately 8 miles. Additional segments may be constructed and designated as funds become available.

Rationale for the Final Rule

This rule complies with 36 CFR 4.30, which requires the NPS to designate bicycle routes outside of developed areas through the promulgation of a special regulation. Section 4.30 further specifies that such routes may be designated only upon ''* * * a written determination that such use is consistent with the protection of a park area's natural, scenic and aesthetic values, safety considerations and management objectives and will not disturb wildlife or park resources.'' The Superintendent has made such a determination and found that the designation of the pathway segments between Moose and South Jenny Lake as a route for bicycle use is consistent with the requirements of 36 CFR 4.30.

This rule also makes several changes to the special regulations for the Park, as set forth in 36 CFR 7.22, to reflect current operating practices and changes to the Park's land status. The rule closes Phelps Lake to the operation of motor boats, consistent with all other backcountry lakes in the Park. This change is prompted by the change in land status for the area surrounding the southern half of the lake.

Prior to November 2007, these lands were a private inholding within the park known as the JY Ranch, owned by Laurance S. Rockefeller and, subsequent to his death, by his estate. The property functioned as a family guest ranch and retreat for the Rockefeller family since the 1930s, where guests typically engaged in activities such as hiking, horseback riding, and boating on Phelps Lake. The ranch included a boathouse on the lakeshore where motorboats were kept during the summer. The Park's special regulations authorized the use of motorboats on Phelps Lake, thereby allowing the JY Ranch to continue a use that had existed prior to the Park's establishment. No other motorboat use occurred on the lake since it was inaccessible to park visitors except on foot or horseback.

Before his death, Mr. Rockefeller made a decision to donate the property to the United States for inclusion within the Park. In accordance with Mr. Rockefeller's wishes, all buildings, roads, and other development were removed by his estate, and a system of trails to allow visitors to enjoy the area was constructed. The property was conveyed to the United States in November 2007. This rule removes the now-unnecessary provision that allowed motorboat use on Phelps Lake.

This rule also removes the provision in 36 CFR 7.22(b) that allows authorized marine bait dealers, all of which are Park concessioners, to keep certain species of fish taken from Jackson Lake and sell them as bait. The NPS determined this provision to be unnecessary and inconsistent with NPS Management Policies, and the practice was discontinued several years ago.

Summary of and Responses to Public Comments

The NPS published a proposed rule on October 5, 2009 (74 FR 51099) and accepted public comments through December 4, 2009. Comments were accepted through the mail, hand delivery, and through the Federal eRulemaking Portal: *http://www.regulations.gov.* A total of three (3) comments were received, all of them from individuals.

One of the comments supported the proposed rule but opposed NPS regulation of bicycle use and other uses. The NPS recognizes that individuals have a variety of opinions regarding the regulation of activities within units of the National Park System, but notes that such regulations are necessary for the proper administration of such areas.

A second comment supported the proposed rule and noted that the pathway system will benefit persons with disabilities. The NPS agrees with the comment.

A third comment supported the proposed rule and suggested the adoption of safety and etiquette rules for pathway users, such as travelling at a safe speed, keeping right except to pass, giving a clear warning when passing, and moving off the trail when stopped. The NPS will provide information to pathway users on proper etiquette and establish additional rules regulating the use of the pathway consistent with the requirements of 36 CFR 1.5 and 1.7.

Changes From the Proposed Rule

The term motorboat in the proposed rule is changed to power-driven vessel in the final rule, as the term power-driven vessel is defined by the NPS in 36 CFR 1.4 and use here is consistent with language in 36 CFR part 3 pertaining to Boating and Water Use activities within NPS areas system-wide. Further, the rule language in the final rule is changed slightly and formatted differently than in the proposed rule to improve clarity and consistency with contemporary rulemaking without affecting the intent of the rule.

Summary of Economic Analysis

The NPS published a report in March 2009 entitled ''Cost-Benefit and Regulatory Flexibility Analyses: Proposed Regulations Designating Pathways for Multi-Use in Grand Teton National Park.'' The report presents the cost-benefit and regulatory flexibility analyses of the regulatory action associated with designating certain pathways for multi-use, including bicycle use, pursuant to the Grand Teton National Park Transportation Plan (NPS 2006). Quantitative analyses were not conducted due to a lack of available data, and because the additional cost of conducting quantitative analyses was not considered to be reasonably related to the expected increase in the quantity and/or quality of relevant information. Nevertheless, the NPS believes that the cost-benefit and regulatory flexibility analyses provide an adequate assessment of all relevant costs and benefits associated with the regulatory action.

The results of the cost-benefit analysis indicate that the costs of the regulatory action are justified by the associated benefits. Additionally, this regulatory action will not have an annual economic effect of $100 million or more, and will not adversely affect an economic sector, productivity, jobs, the environment, or other units of government. This regulatory action will improve economic efficiency.

The full report is available for review on the Park Web site, *http://www.nps.gov/grte.*

Drafting Information: The primary author of this rule was Gary M. Pollock, Management Assistant, Grand Teton National Park.

Compliance With Other Laws and Executive Orders

Regulatory Planning and Review (Executive Order 12866)

This document is not a significant rule and is not subject to review by the Office of Management and Budget under Executive Order 12866.

(1) This rule will not have an effect of $100 million or more on the economy. It will not adversely affect, in a material way, the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities.

(2) This rule will not create a serious inconsistency or otherwise interfere with an action taken or planned by another agency. Since this is an agency-specific change, implementing actions

under this rule will not interfere with plans by other agencies, local government plans, policies, or controls.

(3) This rule does not alter the budgetary effects of entitlements, grants, user fees, or loan programs or the rights or obligations of their recipients. This rule exclusively affects the use of bicycles and motorboats within the Park. No grants or other forms of monetary supplement are involved.

(4) This rule does not raise novel legal or policy issues. This rule simply implements the NPS general bicycle regulation at 36 CFR 4.30 requiring rulemaking for the designation of bicycle routes in Grand Teton National Park.

Regulatory Flexibility Act (RFA)

The Department of the Interior certifies that this document 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: Proposed Regulations Designating Pathways for Multi-Use in Grand Teton National Park,'' which is available for review on the Park Web site at: *http://www.nps.gov/grte.*

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.

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. It addresses public use of national park lands, and imposes no requirements on other agencies or governments.

Takings (Executive Order 12630)

Under the criteria in Executive Order 12630, the rule does not have significant takings implications. A taking implication assessment is not required. No taking of personal property will occur as a result of this rule.

Federalism (Executive Order 13132)

Under the criteria in Executive Order 13132, the 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. This rule only affects use of NPS administered lands and waters. It has no outside effects on other areas.

Civil Justice Reform (Executive Order 12988)

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

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

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

Consultation With Indian Tribes (Executive Order 13175)

Under the criteria in Executive Order 13175, we have evaluated this rule and determined that it has no potential effects on federally recognized Indian tribes. Representatives of the eleven tribes affiliated with the Park were consulted during the preparation of the FEIS for the project.

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)

In April 2000, the Park undertook a transportation study to collect basic information regarding transportation issues in the Park. The study subsequently served as a foundation for a transportation planning process that was initiated in September 2001. The Transportation Plan/Final Environmental Impact Statement (FEIS) was released in September 2006. A Record of Decision (ROD) selecting Alternative 3a was signed on March 12, 2007, and a notice of the decision was published in the **Federal Register** on April 24, 2007 (72 FR 20365). A full description of the alternatives that were considered, the environmental impacts associated with the project, and public involvement can be found online at *http://www.nps.gov/grte/parkmgmt/tranplan* or by contacting the Superintendent, Grand Teton National Park, P.O. Drawer 170, Moose, Wyoming 83012.

Information Quality Act (IQA)

In developing this rule we did not conduct or use a study, experiment, or survey requiring peer review under the IQA (Pub. L. 106–554).

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.

List of Subjects in 36 CFR Part 7

National parks, Reporting and recordkeeping requirements.

For the reasons given in the preamble, 36 CFR part 7 is amended 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, 460(q), 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. Amend § 7.22 to revise paragraphs (b)(3) and (e)(1), redesignate paragraphs (e)(2) through (e)(4) as (e)(3) through (e)(5), and add new paragraphs (e)(2) and (h) to read as follows:

§ 7.22 Grand Teton National Park.

* * * * *

(b) * * *

(3) *Bait:* (i) The use or possession of fish eggs or fish for bait is prohibited on or along the shores of all park waters, except:

(ii) It is permissible to possess or use the following dead, non-game fish as bait on or along the shores of Jackson Lake:

(A) Redside Shiner
(B) Speckled Dace
(C) Longnose Dace
(D) Piute Sculpin
(E) Mottled Sculpin
(F) Utah Chub
(G) Utah Sucker
(H) Bluehead Sucker
(I) Mountain Sucker

* * * * *

(e) *Vessels.* (1) Power-driven vessels are prohibited on all park waters except Jackson Lake and Jenny Lake.

(2) On Jenny Lake:

(i) Operating a power-driven vessel using a motor exceeding 7½ horsepower is prohibited, except:

(ii) An NPS authorized boating concessioner may operate power-driven vessels under conditions specified by the Superintendent.

* * * * *

(h) *Where may I ride a bicycle in Grand Teton National Park?* (1) You may ride a bicycle on park roads, in parking areas, and upon designated routes established within the park in accordance with § 4.30(a) of this chapter. The following routes are designated for bicycle use:

(i) The paved multi-use pathway alongside Dornan Road between Dornan's and the Teton Park Road.

(ii) The paved multi-use pathway alongside the Teton Park Road between Dornan Road (Dornan's Junction) and the South Jenny Lake developed area.

(2) The Superintendent may open or close designated routes, or portions thereof, or impose conditions or restrictions for bicycle use after taking into consideration the location of or impacts on wildlife, the amount of snow cover or other environmental conditions, public safety, and other factors, under the criteria and procedures of §§ 1.5 and 1.7 of this chapter.

Dated: September 22, 2011.

Eileen Sobeck,

Acting Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 2011–25394 Filed 10–3–11; 8:45 am]

BILLING CODE 4310–CT–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 82

[EPA–HQ–OAR–2003–0118; FRL–9474–4]

RIN 2060–AG12

Protection of Stratospheric Ozone: acceptability Determination 26 for Significant New Alternatives Policy Program

AGENCY: Environmental Protection Agency (EPA).

ACTION: Determination of acceptability.

SUMMARY: This Determination of Acceptability expands the list of acceptable substitutes for ozone-depleting substances under the U.S. Environmental Protection Agency's (EPA) Significant New Alternatives Policy (SNAP) program. The determinations concern new substitutes for use in the refrigeration and air conditioning, solvent cleaning and fire suppression sectors.

DATES: This determination is effective on October 4, 2011.

ADDRESSES: EPA has established a docket for this action under Docket ID No. EPA–HQ–OAR–2003–0118 (continuation of Air Docket A–91–42). All electronic documents in the docket are listed in the index at *http://www.regulations.gov.* Although listed in the index, some information is not publicly available, *i.e.,* Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Publicly available docket materials are available either electronically at *http://www.regulations.gov* or in hard copy at the EPA Air Docket (No. A–91–42), EPA/DC, EPA West, Room 3334, 1301 Constitution Ave., NW., Washington, DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the Air Docket is (202) 566–1742.

FOR FURTHER INFORMATION CONTACT: Margaret Sheppard by telephone at (202) 343–9163, by facsimile at (202) 343–2338, by e-mail at *sheppard.margaret@epa.gov,* or by mail at U.S. Environmental Protection Agency, Mail Code 6205J, 1200 Pennsylvania Avenue, NW., Washington, DC 20460. Overnight or courier deliveries should be sent to the office location at 1310 L Street, NW., 10th floor, Washington, DC 20005.

For more information on the Agency's process for administering the SNAP program or criteria for evaluation of substitutes, refer to the original SNAP rulemaking published in the **Federal Register** on March 18, 1994 (59 FR 13044). Notices and rulemakings under the SNAP program, as well as other EPA publications on protection of stratospheric ozone, are available at EPA's Ozone Depletion World Wide Web site at *http://www.epa.gov/ozone/* including the SNAP portion at *http://www.epa.gov/ozone/snap/.*

SUPPLEMENTARY INFORMATION:

I. Listing of New Acceptable Substitutes
A. Refrigeration and Air Conditioning
B. Solvent Cleaning
C. Fire Suppression
II. Section 612 Program
A. Statutory Requirements and Authority for the SNAP Program
B. EPA's Regulations Implementing Section 612
C. How the Regulations for the SNAP Program Work
D. Additional Information About the SNAP Program
Appendix A—Summary of Decisions for New Acceptable Substitutes

I. Listing of New Acceptable Substitutes

This section presents EPA's most recent acceptable listing decisions for substitutes in the refrigeration and air conditioning, solvent cleaning, and fire suppression sectors. For copies of the full list of ozone-depleting substance (ODS) substitutes in all industrial sectors, visit EPA's Ozone Layer Protection Web site at *http://www.epa.gov/ozone/snap/lists/index.html.*

The sections below discuss each substitute listing in detail. Appendix A contains a table summarizing today's listing decisions for new substitutes. The statements in the ''Further Information'' column in the table provide additional information, but are not legally binding under section 612 of the Clean Air Act (CAA). In addition, the ''further information'' may not be a comprehensive list of other legal obligations you may need to meet when using the substitute. Although you are not required to follow recommendations in the ''further information'' column of the table to use a substitute consistent with section 612 of the CAA, EPA strongly encourages you to apply the information when using these substitutes. In many instances, the information simply refers to standard operating practices in existing industry and/or building-code standards. However, some of these statements may refer to obligations that are enforceable or binding under federal or state programs other than the SNAP program. Many of these statements, if adopted, would not require significant changes to existing operating practices.

You can find submissions to EPA for the use of the substitutes listed in this document and other materials supporting the decisions in this action in docket EPA–HQ–OAR–2003–0118 at *http://www.regulations.gov.*

A. Refrigeration and Air Conditioning

1. Hot Shot 2

EPA's decision: EPA finds Hot Shot 2 is acceptable as a substitute for CFC–12, CFC–11, CFC–113, CFC–114, R–13B1, R–500, R–502, HCFC–22 and HCFC blends, including those containing HCFC–22 and/or HCFC–142b, for use in retrofit equipment in:

- Centrifugal chillers
- Reciprocating and screw chillers
- Industrial process refrigeration
- Ice skating rinks
- Cold storage warehouses

- Refrigerated transport
- Retail food refrigeration
- Vending machines
- Commercial ice machines
- Residential dehumidifiers
- Household and light commercial air conditioning and heat pumps

Hot Shot 2 is a blend by weight of 79.3 percent HFC–134a, which is also known as 1,1,1,2-tetrafluoroethane (CAS Reg. No. 811–97–2), 19.5 percent HFC–125, which is also known as 1,1,1,2,2-pentafluoroethane (CAS Reg. No. 354–33–6), and 1.7 percent R–600, which is also known as n-butane (CAS Reg. No. 106–97–8). You may find the submission under Docket item EPA–HQ–OAR–2003–0118–0271 at *http://www.regulations.gov.*

Environmental information: Hot Shot 2 has no ozone depletion potential (ODP). Its components (HFC–134a, HFC–125, and R–600) have 100-year integrated (100-yr) global warming potentials (GWPs) of 1,430,[1] 3,500, and 4 respectively. If these values are weighted by mass percentage, then Hot Shot 2 has a GWP of about 1,820. Of the three components of Hot Shot 2, R–600 is defined as a volatile organic compound (VOC) under CAA regulations (see 40 CFR 51.100(s)) addressing the development of State Implementation Plans (SIPs) to attain and maintain the national ambient air quality standards. The emissions of this refrigerant will be limited given it is subject to the venting prohibition under section 608(c)(2) of the CAA and EPA's implementing regulations codified at 40 CFR 82.154(a)(1).[2] Considering the small expected emissions of this refrigerant and particularly of the VOC component, use of Hot Shot 2 is not expected to pose any significant adverse impacts on local air quality.

Flammability information: While the component R–600, isobutane, is a hydrocarbon that is flammable, Hot Shot 2 as formulated and in the worst-case fractionation formulation is not flammable.

Toxicity and exposure data: Potential health effects of this substitute include drowsiness or dizziness. The substitute may also irritate the skin or eyes or cause frostbite. At sufficiently high concentrations, the substitute may cause irregular heartbeat. The substitute could cause asphyxiation if air is displaced by vapors in a confined space. These potential health effects are common to many refrigerants.

EPA anticipates that Hot Shot 2 will be used consistent with the recommendations specified in the Material Safety Data Sheets (MSDSs) for the blend and for the individual components. For the blend, the manufacturer recommends an acceptable exposure limit (AEL) of 1000 ppm on an 8-hour time-weighted average. For both HFC–134a and HFC–125, the American Industrial Hygiene Association (AIHA) recommends workplace environmental exposure limits (WEELs) of 1000 ppm on an 8-hour time-weighted average. Similarly, for R–600 the American Conference of Governmental Industrial Hygienists (ACGIH) has established a threshold limit value (TLV) of 1,000 ppm on an 8-hour time-weighted average. The National Institute for Occupational Safety and Health (NIOSH) has a recommended exposure limit (REL) of 800 ppm for R–600 on a 10-hour time-weighted average. EPA anticipates that users will be able to meet workplace exposure limits (WEELs, TLVs, RELs and manufacturer AELs) and address potential health risks by following requirements and recommendations in the MSDS and other safety precautions common to the refrigeration and air conditioning industry.

Comparison to other refrigerants: Hot Shot 2 is not ozone-depleting in contrast to CFC–12, CFC–11, CFC–113, CFC–114 (with ODPs ranging from 0.58 to 1.0[3]), R–13B1 (with an ODP of 15.9), HCFC–22 (with an ODP of 0.04), R–500 (with an ODP of 0.074) and R–502 (with an ODP of 0.334), the ozone-depleting substances which it replaces, and comparable to a number of other acceptable non-ozone-depleting substitutes for these end uses such as HFC–134a, R–410A, and R–404A. Hot Shot 2's GWP of about 1,820 is lower than or comparable to those of the substances it is replacing, including CFC–12, CFC–11, CFC–113, CFC–114, R–13B1, R–500, R–502, and HCFC–22, with GWPs ranging from 1,810 to 10,900. Furthermore, the GWP of Hot Shot 2 is lower than or comparable to that of other non-ozone-depleting substitutes in the same refrigeration and air conditioning end uses for which we are finding it acceptable, such as HFC–134a with a GWP of 1,430, R–410A with a GWP of 2,100 and R–404A with a GWP of 3,930. Flammability and toxicity risks are low, as discussed above. Thus, EPA finds Hot Shot 2 acceptable in the end uses listed above because the overall environmental and human health risk posed by Hot Shot 2 is lower than or comparable to the risks posed by other substitutes found acceptable in the same end uses.

2. R–407F

EPA's decision: EPA finds R–407F is acceptable as a substitute for HCFC–22 and HCFC blends, including those containing HCFC–22 and/or HCFC–142b, for use in new and retrofit equipment in:

- Industrial process refrigeration
- Ice skating rinks
- Industrial process air conditioning
- Cold storage warehouses
- Refrigerated transport
- Retail food refrigeration
- Commercial ice machines
- Household refrigerators and freezers
- Motor vehicle air conditioning (buses and passenger trains only)
- Household and light commercial air conditioning and heat pumps

R–407F, marketed under the trade name Genetron® LT or Genetron® Performax™ LT, is a weighted blend of 30 percent HFC–32, which is also known as difluoromethane (CAS Reg. No. 75–10–5), 30 percent HFC–125, which is also known as 1,1,1,2,2-pentafluoroethane (CAS Reg. No. 354–33–6), and 40 percent HFC–134a, which is also known as 1,1,1,2-tetrafluoroethane (CAS Reg. No. 811–97–2). You may find the submission under Docket item EPA–HQ–OAR–2003–0118–0264 at *http://www.regulations.gov.*

Environmental information: R–407F has no ODP. HFC–32, HFC–125, and HFC–134a have GWPs of 675, 3500, and 1430, respectively. If these values are weighted by mass percentage, then R–407F has a GWP of about 1,820. The contribution of this refrigerant blend to greenhouse gas emissions will be limited given it is subject to the venting prohibition under section 608(c)(2) of the CAA and EPA's implementing regulations codified at 40 CFR 82.154(a)(1), which limit emissions of refrigerant substitutes.

R–407F does not contain any VOCs as defined under CAA regulations (see 40 CFR 51.100(s)) addressing the development of SIPs to attain and maintain the national ambient air quality standards.

[1] Unless otherwise stated, all GWPs in this document are from: IPCC, 2007: *Climate Change 2007: The Physical Science Basis. Contribution of Working Group I to the Fourth Assessment Report of the Intergovernmental Panel on Climate Change* (Solomon, S., D. Qin, M. Manning, Z. Chen, M. Marquis, K.B. Averyt, M. Tignor and H.L. Miller (eds.)). Cambridge University Press, Cambridge, United Kingdom and New York, NY, USA. This document is accessible at *http://www.ipcc.ch/publications_and_data/ar4/wg1/en/contents.html.*

[2] For more information, including definitions, see 40 CFR part 82 subpart F.

[3] Unless otherwise stated, all ODPs in this document are from: WMO (World Meteorological Organization), *Scientific Assessment of Ozone Depletion: 2010,* Global Ozone Research and Monitoring Project–Report No. 52, 516 pp., Geneva, Switzerland, 2011. This document is accessible at *http://ozone.unep.org/Assessment_Panels/SAP/Scientific_Assessment_2010/index.shtml.*

Flammability information: While the component HFC–32 is moderately flammable, R–407F as formulated and in the worst-case fractionation formulation is not flammable.

Toxicity and exposure data: Potential health effects of this substitute include drowsiness or dizziness. The substitute may also irritate the skin or eyes or cause frostbite. At sufficiently high concentrations, the substitute may cause irregular heartbeat. The substitute could cause asphyxiation if air is displaced by vapors in a confined space. These potential health effects are common to many refrigerants.

The AIHA has established WEELs of 1000 ppm on an 8-hour time-weighted average for each of the components of R–407F. The manufacturer also recommends an AEL of 1000 ppm on an 8-hour time-weighted average for each of the R–407F components. EPA anticipates that users will be able to meet AIHA's WEELs and the manufacturer's recommended AELs and address potential health risks by following requirements and recommendations in the MSDS and other safety precautions common to the refrigeration and air conditioning industry.

Comparison to other refrigerants: R–407F is not ozone-depleting in contrast to HCFC–22 (with an ODP of 0.04) and HCFC–142b (with an ODP of 0.06), the ozone-depleting substances which it replaces, and comparable to a number of other acceptable non-ozone-depleting substitutes in these end uses (*e.g.,* R–410A and R–404A). R–407F's GWP of about 1,820 is comparable to that of HCFC–22 with a GWP of 1,810 and lower than or comparable to that of other non-ozone-depleting substitutes for HCFC–22 in the same refrigeration and air conditioning end uses, such as R–410A with a GWP of 2,100 and R–404A with a GWP of 3,930. Flammability and toxicity risks are low, as discussed above. Thus, EPA finds R–407F acceptable in the end uses listed above because the overall environmental and human health risk posed by R–407F is lower than or comparable to the risks posed by other substitutes found acceptable in the same end uses.

3. R–507A

EPA's decision: EPA finds R–507A is acceptable as a substitute for R–13B1 for use in retrofit equipment in very low temperature refrigeration.

R–507A, also known as R–507, is a blend of 50% by weight HFC–125 (1,1,1,2,2-pentafluoroethane) and 50% by weight HFC–143a (1,1,1-trifluoroethane). EPA previously listed R–507A as an acceptable alternative for various CFCs (*e.g.,* CFC–12) and CFC-containing blends (*e.g.,* R–500 and R–502) in several refrigeration and air conditioning end uses and as an alternative for HCFC–22 and blends in the very low temperature refrigeration end use. (March 18, 1994, 59 FR 13044; August 26, 1994, 59 FR 44240; January 13, 1995, 60 FR 3318; September 5, 1996, 61 FR 47012; December 20, 2002, 67 FR 77927). Today's decision finds R–507A acceptable as a substitute for R–13B1 (also known as halon 1301) in the very low temperature refrigeration end use.[4]

Environmental information: The ODP of R–507A is zero. The GWPs of HFC–125 and HFC–143a are about 3,400 and 4,300, respectively. If these values are weighted by mass percentage, then R–507A has a GWP of 3,850. The contribution of this refrigerant blend to greenhouse gas emissions will be limited given it is subject to the venting prohibition under section 608(c)(2) of the CAA and EPA's implementing regulations codified at 40 CFR 82.154(a)(1), which limit emissions of refrigerant substitutes.

R–507A does not contain any VOCs as defined under CAA regulations (see 40 CFR 51.100(s)) addressing the development of SIPs to attain and maintain the national ambient air quality standards.

Flammability Information: While the component HFC–143a is moderately flammable, R–507A as formulated and in the worst-case fractionation formulation is not flammable.

Toxicity and Exposure Data: Potential health effects of this substitute include headache, nausea, dizziness, drowsiness, or loss of consciousness. The substitute may also irritate the skin or eyes or cause frostbite. At sufficiently high concentrations, the substitute may cause irregular heartbeat or rapid heartbeat. The substitute could cause asphyxiation if air is displaced by vapors in a confined space. These potential health effects are common to many refrigerants.

EPA anticipates that R–507A will be used consistent with the recommendations specified in the MSDSs for the blend and the individual components. All components of the blend have WEELs of 1,000 ppm, as established by AIHA. EPA anticipates that users will be able to meet AIHA's WEELs and address potential health risks by following requirements and recommendations in the MSDS and other safety precautions common to the refrigeration and air conditioning industry.

Comparison to Other Refrigerants: R–507A is not ozone-depleting, in contrast to R–13B1 (with an ODP of 15.9), the ozone-depleting substance which it replaces, and in contrast to NARM–502 and R–403B, substitutes for this end use that contain HCFC–22 with an ODP of 0.04. R–507A's GWP of about 3,850 is well below that of R–13B1 with a GWP of 7,140 and lower than or comparable to that of other non-ozone-depleting substitutes for R–13B1 in the very low temperature refrigeration end use, such as R–508A with a GWP of 13,200, NARM–502 with a GWP of 2,380, and R–403B with a GWP of 1,500. Flammability and toxicity risks are low, as discussed above. Thus, EPA finds R–507A acceptable in the very low temperature refrigeration end use for retrofit equipment because the overall environmental and human health risk posed by R–507A is lower than or comparable to the risks posed by other substitutes found acceptable in the same end use.

B. Solvent Cleaning

1. Perfluorobutyl Iodide (PFBI)

EPA's decision: EPA finds perfluorobutyl iodide (PFBI) is acceptable as a substitute for CFC–113, methyl chloroform, and HCFC–225ca, HCFC–225cb, and blends thereof for use in:

- Metal cleaning.
- Electronics cleaning.
- Precision cleaning.

PFBI is also known as 1,1,1,2,2,3,3,4,4-nonafluoro-4-iodo-butane (CAS Reg. No. 423–39–2). This substitute was submitted to EPA under the trade name Capstone® 4–I as a fluorinated iodide mixture containing greater than 99 percent PFBI. You may find the submission under Docket item EPA–HQ–OAR–2003–0118–0269 at *http://www.regulations.gov.*

Environmental information: PFBI has an ODP of less than 0.005. PFBI has a GWP of less than 5 relative to CO_2 and an atmospheric lifetime of a few days[5]. PFBI is currently defined as a VOC under Clean Air Act regulations (see 40 CFR 51.100(s)) addressing the development of SIPs to attain and maintain the national ambient air quality standards. Many States currently, in particular those with areas that are violating the ozone NAAQS,

[4] EPA received a test marketing notification for this use, accessible under Docket item EPA–HQ–OAR–2003–0118–0266 at *http://www.regulations.gov.*

[5] ODP, GWP and atmospheric lifetime for PFBI are from information provided in the submission under Docket item EPA–HQ–OAR–2003–0118–0269 at *http://www.regulations.gov.*

have regulations governing the VOC content of solvents.

Some evidence shows that the substitute can cause aquatic toxicity, with an LC_{50}[6] of 2 mg/l in a 96-hour test on fathead minnows under laboratory conditions. Due to PFBI's low solubility in water, high vapor pressure and high volatility, it is not likely to accumulate in surface water at concentrations high enough to be toxic to fish[7]. To address the potential for toxicity to fish, the EPA recommends that users follow recommendations in the manufacturer's MSDS, including:

- Collect the spent solvent for reclamation or incineration;
- Incinerate materials that contain or are contaminated with the solvent;
- Send solvent-contaminated wastewater to a wastewater treatment facility to prevent the solvent from entering waterways; and
- Do not dispose of the solvent by releasing it into waterways.

EPA anticipates that PFBI will be disposed of consistent with regulations pertaining to the definition of hazardous waste under the Resource Conservation and Recovery Act (RCRA) as well as with the recommendations above.

Flammability information: PFBI is not flammable.

Toxicity and exposure data: Potential health effects of this substitute include cough, shortness of breath, central nervous system depression, dizziness, confusion, incoordination, drowsiness, or unconsciousness. The substitute may also irritate the skin or eyes. At sufficiently high concentrations, the substitute may cause irregular heartbeat or fluid in the lungs. These potential health effects are common to many solvents.

EPA anticipates that PFBI will be used consistent with the recommendations specified in the manufacturer's MSDS. EPA and the manufacturer both recommend an acceptable exposure limit of 375 ppm over an 8-hour time-weighted average for PFBI. Users should be aware of additional exposure limits that may be associated with byproducts in PFBI solutions, such as iodine. EPA anticipates that users will be able to meet the workplace exposure limits (manufacturer AEL and EPA recommendation) and address potential health risks by following requirements and recommendations in the MSDSs and other safety precautions common in the solvent cleaning industry.

Comparison to other solvents: PFBI's ODP of less than 0.005 is below that of CFC–113 (with an ODP of 0.85) and lower than or comparable to that of other substitutes for CFC–113 in metals, electronics, and precision cleaning such as HCFC–225ca with an ODP of 0.02, HCFC–225cb with an ODP of 0.03, and HFE–7100 with an ODP of zero. PFBI's GWP of less than 5 is well below that of CFC–113 with a GWP of 6,130 and is lower than that of other substitutes for CFC–113 in the listed end uses, such as HCFC–225ca with a GWP of 1,220, HCFC–225cb with a GWP of 595, and HFE–7100 with a GWP of 297. PFBI has a lower LC_{50} for fish than some other acceptable solvents in these end uses (*e.g.,* 7280 to 8120 mg/l for acetone[8], 40.7 to 66.8 mg/l for trichloroethylene,[9] and greater than 7.9 mg/l for HFE–7100[10]) and an LC_{50} higher than for some other acceptable substitutes (*e.g.,* 0.7 mg/l for d-limonene[11]). EPA expects that following the disposal recommendations in the manufacturer's MSDS can sufficiently address this risk. Flammability and toxicity risks are low, as discussed above. Thus, EPA finds PFBI acceptable in the end uses listed above because the overall risk to human health and the environment posed by PFBI is lower than or comparable to the risks posed by other substitutes found acceptable in the same end uses.

C. Fire Suppression

1. Firebane® All-Weather 1115 and Firebane® 1115

EPA's decision: EPA finds Firebane® All-Weather 1115 and Firebane® 1115 acceptable as substitutes for halon 1211 for use as streaming agents.

Because the formulations of Firebane® All-Weather 1115 and Firebane® 1115 are very similar and share the same human health and environmental risks, we are listing them together and, hereinafter, collectively referring to them as ''both Firebane® 1115 formulations.'' The manufacturer of both Firebane® 1115 formulations has claimed their composition as CBI. You may find the submissions under Docket items EPA–HQ–OAR–2003–0118–0255 and EPA–HQ–OAR–2003–0118–0256 at *http://www.regulations.g*ov.

Environmental information: Both Firebane® 1115 formulations have zero ODP and zero GWP. Therefore, both Firebane® 1115 formulations are not expected to pose any significant adverse impacts on the ozone layer or climate.

In the case of both Firebane® 1115 formulations, it is expected that all of the constituents would rapidly aerosolize during expulsion from the container and then settle as a liquid on surfaces. After settling, cleanup would involve washing or rinsing of surfaces. The substitutes are readily biodegradable and have an exceptionally low biological oxygen demand[12] (BOD) level for wastewater and low chemical oxygen demand. Discharge of either Firebane® 1115 formulation is, therefore, not expected to contribute to surface water contamination or generation of solid waste.

Of the constituents of both Firebane 1115® formulations, only one has not been exempted as a VOC under the CAA (40 CFR 51.100(s)). Potential emissions of VOCs from the use of substitutes for halons in the fire extinguishing and explosion prevention sector are likely to be insignificant relative to VOCs from all other sources (*i.e.,* other industries, mobile sources, and biogenic sources). Even at full market penetration, and given typical annual emission rates for halon substitute fire suppressants, estimated annual VOC emissions from both formulations of Firebane® 1115 are not expected to pose any significant adverse impacts on local air quality.

Flammability information: Both Firebane® 1115 formulations are non-flammable.

Toxicity and exposure data: The majority of the constituents of the Firebane® 1115 formulations are classified by the U.S. Food and Drug Administration (FDA) as ''Generally Recognized as Safe (GRAS)'' compounds, and the remaining constituents are FDA-approved for use as direct and/or indirect food additives. These compounds are commonly used in food, pharmaceutical, or cosmetic applications. Individual constituents may cause gastrointestinal discomfort (if

[6] LC_{50} is defined as the concentration at which 50% of the test animals die.

[7] For more information see the risk screen for PFBI provided in the Docket at *http://www.regulations.gov.*

[8] Fisher Scientific, 2001. Material Safety Data Sheet for acetone. Updated March 19, 2001. Available at *http://www.mhatt.aps.anl.gov/dohn/msds/acetone.html.*

[9] NPS, 1997. Irwin, R.J., M. VanMouwerik, L. Stevens, M.S. Seese, and W. Basham. 1997. Environmental Contaminants Encyclopedia. National Park Service, Water Resources Division, Fort Collins, Colorado.

[10] Material Safety Data Sheet for 3M™ Novec™ 7100 Engineered Fluid. March 17, 2011. Downloaded from *http://multimedia.3m.com/mws/mediawebserver?mwsId=SSSSSuUn_zu8l00xl8mBm8mePv70k17zHvu9lxtD7SSSSSS*—on August 10, 2011. HFE–7100's LC50 for fish (fathead minnow) is reported as being greater than its saturation concentration in water.

[11] *Toxicity of eight terpenes to fathead minnows (Pimephales promelas), daphnids (Daphnia magna), and algae (Selenastrum capricornutum).* AScI Corporation and U.S. Environmental Protection Agency, Environmental Research Laboratory–Duluth. 1990.

[12] BOD is the amount of oxygen consumed by microorganisms as they decompose organic materials in water.

excessively ingested), or minor irritation to the eyes, skin, and/or respiratory tract.

Given the low toxicity of its constituents, both formulations of Firebane® 1115 are not expected to pose a significant risk to personnel during manufacture, installation and maintenance. To minimize worker exposure to any chemicals during manufacture, installation, and maintenance through an accidental release or spill, EPA recommends the following:

- Proper personal protective equipment (PPE) be used during handling of the substitute (*e.g.,* goggles, gloves);
- Adequate ventilation should be in place;
- All spills should be cleaned up immediately in accordance with good industrial hygiene practices;
- Training for safe handling procedures should be provided to all employees that would be likely to handle containers of or extinguishing units filled with Firebane® 1115 or Firebane® All-Weather 1115; and
- In case of an inadvertent discharge, workers should immediately follow the instructions listed in the manufacturer's MSDS.

The above recommendations are all contained in the manufacturers's MSDS. EPA also recommends that use of these systems should be in accordance with the latest edition of NFPA 10 Standard for Portable Extinguishers.

Firebane® 1115 and Firebane® All-Weather 1115 are not expected to cause significant harm to human health when used as streaming agents in portable fire extinguishers. As described above, the constituents of both Firebane® 1115 formulations are composed of compounds with low toxicity. Their use as streaming agents is not expected to pose any significant adverse health effects when the recommended safety precautions are followed.

Comparison to other fire suppressants: Both Firebane® 1115 formulations have zero ODP and GWP in contrast to halon 1211 (with an ODP of 7.1 and a GWP of 1,890), the ODS which they replace. Compared to other substitutes for halon 1211, such as HCFC Blend B (with ODP of roughly 0.01 and GWP of roughly 80), HFC–227ea (with ODP of 0 and GWP of 3,220), and HFC–236fa (with an ODP of 0 and GWP of 9,810), both Firebane® 1115 formulations have less impact on the atmosphere. Toxicity risks are low, as discussed above. Thus, we find that Firebane® 1115 and Firebane® All-Weather 1115 are acceptable because the overall environmental and human health risk posed by Firebane® 1115 and Firebane® All-Weather 1115 is lower than or comparable to the risks posed by other substitutes found acceptable in the same end use.

2. Firebane® 1170 and Firebane® 1179

EPA's decision: EPA finds Firebane® 1170 and Firebane® 1179 acceptable as substitutes for halon 1211 for use as streaming agents.

Because the formulations of Firebane® 1170 and Firebane® 1179 are very similar and share the same human health and environmental risks, they are being listed together and, hereinafter, collectively referred to in this section as ''both Firebane® formulations.'' The manufacturer of both Firebane® formulations has claimed their composition as CBI. You may find the submissions under Docket items EPA–HQ–OAR–2003–0118–0260 and EPA–HQ–OAR–2003–0118–0270 at *http://www.regulations.gov.*

Environmental information: Both Firebane® formulations have zero ODP and zero GWP. Therefore, both Firebane® formulations are not expected to pose any significant adverse impacts on the ozone layer or climate.

At manufacture, EPA believes that regulatory requirements on industrial wastewater discharges are sufficient to prevent the unlikely release of the substitute to surface water during the manufacturing operations of both Firebane® formulations. Because of the BOD level of these formulations, discharges of either Firebane® formulation that result in release to waterways could result in relatively high BOD in the waterways. However, neither Firebane® formulation is expected to pose significant harm to the environment, provided that proper disposal procedures are followed. As with the majority of halon substitutes, their physicochemical properties make it unlikely that the substitutes would be released to surface water.

During discharge, the constituents of both Firebane® formulations would rapidly aerosolize during expulsion from the container and then settle as a liquid on surfaces. After settling, cleanup would involve washing or rinsing of surfaces. It is recommended that discharges of either Firebane® formulation not be released to waterways. Further, during cleanup, it is recommended that discharges of either Firebane® formulation be collected (*e.g.,* mopped) and sealed in containers and then disposed of in accordance with local, state, and federal requirements and as specified in the manufacturer's MSDS. The MSDS also specifies that training for safe handling procedures be provided to all employees that would be likely to dispose of either Firebane® formulation at cleanup. In addition, the use of an extinguisher is expected to be infrequent (*i.e.,* in case of a fire emergency), and therefore discharges at end-use would be infrequent. Therefore, EPA expects that following the safe handling and disposal recommendations in the manufacturer's MSDS would protect against significant harm to surface water during manufacture, end-use or at cleanup.

Of the constituents of both Firebane® formulations, only one has not been exempted as a VOC under the CAA (40 CFR 51.000). Potential emissions of VOCs from the use of substitutes for halons in the fire extinguishing and explosion prevention sector are likely to be insignificant relative to VOCs from all other sources (*i.e.,* other industries, mobile sources, and biogenic sources). Even at full market penetration, and given typically annual emission rates for halon substitute fire suppressants, estimated annual VOC emissions from both Firebane® formulations are not expected to pose any significant adverse impact on local air quality.

Flammability information: Both Firebane® formulations are non-flammable.

Toxicity and exposure data: The majority of the constituents of both Firebane® formulations are composed of FDA-classified GRAS compounds, and the remaining constituents are FDA-approved for use as direct or indirect food additives. These compounds are commonly used in food, pharmaceutical, or cosmetic applications. Individual constituents may cause gastrointestinal discomfort (if excessively ingested), or minor irritation to the eyes, skin, and/or respiratory tract. Given the low toxicity of their constituents, both Firebane® formulations are not expected to pose a significant risk to personnel during manufacture, installation and maintenance. To minimize worker exposure to any chemicals during manufacture, installation, and maintenance through an accidental release or spill, EPA recommends the following:

- Proper Level C or higher PPE be used during handling of the substitute (*e.g.,* goggles, gloves);
- Adequate ventilation should be in place;
- All spills should be cleaned up immediately in accordance with good industrial hygiene practices;
- Training for safe handling procedures should be provided to all employees that would be likely to

handle containers of or extinguishing units filled with Firebane® 1170 or Firebane® 1179; and

• In case of an inadvertent discharge, workers should immediately follow the instructions listed in the MSDS for Firebane® 1170 or for Firebane® 1179. The above recommendations are all included in the manufacturer's MSDSs. EPA also recommends that use of these systems should be in accordance with the latest edition of NFPA 10 Standard for Portable Extinguishers.

Firebane® 1170 and Firebane® 1179 are not expected to cause harm to human health when used as streaming agents in portable fire extinguishers. EPA expects no significant adverse health effects when the recommended safety precautions and normal industry practices are applied and use of the substitutes is in accordance with the manufacturer's MSDSs.

Comparison to other fire suppressants: Both Firebane® 1170 and Firebane® 1179 have zero ODP and GWP in contrast to halon 1211 (with an ODP of 7.1 and a GWP or 1,890), the ODS they replace. Compared to other substitutes for halon 1211, such as HCFC Blend B (with an ODP of roughly 0.01 and GWP of roughly 80), HFC–227ea (with an ODP of 0 and GWP of 3,220), and HFC–236fa (with an ODP of 0 and GWP of 9,810), both Firebane® formulations have less impact on the atmosphere. Toxicity risks are low, as discussed above. Thus, we find that Firebane® 1170 and Firebane® 1179 are acceptable because the overall environmental and human health risk posed by Firebane® 1170 and Firebane® 1179 is lower than or comparable to the risks posed by other substitutes found acceptable in the same end use.

3. Firebane® 1179 Total Flooding

EPA's decision: EPA finds Firebane® 1179 acceptable as a substitute for halon 1301 for total flooding uses in both occupied and unoccupied areas.

The manufacturer of Firebane® 1179 has claimed its composition as CBI. You may find the submission under Docket item EPA–HQ–OAR–2003–0118–0270 at *http://www.regulations.gov.*

Environmental information: Firebane® 1179 has zero ODP and zero GWP. Firebane® 1179 is expected to aerosolize rapidly during expulsion from the fire suppression system and then settle as a liquid on surfaces. After settling, cleanup would involve washing or rinsing of surfaces. See the listing for Firebane® 1179 above in section C.2 for further information.

Flammability information: Firebane® 1179 is non-flammable.

Toxicity and exposure data: The majority of the constituents in the Firebane® 1179 formulation are FDA-classified GRAS compounds, and the remaining constituents are FDA-approved for use as direct or indirect food additives. These compounds are commonly used in food, pharmaceutical, or cosmetic applications. Individual constituents may cause gastrointestinal discomfort (if excessively ingested), or minor irritation to the eyes, skin, and/or respiratory tract. Given the low toxicity of its constituents, EPA expects no significant adverse health effects when the recommended safety precautions and normal industry practices are applied and use of the substitute is in accordance with the manufacturer's MSDS. See the listing for Firebane® 1179 above in section C.2 for further information.

Comparison to other fire suppressants: Firebane® 1179 has zero ODP and GWP in contrast to halon 1301 (with an ODP of 16 and a GWP of 7,140), the ozone-depleting substance which it replaces, and comparable to other acceptable non-ozone-depleting substitutes (*e.g.,* Inert Gas 541, HFC–227ea and HFC–125). Firebane® 1179's GWP is comparable to or less than that for other non-ozone depleting substitutes for halon 1301, such as Inert Gas 541, HFC–227ea or HFC–125, with GWPs of less than 1, 3,220, and 3,500, respectively. Toxicity risks are low, as discussed above. Thus, we find that Firebane® 1179 is acceptable because the overall environmental and human health risk posed by Firebane® 1179 is lower than or comparable to the risks posed by other substitutes found acceptable in the same end use.

4. N2 Towers Inert Gas Generator Fire Suppression System (N2 Towers® System)

EPA's decision: EPA finds the N2 Towers Inert Gas Generator Fire Suppression System (N2 Towers® System) is acceptable as a substitute for halon 1301 for total flooding uses in both occupied and unoccupied areas.

The N2 Towers® System is a fire suppression system that pyrotechnically generates nitrogen (N_2, CAS Reg. No. 7727–37–9). It is designed for use with Class A and B fires (ordinary combustible materials fires and flammable liquids fires, respectively). The N2 Towers® System is an inert gas system designed for total flooding applications for fires in normally occupied or unoccupied spaces. Each N_2 generator unit contains a large number of small propellant grain discs that generate nitrogen gas when activated. Depending on the fire suppression requirement, several generators may be stacked inside an N_2 tower in a room, or a single generator may be bracketed inside a vehicle. You may find the submission under Docket item EPA–HQ–OAR–2003–0118–0253 at *http://www.regulations.gov.*

Environmental information: The constituents of the N2 Towers® System are solids before use and therefore have zero ODP and zero GWP. Further, the ODP of each of the post-activation constituents of the N2 Towers® System is zero, and the GWPs of post-activation constituents are 1 or less.

The N2 Towers® System does not contain any VOCs as defined under CAA regulations (see 40 CFR 51.100(s)) addressing the development of SIPs to attain and maintain the national ambient air quality standards. Accordingly, use of the N2 Towers® System is not expected to pose any significant adverse impacts on local air quality.

Flammability information: The N2 Towers® System generates products that are non-flammable.

Toxicity and exposure data: The potential health risks of the N2 Towers® System come from its production of nitrogen gas, an inert gas that at sufficiently high levels can cause asphyxiation. The N2 Towers® System is designed to ensure that the oxygen concentration in any protected space will not fall below 12 percent over the 5-minute discharge period, consistent with the health criteria in NFPA Standard 2001 for Clean Agent Fire Extinguishing Systems. EPA recommends that use of this system should be in accordance with the safe exposure guidelines for inert gas systems in the latest edition of NFPA 2001, specifically the requirements for residual oxygen levels, and that use should be in accordance with the relevant operational requirements in NFPA Standard 2010 for Aerosol Extinguishing Systems. EPA also recommends that Section VIII of the OSHA Technical Manual be consulted as well as all information from the manufacturer for information on selecting the appropriate types of PPE to be worn by personnel involved in the manufacture, installation, and maintenance of the N2 Towers® System.

Comparison to other fire suppressants: The N2 Towers® System is not ozone-depleting in contrast to halon 1301 (with an ODP of 16 and a GWP of 7,140), the ODS which it replaces, and comparable to other acceptable non-ozone-depleting substitutes (*e.g.,* Inert Gas 541, HFC–227ea and HFC–125). The GWPs of the

post-activation constituents of the N2 Towers® System range from zero to three which are comparable to or less than the GWPs for other non-ozone depleting substitutes for halon 1301, such as Inert Gas 541, HFC–227ea or HFC–125, with GWPs of less than 1, 3,220, and 3,500, respectively. Toxicity risks are low, as discussed above. Thus, we find that the N2 Towers® System is acceptable because the overall environmental and human health risk posed by the N2 Towers® System is lower than or comparable to the risks posed by other substitutes found acceptable in the same end use.

II. Section 612 Program

A. Statutory Requirements and Authority for the SNAP Program

Section 612 of the Clean Air Act (CAA) requires EPA to develop a program for evaluating alternatives to ozone-depleting substances. EPA refers to this program as the Significant New Alternatives Policy (SNAP) program. The major provisions of section 612 are:

1. Rulemaking

Section 612(c) requires EPA to promulgate rules making it unlawful to replace any class I substance (*i.e.,* chlorofluorocarbon, halon, carbon tetrachloride, methyl chloroform, methyl bromide, and hydrobromofluorocarbon) or class II substance (*i.e.,* hydrochlorofluorocarbon) with any substitute that the Administrator determines may present adverse effects to human health or the environment where the Administrator has identified an alternative that (1) Reduces the overall risk to human health and the environment, and (2) is currently or potentially available.

2. Listing of Unacceptable/Acceptable Substitutes

Section 612(c) requires EPA to publish a list of the substitutes unacceptable for specific uses and to publish a corresponding list of acceptable alternatives for specific uses. The list of acceptable substitutes may be found at *http://www.epa.gov/ozone/snap/lists/index.html* and the lists of substitutes that are ''unacceptable,'' ''acceptable subject to use conditions,'' and ''acceptable subject to narrowed use limits'' are in subpart G of 40 CFR part 82.

3. Petition Process

Section 612(d) grants the right to any person to petition EPA to add a substance to, or delete a substance from, the lists published in accordance with section 612(c). The Agency has 90 days to grant or deny a petition. Where the Agency grants the petition, EPA must publish the revised lists within an additional six months.

4. 90-Day Notification

Section 612(e) directs EPA to require any person who produces a chemical substitute for a class I substance to notify the Agency not less than 90 days before new or existing chemicals are introduced into interstate commerce for significant new uses as substitutes for a class I substance. The producer must also provide the Agency with the producer's unpublished health and safety studies on such substitutes.

5. Outreach

Section 612(b)(1) states that the Administrator shall seek to maximize the use of federal research facilities and resources to assist users of class I and II substances in identifying and developing alternatives to the use of such substances in key commercial applications.

6. Clearinghouse

Section 612(b)(4) requires the Agency to set up a public clearinghouse of alternative chemicals, product substitutes, and alternative manufacturing processes that are available for products and manufacturing processes which use class I and II substances.

B. EPA's Regulations Implementing Section 612

On March 18, 1994, EPA published the original rulemaking (59 FR 13044) which established the process for administering the SNAP program and issued EPA's first lists identifying acceptable and unacceptable substitutes in the major industrial use sectors (subpart G of 40 CFR part 82). These sectors—refrigeration and air conditioning; foam blowing; cleaning solvents; fire suppression and explosion protection; sterilants; aerosols; adhesives, coatings and inks; and tobacco expansion—are the principal industrial sectors that historically consumed the largest volumes of ODS.

Section 612 of the CAA requires EPA to ensure that substitutes found acceptable do not present a significantly greater risk to human health and the environment than other substitutes that are currently or potentially available.

C. How the Regulations for the SNAP Program Work

Under the SNAP regulations, anyone who plans to market or produce a substitute to replace a class I substance or class II substance in one of the eight major industrial use sectors must provide notice to the Agency, including health and safety information on the substitute, at least 90 days before introducing it into interstate commerce for significant new use as an alternative. This requirement applies to the persons planning to introduce the substitute into interstate commerce,[13] which typically are chemical manufacturers but may include importers, formulators, equipment manufacturers, and end-users [14]. The regulations identify certain narrow exemptions from the notification requirement, such as research and development and test marketing (40 CFR 82.176(b)(4) and (5), respectively).

The Agency has identified four possible decision categories for substitutes that are submitted for evaluation: Acceptable; acceptable subject to use conditions; acceptable subject to narrowed use limits; and unacceptable (40 CFR 82.180(b)). Use conditions and narrowed use limits are both considered ''use restrictions'' and are explained in the paragraphs below. Substitutes that are deemed acceptable with no use restrictions (no use conditions or narrowed use limits) can be used for all applications within the relevant end uses within the sector.

After reviewing a substitute, the Agency may determine that a substitute is acceptable only if certain conditions in the way that the substitute is used are met to minimize risks to human health and the environment. EPA describes such substitutes as ''acceptable subject to use conditions.'' Entities that use these substitutes without meeting the associated use conditions are in violation of EPA's SNAP regulations.

For some substitutes, the Agency may permit a narrowed range of use within an end-use or sector. For example, the Agency may limit the use of a substitute to certain end-uses or specific applications within an industry sector. EPA describes these substitutes as ''acceptable subject to narrowed use limits.'' The Agency requires the user of a narrowed-use substitute to

[13] As defined at 40 CFR 82.104, ''interstate commerce'' means the distribution or transportation of any product between one state, territory, possession or the District of Columbia, and another state, territory, possession or the District of Columbia, or the sale, use or manufacture of any product in more than one state, territory, possession or District of Columbia. The entry points for which a product is introduced into interstate commerce are the release of a product from the facility in which the product was manufactured, the entry into a warehouse from which the domestic manufacturer releases the product for sale or distribution, and at the site of United States Customs clearance.

[14] As defined at 40 CFR 82.172, ''end-use'' means processes or classes of specific applications within major industrial sectors where a substitute is used to replace an ODS.

demonstrate that no other acceptable substitutes are available for the specific application by conducting comprehensive studies. A person using a substitute that is acceptable subject to narrowed use limits in applications and end-uses that are not consistent with the narrowed use limit is using the substitute in an unacceptable manner and is in violation of section 612 of the CAA and EPA's SNAP regulations.

The Agency publishes its SNAP program decisions in the **Federal Register** (FR). EPA publishes decisions concerning substitutes that are deemed acceptable subject to use restrictions (use conditions and/or narrowed use limits), or substitutes deemed unacceptable, as proposed rulemakings to provide the public with an opportunity to comment, before publishing final decisions.

In contrast, EPA publishes decisions concerning substitutes that are deemed acceptable with no restrictions in ''notices of acceptability'' or ''determinations of acceptability,'' rather than as proposed and final rules. As described in the March 18, 1994, rule initially implementing the SNAP program, EPA does not believe that rulemaking procedures are necessary to list alternatives that are acceptable without restrictions because such listings neither impose any sanction nor prevent anyone from using a substitute.

Many SNAP listings include ''Comments'' or ''Further Information'' to provide additional information on substitutes. Since this additional information is not part of the regulatory decision, these statements are not binding for use of the substitute under the SNAP program. However, regulatory requirements so listed are binding under other regulatory programs (*e.g.,* worker protection regulations promulgated by the Occupational Safety and Health Administration (OSHA)). The ''Further Information'' classification does not necessarily include all other legal obligations pertaining to the use of the substitute. While the items listed are not legally binding under the SNAP program, EPA encourages users of substitutes to apply all statements in the ''Further Information'' column in their use of these substitutes. In many instances, the information simply refers to sound operating practices that have already been identified in existing industry and/or building codes or standards. Thus many of the statements, if adopted, would not require the affected user to make significant changes in existing operating practices.

D. Additional Information About the SNAP Program

For copies of the comprehensive SNAP lists of substitutes or additional information on SNAP, refer to EPA's Ozone Depletion Web site at: *http://www.epa.gov/ozone/snap/index.html.* For more information on the Agency's process for administering the SNAP program or criteria for evaluation of substitutes, refer to the March 18, 1994, SNAP final rulemaking (59 FR 13044), codified at 40 CFR part 82, subpart G. A complete chronology of SNAP decisions and the appropriate citations is found at: *http://www.epa.gov/ozone/snap/chron.html.*

List of Subjects in 40 CFR Part 82

Environmental protection, Administrative practice and procedure, Air pollution control, Reporting and recordkeeping requirements.

Dated: September 27, 2011.

Elizabeth Craig,

Acting Director, Office of Atmospheric Programs.

Appendix A: Summary of Acceptable Decisions

REFRIGERATION AND AIR CONDITIONING

End-Use	Substitute	Decision	Further information [1]
Centrifugal chillers *(retrofit only)*	Hot Shot 2 as a substitute for CFC–11, CFC–12, CFC–114, R–500, HCFC–22 and HCFC blends, including those containing HCFC–22 and/or HCFC–142b.	Acceptable	The manufacturer has an acceptable exposure limit of 1,000 ppm over an 8-hour time-weighted average for Hot Shot 2.
Reciprocating and screw chillers *(retrofit only).*	Hot Shot 2 as a substitute for CFC–12, R–500, R–502, HCFC–22 and HCFC blends, including those containing HCFC–22 and/or HCFC–142b.	Acceptable	The manufacturer has an acceptable exposure limit of 1,000 ppm over an 8-hour time-weighted average for Hot Shot 2.
Industrial process refrigeration *(retrofit only).*	Hot Shot 2 as a substitute for CFC–11, CFC–12, CFC–113, CFC–114, R–13B1, R–500, R–502, HCFC–22 and HCFC blends, including those containing HCFC–22 and/or HCFC–142b.	Acceptable	The manufacturer has an acceptable exposure limit of 1,000 ppm over an 8-hour time-weighted average for Hot Shot 2.
Industrial process refrigeration *(retrofit and new).*	R–407F as a substitute for HCFC–22 and HCFC blends, including those containing HCFC–22 and/or HCFC–142b.	Acceptable	The American Industrial Hygiene Association (AIHA) has established workplace environmental exposure limits (WEELs) of 1,000 ppm over an 8-hour time-weighted average for each of R–407F's individual components.
Ice skating rinks *(retrofit only)*	Hot Shot 2 as a substitute for CFC–12, R–500, R–502, HCFC–22 and HCFC blends, including those containing HCFC–22 and/or HCFC–142b.	Acceptable	The manufacturer has an acceptable exposure limit of 1,000 ppm over an 8-hour time-weighted average for Hot Shot 2.
Ice skating rinks *(retrofit and new)*	R–407F as a substitute for HCFC–22 and HCFC blends, including those containing HCFC–22 and/or HCFC–142b.	Acceptable	The AIHA has established WEELs of 1,000 ppm over an 8-hour time-weighted average for each of R–407F's individual components.

REFRIGERATION AND AIR CONDITIONING—Continued

End-Use	Substitute	Decision	Further information [1]
Industrial process air conditioning *(retrofit and new)*.	R–407F as a substitute for HCFC–22 and HCFC blends, including those containing HCFC–22 and/or HCFC–142b.	Acceptable	The AIHA has established WEELs of 1,000 ppm over an 8-hour time-weighted average for each of R–407F's individual components.
Cold storage warehouses *(retrofit only)*.	Hot Shot 2 as a substitute for CFC–12, R–500, R–502, HCFC–22 and HCFC blends, including those containing HCFC–22 and/or HCFC–142b.	Acceptable	The manufacturer has an acceptable exposure limit of 1,000 ppm over an 8-hour time-weighted average for Hot Shot 2.
Cold storage warehouses *(retrofit and new)*.	R–407F as a substitute for HCFC–22 and HCFC blends, including those containing HCFC–22 and/or HCFC–142b.	Acceptable	The AIHA has established WEELs of 1,000 ppm over an 8-hour time-weighted average for each of R–407F's individual components.
Refrigerated transport *(retrofit only)*	Hot Shot 2 as a substitute for CFC–12, R–500, R–502, HCFC–22 and HCFC blends, including those containing HCFC–22 and/or HCFC–142b.	Acceptable	The manufacturer has an acceptable exposure limit of 1,000 ppm over an 8-hour time-weighted average for Hot Shot 2.
Refrigerated transport *(retrofit and new)*.	R–407F as a substitute for HCFC–22 and HCFC blends, including those containing HCFC–22 and/or HCFC–142b.	Acceptable	The AIHA has established WEELs of 1,000 ppm over an 8-hour time-weighted average for each of R–407F's individual components.
Retail food refrigeration *(retrofit only)*.	Hot Shot 2 as a substitute for CFC–12, R–500, R–502, HCFC–22 and HCFC blends, including those containing HCFC–22 and/or HCFC–142b.	Acceptable	The manufacturer has an acceptable exposure limit of 1,000 ppm over an 8-hour time-weighted average for Hot Shot 2.
Retail food refrigeration *(retrofit and new)*.	R–407F as a substitute for HCFC–22 and HCFC blends, including those containing HCFC–22 and/or HCFC–142b.	Acceptable	The AIHA has established WEELs of 1,000 ppm over an 8-hour time-weighted average for each of R–407F's individual components.
Vending machines *(retrofit only)*	Hot Shot 2 as a substitute for CFC–12, R–500, R–502, HCFC–22 and HCFC blends, including those containing HCFC–22 and/or HCFC–142b.	Acceptable	The manufacturer has an acceptable exposure limit of 1,000 ppm over an 8-hour time-weighted average for Hot Shot 2.
Commercial ice machines *(retrofit only)*.	Hot Shot 2 as a substitute for CFC–12, R–500, R–502, HCFC–22 and HCFC blends, including those containing HCFC–22 and/or HCFC–142b.	Acceptable	The manufacturer has an acceptable exposure limit of 1,000 ppm over an 8-hour time-weighted average for Hot Shot 2.
Commercial ice machines *(retrofit and new)*.	R–407F as a substitute for HCFC–22 and HCFC blends, including those containing HCFC–22 and/or HCFC–142b.	Acceptable	The AIHA has established WEELs of 1,000 ppm over an 8-hour time-weighted average for each of R–407F's individual components.
Residential dehumidifiers *(retrofit only)*.	Hot Shot 2 as a substitute for CFC–12, R–500, HCFC–22 and HCFC blends, including those containing HCFC–22 and/or HCFC–142b.	Acceptable	The manufacturer has an acceptable exposure limit of 1,000 ppm over an 8-hour time-weighted average for Hot Shot 2.
Household refrigerators and freezers *(retrofit and new)*.	R–407F as a substitute for HCFC–22 and HCFC blends, including those containing HCFC–22 and/or HCFC–142b.	Acceptable	The AIHA has established WEELs of 1,000 ppm over an 8-hour time-weighted average for each of R–407F's individual components.
Motor vehicle air conditioning *(retrofit and new-bus and passenger trains only)*.	R–407F as a substitute for HCFC–22 and HCFC blends, including those containing HCFC–22 and/or HCFC–142b.	Acceptable	The AIHA has established WEELs of 1,000 ppm over an 8-hour time-weighted average for each of R–407F's individual components.
Household and light commercial air conditioning and heat pumps *(retrofit only)*.	Hot Shot 2 as a substitute for CFC–12, R–502, HCFC–22 and HCFC blends, including those containing HCFC–22 and/or HCFC–142b.	Acceptable	The manufacturer has an acceptable exposure limit of 1,000 ppm over an 8-hour time-weighted average for Hot Shot 2.
Household and light commercial air conditioning and heat pumps *(retrofit and new)*.	R–407F as a substitute for CFC–12, R–502, HCFC–22 and HCFC blends, including those containing HCFC–22 and/or HCFC–142b.	Acceptable	The AIHA has established WEELs of 1,000 ppm over an 8-hour time-weighted average for each of R–407F's individual components.

REFRIGERATION AND AIR CONDITIONING—Continued

End-Use	Substitute	Decision	Further information [1]
Very low temperature refrigeration *(retrofit)*.	R–507A as a substitute for R–13B1.	Acceptable	The AIHA has established WEELs of 1,000 ppm over an 8-hour time-weighted average for each of R–507A's individual components.

[1] Users should observe recommendations in the manufacturer's MSDS and guidance for all listed refrigerants.

SOLVENT CLEANING

End-Uses	Substitute	Decision	Further information
Metals cleaning	Perfluorobutyl iodide (PFBI) as a substitute for CFC–113, methyl chloroform, and HCFC–225ca, HCFC–225cb, and blends thereof.	Acceptable	PFBI has an ODP of less than 0.005 and a 100-year global warming potential of less than 5. Its Chemical Abstracts Service Registry number (CAS Reg. No.) is 423–39–2.
Electronics cleaning	.....	.....	EPA recommends an acceptable exposure limit of 375 ppm over an 8-hour time-weighted average for PFBI.
Precision cleaning	.....	.....	Observe recommendations in the manufacturer's MSDS and guidance for using this substitute, particularly with respect to disposal considerations. EPA recommends that spent solvent is collected for reclamation or incineration, materials that contain or contaminated with solvents are incinerated, and that solvent-contaminated wastewater is sent to a wastewater treatment facility to prevent the solvent from entering waterways. PFBI is currently defined as a volatile organic compound (VOC) under CAA regulations (see 40 CFR 51.100(s)) addressing the development of State Implementation Plans (SIPs) to attain and maintain the national ambient air quality standards.

FIRE SUPPRESSION

End-Use	Substitute	Decision	Further information [1] [2]
Total flooding systems (occupied and unoccupied areas).	Firebane® 1179 as a substitute for halon 1301.	Acceptable	EPA recommends that use of this system should be in accordance with the manufacturer's MSDS.
	N2 Towers® System as a substitute for halon 1301.	Acceptable	EPA recommends that use of this system should be in accordance with the safe exposure guidelines for inert gas systems in the latest edition of NFPA 2001 Standard on Clean Agent Fire Extinguishing Systems, specifically the requirements for residual oxygen levels, and use should be in accordance with the NFPA Standard 2010 for Aerosol Extinguishing Systems.
Streaming agents	Firebane® All-Weather 1115 and Firebane® 1115 as substitutes for halon 1211.	Acceptable	EPA recommends that use of these systems be in accordance with the latest edition of NFPA 10 Standard for Portable Extinguishers.
	Firebane® 1170 and Firebane® 1179 as substitutes for halon 1211.	Acceptable	EPA recommends that use of these systems be in accordance with the latest edition of NFPA 10 Standard for Portable Extinguishers.

[1] EPA recommends that users consult Section VIII of the OSHA Technical Manual for information on selecting the appropriate types of personal protective equipment for all listed fire suppression agents. EPA has no intention of duplicating or displacing OSHA coverage related to the use of personal protective equipment *(e.g.,* respiratory protection), fire protection, hazard communication, worker training or any other occupational safety and health standard with respect to halon substitutes.

[2] Use of all listed fire suppression agents should conform to relevant OSHA requirements, including 29 CFR part 1910, subpart L, sections 1910.160 and 1910.162.

[FR Doc. 2011–25391 Filed 10–3–11; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

44 CFR Part 67

[Docket ID FEMA–2011–0002]

Final Flood Elevation Determinations

Correction

In rule document 2011–15507, beginning on page 36373, in the issue of Wednesday June 22, 2011, make the following corrections:

§ 67.11 [Corrected]

1. On page 36379, in the first column of the table for Clinton County, Iowa, ''Unincorporated Areas of Clinton County'' should not have appeared.

2. On the same page, in the first column of the table for Muscatine County, Iowa, ''Unincorporated Areas of Muscatine County, Iowa'' should not have appeared.

[FR Doc. C1–2011–15507 Filed 10–3–11; 8:45 am]

BILLING CODE 1505–01–D

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 32, 52, 61, 64, and 69

Communications Common Carriers, Reporting and Recordkeeping Requirements, Telephone, Telecommunications, Uniform System of Accounts

AGENCY: Federal Communications Commission.

ACTION: Final rule; announcement of effective date.

SUMMARY: This document announces the approval of the Office of Management and Budget (OMB) for information collection requirements in the sections outlined in the **DATES** section.

DATES: Effective October 4, 2011, the following regulations have been approved by OMB:

32.2000—64 FR 50007, September 15, 1999.

52.33—63 FR 35161, June 29, 1998.

52.33(a)(3)—67 FR 40620, June 13, 2002.

61.38(b)(4)—69 FR 25336, May 6, 2004.

61.41(c), (d) and (e)—69 FR 25336, May 6, 2004.

64.5001—71 FR 43673, August 2, 2006.

69.123—69 FR 25336, May 6, 2004.

FOR FURTHER INFORMATION CONTACT: Lynne Hewitt Engledow, Pricing Policy Division, Wireline Competition Bureau, at *lynne.engledow@fcc.gov.*

SUPPLEMENTARY INFORMATION: On June 23 2000, OMB approved the information collection requirements contained in § 32.2000 of title 47 of the United States Code as a revision to OMB Control Number 3060–0370.

On September 12, 2000, OMB approved the information collection requirements contained in § 52.33 of title 47 of the United States Code as a revision to OMB Control Number 3060–0370.

On October 22, 2002 OMB approved the information collection requirements contained in § 52.33(a)(3) of title 47 of the United States Code as a revision to OMB Control Number 3060–0742.

On May 25, 2005, OMB approved the information collection requirements contained in §§ 61.38(b)(4), 61.41(c), (d) and (e) and 69.123 of title 47 of the United States Code as a revision to OMB Control Number 3060–0298.

On February 5, 2007, OMB approved the information collection requirements contained in § 64.5001 of title 47 of the United States Code as a new collection, OMB Control Number 3060–1096. These information collection requirements required OMB approval to become effective. The Commission publishes this document as an announcement of those approvals. If you have any comments on the burden estimates listed below, or how the Commission can improve the collections and reduce any burdens caused thereby, please contact Thomas Butler, Federal Communications Commission, Room 5–C458, 445 12th Street, SW., Washington, DC 20554. Please include the OMB Control Numbers, 3060–0370, 3060–0742, 3060–0298, and 3060–1096 in your correspondence. The Commission will also accept your comments via the Internet if you send them to *PRA@fcc.gov.*

To request materials in accessible formats for people with disabilities (Braille, large print, electronic files, audio format), send an e-mail to *fcc504@fcc.gov* or call the Consumer & Governmental Affairs Bureau at (202) 418–0530 (voice, (202) 419–0432 (TTY).

Synopsis: As required by the Paperwork Reduction Act of 1995 (44 U.S.C. 3507), the FCC is notifying the public that it received OMB approval for the information collection requirements described above. The OMB Control Numbers are 3060–0370, 3060–0742, 3060–0298 and 3060–1096. The total annual reporting burden for respondents for these collections of information, including the time for gathering and maintaining the collection of information, has been most recently approved to be:

For 3060–0370: 859 responses, for a total of 859 hours, and no annual costs.

For 3060–0742: 10,001,890 responses, for a total of 672,516 hours and $13,423,321 in annual costs.

For 3060–0298: 1,160 responses, for a total annual burden of 58,000 hours, and $945,400 in annual costs.

For 3060–1096: 1,896 responses, for a total of 15,800 hours, and no annual costs.

An agency may not conduct or sponsor a collection of information unless it displays a current valid OMB Control Number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act, which does not display a current, valid OMB Control Number. The foregoing notice is required by the Paperwork Reduction Act of 1995, Public Law 104–13, October 1, 1995, and 44 U.S.C. 3507.

List of Subjects in 47 CFR Parts 32, 52, 61, 64, and 69

Communications common carriers, reporting and Recordkeeping requirements, Telephone, Telecommunications, Uniform system of accounts.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 2011–25586 Filed 10–3–11; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF DEFENSE

Defense Acquisition Regulations System

48 CFR Parts 212, 247, and 252

RIN 0750–AG25

Defense Federal Acquisition Regulation Supplement; Defense Cargo Riding Gang Member (DFARS Case 2007–D002)

AGENCY: Defense Acquisition Regulations System, Department of Defense (DoD).

ACTION: Final rule.

SUMMARY: DoD is adopting as final, with changes, an interim rule amending the Defense Federal Acquisition Regulation Supplement (DFARS) to implement section 3504 of the National Defense

Authorization Act for Fiscal Year 2009. Section 3504 addresses requirements that apply to riding gang members and DoD-exempted individuals who perform work on U.S.-flag vessels under DoD contracts for transportation services. The final rule also makes an administrative change to a cross-reference.

DATES: *Effective Date:* October 4, 2011.

FOR FURTHER INFORMATION CONTACT: Meredith Murphy, telephone 703–602–1302.

SUPPLEMENTARY INFORMATION:

I. Background

DoD published an interim rule at 75 FR 65437 on October 25, 2010, to implement section 3504 of the National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2009 (Pub. L. 110–417). Section 3504 amended section 1018 of the NDAA for FY 2007 (Pub. L. 109–364).

Section 3504 addresses requirements that apply to riding gang members and DoD-exempted individuals who perform work on U.S.-flag vessels under DoD contracts for transportation services documented under chapter 121, title 46 U.S.C. Section 3504 also applies to commercial contracts for carriage of cargo by a U.S.-flag vessel documented under chapter 121 of title 46 U.S.C. Such riding gang members must hold a U.S. Merchant Mariner's Document issued under 46 U.S.C., chapter 73, or a transportation security card issued under section 70105 of such title. Section 3504 also permits exemptions for certain individuals, provided a background check of the individual is conducted.

U.S. law requires crews of predominantly U.S. citizens aboard U.S.-flag vessels. For many years, foreign nationals have been utilized on U.S.-flag vessels as members of ''riding gangs'' who perform work beyond standard vessel maintenance and repair while ships are underway. In 2006, Congress prohibited the use of such foreign riding personnel on board vessels that are under contract with DoD unless DoD complied with certain limitations (The Coast Guard and Maritime Transportation Act of 2006, Pub. L. 109–241). The exceptions provided to DoD in 2006 did not match those applicable to other U.S.-flag vessels. The NDAA for FY 2009 made it clear that the exceptions available to DoD are complete exemptions both from the DoD-specific riding gang limitations and those generally applicable to U.S.-flag vessels.

Contracting officers are encouraged to apply this rule to the maximum extent practicable to existing contracts, consistent with FAR 1.108(d).

II. Discussion and Analysis

Two respondents submitted a total of three comments on the interim rule. A discussion of the comments received and the resulting changes made to the rule follows.

A. Background Checks

These comments relate to the clause at 252.247–7027(c)(2) as promulgated, which requires that any individual who is exempted by paragraph (c)(1) of the clause from the requirements imposed on riding gang members by 46 U.S.C. 8106 must pass a DoD background check before going aboard a vessel. With regard to these exempt individuals, the contractor shall submit the name and ''other necessary information'' for a background check to the Government official specified in the contract.

Comment: One respondent recommended that, in order to ensure consistency of information required across DoD contracting agencies, the final rule include guidelines as to what is considered ''additional necessary information'' in the case of an alien to be employed on a vessel under subparagraphs (i)–(iv) of paragraph (c)(1). Such guidelines could, for example, be constructed to be limited/consistent with the types of personal identifying and employment-related information required to obtain a U.S. nonimmigrant visa for an individual to enter the U.S. temporarily for business as required for an alien to be eligible for issuance of a transportation security card under 46 U.S.C. 70105, including inter alia, a C–1/D Crewman Visa.

DoD Response: The clause at 252.247–7027 has been revised to state that the contractor will submit the name and other ''biographical'' information necessary to the Government official specified in the contract for the purposes of conducting a background check. The term biographical encompasses the following examples of information required, such as last (previous and current), first, and middle name, date of birth, social security account number, passport number, and nationality listed on the passport, as applicable.

Comment: A respondent commented on the ''approving official specified in the contract.'' The underlying rationale for the exemptions provided by section 3504 of the FY 2009 NDAA, was to grant DoD greater flexibility to allow individuals to perform functions unrelated to the operation or maintenance of the vessel transporting DoD cargoes, outside the parameters applied to riding gang members on U.S.-flag freight vessels generally under 46 U.S.C. 8106. It is, therefore, recommended that the language of the proposed clause be amended to read as follows to reinforce DoD's role in the approval process:

''The Contractor shall submit the name and other necessary information for a background check to the DoD Contracting Officer or his designee for approval.''

DoD response: The contracting officer or designee is not the approving official for the background check. The clause has been revised to state that ''the Contractor is required to submit the name and other biographical information necessary to the Government official specified in the contract for the purposes of conducting a background check.'' The Government official specified in the contract could be the program manager, contracting officer, or other designee depending upon the contract and agency. Contact information for the specific DoD law enforcement agency approving the background check, COMSC N34 (Director of Force Protection for Military Sealift Command), and specific procedural guidance for DoD personnel obtaining the background check is contained in the DFARS companion resource, Procedures, Guidance, and Information (PGI), at PGI 247.5.

B. Language Inconsistency

Comment: DFARS 252.247–7027(a) defines ''riding gang member'' as it is defined at 46 U.S.C. 8106. That statutory definition of ''riding gang member'' describes an individual who does not perform certain duties and ''has not been issued a Merchant Mariner's Document * * *.'' One respondent noted that DFARS 252.247–7027(b) states ''Notwithstanding 46 U.S.C. 8106, the Contractor shall ensure each riding gang member holds a valid U.S. Merchant Mariner's Document issued under 46 U.S.C. chapter 73, or a transportation security card * * *.''

DoD response: The implementing language of the interim rule is consistent with the statutory language. Section 3504 of the NDAA for FY 2009, Public Law 110–417, required the Secretary of Defense to include clauses in certain contracts implementing the riding gang member provisions of 46 U.S.C. 8106 and requiring that riding gang members be issued a Merchant Mariner's Document or a transportation security card. As such, the interim rule merely implements the requirement of the statute.

The initial legislative proposal that resulted in section 3504 contained a

section-by-section analysis that specifically identified the apparent inconsistency noted by the respondent. DoD determined that Congress intended for the language in 46 U.S.C. 8106 in the definition of ''riding gang member'' pertaining to the Merchant Mariner's Document to be modified, as applicable, to DoD in 10 U.S.C. 1018 by requiring that each riding gang member have either a Merchant Mariner's Document or a transportation security card. Accordingly, the ''Notwithstanding 46 U.S.C. 8106'' language of DFARS 252.247–7027 accurately implements section 3504 and is consistent with Congressional intent.

C. Other Changes

The final rule adds clause 252.247–7027, Riding Gang Member Requirements, to the list of clauses at 252.212–7001 that are required to implement statutes or executive orders applicable to defense acquisitions of commercial items because section 3504 also applies to commercial contracts for carriage of cargo by a U.S.-flag vessel documented under chapter 121 of title 46 U.S.C. and, in a related change, removes it from the list at 212.301(f).

Additionally, the final rule revises the cross-reference to 252.211–7006 at 212.301(f)(iv)(D) to reflect the correct title of the clause.

III. Executive Orders 12866 and 13563

Executive Orders (E.O.s) 12866 and 13563 direct agencies to assess all 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). E.O. 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This is a significant regulatory action and, therefore, was subject to review under section 6(b) of E.O. 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

IV. Regulatory Flexibility Act

DoD does not expect this final rule to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.* DoD has prepared a final regulatory flexibility analysis (FRFA), which is summarized as follows:

The objective of the rule is to provide authorization, restrictions, and exemptions for the use of riding gang members on U.S.-flag vessels under charter or contract to DoD for the carriage of DoD cargo. The requirements of the rule will apply to entities interested in receiving DoD contracts for carriage of DoD cargo.

The rule requires the contractor to ensure that each riding gang member holds a valid U.S. Merchant Mariner's Document issued under 46 U.S.C. chapter 73, or a transportation security card issued under section 70105 of such title. Any individual who is exempt from these requirements must pass a DoD background check before going aboard the vessel. With regard to these exempt individuals, the contractor shall submit the name and other necessary identifying information for a background check to the approving official specified in the contract.

There is no reporting or recordkeeping requirement established by this rule. This rule does not duplicate, overlap, or conflict with any other Federal rules. DoD anticipates that there will be limited, if any, additional costs imposed on small businesses. No comments were received in response to the initial regulatory flexibility analysis as published in the interim rule.

Interested parties may obtain a copy of the FRFA from the point of contact named herein. A copy of the FRFA has been submitted to the Chief Counsel for Advocacy of the Small Business Administration.

V. Paperwork Reduction Act

The rule does not impose any information collection requirements that require the approval of the Office of Management and Budget under the Paperwork Reduction Act (44 U.S.C. chapter 35).

List of Subjects in 48 CFR Parts 212, 247, and 252

Government procurement.

Ynette R. Shelkin,

Editor, Defense Acquisition Regulations System.

Accordingly, the interim rule amending 48 CFR parts 212, 247, and 252, which was published at 75 FR 65437 on October 25, 2010, is adopted as a final rule with the following changes:

■ 1. The authority citation for 48 CFR parts 212, 247, and 252 continues to read as follows:

Authority: 41 U.S.C. 1303 and 48 CFR chapter 1.

PART 212—ACQUISITION OF COMMERCIAL ITEMS

212.301 [Amended]

■ 2. Amend section 212.301 in paragraph (f)(iv)(D) by removing the title of the clause ''Radio Frequency Identification'' and adding in its place ''Passive Radio Frequency Identification'' and by removing paragraph (f)(iv)(M).

PART 247—TRANSPORTATION

■ 3. Amend section 247.574 by revising paragraph (f) to read as follows:

247.574 Solicitation provisions and contract clauses.

* * * * *

(f) Use the clause at 252.247–7027, Riding Gang Member Requirements, in solicitations and contracts for the charter of, or contract for carriage of cargo by, a U.S.-flag vessel documented under chapter 121 of title 46 U.S.C. Follow the procedures at PGI 247.574.

PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

■ 4. Amend section 252.212–7001 by removing the clause date ''(SEP 2011)'' and adding in its place ''(OCT 2011)'' and adding paragraph (b)(30) to read as follows:

252.212–7001 Contract Terms and Conditions Required to Implement Statutes or Executive Orders Applicable to Defense Acquisitions of Commercial Items.

* * * * *

(b) * * *

(30) ____ 252.247–7027, Riding Gang Member Requirements (OCT 2011) (Section 3504 of Pub. L. 110–417).

* * * * *

■ 5. Amend section 252.247–7027 by removing the clause date ''(OCT 2010)'' and adding in its place ''(OCT 2011)'' and revising paragraph (c)(2) to read as follows:

252.247–7027 Riding Gang Member Requirements.

* * * * *

(c) * * *

(2) Any individual who is exempt under paragraph (c)(1) of this clause must pass a DoD background check before going aboard the vessel.

(i) The Contractor shall—

(A) Render all necessary assistance to U.S. Armed Forces personnel with respect to the identification and screening of exempted individuals. This will require, at a minimum, the Contractor to submit the name and other biographical information necessary to

the Government official specified in the contract for the purposes of conducting a background check; and

(B) Deny access or immediately remove any individual(s) from the vessel deemed unsuitable for any reason by Military Sealift Command Force Protection personnel. The Contractor agrees to replace any such individual promptly and require such replacements to fully comply with all screening requirements.

(ii) The head of the contracting activity may waive this requirement if the individual possesses a valid U.S. Merchant Mariner's Document issued under 46 U.S.C. chapter 73, or a transportation security card issued under section 70105 of such title.

* * * * *

[FR Doc. 2011–25233 Filed 10–3–11; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Defense Acquisition Regulations System

48 CFR Part 252

RIN 0750–AH21

Defense Federal Acquisition Regulation Supplement; Definition of ''Qualifying Country End Product'' (DFARS Case 2011–D028)

AGENCY: Defense Acquisition Regulations System, Department of Defense (DoD).

ACTION: Final rule.

SUMMARY: DoD is issuing a final rule amending the Defense Federal Acquisition Regulation Supplement (DFARS) to revise the definition of ''qualifying country end product.'' This final rule eliminates the component test for qualifying country end products that are commercially available off-the-shelf items.

DATES: *Effective date:* October 4, 2011.

FOR FURTHER INFORMATION CONTACT: Amy G. Williams, telephone 703–602–0328.

SUPPLEMENTARY INFORMATION:

I. Background

DoD published a proposed rule in the **Federal Register** at 76 FR 32845 on June 6, 2011, to amend the definition of qualifying country end product. One comment was received in response to the proposed rule.

II. Discussion and Analysis of Public Comment

Comment: The respondent stated that we need to define ''commercially available off-the-shelf item'' or reference the definition in the FAR, because there is nothing that says that the definitions in the FAR necessarily apply to the DFARS.

Response: The DFARS implements and supplements the FAR (see FAR subpart 1.3). Unless the DFARS specifically makes a statement to the contrary, everything in the FAR is the basis upon which the DFARS is built. No change to the rule is necessary on the basis of this comment.

III. Other Changes

As a technical update, the more recent definition of ''qualifying country'' in 225.003 is incorporated in two of the clauses changed by the final rule, rather than citing to the list of qualifying countries at 225.872–1. This has no practical impact, because the two lists contain the same countries. The definition was added to DFARS 225.003 to reduce confusion, because the list at DFARS 225.872–1 is split into two paragraphs, (a) and (b), which sometimes leads to misinterpretation of the status of countries that are listed in paragraph (b).

IV. Executive Orders 12866 and 13563

Executive Orders (E.O.s) 12866 and 13563 direct agencies to assess all 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). E.O. 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This is not a significant regulatory action and, therefore, was not subject to review under section 6(b) of E.O. 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

V. Regulatory Flexibility Act

DoD certifies that this rule will not have a significant impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because the rule only affects manufacturers of COTS items in qualifying countries, removing an administrative burden for the qualifying country manufacturer and the Government personnel acquiring the items. No domestic entities will be impacted by this rule. For the definition of ''small business,'' the Regulatory Flexibility Act refers to the Small Business Act, which in turn allows the U.S. Small Business Administration (SBA) Administrator to specify detailed definitions or standards (5 U..S.C 601(3) and 15 U.S.C. 632(a)). The SBA regulations at 13 CFR 121.105 discuss who is a small business: ''(a)(1) Except for small agricultural cooperatives, a business concern eligible for assistance from SBA as a small business is a business entity organized for profit, with a place of business located in the United States, and which operates primarily within the United States or which makes a significant contribution to the U.S. economy through payment of taxes or use of American products, materials or labor.''

The comparable change has already been enacted for the benefit of U.S. manufacturers of COTS items.

VI. Paperwork Reduction Act

The rule does not impose any information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. (chapter 35).

List of Subjects in 48 CFR Part 252

Government procurement.

Ynette R. Shelkin,

Editor, Defense Acquisition Regulations System.

Therefore, 48 CFR part 252 is amended as follows:

PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

■ 1. The authority citation for 48 CFR part 252 continues to read as follows:

Authority: 41 U.S.C. 1303 and 48 CFR chapter 1.

252.212–7001 [Amended]

■ 2. Amend section 252.212–7001 as follows:

■ a. Remove the clause date ''(SEP 2011)'' and add in its place ''(OCT 2011)'';

■ b. In paragraph (b)(6)(i), remove the clause date ''(JAN 2009)'' and add in its place ''(OCT 2011)'' and in paragraph (b)(6)(ii), remove the clause date ''(DEC 2010)'' and add in its place ''(OCT 2011)'';

■ c. In paragraph (b)(12)(i), remove the clause date ''(JUN 2011)'' and add in its place ''(OCT 2011)'', in paragraph (b)(12)(ii), remove the clause date ''(SEP 2008)'' and add in its place ''(OCT 2011)'', and in paragraph (b)(12)(iii), remove the clause date ''(DEC 2010)'' and add in its place ''(OCT 2011)''; and

■ d. In paragraph (b)(15)(i), remove the clause date ''(DEC 2010)'' and add in its

place ''(OCT 2011)'', in paragraph (b)(15)(ii), remove the clause date ''(JUL 2009)'' and add in its place ''(OCT 2011)'', and in paragraphs (b)(15)(iii) and (b)(15)(iv), remove the clause date ''(DEC 2010)'' and add in its place ''(OCT 2011)''.

■ 3. Amend section 252.225–7001 as follows:
■ a. Remove the clause date ''(SEP 2011)'' and add in its place ''(OCT 2011)'';
■ b. In paragraph (a), remove the number preceding each definition and revise the definitions for ''Qualifying country'' and ''Qualifying country end product;
■ c. In Alternate I, remove the clause date ''(DEC 2010)'' and add in its place ''(OCT 2011)'' and in paragraph (a), remove the numbers preceding each definition.

252.225–7001 Buy American Act and Balance of Payments Program.

* * * * *

(a) * * *

Qualifying country means a country with a reciprocal defense procurement memorandum of understanding or international agreement with the United States in which both countries agree to remove barriers to purchases of supplies produced in the other country or services performed by sources of the other country, and the memorandum or agreement complies, where applicable, with the requirements of section 36 of the Arms Export Control Act (22 U.S.C. 2776) and with 10 U.S.C. 2457. Accordingly, the following are qualifying countries:

Australia, Austria, Belgium, Canada, Denmark, Egypt, Finland, France, Germany, Greece, Israel, Italy, Luxembourg, Netherlands, Norway, Portugal, Spain, Sweden, Switzerland, Turkey, United Kingdom of Great Britain and Northern Ireland.

* * * * *

Qualifying country end product means—

(i) An unmanufactured end product mined or produced in a qualifying country; or

(ii) An end product manufactured in a qualifying country if—

(A) The cost of the following types of components exceeds 50 percent of the cost of all its components:

(*1*) Components mined, produced, or manufactured in a qualifying country.

(*2*) Components mined, produced, or manufactured in the United States.

(*3*) Components of foreign origin of a class or kind for which the Government has determined that sufficient and reasonably available commercial quantities of a satisfactory quality are not mined, produced, or manufactured in the United States; or

(B) The end product is a COTS item.

* * * * *

■ 4. Amend section 252.225–7021 as follows:
■ a. Remove the clause date ''(JUN 2011)'' and add in its place ''(OCT 2011)'';
■ b. In paragraph (a), remove the number preceding each definition, add in alphabetical order the definition for ''Commercially available off-the-shelf (COTS) item'', and revise the definitions for ''Qualifying country'' and ''Qualifying country end product;
■ c. In Alternate I, revise the clause date, revise the introductory text, and, in paragraph (a), remove the number preceding the definition;

d. In Alternate II, remove the clause date ''(DEC 2010)'' and add in its place ''(OCT 2011)'' and, in paragraph (a), remove the numbers preceding the definitions.

252.225–7021 Trade Agreements.

* * * * *

(a) * * *

Commercially available off-the-shelf (COTS) item. (i) Means any item of supply (including construction material) that is—

(A) A commercial item (as defined in paragraph (1) of the definition of ''commercial item'' in section 2.101 of the Federal Acquisition Regulation);

(B) Sold in substantial quantities in the commercial marketplace; and

(C) Offered to the Government, under a contract or subcontract at any tier, without modification, in the same form in which it is sold in the commercial marketplace; and

(ii) Does not include bulk cargo, as defined in section 4 of the Shipping Act of 1984 (46 U.S.C. 40102), such as agricultural products and petroleum products.

* * * * *

Qualifying country means a country with a reciprocal defense procurement memorandum of understanding or international agreement with the United States in which both countries agree to remove barriers to purchases of supplies produced in the other country or services performed by sources of the other country, and the memorandum or agreement complies, where applicable, with the requirements of section 36 of the Arms Export Control Act (22 U.S.C. 2776) and with 10 U.S.C. 2457. Accordingly, the following are qualifying countries:

Australia, Austria, Belgium, Canada, Denmark, Egypt, Finland, France, Germany, Greece, Israel, Italy, Luxembourg, Netherlands, Norway, Portugal, Spain, Sweden, Switzerland, Turkey, United Kingdom of Great Britain and Northern Ireland.

Qualifying country end product means—

(i) An unmanufactured end product mined or produced in a qualifying country; or

(ii) An end product manufactured in a qualifying country if—

(A) The cost of the following types of components exceeds 50 percent of the cost of all its components:

(*1*) Components mined, produced, or manufactured in a qualifying country.

(*2*) Components mined, produced, or manufactured in the United States.

(*3*) Components of foreign origin of a class or kind for which the Government has determined that sufficient and reasonably available commercial quantities of a satisfactory quality are not mined, produced, or manufactured in the United States; or

(B) The end product is a COTS item.

* * * * *

ALTERNATE I (OCT 2011)

As prescribed in 225.1101(6)(ii), add the following definition to paragraph (a) of the basic clause and substitute the following paragraph (c) for paragraph (c) of the basic clause:

* * * * *

■ 5. Amend section 252.225–7036 as follows:
■ a. Remove the clause date ''(DEC 2010)'' and add in its place ''(OCT 2011)'';
■ b. In paragraph (a), remove the numbers preceding the definitions and revise the definition for ''Qualifying country end product'';
■ c. In Alternate I, revise the clause date, revise the introductory text, and, in paragraph (a), remove the number preceding the definition; and
■ d. In Alternates II and III, remove the clause date ''(DEC 2010)'' and add in its place ''(OCT 2011)'' and in paragraph (a), remove the numbers preceding the definitions.

252.225–7036 Buy American Act—Free Trade Agreements—Balance of Payments Program.

* * * * *

(a) * * *

Qualifying country end product means—

(i) An unmanufactured end product mined or produced in a qualifying country; or

(ii) An end product manufactured in a qualifying country if—

(A) The cost of the following types of components exceeds 50 percent of the cost of all its components:

(*1*) Components mined, produced, or manufactured in a qualifying country.

(*2*) Components mined, produced, or manufactured in the United States.

(*3*) Components of foreign origin of a class or kind for which the Government has determined that sufficient and reasonably available commercial quantities of a satisfactory quality are not mined, produced, or manufactured in the United States; or

(B) The end product is a COTS item.

* * * * *

ALTERNATE I (OCT 2011)

As prescribed in 225.1101(11)(i)(B), add the following definition to paragraph (a) and substitute the following paragraph (c) for paragraph (c) of the basic clause:

* * * * *

[FR Doc. 2011–25234 Filed 10–3–11; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 622

[Docket No. 0907271173–0629–03]

RIN 0648–XA701

Accountability Measures and Reduced Season for the South Atlantic Recreational Sector of Golden Tilefish for the 2011 Fishing Year

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

ACTION: Temporary rule.

SUMMARY: NMFS implements accountability measures (AMs) for the recreational sector of golden tilefish in the South Atlantic for the 2011 fishing year through this temporary final rule. This rule reduces the length of the 2011 recreational fishing season for golden tilefish based on the 2010 recreational annual catch limit (ACL) overage, and as a result closes the recreational sector. This action is necessary to reduce overfishing of the South Atlantic golden tilefish resource.

DATES: This rule is effective October 6, 2011 until 12:01 a.m., local time on January 1, 2012.

ADDRESSES: Copies of the final rule for Amendment 17B, the Environmental Assessment for Amendment 17B, and other supporting documentation may be obtained from Catherine Bruger, NMFS, Southeast Regional Office, 263 13th Avenue South, St. Petersburg, FL 33701; telephone: 727–824–5305.

FOR FURTHER INFORMATION CONTACT: Catherine Bruger, telephone: 727–824–5305, fax: 727–824–5308, e-mail: *Catherine.Bruger@noaa.gov.*

SUPPLEMENTARY INFORMATION: The snapper-grouper fishery of the South Atlantic is managed under the Fishery Management Plan for the Snapper-Grouper Fishery of the South Atlantic Region (FMP). Golden tilefish are managed under this FMP. The FMP was prepared by the South Atlantic Fishery Management Council and is implemented under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) by regulations at 50 CFR part 622.

Background

The 2006 reauthorization of the Magnuson-Stevens Act implemented new requirements that ACLs and AMs be established to end overfishing and prevent overfishing from occurring. AMs are management controls to prevent ACLs from being exceeded, and to correct or mitigate overages of the ACL if they occur.

On December 30, 2010, NMFS issued a final rule (75 FR 82280) to implement Amendment 17B to the FMP (Amendment 17B). Amendment 17B established ACLs for eight snapper-grouper species in the FMP that are undergoing overfishing, including golden tilefish, and AMs to be implemented if these ACLs are reached or exceeded.

The recreational ACL for golden tilefish, implemented through Amendment 17B, is 1,578 fish. In accordance with regulations at 50 CFR 622.49(b)(1)(ii), if the ACL is exceeded, the Regional Administrator (RA) will publish a notice to reduce the length of the following fishing season by the amount necessary to ensure landings do not exceed the recreational sector ACL in the following fishing year. Additionally, in accordance with these regulations, the recreational landings are evaluated relative to the ACL as follows: For 2010, only 2010 recreational landings will be compared to the ACL; in 2011, the average of 2010 and 2011 recreational landings will be compared to the ACL; and in 2012 and subsequent fishing years, the most recent 3-year running average recreational landings will be compared to the ACL. Therefore this temporary final rule is being implemented based on an evaluation of golden tilefish recreational landings for the 2010 fishing year.

Finalized landings data from the NMFS Southeast Fisheries Science Center indicate that the recreational golden tilefish ACL was exceeded by 2,805 fish in 2010. Therefore, this temporary rule implements an AM to reduce the fishing season for the recreational golden tilefish component of the snapper-grouper fishery from October 6, 2011 until January 1, 2012. As a result of this reduced season, the recreational sector for golden tilefish will be closed effective 12:01 a.m., local time October 6, 2011.

The 2012 recreational fishing season for golden tilefish will begin on January 1, 2012, through December 31, 2012, unless AMs are implemented due to an ACL overage and a reduced fishing season is specified through notification in the **Federal Register**.

Commencing 12:01 a.m., local time on October 6, 2011, the bag limit and possession limits specified in 50 CFR 622.39(d)(1)(ii) and (d)(2), respectively, are zero and apply to all recreational harvest or possession of golden tilefish in or from the South Atlantic exclusive economic zone.

Classification

The Administrator, Southeast Region, NMFS, (RA) has determined this temporary rule is necessary for the conservation and management of the South Atlantic golden tilefish component of the South Atlantic snapper-grouper fishery and is consistent with the Magnuson-Stevens Act and other applicable laws.

This action is taken under 50 CFR 622.43(a) and is exempt from review under Executive Order 12866.

These measures are exempt from the procedures of the Regulatory Flexibility Act because the temporary rule is issued without opportunity for prior notice and comment.

Pursuant to 5 U.S.C. 553(b)(B), there is good cause to waive the requirements to provide prior notice and opportunity for public comment on this temporary rule. Such procedures are unnecessary because the AMs established by Amendment 17B and located at 50 CFR 622.49(b)(1)(ii) have already been subject to notice and comment and authorize the AA to file a notification with the Office of the Federal Register to reduce the duration of the recreational fishing season the following fishing year if an overage occurs in the prior fishing year. All that remains is to notify the public of the reduced recreational fishing season for golden tilefish for the 2011 fishing year.

Additionally, there is a need to immediately notify the public of the reduced recreational fishing season for golden tilefish for the 2011 fishing year, since golden tilefish are overfished and undergoing overfishing and this waiver will help further protect the South Atlantic golden tilefish resource. Also, providing prior notice and opportunity for public comment on this action would be contrary to the public interest because many of those affected by the length of the recreational fishing season, particularly charter vessel and headboat operations, book trips for clients in advance and, therefore need as much time as possible to adjust business plans to account for the reduced recreational fishing season.

For the aforementioned reasons, the AA also finds good cause to waive the 30-day delay in the effectiveness of this action under 5 U.S.C. 553(d)(3).

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

Dated: September 29, 2011.

Steven Thur,

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

[FR Doc. 2011–25536 Filed 9–29–11; 4:15 pm]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 622

[Docket No. 0907271173–0629–03]

RIN 0648–XA698

Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; South Atlantic Snapper-Grouper Fishery; 2011–2012 Accountability Measures for Recreational Black Sea Bass

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

ACTION: Temporary rule.

SUMMARY: NMFS implements accountability measures (AMs) for recreational black sea bass in the South Atlantic for the 2011–2012 fishing year through this temporary final rule. This rule reduces the 2011–2012 recreational annual catch limit (ACL) for black sea bass based on the 2010–2011 recreational ACL overage. This action is necessary to reduce overfishing of the South Atlantic black sea bass resource.

DATES: This rule is effective October 4, 2011, through May 31, 2012.

ADDRESSES: Copies of the final rule for Amendment 17B, the Environmental Assessment for Amendment 17B, and other supporting documentation may be obtained from Catherine Bruger, NMFS, Southeast Regional Office, 263 13th Avenue South, St. Petersburg, FL 33701; *telephone:* 727–824–5305.

FOR FURTHER INFORMATION CONTACT: Catherine Bruger, *telephone:* 727–824–5305, *fax:* 727–824–5308, *e-mail: Catherine.Bruger@noaa.gov.*

SUPPLEMENTARY INFORMATION: The snapper-grouper fishery of the South Atlantic is managed under the Fishery Management Plan for the Snapper-Grouper Fishery of the South Atlantic Region (FMP). The FMP was prepared by the South Atlantic Fishery Management Council (Council) and is implemented under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) by regulations at 50 CFR part 622.

Background

The 2006 reauthorization of the Magnuson-Stevens Act established new requirements that ACLs and accountability measures (AMs) be implemented to end overfishing and prevent overfishing from occurring. AMs are management controls to prevent ACLs from being exceeded, and correct or mitigate the ACL if an overage occurs.

On December 30, 2010, NMFS issued a final rule (75 FR 82280) to implement Amendment 17B to the FMP (Amendment 17B). Amendment 17B established ACLs for eight snapper-grouper species in the FMP that are undergoing overfishing, including black sea bass, and AMs if these ACLs are reached or exceeded.

The recreational ACL for black sea bass, implemented through Amendment 17B, is 409,000 lb (185,519 kg), gutted weight. In accordance with regulations at 50 CFR 622.49 (b)(5)(ii)(A), when the recreational ACL is reached or projected to be reached, and black sea bass are classified as overfished, the Assistant Administrator for Fisheries, NOAA (AA) will file a notification with the Office of the Federal Register to close the recreational sector for black sea bass for the remainder of the fishing year. In accordance with the regulations at 50 CFR 622.49 (b)(5)(ii)(B), if black sea bass recreational landings exceed the ACL, without regard to overfished status, the AA will file a notification with the Office of the Federal Register, at or near the beginning of the following fishing year, to reduce the ACL for that fishing year by the amount of the previous year's overage. Recreational landings will be evaluated relative to the ACL, in accordance with the regulations at 50 CFR 622.49 (b)(5)(ii)(C), as follows. For 2010, only 2010 recreational landings will be compared to the ACL; in 2011, the average of 2010 and 2011 recreational landings will be compared to the ACL; and in 2012 and subsequent fishing years, the most recent 3-year running average recreational landings will be compared to the ACL.

For the 2010–2011 fishing year (June 1, 2010–May 31, 2011), the recreational ACL for black sea bass was projected to be reached by February 12, 2011. In accordance with the regulations at 50 CFR 622.49 (b)(5)(ii)(A), NMFS published a temporary rule to close the black sea bass recreational sector on February 12, 2011 (76 FR 5717, February 2, 2011) for the remainder of the 2010–2011 fishing year. Additionally, recent finalized landings data from the NMFS Southeast Fisheries Science Center (SEFSC) estimate that the 2010–2011 recreational ACL was exceeded by 67,253 lb (30,505 kg), gutted weight. Therefore, NMFS reduces the black sea bass recreational sector ACL for the 2011–2012 fishing year by 67,253 lb (30,505 kg) to 341,747 lb (155,014 kg) effective October 4, 2011, through May 31, 2012.

If recreational landings during the 2011–2012 fishing year, as estimated by the SEFSC Science and Research Director (SRD), reach the revised 2011–2012 recreational ACL of 341,747 lb (155,014 kg), gutted weight, and black sea bass are overfished, the AA will file a notification with the Office of the Federal Register to close the recreational sector for black sea bass for the remainder of the fishing year. The 2012–2013 recreational ACL for black sea bass will return to the 2010–2011 recreational ACL amount, unless AMs are implemented due to an overage.

Classification

The Administrator, Southeast Region, NMFS, (RA) has determined this temporary rule is necessary for the conservation and management of the South Atlantic black sea bass component of the South Atlantic snapper-grouper fishery and is consistent with the Magnuson-Stevens Act and other applicable laws.

The temporary rule has been determined to be not significant for purposes of Executive Order 12866.

These measures are exempt from the procedures of the Regulatory Flexibility Act because the temporary rule is issued without opportunity for prior notice and comment.

Pursuant to 5 U.S.C. 553(b)(B), there is good cause to waive the requirements to provide prior notice and opportunity

for public comment on this temporary rule. Such procedures are unnecessary because the AMs established by Amendment 17B and located at 50 CFR 622.49(b)(5)(ii) authorize the AA to file a notification with the Office of the Federal Register to reduce the recreational ACL the following fishing year if an overage occurs in the prior fishing year. The final rule for Amendment 17B implementing this AM was subject to notice and comment, and all that remains is to notify the public of the reduced recreational ACL for black sea bass for the 2011–2012 fishing year. Additionally, there is a need to immediately notify the public of the reduced recreational ACL since black sea bass are overfished and undergoing overfishing and this waiver will help to provide timely notice to further protect the South Atlantic black sea bass resource. Also, providing prior notice and opportunity for public comment on this action would be contrary to the public interest because many of those affected by the recreational season ACL, particularly charter vessel and headboat operations, book trips for clients in advance and, therefore need as much time as possible to adjust business plans to account for the revised ACL.

For the aforementioned reasons, the AA also finds good cause to waive the 30-day delay in the effectiveness of this action under 5 U.S.C. 553(d)(3).

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

Dated: September 29, 2011.

Steven Thur,

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

[FR Doc. 2011–25562 Filed 10–3–11; 8:45 am]

BILLING CODE 3510–22–P

Proposed Rules

Federal Register
Vol. 76, No. 192
Tuesday, October 4, 2011

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

DEPARTMENT OF AGRICULTURE

Grain Inspection, Packers and Stockyards Administration

7 CFR Part 810

Request for Public Comment on the United States Standards for Barley

AGENCY: Grain Inspection, Packers and Stockyards Administration, USDA.

ACTION: Advance notice of proposed rulemaking.

SUMMARY: The Department of Agriculture's (USDA) Grain Inspection, Packers and Stockyards Administration (GIPSA) is reviewing the United States (U.S.) Standards for Barley under the United States Grain Standards Act (USGSA). To ensure that standards and official grading practices remain relevant, GIPSA invites interested parties to comment on whether the current barley standards and grading practices need to be changed.

DATES: Comments must be received on or before January 3, 2012.

ADDRESSES: You may submit your written or electronic comments on this notice to:

- *Internet:* Go to *http://www.regulations.gov* and follow the on-line instruction for submitting comments.
- *Mail:* Dexter Thomas, GIPSA, USDA, 1400 Independence Avenue, SW., Room 2530–S, Washington, DC 20250–3642.
- *Fax:* (202) 690–2173.

All comments will become a matter of public record and should be identified as ''U.S. barley standards ANPR comments,'' making reference to the date and page number of this issue of the **Federal Register**. All comments received become the property of the Federal government, are a part of the public record, and will generally be posted to *http://www.regulations.gov* without change. If you send an e-mail comment directly to GIPSA without going through *http://www.regulations.gov,* or you submit a comment to GIPSA via fax, the originating e-mail address or telephone number will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. Also, all personal identifying information (for example, name, address, etc.) voluntarily submitted by the commenter may be publicly accessible. Do not submit confidential business information or otherwise sensitive or protected information.

Electronic submissions should avoid the use of special characters, avoid any form of encryption, and be free of any defects or viruses, since these may prevent GIPSA from being able to read and understand, and thus consider your comment.

All comments will also be available for public inspection at the above address during regular business hours (7 CFR 1.27(b)). Please call the GIPSA Management and Budget Services staff (202) 720–7486 for an appointment to view the comments.

FOR FURTHER INFORMATION CONTACT: Patrick McCluskey at GIPSA, USDA, 10383 N. Ambassador Dr., Kansas City, MO 64153; Telephone (816) 659–8403; Fax Number (816) 872–1258; e-mail *Patrick.J.McCluskey@usda.gov.*

SUPPLEMENTARY INFORMATION:

Executive Order 12866

This rule has been determined to be exempt for the purposes of Executive Order 12866, and therefore has not been reviewed by the Office of Management and Budget (OMB).

Background

Under the authority of the USGSA (7 U.S.C. 76), GIPSA establishes standards for barley and other grains regarding kind, class, quality and condition. The barley standards, established by USDA on August 24, 1926, were last revised in 1997 and appear in the USGSA regulations at 7 CFR 810.201–810.207. The standards facilitate barley marketing and define U.S. barley quality in the domestic and global marketplace. The standards define commonly used industry terms; contain basic principles governing the application of standards, such as the type of sample used for a particular quality analysis; specify grades, grade requirements, special grades and special grade requirements, such as garlicky barley and blighted barley. Official procedures for determining grading factors are provided in GIPSA's Grain Inspection Handbook, Book II, Chapter 2, ''Barley,'' which also includes standardized procedures for additional quality attributes not used to determine grade, such as dockage and moisture content. Together, the grading standards and testing procedures allow buyers and sellers to communicate quality requirements, compare barley quality using equivalent forms of measurement and assist in price discovery.

GIPSA's grading and inspection services are provided through a network of Federal, State, and private laboratories that conduct tests to determine the quality and condition of barley. These tests are conducted in accordance with applicable standards using approved methodologies and can be applied at any point in the marketing chain. Furthermore, the tests yield rapid, reliable and consistent results. In addition, GIPSA-issued certificates describing the quality and condition of graded barley are accepted as *prima facie* evidence in all Federal courts. U.S. barley standards and the affiliated grading and testing services offered by GIPSA verify that a seller's barley meets specified requirements, and ensure that customers receive the quality of barley they purchased.

In order for U.S. standards and grading procedures for barley to remain relevant, GIPSA is issuing this advance notice of proposed rulemaking to invite interested parties to submit comments, ideas, and suggestions on all aspects of the U.S. barley standards and inspection procedures.

Authority: 7 U.S.C. 71–87k.

J. Dudley Butler,

Administrator, Grain Inspection, Packers and Stockyards Administration.

[FR Doc. 2011–25468 Filed 10–3–11; 8:45 am]

BILLING CODE 3410–KD–P

DEPARTMENT OF HOMELAND SECURITY

8 CFR Parts 216 and 245

[CIS No. 2484–09; Docket No. USCIS–2009–0029]

RIN 1615–AA90

Treatment of Aliens Whose Employment Creation Immigrant (EB–5) Petitions Were Approved After January 1, 1995 and Before August 31, 1998; Correction

AGENCY: U.S. Citizenship and Immigration Services, DHS.

ACTION: Proposed rule; correction.

SUMMARY: The Department of Homeland Security corrects an inadvertent error contained in the proposed rule titled Treatment of Aliens Whose Employment Creation Immigrant (EB–5) Petitions Were Approved After January 1, 1995 and Before August 31, 1998 published in the **Federal Register** on September 28, 2011. The docket number referenced in the proposed rule should read ''DHS Docket No. USCIS–2009–0029''.

DATES: You must submit written comments on or before November 28, 2011.

FOR FURTHER INFORMATION CONTACT: Alexandra Haskell, Adjudications Officer, Business, Employment and Trade Services, Service Center Operations, U.S. Citizenship and Immigration Services, Department of Homeland Security, 20 Massachusetts Avenue, NW., Mailstop 2060, Washington, DC 20259–2060, telephone (202) 272–8410.

SUPPLEMENTARY INFORMATION:

Need for Correction

On September 28, 2011, the Department of Homeland Security published a proposed rule in the **Federal Register** at 76 FR 59927 proposing to amend its regulations governing the employment creation (EB–5) immigrant classification. There was an inadvertent error in the document. The docket number referenced should be changed to read ''DHS Docket No. USCIS–2009–0029'' instead of ''DHS Docket No. DHS–2009–0029''.

Dated: September 28, 2011.

Sunday Aigbe,

Chief Regulatory Products Division, Office of the Executive Secretariat, U.S. Citizenship and Immigration Services, Department of Homeland Security.

[FR Doc. 2011–25463 Filed 10–3–11; 8:45 am]

BILLING CODE 9111–97–P

DEPARTMENT OF ENERGY

10 CFR Part 431

RIN 1904–AC62

Efficiency and Renewables Advisory Committee, Appliance Standards Subcommittee Negotiated Rulemaking Subcommittee/Working Group for Liquid-Immersed and Medium- and Low-Voltage Dry-Type Distribution Transformers

AGENCY: Department of Energy, Office of Energy Efficiency and Renewable Energy.

ACTION: Notice of open meeting.

SUMMARY: This document announces an open meeting of two Negotiated Rulemaking Working Groups; one concerning Liquid Immersed and Medium-Voltage Dry-Type Distribution Transformers and the second addressing Low-Voltage Dry-Type Distribution Transformers. The Liquid Immersed and Medium-Voltage Dry-Type Group (MV Group) and the Low-Voltage Dry-Type Group (LV Group) are working groups within the Appliance Standards Subcommittee of the Efficiency and Renewables Advisory Committee (ERAC). The purpose of the MV and LV Groups is to discuss and, if possible, reach consensus on a proposed rule for regulating the energy efficiency of distribution transformers, as authorized by the Energy Policy Conservation Act (EPCA) of 1975, as amended, 42 U.S.C. 6313(a)(6)(C) and 6317(a).

DATES:

Wednesday, October 12, 2011; 9 a.m.–5 p.m.
Thursday, October 13, 2011; 9 a.m.–5 p.m.
Friday, October 14, 2011; 9 a.m.–5 p.m.

ADDRESSES: National Rural Electric Cooperative Association, 4301 Wilson Blvd., Arlington, VA 22203.

FOR FURTHER INFORMATION CONTACT: John Cymbalsky, U.S. Department of Energy, Office of Building Technologies (EE–2J), 1000 Independence Avenue, SW., Washington, DC 20585–0121. Phone (202) 287–1692 or *e-mail: John.Cymbalsky@ee.doe.gov.*

SUPPLEMENTARY INFORMATION:

Background: The Department of Energy (DOE) has decided to use the negotiated rulemaking process to develop proposed energy efficiency standards for distribution transformers. The primary reasons for using the negotiated rulemaking process for developing a proposed Federal standard is that stakeholders strongly support a consensual rulemaking effort and DOE believes such a regulatory negotiation process will be less adversarial and better suited to resolving the complex technical issues raised by this rulemaking. An important virtue of negotiated rulemaking is that it allows expert dialog that is much better than traditional techniques at getting the facts and issues right and will result in a proposed rule that will effectively reflect Congressional intent.

A regulatory negotiation will enable DOE to engage in direct and sustained dialog with informed, interested, and affected parties when drafting the proposed regulation that is then presented to the public for comment. Gaining this early understanding of all parties' perspectives allows DOE to address key issues at an earlier stage of the process, thereby allowing more time for an iterative process to resolve issues. A rule drafted by negotiation with informed and affected parties is more likely to maximize benefits while minimizing unnecessary costs than one conceived or drafted without the opportunity for sustained dialog among interested and expert parties. DOE anticipates that there will be a need for fewer substantive changes to a proposed rule developed under a regulatory negotiation process prior to the publication of a final rule.

To the maximum extent possible, consistent with the legal obligations of the Department, DOE will use the consensus of the advisory committee or subcommittee as the basis for the rule the Department proposes for public notice and comment.

Purpose of the Meeting: To continue the process of seeking consensus on a proposed rule for setting standards for the energy efficiency of liquid immersed and medium- and low-voltage dry type distribution transformers, as authorized by the Energy Policy Conservation Act (EPCA) of 1975, as amended, 42 U.S.C. 6313(a)(6)(C) and 6317(a).

Tentative Agenda: The MV Group will meet at 9 a.m. and will conclude at 5 p.m. on Wednesday, October 12, 2011, and reconvene from 9 a.m. through 12 p.m. on Thursday, October 13, 2011. The LV Group will meet from 2 p.m. through 5 p.m. on Thursday, October 13, 2011, and reconvene on Friday, October 14, 2011, from 9 a.m. through 5 p.m. The tentative agenda for the meetings includes continued discussion regarding the analyses of alternate standard levels and negotiation efforts to address the perceived issues.

Public Participation: Members of the public are welcome to observe the business of the meetings and to make comments related to the issues being discussed at appropriate points, when called on by the moderator. The

facilitator will make every effort to hear the views of all interested parties, within limits, required for the orderly conduct of business. To attend the meeting and/or to make oral statements regarding any of the items on the agenda, please send an e-mail to: *erac@ee.doe.gov.* Please include ''MV and LV Work Group 101211'' in the subject line of the message. Please be sure to specify which working group discussion you will be attending. In the e-mail, please provide your name, organization, citizenship, and contact information. Space is limited.

Participation in the meeting is not a prerequisite for submission of written comments. ERAC invites written comments from all interested parties. If you would like to file a written statement with the committee, you may do so either by submitting a hard or electronic copy before or after the meeting. Electronic copy of written statements should be e-mailed to: *erac@ee.doe.gov*. This notice is being published less than 15 days prior to the meeting date due to programmatic issues and members' availability that had to be resolved prior to the meeting date.

Minutes: The minutes of the meeting will be available for public review at *http://www.erac.energy.gov.*

Issued in Washington, DC, on September 28, 2011.

LaTanya R. Butler,

Acting Deputy Committee Management Officer.

[FR Doc. 2011–25499 Filed 10–3–11; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF LABOR

Wage and Hour Division

29 CFR Parts 570 and 579

RIN 1235–AA06

Public Hearing on Child Labor Regulations, Orders and Statements of Interpretation; Child Labor Violations—Civil Money Penalties

AGENCY: Wage and Hour Division, Labor.

ACTION: Notice of public hearing.

SUMMARY: The Wage and Hour Division (WHD) will hold a public hearing on its Notice of Proposed Rulemaking (NPRM), Child Labor Regulations, Orders and Statements of Interpretation; Child Labor Violations—Civil Money Penalties to give interested persons an opportunity to present comments on the proposed rule. In the NPRM, the Department proposes to revise the child labor regulations issued pursuant to the Fair Labor Standards Act (FLSA) which set forth the criteria for the permissible employment of minors under 16 years of age in agricultural and under 18 years in nonagricultural occupations. The NPRM proposes to implement specific recommendations made by the National Institute for Occupational Safety and Health, increase parity between the agricultural and nonagricultural child labor provisions, and also address other areas that can be improved, which were identified by the Department's own enforcement actions. The NPRM was published in the **Federal Register** on September 2, 2011, and the comment period runs through November 1, 2011.

DATES: The public hearing will be held on October 14, 2011 from 10 a.m.–12 noon, EST in Tampa, Florida. All requests to speak at the hearing must be received by 5 p.m. EST, October 11, 2011.

ADDRESSES: Persons interested in presenting testimony at this public hearing must submit notice of their intent to participate in the hearing and their name, title, organization, and e-mail address using one of the following methods:

Electronic. You may submit requests to speak at the public hearing and requests for special accommodations to attend the hearing at: *WHDForum@dol.gov.*

Regular Mail, express delivery, hand (courier) delivery, and messenger service. You may submit requests to speak at the public hearing and requests for special accommodations to attend the hearing to: Wage and Hour Division, attention: Division of Regulations, Legislation, and Interpretation, U.S. Department of Labor, Room S–3502, 200 Constitution Avenue, NW., Washington, DC 20210.

Instructions: Please submit one copy of your request by only one method. All requests received must include the agency name (Wage and Hour Division) and Regulatory Information Number identified above for the subject rulemaking (1235–AA06). All comments and requests to speak will be posted without change to *http://www.regulations.gov*, including any personal information provided. Consequently, prior to including any individual's personal information such as Social Security Number, home address, telephone number, e-mail addresses and medical data in the submission, the Department urges commenters carefully to consider that their submissions are a matter of public record and will be publicly accessible on the Internet. It is the submitter's responsibility to safeguard his or her information. Because we continue to experience delays in receiving mail in the Washington, DC area, interested parties are strongly encouraged to transmit their requests to speak at the public hearing electronically via *WHDForum@dol.gov* or to submit them by mail early. For additional information on submitting comments on the proposed rule and the rulemaking process, see the ''Public Participation'' heading of the **SUPPLEMENTARY INFORMATION** section of this document.

Docket: For access to the docket to read the proposed rule, background documents or comments received, go to the Federal eRulemaking Portal at *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Information regarding this notice is available from the following sources:

Press inquiries. Contact Michael Kravitz, Director of Communications, Room S–3502, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210; telephone: 202–693–0051.

General and technical information. Contact Arthur M. Kerschner, Jr., Chief, Branch of Child Labor, Room S–3510, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210; telephone: 202–693–0072.

Copies of this Federal Register notice. This **Federal Register** notice, as well as news releases and other relevant information, are available on the WHD web site at *http://www.dol.gov/whd/.*

Questions of interpretation and/or enforcement of regulations issued by this agency or referenced in this notice may be directed to the nearest WHD District Office. Locate the nearest office by calling the WHD toll-free help line at (866) 4US–WAGE ((866) 487–9243) between 8 a.m. and 5 p.m. in your local time zone, or log onto the WHD Web site for a nationwide listing of WHD District and Area Offices at: *http://www.dol.gov/whd/america2.htm.*

SUPPLEMENTARY INFORMATION: The NPRM was published in the **Federal Register** on September 2, 2011, and the comment period runs through November 1, 2011. (76 FR 54836). Comments on the rule can be electronically submitted through that time at *http://www.regulations.gov.*

Public Participation: The WHD is proposing to revise the child labor regulations issued pursuant to the FLSA, which set forth the criteria for the permissible employment of minors under 18 years of age in agricultural and nonagricultural occupations. (29 CFR parts 570 and 579). The proposed rule,

background documents, and comments received on the proposal are available at www.regulations.gov. To comment electronically on federal rulemakings, go to the Federal eRulemaking Portal at *http://www.regulations.gov*, which will allow you to find, review, and submit comments on federal documents that are open for comment and published in the **Federal Register**. The comment period for this rulemaking runs through November 1, 2011.

The public hearing will be held on October 14, 2011, beginning at 10 a.m. at the Tampa Port Authority, 1101 Channelside Drive, #400, Tampa, FL 33602. Persons interested in speaking at this public hearing must submit by 5 p.m., EST, October 11, 2011, the following information: (1) A written request to be heard; and (2) An outline of the topics to be discussed, indicating the time allocated to each topic. To facilitate the receipt and processing of requests, WHD encourages interested persons to submit their requests and outlines electronically to *WHDForum@dol.gov.* It should be noted that, while reasonable efforts will be made to accommodate requests to speak on the specified issues, it may be necessary to limit the number of those speaking and/or the amount of time allocated to each speaker in order to adhere to the hearing format. Any persons not afforded an opportunity to testify will have an opportunity to submit a written statement on the specified issues for the record. The hearing will be open to the general public.

Persons submitting requests and outlines on paper should send or deliver their requests and outlines to the Wage and Hour Division, attention: Division of Regulations, Legislation, and Interpretation, U.S. Department of Labor, Room S–3502, 200 Constitution Avenue, NW., Washington, DC 20210. All requests and outlines submitted to the Department will be available to the public online at *http://www.regulations.gov.*

The Department will prepare an agenda indicating the order of the presentation of oral comments and testimony. In the absence of special circumstances, presenters will be allotted an equal amount of time for presenting oral comments and testimony. Information about the agenda will be posted on *http://www.regulations.gov* on or after October 12, 2011.

Background

The Department is committed to helping youth enjoy positive and challenging work experiences—both in agricultural and nonagricultural employment—that are so important to their development and transition to adulthood. The federal child labor provisions were enacted to ensure that when young people work, the work is safe, age appropriate, and does not jeopardize their schooling. The NPRM, published September 2, 2011 in the **Federal Register**, continues the Department's tradition of encouraging compliance with the child labor provisions and fostering permissible and appropriate job opportunities for working youth that are healthy, safe, and not detrimental to their education. (76 FR 54836). As mentioned, the Department's proposals arise from the enforcement experiences of the Wage and Hour Division, specific recommendations made by the National Institute for Occupational Safety and Health, and a commitment to provide young hired farm workers with the same level of workplace protections afforded their peers who are employed in nonagricultural industries.

A. Child Labor Provisions for Employment in Nonagriculture

The child labor provisions of the FLSA, 29 U.S.C. 201 *et seq.*, establish a minimum age of 16 years for employment in nonagricultural occupations, but the Secretary of Labor is authorized to provide by regulation for 14- and 15-year-olds to work in suitable occupations other than manufacturing or mining, and during periods and under conditions that will not interfere with their schooling or health and well-being. The FLSA provisions permit 16- and 17-year-olds to work in the nonagricultural sector without hours or time limitations, except in certain occupations found and declared by the Secretary to be particularly hazardous, or detrimental to the health or well-being of such workers.

The regulations concerning nonagricultural hazardous occupations are contained in subpart E of 29 CFR part 570 (29 CFR 570.50–.68). These Hazardous Occupations Orders (HOs) apply on either an industry basis, specifying the occupations in a particular industry that are prohibited, or an occupational basis, irrespective of the industry in which the work is performed. The seventeen nonagricultural HOs were adopted individually during the period of 1939 through 1963. Seven of these HOs, specifically HOs 5, 8, 10, 12, 14, 16, and 17, contain limited exemptions that permit the employment of 16- and 17-year-old apprentices and student-learners under particular conditions to perform work otherwise prohibited to that age group. The terms and conditions for employing such apprentices and student-learners are detailed in § 570.50(b) and (c). In the recently published NPRM, the Department proposes to create two new nonagricultural HOs, one concerning the employment of youth in certain facilities within farm-product raw materials wholesale trade industries, as recommended by National Institute for Occupational Safety and Health (NIOSH) in its 2002 Report, and another addressing the use of electronic devices, including communication devices, while operating or assisting to operate certain power-driven equipment, including motor vehicles.

B. Child Labor Provisions for Employment in Agriculture

The FLSA, since its enactment in 1938, has applied child labor standards to the employment of youth in agriculture that differ from those applied to youth employed in nonagricultural occupations. FLSA section 3(f) defines agriculture as including ''farming in all its branches and among other things includes the cultivation and tillage of the soil, dairying, the production, cultivation, growing, and harvesting of any agricultural or horticultural commodities (including commodities defined as agricultural commodities in section 1141j(g) of [U.S.C.] Title 12), the raising of livestock, bees, fur-bearing animals, or poultry, and any practices (including any forestry or lumbering operations) performed by a farmer or on a farm as an incident to or in conjunction with such farming operations, including preparation for market, delivery to storage or to market or to carriers for transportation to market.'' The Department's regulations at 29 CFR part 780 explain the meaning of these terms, including a description of what constitutes primary agriculture and secondary agriculture under section 3(f). However, the FLSA, when enacted, also included a broad exemption from the child labor provisions for youth under 16 years of age employed in agriculture.

In 1966, Congress amended the FLSA and, among other things, authorized the Secretary to create Agricultural Hazardous Occupations Orders (Ag H.O.s) (Pub. L. 89–601, § 203). The newly enacted FLSA section 13(c)(2) stated that ''[t]he provisions of section 12 relating to child labor shall apply to an employee below the age of sixteen employed in agriculture in any occupations that the Secretary of Labor finds and declares to be particularly

hazardous for the employment of children below the age of sixteen, except where such employee is employed by his parent or by a person standing in place of his parent on a farm owned or operated by such parent or person.'' It is important to note that the amendment created a minimum age of 16 for the permissible performance of hazardous work in agricultural occupations, although 18 remained the minimum age for the performance of hazardous work in nonagricultural employment. This statutory difference remains to this day. The Department published a final rule implementing FLSA § 213(c) in the **Federal Register** on January 7, 1970 (35 FR 221), which became effective on February 6, 1970. The Ag H.O.s established by that final rule have never been revised and are identical to the current Ag H.O.s now contained in 29 CFR 570.71.

The Department proposes to not only accept all of the agricultural hazardous occupations order recommendations made by the National Institute for Occupational Safety and Health but to expand several of them. The NPRM proposes to eliminate two exemptions that currently allow 14- and 15-year-old hired farm workers to operate tractors and certain other farm equipment after receiving limited training and the successful completion of a practical examination. The proposal would also strengthen a student-learner exemption for 14- and 15-year-old hired farm workers by modeling it after the same exemption that is available to 16- and 17-year-old youths employed in nonagricultural work places.

The Department's proposals apply only to young hired farm workers and in no way change the statutory parental exemptions applicable to children of any age who are employed on a farm owned or operated by their parent.

C. The Assessment of Child Labor Civil Money Penalties (29 CFR Part 579)

The Department proposes to revise 29 CFR part 579 to provide additional transparency to its child labor civil money penalty assessment process by incorporating the primary provisions of Wage and Hour Division Field Assistance Bulletin 2010–1 (available at *http://www.dol.gov/whd/FieldBulletins/fab2010_1.pdf*). The Department believes this proposal will increase the public's understanding of the child labor civil money penalty assessment process while preserving national consistency in its administration.

Authority and Signature

This document was prepared under the direction of Nancy J. Leppink, Deputy Administrator for the Wage and Hour Division, U. S. Department of Labor, pursuant to sections 3 and 13 of the Fair Labor Standards Act (29 U.S.C. 203, 213).

Signed at Washington, DC, this 28th day of September 2011.

Nancy J. Leppink,

Deputy Administrator, Wage and Hour Division.

[FR Doc. 2011–25472 Filed 10–3–11; 8:45 am]

BILLING CODE 4510–27–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R03–OAR–2011–0556; FRL–9473–4]

Approval and Promulgation of Air Quality Implementation Plans; West Virginia; Ohio; Determination of Clean Data for the 2006 24-Hour Fine Particulate Standard for the Steubenville-Weirton Area

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to determine that the two-state Steubenville-Weirton, nonattainment area for the 2006 24-hour fine particulate matter ($PM_{2.5}$) National Ambient Air Quality Standard (NAAQS) has clean data for the 2006 24-hour $PM_{2.5}$ NAAQS. This proposed determination is based upon quality assured, quality controlled, and certified ambient air monitoring data showing that this area has monitored attainment of the 2006 $PM_{2.5}$ NAAQS based on the 2008–2010 data available in EPA's Air Quality System (AQS) database. If this proposed determination is made final, the requirements for the Steubenville-Weirton area to submit an attainment demonstration, associated reasonably available control measures (RACM), a reasonable further progress plan (RFP), contingency measures, and other planning State Implementation Plans (SIPs) related to attainment of the standard shall be suspended for so long as the area continues to meet the 2006 24-hour $PM_{2.5}$ NAAQS. This action is being taken under the Clean Air Act (CAA).

DATES: Written comments must be received on or before November 3, 2011.

ADDRESSES: Submit your comments regarding the two-state Steubenville-Weirton area, identified by Docket ID Number EPA–R03–OAR–2011–0556 by one of the following methods:

A. *http://www.regulations.gov.* Follow the on-line instructions for submitting comments.

B. *E-mail: fernandez.cristina@epa.gov.*

C. *Mail:* EPA–R03–OAR–2011–0556, Cristina Fernandez, 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–2011–0556. EPA's policy is that all comments received will be included in the public docket without change, and may be made available online at *http://www.regulations.gov*, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *http://www.regulations.gov* or e-mail. The *http://www.regulations.gov* Web site is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through *http://www.regulations.gov,* your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the electronic docket are listed in the *http://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 *http://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: In Region III, Asrah Khadr, Office of Air Program Planning, Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, PA 19103–2023. The telephone number is (215) 814–2071. Ms. Khadr can also be reached via electronic mail at *khadr.asrah@epa.gov*. In Region V, Carolyn Persoon, Air Planning and Maintenance Section, Air Programs Branch (AR–18J), Environmental Protection Agency, Region V, 77 West Jackson Boulevard, Chicago, Illinois 60604–3507. Ms. Persoon's telephone number is (312) 353–8290. Ms. Persoon can also be reached via electronic mail at *persoon.carolyn@epa.gov*.

SUPPLEMENTARY INFORMATION: Throughout this document whenever ''we,'' ''us,'' or ''our'' is used, we mean EPA.

The following outline is provided to aid in locating information in this preamble.

I. What action is EPA taking?
II. What is the effect of this action?
III. What is the background for this action?
IV. What is EPA's analysis of the relevant air quality data?
V. What's EPA's proposed action?
VI. What are the statutory and Executive Order reviews?

I. What action is EPA taking?

EPA is proposing to determine that the Steubenville-Weirton $PM_{2.5}$ nonattainment area has clean data for the 2006 24-hour $PM_{2.5}$ NAAQS. This determination is based upon quality assured, quality controlled, and certified ambient air monitoring data showing that this area has monitored attainment of the 2006 $PM_{2.5}$ NAAQS based on the 2008–2010 data in EPA's AQS database.

II. What is the effect of this action?

If this determination is made final, under the provisions of EPA's $PM_{2.5}$ implementation rule (see 40 CFR section 51.1004(c)), the requirements for the Steubenville-Weirton nonattainment area to submit an attainment demonstration, associated RACM, a RFP plan, contingency measures, and any other planning SIPs related to attainment of the 2006 $PM_{2.5}$ NAAQS would be suspended for so long as the area continues to meet the 2006 24-hour $PM_{2.5}$ NAAQS. Furthermore, as described below, a final clean data determination would not be equivalent to the redesignation of this area to attainment of the 2006 24-hour $PM_{2.5}$ NAAQS.

If EPA subsequently determines that this area is in violation of the 2006 24-hour $PM_{2.5}$ NAAQS, the basis for the suspension of the specific requirements, set forth at 40 CFR section 51.1004(c), would no longer exist and this area would thereafter have to address the pertinent requirements.

This clean data determination that EPA proposes with this **Federal Register** notice, that the air quality data shows attainment of the 2006 24-hour $PM_{2.5}$ NAAQS, is not equivalent to the redesignation of this area to attainment. This proposed action, if finalized, will not constitute a redesignation to attainment under section 107(d)(3) of the CAA, because we would not yet have an approved maintenance plan for this area as required under section 175A of the CAA, nor a determination that this area has met the other requirements for redesignation. The designation status of this area would remain nonattainment for the 2006 $PM_{2.5}$ NAAQS until such time as EPA determines that this area meets the CAA requirements for redesignation to attainment.

III. What is the background for this action?

The 2006 $PM_{2.5}$ NAAQS set forth at 40 CFR 50.13 became effective on December 18, 2006 (71 FR 61144) and promulgated a 24-hour standard of 35 micrograms per cubic meter ($\mu g/m^3$) based on a 3-year average of the 98th percentile of 24-hour concentration. On December 14, 2009 (74 FR 58688), EPA made designation determinations, as required by CAA section 107(d)(1), for the 2006 24-hour $PM_{2.5}$ NAAQS. The Steubenville-Weirton area is designated as nonattainment for the 2006 24-hour $PM_{2.5}$ NAAQS.

IV. What is EPA's analysis of the relevant air quality data?

EPA has reviewed the ambient air monitoring data, consistent with the requirements contained in 40 CFR part 50 and recorded in EPA's AQS database for the Steubenville-Weirton $PM_{2.5}$ nonattainment area from 2008 through the present time. On the basis of that review, EPA has concluded that this area meets the 2006 24-hour $PM_{2.5}$ NAAQS based on the 2008–2010 data available in EPA's AQS database.

Under EPA regulations in 40 CFR part 50, section 50.13 and in accordance with Appendix N, the 24-hour primary and secondary $PM_{2.5}$ standards are met when the 98th percentile 24-hour concentration is less than or equal to 35 $\mu g/m^3$. Table 1 shows the design values for the 2006 24-hour $PM_{2.5}$ NAAQS for the years 2008–2010. EPA's review of the data indicates that the Steubenville-Weirton $PM_{2.5}$ nonattainment area meets the 2006 $PM_{2.5}$ NAAQS.

TABLE 1—2008–2010 DAILY AVERAGE CONCENTRATIONS IN THE STEUBENVILLE-WEIRTON AREA [1]

State	County	Site No.	Design value ($\mu g/m^3$)
Ohio	Jefferson	390810017	30.0
Ohio	Jefferson	390811001	28.0
West Virginia	Brooke	540090005	31.0
West Virginia	Brooke	540090011	31.0
West Virginia	Hancock	540291004	31.0

[1] The publicly available $PM_{2.5}$ AQS data and information is available as part of EPA's AirTrends Site at: *http://www.epa.gov/airtrends/values.html.*

V. What's EPA's proposed action?

EPA is proposing to determine that the Steubenville-Weirton nonattainment area has clean data for the 2006 24-hour $PM_{2.5}$ NAAQS. As provided in 40 CFR section 51.1004(c), if EPA finalizes this determination, it will suspend the requirements for this area to submit an attainment demonstration, associated RACM, a RFP, contingency measures, and any other planning SIPs related to the attainment of the 2006 $PM_{2.5}$ NAAQS, so long as this area continues to meet the standard. EPA is soliciting public comments on the issues

discussed in this document. These comments will be considered before taking final action.

VI. What are the 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 rulemaking that the Steubenville-Weirton $PM_{2.5}$ nonattainment area has clean data for the 2006 24-hour $PM_{2.5}$ standard 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, Particulate matter, Reporting and recordkeeping requirements.

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

Dated: August 8, 2011.

C. Early,

Acting Regional Administrator, Region III.

Dated: September 6, 2011.

Susan Hedman,

Regional Administrator, Region V.

[FR Doc. 2011–25111 Filed 10–3–11; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 98

[EPA–HQ–OAR–2011–0512; FRL–9474–8]

RIN 2060–AR09

Extension of Public Comment Period: Mandatory Reporting of Greenhouse Gases: Technical Revisions to the Electronics Manufacturing and the Petroleum and Natural Gas Systems Categories of the Greenhouse Gas Reporting Rule

AGENCY: Environmental Protection Agency (EPA).

ACTION: Extension of public comment period.

SUMMARY: On September 9, 2011, EPA published a proposed action, Mandatory Reporting of Greenhouse Gases: Technical Revisions to the Electronics Manufacturing and the Petroleum and Natural Gas Systems Categories of the Greenhouse Gas Reporting Rule. In this action, EPA is extending the comment period for that action until October 24, 2011.

DATES: Comments must be received on or before October 24, 2011.

ADDRESSES: You may submit your comments, identified by Docket ID No. EPA–HQ–OAR–2011–0512 by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the online instructions for submitting comments.
- *E-mail: GHG_Reporting_Rule_Oil_And_Natural_Gas@epa.gov.* Include Docket ID No. *EPA–HQ–OAR–2011–0512* in the subject line of the message.
- *Fax:* (202) 566–9744.
- *Mail:* Environmental Protection Agency, EPA Docket Center (EPA/DC), Mail Code 28221T, Attention Docket ID No. EPA–HQ–OAR–2011–0512, 1200 Pennsylvania Avenue, NW., Washington, DC 20460.
- *Hand/Courier Delivery:* EPA Docket Center, Public Reading Room, EPA West Building, Room 3334, Attention Docket ID No. EPA–HQ–OAR–2011–0512, 1301 Constitution Avenue, NW., Washington, DC 20004. Such deliveries are only accepted during the docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. *EPA–HQ–OAR–2011–0512*, Mandatory Reporting of Greenhouse Gases: Petroleum and Natural Gas Systems. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *http://www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be confidential business information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *http://www.regulations.gov* or e-mail. The *http://www.regulations.gov* Web site is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through *http://www.regulations.gov* your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

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 for viewing at the EPA Docket Center. Publicly

available docket materials are available either electronically in *http://www.regulations.gov* or in hard copy at the EPA Docket Center, EPA/DC, EPA West Building, Room 3334, 1301 Constitution Ave., NW., Washington, DC. This Docket Facility is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the Air Docket is (202) 566–1742.

FOR FURTHER INFORMATION CONTACT: Carole Cook, Climate Change Division, Office of Atmospheric Programs (MC–6207J), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (202) 343–9263; fax number: (202) 343–2342; e-mail address: *GHGReportingRule@epa.gov.* For technical questions, please see the Greenhouse Gas Reporting Program Web site *http://www.epa.gov/climatechange/emissions/ghgrulemaking.html.* To submit a question, select *Rule Help Center,* followed by *Contact Us.* To obtain information about the public hearing or to register to speak at the public hearing, please go to *http://www.epa.gov/climatechange/emissions/ghgrulemaking.html.* Alternatively, you may contact Carole Cook at 202–343–9263.

SUPPLEMENTARY INFORMATION:

Worldwide Web (WWW). In addition to being available in the docket, an electronic copy of today's notice will also be available through the WWW. Following the Administrator's signature, a copy of this action will be posted on EPA's greenhouse gas reporting rule Web site at *http://www.epa.gov/climatechange/emissions/ghgrulemaking.html.*

Additional information on submitting comments. To expedite review of your comments by Agency staff, you are encouraged to send a separate copy of your comments, in addition to the copy you submit to the official docket, to Carole Cook, U.S. EPA, Office of Atmospheric Programs, Climate Change Division, Mail Code 6207–J, Washington, DC 20460, telephone (202) 343–9263, e-mail address: *GHGReportingRule@epa.gov.*

Background on Today's Action. In this action, EPA is providing notice that it is extending the public comment period on the action published on September 9, 2011 (76 FR 56010), Mandatory Reporting of Greenhouse Gases: Technical Revisions to the Electronics Manufacturing and the Petroleum and Natural Gas Systems Categories of the Greenhouse Gas Reporting Rule. The current deadline for submitting public comment on that rule is October 11, 2011. EPA is extending that deadline to October 24, 2011. This extension will provide the general public additional time for public participation.

List of Subjects in 40 CFR Part 98

Environmental protection, Administrative practice and procedure, Greenhouse gases, Incorporation by reference, Suppliers, Reporting and recordkeeping requirements.

Dated: September 27, 2011.

Elizabeth Craig,

Acting Director, Office of Atmospheric Programs.

[FR Doc. 2011–25500 Filed 10–3–11; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

42 CFR Part 5

Negotiated Rulemaking Committee on Designation of Medically Underserved Populations and Health Professional Shortage Areas; Notice of Meeting

AGENCY: Health Resources and Services Administration, HHS.

ACTION: Negotiated Rulemaking Committee meeting.

SUMMARY: In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), notice is hereby given of the following meeting of the Negotiated Rulemaking Committee on Designation of Medically Underserved Populations and Health Professional Shortage Areas.

DATES: Meetings will be held on October 12, 2011, 9:30 a.m. to 6 p.m. and October 13, 2011, 9 a.m. to 6 p.m. All meeting times are Eastern Daylight Time (E.D.T.).

ADDRESSES: Meetings will be held at the Sheraton Suites Old Town Alexandria, 801 North Saint Asaph Street, Alexandria, Virginia 22314; 703–836–4700.

FOR FURTHER INFORMATION CONTACT: For more information, please contact La Crystal McNair, National Center for Health Workforce Analysis, Bureau of Health Professions, Health Resources and Services Administration, Room 9–49, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, Telephone (301) 443–3578, *E-mail: lmcnair@hrsa.gov*, or visit *http://www.hrsa.gov/advisorycommittees/shortage/*.

SUPPLEMENTARY INFORMATION:

Status: The meeting will be open to the public.

Purpose: The purpose of the Negotiated Rulemaking Committee on Designation of Medically Underserved Populations and Health Professional Shortage Areas is to establish criteria and a comprehensive methodology for Designation of Medically Underserved Populations and Primary Care Health Professional Shortage Areas, using a Negotiated Rulemaking (NR) process. It is hoped that use of the NR process will yield a consensus among technical experts and stakeholders on a new rule for designation of medically underserved populations and primary care health professions shortage areas, which would be published as an Interim Final Rule in accordance with Section 5602 of the Affordable Care Act, Public Law 111–148.

Agenda: The meeting will be held on Wednesday, October 12, and Thursday, October 13, 2011. This will be the last meeting of the Committee, and the main purpose will be to review the draft report reflecting their decisions and deliberations prior to this meeting. The meeting will include a review of the major recommendations (regarding new methodologies) for the designation of Health Professional Shortage Areas and Medically Underserved Areas, the justification and support for these decisions, and the approval of the draft report (to be prepared in final discussion of various components) of a possible methodology for identifying areas of shortage and underservice, based on the recommendations of the Committee in the previous meeting. The final agenda will be available on the Committee's *Web site: http://www.hrsa.gov/advisorycommittees/shortage/*. Agenda items are subject to change as priorities dictate.

Members of the public will have the opportunity to provide comments during the meeting on the afternoon of the last day. Requests from the public, to make oral comments or to provide written comments to the Committee, should be sent to LaCrystal McNair (at the contact address above) at least 10 days prior to the first day of the meeting, Wednesday, October 12, 2011. The meetings will be open to the public as indicated above, with attendance limited to the space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the contact person at least 10 days prior to the meeting.

The Committee is working under tight timeframes in order to meet the reporting requirements in the Affordable

Care Act. Due to the complexity of the issue, the Committee requested an additional meeting for a final review of the key decisions and draft report prior to its submission to the Secretary by October 31, 2011. The logistical challenges of scheduling an additional meeting after it was requested in August 2011 hindered an earlier publication of this meeting notice.

Dated: September 27, 2011.

Reva Harris,

Acting Director, Division of Policy and Information Coordination.

[FR Doc. 2011–25465 Filed 10–3–11; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

44 CFR Part 67

[Docket ID FEMA–2011–0002; Internal Agency Docket No. FEMA–B–1213]

Proposed Flood Elevation Determinations

Correction

In proposed rule document 2011–21709 appearing on pages 53082–53086 in the issue of August 25, 2011, make the following correction:

PART 67—[CORRECTED]

1. On page 53084, in § 67.4, in the table for ''Smith County, Texas and Incorporated Areas'', in the first column, in the second entry ''Tributary BF–1'' should read ''Black Fork Creek Tributary BF–1''.

2. On the same page, in the same section, in the same table, in the same column, in the third entry ''Tributary BF–M–1'' should read ''Black Fork Creek Tributary BF–M–1''.

3. On the same page, in the same section, in the same table, in the same column, in the fourth entry ''Tributary D'' should read ''Black Fork Creek Tributary D''.

4. On the same page, in the same section, in the same table, in the same column, in the fifth entry ''Tributary D–1'' should read ''Black Fork Creek Tributary D–1''.

5. On the same page, in the same section, in the same table, in the same column, in the sixth entry ''Tributary D–2'' should read ''Black Fork Creek Tributary D–2''.

6. On the same page, in the same column, in the same table, in the same column, in the seventh entry ''Tributary D–3'' should read ''Black Fork Creek Tributary D–3''.

7. On the same page, in the same section, in the same table, in the same column, in the eighth entry ''Tributary D–4'' should read ''Black Fork Creek Tributary D–4''.

8. On the same page, in the same section, in the same table, in the same column, in the ninth entry ''Tributary D–5'' should read ''Black Fork Creek Tributary D–5''.

9. On page 53085, in the same section, in the same table, in the same column, in the second entry ''Tributary G–1'' should read ''Gilley Creek Tributary G–1''.

10. On the same page, in the same section, in the same table, in the same column, in the ninth entry ''Tributary 11'' should read ''West Mud Creek Tributary 11''.

11. On the same page, in the same section, in the same table, in the same column, in the tenth entry ''Tributary B'' should read ''West Mud Creek Tributary B''.

12. On the same page, in the same section, in the same table, in the same column, in the eleventh entry ''Tributary M–1'' should read ''West Mud Creek Tributary M–1''.

13. On the same page, in the same section, in the same table, in the same column, in the twelfth entry ''Tributary M–2'' should read ''West Mud Creek Tributary M–2''.

14. On the same page, in the same section, in the same table, in the same column, in the thirteenth entry ''Tributary M–A'' should read ''West Mud Creek Tributary M–A''.

15. On the same page, in the same section, in the same table, in the same column, in the fourteenth entry ''Tributary M–A.1'' should read ''West Mud Creek Tributary M–A.1''.

16. On the same page, in the same section, in the same table, in the same column, in the fifteenth entry ''Tributary M–A.2'' should read ''West Mud Creek Tributary M–A.2''.

17. On the same page, in the same section, in the same table, in the same column, in the sixteenth entry ''Tributary M–C'' should read ''West Mud Creek Tributary M–C''.

18. On the same page, in the same section, in the same table, in the same column, in the seventeenth entry ''Tributary M–C.1'' should read ''West Mud Creek Tributary M–C.1''.

19. On the same page, in the same section, in the same table, in the same column, in the eighteenth entry ''Tributary M–C.2'' should read ''West Mud Creek Tributary M–C.2''.

[FR Doc. C1–2011–21709 Filed 10–3–11; 8:45 am]

BILLING CODE 1505–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 1

[WT Docket No. 08–61, WT Docket No. 03–187; DA 11–1608]

Programmatic Environmental Assessment

AGENCY: Federal Communications Commission.

ACTION: Proposed rule; extension of comment period.

SUMMARY: This document grants a motion requesting an extension of time to file comments in response to a draft programmatic environmental assessment (PEA) of the Antenna Structure Registration (ASR) program. The purpose of the PEA is to evaluate the potential environmental effects of the Commission's ASR program. Owners of structures that are taller than 200 feet above ground level or that may interfere with the flight path of a nearby airport must register those structures with the FCC.

DATES: Comments on the proposed rule published at 76 FR 54422, September 1, 2011, are now due on or before November 2, 2011.

ADDRESSES: You may submit comments, identified by WT Docket No. 08–61; WT Docket No. 03–187, by any of the following methods:

- *Electronic Filers:* Comments may be filed electronically using the Internet by accessing the Commission's Electronic Comment Filing System (''ECFS''): *http://www.fcc.gov/cgb/ecfs/,* through a link on the PEA Web site: *http://www.fcc.gov/pea,* or via the Federal eRulemaking Portal: *http://www.regulations.gov.*
- *Paper Filers:* Parties who choose to file by paper must file an original and four copies of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding, filers must submit two additional copies for each additional docket or rulemaking number.

Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.

○ All hand-delivered or messenger-delivered paper filings for the Commission's Secretary must be delivered to FCC Headquarters at 445 12th St., SW., Room TW–A325, Washington, DC 20554. All hand deliveries must be held together with

rubber bands or fasteners. Any envelopes must be disposed of *before* entering the building. The filing hours are 8 a.m. to 7 p.m.

○ Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743.

○ U.S. Postal Service first-class, Express, and Priority mail must be addressed to 445 12th Street, SW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Aaron Goldschmidt, Wireless Telecommunications Bureau, (202) 418–7146, or e-mail *Aaron.Goldschmidt@fcc.gov.*

SUPPLEMENTARY INFORMATION: The FCC has established a Web site, *http://www.fcc.gov/pea,* which contains information and downloadable documents relating to the PEA process, including the Draft PEA. The Web site also allows individuals to contact the Commission. See original published document (proposed rule published at 76 FR 54422, September 1, 2011).

Federal Communications Commission.

Matthew Nodine,

Chief of Staff, Wireless Telecommunications Bureau.

[FR Doc. 2011–25576 Filed 9–30–11; 11:15 am]

BILLING CODE 6712–01–P

DEPARTMENT OF DEFENSE

Defense Acquisition Regulations System

48 CFR Parts 215, 225, and 252

RIN 0750–AH42

Defense Federal Acquisition Regulation Supplement: Contracting With the Canadian Commercial Corporation (DFARS Case 2011–D049)

AGENCY: Defense Acquisition Regulations System, Department of Defense (DoD).

ACTION: Proposed rule.

SUMMARY: DoD is proposing to amend the Defense Federal Acquisition Regulation Supplement (DFARS) to clarify the requirements for the Canadian Commercial Corporation to submit data other than certified cost or pricing data.

DATES: *Comment Date:* Comments on the proposed rule should be submitted in writing to the address shown below on or before December 5, 2011, to be considered in the formation of a final rule.

ADDRESSES: Submit comments identified by DFARS Case 2011–D049, using any of the following methods:

○ *Regulations.gov: http://www.regulations.gov.* Submit comments via the Federal eRulemaking portal by entering ''DFARS Case 2011–D049'' under the heading ''Enter keyword or ID'' and selecting ''Search.'' Select the link ''Submit a Comment'' that corresponds with ''DFARS Case 2011–D049.'' Follow the instructions provided at the ''Submit a Comment'' screen. Please include your name, company name (if any), and ''DFARS Case 2011–D049'' on your attached document.

○ *E-mail: dfars@osd.mil.* Include DFARS Case 2011–D049 in the subject line of the message.

○ *Fax:* 703–602–0350.

○ *Mail:* Defense Acquisition Regulations System, Attn: Amy G. Williams, OUSD (AT&L) DPAP/DARS, Room 3B855, 3060 Defense Pentagon, Washington, DC 20301–3060.

Comments received generally will be posted without change to *http://www.regulations.gov*, including any personal information provided. To confirm receipt of your comment(s), please check *http://www.regulations.gov*, approximately two to three days after submission to verify posting (except allow 30 days for posting of comments submitted by mail).

FOR FURTHER INFORMATION CONTACT: Amy G. Williams, telephone 703–602–0328.

SUPPLEMENTARY INFORMATION:

I. Background

This proposed rule implements a recommendation of a bilateral integrated product team on cost or pricing data, including representatives from the U.S. Government and Canada.

With some exceptions, as provided at DFARS 225.870–1(c), the Canadian Commercial Corporation awards and administers DoD contracts with contractors located in Canada.

DoD has waived the requirement for the Canadian Commercial Corporation and its subcontractors to submit certified cost or pricing data (see DFARS 215.403–1(c)(4)(C)). However, the requirement to submit data other than certified cost or pricing data has not been waived for the Canadian Commercial Corporation and its subcontractors. The purpose of this rule is to clarify the requirement to submit data other than certified cost or pricing data.

II. Discussion and Analysis

Effective on October 1, 2010, the definitions in the Federal Acquisition Regulation (FAR) relating to cost or pricing data were revised (76 FR 53135, published August 30, 2010). The final rule under FAR Case 2005–036, FAC 2005–45, redefined ''cost or pricing data'' to mean all cost or pricing data and added a new term for ''certified cost or pricing data.'' Previously, the term ''cost or pricing data'' had been defined to mean only what is now defined as ''certified cost or pricing data.'' Throughout the FAR, the term ''cost or pricing data'' was generally replaced with the new term ''certified cost or pricing data.'' The same final rule also replaced the term ''information other than cost or pricing data'' with the new term ''data other than certified cost or pricing data.'' The new definition of these terms in the FAR is significant because the conforming changes to the DFARS, currently being processed under DFARS Case 2011–D040, Definition of Cost or Pricing Data, are not yet implemented. Therefore, this rule includes conforming changes to DFARS 215.4, in order to ensure that it is clear that only submission of certified cost or pricing data has been waived for the Canadian Commercial Corporation and its subcontractors.

FAR 15.402 and FAR 15.403–3 address requiring data other than certified cost or pricing data. FAR 15.402 emphasizes obtaining no more data than is necessary to establish a fair and reasonable price. Generally, no additional data is required from the offeror if the price is based on adequate price competition. FAR 15.402(a)(2)(ii)(A) and FAR 15.403–3(a)(1)(iv) both address the exceptions to obtaining data related to prices, i.e., FAR 15.403–1(b)(1) (prices based on adequate price competition) or FAR 15.403–1(b)(2) (prices set by law or regulation). None of these exceptions provides a general exception to the requirement to obtain data other than certified cost or pricing data based on a waiver of the requirement to provide certified cost or pricing data. In fact, FAR 15.403–3(a)(1)(ii) clearly states that in those acquisition that do not require certified cost or pricing data (e.g., when a waiver has been granted), the contracting officer shall obtain data other than certified cost or pricing data from the offeror to the extent necessary to determine a fair and reasonable price if the contracting officer determines that adequate data from sources other than the offeror are not available. FAR 15.403–3(a)(1)(v) recommends consideration of the guidance in section 3.3, chapter 3, volume I, of the Contract Pricing Reference Guide, available at *http://www.acq.osd.mil/dpap/cpf/*

contract_pricing_reference_guides.html. The contracting officer would not usually require all of the listed items, but would select only those items necessary in order to determine that the price is fair and reasonable.

In order to facilitate requests for data other than certified cost or pricing data when contracting with the Canadian Commercial Corporation, this rule proposes a new provision, Requirement for Submission of Data Other Than Certified Cost or Pricing Data—Canadian Commercial Corporation, for use in appropriate solicitations with the Canadian Commercial Corporation, and a comparable clause, Requirement for Submission of Data Other Than Certified Cost or Pricing Data—Modifications—Canadian Commercial Corporation, to be included in contracts to cover modifications that may require submission of data other than certified cost or pricing data. This provision and clause are a tailored version of Alternate IV of—

- FAR 52.215–20, Requirements for Certified Cost or Pricing Data and Data Other than Certified Cost or Pricing Data; and
- FAR 52.215–21, Requirements for Certified Cost or Pricing Data and Data Other than Certified Cost or Pricing Data—Modification.

The provision and clause both require the following information:

- Profit rate or fee (as applicable).
- Analysis provided by Public Works and Government Services Canada to Canadian Commercial Corporation to determine a fair and reasonable price (comparable to the analysis required by FAR 15.404–1).
- Data other than certified cost or pricing data necessary to permit an adequate determination by the U.S. contracting officer that the proposed price is fair and reasonable. (The U.S. contracting officer must insert a description of the data required, in accordance with the guidance at 15.403–3(a)(1).)

The rule prescribes use of this provision and clause in solicitations and contracts for sole source acquisitions from the Canadian Commercial Corporation that are expected to result in cost-reimbursement contracts expected to exceed the simplified acquisition threshold or fixed-price contracts expected to exceed $500 million. The provision and clause may also be used in other solicitations and contracts if the head of the contracting activity, or designee no lower than one level above the contracting officer, determines that such data is needed in order to determine that the price is fair and reasonable (see FAR 15.403–3(a)(2)).

III. Executive Orders 12866 and 13563

Executive Orders (E.O.s) 12866 and 13563 direct agencies to assess all 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). E.O. 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This is a significant regulatory action and, therefore, was subject to review under section 6(b) of E.O. 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

IV. Regulatory Flexibility Act

DoD does not expect this rule to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.,* because it only impacts Canadian business concerns. No domestic entities will be impacted by this rule. For the definition of ''small business'', the Regulatory Flexibility Act refers to the Small Business Act, which in turn allows the U.S. Small Business Administration (SBA) Administrator to specify detailed definitions or standards. 5 U.S.C. 601(3) and 15 U.S.C. 632(a). The SBA regulations at 13 CFR 121.105 discuss who is a small business: ''(a)(1) Except for small agricultural cooperatives, a business concern eligible for assistance from SBA as a small business is a business entity organized for profit, with a place of business located in the United States, and which operates primarily within the United States or which makes a significant contribution to the U.S. economy through payment of taxes or use of American products, materials or labor.'' Therefore, an initial regulatory flexibility analysis has not been performed. DoD invites comments from small business concerns and other interested parties on the expected impact of this rule on small entities.

DoD will also consider comments from small entities concerning the existing regulations in subparts affected by this rule in accordance with 5 U.S.C. 610. Interested parties must submit such comments separately and should cite 5 U.S.C 610 (DFARS Case 2011–D049), in correspondence.

V. Paperwork Reduction Act

The rule contains information collection requirements that require the approval of the Office of Management and Budget under the Paperwork Reduction Act (44 U.S.C. chapter 35); however, these changes to the DFARS do not impose additional information collection requirements to the paperwork burden previously approved under OMB Control Number 9000–0013, Cost or Pricing Data Requirements and Information Other Than Cost or Pricing Data.

List of Subjects in 48 CFR Parts 215, 225, and 252

Government procurement.

Ynette R. Shelkin,

Editor, Defense Acquisition Regulations System.

Therefore, 48 CFR parts 215, 225, and 252 are amended as follows:

1. The authority citation for 48 CFR parts 215, 225, and 252 continues to read as follows:

Authority: 41 U.S.C. 1303 and 48 CFR chapter 1.

PART 215—CONTRACTING BY NEGOTIATION

2. Amend section 215.403–1 by revising the heading and revising paragraph (c)(4)(C) to read as follows:

215.403–1 Prohibition on obtaining certified cost or pricing data (10 U.S.C. 2306a and 41 U.S.C. chapter 35).

* * * * *

(c) * * *

(4) * * *

(C) DoD has waived the requirement for submission of certified cost or pricing data for the Canadian Commercial Corporation and its subcontractors (but see 215.408(3) and 225.870–4(d)).

* * * * *

3. Amend section 215.408 by adding paragraph (3) to read as follows:

215.408 Solicitation provisions and contract clauses.

* * * * *

(3) When contracting with the Canadian Commercial Corporation—

(i) Use the provision at 252.215–70XX, Requirement for Data Other Than Certified Cost or Pricing Data—

(A) In solicitations for sole source acquisitions that are—

(*1*) Cost-reimbursement, if the contract value is expected to exceed the simplified acquisition threshold; or

(*2*) Fixed-price, if the contract value is expected to exceed $500 million; or

(B) In other solicitations, if the head of the contracting activity, or designee

no lower than one level above the contracting officer, determines that data other than certified cost or pricing data is needed in order to determine that the price is fair and reasonable (see FAR 15.403–3(a)(2)); and

(ii) Use the clause at 252.215–70YY, Requirement for Data Other Than Certified Cost or Pricing Data—Modifications—Canadian Commercial Corporation—

(A) In solicitations and contracts for sole source acquisitions that are—

(*1*) Cost-reimbursement, if the contract value is expected to exceed the simplified acquisition threshold; or

(*2*) Fixed-price, if the contract value is expected to exceed $500 million; or

(B) In other solicitations and contracts, if the head of the contracting activity, or designee no lower than one level above the contracting officer, determines that it is reasonably certain that data other than certified cost or pricing data will be needed in order to determine that the price of modifications is fair and reasonable (see FAR 15.403–3(a)(2)).

PART 225—FOREIGN ACQUISITION

4. Amend section 225.870–4 by redesignating paragraph (c) as paragraph (d) and adding new paragraph (c) to read as follows:

225.870–4 Contracting procedures.

* * * * *

(c) *Requirement for data other than certified cost or pricing data.* (1) DoD has waived the requirement for submission of certified cost or pricing data for the Canadian Commercial Corporation and its subcontractors (see 215.403–1(c)(4)(C)).

(2) The Canadian Commercial Corporation is not exempt from the requirement to submit data other than certified cost or pricing data, as defined in FAR 2.101. In accordance with FAR 15.403–3(a)(1)(ii), the contracting officer shall require submission of data other than certified cost or pricing data from the offeror, to the extent necessary to determine a fair and reasonable price.

(3) The contracting officer shall use the provision at 252.215–70XX, Requirement for Data Other Than Certified Cost or Pricing Data—Canadian Commercial Corporation, and the clause at 252.215–70YY, Requirement for Data Other Than Certified Cost or Pricing Data—Modifications—Canadian Commercial Corporation, as prescribed at 215.408(3)(i) and (ii), respectively.

(4) Except for contracts described in 225.870–1(c)(1) through (4), Canadian suppliers will provide required data other than certified cost or pricing data exclusively through the Canadian Commercial Corporation.

* * * * *

PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

5. Add section 252.215–70XX to read as follows:

252.215–70XX Requirement for Submission of Data Other Than Certified Cost or Pricing Data—Canadian Commercial Corporation.

As prescribed at 215.408(3), use the following provision:

REQUIREMENT FOR SUBMISSION OF DATA OTHER THAN CERTIFIED COST OR PRICING DATA—CANADIAN COMMERCIAL CORPORATION (DATE)

(a) Submission of certified cost or pricing data is not required.

(b) Canadian Commercial Corporation shall obtain and provide the following:

(1) Profit rate or fee (as applicable).

(2) Analysis provided by Public Works and Government Services Canada to the Canadian Commercial Corporation to determine a fair and reasonable price (comparable to the analysis required at FAR 15.404–1).

(3) Data other than certified cost or pricing data necessary to permit a determination by the U.S. Contracting Officer that the proposed price is fair and reasonable [*U.S. Contracting Officer to insert description of the data required in accordance with 15.403–3(a)(1)*].

(End of provision)

6. Add section 252.215–70YY to read as follows:

252.215–70YY Requirement for Submission of Data Other Than Certified Cost or Pricing Data—Modifications—Canadian Commercial Corporation.

As prescribed at 215.408(3), use the following clause:

REQUIREMENT FOR SUBMISSION OF DATA OTHER THAN CERTIFIED COST OR PRICING DATA—MODIFICATIONS—CANADIAN COMMERCIAL CORPORATION (DATE)

(a) Submission of certified cost or pricing data is not required.

(b) Canadian Commercial Corporation shall obtain and provide the following:

(1) Profit rate or fee (as applicable).

(2) Analysis provided by Public Works and Government Services Canada to the Canadian Commercial Corporation to determine a fair and reasonable price (comparable to the analysis required at FAR 15.404–1).

(3) Data other than certified cost or pricing data necessary to permit a determination by the U.S. Contracting Officer that the proposed price is fair and reasonable [*U.S. Contracting Officer to insert description of the data required in accordance with 15.403–3(a)(1)*].

(End of clause.)

[FR Doc. 2011–25237 Filed 10–3–11; 8:45 am]

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DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

[FWS–R1–ES–2008–0048; MO 92210–0–0008 B2]

Endangered and Threatened Wildlife and Plants; 12-Month Finding on a Petition To List the Lake Sammamish Kokanee Population of Oncorhynchus nerka as an Endangered or Threatened Distinct Population Segment

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of a 12-month petition finding.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), announce a 12-month finding on a petition to list the Lake Sammamish kokanee, *Oncorhynchus nerka,* as an endangered or threatened species under the Endangered Species Act of 1973, as amended (Act). After review of all available scientific and commercial information, we find that the Lake Sammamish kokanee population is not a listable entity under the Act and, therefore, listing is not warranted. We ask the public to continue to submit to us any new information that becomes available concerning the taxonomy, biology, ecology, and status of Lake Sammamish kokanee, and to support cooperative conservation efforts for this population.

DATES: The finding announced in this document was made on October 4, 2011.

ADDRESSES: This finding is available on the Internet at *http://www.regulations.gov* at docket number [FWS–R1–ES–2008–0048]. Supporting documentation we used to prepare this finding is available for public inspection, by appointment, during normal business hours at the U.S. Fish and Wildlife Service, Washington Fish and Wildlife Office, 510 Desmond Drive, SE., Suite 102, Lacey, WA 98503. Please submit any new information, materials, comments, or questions concerning this finding to the above address.

FOR FURTHER INFORMATION CONTACT: Ken Berg, Manager, Project Leader, Washington Fish and Wildlife Office, U.S. Fish and Wildlife Service (see

ADDRESSES) by telephone at 360–753–6039; or by facsimile at 360–753–9405. Persons who use a telecommunications device for the deaf (TDD), may call the Federal Information Relay Service (FIRS) at 800–877–8339.

SUPPLEMENTARY INFORMATION:

Background

Section 4(b)(3)(B) of the Endangered Species Act of 1973, as amended (Act) (16 U.S.C. 1531 *et seq.*) requires that, for any petition to revise the Lists of Endangered and Threatened Wildlife and Plants that contains substantial scientific or commercial information that listing the species may be warranted, we make a finding within 12 months of the date of receipt of the petition on whether the petitioned action is: (a) Not warranted; (b) warranted; or (c) warranted, but immediate proposal of a regulation implementing the petitioned action is precluded by other pending proposals to determine whether species are threatened or endangered, and expeditious progress is being made to add or remove qualified species from the Lists of Endangered and Threatened Wildlife and Plants. Section 4(b)(3)(C) of the Act requires that we treat a petition for which the requested action is found to be warranted but precluded as though resubmitted on the date of such finding; that is, requiring a subsequent finding to be made within 12 months. Such 12-month findings must be published in the **Federal Register.** This notice constitutes our 12-month finding for the petition to list the Lake Sammamish population of kokanee.

Previous Federal Actions

On July 9, 2007, we received a petition from Trout Unlimited; the City of Issaquah, Washington; King County, Washington; People for Puget Sound; Save Lake Sammamish; the Snoqualmie Tribe; and the Wild Fish Conservancy requesting that all wild, indigenous, naturally spawned kokanee (*Oncorhynchus nerka*) in Lake Sammamish, Washington, be listed as a threatened or endangered species under the Endangered Species Act. The petition clearly identified itself as such and included the requisite identification information for the petitioners, as required in 50 CFR 424.14(a). Included in the petition was supporting information regarding the species' declining numbers, reduced productivity, a decline in the quantity and quality of their habitat, and narrowing temporal, spatial, and genetic diversity. We acknowledged the receipt of the petition in a letter to the petitioners dated September 24, 2007, and stated that we anticipated making an initial finding within 90 days as to whether the petition contained substantial information indicating that the action may be warranted. We also advised that our initial review of the petition did not indicate that an emergency listing situation existed, but that if conditions changed and we determined that emergency listing was warranted, an emergency rule may be developed. Funding became available to work on the 90-day finding on October 1, 2007. We published a notice of 90-day finding in the **Federal Register** on May 6, 2008 (73 FR 24915), determining that the petition presented substantial scientific information indicating that listing the Lake Sammamish kokanee may be warranted, and that we were initiating a status review of the species and opening a 60-day public comment period. On December 14, 2009, we received a 60-day notice of intent to sue from the Center for Biological Diversity over the Service's failure to make a 12-month finding as required by the Act (*CBD* v. *Ken Salazar,* U.S. District Court, District of Oregon, CV 10–0176–JO). A complaint was filed with the court on February 17, 2010.

We received comments and information from the following individuals and organizations in response to the 90-day finding: King County Department of Natural Resources and Parks, James Mattila, Trout Unlimited, Snoqualmie Indian Tribe, Save Lake Sammamish, Friends of Pine Lake Creek, Washington Department of Fish and Wildlife, and Sno-King Watershed Council. We have fully considered the comments and information presented by these commentors in this finding. In addition, during our status assessment, we generally found that much more information was available on the status of sockeye populations, compared to kokanee populations at the rangewide scale, which may be related to the commercial importance of sockeye salmon. To evaluate whether the population of kokanee in Lake Sammamish qualifies as a listable entity under the Act, we must first determine if it satisfies the criteria for being a distinct population segment. Under the *Policy Regarding the Recognition of Distinct Vertebrate Population Segments* (DPS Policy), which was published in the **Federal Register** on February 7, 1996 (61 FR 4722), we are required to evaluate the discreteness and significance of the petitioned entity against the rest of the taxon, at the rangewide scale.

Species Information

Taxonomy and Range

Oncorhynchus nerka (Order Salmoniformes, Family Salmonidae), is native to watersheds in the north Pacific from southern Kamchatka to Japan in the western Pacific, and from Alaska to the Columbia River in North America (Page and Burr 1991, p. 52; Taylor *et al.* 1996, pp. 402–403). There are three life forms of this species, which are discussed in greater detail below: (1) Anadromous (ocean-going) sockeye; (2) residual sockeye, and (3) kokanee. The kokanee life form was at one time thought to be a separate subspecies (*Oncorhynchus nerka kennerlyi,* Suckley 1861), and that taxonomy continues to be reflected in some scientific papers and other studies (Robertson 1961; McLellan *et al.* 2001; Carruth *et al.* 2000; Maiolie *et al.* 1996). However, kokanee and sockeye are formally recognized as the same species (*O. nerka*) by the scientific community, and in the integrated taxonomic data system (ITIS) (*http://www.itis.gov/servlet/SingleRpt/SingleRpt?search_topic=TSN&search_value=161979*). Despite their recognized conspecific status, sympatric populations of sockeye and kokanee (those that occur in the same or overlapping geographic areas) are biologically and genetically distinct (Foote *et al.* 1989, in Young *et al.* 2004, p. 63). Based on the best available information, we consider the Lake Sammamish kokanee population to belong to the species *Oncorhynchus nerka.*

Kokanee Evolution

All kokanee populations are evolutionarily derived from sockeye salmon. Sockeye salmon (anadromous *Oncorhynchus nerka*) give rise to kokanee over evolutionary timeframes (hundreds to thousands of years) as a result of isolation or selective pressures related to difficulty of migration and lake productivity (Wood *et al.* 2008, pp. 208–210). All kokanee are at the end of a long chain of events where individuals of the anadromous sockeye entered a lake and selective pressures founded a residual sockeye population, then selective pressures or perhaps a geologic event selected for a kokanee population. The evolution of the *O. nerka* forms is unidirectional, and established resident, migratory, or kokanee forms generally do not create successful progeny of the other forms (Wood *et al.* 2008, pp. 209–210).

Taylor *et al.* (1996, pp. 411–414), found multiple episodes of independent divergence between sockeye and kokanee throughout their current range.

As ancestral anadromous sockeye populations expanded to new river systems, those that could not access the marine environment on a regular basis evolved into the non anadromous kokanee form or developed a sympatric population of the non anadromous kokanee form. This has resulted in native kokanee populations typically being genetically more similar to their sympatric (occupying the same geographic area without interbreeding) sockeye populations than to kokanee in other river systems (Taylor *et al.* 1996, pp. 401, 413–414). However, there are exceptions (*e.g.,* Lake Ozette, Washington) where native sympatric kokanee and sockeye populations were determined to be genetically dissimilar, which suggests in these cases that they were established through a different founding event (Winans *et al.* 1996, pp. 655–656).

Differences Between Sockeye and Kokanee

Sockeye salmon are primarily anadromous, migrating to the Pacific Ocean following hatching and rearing in freshwater. Most populations are associated with a natal lake. They spend 2 to 3 years in marine waters before returning to freshwater environments to spawn and die. Some progeny within each sockeye population may remain in freshwater throughout their lifecycle and are called ''residual sockeye'' or ''residuals'' (Gustafson *et al.* 1997, p. 20). Unlike sockeye, kokanee are non anadromous and spend their entire lives in freshwater habitats (Meehan and Bjorn 1991, pp. 56–57). Ricker (1938) first used the terms ''residual sockeye'' and ''residuals'' to refer to these resident, non migratory progeny of anadromous salmon (Quinn 2005, p. 210). These ''residuals'' were much smaller at maturity than the anadromous fish because growing conditions in the lakes are generally poorer than those at sea (Quinn 2005, p. 210). Wood (1995) hypothesizes that the evolution of sockeye populations may proceed from postglacial colonization by ocean-type fish, to lake-type populations if a suitable lake is present, and then to kokanee if there is some combination of good growing conditions and an arduous migration (Quinn 2005, pp. 301–302). Kokanee young are spawned in freshwater streams and subsequently migrate to a nursery lake (Burgner 1991, pp. 35–37), where they remain until maturity. In some cases kokanee are spawned along the shoreline of the nursery lake itself (Scott and Crossman 1973, p.168). When mature, they return to natal freshwater streams to spawn and die, typically around age four. Sympatric kokanee and sockeye populations are typically temporally or spatially separated. In cases where they are not, assortative mating by body size usually leads to assortative mating by type (Gustafson *et al.* 1997, p. 30). Said another way, sockeye are typically larger and spawn with other sockeye, while kokanee are smaller and spawn with other kokanee.

Both kokanee and anadromous sockeye turn from silver to bright red during maturation, while the head is olive green and the fins are blackish red (Craig and Foote 2001, p. 381). Typically, resident or ''residual sockeye'' (progeny of anadromous sockeye that do not migrate to sea but are not kokanee) turn from silver to green (Foote *et al.* 2004, p. 70). Although adult kokanee resemble sockeye salmon, they have significant morphological and physiological differences. Kokanee are more efficient at extracting carotinoids from food resources; have higher gill raker counts, which is known to be an inherited trait; and are normally smaller in size at maturity than sockeye because they are confined to freshwater environments, which are less productive than the ocean (Burgner 1991, p. 59; Gustafson *et al.* 1997, p. 29; Craig and Foote 2001, p. 387; Leary *et al.* 1985 *in* Wood 1995, p. 203). Kokanee maintain a constant egg size, while increasing egg number with increasing body size; sockeye increase both egg number and egg size with increasing body size. It is thought that this characteristic may be related to the less energetically costly kokanee spawning migrations and the smaller particle size of spawning gravel that can be exploited (McGurk 2000, p. 1802). Other studies have demonstrated that under-yearling sockeye salmon exhibit superior swimming ability compared to kokanee (Taylor and Foote 1991). Further, although kokanee appear to have maintained some degree of seasonal adaptation to saltwater, which is part of the smoltification process of anadromous salmonids (complex physiological changes that enable juvenile salmon to make the transition from freshwater to saltwater), genetically there are significant differences in the timing (delayed) and duration (short-lived) compared to sockeye (Foote *et al.* 1992, pp. 106–108).

Sockeye and Kokanee Distribution

Sockeye occur in watersheds in the north Pacific from southern Kamchatka to Japan in the western Pacific, and from Alaska to the Columbia River in North America (Page and Burr 1991, p. 52; Taylor *et al.* 1996, pp. 402–403). Sockeye salmon of Canadian origin generally remain east of the International Dateline and south of the Aleutian Islands, while those from Asia originate in freshwater habitats from Cape Navarin Peninsula in the Bering Sea to north of Sakhalin Island in the Sea of Okhotsk. Most sockeye from Canadian rivers spend 2 years in the ocean, while those from other rivers spend 1, 3 or 4 years (Hart 1973, p. 121).

Native populations of kokanee, each associated with a specific nursery lake, likely occurred historically over most of the range of sockeye salmon within the Columbia River to the Yukon River systems. Native kokanee populations are not widespread in Alaska (McGurk 2000, p. 1801) or Asia (McPhail 2007, p. 288). There are said to be well over 500 kokanee populations in British Columbia (B.C.) (McPhail 2007, p. 295). No native kokanee are known from the B.C. portion of the Yukon River (B.C. Ministry of Fisheries 1998, p. 17), and although introduction activities have spread kokanee throughout the province, only two natural populations are known from the Mackenzie River system (McPhail 2007, p. 289). Kokanee have been widely introduced across North America, including areas outside their larger geographic distribution and farther inland in States and provinces where they occur naturally (Scott and Crossman 1973, p. 167).

Sammamish River/Lake Sammamish Watershed Kokanee Population Groupings

Lake Sammamish kokanee distribution (the petitioned entity): Lake Washington is the dominant feature of the greater Lake Washington/Lake Sammamish Basin and is fed by two major drainage systems. The Cedar River watershed at the south end of the lake, and the Sammamish River/Lake Sammamish watershed at the north end of the lake. Surface water discharge from Lake Sammamish is by way of the Sammamish River at the north end of the lake, which ultimately flows into Lake Washington. The four major tributaries that discharge into the Sammamish River are Swamp Creek, North Creek, Little Bear Creek, and Bear Creek. The major tributary to Lake Sammamish is Issaquah Creek, which enters at the south end of the lake and contributes approximately 70 percent of the inflow to the lake (Kerwin 2001, p. 425). Native kokanee historically spawned in tributaries located throughout Lake Washington and Lake Sammamish. Although the Sammamish River and Cedar River (Walsh Lake) drainages have been included within the current distribution of native kokanee in prior assessments (Gustafson

et al. 1997, p. 123; Berge and Higgins 2003, p. 3), their current spawning distribution in the Lake Washington/Lake Sammamish Basin appears to be limited to portions of the Lake Sammamish drainage. For the purposes of this finding, we are analyzing a petitioned entity that includes the native kokanee population found in the Lake Sammamish drainage.

Although the major tributary to Lake Sammamish is Issaquah Creek, there are also several smaller tributaries to Lake Sammamish used for spawning by kokanee, including Ebright Creek, Pine Lake Creek, Laughing Jacobs Creek, and Lewis Creek (Berge and Higgins 2003, p. 5). Kokanee in the Sammamish River/Lake Sammamish watershed (referred to by the petitioners as the Lake Sammamish population) are separated into three groups: (1) Summer/early-run; (2) fall/middle-run; and, (3) winter/late-run, based on spawn timing and location (Berge and Higgins 2003, p. 3; Young *et al.* 2004, p. 66). Summer/early-run kokanee spawn during late summer (August through September) in Issaquah Creek, and are the only run of kokanee known to spawn in that creek, although introduced sockeye salmon spawn there in October. Fall/middle-run kokanee spawn in late September through November, primarily in larger Sammamish River tributaries including Swamp Creek, North Creek, Bear Creek, Little Bear Creek, and Cottage Lake Creek (Berge and Higgins 2003, pp. 21–25). Winter/late-run kokanee spawn from late fall into winter (October through January) in Lake Sammamish tributaries including Lewis Creek, Ebright Creek, and Laughing Jacobs Creek (Berge and Higgins 2003, pp. 26–29). Some winter/late-run spawning kokanee have also been recorded in Vasa Creek, Pine Lake (Trout Unlimited *et al.* 2007, p. 9), and Tibbetts Creek (Berge and Higgins 2003, pp. 5, 30) in the recent past. Berge and Higgins (2003, p. 5) identified George Davis, Zaccuse, and Alexander's Creeks as part of the historical spawning distribution for winter/late-run kokanee. On at least one occasion, kokanee, presumed to be winter/late-run based on spawn timing, were observed spawning in Lake Sammamish near the mouth of Ebright Creek (Berge and Higgins 2003, p. 33), suggesting that some degree of beach spawning may also occur within the lake. More recently, what appears to be winter/late-run kokanee have been observed entering the lower reach of George Davis Creek at dusk (Nickel 2009) but then retreating back to Lake Sammamish during the day apparently without spawning. This may further indicate possible beach spawning within the lake.

Sammamish River/Lake Sammamish Watershed Kokanee Escapement Surveys

Summer/early-run: Berggren (1974, p. 9) and Pfeifer (1995, pp. 8–9, 21–22) report escapements (the number of fish arriving at a natal stream or river to spawn) of summer/early-run Issaquah Creek kokanee numbering in the thousands during the 1970s. Since 1980, the escapement of early-run kokanee in Issaquah Creek has ''plummeted dramatically'' (Berge and Higgins 2003, p. 18). Between 1998 and 2001, only three summer/early-run kokanee redds (gravel nests of fish eggs) were observed in Issaquah Creek (Berge and Higgins 2003, p. 18). The last time summer/early-run kokanee were observed was during the summer of 2000, when only two individuals were recorded (Washington Trout 2004, p. 3). In July 2001 and 2002, the Washington Department of Fish and Wildlife installed a fish weir across Issaquah Creek in an attempt to capture all migrating summer/early-run kokanee and spawn them in a hatchery for a supplementation program. No kokanee were observed or captured (WDFW 2002, pp. 5–7). Further, there were no summer/early-run kokanee observed during spawner surveys conducted in 2003 (Washington Trout 2004, p. 2), leading King County and Washington Department of Fish and Wildlife biologists to conclude that the summer/early-run is functionally extinct (Berge and Higgins 2003, p. 33; Jackson 2006, p. 1).

Fall/middle-run: In the 1940s, the fall/middle-run kokanee was estimated to number from 6,000 to as many as 30,000 spawners in Bear Creek, a tributary to the Sammamish River (Connor *et al.* 2000, pp. 13–14), although these estimates are confounded by the high numbers of out-of-basin and in-basin kokanee introductions during this time period. Between 1917 and 1969, more than 44 million kokanee were introduced into Bear Creek and its tributaries, 35 million of which originated from Lake Whatcom in northwestern Washington (Gustafson *et al.* 1997, pp. 3–113). However, the introduced kokanee were unable to persist, and by the 1970s the native kokanee fall/middle-run was also considered extinct by biologists from Washington Department of Game (now part of Washington Department of Fish and Wildlife) (Fletcher 1973, p. 1).

Winter/late-run: From 1996 to 2006, the winter/late-run kokanee have had highly variable spawner returns with returns as low as 64 in 1997, and as high as 4,702 in 2003 (Trout Unlimited *et al.* 2007, p. 18). Annual spawner returns averaged 946 fish, with a median return of 594 fish during this period (Trout Unlimited *et al.* 2007, p. 16). From 2004 to 2007, the average spawner return was 463 fish, although in two of the four spawning streams currently used by the winter/late-run (Laughing Jacobs Creek and Pine Lake Creek), there were fewer than 70 fish counted annually in each stream (Jackson 2009). In 2008, the estimated spawner return was 42 individuals with none observed in Pine Lake Creek and only one kokanee observed in Laughing Jacobs Creek (Jackson 2009, pp. 1–6). This represented the lowest escapement for this population on record, although in 2009 the estimated spawner return was 1,655 individuals, which was the largest escapement recorded since 2003 (Jackson 2010, p. 11). The longest accessible spawning stream currently used by the winter/late-run, Lewis Creek, is 0.75 mile (mi) (1.2 kilometers (km)), and the combined spawning reaches of the core spawning streams (Lewis Creek, Laughing Jacobs Creek, and Ebright Creek) total less than 1.0 mile (1.6 km) (Jackson 2006, p. 5). Winter/late run propagation efforts have recently been implemented, and are described below.

Winter/Late Run Propagation Efforts

In the fall of 2009, approximately 35,000 eggs were harvested from mature kokanee collected from Lewis, Ebright, and Laughing Jacobs Creeks by teams from the Issaquah Creek salmon hatchery. The eggs were shipped to the Cedar River and Chambers Creek hatcheries in Washington State for development into fry, for use in supplementing the native kokanee population in Lake Sammamish. In March 2010, approximately 14,000 kokanee fry were released into Lewis, Ebright, and Laughing Jacobs Creeks; another release of 20,000 fry into the same creeks was done on April 14, 2010. The eventual success of these efforts remains to be determined (*http://www.issaquahpress.com/2010/04/20/the-fish-journal-bar-codes-help-kokanee-salmon-in-their-survival/#more-21481*).

Sockeye and Kokanee Abundance Trends

Quinn 2005 (p. 319) indicated the estimated average annual abundance of sockeye salmon per region (catch and escapement of wild and hatchery fish) from 1981 to 2000 to be 83 million fish (Japan 0.0 million, Russia 10.0 million, Western Alaska 50.4 million, Central

Alaska 20.3 million, and Southeast Alaska to California 19.3 million). The estimated catch and escapement of North American sockeye salmon from 1951 through 2001 was 51.4 million fish from 1,400 populations, averaging approximately 37,000 fish per population (Quinn 2005, p. 321).

Sockeye populations inhabiting the southern portions of their range are in decline, whereas those in the northerly regions are generally stable. In southwestern British Columbia, one-third of the sockeye spawning runs known since the early 1950s have been lost or have decreased to such low numbers that spawners are not consistently monitored (Ridell 1993, *in* Wood 1995, p. 195). These trends in number and magnitude of spawning runs imply a loss of genetic diversity, through the loss of both locally adapted subpopulations and genetic variation due to low effective population sizes (Wood 1995, p. 195). Subpopulations in the Hecata Strait–Queen Charlotte Sound, Georgia Basin/Vancouver Island Area, Skeena River and Fraser River, decreased in abundance considerably over the last three generations. Towards the northern end of their distribution, sockeye were generally characterized by stable-to-increasing trends in adult abundance. There were several notable exceptions, however, to the north-to-south risk gradient, including subpopulations in the Columbia and in eastern Washington State. Many of these are supported through some level of artificial enhancement, however, which may mask declines in wild populations (Rand 2008 (IUCN Red List Supporting Documentation, *O. nerka,* (*http://www.iucnredlist.org/apps/redlist/details/135301/0*)).

Although Fraser River stocks as well as other West Coast sockeye salmon stocks had record returns in 2010 (Northwest Indian Fisheries Commission (NWIFC 2010, p. 1) (*http://nwifc.org/2010/09/large-fraser-sockeye-run-doesnt-make-up-for-decades-of-poor-fishing/*), prior to this year most Fraser River stocks have exhibited declining trends in productivity beginning as early as 1960 (Fisheries and Oceans Canada (DFO) 2010, p. 1). Following returns are expected to again be poor for the next 3 years (NWIFC 2010, p. 1). The three factors that likely contributed to this record return are:

(1) Large number of offspring resulting from the 6th largest spawning escapement since 1952 as a result of reduced fisheries in 2006;

(2) Favorable changes in coastal ocean conditions toward cool temperatures in early 2008 when sockeye that returned in 2010 were entering the ocean as juveniles; and

(3) the occurrence of a major volcanic eruption in Alaska's Aleutian Islands in 2008, which resulted in ash fertilizing the ocean and triggering an algal bloom that possibly enhanced forage value and availability (Simon Fraser University *et al.* 2010, p. 2).

The Snake River sockeye Evolutionarily Significant Unit (ESU) has remained at very low levels of only a few hundred fish, though there have been recent increases in the number of hatchery-reared fish returning to spawn. Data quality for the Ozette Lake sockeye ESU make differentiating between the number of hatchery and natural spawners difficult, but in either case the size of the population is small, though possibly growing. Both the Snake River and Ozette Lake ESUs were listed as endangered and threatened, respectively, under the Act by the National Marine Fisheries Service (now NOAA Fisheries (NOAAF) under their ESU policy (56 FR 58612; November 20, 1991), (*http://www.nmfs.noaa.gov/pr/species/fish/sockeyesalmon.htm*).

We are unaware of average annual abundance records for kokanee; however, there are said to be well over 500 kokanee populations in British Columbia (McPhail 2007, p. 295). No native kokanee are known from the B.C. portion of the Yukon River (B.C. Ministry of Fisheries 1998, p. 17), and although introduction activities have spread kokanee throughout the province, only two natural populations are known from the Mackenzie River system (McPhail 2007, p. 289). There are numerous introduced kokanee populations maintained through hatchery introductions to support recreational fisheries; kokanee have been widely introduced across North America, including areas outside their larger geographic distribution and farther inland in States and provinces where they occur naturally (Scott and Crossman 1973, p. 167).

Regulatory Context and Agency Responsibilities

National Oceanic and Atmospheric Administration and U.S. Fish and Wildlife Service Regulatory Jurisdiction under the Endangered Species Act

Under a 1974 Memorandum of Understanding between the U.S. Fish and Wildlife Service (FWS) and the National Marine Fisheries Service (now NOAAF), NOAAF has Act authority over species that either reside the major portion of their lifetimes in marine waters or spend part of their lifetime in estuarine waters if the major portion of the remaining time is spent in marine waters. The FWS has Act authority over species that spend the major portion of their lifetimes on land or in fresh water, or that spent part of their lifetimes in estuarine waters if a major portion of the remaining time is spent on land or in fresh water (USFWS and NOAA, 1974).

Evolutionarily Significant Unit (ESU) and Distinct Population Segment (DPS) Policies

In addition to the DPS policy, NOAAF applies the ESU policy (56 FR 58612; November 20, 1991), which was adopted prior to adoption of the U. S. Fish and Wildlife Service and National Marine Fisheries Service DPS Policy. The ESU policy considers a stock of Pacific salmon to be a distinct population and hence a ''species'' under the Act, if it represents an ESU of the biological species. A stock must satisfy two criteria to be considered an ESU: (1) It must be substantially reproductively isolated from other conspecific population units; and (2) It must represent an important component in the evolutionary legacy of the species. Under the ESU policy, the evolutionary legacy of a species is the genetic variability that is a product of past evolutionary events and which represents the reservoir upon which future evolutionary potential depends. This criteria would be met for purposes of the ESU policy if the population contributed substantially to the ecological/genetic diversity of the species as a whole (*i.e.,* extinction of the population would represent a significant loss to the ecological/genetic diversity of the species). In making this determination, NOAAF considers whether: (1) The population is genetically distinct from other conspecific populations; (2) the population occupies unusual or distinctive habitat; and (3) the population shows evidence of unusual or distinctive adaptation to its environment.

NOAAF states that while conclusive evidence does not yet exist regarding the relationship of resident and anadromous forms of *Oncorhynchus nerka,* the available evidence suggests that resident sockeye and kokanee should not be included in listed anadromous sockeye ESUs in cases where the strength and duration of reproductive isolation would provide the opportunity for adaptive divergence in sympatry (64 FR 14530; March 25, 1999). However, NOAAF does include those resident/residual sockeye within ESUs that spawn with, or adjacent to, sockeye salmon in the same ESU. NOAAF interprets an ESU as a

population that is substantially reproductively isolated from conspecific populations (populations of the same species), which represents an important component of the evolutionary legacy of the species. Although Lake Sammamish kokanee are also Pacific salmon, we have no authority under NOAAF's ESU policy, and have evaluated the status of the Lake Sammamish kokanee population under the DPS policy.

NOAAF acknowledges the DPS policy takes a somewhat different approach from the ESU policy to identifying conservation units, which may result, in some cases, in the identification of different conservation units. Although the DPS and ESU policies are consistent, they will not necessarily result in the same delineation of DPSs under the Act. The statutory term ''distinct population segment'' is not used in the scientific literature and does not have a commonly understood meaning therein. NOAAF's ESU policy and the joint DPS policy apply somewhat different criteria, with the result that their application may lead to different outcomes in some cases. The ESU policy relies on ''substantial reproductive isolation'' to delineate a group of organisms, and emphasizes the consideration of genetic and other relevant information in evaluating the level of reproductive exchange among potential ESU components. The DPS policy does not rely on reproductive isolation to determine ''discreteness,'' but rather on the marked separation of the population segment from other populations of the same taxon as a consequence of biological factors (61 FR 4725; February 7, 1996). In addition, the DPS policy also considers the significance of the discrete population segment to the taxon to which it belongs, which may produce a different result than the important evolutionary legacy component considered by NOAAF under the ESU policy.

Distinct Population Segment Policy

Defining a Species Under the Act

Section 3(16) of the Act defines ''species'' to include ''any subspecies of fish or wildlife or plants, and any distinct population segment of any species of vertebrate fish or wildlife which interbreeds when mature.'' Under the DPS policy, three elements are considered in the decision regarding the establishment and classification of a population of a vertebrate species as a possible DPS. These are applied similarly for additions to and removal from the Lists of Endangered and Threatened Wildlife and Plants. These elements are: (1) The discreteness of a population segment in relation to the remainder of the species to which it belongs; (2) the significance of the population segment to the species to which it belongs; and (3) the population segment's conservation status in relation to the Act's standards for listing, delisting, or reclassification. Our regulations provide further guidance for determining whether a particular taxon or population is a species for the purposes of the Act: ''The Secretary shall rely on standard taxonomic distinctions and the biological expertise of the Department and the scientific community concerning the relevant taxonomic group'' (50 CFR 424.11).

Kokanee are classified as *Oncorhynchus nerka,* which is the same taxonomic species as sockeye salmon. Because the kokanee life history form itself is not recognized taxonomically as a distinct species or subspecies, to determine whether the kokanee population in Lake Sammamish constitutes a DPS, and thus a listable entity under the Act, we evaluate this population's discreteness and significance with respect to the taxon to which it belongs (in other words, all *Oncorhynchus nerka* (sockeye and kokanee) populations rangewide). Accordingly, each of the factors evaluated in this finding have been considered within that context.

Under the DPS policy, a population segment of a vertebrate taxon may be considered discrete if it satisfies either of the following factors:

Discreteness Factor 1: The population is markedly separated from other populations of the same taxon as a consequence of physical, physiological, ecological, or behavioral factors (quantitative measures of genetic or morphological discontinuity may provide evidence of this separation).

Discreteness Factor 2: The population is delimited by international governmental boundaries within which differences in control of exploitation, management of habitat, conservation status, or regulatory mechanisms exist that are significant in light of Section 4(a)(1)(D) of the Act.

Lake Sammamish Kokanee Discreteness Analysis

Discreteness Factor 1 Examination

Patterns of genetic variation demonstrate that the sockeye and kokanee within lakes are usually more closely related to each other than they are to members of their form in other lakes (Foote *et al.* 1989; Taylor *et al.* 1996 *in* Quinn 2005 p. 212). Sympatric kokanee and sockeye populations are typically temporally or spatially separated; where that is not the case, assortative mating by body size usually leads to assortative mating by type (Gustafson *et al.* 1997, p. 30) (*e.g.,* sockeye are typically larger and spawn with other sockeye, while kokanee are smaller and spawn with other kokanee). Historically, a heritable tendency to remain in a lake system rather than migrate to sea may have promoted genetic divergence between kokanee and sockeye forms as they specialized for their freshwater and marine habitat. These genetic differences would be reinforced by size-specific preferences for breeding sites, accompanied by the evolution of isolating mechanisms to reduce interbreeding between the forms (Quinn p. 210). Kokanee in Lake Sammamish are geographically isolated from other kokanee, and within Lake Sammamish, kokanee and sockeye are further isolated by genetic and reproductive behavior (Young *et al.* 2004, pp. 72–73).

Conclusion: Available data indicate that the Lake Sammamish population is geographically and reproductively isolated from other native kokanee and sockeye populations, and genetically and ecologically discrete from other *Oncorhynchus nerka* populations, although a transplanted sockeye population was introduced during the 1930s to the 1950s (NOAA 1997, p. ix).

Discreteness Factor 2 Examination

This factor is not applicable to the discreteness analysis for the Lake Sammamish kokanee population, as the petitioned *Oncorhynchus nerka* population is not delimited by international governmental boundaries within which differences in control of exploitation, management of habitat, conservation status, or regulatory mechanisms exist that are significant in light of Section 4(a)(1)(D) of the Act.

Discreteness Analysis Summary

The kokanee population in Lake Sammamish has been determined to be discrete as a result of its marked separation from other populations of the same taxon as a consequence of physical, physiological, ecological, or behavioral factors. There are no international governmental boundaries within which differences in control of exploitation, management of habitat, conservation status, or regulatory mechanisms exist that are significant in light of Section 4(a)(1)(D) of the Act. Accordingly, this discreteness criterion is not applicable to our evaluation.

Lake Sammamish Kokanee Significance Analysis

Under the DPS policy, a determination as to whether the Lake Sammamish kokanee population is a listable entity under the Act must first consider its discreteness and significance with regard to the remainder of the taxon, which includes all other sockeye salmon and kokanee populations throughout the range of the biological species. If a population segment is considered discrete under one or more of the conditions listed in the Service's DPS policy, its biological and ecological significance is considered in light of Congressional guidance that the authority to list a DPS be used sparingly, while encouraging the conservation of genetic diversity. In carrying out this examination, we consider available scientific evidence of the population segment's importance to the taxon to which it belongs. This consideration may include, but is not limited to: (1) Its persistence in an ecological setting unusual or unique for the taxon; (2) evidence that its loss would result in a significant gap in the range of the taxon; (3) evidence that it is the only surviving natural occurrence of the taxon that may be more abundant elsewhere as an introduced population outside of its historical range; or (4) evidence that the discrete segment differs markedly from other populations of the species in its genetic characteristics (FR 61 4721; February 7, 1996). A population segment needs to satisfy only one of these criteria to be considered significant. Furthermore, since the list of criteria is not exhaustive, other criteria may be used if appropriate.

Significance Factor 1: Persistence of the discrete population segment in an ecological setting unusual or unique for the taxon.

Significance Factor 1 Examination

(A) The Lake Washington/Lake Sammamish Basin is a large, interconnected lake system containing two low-elevation mesotrophic lakes (Edmondson 1979, pp. 234–235; Welch *et al.* 1977, p. 301). Mesotrophic lakes are characterized by an intermediate concentration of nutrients, moderate plant production, some organic sediment accumulation, some loss of dissolved oxygen in the lower waters, and moderate water clarity. Other lake systems that support or have supported native sockeye populations (and by association their native kokanee populations) are typically oligotrophic in nature (Mullan 1986, pp. 71–73; Quinn 2005, p. 171). Oligotrophic lakes are characterized by low concentrations of nutrients, limited plant production, little accumulation of organic sediment on the bottom, an abundance of dissolved oxygen, and good water clarity. Oligotrophic lakes are also typically located at high elevations in interior areas where energetic costs of anadromous migration are high (Wood 1995, pp. 202–203). In addition to Lake Sammamish, the two other known exceptions are Lake Ozette in Washington, which has been characterized as oligotrophic to mesotrophic (or meso-oligotrophic) (Ritchie and Bourgeois 2010, p. 5), and Lake Osoyoos, which straddles the Washington and B.C border in the interior Columbia Basin, which has been characterized as a mesotrophic system (Gustafson *et al.* 1997, p. 57).

Although we were unable to find comprehensive information on limnology as it relates to lake systems occupied by *O. nerka,* within the known and studied kokanee lakes, Lake Sammamish is the only mesotrophic, easily accessible coastal lake, where energetic costs of migration are minimal, that is known to support a native kokanee population in the coterminous United States. Mesotrophic lakes containing *Oncorhynchus nerka* populations appear to be rare in coastal British Columbia (Shortreed 2007, p. vi; Woodruff 2010, pp. 47, 56). We would also expect mesotrophic lakes that support kokanee to be rare or absent within the northern portion of the species' range and at higher elevations, since lakes with the lowest productivity are either at high altitudes or high latitudes (Brylinsky and Mann 1973, p. 2). One research biologist with the NOAAF Northwest Fishery Science Center, commented that most sockeye salmon nursery lakes are typically strongly nutrient limited (*i.e.,* oligotrophic), and kokanee are not common in easily accessible coastal lakes where the energetic costs of migration are minimal (Gustafson 2009. pers comm.).

Although the presence of the petitioned entity in a mesotrophic lake appears to be atypical, we do not have information on the percentage or extent of mesotrophic lakes occupied by *O. nerka* throughout the range of the taxon, and therefore cannot determine whether this is actually an unusual or unique setting for *O. nerka.* However, it is well-documented that the species occupies lakes with a wide range of thermal regimes and other physical attributes (McPhail 2007, pp. 288, 295; Scott and Crossman 1973, p. 167; Mullen 1986 pp. 71–73; Quinn 2005, p. 171). These include coastal lakes in Washington that stratify in summer with surface temperatures near 20 degrees Celsius (C) (60 degrees Fahrenheit (F)), and remain mixed without freezing in winter, to lakes in the interior and northern latitudes that are ice-covered for at least half the year and have summer temperatures barely above 10 degrees C (50 degrees F). *Oncorhynchus nerka* occupies lakes that range in elevation from essentially sea level to 2,000 m (6,550 ft), and in area from 1 to 2,600 square kilometers (0.6 to 1,615 square miles), which includes coastal lakes from Washington to Alaska and lakes in the interior of the Columbia, Fraser, and Skeena river systems (Quinn 2005, p. 173). Anadromous *O. nerka* do not occur naturally in Japan, although other populations are distributed among several lakes. Native populations occur in Akan and Chimikeppu Lakes (Kogura *et al.* 2011, pp. 2–3), and *O. nerka* also occurs in Lake Toya, a large oligotrophic lake located in a caldera in the central area of Hokkaido, in Northern Japan (Sakano *et al.,* 1998, p. 173). Based on our analysis, we are not aware of any scientific evidence suggesting or demonstrating that the presence of an *O. nerka* population in a mesotrophic lake is beyond the normal range of variability that would be expected from a species that occupies the diversity of habitat types where it has been documented, or that this may represent an important trait from an adaptation/evolutionary perspective.

In addition, NOAAF (1997, p. 20) states that *Oncorhynchus nerka* exhibits the greatest diversity in selection of spawning habitat among the Pacific salmon, and great variation in river entry timing and the duration of holding in lakes prior to spawning. The species' adaptation to a greater diversity of lake environments for adult spawning and juvenile rearing has resulted in the evolution of complex timing for incubation, fry emergence, spawning, and adult lake entry that often involves intricate patterns of adult and juvenile migration and orientation not seen in other *Oncorhynchus species.*

Conclusion: Oncorhynchus nerka exhibiting differing life-history forms occupy a variety of ecosystems and watersheds in the north Pacific from southern Kamchatka to Japan in the western Pacific, and from Alaska to the Columbia River in North America (Page and Burr 1991, p. 52; Taylor *et al.* 1996, pp. 402–403). We acknowledge Lake Sammamish represents a complex ecological setting. However, the available information indicates *O. nerka* occurs in a wide geographical range, and habitat varies with respect to continental setting, latitude, elevation,

and type(s) of waters used to support the species' physical and biological needs. Given the available information on the diversity and extent of ecological settings *O. nerka* occupies within the rest of its range, the best scientific information available does not suggest that Lake Sammamish represents a unique or unusual setting that may have special significance relative to the taxon as a whole.

(B) The kokanee life form has historically been more abundant than the sockeye life form in Lake Sammamish, although a larger number of the sockeye life form would be expected because of the relatively easy access to marine waters. Reports in the literature are equivocal as to whether sockeye salmon were historically present in the Lake Sammamish basin prior to the construction of the Lake Washington Ship Canal, although kokanee were described as numerous (NOAA 1997, pp. 73–75). Hendry (1995) *in* NOAA 1997 (p. 75), stated that limited runs of sockeye salmon were probably present at the turn of the century in the Lake Washington/Lake Sammamish drainage, and that it is ''certainly unlikely that large populations were present.'' Young (2004, p. 1) stated the Lake Sammamish/Lake Washington watershed supported only small populations of sockeye, but large populations of kokanee in the period from 1890 to 1920. In addition, the oral history of the Snoqualmie Indian Tribe once characterized kokanee as being so abundant that Tribal members could stand in the tributaries of Lake Sammamish and scoop up the ''little red fish'' in their hands (Snoqualmie Indian Tribe and Trout Unlimited 2008, p. 10).

As ancestral sockeye populations expanded to new river systems, those that could not access the marine environment on a regular basis evolved into the non anadromous kokanee form (Taylor *et al.* 1996, pp. 411–414). Kokanee populations are typically located at high elevations in interior areas where energetic costs of anadromous migration are high or where productive lakes can support both types (Wood 1995, pp. 202–203). In areas closer to and with easy access to marine waters, sockeye populations typically dominate and kokanee are not common, since the energetic costs of migration are minimal (Gustafson 2009, pers comm.), and marine waters are much more productive. At higher latitudes, productivity (and growing opportunities) is greater at sea than in freshwater, as is evidenced by the more rapid growth of salmon at sea than in streams and lakes (Quinn 2005, p. 6). Since Lake Sammamish is located close to marine waters and is historically and presently capable of accommodating anadromous migration, the expectation would be that this should be a sockeye-dominated system. The fact that kokanee appears to have been the more common *Oncorhynchus nerka* life form in the Lake Washington/Lake Sammamish system historically suggests there may have been at least some partial or periodic barrier to anadromous sockeye in the past (Young *et al.* 2004, p. 1).

Comparing Lake Sammamish to other nearby water bodies, Lake Whatcom and Lake Ozette are geographically near marine waters and support native kokanee populations; however, there are differences. Lake Whatcom is oligotrophic (Matthews *et al.* 2002, p. 107), and has an outlet that presents a long-standing natural barrier to anadromous migration. Lake Ozette, although also near marine waters, is meso-oligotrophic and dominated by sockeye.

Although the dominant presence of kokanee in a system where a greater abundance of the sockeye life form would be expected is notable, this does not necessarily lead to a conclusion that Lake Sammamish represents a unique or unusual ecological setting. Quinn (2005, pp. 10–11), states that all salmon are habitat generalists, and populations tend to be very productive (*i.e.,* when the population is below its carrying capacity, each salmon produces many surviving offspring). They spawn and rear in bodies of water ranging from tiny creeks above waterfalls in the mountains, or streams discharging directly into saltwater, to large rivers, and from small beaver ponds and ephemeral wetlands to the largest lakes of the region. They are found in a number of large rivers as well as in thousands of smaller streams. *Oncorhynchus nerka* is the second most abundant Pacific salmon species, having a primary spawning range from the Columbia River to the Kuskokwim River in Alaska. In Asia they range from the Kuril Islands to the area of the Anadyr River, but the heart of their distribution is the Kamchatka Peninsula and tributaries of the Bering Sea. They spawn in coastal systems and also ascent as far as 1,600 km (994 mi) to Redfish Lake, Idaho (Quinn 2005, p. 14). We have no information on whether there are any other lake systems that are predominately occupied by the kokanee life form that would be expected to be dominated by sockeye.

Conclusion: We have insufficient information to determine the extent of waterbodies with relatively easy access to marine waters where the kokanee form may be dominant over the anadromous form of *O. nerka* across the range of the taxon. However, given the available information on the diversity and extent of ecological settings of *O. nerka* throughout the rest of its range, there is no information that would suggest the apparent dominance of the kokanee life form over the anadromous form in Lake Sammamish (at least since at least the late 19th century) supports a conclusion that Lake Sammamish constitutes a unique or unusual setting that is significant to the taxon.

Significance Factor 2: Evidence that the loss of the population would result in a significant gap in the range of the taxon.

Significance Factor 2 Examination

Lake Sammamish kokanee represent 1 of 11 known native kokanee populations within the southern extent of their North American range, and currently, we believe the best available information identifies 9 extant native kokanee populations that occur in the coterminous United States (Lake Ozette, WA; Lake Sammamish, WA; Lake Whatcom, WA; Chilliwack Lake, WA; Chain Lake, WA; Osoyoos Lake, WA; Stanley Lake, ID; Redfish Lake, ID; and Alturas Lake, ID). The number of kokanee populations in other areas within the range of the taxon is less well known, but there are said to be well over 500 kokanee populations in British Columbia (McPhail 2007, p. 295) alone. At one time there were kokanee in Lake Washington as well as three different runs of kokanee in Lake Sammamish. All other native kokanee that inhabited the Lake Washington Basin are thought to be extinct, and the prevailing evidence indicates that only the winter/late-run kokanee in the Lake Sammamish Basin remain (Berge and Higgins 2003, p. 33; Jackson 2006, p. 1; Warheit and Bowman 2008, p. 3).

Conclusion: The Lake Sammamish kokanee population is one of three native kokanee populations (Lake Sammamish, Lake Whatcom, and Chilliwack Lake) that evolved from sockeye populations within the Puget Sound and the Strait of Georgia Basin regions. If Lake Sammamish kokanee were to become extirpated, two other native kokanee populations would persist from this evolutionary arm of the taxon, and there are other native kokanee populations in the southern extent of their North American range, although each of these populations expresses differences in their geographic and biological characteristics. The loss of Lake Sammamish kokanee, when considered in relation to *Oncorhynchus*

nerka throughout the remainder of the species' range would mean the loss of a very small geographic portion of the entire range of the taxon, since this species occurs in watersheds in the north Pacific from southern Kamchatka to Japan in the western Pacific, and from Alaska to the Columbia River in North America (Page and Burr 1991, p. 52; Taylor *et al.* 1996, pp. 402–403). Due to the broad geographic range of *O. nerka,* the wide diversity of habitats available to the species, and the fact that this population is one of several *O. nerka* populations within this portion of the range, we find the gap in the range resulting from the loss of the Lake Sammamish population would not be significant.

Significance Factor 3: Evidence that the population represents the only surviving natural occurrence of a taxon that may be more abundant elsewhere as an introduced population outside of its historical range.

Significance Factor 3 Examination

Since the taxon is widespread, there are 11 known populations of native kokanee in the coterminous United States within the historic range, and at least 500 kokanee populations in B.C., Lake Sammamish kokanee do not represent the only surviving natural occurrence of the taxon.

Significance Factor 4: Evidence that the population differs markedly from other populations of the species in its genetic characteristics.

Significance Factor 4 Examination

Relatively large genetic differences occur among the largest sockeye salmon stocks in northwestern, coastal Canadian, and southeastern parts of the species' range (Wood 1995, p. 197). Surveys of genetic variation throughout the range of *Oncorhynchus nerka* provide new insights about colonization patterns following the last glaciation and the extent of reproductive isolation among spawning locations (Wood 1995, p. 196). Evidence from geological studies and the distribution of freshwater fish assemblages strongly suggests that modern sockeye salmon populations are derived primarily from a northern race that survived glaciation in the Bering Sea area and a southern race that survived south of the Cordilleran Ice Sheet in the Columbia River (Wood *et al.* 2008, p. 208). This 4,000-feet thick (1,219-meters) ice sheet expanded southward into Northern Washington, Idaho and Montana and had three main lobes. The Puget lobe that scoured out the Puget Sound, the Okanogan lobe that blocked the Columbia River at the site of the present day Grand Coulee dam, and the Purcell lobe that blocked the North Fork, Clark River near Cabinet Gorge on the Idaho-Montana border. Postglacial (the time following a glacial period) adaptive evolution occurred multiple times, resulting in native kokanee populations being genetically more similar to their sympatric (*i.e.,* occupying the same geographic area without interbreeding) sockeye populations than kokanee in other river systems (Taylor *et al.* 1996, pp. 401, 413–414).

Conclusion: Lake Sammamish kokanee may be 1 of only 11 remaining native kokanee populations that evolved from the southern race of sockeye and 1 of 3 that evolved in the Puget Sound/Georgia Basin region. Given the presumed large number of kokanee populations across the range of *Oncorhynchus nerka* (*e.g.,* 500 kokanee populations in British Columbia alone (McPhail 2007, p. 295)), based on the genetic information currently available, the Lake Sammamish kokanee population does not differ markedly from other *O. nerka* populations with respect to the variability beyond the species' norm of distribution, such that they should be considered biologically or ecologically significant based on genetic characteristics. Although each *O. nerka* population likely expresses some degree of genetic distinctiveness because of differing responses to evolutionary pressures, Lake Sammamish kokanee do not demonstrate any unique or unusual genetic distinctiveness beyond that which would be expected between other populations throughout the range of the taxon. When measuring this evidence against the DPS standard, we are required to look for evidence of marked differentiation of this Lake Sammamish kokanee population segment compared to other populations of *Oncorhynchus nerka* throughout the range of the taxon. More importantly, scientific information to indicate that the genetic divergence observed in the Lake Sammamish kokanee population segment confers a fitness advantage or otherwise contributes to the biological or ecological importance of this population, in relation to the taxon as a whole, is lacking. With the additional consideration that the authority to list DPSs be used ''sparingly,'' we conclude this population segment of *O. nerka* does not meet the significance element of this factor.

Other Potential Significance Factors Examined

(A) *Disease resistance:* Infectious hematopoietic necrosis (IHN) is a serious viral disease of salmonid fish, which was first reported at fish hatcheries in Oregon and Washington in the 1950s. The causative virus now exists in many wild and farmed salmonid stocks in the Pacific Northwest region of North America, and has spread to Europe and some Asian countries. IHN virus (IHN) affects rainbow/steelhead trout (*O. mykiss*), cutthroat trout (*Salmo clarki*), brown trout (*Salmo trutta*), Atlantic salmon (*Salmo salar*), and Pacific salmon including chinook (*O. tshawytscha*), sockeye/kokanee (*O. nerka*), chum (*O. keta*), masou/yamame (*O. masou*), amago (*O. rhodurus*), and coho (*O. kisutch*) (Iowa State University, 2007, p. 1). Over 40 million kokanee were introduced into the Sammamish basin from the Lake Whatcom Hatchery between 1940 and 1978 (Young *et al.* 2004, p. 65); however, these introduced stocks have not been successful. The Lake Sammamish kokanee population remains extant, whereas transplanted stocks were unable to persist (Young *et al.* 2004, p. 1). The reasons are unknown, and there has been some speculation that this could be related to a disease resistance function to IHN; however, this theory has not been confirmed. This speculation is based on Young *et al.* 2004 (p. 3), who stated, ''We note that the Lake Washington/Lake Sammamish Basin is an IHN positive environment and that Lake Whatcom is IHN free. We speculate that IHN vulnerability might explain the apparent lack of success of the Lake Whatcom kokanee introductions, however, confirmation or refutation would require further study.'' However, while these authors speculated as to the vulnerability of Lake Whatcom kokanee to IHN, it does not follow that Lake Sammamish kokanee are, therefore, resistant to, or tolerant of, the disease. We were also unable to find any additional studies regarding disease resistance or disease tolerance of the Lake Sammamish kokanee, so this idea remains merely speculative at this time.

Even assuming that Lake Sammamish kokanee may be resistant to IHN, this does not mean disease resistance is unique to kokanee in the Lake Washington/Lake Sammamish system. We were unable to find any information on IHN presence in other lakes within the range of *Oncorhynchus nerka,* so were unable to determine whether a presumed resistance or tolerance to IHN (as evidenced by presence of a population of *O. nerka* in IHN-positive lakes) is unusual such that a population evidencing this disease resistance or tolerance would be significant to the taxon as a whole.

Conclusion: Although disease resistance or tolerance may be important to the long-term viability of *Oncorhynchus nerka* at some scale, the relevant question for this finding is whether the Lake Sammamish kokanee population is significant to the taxon as a whole (*i.e.,* all *O. nerka* populations and life history forms throughout the range of the species). Given that there is no evidence indicating that the Lake Sammamish kokanee are disease resistant or disease tolerant, and that we were unable to find any information on IHN presence in other lakes containing *O. nerka* populations in order to determine whether Lake Sammamish is atypical, we conclude that the hypothesized disease resistance or tolerance of the Lake Sammamish kokanee population does not meet the significance element of the DPS policy.

(B) Multiple run spawning timings: Multiple run timings allow kokanee and other salmonid populations the ability to exploit a range of available habitats and reduce risks to extirpation (*e.g.,* stochastic events, predation, variable climate) by diversifying spawning distribution over space and time. The Lake Sammamish/Lake Washington kokanee population historically had at least three distinct run timings expressed in different locations within the basin. The expression of multiple-run timings within populations appears to be rare across the range of kokanee, especially among tributaries (Wood 2009, pers comm.), although there are at least a few other kokanee populations that are known to exhibit this trait (Shepard 1999). In addition, the literature indicates that other kokanee populations have run timings that occur during similar times of the year as do the run timings of the Lake Sammamish kokanee (Scott and Crossman 1973, p. 167). With regard to the taxon-wide examination, NOAAF (1997, p. 20) states that *Oncorhynchus nerka* exhibits the greatest diversity in selection of spawning habitat among the Pacific salmon, and great variation in river entry timing and the duration of holding in lakes prior to spawning. Bimodal run timing (two spawning runs in a single season) for *O. nerka* populations have been demonstrated in the Russian River in Alaska (Nelson 1979, p. 3), the Klukshu River, Yukon Territory (Fillatre *et al.* 2003, p. 1), and Karluk Lake on Kodiak Island, Alaska (Schmidt *et al.* 1998, p. 744).

Conclusion: Under the DPS policy, we are required to evaluate the Lake Sammamish kokanee population segment's significance relative to the taxon as a whole. Therefore, given the available information on the number of *O. nerka* populations across the range of the species (see sockeye and kokanee abundance trends above), and the presence of bimodal run timing in other populations, we conclude the presence of multiple run timings in Lake Sammamish is not significant to the taxon.

DPS Conclusion

On the basis of the best available information, we conclude that the Lake Sammamish kokanee population segment is discrete due to marked separation as a consequence of physical, ecological, physiological, or behavioral factors according to the 1996 DPS policy. However, on the basis of the four significance elements in the 1996 DPS policy, we conclude this discrete population segment is not significant to the remainder of the taxon and therefore, does not qualify as a DPS under our 1996 DPS policy. As such, we find the Lake Sammamish kokanee population is not a listable entity under the Act.

Finding

In making this finding, we considered information provided by the petitioners, as well as other information available to us concerning the Lake Sammamish kokanee population. We have carefully assessed the best scientific and commercial information available regarding the status and threats to the Lake Sammamish kokanee population. We reviewed the petition and unpublished scientific and commercial information. We also consulted with Federal and State land managers, and scientists having expertise with *Oncorhynchus nerka.* This 12-month finding reflects and incorporates information received from the public following our 90-day finding or obtained through consultation or literature research.

On the basis of that review, we have determined that the Lake Sammamish kokanee does not meet the elements of our 1996 DPS policy as being a valid DPS. Consequently, we find the Lake Sammamish kokanee population is not a listable entity under the Act, and that listing is not warranted.

References

A complete list of all references cited is available at *http://www.regulations.gov,* or upon request from the Washington Fish and Wildlife Office (see **ADDRESSES**).

Author

The primary authors of this document are staff of Region 1, Pacific Region, U.S. Fish and Wildlife Service.

Authority

The authority for this action is the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

Dated: September 23, 2011.

Rowan W. Gould,

Acting Director, U.S. Fish and Wildlife Service.

[FR Doc. 2011–25595 Filed 10–3–11; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

[Docket No. FWS–R3–ES–2010–0034; MO 92210–0–0008]

Endangered and Threatened Wildlife and Plants; 12-Month Finding on a Petition To List Calopogon oklahomensis as Threatened or Endangered

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of 12-month petition finding.

SUMMARY: We, the U.S. Fish and Wildlife Service, announce a 12-month finding on a petition to list *Calopogon oklahomensis* (Oklahoma grass pink orchid) under the Endangered Species Act of 1973, as amended. After review of the best available scientific and commercial information, we find that listing *Calopogon oklahomensis* is not warranted at this time. However, we ask the public to submit to us any new information that becomes available concerning the threats to *Calopogon oklahomensis* or its habitat at any time.

DATES: The finding announced in this document was made on October 4, 2011.

ADDRESSES: This finding is available on the Internet at *http://www.regulations.gov* at Docket Number FWS–R3–ES–2010–0034. Supporting documentation used in preparing this finding is available for public inspection, by appointment, during normal business hours at the U.S. Fish and Wildlife Service, Chicago, Illinois Ecological Services Field Office, 1250 South Grove, Suite 103, Barrington, IL 60010. Please submit any new information, materials, comments, or questions concerning this finding to the above address.

FOR FURTHER INFORMATION CONTACT: Ms. Louise Clemency, Field Supervisor, Chicago, Illinois Ecological Services Field Office (see **ADDRESSES**); by telephone at 847–381–2253; or by facsimile at 847–381–2285. Persons who

use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 800–877–8339.

SUPPLEMENTARY INFORMATION:

Background

Section 4(b)(3)(B) of the Act (16 U.S.C. 1531 *et seq.*), requires that, for any petition to revise the Federal Lists of Endangered and Threatened Wildlife and Plants that contains substantial scientific or commercial information that listing the species may be warranted, we make a finding within 12 months of the date of receipt of the petition. In this finding, we will determine that the petitioned action is: (1) Not warranted, (2) warranted, or (3) warranted, but the immediate proposal of a regulation implementing the petitioned action is precluded by other pending proposals to determine whether species are threatened or endangered, and expeditious progress is being made to add or remove qualified species from the Federal Lists of Endangered and Threatened Wildlife and Plants. Section 4(b)(3)(C) of the Act requires that we treat a petition for which the requested action is found to be warranted but precluded as though resubmitted on the date of such finding, that is, requiring a subsequent finding to be made within 12 months. We must publish these 12-month findings in the **Federal Register.**

Previous Federal Actions

On May 28, 2008, we received a petition dated May 22, 2008, from Dr. Douglas Goldman of the Harvard University Herbaria requesting that *Calopogon oklahomensis* be listed as threatened or endangered under the Act. Included in the petition was supporting information regarding the species' taxonomy and ecology, historical and current distribution, present status, and actual and potential causes of decline. We acknowledged the receipt of the petition in a letter to Dr. Douglas Goldman, dated September 15, 2008. In that letter we also stated that due to funding constraints in fiscal year 2008, we would not be able to begin processing the petition at that time.

Funding became available in fiscal year 2010, wherein work began on the 90-day finding. The 90-day finding was published on August 24, 2010 (75 FR 51969). This notice constitutes the 12-month finding on the May 22, 2008, petition to list *Calopogon oklahomensis* as threatened or endangered.

Species Information

Taxonomy and Species Description

Calopogon oklahomensis, commonly known as the Oklahoma grass pink or prairie grass pink, is a terrestrial species of orchid (family Orchidaceae) native to the United States and primarily occurring in the south-central United States. It is a member of the genus *Calopogon,* a group of terrestrial orchids known as grass pinks.

The number of species identified as belonging to the genus *Calopogon* has varied since the genus was identified by Linnaeus in 1753 (Correll 1978, p. 167). The first species of the current genus *Calopogon,* was identified by Linnaeus as *Limodorum tuberosum* in 1753 (Correll 1978, p. 167). In 1788, Walter originally identified *Ophrys barbata,* with Ames (1908) later changing the name to *Calopogon barbatus,* which was subsequently accepted and conserved (Correll, 1978, p. 167). *Calopogon multiflorus* was first described by Lindley in 1840 (Correll 1978, p. 169). In 1860, Chapman identified and described *Calopogon pallidus* (Correll 1978, p. 171). By 1888, *Limodorum tuberosum* was accepted and given the conserved name of *Calopogon tuberosus* (L) by Britton, Sterns, and Poggenburg (Jarvis and Cribb 2009, p. 368). In 1933, Small (pp. 363–399) recognized six species of *Calopogon* based on minor variations, which Correll (1978, p. 167) believed were difficult to interpret. By 1950, Correll, taking a more conservative approach, recognized four species of *Calopogon: C. barbatus, C. multiflorus, C. pallidus,* and *C. pulchellus,* with two variants of *C. pulchellus,* the more northern variant, *latifolius,* and the more southern variant, *simpsonii* Ames (1904) (Correll 1978, pp. 167–176). The former species, *C. pulchellus,* is now considered a variant of *C. tuberosus,* that being, *C. tuberosus* var. *tuberosus.* By 1989, it was recognized that *Calopogon tuberosus* encompassed two variants, variant *simpsonii* (southern variant) and variant *tuberosus* (northern variant). The four species, *C. barbatus, C. multiflorus, C. pallidus,* and *C. tuberosus,* were thought to compose the genus *Calopogon* until Goldman (1995, p. 37) proposed a fifth species, *C. oklahomensis.*

Goldman (1995, p. 41) asserts that morphological and phenological variation of the genus *Calopogon* in the midwestern States was not previously recognized by Correll (1978) or Luer (1975) (Goldman 1995, p. 41) and that while examining herbarium specimens from eastern Texas, western Louisiana, and northward to central Missouri, he (Dr. Douglas Goldman) observed several morphological and ecological characteristics, which he believed were inconsistent with true *C. tuberosus* or *C. barbatus.* These characteristics included corm (a modified underground stem) shape and formation, average leaf width, leaf length verses inflorescence (a branching stem with flowers) length, bud characterization, anthesis (the period from flowering to fruiting), floral fragrance, dorsal sepal description, lateral sepal description, distal portion of labellum disc (portion of the lower petal that is attached to the center of the flower), and stigma (where deposited pollen germinates) characteristics (Table 1) (Goldman 1995, pp. 37–39). In addition, although *C. oklahomensis* may occur in close geographic proximity to *C. tuberosus,* they are temporally isolated, as *C. oklahomensis* flowers at different times of the year than *C. tuberosus* (Goldman 1995, p. 40). In Missouri, *C. oklahomensis* blooms from early May to June, whereas *C. tuberosus* blooms from mid-June to early July (Summers 1987 in Goldman 1995, p. 40). Goldman (1995, p. 40) ascertained from herbarium label data that in eastern Texas and western Louisiana, *C. oklahomensis* blooms from March to early May, whereas *C. tuberosus* blooms from May to June. *Calopogon oklahomensis* was subsequently described, by Goldman, as unique and distinct from all other species of *Calopogon,* with a large geographic range, many consistent morphological features, and temporal isolation from its occasional associate, *Calopogon tuberosus* (Goldman 1995, p. 41).

In addition to timing of flower emergence and a suite of morphological features differing from *Calopogon tuberosus* and *C. barbatus, C. oklahomensis* has been shown to have unique genetic characteristics. Genetic analysis has shown *C. oklahomensis* to be hexaploid (having six sets of chromosomes), where all other taxa within *Calopogon* are diploid (consisting of two sets of chromosomes), suggesting that this species may be an alloploid (number of chromosomes is doubled in the hybrid), possibly derived from ancient hybridization between *C. barbatus* and *C. tuberosus* (Goldman 2000, p. 79). Recent genetic analyses by Goldman *et al.* (2004a, p. 719), however, concluded that if hybrid in origin, the cross is ancient, and it may be prudent to conclude that the origin and affinities of *C. oklahomensis* remain uncertain (Goldman *et al.* 2004a, p. 719). Trapnell *et al.* (2004, p. 314) conducted additional genetic testing for genetic variation among the five species of the

terrestrial orchid genus *Calopogon,* with results indicating that *C. oklahomensis* is the most genetically diverse species of the five species tested.

The review of *Calopogon oklahomensis* is complete, and the name is accepted by Govaerts (1999) and Govaerts (2003). Recognition of *C. oklahomensis* as the fifth *Calopogon* species was affirmed in Flora of North America (Goldman 2002, pp. 601–602), and reaffirmed by Brown (2006, p. 21; 2008, p. 177), who describes the genus *Calopogon* as being composed of five species: *C. barbatus, C. multiflorus, C. pallidus, C. tuberosus,* and *C. oklahomensis* (Brown 2006, p. 21). Currently, Govaerts *et al.* (2011, entire) and Kartesz (2011, in press) also recognize *C. oklahomensis* as a distinct species.

For these reasons, we accept the characterization of *Calopogon oklahomensis* as a distinct species of *Calopogon,* with a large geographic range, many consistent morphological features, temporal isolation in flower timing from other species in the genus *Calopogon,* and genetic differentiation from all other *Calopogon* (Brown 2006, p. 22; Goldman 1995, p. 41; Goldman 2002, pp. 601–602), and, therefore, a listable entity under the Act.

Calopogon oklahomensis is a terrestrial plant growing (6 to 14 inches (in) (15 to 36 centimeters (cm)) tall (Brown 2006, p. 22). It has a forked corm, with the new corm at the base of the leaf and the inflorescence rapidly growing distally at the time of anthesis (Goldman 1995, p. 39). It has one or two leaves, which are lanceolate, slender, and 0.2 to 0.6 in (0.5 to 1.5 cm) wide by 3 to 14 in (7 to 35 cm) long (Brown 2006, p. 22; Goldman 1995, p. 37). The leaf is almost always as long as or longer than the inflorescence (Goldman 1995, p. 39). The flower buds are deeply grooved longitudinally, waxy, and shiny with elongated acuminate apices (narrowing to a point at the tip). The flower has three to seven non-resupinate flowers (labellum is uppermost) that are fragrant (smelling of citronella) and open simultaneously, with the color being highly variable, from lilac blue to bright magenta pink or, in the form albiflorus, white. All have a golden crest on the lip (Brown 2006, p. 22; Goldman 1995, p. 39). The labellum disk is pinkish with a basal region of short to long yellow hairs, above which there is a triangular region of short, stout, pinkish hairs, which extend to the labellum apex (terminal end of the lower petal) (Goldman 1995, p. 39).

Calopogon oklahomensis has a winged column with two soft pollinia (a mass of pollen grains) (Goldman 2000, p. 3). The stigma is flat against the column surface (Goldman 1995, p. 40), and the species blooms April throughout May or June (Brown 2006, p. 22). *Calopogon oklahomensis* flowers produce little or no nectar and offer no pollen reward; they attract pollinators using showy yellow and pink lip hairs that resemble a mass of pollen. When an insect lands on the labellum, if it is heavy enough, the labellum swings down and the insect's posterior comes into contact with the sticky pollinia located on the end of the column (Trapnell *et al.* 2004, p. 308). The tiny, dustlike seeds are wind dispersed (Trapnell *et al.* 2004, p. 308).

TABLE 1—COMPARISON OF 11 CHARACTERS USED TO DISTINGUISH CALOPOGON OKLAHOMENSIS FROM C. TUBEROSUS AND C. BARBATUS, OBTAINED FROM GOLDMAN'S PERSONAL OBSERVATIONS, CORRELL (1978), AND LUER (1972, 1975) (GOLDMAN 1995, P. 39)

Character	*Calopogon oklahomensis*	*Calopogon tuberosus*	*Calopogon barbatus*
Corm	Forked	Spherical	Spherical.
New corm forming distally at anthesis.	Yes	No	No.
Average leaf width (range) *	7 mm (0.28 inches) (5–15 mm (0.20–0.59 inches)).	(10 mm (0.39 inches) (4–37 mm 0.16–1.46 inches)).	2 mm (0.08 inches) (1–4 mm (0.04–0.16 inches)).
Leaf length vs. inflorescence length.	About equal	Usually shorter	Shorter.
Buds	Grooved longitudinally, acuminate, very waxy.	Generally smooth, acute or apiculate, waxy.	Smooth, acute or apiculate, waxy.
Anthesis	Flowers open in rapid succession	Flowers open in slow succession	Flowers open in rapid succession.
Floral fragrance	Yes	No	No.
Dorsal sepal *	Lanceolate, average 19 mm × 6 mm (0.75 inches × 0.24 inches), straight to reflexed backwards.	Oblong-elliptical, average 22 mm × 8 mm (0.87 inches × 0.31 inches), straight.	Oblong-elliptical, average 16 mm × 5 mm (0.63 inches × 0.20 inches), straight to reflexed backwards.
Lateral sepals *	Acuminate, grooved longitudinally, recurved backwards.	Apiculate, smooth, straight	Apiculate, longitudinally grooved, recurved backwards.
Distal portion of labellum disc	Same color as most of flower, triangular region of short, pink hairs.	White, generally circular region of short, white, yellow, or orange hairs.	Same color as most of flower, triangular, region of short, pink hairs.
Stigma	Flat against column surface	Most often perpendicular to column surface.	Flat against column surface.

* Based on 60 herbarium specimens of *Calopogon oklahomensis,* 60 specimens of *C. tuberosus,* and 30 specimens of *C. barbatus,* collected throughout the geographic range of each species.

Distribution and Population Status

Calopogon oklahomensis was originally thought to be restricted to the prairies of the south-central States; however, herbarium specimens (Goldman 1995, pp. 37, 40–41) indicate that it was previously much more widespread (Brown 2006, p. 22). Goldman (1995, p. 41) based his description of the species' range on collected specimens in six States (Arkansas, Kansas, Louisiana, Missouri, Oklahoma, and Texas), and hypothesized that overall, the historical range covered 17 States (Alabama, Arkansas, Florida, Georgia, Iowa, Illinois, Indiana, Kansas, Louisiana, Minnesota, Mississippi, Missouri, Oklahoma, South Carolina, Tennessee, Texas, and Wisconsin) (Goldman 2008a, pp. 2–3). Brown (2006, p. 22) identifies the historical range of *C. oklahomensis* as occurring in only 10 States (Arkansas, Illinois, Iowa, Kansas, Louisiana, Minnesota, Missouri, Oklahoma, Texas, and Wisconsin) and does not list this

species as occurring in Florida, South Carolina, Georgia, Alabama, Indiana, Tennessee, or Mississippi. NatureServe (2011) identifies the historical range of the species in 14 States (Alabama, Arkansas, Illinois, Iowa, Indiana, Kansas, Louisiana, Minnesota, Mississippi, Missouri, Oklahoma, Tennessee, Texas, and Wisconsin); however, the source of this information is also Goldman (2008a).

Goldman (2008a, pp. 2–3) states that there are 233 historical occurrences from 17 States (Table 2). A thorough review of the available information on the distribution of *Calopogon oklahomensis,* however, indicates that there are 86 to 90 historical occurrences of *C. oklahomensis* from 11 States (Arkansas, Illinois, Iowa, Kansas, Louisiana, Mississippi, Missouri, Oklahoma, Tennessee, Texas, and Wisconsin (Table 2). This 11-State historical range, which is based on a review of actual occurrences rather than the generalized range discussion presented above, is what we used in conducting our assessment of the species' status.

TABLE 2—A COMPARISON OF INFORMATION ON HISTORICAL AND EXTANT OCCURRENCES OF CALOPOGON OKLAHOMENSIS, BASED ON GOLDMAN'S (2008b, P. 3) REVIEW OF HERBARIUM SPECIMENS AS PROVIDED IN THE PETITION AND INFORMATION AVAILABLE TO THE SERVICE, PRIMARILY FROM STATE DATABASES

State	Last observed (Goldman)	Number of historical records (Goldman)	Number of historical records (based on State databases)	Estimated extant populations (Goldman)	Estimated extant populations (based on State databases)
AL*	1887	5	0	0	0
AR	1995	22	25	3 to 5	17
FL*	1882	1	0	0	0
GA*	1943	1	0	0	0
IA	1941	8	3 to 6	0	0
IL	2006?	42	7	1	2
IN*	1933	15	0	0	0
KS	1980	1	1	0	0
LA	1996	22	3	3 to 6	0
MN*	1884	5	0	0	0
MO	1994	16	2	4 to 6	11
MS	2006	4	1	2 to 3	3
OK	2004	53	24	10?	6
SC*	?	1	0	0	0
TN	1939	2	1	0	0
TX	2004	27	12 to 13	1 to 3	1
WI	1987	8	7?	1	1
Total		233	86 to 90	25 to 35	41

*The Service does not consider these States to be within the historical range for the species.

The historical range suggested by Goldman (2008a, p. 6) includes the States of Florida and Georgia. Goldman (2008a, p. 6) describes one historical herbarium specimen of *Calopogon oklahomensis* from Florida, dated 1882 and labeled only as ''Florida'' for the locality. He hypothesizes that it may have been collected from the western Florida panhandle (Goldman 2008a, p. 6). This record is questionable because Florida has no other information or records regarding historical or extant occurrences of *C. oklahomensis* in the State (Brown 2011, pers. comm.; Johnson 2011, pers. comm.; Knight 2009, pers. comm.; Halupa 2009, pers. comm.). Based on the lack of records, we believe this species is not a component of the Florida flora and, therefore, do not include Florida in the range for this species.

Goldman (2008a, p. 6) states that one specimen of *Calopogon oklahomensis* was collected in southwestern Georgia by Robert Thorne in 1947. As in the case of Florida, because we have no other historical or extant records of *C. oklahomensis* as occurring in Georgia (Pattavina 2009, pers. comm.), we do not include Georgia in the range of *C. oklahomensis.*

There are no confirmed specimens from South Carolina for this species (Holling 2011, pers. comm.; Pittman 2011, pers. comm.); however, there is one specimen (probably over 200 years old) housed at the herbarium at the Royal Botanic Gardens, Kew, which is marked simply as ''S.C.,'' but without information on collector, locality, or date (Goldman 2010, pers. comm.). We do not include South Carolina in the current or historical range of *Calopogon oklahomensis* because we have no other information of *C. oklahomensis* as occurring in South Carolina (Holling 2011, pers. comm.).

We do not have comprehensive survey information for *Calopogon oklahomensis.* Therefore, we do not know the full extent of the species' distribution or if the distribution has changed over time. The following paragraphs outline the distribution and status information that is available.

Goldman (2008a, p. 3) estimates 25 to 35 extant *Calopogon oklahomensis* populations from 8 States (Arkansas, Illinois, Louisiana, Missouri, Mississippi, Oklahoma, Texas, and Wisconsin) (Table 2). The Service cannot confirm Goldman's information regarding extant populations of *C. oklahomensis* in Louisiana. The Service has information from Goldman's personal collection data (provided as supplemental information to the petition (Goldman 2008b)) of three specimens from Louisiana dated 1995 to 1996. More recent information, however, is not available regarding the sites from where these specimens originated.

Alabama has no extant occurrences of *Calopogon oklahomensis* (Everson 2009, pers. comm.; Schotz 2011, pers. comm.). Goldman (2008a, p. 5) asserts that this species was collected in Alabama a handful of times in the late 1800s, near the town of Mount Vernon, but over a few visits to this area in the last 10 years, the species has not been found, even under favorable conditions.

Arkansas has 25 documented historical occurrences of *Calopogon oklahomensis,* of these, 17 are extant populations (Witsell 2009, pers. comm.).

Illinois has seven historical specimens, which perhaps were originally misidentified as *Calopogon pulchellus* and *C. tuberosus,* then, in 1999, determined to be *C. oklahomensis* by Goldman (Phillippe 2010, pers. comm.). Currently, Illinois has two extant populations of *C. oklahomensis* (Phillippe *et al.* 2008, p. 11; Armstrong 2010, pers. comm.; Kieninger 2010, pers. comm.; Catchpole 2010, pers. comm.).

There is one record of *Calopogon oklahomensis* collected in Lake County, Indiana. It was originally (in 1912) identified in the Indiana Natural Heritage Database as *C. pulchellus,* however, it was later (in 1999) determined to be *C. oklahomensis* by Goldman (Phillippe 2010, pers. comm.). Indiana has records of the closely related congener, *C. puchellus,* that were collected prior to *C. oklahomensis* being described as a unique species (Deam 1940, p. 347; King 2009, pers. comm.). We have no information of extant *C. oklahomensis* populations in Indiana.

There are no known extant populations of *Calopogon oklahomensis* in Iowa. Our information indicates that only historical records exist, but we do not know how many historical records exist. The species is believed to be extirpated in the State (Pearson 2009, pers. comm.).

Kansas has one historical record of *Calopogon oklahomensis* from Cherokee County, dated May 1980 (Freeman 2011, pers. comm.). This specimen was annotated as *C. oklahomensis* by Goldman in 1999 (Freeman 2008, pers. comm.). This site and other prairie hay meadows in the county have been searched for *C. oklahomensis* over the past 30 years, with no populations of this species located (Freeman 2011, pers. comm.).

Mississippi has three known extant populations of *Calopogon oklahomensis* located at the Camp Shelby Joint Forces Training Center (Camp Shelby), a National Guard installation operating under a special use permit on U.S. Forest Service land. These three populations are separated by more than 1 mile (1.6 kilometers (km)) each and occur in three separate watersheds; therefore, they are considered separate populations (Wiggers 2011b, pers. comm.). The Poplar Creek population includes four separate colonies. One colony was last surveyed in 2004, with an estimated population of 1 to 10 individuals (Wiggers 2011b, pers. comm.; 2011c, pers. comm.). The second and third colonies were last surveyed in 2006, with one population estimated at 11 to 50 individuals and the other population estimated at 101 to 1,000 individuals (Wiggers 2011b, pers. comm.; 2011c, pers. comm.). The fourth Poplar Creek colony size is unknown (Wiggers 2011c, pers. comm.). The minimum population size of all the Poplar Creek colonies is estimated at 113 individuals (Wiggers 2011c, pers. comm.).

In Mississippi, the Clear Creek population includes two colonies, one of which was last surveyed in 1999, with a population estimate of 11 to 50 individual plants, and the other colony last surveyed in 2004, with a population estimate of 1 to 10 individuals (Wiggers 2011b, pers. comm.; 2011c, pers. comm.). The minimum population size of all Clear Creek colonies is 12 individuals (Wiggers 2011c, pers. comm.).

The Pearces Creek population in Mississippi consists of two colonies of *Calopogon oklahomensis,* both with a population estimate of 1 to 10 individuals, with one colony last surveyed in 1999 and the other last surveyed in 2004 (Wiggers 2011b, pers. comm.; 2011c, pers. comm.). The minimum population size of both Pearces Creek colonies is two individuals (Wiggers 2011c, pers. comm.). The total Camp Shelby population estimate of *C. oklahomensis* is 127 individuals; however, this is only a rough estimate, as current population counts are unavailable (Wiggers 2011b, pers. comm.). Within Camp Shelby, there may be other areas of *C. oklahomensis* located within an ''impact area'' (an area containing unexploded ordnance), which has been protected from active training, draining, and clearing since World War I (Wiggers 2011a, pers. comm.; Lyman 2011a, pers. comm.). Surveys have not been conducted in this ''impact area'' due to its restricted access (Wiggers 2011b, pers. comm.).

In Missouri, prior to describing *Calopogon oklahomensis* as distinct from *C. tuberosus, C. oklahomensis* was not tracked in the Missouri Natural Heritage Database. Once *C. tuberosus* was split into the two species, Missouri began tracking only the rarer and range-limited *C. tuberosus* (Yatskievych 2009, pers. comm.; Kruse 2010, pers. comm.); however, the Missouri Botanical Garden indicates that Missouri has at least 11 sites with extant populations of *C. oklahomensis* (Yatskievych 2009, pers. comm.). At least 10 of the 11 extant sites occur on public lands that are managed as native prairie, however, there are no current studies in Missouri on population size, success of reproduction, or other indicators of status (Yatskievych 2009, pers. comm.).

Oklahoma has 24 historical populations of *Calopogon oklahomensis* from 15 counties, with 6 sites having extant populations, 5 of which occur on private land (Hoagland *et al.* 2004, entire; Buthod 2010, pers. comm.). The site of the sixth *C. oklahomensis* population in Oklahoma is owned by the State of Oklahoma and used by the Department of Corrections as the Jess Dunn Prison.

Tennessee acknowledges a single occurrence of *Calopogon oklahomensis* in the Tennessee Natural Heritage Program Geographic Information System (GIS) database. It was last observed in 1937, with no details available in the record regarding location or abundance (Call 2009, pers. comm.). To our knowledge, the species has not been recorded in Tennessee for more than 20 years, and is possibly extirpated from the State (Call 2009, pers. comm.).

Texas has historical records of 12 to 13 specimens of *C. oklahomensis* from 12 counties, including information from the University of Texas herbarium database, which lists only 5 specimens collected from 1927 to 1965 (Poole 2008, pers. comm.). It is believed that some of the sites from where the specimens were collected may no longer be extant (Poole 2008, pers. comm.; Best 2009, pers. comm.). The most recent specimen from Brazos County, Texas, was last observed by Goldman in 2004 (Goldman 2008a, p. 9). Although this species is not tracked in Texas, we assume presence of *C. oklahomensis* at the Brazos County site because it was last observed in 2004, although no further surveys have taken place since then. We acknowledge that there may be other extant sites of *C. oklahomensis* in Texas, but because this species is not tracked in Texas, we have no information other than what is stated above.

In Wisconsin, records indicate that *Calopogon oklahomensis* was historically known from seven sites in five counties between 1872 and 2005 (Anderson 2010a, pers. comm.; Anderson 2010b, pers. comm.). Currently, Greene Prairie at the University of Wisconsin-Madison Arboretum supports perhaps the only extant population of *C. oklahomensis* in Wisconsin (Anderson 2010a, pers. comm.). The plants at Greene Prairie originated from a site in Sauk County near Sauk City, but the exact location is unknown. Wisconsin's historical collections do not contain specific site information other than they originated

from Dane, Grant, Monroe, Sauk, and Waukesha Counties (Anderson 2010a, pers. comm.; Anderson 2010b, pers. comm.). Although the Arboretum population is not naturally occurring, it is considered a self-sustaining introduction and relocation, which is valuable for biodiversity conservation (O'Connor 2011, pers. comm.).

The Minnesota Department of Natural Resource's Rare Features Database contains no records for this species (Delphey 2009, pers. comm.).

Based on the information described above regarding locations of extant populations, we believe the current range of *Calopogon oklahomensis* includes the seven States of Arkansas, Illinois, Mississippi, Missouri, Oklahoma, Texas, and Wisconsin.

The State Natural Heritage programs and NatureServe (NatureServe 2010c, p. 3) rank *Calopogon oklahomensis* as S1 in Illinois, Mississippi, and Texas. The S1 designation indicates the species is considered critically imperiled because of extreme rarity (5 or fewer occurrences or less than 1,000 individuals) or because of extreme vulnerability to extinction due to some natural or human-made factor. The Arkansas and Oklahoma State Natural Heritage Programs rank *C. oklahomensis* populations in Arkansas and Oklahoma as S2, meaning the species is considered imperiled because of rarity (6 to 20 occurrences of less than 3,000 individuals) or because of vulnerability to extinction due to some natural or man-made factor (NatureServe 2010c, p. 3). In Wisconsin, the State Natural Heritage program ranks *C. oklahomensis* as SH, meaning the species is possibly extirpated in that State (NatureServe 2010c. p. 3). These State heritage program rankings are not legal designations and do not confer State regulatory protection to this species.

This species is either not State ranked or is under review in the States of Iowa, Minnesota, and Missouri (NatureServe 2010c). In Missouri, the species is not tracked by the State; however, status surveys for *Calopogon oklahomensis* are being conducted in 2011 (Yatskievych 2009, pers. comm.; 2011, pers. comm.).

Based on the available information, as summarized above, we believe the historical range of *Calopogon oklahomensis* includes 11 States (Arkansas, Iowa, Illinois, Kansas, Louisiana, Mississippi, Missouri, Oklahoma, Tennessee, Texas, and Wisconsin), and the current range includes 7 States (Arkansas, Illinois, Missouri, Oklahoma, Mississippi, Texas, and Wisconsin).

Habitat

Calopogon oklahomensis inhabits a variety of habitats, including moist to seasonally dry-mesic prairies; tallgrass and coastal prairies; prairie-haymeadows; upland prairies; savannas; open woodlands (*e.g.,* post oak-blackjack oak woodlands); hillside seepage bogs; edges of bogs; and occasionally pine plantations, acidic wet barrens, or claypan savannas (Goldman 1995, p. 40; Brown 2006, p. 22). The species is not found in the wetter habitats preferred by most of the other species in the genus (Goldman 1995, p. 40; Brown 2006, p. 22; Goldman 2008, p. 2). It is also found in prairie remnants such as those beside railroads, as well as other mowed meadows, savannas (*e.g.,* longleaf pine *(Pinus palustris)* savannas), and wetland savanna borders (NatureServe 2010b, p. 10). The upland prairies often contain ''pimple mounds'' (naturally occurring low, flattened, circular to oval, domelike, mounds composed of loose, sandy loam or loamy sand lying either on a more or less flat or slightly, but noticeably depressed, clayey B horizon (subsoil layer)). In Arkansas, Missouri, and Oklahoma, the species occupies moist to seasonally dry-mesic prairies and high-quality hay meadow associated with pimple mounds (Goldman 2008a, p. 8).

Biology

Calopogon oklahomensis occurs sporadically at known locations, with the number of flowering plants varying dramatically from year to year. The number of flowering plants may depend on management practices; for example, abundance of *C. oklahomensis* increases significantly after a fire has occurred (Goldman 2008a, p. 10). *Calopogon oklahomensis* appears to thrive under relatively frequent fires (every 1 to 3 years), particularly dormant-season burns; late-season haymeadow mowing, where most or all of the above-ground vegetation is removed once every 1 to 2 years, with no thatch left behind; and light grazing (Osborne 2010, pers. comm.). The species also appears to respond favorably to summer haying (late June or July) on prairie remnants managed as hayfields (Osborne 2010, pers. comm.).

Goldman (2008a, pp. 4–5) describes the genus *Calopogon* as having two growing points, which means that the plant has two chances for reproductive success in a given year. He has observed that if both growing points initiate, they do so at different times, one earlier in the season and one slightly later. When dormant, *Calopogon* corms can survive some drying, but if drought or other disturbance strikes while they are forming new leaves or flowering, they can be severely damaged or killed. The second growing point, by initiating up to a few months later when environmental conditions may have improved, seems to be an adaptation to survive springtime drought or other disturbance such as fires or grazing (Goldman 2008a, p. 5). Most other vascular plants survive such disturbance by resprouting from multiple tiny, dormant buds, or forming new buds. Therefore, *Calopogon* may be more vulnerable to local extirpation because of the limitation of having only two growing points (Goldman 2008a, p. 5).

Summary of Information Pertaining to the Five Factors

Section 4 of the Act (16 U.S.C. 1533) and implementing regulations (50 CFR part 424) set forth procedures for adding species to, removing species from, or reclassifying species on the Federal Lists of Endangered and Threatened Wildlife and Plants. Under section 4(a)(1) of the Act, a species may be determined to be endangered or threatened 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; or

(E) Other natural or manmade factors affecting its continued existence.

In making this finding, information pertaining to *Calopogon oklahomensis* in relation to the five factors provided in section 4(a)(1) of the Act is discussed below. In considering what factors might constitute threats, we must look beyond the mere exposure of the species to the factor to determine whether the species responds to the factor in a way that causes actual impacts to the species. If there is exposure to a factor, but no response, or only a positive response, that factor is not a threat. If there is exposure and the species responds negatively, the factor may be a threat and we then attempt to determine how significant a threat it is. If the threat is significant, it may drive or contribute to the risk of extinction of the species such that the species warrants listing as threatened or endangered as those terms are defined by the Act. This does not necessarily require empirical proof of a threat. The combination of exposure and some

corroborating evidence of how the species is likely impacted could suffice. The mere identification of factors that could impact a species negatively is not sufficient to compel a finding that listing is appropriate; we require evidence that these factors are operative threats that act on the species to the point that the species meets the definition of threatened or endangered under the Act.

In making our 12-month finding on the petition to list *Calopogon oklahomensis,* we considered and evaluated the best available scientific and commercial information.

Factor A. The Present or Threatened Destruction, Modification, or Curtailment of Its Habitat or Range

Some habitats of *Calopogon oklahomensis,* such as tallgrass prairie, remnant prairie, prairie-haymeadow, and mowed meadow, have historically suffered destruction across their entire range through development, plowing, lowering of the water table, fire suppression, construction, and conversion to nonnative grasses. Appropriate management for these habitats (typically burning or haying) to prevent the encroachment of woody vegetation and nonnative species is crucial for the continued existence of prairie-dependent species within these habitats, including *C. oklahomensis.* Because these habitats are the preferred habitat of *C. oklahomensis,* and because proper management of prairie habitat on public land cannot be ensured, and is even less ensured on private land, it is reasonable to conclude that overall habitat of *C. oklahomensis* has been modified and destroyed in the past, and could foreseeably continue into the future. However, this threat does not rise to the level where listing *C. oklahomensis* as threatened or endangered is warranted, as discussed below.

There are 41 extant sites supporting populations of *Calopogon oklahomensis* within the 7-State range (Arkansas, Illinois, Mississippi, Missouri, Oklahoma, Texas, and Wisconsin) of the species (Table 3). Many of the remaining populations of *C. oklahomensis* occur within high-quality habitat, which is protected from further modification and destruction by various measures, as further described below. In Arkansas, 9 of the 17 extant occurrences of *C. oklahomensis* occur in high-quality, unplowed tallgrass prairie remnants (Leone 2011, pers. comm.; Witsell 2010, pers. comm.; Osborne 2010, pers. comm.), which are currently protected and managed on 9 State Natural Areas in five counties. The Arkansas Natural Heritage Commission (ANHC) is charged with the responsibility of protecting the best of the last remaining vestiges of the State's natural communities through its System of Natural Areas. Natural Areas are lands specifically managed to preserve, and sometimes restore, rare natural communities. These nine State Natural Areas have specific ''conservation visions'' that guide site management in maintaining native prairie communities (ANHC 2010, pp. 10–88). In addition, ANHC rules and regulations prohibit the collection or removal of plants (including fruits, nuts, or edible plant parts), animals, fungi, rocks, minerals, fossils, archaeological artifacts, soil, downed wood, or any other natural material, alive or dead (ANHC 2010, p. 1). Although these ''conservation visions'' do not specifically address management for *C. oklahomensis,* they include appropriate management for the continued existence of *C. oklahomensis* at these sites, through burning or haying to prevent the encroachment of woody vegetation and nonnative species.

Of the 9 extant *Calopogon oklahomensis* populations within Arkansas State Natural Areas, *C. oklahomensis* was last observed in 2002 at Baker Prairie with 75 to 100 plants in bloom, in Searles Prairie in 2003 with at least 35 plants in bloom, Chesney Prairie in 2003 had several hundred *C. oklahomensis* plants in bloom, and Cherokee Prairie had several hundred to at least 1,000 plants in 2003 (Arkansas Natural Heritage Commission (ANHC) 2011). In 2008, three other *C. oklahomensis* populations surveyed at three different Natural Areas (Downs Prairie, Konecny Prairie, and Roth Prairie) had 5, 12, and more than 50 blooming plants, respectively (ANHC 2011). The H.E. Flanagan Prairie, surveyed in 2007, had hundreds of *C. oklahomensis* blooms, and the Railroad Prairie was surveyed in 2009, with 3 *C. oklahomensis* plants found (ANHC 2011).

One *Calopogon oklahomensis* population in Arkansas occurs on the Fort Chaffee Maneuver Training Center (Fort Chaffee). Management specifically for *C. oklahomensis* does not occur at Fort Chaffee; however, Fort Chaffee has the largest known population of the federally endangered American burying beetle *(Nicrophorus americanus)* and is implementing a ''Conservation Plan for the American Burying Beetle'' (CPABB 2010) (Leone 2011, pers. comm.). The goal of the Conservation Plan is to maintain existing populations of the American burying beetle, with sustainable habitat. American burying beetles require large tracts of open oak woodland and prairie, some of which are also occupied by *C. oklahomensis* at Fort Chaffee. The Conservation Plan outlines a strategy that limits long-term and short-term habitat loss, fragmentation, and degradation to the greatest extent possible (CPABB 2010, p. 31). Another strategy in the Conservation Plan uses fire as a management tool and evaluates the effects that fire has on the habitat (CPABB 2010, p. 36). Such fire management is also beneficial to *C. oklahomensis* habitat (Goldman 2008a, p. 10).

Because the Conservation Plan manages for American burying beetle habitat, including prairie, its implementation also will benefit *Calopogon oklahomensis,* which occurs in that prairie habitat. Although the Conservation Plan does not specifically address *C. oklahomensis,* this plan includes appropriate management tools to manage for the continued existence of *C. oklahomensis* at this site.

Arkansas has seven additional *Calopogon oklahomensis* populations that occur on private land (Table 3), of which four are managed as hayfield, two are managed for prairie, and one is mowed (Leone 2011, pers. comm.). These seven populations are not currently protected from conversion to other uses, and habitat destruction or modification may be a threat to these *C. oklahomensis* populations.

TABLE 3—EXTANT CALOPOGON OKLAHOMENSIS POPULATION INFORMATION BY STATE

State	Est. extant pops.	Site/location NA = Natural Area	Land ownership	Current habitat management plan and future plans	Protection status	Threats
AR	1	Cherokee Prairie NA.	AR Natural Heritage Commission.	The conservation vision is to restore and protect biological diversity representative of tallgrass prairies of the western Arkansas Valley by maintaining natural ecosystem processes.	Yes.	
AR	1	Chesney Prairie NA.	AR Natural Heritage Commission.	The conservation vision is to restore and protect biological diversity representative of Northwest Arkansas prairies by maintaining natural ecosystem processes.	Yes.	
AR	1	Downs Prairie NA.	AR Natural Heritage Commission.	The conservation vision is to maintain representative communities and species related to the landform, hydrology, fire, and other ecosystem processes of the Grand Prairie.	Yes	Factor B (poaching at one State Natural Area).
AR	1	H. E. Flanagan Prairie NA.	AR Natural Heritage Commission.	The conservation vision is to restore and protect the biological diversity representative of tallgrass prairies of the western Arkansas Valley by maintaining natural ecosystem processes.	Yes.	
AR	1	Konecny Prairie NA.	AR Natural Heritage Commission.	The conservation vision is to maintain the integrity of this remnant of tallgrass prairie community representative of the vegetation and biota of the Grand Prairie.	Yes.	
AR	1	Railroad Prairie NA.	AR Natural Heritage Commission.	The conservation vision is to maintain a representative transect of communities and species related to the landform, hydrology, fire and other ecosystem processes of the Grand Prairie of eastern Arkansas.	Yes.	
AR	1	Roth Prairie NA	AR Natural Heritage Commission.	The conservation vision is to work in conjunction with Arkansas State University to maintain the viability and associated biological diversity of a remnant tallgrass prairie in the Grand Prairie of eastern Arkansas.	Yes.	
AR	1	Searles Prairie NA.	AR Natural Heritage Commission.	The conservation vision is to protect the biological diversity characteristic of a tallgrass prairie remnant on the Springfield Plateau of the Ozark Mountains.	Yes.	
AR	1	Baker Prairie NA	AR Natural Heritage Commission and The Nature Conservancy (TNC).	The conservation vision is to maintain a mosaic of prairie communities and associated ecological diversity buffered from the stresses of nearby development. *C. oklahomensis* falls on a tract owned by TNC.	Yes.	
AR	1	Ft. Chaffee Military Base.	Department of Defense.	This site has an Integrated Natural Resource Management Plan and an American burying beetle (ABB) Conservation Plan. The goal of the ABB plan is to maintain existing populations with sustainable habitat. ABBs require large tracts of open oak woodland and prairie.	Yes.	
AR	1	Gray	Private	Managed as prairie	No	Factor A (No land protection status).
AR	1	Crossett Airport ..	Private	Mowed	No	Factor A (No land protection status).

TABLE 3—EXTANT CALOPOGON OKLAHOMENSIS POPULATION INFORMATION BY STATE—Continued

State	Est. extant pops.	Site/location NA = Natural Area	Land ownership	Current habitat management plan and future plans	Protection status	Threats
AR	1	Burt Prairie	Private	Managed as hayfield	No	Factor A (No land protection status).
AR	1	McFarren	Private	Managed as hayfield	No	Factor A (No land protection status).
AR	1	Stump	Private	Managed as hayfield	No	Factor A (No land protection status).
AR	1	Halijan	Private	Managed as hayfield	No	Factor A (No land protection status).
AR	1	Weber Prairie	Private	Managed as hayfield	No	Factor A (No land protection status).
IL	1	Hitt's Siding Prairie Nature Preserve.		Managed by the Nature Preserves with regular burns, and control of exotic species (woody and herbaceous).	Yes	Factor C (predation).
IL	1	Braidwood Nature Preserve.		Managed by the Forest Preserve District of Will County with regular burns, and control of exotic species (woody and herbaceous).	Yes.	
MO	8		2 to 3 sites owned by TNC.	Managed by MO Department of Conservation for prairie habitat.	Yes.	
MO	2	Coyne Prairie	MO Prairie Foundation.	Managed for prairie habitat	Yes.	
MO	1		Private	No management plan in effect	No	Factor A (No land protection status; lack of management).
MS	3	Camp Shelby Joint Forces Training Center.	U.S. Forest Service/Dept. of Defense with special use permit.	No known management plan in effect, however portions of these populations receive incidental protection because they are located within a 165 foot buffer for the federally endangered *Isoetes louisianensis* (Louisiana quillwort).	Yes.	
OK	5		Private	No known management plans in effect.	No	Factor A (No land protection status; development and/or conversion to fescue for grazing use).
OK	1		State of Oklahoma/Dept. of Corrections.	No known management plans in effect.	?	
TX	1	College Station, Brazos County.	City owned park	No known management plan in effect.	No	Factor A (No land protection status; development; lack of appropriate management).
WI	1	Greene Prairie	University of Wisconsin Arboretum.	Managed for prairie habitat	Yes.	
Total	41					

Illinois has two extant *Calopogon oklahomensis* populations, which occur within designated Illinois Nature Preserves (Table 3). This designation affords land protection only to high-quality natural areas. Dedication as a Nature Preserve is the strongest protection given to land in Illinois, and provides permanent protection. The landowner retains custody of the property, but voluntarily restricts future uses of the land in perpetuity to preserve its natural state and to perpetuate natural conditions. Illinois Nature Preserves are managed for native plant communities. This type of management is appropriate for the continued existence of *C. oklahomensis*

at these sites, as the species occurs within native prairie communities.

In Mississippi, all three extant *Calopogon oklahomensis* populations occur on U.S. Forest Service (USFS) land (Table 3), with a special use permit issued to the Camp Shelby. Under the Act, the USFS must ensure that activities they implement, fund, or permit are not likely to jeopardize the continued existence of a listed species. Federal agencies are also instructed to implement programs for the conservation of listed species. Portions of two of the *C. oklahomensis* populations (Poplar Creek and Clear Creek) in Mississippi and on USFS land receive incidental protection from future forest clearing and development because they are located within the 165-foot (ft) (50-meter (m)) buffer of the federally endangered *Isoetes louisianensis* (Louisiana quillwort) (Lyman 2011, pers. comm.; Wiggers 2011b, pers. comm.). This buffer was established in the Federal recovery plan for *I. louisianensis* and includes restricted timber harvest and riparian zone protection to ensure that habitat conditions are not altered, such as changes in ambient light, increase in sediment load from runoff, or alteration of stream flow from debris deposition (USFWS 1996, p. 18). Because these populations of *C. oklahomensis* occur within the 165-ft (50-m) buffer for *I. louisianensis,* the protections in place for the quillwort also protect those portions of the Poplar Creek and Clear Creek populations of *C. oklahomensis* (FEIS 2008).

Missouri has experienced declines in prairie habitat (less than 0.5 percent of original prairie acreage remains), possibly resulting in *Calopogon oklahomensis* being uncommon in this State. At least 10 of the 11 extant sites in Missouri occur on public lands managed as native prairie (Table 3) (Yatskievych 2009, pers. comm.). Although *C. oklahomensis* is considered uncommon in Missouri, it is not considered so rare as to be tracked. Therefore, population status studies in Missouri have not been conducted. Even so, Yatskievych (2009, pers. comm.) believes the existing sites are reasonably secure. Kruse (2010, pers. comm.) believes that management of public prairies will ensure the stable and continued existence of Missouri's populations of *C. oklahomensis* (Kruse 2010, pers. comm.). This species is reported from a number of prairie preserves in southwestern Missouri, and likely is more secure in Missouri than any other State (Goldman 2008a, p. 3).

Goldman (2008a, p. 8) believes Oklahoma had the greatest number of records of the species from the last 30 years; however, there are currently six extant sites of *Calopogon oklahomensis* in Oklahoma (Table 3) (Buthod 2010, pers. comm.) Buthod (2010, pers. comm.) indicates that portions of *C. oklahomensis* habitat in Oklahoma are being converted to fescue and being used for grazing, as five of the six extant populations are on private land. The site of the sixth *C. oklahomensis* population in Oklahoma is owned by the State of Oklahoma and used by the Department of Corrections (Table 3) as the Jess Dunn Prison. Current information indicates that the prison grounds have no native grass pasture and are actively hayed and growing fescue (Frye 2011, pers. comm.). In 2009 and 2010, personnel from the Oklahoma Biological Survey and the Oklahoma Natural Heritage collected information on the status of extant *C. oklahomensis* populations on private land in Oklahoma (Buthod 2010, pers. comm.). Two populations of *C. oklahomensis* exist in Bryan County, Oklahoma. One of those population's sites is described as having native prairie hay meadow elements, but *C. oklahomensis* could not be located at this site (Buthod 2011, pers. comm.). This site is on the outskirts of Durant, Oklahoma, where the land is currently not in use, but exhibits evidence of disturbance from pipeline construction, and is expected to be developed for commercial or private use (Buthod 2011, pers. comm.). The second *C. oklahomensis* population in Bryan County, Oklahoma, was surveyed in May 2010. It has some native prairie hay meadow elements, but is used for hay. *Calopogon oklahomensis* could not be located at that site in 2010 (Buthod 2011, pers. comm.).

Two other *Calopogon oklahomensis* populations occur in LeFlore County, Oklahoma. Surveys conducted in May 2009 indicated 20 plants of *C. oklahomensis* at one LeFlore County site, which is mowed for hay (Buthod 2011, pers. comm.). The other site in LeFlore County had one *C. oklahomensis* plant observed in native prairie hay meadow with mima mounds (natural domelike soil mounds) (Buthod 2011, pers. comm.).

The fifth *Calopogon oklahomensis* population in Oklahoma that is on private land is in Muskogee County. Over 50 stems of *C. oklahomensis* (80 percent in bloom) were seen in May 2009 (Buthod 2011, pers. comm.). The site is mowed for hay and also has mima mounds.

The destruction, modification, or curtailment of *Calopogon oklahomensis* habitat may be a threat for at least five of Oklahoma's six extant populations because they occur on private land. The private land, as currently managed, does not afford the species any land protection status or certainty on future land use, nor does it provide an obligation for management, such as burning or mowing, conducive to the continued existence of *C. oklahomensis.*

In Texas, there is one extant population of *C. oklahomensis* located in Brazos County, which exists in a city-owned park near College Station, Texas (Goldman 2008a, p. 9). We have no information on the management of the site other than Goldman (2008a, p. 9) believes the site is not burned, even occasionally, and, therefore, is experiencing tree and shrub encroachment.

In Wisconsin, *Calopogon oklahomensis* occurs within the University of Wisconsin Arboretum's Greene Prairie. Greene Prairie is not specifically managed for *C. oklahomensis,* but it is managed to maintain native prairie communities, which is the preferred habitat of *C. oklahomensis.*

Summary of Factor A

The destruction and modification of *Calopogon oklahomensis* habitat, specifically tallgrass prairie, remnant prairie, prairie-haymeadow, and mowed meadow, has historically occurred rangewide. Furthermore, the destruction and modification of some types of *C. oklahomensis* habitat (tallgrass prairie, remnant prairie, prairie haymeadow, and mowed meadow) currently continues rangewide. However, of the 41 extant *C. oklahomensis* populations, 26 are on land that is protected, and although those sites may not be managed specifically for *C. oklahomensis,* the management focuses on the continued existence of native prairie communities, which benefits *C. oklahomensis* as its preferred habitat is native prairie communities. Therefore, we believe this threat may only be applicable to 15 of the 41 extant populations in 4 (Arkansas, Oklahoma, Missouri, and Texas) of the 7 States where the species currently occurs (Table 3).

Of the 15 extant populations that may be threatened by destruction or modification of habitat, 14 populations occur on private land with no land protection status, and we have no information on the land protection status for one other population that occurs on land owned by the State of Oklahoma Department of Corrections. The 14 populations that occur on private land, and that are documented as having no land protection status, may be threatened by destruction or

modification of habitat from drainage, clearing, plowing, development, and lack of management, including the conversion to fescue for grazing (Table 3). In Arkansas, where 7 of those 14 populations occur, 4 sites are managed as hayfield, 2 as prairie, and 1 is mowed. The management of these seven extant *Calopogon oklahomensis* populations on private land may be adequate to maintain their continued existence.

Fourteen populations of *Calopogon oklahomensis* occur on private land, which are not protected from destruction or modification of habitat. Habitat destruction and modification, however, have not been linked to widespread declines throughout the range of the species. The majority of *C. oklahomensis* populations (26 populations) occur on protected, public land that is managed for native plant communities. These 26 protected populations occur in 5 (Arkansas, Mississippi, Missouri, Illinois, and Wisconsin) of the 7 States within the species' current range. Furthermore, although the 14 populations that occur on private land are not specifically protected from habitat destruction, we have no information indicating that these 14 populations are expected to be destroyed in the future. Therefore, a review of the best available information indicates that although some populations of *C. oklahomensis* may be threatened by habitat destruction or modification, the continued existence of the species is not threatened throughout all of its range by the present or threatened destruction, modification, or curtailment of its habitat or range, or likely to become so.

Factor B. Overutilization for Commercial, Recreational, Scientific, or Educational Purposes

In Arkansas, poaching of *Calopogon oklahomensis* was observed at one State Natural Area (Down's Prairie) in recent years (Osborne 2010, pers. comm.). In this case, a number of obvious and fresh shovel holes were observed in the center of a patch of *C. oklahomensis* during the blooming period (Osborne 2010, pers. comm.). The poaching was noted as a one-time event, and *C. oklahomensis* persisted at this location after the incident (Osborne 2011, pers. comm.). This State Natural Area is regularly monitored with no additional poaching observed, but it is difficult to determine the true impact of this one-time poaching event as population numbers of *C. oklahomensis* fluctuate greatly from one year to the next (Osborne 2011, pers. comm.).

We have no other information regarding overutilization of this species for commercial, recreational, scientific, or educational purposes. Because poaching of plants is known to have occurred at only 1 extant *Calopogon oklahomensis* population and does not appear to have adversely impacted that population, poaching does not constitute a threat to the species throughout its range. In summary, a review of the best available information indicates that *C. oklahomensis* is not threatened by overutilization for commercial, recreational, scientific, or educational purposes throughout its range.

Factor C. Disease or Predation

Disease and herbivory by insects, wildlife, or livestock was documented for *Calopogon oklahomensis* at only one location. At Hitt's Siding Prairie Nature Preserve, the State of Illinois has documented deer browse on the species and seed capsule destruction by weevils (Masi 2010, pers. comm.). We do not know how widespread this herbivory may be or if it resulted in detrimental effects on *C. oklahomensis* as deer and weevils naturally feed on many plant species. We have no other evidence of unnatural levels of predation for this species, and we do not have any information indicating that disease impacts *C. oklahomensis.* In summary, a review of the best available information indicates that *C. oklahomensis* is not threatened by disease or predation throughout its range.

Factor D. The Inadequacy of Existing Regulatory Mechanisms

There are no Federal laws that specifically protect *Calopogon oklahomensis.* At the State level, of the seven States within the current range of the species, *C. oklahomensis* is currently protected by State regulations only in Illinois, where it is State listed as endangered. The species is also State listed as endangered in Tennessee, but the species is believed to be extirpated there.

The Illinois Endangered Species Protection Act requires State and municipal agencies taking actions that might affect State or federally listed species (including plants) to avoid, minimize, or mitigate impacts to the listed species (*http://www.ilga.gov/legislation/lcs/ilcs3.asp?ActID=1730&ChapterID=43&Print=True* accessed on 09/06/2011). Furthermore, it is unlawful in the State of Illinois for any person to take plants on the List of Endangered and Threatened Species in Illinois without the express written permission of the landowner, or to sell or offer for sale plants or plant products of endangered species. In addition, Illinois's two extant *Calopogon oklahomensis* sites occur on dedicated Nature Preserve land, which affords the species additional protections. Only high-quality natural areas qualify for this land protection status. Dedication as a Nature Preserve is the strongest protection that can be given to land in Illinois, and provides permanent protection. The landowner retains custody of the property, but voluntarily restricts future uses of the land in perpetuity to preserve its natural state and to perpetuate natural conditions.

In the State of Tennessee, *Calopogon oklahomensis* is considered endangered and possibly extirpated, as it has not been seen in the State for the past 20 years. It is possible that *C. oklahomensis* may no longer occur in Tennessee, however, if it is determined that the species still persists in Tennessee, under Tennessee Code Annotated 70–8–309, it is a violation for any person, other than the landowner, lessee, or other person entitled to possession, or the manager, in the case of publicly owned land, or a person with the written permission of the landowner or manager, to knowingly uproot, dig, take, remove, damage, destroy, possess, or otherwise disturb for any purpose any endangered species (Tenn. Code Ann. 2011).

Despite the lack of regulatory mechanisms to protect *Calopogon oklahomensis* in most States, we found that there are no threats that are placing the species at risk (Factors A, B, C, and E) that require regulatory mechanisms to protect the species. Therefore, we do not consider the inadequacy of regulatory mechanisms a threat to this species. We conclude that the best scientific and commercial information available indicates that *Calopogon oklahomensis* is not threatened throughout its range due to the inadequacy of existing regulatory mechanisms.

Factor E. Other Natural or Manmade Factors Affecting Its Continued Existence

Small, Isolated Populations

Goldman (2008a, pp. 4–5) describes *Calopogon* species as having a unique biology that makes small or widely scattered populations more vulnerable to extirpation. A *Calopogon* corm contains only two growing points compared to other vascular plants, which have multiple tiny, dormant buds (Goldman 2008a, pp. 4–5). Because *Calopogon* does not form new buds, this species has only two chances for success at perpetuating the plant

through the next winter (Goldman 2008a, pp. 4–5). Therefore, the species may be particularly vulnerable to stochastic events, which, if they occur at a certain time (when the buds have formed or are forming), may destroy the chance for the plant to reproduce that year. Historically, the species most likely relied on a widespread mosaic of large populations, and thus some populations were able to escape local or regional droughts, allowing the species to persist and recolonize the drought-affected areas. This species now consists of smaller populations that may be geographically disconnected from each other. Existence in small, isolated populations can render species vulnerable to local, regional, or widespread extirpation due to uncontrollable natural forces, including local or regional climate perturbation such as drought. Such an event could eliminate most or all of a small population.

Species that are known from few, widely dispersed locations are inherently more vulnerable to extinction than widespread species because of the higher risks from genetic bottlenecks, random demographic fluctuations, and localized catastrophes such as long-term drought (Lande 1988, p. 1455; Pimm *et al.* 1988, p. 757; Mangel and Tier 1994, p. 607). These problems are further magnified when populations are few and restricted to a limited geographic area, and the number of individuals is very small. Populations with these characteristics face an increased likelihood of stochastic extinction due to changes in demography, the environment, genetics, or other factors, in a process described as an ''extinction vortex'' by Gilpin and Soulé (1986, pp. 24–25). Small, isolated populations often exhibit a reduced level of genetic variability or genetic depression due to inbreeding, which diminishes the species' capacity to adapt and respond to environmental changes, thereby lessening the probability of long-term persistence (Soulé 1987, pp. 4–7). Inbreeding depression as the result of isolated, small populations can result in death, decreased fertility, smaller body size, loss of vigor, reduced fitness, and various chromosome abnormalities (Smith 1974, p. 350).

Although changes in the environment may cause populations to fluctuate naturally, small and low-density populations are more likely to fluctuate below a minimum viable population (the minimum or threshold number of individuals needed in a population to persist in a viable state for a given interval) (Shaffer 1981, p. 131; Shaffer and Samson 1985, pp. 148–150; Gilpin and Soulé 1986, pp. 25–33). The problems associated with small population size and vulnerability to random demographic fluctuations or natural catastrophes are further magnified by synergistic interactions with other potential threats, such as those discussed above under Factor A. Despite evolutionary adaptations for rarity, habitat loss and degradation increase a species' vulnerability to extinction (Noss and Cooperrider 1994, pp. 58–62). Historically, *Calopogon oklahomensis* was more widespread. An important benefit of this greater historical range resulted in an advantage of redundancy: Additional populations separated by some distance likely allowed some populations to be spared the impacts of localized or more discrete catastrophic events, such as drought. However, this advantage of redundancy may be lost with the reduction in *C. oklahomensis* range. Additionally, the unique biological features of *C. oklahomensis* described by Goldman (2008a, pp. 4–5), which limit reproduction and the ability to recolonize, may make this species more vulnerable to the effects of small population sizes and fragmented habitats.

Our assessment of this species' status is complicated by the fact that we have limited information regarding population sizes of *Calopogon oklahomensis.* Although *C. oklahomensis* may be considered uncommon, it is not considered so rare as to be tracked by most States. (This may also be due to the recent recognition of *C. oklahomensis* as a distinct species). Therefore, population status studies have not been regularly conducted across its range for the 41 extant populations. Throughout the range of *C. oklahomensis* (the States of Arkansas, Illinois, Mississippi, Missouri, Oklahoma, Texas, and Wisconsin), we have limited population status information for three States (Arkansas, Mississippi and Oklahoma). Further complicating the availability of population data, the number of flowering plants annually can vary dramatically at any *C. oklahomensis* site, with this species not appearing some years (Witsell 2009, pers. comm.). In addition, because this species was relatively recently identified (1995), *C. oklahomensis* specimens have been confused for other *Calopogon* species, especially *C. tuberosus,* due to the difficulty in distinguishing the two species (Goldman 1995, pp. 37–41; Goldman *et al.* 2004b pp. 37–38; Anderson 2010a, pers. comm.). For these reasons, meaningful long-term monitoring of the species is difficult, and long-term population abundance datasets are absent.

Unique features of the species' biology increase its vulnerability to extirpation because it now exists in small, isolated populations. However, we have population density information only for some populations, and for some years, in three (Arkansas, Mississippi, and Oklahoma) of the seven States (Arkansas, Illinois, Mississippi, Missouri, Oklahoma, Texas, and Wisconsin) where *Calopogon oklahomensis* is believed to be extant. Populations may be large enough to withstand stochastic events. In addition, because *C. oklahomensis* is not tracked in four of the seven States where it exists, and there is, thus, likely unsurveyed potential habitat, there may be other, as yet unknown populations of *C. oklahomensis.* Although *C. oklahomensis* may be exposed to a potential threat from small population size and fragmented habitats, we have no evidence of a response to this factor. Rangewide, *C. oklahomensis* habitat is fragmented compared to historical occurrences of the species, and it's unique biology may make it more vulnerable to extirpation than other vascular plants; however, we have no information that this threat may act on this species to the point that the species itself may be at risk or likely to become so.

Climate Change

The Intergovernmental Panel on Climate Change (IPCC) was established in 1988 by the World Meteorological Organization and the United Nations Environment Program in response to growing concerns about climate change and, in particular, the effects of global warming. The IPCC Fourth Assessment Report (IPCC 2007, entire) synthesized the projections of the Coupled Model Intercomparison Project (CMIP) Phase 3, a coordinated large set of climate model runs performed at modeling centers worldwide using 22 global climate models (Ray *et al.* 2010, p. 11). Based on these projections, the IPCC has concluded that the warming of the climate system is unequivocal, as evidenced from observations of increases in global average air and ocean temperatures, widespread melting of snow and ice, and rising global average sea level (IPCC 2007, pp. 6, 30; Karl *et al.* 2009, p. 17). Changes in the global climate system during the 21st century are likely to be larger than those observed during the 20th century (IPCC 2007, p. 19). Several scenarios are virtually certain or very likely to occur in the 21st century including: (1) Over

most land, weather will be warmer, with fewer cold days and nights, and more frequent hot days and nights; (2) areas affected by drought will increase; and (3) the frequency of warm spells and heat waves over most land areas will likely increase (IPCC 2007, pp. 13, 53).

In instances for which a direct cause and effect relationship between global climate change and regional effects to a specific species has not been documented, we rely primarily on synthesis documents (*e.g.,* IPCC 2007, entire; Karl *et al.* 2009, entire) to inform our evaluation of the extent that regional impacts due to climate change may affect our species. These synthesis documents present the consensus view of climate change experts from around the world. Typically, the projections of downscaled models agree with the projections of the global climate models (Ray *et al.* 2010, p. 25). Climate change projections are based on models with assumptions and are not absolute. Portions of the global climate change models can be used to predict changes at the regional-landscape scale; however, this approach contains higher levels of uncertainty than using global models to examine changes on a larger scale. The uncertainty arises due to various factors related to difficulty in applying data to a smaller scale, and to the paucity of information in these models such as regional weather patterns, local physiographic conditions, life stages of individual species, generation time of species, and species reactions to changing carbon dioxide levels. Additionally, global climate models do not incorporate a variety of plant-related factors that could be informative in determining how climate change could affect plant species (*e.g.,* effect of elevated carbon dioxide on plant water-use efficiency, the life stage at which the limit affects the species (seedling versus adult), the lifespan of the species, and the movement of other organisms into the species' range) (Shafer *et al.* 2001, p. 207).

Regional landscapes also can be examined by downscaling global climate models. Global climate models can play an important role in characterizing the types of changes that may occur, so that the potential impacts on natural systems can be assessed (Shafer *et al.* 2001, p. 213).

Climate change is likely to affect the habitat of *Calopogon oklahomensis,* but we lack scientific information on what those changes may ultimately mean for the status of the species. Climate change effects are not limited to the timing and amount of precipitation; other factors potentially influenced by climate change may in turn affect the habitat conditions for *C. oklahomensis.* For example, fire frequency may be influenced by climate change (Logan and Powell 2001, p. 170; Westerling *et al.* 2006, pp. 942–943) and may in turn increase suitable habitat of *C. oklahomensis,* as it is believed that frequent burns tend to increase population numbers of *C. oklahomensis* (Goldman 2008, p. 10). Impacts of specific events on *C. oklahomensis* and its habitat have not been analyzed. Climate change is likely to affect multiple variables that may influence the suitability of habitat for *C. oklahomensis.* As habitat conditions have fluctuated in the past, and *C. oklahomensis* has persisted throughout these fluctuations, this species should be able to persist so long as climate change does not result in extreme changes to important characteristics of the species habitat or life cycle, such as the complete loss of prairie habitat or the complete loss of available moisture at a crucial life stage. At this time, the best available scientific information does not indicate that impacts from climate change are likely to be a threat to the species to the point that the species may be at risk or likely to become so.

Summary of Factor E

Based on our evaluation, we find that *Calopogon oklahomensis* is not threatened by other natural or manmade factors. *Calopogon oklahomensis* may be more vulnerable to other natural or manmade factors such as genetic bottlenecks, random demographic fluctuations, climate change, and localized catastrophes such as long-term drought because of its unique biology and because populations may be small and fragmented from each other. At this time, the best available information on long-term population abundance does not enable us to make a connection between the species unique biology and small population size and the potential impacts outlined above. For this reason, a review of the best available information indicates that threats considered under Factor E may act on *C. oklahomensis,* but not to the point that the species is at risk now or now or likely to become so.

Finding

As required by the Act, we considered the five factors in assessing whether *Calopogon oklahomensis* is threatened or endangered throughout all of its range. We examined the best scientific and commercial information available regarding the past, present, and future threats faced by *Calopogon oklahomensis.* We reviewed the petition, information available in our files, other available published and unpublished information, and we consulted with species and habitat experts, and other Federal, State, and tribal agencies.

The available information indicates that *C. oklahomensis* is a fairly wide-ranging species with relatively stable, protected populations in much of its current range. Based on our review of the best available scientific and commercial information pertaining to the five factors, we find that despite range reductions that have resulted in smaller, disconnected populations, and the species' reproductive biology, which may make it more vulnerable to extirpation through stochastic events, the threats, either individually or in combination, are not of sufficient imminence, intensity, or magnitude to indicate that *Calopogon oklahomensis* is in danger of extinction (endangered), or likely to become endangered within the foreseeable future (threatened), throughout all of its range.

Significant Portion of the Range

Having determined that *Calopogon oklahomensis* is not in danger of extinction or likely to become so within the foreseeable future throughout all of its range, we must next consider whether there are any significant portions of the range where *C. oklahomensis* is in danger of extinction or is likely to become in danger of extinction in the foreseeable future. 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 the term ''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 significant portion of its range 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, Apr. 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, Feb. 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 significant portion of its range 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 a significant portion of its range, it, the species, is an ''endangered species.'' The same analysis applies to ''threatened species.'' Therefore, the consequence of finding that a species is endangered or threatened in only a significant portion of its range is that the entire species shall be listed as endangered or threatened, respectively, and the Act's protections shall be applied across the species' entire range.

We conclude, for the purposes of this finding, that interpreting the significant portion of its range 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 March 16, 2007, Memorandum Opinion issued by the Solicitor of the Department of the Interior, ''The Meaning of 'In Danger of Extinction Throughout All or a Significant Portion of Its Range' '') 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, 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 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 habitats 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 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'' 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 a significant portion of its range 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 significant portion of its range 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 significant portion of its range language for such a listing.) Rather, under this interpretation we ask whether the species would be in danger of extinction everywhere without that portion, *i.e.,* if the species was completely extirpated from that portion.

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 *and* threatened or endangered. 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 portion status analysis 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 applies only to portions of the species' range that clearly would not meet the biologically based definition of ''significant,'' such portions will not warrant further consideration.

In determining whether *Calopogon oklahomensis* is threatened or endangered in a significant portion of its range, we first addressed whether any portions of the range of *C. oklahomensis* warrant further consideration. We have no evidence that any particular population or portion of the range of *C. oklahomensis* is critical to the species' survival. *Calopogon oklahomensis* may actually occur continuously across its known range, but consistent, range-wide surveys have not been done. The population areas delineated in this document were derived from existing data and information; however, information on the species' distribution and numbers may change with more survey effort. Other than the potential threat of habitat destruction and modification, which is concentrated on private land, other potential threats to the species are essentially uniform throughout its range. The 14 *C. oklahomensis* populations that occur on private lands, which are not specifically protected from habitat destruction or modification, are not contiguous, but scattered throughout the range of the species. Other than the land ownership, there is nothing unique about these 14 populations that would contribute to the resiliency, redundancy, or representation of the species—they have the same biological characteristics that contribute to the species resiliency to periodic disturbance; even in their absence, there are multiple, stable and protected populations distributed throughout the species' range; and they do not contain unique genetic, morphological, physiological, behavioral, or ecological diversity of the species that is not represented in the protected populations. Therefore, we find that *C. oklahomensis* is not in danger of extinction now, nor is it likely to become endangered within the foreseeable future throughout all or a significant portion of its range. Therefore, listing *C. oklahomensis* as threatened or endangered under the Act is not warranted at this time.

We request that you submit any new information concerning the status of, or threats to, *Calopogon oklahomensis* to our Chicago, Illinois Fish and Wildlife Office (see **ADDRESSES**) whenever it becomes available. New information will help us monitor *C. oklahomensis* and encourage its conservation. If an emergency situation develops for *C. oklahomensis* or any other species, we will act to provide immediate protection.

References Cited

A complete list of references cited is available on the Internet at *http://www.regulations.gov* and upon request from the Chicago, Illinois Fish and Wildlife Office (see **ADDRESSES**).

Author

The primary author of this notice is a staff member of the Chicago, Illinois Ecological Services Field Office.

Authority

The authority for this section is section 4 of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

Dated: September 23, 2011.

Rowan Gould,

Acting Director, Fish and Wildlife Service.

[FR Doc. 2011–25530 Filed 10–3–11; 8:45 am]

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DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

[Docket No. FWS–R8–ES–2007–0023; MO 92210–0–0008–B2]

Endangered and Threatened Wildlife and Plants; 12-Month Finding on a Petition to List the Amargosa River Population of the Mojave Fringe-Toed Lizard as an Endangered or Threatened Distinct Population Segment

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of 12-month petition finding.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), announce a 12-month finding on a petition to list the Amargosa River population of the Mojave fringe-toed lizard (*Uma scoparia*) located in San Bernardino County, California, as an endangered or threatened distinct population segment (DPS), under the Endangered Species Act of 1973, as amended (Act). After a thorough review of all available scientific and commercial information, we find that the Amargosa River population of the Mojave fringe-toed lizard does not constitute a DPS under our 1996 policy and, therefore, is not a listable entity under the Act. We ask the

public to continue to submit to us any new information concerning the status of, and threats to, the Amargosa River population of this species and the species overall. This information will help us to monitor and encourage the ongoing management of this species.

DATES: The finding announced in the document was made on October 4, 2011.

ADDRESSES: This finding is available on the Internet at *http://www.regulations.gov* at Docket Number FWS–R8–ES–2007–0023 and at *http://www.fws.gov/ventura/*. Supporting documentation we used in preparing this finding is available for public inspection, by appointment, during normal business hours at the U.S. Fish and Wildlife Service, Ventura Fish and Wildlife Office, 2493 Portola Road, Suite B, Ventura, CA 93003; telephone 805–644–1766, extension 372; facsimile 805–644–3958. Please submit any new information, materials, comments, or questions concerning this finding to the above street address.

FOR FURTHER INFORMATION CONTACT: Michael McCrary, Listing and Recovery Coordinator, U.S. Fish and Wildlife Service, Ventura Fish and Wildlife Office (see **ADDRESSES** section). Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 800–877–8339.

SUPPLEMENTARY INFORMATION:

Background

Section 4(b)(3)(B) of the Endangered Species Act of 1973, as amended (Act) (16 U.S.C. 1531 *et seq.*), requires that, for any petition to revise the Lists of Endangered and Threatened Wildlife and Plants that contains substantial scientific and commercial information that the petitioned action may be warranted, we make a finding within 12 months of the date of our receipt of the petition. In this finding, we determine that the petitioned action is: (1) Not warranted; (2) warranted; or (3) warranted, but the immediate proposal of a regulation implementing the petitioned action is precluded by other pending proposals to determine whether species are endangered or threatened, and expeditious progress is being made to add or remove qualified species from the Lists of Endangered and Threatened Wildlife and Plants. Section 4(b)(3)(C) of the Act requires that we treat a petition for which the requested action is found to be warranted but precluded as though resubmitted on the date of such finding; that is, it requires a subsequent finding to be made within 12 months. We must publish these 12-month findings in the **Federal Register.**

Previous Federal Actions

We received a petition dated April 10, 2006, from the Center for Biological Diversity (CBD) and Ms. Sylvia Papadakos-Morafka requesting that the Amargosa River population of the Mojave fringe-toed lizard (*Uma scoparia*) located in San Bernardino County, California, be listed as an endangered or threatened distinct population segment (DPS) under the Act (CBD and Papadakos-Morafka 2006). According to the petition, the Amargosa River population is limited to Ibex and Dumont dunes and Coyote Holes, which are located at the northern end of the entire range of the species. On January 10, 2008, the Service made its 90-day finding (73 FR 1855), concluding that the petition did present substantial scientific or commercial information to indicate that the Amargosa River population of the Mojave fringe-toed lizard may be a DPS based on genetic evidence, which may meet both the discreteness and significance criteria of the DPS policy (61 FR 4722; February 7, 1996), and, thus, may be a listable entity under the Act. Additionally, the Service found the petition presented substantial scientific or commercial information that listing the Amargosa River population of the Mojave fringe-toed lizard as endangered or threatened may be warranted. With publication of the 90-day finding, the Service initiated a status review of the Amargosa River population of the Mojave fringe-toed lizard and solicited scientific and commercial information regarding this population.

To ensure that this finding is based on the latest information and incorporates the opinions of the scientific community, the Service considered information provided by the public and additional information and data in our files that, combined, provided the basis for the status review for the Amargosa River population of the Mojave fringe-toed lizard.

Species Information

Species Biology

The Mojave fringe-toed lizard is in the North American spiny lizard family (Phrynosomatidae). This medium-sized lizard, which may reach a snout-to-vent length of up to 4.5 inches (112 millimeters), is highly adapted to a sand-dwelling existence (Norris 1958, p. 253). As part of its adaptation to living in sand, the Mojave fringe-toed lizard's body and tail are dorsoventrally (top to bottom) compressed, which facilitates sand self-burial (Hollingsworth and Beaman 1999, p. 1). The hind feet have a series of elongated scales fringing the lateral edges of the third and fourth digits; these fringes widen the toes, giving the lizard additional support for locomotion on sand, and serve as ''sand shoes.'' The fringes also assist in the lizard's movements beneath the surface of the sand (Norris 1958, p. 253). Self-burial by fringe-toed lizards is presumed to be defensive; there is no evidence to suggest that self-burial is thermoregulatory or used for subsurface hunting as exhibited by other genera of sand lizards (Pough 1970, p. 153). Nasal valves restrict the entrance of sand into the lizard's nasal passages. The nasal passages are also specialized for desert living; they are convoluted and have absorbing surfaces that reduce moisture loss through the nasal openings (Stebbins 1944, p. 316). Other adaptations to a sand environment include smooth skin surface, a wedge-shaped head, and well-developed eye and ear flaps (Pough 1970, p. 145).

The Mojave fringe-toed lizard's smooth skin is patterned with small, black circles and flecks. Both sides of the belly have a conspicuous black spot, the underside of the tail has black bars, and both sides of the throat have crescent-shaped markings. The concealing coloration of fringe-toed lizards is striking and is one of the best examples of this phenomenon among North American vertebrates. Adults of the species have a yellow-green wash on the belly and pink on the sides during breeding periods, but during other times of year, the Mojave fringe-toed lizard's color mimics the sand dunes on which they dwell (Norris 1958, p. 253). The Mojave fringe-toed lizard is distinguished from other fringe-toed lizard species by the dark black spot on each side of the belly and the crescent-shaped markings present on the sides of the throat. The small black circles over the shoulders do not unite to form lines as they do in the very closely related species, *Uma notata.*

Mojave fringe-toed lizards are omnivorous throughout their lives. They primarily feed on insects but will also eat seeds and flowers (Stebbins 1944, p. 329). Annual plants provide forage during the springtime; however, their availability diminishes during the summer as vegetation dries up (Stebbins 1944, p. 329). Mojave fringe-toed lizards derive most of their water from arthropods and plants they ingest.

The Mojave fringe-toed lizard is diurnal (active during the day) and has daily activity patterns that are temperature-dependent. The actual ambient temperature range in which the

Mojave fringe-toed lizard is active has not been documented. However, it is documented that the Mojave fringe-toed lizard is likely active when its internal body temperature is between 79 and 112 degrees Fahrenheit (26 and 44 degrees Celsius) (Hollingsworth and Beaman 1999, p. 3). In March and April, Mojave fringe-toed lizards are active fewer hours than other species of fringe-toed lizards due to cooler temperatures in the Mojave Desert. From May to September, they move about in the mornings and late afternoons but retreat underground when temperatures are high. Hibernation occurs from November to February (Mayhew 1966, pp. 120–121).

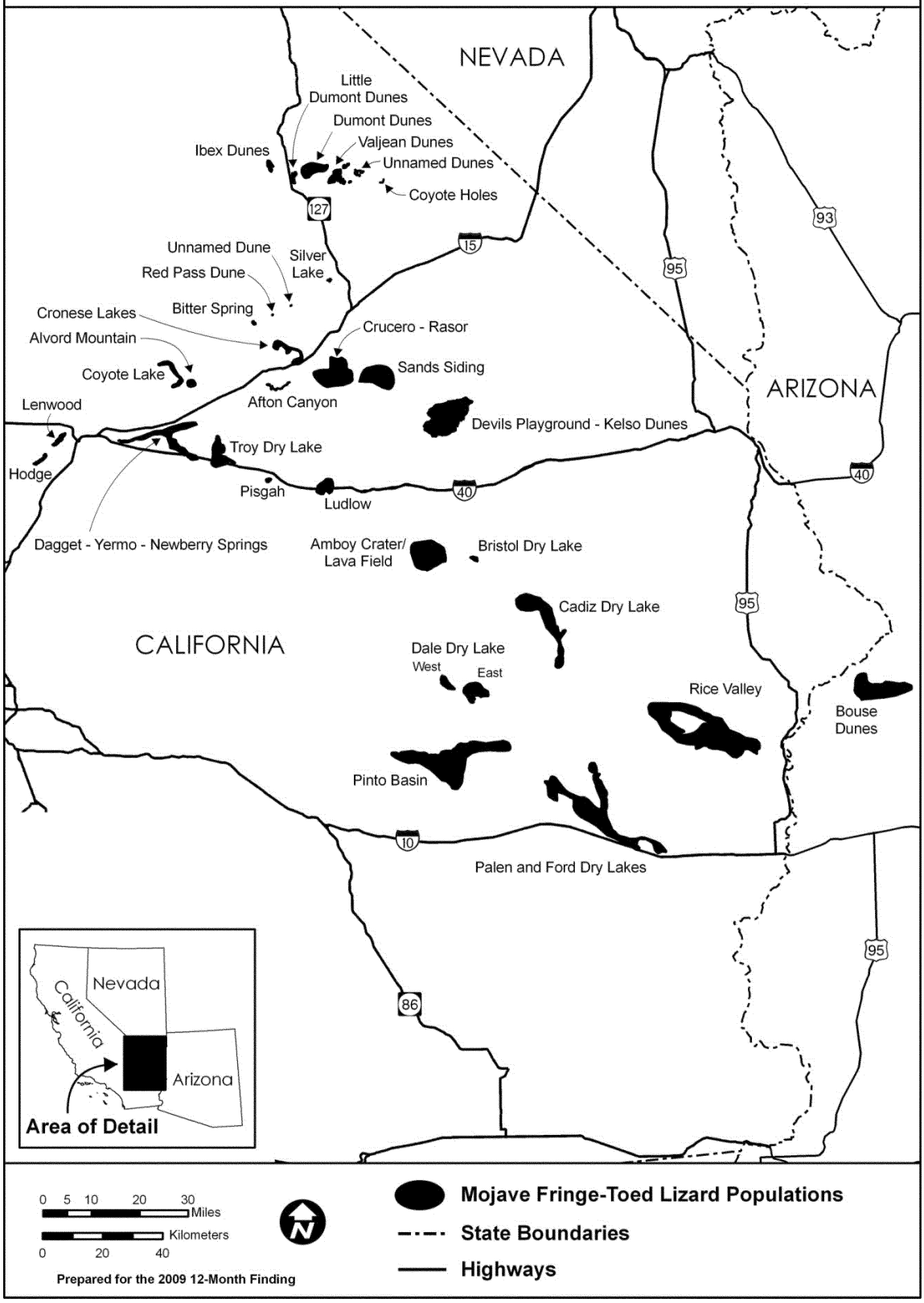
The Mojave fringe-toed lizard generally reaches sexual maturity during the second summer following hatching. Reproductive activity in both sexes varies from year-to-year and tends to increase with higher rainfall; winter rainfall (October to March) in particular seems to be the critical reason for the increased reproductive activity. The moisture promotes germination in sand-dwelling plants and production of leaves and flowers that provide nutrients, moisture, and protective cover to the lizards, and thus enhances reproductive activity (Mayhew 1966, pp. 119–120). Breeding coloration and increase in testis size indicate the male breeding period, which typically occurs between April and late June. Female breeding colors are displayed between April and September (Mayhew 1966, pp. 115–117). Ovarian egg counts also fluctuate in response to rainfall and food availability, with reduced egg counts and fewer juveniles following dry winters. There is also evidence to suggest that female lizards may have more than one brood per year (Mayhew 1966, p. 118).

Species Range, Habitat, and Dispersal

The Mojave fringe-toed lizard is endemic to the deserts of southern California and a small area across the Colorado River in western Arizona. The Mojave fringe-toed lizard occurs in the lower Sonoran life zones of the Mojave Desert and the northwestern reaches of the Sonoran Desert characterized by palo verde (*Cercidium floridum*), mesquite (*Prosopis chilensis*), creosote bush (*Larrea tridentata*), white bur sage (*Franseria* sp.), indigo bush (*Dalea* sp.), and numerous species of annuals. The Mojave fringe-toed lizard inhabits areas of wind-blown sand, including dunes, washes, hillsides, margins of dry lakes, and flats with sandy hummocks that form around bases of vegetation (Hollingsworth and Beaman 1999, p. 8). Fringe-toed lizards (*Uma* spp.), including the Mojave fringe-toed lizard, likely select active sand dune areas and other areas of wind-blown, intermediate-sized grains of sand, because those conditions facilitate self-burying and respiration while under the sand (Pough 1970, p. 154). Based on the scientific literature, the Mojave fringe-toed lizard is currently known to occur at more than 35 sand dunes localities in southern California and one dune in western Arizona (Figure 1).

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Figure 1. Mojave Fringe-Toed Lizard Populations (*Uma scoparia*)



BILLING CODE 4310–55–C

On April 10, 2006, we received a petition to list the Amargosa River population of Mojave fringe-toed lizard as an endangered or threatened DPS under the Act. The petition defined the Amargosa River population as Mojave fringe-toed lizards occurring at Ibex Dunes, Dumont Dunes, and Coyote Holes (Figure 1). Subsequent to the submittal of the petition, and as part of the status review conducted for this finding, Mojave fringe-toed lizards were found in new locations for which there are no historical records of occurrence. Based on their proximity to the three petitioned dunes, several of the new locations are part of the Amargosa River population and, as hereafter described in this finding, the Amargosa River population includes the following newly discovered occupied dunes: Little Dumont Dunes, located about 3 miles (mi) (4.8 kilometers (km)) southwest of Dumont Dunes (Glenn 2008, *in litt.*); Valjean Dunes, located about 4 mi (6.4 km) southeast of Dumont Dunes (Encinas 2008, *in litt.*); the sandy area between Dumont and Valjean dunes (Encinas 2008, *in litt.*); and three unnamed dunes located roughly midway between Valjean Dunes and Coyote Holes (Encinas 2008, *in litt.*) (Figure 1).

Additionally, new records of Mojave fringe-toed lizards have also expanded the areas known to be occupied at Ibex Dunes, Dumont Dunes, and Coyote Holes (Glenn 2008, *in litt.*). Although not part of the Amargosa River population, Mojave fringe-toed lizards have also been recently found at an unnamed dune between Red Pass Dune and Silver Lake (Glenn 2008, *in litt.*) (Figure 1). In aerial photographs, we also noted the presence of other dune formations and wind-blown sand areas southeast of Ibex Dune, northwest of Valjean Dunes, between Silver Lake and Red Pass Dune, and between Red Pass Dune and Cronese Lakes. The physical characteristics and structure of these areas appear to be similar to habitat known to be occupied by the Mojave fringe-toed lizard. However, these areas have not yet been surveyed for the presence of Mojave fringe-toed lizards.

Dispersal of Mojave fringe-toed lizards between populations is poorly studied. No specimen of fringe-toed lizard has been captured more than approximately 150 feet (ft) (46 meters (m)) from wind-blown sand deposits (Norris 1958, p. 257). Norris believed that fringe-toed lizards are totally restricted to areas of wind-blown sand. For this reason, Mojave fringe-toed lizards, in the absence of intervening suitable habitat, have historically been considered to be restricted to active dunes, and in a few cases, sandy habitat associated with dry lakes and washes.

Genetics

Mojave fringe-toed lizard phylogenetics have been studied by Murphy *et al.* (2006, pp. 226–247) and more recently by Gottscho (2010, pp. 1–81). Phylogenetics is the study of the evolutionary relationships between groups of organisms, such as families, subfamilies, genera, and species, based on genetic material. Murphy *et al.* (2006, pp. 231–233) analyzed the relationships between different populations of Mojave fringe-toed lizards based on mitochondrial DNA. Mitochondrial DNA is inherited from the female parent and not the male; thus, the genetic information reflects the matrilineal history. In the mitochondrial DNA study, tissue samples from 79 lizards were collected from 21 major dune systems, including 1 dune in Arizona, known to be occupied by the Mojave fringe-toed lizard as verified by collections in the California Academy of Sciences and Los Angeles County Museum of Natural History. Murphy *et al.* (2006, p. 232) detected 52 unique haplotypes among the 21 dune systems sampled. A haplotype is a set of closely linked genetic markers on a single chromosome that tend to be inherited together. The number of tissue samples collected per dune was small, with three or fewer samples collected from the majority (57 percent) of dunes (Murphy *et al.* 2006, p. 230). Based on mitochondrial DNA sequence data from two mitochondrial genes, Murphy *et al.* (2006) developed a phylogenetic tree (a diagram consisting of branches that represent genetic relationships, similar in appearance to a family tree) for the Mojave fringe-toed lizard.

Murphy *et al.* (2006, pp. 232–233) concluded that the lizards from the 21 dune systems consisted of 6 genetically related groupings or clades. One of the six is the Amargosa River clade, which Murphy determined consists of Ibex and Dumont Dunes, Coyote Holes, and Red Pass Dune (Murphy *et al.* 2006, p. 234). Red Pass Dune is geographically associated with the Mojave River drainage system clade, which is the next population to the south of the Amargosa River population. Although Murphy *et al.* (2006, pp. 232–233) classified lizards from the Amargosa River population as constituting a separate genetic clade than lizards in the Mojave River drainage system, the population of Mojave fringe-toed lizards occurring at Red Pass Dune is unique in that it shares a haplotype with both the Amargosa River clade and the Mojave River drainage system clade. For this reason, Red Pass Dune appears twice in the phylogenetic tree developed by Murphy *et al.* (2006, p. 233), once in the Amargosa River clade and once in the Mojave River drainage system clade. However, Murphy *et al.*'s (2006, p. 241) overall conclusion was that the Amargosa River population is genetically distinct from other Mojave fringed-toed lizard populations.

Gottscho (2010, pp. 9–18) also studied the relationships between different populations of Mojave fringe-toed lizards but based his analysis on nuclear DNA instead of on mitochondrial DNA. Nuclear DNA is inherited from both the female and male; thus each tissue sample had genetic information inherited from both the mother and father as opposed to mitochondrial DNA, which has genetic information inherited from the mother only. Gottscho conducted his DNA analysis on tissue samples collected from lizards at 20 major dune systems throughout the range of the species. Fifteen unlinked DNA sequences (or loci) from each tissue sample were analyzed to determine genetic divergence between population locations. Unlinked DNA sequences represent random segments of DNA that are not typically inherited together and thus represent independent samples of genetic variation across the entire genome. Based on the nuclear DNA sequences from the 15 loci, Gottscho developed 15 gene trees for the Mojave fringe-toed lizard, and none of these gene trees showed evidence of genetic divergence between the Amargosa River population and other Mojave fringed-toed lizard populations (Gottscho 2010, pp. 54–68). Gottscho (2010, p. 26) found that ''No geographic structuring within *U. scoparia* is evident, particularly between the Mojave and Amargosa populations, which is expected given that they have 0% sequence divergence.'' Thus, based on his analysis of 15 nuclear DNA loci, Gottscho found no evidence that the Amargosa River population of Mojave fringed-toed lizard was genetically distinct from other Mojave fringed-toed lizard populations (see Distinct Vertebrate Population Segment (DPS) section for additional discussion of research results of Gottscho (2010) and Murphy *et al.* (2006)).

Distinct Vertebrate Population Segment (DPS)

Section 3(16) of the Act defines ''species'' to include ''any subspecies of fish or wildlife or plants, and any distinct population segment of any species of vertebrate fish or wildlife which interbreeds when mature'' (16 U.S.C. 1532 (16)). Under the joint DPS

policy of the Service and National Marine Fisheries Service (61 FR 4722; February 7, 1996), three elements are considered in the decision concerning the establishment and classification of a possible DPS. These are applied similarly for additions to or removal from the List of Endangered and Threatened Wildlife. These elements include:

(1) The discreteness of a population in relation to the remainder of the species to which it belongs;

(2) The significance of the population segment to the species to which it belongs; and

(3) The population segment's conservation status in relation to the Act's standards for listing, delisting, or reclassification (*i.e.,* Is the population segment, when treated as if it were a species, endangered or threatened?).

Under the DPS Policy, we must first determine whether the population qualifies as a DPS; this requires a finding that the population is both: (1) Discrete in relation to the remainder of the species to which it belongs; and (2) biologically and ecologically significant to the species to which it belongs. If the population meets the first two criteria under the DPS policy, we then proceed to the third element in the process, which is to evaluate the population segment's conservation status in relation to the Act's standards for listing as an endangered or threatened species. The DPS evaluation in this finding concerns the Amargosa River population as it has been defined herein.

Discreteness

Under the DPS Policy, a population segment of a vertebrate taxon may be considered discrete if it satisfies either one of the following conditions:

(1) It is markedly separated from other populations of the same taxon as a consequence of physical, physiological, ecological, or behavioral factors. Quantitative measures of genetic or morphological discontinuity may provide evidence of this separation.

(2) It is delimited by international governmental boundaries within which differences in control of exploitation, management of habitat, conservation status, or regulatory mechanisms exist that are significant in light of section 4(a)(1)(D) of the Act.

Markedly Separated From Other Populations of the Taxon

Under the first test of discreteness in our DPS policy, a population segment may be considered discrete if it is ''markedly separated from other populations of the same taxon as a consequence of physical, physiological, ecological, or behavioral factors. Quantitative measures of genetic or morphological discontinuity may provide evidence of this separation.'' Although absolute separation is not required under our DPS Policy, the use of the term ''markedly'' in the Policy indicates that the separation must be strikingly noticeable or conspicuous.

As part of the status review associated with this finding, we have examined the Amargosa River population of Mojave fringed-toed lizard and expanded the definition of this population to include the newly discovered occupied dunes, as described above in the ''Species Range, Habitat, and Dispersal'' section. We have examined the Amargosa River population of the Mojave fringe-toed lizard to determine if it is markedly separated from other populations of the same taxon.

The important question with regard to discreteness under our DPS policy is whether or not the Amargosa River population is markedly separated from other populations of Mojave fringed-toed lizard. The Amargosa River population could be found to be markedly physically separated if the distance between any part of that population and any other population is greater than the distance the lizard is believed to be able to travel across areas without suitable habitat (*i.e.,* without windblown sand). Mojave fringe-toed lizard movement among dunes is considered unlikely in the absence of nearby areas of wind-blown sand. Mojave fringe-toed lizards have historically been considered to be restricted to active dunes and, in a few cases, sandy habitat associated with dry lakes and washes (Hollingsworth and Beaman 1999, p. 3).

As noted above in the ''Species Range, Habitat, and Dispersal'' section, surveys conducted subsequent to the submittal of the petition show that there are more Mojave fringe-toed lizards in the Amargosa River area than was previously thought. New locations with documented Mojave fringe-toed lizards include Little Dumont Dunes, Valjean Dunes, the area between Dumont and Valjean dunes, and three unnamed dunes located between Valjean Dunes and Coyote Holes (Glenn 2008, *in litt.;* Encinas 2008, *in litt.*) (Figure 1). The Mojave fringe-toed lizard is also now known to occur in additional areas of Ibex Dunes, Dumont Dunes, and Coyote Holes (Encinas 2008, *in litt.*). In combination, these new areas have expanded the range of the Amargosa River population beyond what was described in the petition. However, the expanded Amargosa River population, including these new areas, is still approximately 17 mi (27 km) from the next nearest location known to be occupied by the species (Silver Lake, Figure 1).

As also noted above in the ''Species Range, Habitat, and Dispersal'' section, there are other dunes and areas of suitable wind-blown sand that could allow for movement of lizards between populations. Two dry lakes, the larger Silurian Lake and a smaller, unnamed lake, lie between the Amargosa River population at Dumont Dune and the Mojave River drainage population at Silver Lake, all of which are connected by a dry streambed. In the past, Norris (1958, p. 263) personally observed this area covered in sand and occupied by Mojave fringe-toed lizards and specifically mentioned dunes at Silurian Lake being occupied. He noted migration between river drainages was allowed across low divides, such as the divide between the Mojave and the Amargosa Rivers when sand shadows (an accumulation of sand formed in the shelter of a fixed obstruction, such as clumps of vegetation) and blow-ups were present (Norris 1958, p. 316). Sand dunes are highly dynamic and continually moving, in some cases, moving several meters per year (Norris 1958, p. 262). This dune movement may have accounted for the species' movement and occupancy of the low divide between the Mojave and Amargosa River drainages, providing a corridor between populations (Norris 1958, p. 263). However, based on our review of aerial photos taken subsequent to Norris' observations, suitable dune habitat does not appear to currently exist around Silurian Lake. Gottscho (2010, p. 31) also noted that the low-divide area between the Mojave and Amargosa River drainages that Norris referred to in 1958 as being covered by sand and occupied by Mojave fringe-toed lizards does not appear to be covered by sand or occupied by Mojave fringe-toed lizards currently. Therefore, at the present time, the Amargosa River population appears to be physically isolated from other populations of Mojave fringed-toed lizards.

Thus, based on the best scientific and commercial information currently available, we believe that the 17 mi (27 km) of unsuitable habitat between the Amargosa River population and the next nearest area known to be currently occupied by the species is beyond the dispersal capability of the species, and we conclude that the Amargosa River population is markedly physically separated from other populations. Therefore, we have determined that the Amargosa River population of the

Mojave fringe-toed lizard meets the discreteness element of our DPS policy.

International Boundaries

A population segment of a vertebrate species may be considered discrete if it is delimited by international governmental boundaries across which differences in control of exploitation, management of habitat, conservation status, or regulatory mechanisms exist that are significant in light of section 4(a)(1)(D) of the Act. The range of the Mojave fringe-toed lizard occurs solely within the continental United States and is not delimited by international governmental boundaries. Therefore, the Amargosa River population of Mojave fringe-toed lizard does not satisfy this condition.

Summary for Discreteness

We find that the Amargosa River population is markedly physically separated from other populations because of the limited dispersal capability of the Mojave fringe-toed lizard and the absence of intervening habitat that could provide for the regular movement of lizards between this population and other populations. Consequently, and based upon review of the best available information, the Service finds that the Amargosa River population meets the discreteness element of our DPS policy.

Significance

Because we have determined that the Amargosa River population of Mojave fringe-toed lizard is discrete under our DPS policy, we will next consider its biological and ecological significance to the taxon to which it belongs in light of Congressional guidance that the authority to list DPSs be used ''sparingly'' while encouraging the conservation of genetic diversity. To evaluate whether a discrete vertebrate population may be significant to the taxon to which it belongs, we consider available scientific evidence of the population segment's importance to the taxon to which it belongs. Because precise circumstances are likely to vary considerably from case to case, the DPS policy does not describe all the classes of information that might be used in determining the biological and ecological importance of a discrete population. However, the DPS policy describes four possible classes of information that provide evidence of a population segment's biological and ecological importance to the taxon to which it belongs. As specified in the DPS policy (61 FR 4722), this consideration of the population segment's significance may include, but is not limited to the following:

(1) Persistence of the discrete population segment in an ecological setting unusual or unique for the taxon,

(2) Evidence that loss of the discrete population segment would result in a significant gap in the range of a taxon,

(3) Evidence that the discrete population segment represents the only surviving natural occurrence of a taxon that may be more abundant elsewhere as an introduced population outside its historical range, or

(4) Evidence that the discrete population segment differs markedly from other populations of the species in its genetic characteristics.

A population segment needs to satisfy only one of these criteria to be considered significant. Furthermore, the list of criteria is not exhaustive; other criteria may be used as appropriate. Here we evaluate the four potential factors suggested by our DPS policy in evaluating significance.

Persistence of the Discrete Population Segment in an Ecological Setting Unusual or Unique for the Taxon

Available information does not indicate that differences exist in the ecological setting between the Amargosa River population and other populations within the species' range. The habitat occupied by the Amargosa River population is wind-blown sand, which is typical of other populations of Mojave fringed-toed lizard. There is no difference in climate or other physical or biological factors between the Amargosa River population and the Silver Lake population, which is located 17 mi (27 km) to the south but is part of the Mojave River drainage population. There is no available information that would suggest the existence of any morphological, behavioral, or physiological differences between individuals from the Amargosa River population and individuals from other Mojave fringed-toed lizard populations. We therefore determine that the Amargosa River population of the Mojave fringe-toed lizard does not meet the significance element of the DPS policy based on this factor.

Evidence that Loss of the Discrete Population Segment Would Result in a Significant Gap in the Range of a Taxon

We estimate that the areas covered by wind-blown sand habitat at Ibex and Dumont dunes and Coyote Holes, along with the newly discovered areas that constitute the Amargosa River population as defined herein, make up less than 5 percent of the total wind-blown sand habitat occupied by the species (73 FR 1855; January 10, 2008). The Amargosa River population is the most northerly population of the species, and as such, the loss of the Amargosa River population would not result in the isolation of any other populations to the south.

The Amargosa River population is a peripheral population, and peripheral populations can be important in species conservation if they are genetically divergent from populations in the central portion of the species' range (Lesica and Allendorf 1995, pp. 753–760; Lomolino and Channell 1998, pp. 481–484; Fraser 2000, pp. 49–53). Peripheral populations that are spatially distant from central populations may be exposed to different environmental conditions and thus different natural selection forces, which in some populations may result in unique adaptations that may be important for the species in adapting to future environmental changes. However, as discussed above, habitat and climate in the area occupied by the Amargosa River population are similar to environmental conditions elsewhere in the species' range. If different natural selection pressures were acting on the Amargosa River population, differences in morphological, behavioral, or physiological characteristics might be expected between Amargosa River Mojave fringed-toed lizards and Mojave fringed-toed lizards in other populations to the south, but there is no available evidence of such differences. Evidence of genetic differences is discussed below.

We conclude that the loss of the Amargosa River population would not result in a significant gap in the range of the species because the population represents only a small percentage (less than 5 percent) of the species' range, and potential loss of the population would not result in the isolation of any other Mojave fringed-toed lizard populations. Peripheral populations can have conservation value, but available evidence does not indicate that individuals from the Amargosa River population have unique morphological, behavioral, or physiological adaptations that may be significant to the species' conservation.

Whether the Population Represents the Only Surviving Natural Occurrence of the Taxon

The Amargosa River population is not the only surviving natural occurrence of the species. Mojave fringe-toed lizards are known to occur at more than 35 sand dune complexes in California, and one in Arizona, all of which are naturally occurring within the species'

historical range. Consequently, we conclude that the Amargosa River population of the Mojave fringe-toed lizard does not meet this factor of the significance criterion of the DPS policy.

Evidence That the Discrete Population Segment Differs Markedly From Other Populations of the Species in Its Genetic Characteristics

Two studies have compared genetic characteristics between the Amargosa River population and other Mojave fringed-toed lizard populations (see ''Genetics'' section). One study, based on analysis of mitochondrial DNA, found that individuals from the Amargosa River population possessed unique haplotypes and differed genetically from other Mojave fringed-toed lizard populations (Murphy *et al.* 2006, pp. 226–247). Another study, based on analysis of 15 nuclear DNA loci, found no genetic divergence between the Amargosa River population and other Mojave fringed-toed lizard populations (Gottscho 2010, pp. 21–68).

Different patterns of genetic variation between mitochondrial and nuclear DNA analyses are not uncommon (Moore 1995, pp. 718–726; Avise 2004, pp. 273–276, 372–380; Ballard and Whitlock 2004, pp. 729–744; Bazin *et al.* 2006, pp. 570–572; Zink and Barrowclough 2008, pp. 2107–2121). Mitochondrial and nuclear DNA differ in important aspects. Genes in the mitochondrial genome evolve as a single linkage unit (Allendorf and Luikart 2007, p. 159). Mitochondrial DNA analysis thus yields only a single gene tree, and single gene trees potentially misrepresent the taxon's evolutionary history (Ballard and Whitlock 2004, p. 734; Zink and Barrowclough 2008, p. 2108). For most animal species, including the Mojave fringed-toed lizard, individuals inherit mitochondrial DNA from only the mother; nuclear DNA is inherited from both mother and father (Allendorf and Luikart 2007, p. 159). These and other differences between mitochondrial and nuclear DNA have led some to caution against the sole use of mitochondrial DNA analysis when trying to understand the phylogeography or evolutionary history of a species or population (Moore 1995, pp. 718–726; Hare 2001, pp. 700–706; Ballard and Whitlock 2004, pp. 729–744; Bazin *et al.* 2006, 570–572).

One of the implications of the differences between mitochondrial and nuclear DNA is that genetic drift will cause divergence between isolated populations to occur more slowly at nuclear gene loci than at mitochondrial gene loci (Hare 2001, pp. 701–702; Zink and Barrowclough 2008, p. 2109). Genetic drift is change in the frequency of a gene variant, or allele, within a population due to random sampling. Zink and Barrowclough (2008, pp. 2107–2121) concluded that mitochondrial DNA is more likely than nuclear DNA to reveal more recent evolutionary splits and that nuclear markers are more lagging indicators of changes in population structure.

Another implication of the differences between mitochondrial and nuclear DNA is that mitochondrial DNA is a single molecule with a single specific history that, for various reasons, can differ from the true evolutionary history of the species or population (Ballard and Whitlock 2004, p. 734). For example, because mitochondrial DNA is inherited only from the mother, mitochondrial DNA patterns might be a biased portrayal of the overall lineage history of the species if the species exhibits different dispersal patterns between males and females (Avis 2004, pp. 274–277; Zink and Barrowclough 2008, p. 2108). Indeed, sex-biased dispersal is known to occur in various lizard species (Doughty *et al.* 1994, pp. 227–229; Johansson *et al.* 2008, p. 4426; Urqhhart 2008, p. 2). In Mojave fringe-toed lizards, although the dispersal of males compared to that of females has not been studied, males do display territorial behavior causing rival males to be pushed out of their territory (Carpenter 1963, p. 406). In addition, there is evidence that the home ranges of male Mojave fringe-toed lizards are larger than those of females (Penrod *et al.* 2008, p. 47). Because it is likely that Mojave fringe-toed lizard males disperse farther than females, we would expect more gene flow to occur among nuclear genes than among mitochondrial genes because mitochondrial genes are only inherited from the female. As a result of reduced female dispersal, gene flow among mitochondrial genes may be reduced compared to nuclear gene flow in species with sex-biased dispersal patterns (Avise 2004, pp. 273–276; Gottscho 2010, p. 32). Reduced flow of mitochondrial genes compared to nuclear genes would be expected to result in greater genetic divergence between individuals and populations in mitochondrial DNA-based studies compared to nuclear DNA-based studies, which is consistent with the pattern observed in the Murphy *et al.* (2006, pp. 226–247) mitochondrial DNA-based study and the Gottscho (2010, pp. 1–81) nuclear DNA-based study.

Gottscho (2010, pp. 21–68) found zero percent genetic divergence between the Amargosa population and other Mojave fringed-toed lizard populations at 15 independent nuclear loci. He concluded that lack of genetic divergence is best explained by past gene flow between Mojave fringed-toed lizard populations (Gottscho 2010, pp. 26–34). He noted that the lack of a single fixed difference between the Amargosa River population and Mojave River population was not unexpected given that the Mojave River overflows into the Amargosa River when its current terminus at Silver Lake reaches capacity, and no mountains exist that might have impeded the movement of sand dunes and lizards between these drainages in historical times (Gottscho 2010, p. 26). Gottscho (2010, pp. 32–33) noted that although sand dune complexes may seem isolated today, in geologic time (evolutionary time) they have moved across the landscape regularly with changing climate.

We conclude that the results of Murphy *et al.* (2006) do not reflect deep genetic divergence between the Amargosa River population and other Mojave fringed-toed lizard populations, as evidenced by the shared haplotypes from the Amargosa River clade and Mojave River drainage clades at the Red Pass Dune location, which is located outside of the Amargosa River drainage (see Genetics section). We conclude that the results of Murphy *et al.* (2006) and Gottscho (2010) are best explained by relatively recent evolutionary population divergence between the Amargosa River population and Mojave River drainage populations: the relatively recent divergence has been enough for subtle differences in the mitochondrial DNA to develop, as indicated by the Murphy *et al.* (2006) study, but not enough for differences in the nuclear DNA genetic markers to develop, as indicated by the Gottscho (2010) study (Gottscho 2011, pers. comm.). We find that the best available information is not indicative of marked differences in genetic characteristics between the Amargosa River population and other Mojave fringed-toed lizard populations because: (1) The Gottshco (2010) study, which showed no genetic differentiation between the Amargosa River population and other Mojave fringed-toed lizard populations, was based on analysis of multiple, independent nuclear gene loci, whereas the Murphy *et al.* (2006) study was based on analysis of a single mitochondrial gene locus and thus may not present a full and accurate representation of the population's evolutionary history (see discussion above of potential limitations of mitochondrial DNA studies); (2) the

results of Murphy *et al.* (2006) are not indicative of deeply divergent genetic differentiation, as evidenced by the shared haplotypes from the Amargosa River clade and Mojave River drainage clades at the Red Pass Dune location.

Summary for Significance

Based on the best information available, we do not find that the Amargosa River population occurs in a unique ecological setting because the population occurs in an ecological setting similar to other nearby populations. Climate and habitat within the Amargosa River population area are similar to climate and habitat in nearby population areas within the Mojave River drainage. We also do not find that the loss of the Amargosa River population would result in a significant gap in the range of the species because the loss of the population would not result in the isolation of other Mojave fringed-toed lizard populations, and the Amargosa River population makes up only a small percentage (less than 5 percent) of the entire range of the species. The Amargosa River population is not the only surviving natural occurrence of the taxon, as all known areas currently occupied by the species (see Figure 1) are naturally occurring populations within the historical range of the species. We also find that the Amargosa River population does not differ markedly from other Mojave fringed-toed lizard populations in its genetic characteristics. One study found evidence of certain genetic differences between the Amargosa River population and other Mojave fringed-toed lizard populations (Murphy *et al.* (2006)), and another study found evidence of no genetic differentiation between populations (Gottscho (2010)). We conclude that in total, the best available data from these studies does not rise to the level of meeting the standard of marked differences in genetic characteristics between the Amargosa River population and other Mojave fringed-toed lizard populations. We also note that there is no evidence of morphological, physiological, or behavioral differences between individuals from the Amargosa River population and individuals from other Mojave fringed-toed lizard populations; such differences may be expected if Mojave fringed-toed lizards from the Amargosa River population possessed unique evolutionary adaptations. Moreover, the best available scientific evidence does not indicate any other classes of information that may provide evidence of the Amargosa River population's biological and ecological importance to the Mojave fringe-toed lizard species.

Overall, based on our review of the factors for significance as summarized herein, we find that the Amargosa River population of the Mojave fringe-toed lizard does not satisfy the considerations of the DPS policy for being significant in relation to the remainder of the taxon.

Determination of Distinct Population Segment

Based on the best scientific and commercial data available, we find that the Amargosa River population of Mojave fringed-toed lizard meets the discreteness element of our 1996 DPS policy, but not the significance element. To qualify as a DPS under the Services' 1996 DPS policy, a population must meet both the discreteness and significance elements of the policy. Therefore, the Amargosa River population does not qualify as a DPS under our DPS policy and is not a listable entity under the Act. Because the population does not qualify as a DPS, we will not proceed with an evaluation of the status of the population under the Act.

Finding

We have carefully assessed the best scientific and commercial information available for the Amargosa River population of the Mojave fringe-toed lizard, including information in the petition, and available published and unpublished scientific and commercial information. This 12-month finding reflects and incorporates information that we received from the public and interested parties or that we obtained through consultation, literature research, and field visits.

On the basis of this review, we have determined that the Amargosa River population of Mojave fringe-toed lizard, although discrete according to our DPS policy, does not meet the significance element of our 1996 DPS policy. The best available scientific and commercial information does not indicate that the Amargosa River population occurs in an ecological setting unusual or unique for the taxon; climate and habitat in the Amargosa River population area are similar to climate and habitat of nearby populations, and we are not aware of differences in behavior, physiology, or morphology between lizards in the Amargosa River population and nearby populations. The best available information also does not indicate that loss of the Amargosa River population would result in a significant gap in the range of the species; loss of the population would not result in the isolation of other Mojave fringed-toed lizard populations; and the population area makes up only a small portion of the entire species' range. The Amargosa River population does not represent the only surviving natural occurrence of a taxon that may be more abundant elsewhere as an introduced population outside its historical range. Although an analysis of mitochondrial DNA showed genetic differences between individuals in the Amargosa River population and individuals in other Mojave fringed-toed lizard populations (Murphy *et al.* 2006, pp. 226–247), this study found that individuals from a population area in the Mojave River drainage (Red Pass Dune) had shared haplotypes from the Amargosa River clade and Mojave River drainage clades. A recent study that analyzed nuclear DNA found zero genetic divergence between lizards in the Amargosa River population and lizards in other Mojave fringed-toed lizard populations at all 15 independent nuclear loci analyzed (Gottscho 2010, pp. 26–30). The best available information does not indicate that individuals from the Amargosa River population possess unique evolutionary adaptations as there are no known morphological, physiological, or behavioral differences between individuals from the Amargosa River population and other Mojave fringed-toed lizard populations. We conclude that the best scientific and commercial data available do not indicate that the Amargosa River population differs markedly from other populations of the species in its genetic characteristics.

We have determined that the Amargosa River population, while markedly separated from other existing populations of Mojave fringe-toed lizard and thus discrete, does not meet the significance element of our 1996 DPS policy and, therefore, does not qualify as a DPS and is not a listable entity under the Act. Therefore, we find that the petitioned action to list the Amargosa River population of Mojave fringe-toed lizard as an endangered or threatened species under the Act is not warranted.

We request that you submit any new information concerning the status of, or threats to, this species to our Ventura Fish and Wildlife Office (see **ADDRESSES** section) whenever it becomes available. New information will help us monitor this species and promote its conservation. If an emergency situation develops for this or any other species, we will act to provide immediate protection.

References Cited

A complete list of all references cited in this document is available on the Internet at *http://www.regulations.gov,* or upon request from the Field Supervisor, Ventura Fish and Wildlife Office (see **ADDRESSES** section).

Authors

The primary authors of this notice are the staff members of the Ventura Fish and Wildlife Office (see **ADDRESSES** section).

Authority

The authority for this action is section 4 of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

Dated: September 23, 2011.

Rowan Gould,

Acting Director, Fish and Wildlife Service,

[FR Doc. 2011–25561 Filed 10–3–11; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

[Docket No. FWS–R2–ES–2010–0072; MO 92210–0–0009–B4]

RIN 1018–AX17

Endangered and Threatened Wildlife and Plants; Endangered Status and Designation of Critical Habitat for Spikedace and Loach Minnow; Revised Proposed Rule

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule; revision and reopening of the comment period.

SUMMARY: We, the U.S. Fish and Wildlife Service, announce the reopening of the October 28, 2010, public comment period on the proposed designation of critical habitat and proposed endangered status for the spikedace *(Meda fulgida)* and loach minnow *(Tiaroga cobitis)* under the Endangered Species Act of 1973, as amended (Act). We also announce the availability of a draft economic analysis (DEA) and draft environmental assessment (EA) on the proposed designation of critical habitat for spikedace and loach minnow, and an amended required determinations section of the proposal. We are also announcing a revision to proposed critical habitat units 6 (San Francisco River Subbasin) and 8 (Gila River Subbasin) for loach minnow. We are reopening the comment period to allow all interested parties an opportunity to comment simultaneously on the proposed rule, revisions to the proposed rule, the associated DEA and draft EA, and the amended required determinations section. Comments previously submitted need not be resubmitted and will be fully considered in preparation of the final rule.

DATES: *Comment submission:* We will consider comments received on or before November 3, 2011. Comments must be received by 11:59 p.m. Eastern Time on the closing date. Any comments that we receive after the closing date may not be considered in the final decision on this action.

Public hearing: We will hold a public hearing on the critical habitat proposal, draft economic analysis, and draft environmental assessment, preceded by an informational session. The informational session will be held from 3 to 4:30 p.m., followed by a public hearing from 6:30 to 8 p.m., on October 17, 2011.

ADDRESSES: *Document availability:* You may obtain a copy of the DEA or EA at *http://www.regulations.gov* at Docket No. FWS–R2–ES–2010–0072 or by contacting the person listed under **FOR FURTHER INFORMATION CONTACT.**

Comment submission: You may submit comments by one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments to Docket No. FWS–R2–ES–2010–0072.
- *U.S. mail or hand-delivery:* Public Comments Processing, Attn: FWS–R2–ES–2010–0072, Division of Policy and Directives Management, U.S. Fish and Wildlife Service, 4401 N. Fairfax Drive, Suite 222, Arlington, VA 22203.

Public hearing: The public hearing of October 17, 2011, will be held at the Apache Gold Convention Center (Geronimo Room), located five miles east of Globe, Arizona on Highway 70. People needing reasonable accommodations in order to attend and participate in the public hearings should contact Steve Spangle, Arizona Ecological Services Office, at (602) 242–0210 as soon as possible (see **FOR FURTHER INFORMATION CONTACT**). In order to allow sufficient time to process requests, please call no later than one week before the hearing date.

FOR FURTHER INFORMATION CONTACT: Steve Spangle, Field Supervisor, U.S. Fish and Wildlife Service, Arizona Ecological Services Office, 2321 W. Royal Palm Road, Suite 103, Phoenix, AZ 85021; telephone (602) 242–0210; facsimile (602) 242–2513. Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at (800) 877–8339.

SUPPLEMENTARY INFORMATION:

Public Comments

We will accept written comments and information during this reopened comment period on our proposed uplisting and designation of critical habitat for the spikedace and loach minnow that was published in the **Federal Register** on October 28, 2010 (75 FR 66482), our draft economic analysis and draft environmental assessment of the proposed designation, and the amended required determinations provided in this document. We will consider information and recommendations from all interested parties. We are particularly interested in comments concerning:

(1) The factors that are the basis for making a listing determination for a species under section 4(a) of the Endangered Species Act of 1973, as amended (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.

(2) Additional information concerning the range, distribution, and population size of this species, including the locations of any additional populations of this species.

(3) Any information on the biological or ecological requirements of the species.

(4) The reasons why we should or should not designate habitat as ''critical habitat'' under section 4 of the Endangered Species Act of 1973, as amended (Act) (16 U.S.C. 1531 *et seq.*) including whether there are threats to the species from human activity, the degree of which can be expected to increase due to the designation, and whether that increase in threat outweighs the benefit of designation such that the designation of critical habitat may not be prudent.

(5) Specific information on:

(a) The amount and distribution of spikedace and loach minnow habitat;

(b) What areas occupied at the time of listing and containing features essential to the conservation of the species should be included in the designation and why;

(c) Special management considerations or protections that features essential to the conservation of spikedace and loach minnow, as identified in this proposal, may require, 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 the species and why.

(6) Land use designations and current or planned activities in the subject areas and their possible impacts on proposed critical habitat.

(7) Any probable economic, national security, or other impacts of designating any area that may be included in the final designation. We are particularly interested in any impacts on small entities or families, and the benefits of including or excluding areas that exhibit these impacts.

(8) 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.

(9) Information on whether the benefit of an exclusion of any particular area outweighs the benefit of inclusion under section 4(b)(2) of the Act. We specifically solicit the delivery of spikedace- and loach minnow-specific management plans for areas included in this proposed designation. Management plans considered in previous critical habitat exclusions for spikedace and loach minnow are available through the contact information listed in **FOR FURTHER INFORMATION CONTACT**.

(10) Information on the projected and reasonably likely impacts of climate change on spikedace and loach minnow and on the critical habitat areas we are proposing.

If you submitted comments or information on the proposed rule (75 FR 66482) during the initial comment period from October 28, 2010, to December 27, 2010, please do not resubmit them. We will incorporate them into the public record as part of this comment period, and we will fully consider them in the preparation of our final determination. Our final determination concerning critical habitat will take into consideration all written comments and any additional information we receive during both comment periods. On the basis of public comments, we may, during the development of our final determination, find that areas proposed are not essential, are appropriate for exclusion under section 4(b)(2) of the Act, or are not appropriate for exclusion.

You may submit your comments and materials concerning the proposed rule, DEA, or draft environmental assessment by one of the methods listed in **ADDRESSES**. We will not consider comments sent by e-mail or fax or to an address not listed in **ADDRESSES**.

If you submit a comment via *http://www.regulations.gov,* your entire comment—including any personal identifying information—will be posted on the Web site. We will post all hardcopy comments on *http://www.regulations.gov* as well. If you submit a hardcopy comment that includes personal identifying information, you may request at the top of your document that we withhold this information from public review. However, we cannot guarantee that we will be able to do so.

Comments and materials we receive, as well as supporting documentation we used in preparing the proposed rule, DEA, and draft environmental assessment will be available for public inspection on *http://www.regulations.gov* at Docket No. FWS–R2–ES–2010–0072, or by appointment, during normal business hours, at the U.S. Fish and Wildlife Service, Arizona Ecological Services Office (see **FOR FURTHER INFORMATION CONTACT**). You may obtain copies of the proposed rule and the DEA on the Internet at *http://www.regulations.gov* at Docket Number FWS–R2–ES–2010–0072, or by mail from the Arizona Ecological Services Office (see **FOR FURTHER INFORMATION CONTACT**).

Background

It is our intent to discuss only those topics directly relevant to the designation of critical habitat for the spikedace and loach minnow in this document. For more information on previous Federal actions concerning the spikedace and loach minnow, refer to the proposed designation of critical habitat published in the **Federal Register** on October 28, 2010 (75 FR 66482). For more information on the spikedace and loach minnow or their habitat, refer to the final listing rule published in the **Federal Register** on (51 FR 23769, July 1, 1986 (spikedace), and 51 FR 39468, October 28, 1986 (loach minnow), and the previous critical habitat designation (72 FR 13356, March 21, 2007), which are available online from the Arizona Ecological Services Office (see **FOR FURTHER INFORMATION CONTACT**). The recovery plans for spikedace and loach minnow were both finalized in 1991, and we have initiated updates and revisions for both plans.

On December 20, 2005, we published a proposed critical habitat designation (70 FR 75546), and on March 21, 2007, we published a final critical habitat designation (72 FR 13356) for the spikedace and loach minnow. The 2007 designation was challenged in *Coalition of Arizona/New Mexico Counties for Stable Economic Growth* v. *Salazar,* (D.N.M.), which was consolidated with another lawsuit brought by the Center for Biological Diversity. Both parties contested the validity of the designation, but for different reasons. We filed a motion for voluntary remand of the final rule on February 2, 2009, in order to reconsider the final rule in light of a recently issued Department of the Interior Solicitor's Opinion, which discusses the Secretary of the Interior's authority to exclude areas from a critical habitat designation under section 4(b)(2) of the Act. On May 4, 2009, the Court granted our motion for voluntary remand, but retained the 2007 critical habitat designation pending promulgation of a new designation.

On October 28, 2010, we published a proposed rule to designate critical habitat for the spikedace and loach minnow (75 FR 66482). We proposed 1,168 kilometers (km) (726 miles (mi)) of streams as critical habitat for spikedace, and 1,172.4 km (728.5 mi) of streams as critical habitat for loach minnow. Of this total mileage, 874 km (543 mi) of streams are overlapping (*proposed* for designation for both species). We are revising critical habitat unit 6 (San Francisco River Subbasin) for loach minnow by adding 22.8 km (14.2 mi) to the San Francisco River. In addition, we are proposing 31.4 km (19.5 mi) of Bear Creek for loach minnow in Grant County, New Mexico. This would be an addition to critical habitat unit 8 (Gila River subbasin). The explanation for these proposed changes are discussed below. The October 28, 2010, proposal had a 60-day comment period, ending December 27, 2010. We received two requests for public hearing, and have scheduled a public hearing on the date specified above in **DATES** and at the location specified above in **ADDRESSES**. We will submit for publication in the **Federal Register** a final critical habitat designation for spikedace and loach minnow on or before October 28, 2011.

We are notifying the public of several changes made to the proposed listing rule. First, in the proposed rule, we defined occupied areas as those streams for which we have species records up to 1986, when they were first listed (51 FR 39468, October 28, 1986, for loach minnow; and 51 FR 23769, July 1, 1986, for spikedace), as well as areas determined to be occupied since listing. To improve clarity, we are revising the

definition. We propose to include as occupied those areas which were identified as occupied for each species in the original listing documents, as well as any additional areas determined to be occupied after 1986. Our reasoning for the inclusion of these additional areas (post-1986) is that it is likely that those areas were occupied at the time of the original listings, but had not been detected in surveys. This change in definition does not result in a change to any of the areas included or excluded as critical habitat in the proposed rule, and the total amount designated as critical habitat will not change, except for the addition of critical habitat along the San Francisco River discussed below. However, some of the areas previously identified as occupied habitat in the proposed rule may now be classified as essential unoccupied habitat.

Second, we would like to provide clarification regarding the criteria that we used to identify critical habitat in our proposed rule. We based our criteria, in part, on a preliminary assessment of steps necessary to achieve recovery of spikedace and loach minnow. We refer to these criteria as a ruleset and the elements are described in the ''Criteria Used to Identify Critical Habitat'' section of the proposed rule (October 28, 2010, 75 FR 66482). One of the criteria used evaluates the potential of a stream segment to ''connect to other occupied areas, which will enhance genetic exchange between populations.'' In the proposed rule, we identified the following three segments under this criterion: Granite Creek in the Verde River Subbasin for both species; and Deer Creek and Turkey Creek for loach minnow in the San Pedro Subbasin. After additional review, we conclude that these three segments do not connect to other occupied areas, and there are no other unoccupied stream segments in the proposed rule that connect occupied habitats. At this time, we are unable to identify other areas that could serve as connective corridors between occupied and unoccupied habitat. Therefore, we are removing this criterion as an element of the rule set. The removal of this criterion does not alter the proposed rule or the amount of critical habitat being proposed, except for the revision within unit 6, as the areas proposed meet one or more of the remaining criteria outlined in the ruleset.

We acknowledge the absence of connective corridors in the proposed designation. We continue to believe that both loach minnow and spikedace conservation will require genetic exchange between the remaining populations to allow for genetic variation, which is important for species' fitness and adaptive capability. Our inability to identify unoccupied streams that would provide connections between occupied areas is a result of the highly degraded condition of unoccupied habitat and the uncertainty of stream corridor restoration potential. We also acknowledge that other areas, outside of the critical habitat designation, may be necessary for long-term conservation. These areas will be subject to future on-the-ground recovery actions and opportunities under section 7(a)(1) of the Act. Furthermore, we will address the issue of restoration of genetic exchange in our revised Recovery Plan.

Third, we would like to correct an error we made in the October 28, 2010, proposed rule. The error is within Unit 6 (San Francisco River Subbasin), and applies to the amount of stream miles designated as critical habitat for loach minnow on the San Francisco River. On pp. 66515, 66533 (legal description), and 66534 (map), we state that 181.0 km (112.3 mi) of the San Francisco River, from the confluence with the Gila River in Greenlee County, Arizona, upstream to the confluence with the Tularosa River in Catron County, New Mexico, is included in the designation. We intended to use the same area described in the 2007 final rule (72 FR 13356); that is, 203.5 km (126.5 mi) of the San Francisco River, from the confluence with the Gila River upstream to the mouth of the Box, a canyon above the town of Reserve in Catron County, New Mexico. This will add 22.8 km (14.2 mi) to the current designation for loach minnow. The total amount of designated habitat for loach minnow is 1,164 km (723 mi), rather than the 1,141 km (709 mi) referred to in the October 28, 2010, proposed rule. The unit descriptions, legal description, and map will be corrected in the final rule. The stream miles (181.0 km (112.3)) of the San Francisco River designated for spikedace will remain the same.

Fourth, we are going to propose an additional stream segment in New Mexico for loach minnow. In our October 28, 2010, proposed rule, Bear Creek in Grant County, New Mexico, was not included in the proposed critical habitat designation. Although we had records of loach minnow occurrence in Bear Creek in 2005, we concluded that most of the stream was intermittent and that loach minnow were not likely to persist there over time. We also concluded that the loach minnow in Bear Creek likely moved upstream during a period of high flow when Bear Creek was temporarily connected to the Gila River where loach minnow are known to persist. After the receipt of agency and public comments and our internal review, we have also been made aware of loach minnow records in Bear Creek from 2006. Bear Creek would be categorized as a 1a stream under the ruleset found in the proposed rule because of the records of loach minnow from 2005 and 2006. Given the presence of loach minnow in the upper portion of Bear Creek, in this revised proposed rule in unit 8, we propose to include 31.4 km (19.5 mi) of Bear Creek from the confluence with the Gila River upstream to the confluence with Sycamore and North Fork Walnut creeks. We recognize that portions of this stream are intermittent, but also acknowledge that streams with intermittent flows can function as connective corridors through which the species may move when the area is wetted. We will continue to solicit additional information on this stream segment during the open comment period to aid us in making a determination of the suitability of including this stream in the final rule.

We have a final clarification on the language used in our proposed rule. Under the Act and its implementing regulations, we are required to identify the physical and biological features (PBFs) essential to the conservation of spikedace and loach minnow in areas occupied at the time of listing, focusing on the features' primary constituent elements (PCEs). We consider PCEs to be the elements of physical and 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. We outline the appropriate quantities and spatial arrangements of the elements in the *Physical and Biological Features (PBFs)* section of the October 28, 2010, proposed rule. For example, spawning substrate would be considered an essential feature, while the specific composition (sand, gravel, and cobble) and level of embeddedness are the elements (PCEs) of that feature.

Section 3 of the Act defines critical habitat as the specific areas within the geographical area occupied by a species, at the time it is listed in accordance with the Act, on which are found those physical or biological features essential to the conservation of the species and that may require special management considerations or protection, and specific areas outside the geographical area occupied by a species at the time it is listed, upon a determination that such areas are essential for the conservation of the species. If the proposed rule is made final, section 7 of

the Act will prohibit destruction or adverse modification of critical habitat by any activity funded, authorized, or carried out by any Federal agency. Federal agencies proposing actions affecting critical habitat must consult with us on the effects of their proposed actions, under section 7(a)(2) of the Act.

Consideration of Impacts Under Section 4(b)(2) of the Act

Section 4(b)(2) of the Act requires that we designate or revise critical habitat based upon the best scientific data available, after taking into consideration the economic impact, impact on national security, or any other relevant impact of specifying any particular area as critical habitat. We may exclude an area from critical habitat if we determine that the benefits of excluding the area outweigh the benefits of including the area as critical habitat, provided such exclusion will not result in the extinction of the species.

When considering the benefits of inclusion for an area, we consider the additional regulatory benefits that area would receive from the protection from adverse modification or destruction as a result of actions with a Federal nexus (activities conducted, funded, permitted, or authorized by Federal agencies), the educational benefits of mapping areas containing essential features that aid in the recovery of the listed species, and any benefits that may result from designation due to State or Federal laws that may apply to critical habitat.

When considering the benefits of exclusion, we consider, among other things, whether exclusion of a specific area is likely to result in conservation; the continuation, strengthening, or encouragement of partnerships; or implementation of a management plan.

The final decision on whether to exclude any areas will be based on the best scientific data available at the time of the final designation, including information obtained during the comment period and information about the economic impact of designation. Accordingly, we have prepared a draft economic analysis (DEA) concerning the proposed critical habitat designation, which is available for review and comment (see **ADDRESSES**).

Draft Economic Analysis

To consider the economic impacts ''of specifying any particular area as critical habitat,'' as section 4(b)(2) of the Act requires, the Service must first identify the probable economic impacts that stem from a designation (50 CFR 424.19). We have interpreted ''probable economic impacts'' to be those potential impacts that are reasonably likely to occur as a result of the critical habitat designation. The identification of the probable incremental effects of a critical habitat designation involves comparing the economic and other relevant impacts that would be present without the designation of a particular area as critical habitat with what would be expected if the particular area is included in the designation—in other words, a comparison of the world with and without critical habitat. A key aspect of this comparison requires identifying, at a general level, the additional protections for species (*e.g.,* project modification or conservation measures) or changes in behavior (*e.g.,* increased awareness that may result in reinitiations of consultation, or additional consultations, under section 7 of the Act; compliance with other laws such as State environmental oversight regulations) and the corresponding costs and impacts to society that may result as a consequence of the critical habitat designation. The scope of probable impacts, then, is inevitably determined by the purpose and function of critical habitat as understood at the time of designation and the conservation measures in place prior to the designation for the particular species and its habitat.

The Service traditionally understood the first sentence of section 4(b)(2) of the Act to require consideration of only those impacts that are solely attributable to—that would not occur ''but for''—the proposed critical habitat designation. Under this approach, known as the ''incremental effects analysis'' (otherwise referred to by the courts as the ''baseline approach''), the Service isolates the probable impacts that would result solely from the designation (incremental effects) from those that stem also from other causes, such as the underlying listing determination or other conservation measures being implemented for the species and its habitat (baseline effects). Once identified, the resulting incremental effects of the designation are then used in the balancing analysis, if one is conducted, under the second sentence of section 4(b)(2) for evaluating the benefits of including a particular area in, or excluding it from, critical habitat, and for evaluating compliance with the required determinations.

However, the application of this relatively straightforward paradigm had become problematic by the late 1990s, in light of our interpretations and practices that had the effect of minimizing the role of critical habitat in safeguarding species' recovery. This stemmed in part from the Service's and National Marine Fisheries Service's 1986 joint regulations implementing the interagency consultation provisions of section 7 of the Act (50 CFR 402). Those regulations govern the assessment of Federal actions that may have adverse impacts on listed species or their critical habitat. They interpret and implement the statute's prohibitions against actions that are likely to jeopardize the continued existence of listed species or result in destruction or adverse modification of critical habitat. However, two key definitions (''jeopardize the continued existence of'' and ''destruction or adverse modification'') had been defined in a similar manner in that they each evaluated impacts on both survival and recovery of a species.

Moreover, our general practice had been to infrequently designate critical habitat in areas where the species was not currently present; because consultation under the jeopardy standard can occur wherever the species is present, this limited the circumstances in which a consultation under the adverse-modification standard would take place without a concomitant consultation under the jeopardy standard. Because the section 7 prohibition against Federal agency actions that may result in ''destruction or adverse modification'' is the most significant and direct protection afforded by a critical habitat designation, equating the two standards while making them occur in conjunction with each other made it practically impossible to distinguish the protections stemming from critical habitat (*i.e.,* incremental effects) from those afforded a species by it being listed as an endangered or threatened species (*i.e.,* baseline effects).

As a result, case law significantly influenced the Service's methodology for evaluating the probable economic effects of a critical habitat designation. In 2001, the United States Court of Appeals for the Tenth Circuit held that, in light of the narrow role reserved for critical habitat under the regulations and the Service's view at the time, the Service was legally precluded from relying on the incremental-effects approach. *New Mexico Cattle Growers Ass'n* v. *United States Fish & Wildlife Serv.,* 248 F.3d 1277, 1283–85 (10th Cir. 2001). The court specifically identified the source of the problem as being ''FWS's long held policy position that [critical habitat determinations] are unhelpful, duplicative, and unnecessary.'' The court held that this position was rooted in the interpretations of the ''jeopardy standard'' and the ''adverse

modification standard'' in 50 CFR 402.02, which the court saw as being defined either to be ''virtually identical'' or such that the latter was subsumed into the ''jeopardy standard.''

To satisfy section 4(b)(2) of the Act in light of the then-current regulations, the court ruled that the Service must consider all impacts that stem in any way from the proposed critical habitat designation, even if they are also partially caused (or, caused ''coextensively'') by listing. In other words, even if there was no ''but for'' economic impact as a result of critical habitat designation, the Service was still required to consider the coextensive economic impacts. The court did not define ''coextensive'' economic analysis; however, the Services interpreted ''coextensive'' to be the sum of anticipated baseline and incremental economic impacts. As a consequence, following the *New Mexico Cattle Growers* decision, the Service began to apply a coextensive approach that evaluated all costs related to the conservation of the species and its habitat, including those attributed to the species being listed as an endangered or threatened species.

Meanwhile, other courts began to conclude that the definition of ''destruction or adverse modification'' in the 1986 regulations did not adequately fulfill the statute's conservation purpose. In fact, the Ninth Circuit in *Gifford Pinchot Task Force* v. *U.S. Fish & Wildlife Service,* 378 F.3d 1059 (9th Cir.), *modified,* 387 F.3d 968 (9th Cir. 2004), invalidated the regulatory definition of ''destruction or adverse modification.'' Following the Ninth Circuit's decision, most district court decisions have rejected coextensive economic analyses. For example, the court in *Cape Hatteras Access Pres. Alliance* v *DOI,* 344 F. Supp. 2d 108, 128–30 (D.D.C. 2004) (*Cape Hatteras*) found that an evaluation of the incremental effect of a critical habitat designation was reasonable and permissible. In that decision the court stated, ''[t]he baseline approach is a reasonable method for assessing the actual costs of a particular critical habitat designation. To find the true cost of a designation, the world with the designation must be compared to the world without it. * * * In order to calculate the costs above the baseline, those that are the ''but for'' result of designation, the agency may need to consider the economic impact of listing and other events that contribute to and fall below the baseline.''

Similarly, in 2010, the Ninth Circuit concluded that the faulty underlying premises that led to the invalidation of the incremental effects (baseline approach) in 2001 no longer applied, and that our consideration of ''but for'' impacts in the increment above the baseline is permissible under the Act (*Arizona Cattle Growers Ass'n* v. *Salazar,* 606 F.3d 1160, 1173 (9th Cir. 2010). It, therefore, held, in light of this change in circumstances, that ''the FWS may employ the baseline approach in analyzing a critical habitat designation.'' In so holding, the court noted that the baseline approach is ''more logical than'' the coextensive approach. The Ninth Circuit further reaffirmed its conclusion in *Home Builders Ass'n of Northern California* v. *U.S. Fish & Wildlife Serv.* 616 F.3d 983 (9th Cir. 2010), in which plaintiffs challenged the use of the Service's incremental-effects (baseline) approach. The Court held that the Service properly analyzed the economic impacts of the critical habitat designation for vernal pool species and stated that the plain language of the Act directs the agency to consider only those impacts caused by the critical habitat designation itself.

In 2008, the Solicitor for the Department of the Interior drafted a Memorandum Opinion summarizing case law on the Secretary's authority to exclude areas from a critical habitat designation under section 4(b)(2) of the Act, including the appropriate use of economic analyses in critical habitat determinations. [Department of the Interior Solicitor Memorandum, October 3, 2008, The Secretary's Authority to Exclude Areas from a Critical Habitat Designation under Section 4(b)(2) of the Endangered Species Act (Opinion M–37016)] In this opinion, the Solicitor concluded that—

> the reasoning in the *Cape Hatteras* line of cases persuasive for the proposition that ''to find the true cost of a designation, the world with the designation must be compared to the world without it.'' Cape Hatteras, 344 F. Supp. 2d at 130. The purpose of excluding an area from critical habitat is to avoid the impacts of the designation, or to realize the benefits that the Secretary determines will flow from that exclusion. Benefits of exclusion are often in the form of avoiding a cost imposed by the designation. By definition, when impacts are completely ''coextensive'', ''such that they will occur even if the area is not designated, any ''cost'' imposed by the designation will not be avoided if the area at issue is excluded. Therefore, exclusion of the area based on such costs would serve no purpose.

Consistent with recent case law and the 2008 Solicitors Memorandum Opinion, the Service concludes that the appropriate analysis to consider economic impacts of a critical habitat designation is to limit the evaluation of the probable economic effects to those that are incremental to, or result solely from, the designation itself. The Service also believes that the use of an incremental-effects analysis is sufficient to fulfill the requirement under section 4(b)(2) of the Act. However, given that we do not have a new definition of ''destruction or adverse modification,'' there may be certain circumstances where we may want to evaluate impacts beyond those that are solely incremental. Such is the case with spikedace and loach minnow, where we have extensive case law and determinations of effects that suggest we evaluate not only incremental effects, but also coextensive effects. While we think that the incremental effects approach is appropriate and meets the intent of the Act, we have taken a conservative approach in this instance to ensure that we are fully evaluating the probable effects of this designation.

The Service attempted to clarify the difference between the jeopardy and adverse modification standards for the spikedace and loach minnow critical habitat in our Incremental Effects Memorandum. This memorandum outlined typical conservation actions, project modifications, and minimization measures that would be requested by the Service to meet the ''not likely to destroy or adversely modify'' standard, above what would be requested to avoid jeopardy to the species. This evaluation of the incremental effects as outlined in the Incremental Effects Memorandum has been used as the basis to develop the draft economic analysis of this proposed designation of critical habitat.

The purpose of the draft economic analysis is to identify and analyze the probable incremental economic impacts associated with the proposed critical habitat designation for the spikedace and loach minnow. The analysis focuses on quantification of the incremental costs of this rulemaking, but provides information on expected costs of conservation efforts expected to occur under the regulatory baseline as context. The ''incremental'' economic impacts are those not expected to occur absent the designation of critical habitat for the spikedace and loach minnow. For a further description of the methodology of the analysis, see Chapter 2, ''Framework for Analysis,'' of the draft economic analysis.

The draft economic analysis provides estimated costs of the reasonably probable incremental economic impacts of the proposed critical habitat designation for the spikedace and loach minnow over the next 20 years, which was determined to be the appropriate period for analysis because limited planning information is available for

most activities to forecast activity levels for projects beyond a 20-year timeframe. It also notes that the timeframe over which certain future impacts can be forecast may be a shorter period. The draft economic analysis quantifies economic impacts of spikedace and loach minnow conservation efforts associated with the following categories of activity:

(1) *Water management:* Including agricultural, municipal, and industrial water diversions. Other affected activities may include flood control and dam operation and maintenance.

(2) *Grazing:* Particularly, increased sedimentation and erosion related to grazing on Bureau of Land Management and U.S. Forest Service lands.

(3) *Mining:* In particular, copper mining operations along Eagle Creek previously have expressed concerns about the potential for critical habitat designation to affect ongoing operations.

(4) *Species management:* Including installation of fish barriers, native species recovery, annual monitoring, and impacts to sportfishing.

(5) *Residential and commercial development:* Including construction in riparian areas and runoff from roads and golf courses.

(6) *Transportation:* Particularly construction and maintenance of bridges, roads, and culverts.

(7) *Fire Management.* Including increased ash, change in water temperature, debris flows, and the use of chemical flame retardants.

The draft economic analysis also describes various concerns expressed by Arizona Tribes concerning possible restrictions on their water rights or water management, but does not quantify potential tribal impacts, except additional administrative costs.

Total incremental impacts for all of the above activities are estimated to be $2.29 to $47.2 million over 20 years ($202,000 to $4.16 million annually) using a real rate of seven percent. However, as discussed above, we are taking a more conservative approach in that we are also evaluating coextensive effects (the sum of baseline and incremental effects). Coextensive effects are estimated to be $75.29 to $169.2 million over 20 years ($6.602 to $15.16 million annualized) using a real rate of seven percent. Quantified baseline costs are primarily associated with:

(1) Water conservation and protection measures that are currently ongoing at Fort Huachuca related to the San Pedro River unit ($4.4 million, annualized at a seven percent discount rate). Many of these actions have been undertaken at the Fort to be protective of the Huachuca water umbel, but are expected to provide baseline protections to the spikedace and loach minnow.

(2) $0.1 million to $2.6 million (annualized at a seven percent discount rate) related to grazing-related conservation efforts, including riparian fencing construction and maintenance.

(3) $1.7 to $3.0 million (annualized at a seven percent discount rate) in other species management efforts, including activities undertaken by the U.S. Bureau of Reclamation, the Arizona Game and Fish Department, and the New Mexico Department of Game and Fish.

As we stated earlier, we are soliciting data and comments from the public on the draft economic analysis, as well as all aspects of the proposed rule and our amended required determinations. We may revise the proposed rule or supporting documents to incorporate or address information we receive during the public comment period. In particular, we may exclude an area from critical habitat if we determine that the benefits of excluding the area outweigh the benefits of including the area, provided the exclusion will not result in the extinction of this species.

Draft Environmental Assessment

The purpose of this draft EA, prepared pursuant to the National Environmental Policy Act (NEPA), is to identify and disclose the environmental consequences resulting from the proposed action of designating critical habitat for the spikedace and loach minnow. In the draft EA, three alternatives are evaluated: Alternative A, the proposed rule with exclusion areas; Alternative B, proposed rule without exclusion areas; and the no action alternative. Under Alternative A, critical habitat segments flowing through tribal and other lands could potentially be excluded in the final rule based on economic impact, national security, or other relevant impacts. The potential exclusion areas discussed in the proposed rule include stream segments that flow through Yavapai-Apache, White Mountain Apache, and San Carlos tribal lands and through lands owned by Freeport-McMoRan. Alternative B is the current proposal, and the no action alternative is equivalent to the 2007 final rule designating critical habitat for spikedace and loach minnow. The no action alternative is required by NEPA for comparison to the other alternatives analyzed in the draft EA.

As we stated earlier, we are soliciting data and comments from the public on the draft EA, as well as all aspects of the proposed rule. We may revise the proposed rule or supporting documents to incorporate or address information we receive during the comment period on the environmental consequences resulting from our designation of critical habitat.

Required Determinations—Amended

In our proposed rule, we indicated that we would defer our determination of compliance with several statutes and executive orders until the information concerning potential economic impacts of the designation and potential effects on landowners and stakeholders became available in the DEA and the draft environmental assessment. We have now made use of the DEA data to make these initial determinations. In this document, we affirm the information in our proposed rule concerning Executive Order (E.O.) 12866 (Regulatory Planning and Review), E.O. 13132 (Federalism), E.O. 12988 (Civil Justice Reform), E.O. 13211 (Energy, Supply, Distribution, and Use), the Unfunded Mandates Reform Act (2 U.S.C. 1501 *et seq.*), the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), and the President's memorandum of April 29, 1994, ''Government-to-Government Relations with Native American Tribal Governments'' (59 FR 22951). However, based on the DEA data and the draft environmental assessment, we are amending our required determination concerning the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), E.O. 12630 (Takings), and National Environmental Policy Act (42 U.S.C. 4321 *et seq.*).

Regulatory Flexibility Act

Under the Regulatory Flexibility Act, as amended by the Small Business Regulatory Enforcement Fairness Act (5 U.S.C. 802(2)), whenever an agency is required to publish a notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis that describes the effect of the rule on small entities (*i.e.,* small businesses, small organizations, and small government jurisdictions). However, no regulatory flexibility analysis is required if the head of an agency certifies the rule will not have a significant economic impact on a substantial number of small entities. Based on our DEA of the proposed designation, we provide our analysis for determining whether the proposed rule would result in a significant economic impact on a substantial number of small entities. Based on comments we receive, we may revise this determination as part of our final rulemaking.

According to the Small Business Administration, small entities include small organizations, such as independent nonprofit organizations;

small governmental jurisdictions, including school boards and city and town governments that serve fewer than 50,000 residents; and small businesses (13 CFR 121.201). Small businesses include manufacturing and mining concerns with fewer than 500 employees, wholesale trade entities with fewer than 100 employees, retail and service businesses with less than $5 million in annual sales, general and heavy construction businesses with less than $27.5 million in annual business, special trade contractors doing less than $11.5 million in annual business, and agricultural businesses with annual sales less than $750,000. To determine if potential economic impacts to these small entities are significant, we considered the types of activities that might trigger regulatory impacts under this designation as well as types of project modifications that may result. In general, the term ''significant economic impact'' is meant to apply to a typical small business firm's business operations.

To determine if the proposed designation of critical habitat for the spikedace and loach minnow would affect a substantial number of small entities, we considered the number of small entities affected within particular types of economic activities, such as mining, species management, transportation, and fire management activities, water management, grazing, and development. In order to determine whether it is appropriate for our agency to certify that this rule would not have a significant economic impact on a substantial number of small entities, we considered each industry or category individually. In estimating the numbers of small entities potentially affected, we also considered whether their activities have any Federal involvement. Critical habitat designation will not affect activities that do not have any Federal involvement; designation of critical habitat only affects activities conducted, funded, permitted, or authorized by Federal agencies. In areas where the species are present, Federal agencies already are required to consult with us under section 7 of the Act on activities they fund, permit, or implement that may affect the species. If we finalize this proposed critical habitat designation, consultations to avoid the destruction or adverse modification of critical habitat would be incorporated into the existing consultation process.

In the DEA, we evaluated the potential economic effects on small entities resulting from implementation of conservation actions related to the proposed designation of critical habitat for the spikedace and loach minnow. No incremental impacts are anticipated for mining, species management, transportation, or fire management activities. The DEA concluded that incremental impacts may be borne by water management, grazing, and development activities. The analysis estimates that 92 small entities may be affected by the rule, each with estimated revenues ranging from $750,000 to $6.4 million per entity. Depending on the activity, annualized impacts may represent between 0 percent and 1.18 percent of annual revenues. Please refer to the DEA of the proposed critical habitat designation for a more detailed discussion of potential economic impacts.

In summary, we have considered whether the proposed designation would result in a significant economic impact on a substantial number of small entities. Information for this analysis was gathered from the Small Business Administration, stakeholders, and the Service. For the above reasons and based on currently available information, we certify that, if promulgated, the proposed designation would not have a significant economic impact on a substantial number of small business entities. Therefore, an initial regulatory flexibility analysis is not required.

Takings—Executive Order 12630

In accordance with E.O. 12630 (Government Actions and Interference with Constitutionally Protected Private Property Rights), we have analyzed the potential takings implications of designating critical habitat for the Spikedace and Loach minnow in a takings implications assessment. Critical habitat designations do not affect landowner actions that do not require Federal funding or permits, nor do they preclude development of habitat conservation programs or issuance of incidental take permits to allow actions that do require Federal funding or permits to go forward. The takings implications assessment concludes that these proposed designations of critical habitat do not pose significant takings implications for lands within or affected by the designations. However, we will further evaluate this issue as we complete our final economic analysis, and review and revise this assessment as appropriate.

National Environmental Policy Act (NEPA)

It is our position that, outside the jurisdiction of the U.S. Court of Appeals for the Tenth Circuit, we do not need to prepare environmental analyses as defined by 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 the Spikedace and Loach minnow, 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. In accordance with the Tenth Circuit, we have completed a draft environmental assessment to identify and disclose the environmental consequences resulting from the proposed designations of critical habitat for the Spikedace and Loach minnow. Our preliminary determination is that the designations of critical habitat for the Spikedace and Loach minnow would not have direct impacts on the environment. However, we will further evaluate this issue as we complete our final environmental assessment.

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, Transportation.

Regulation Promulgation

Accordingly, we propose to further amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, as proposed to be amended at 75 FR 66482, October 28, 2010, as follows:

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.

2. Amend § 17.95(e), in the entry for ''Loach minnow *(Tiaroga cobitis),''* by revising paragraphs (6), (12)(i) and (v), and (14)(vi) and by adding paragraph (14)(vii) to read as follows:

§ 17.95 Critical habitat—fish and wildlife.

* * * * *

(e) *Fishes.*

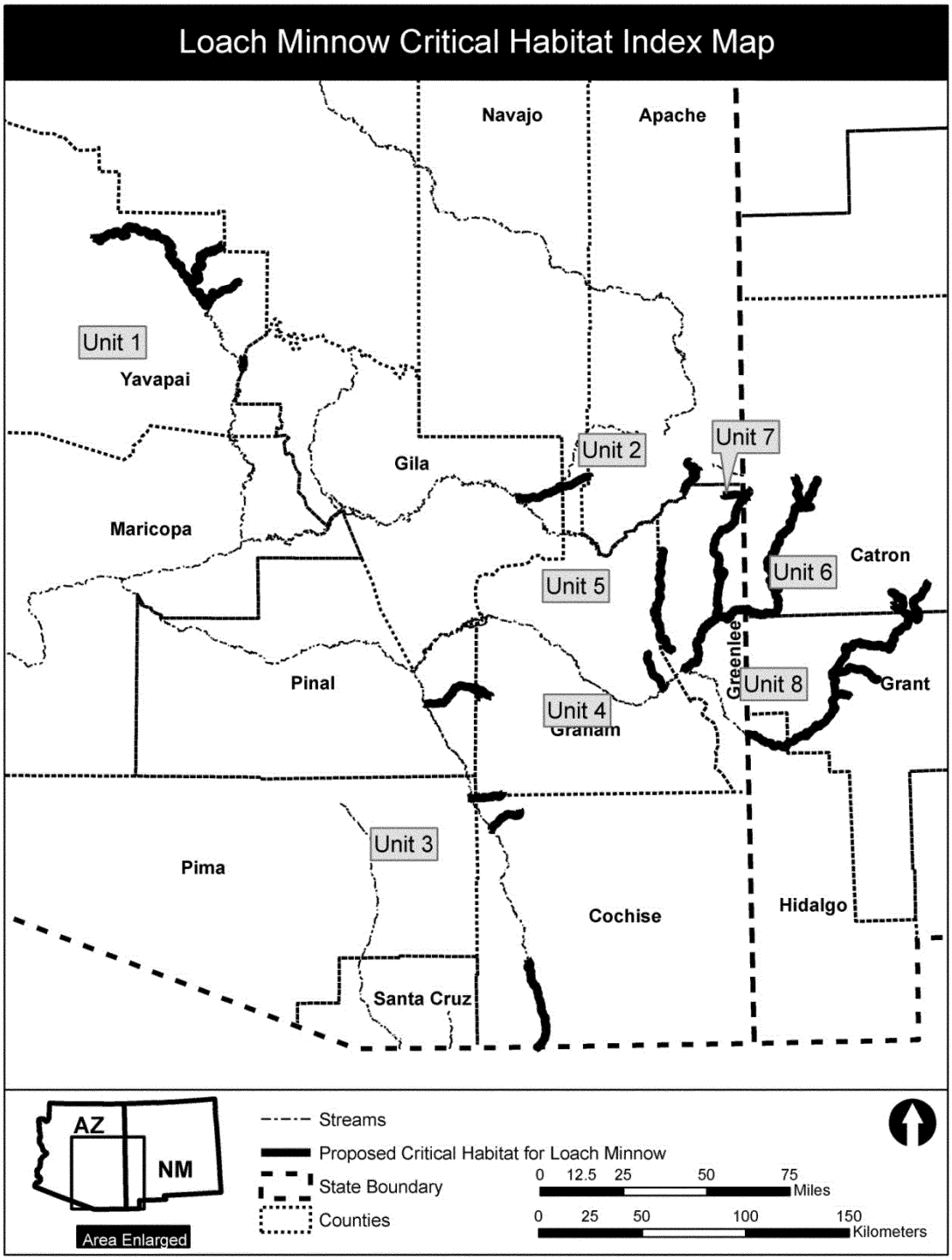
* * * * *

Loach minnow *(Tiaroga cobitis)*

* * * * *

(6) *Note:* Index map for loach minnow critical habitat units follows:

BILLING CODE 4310–55–P



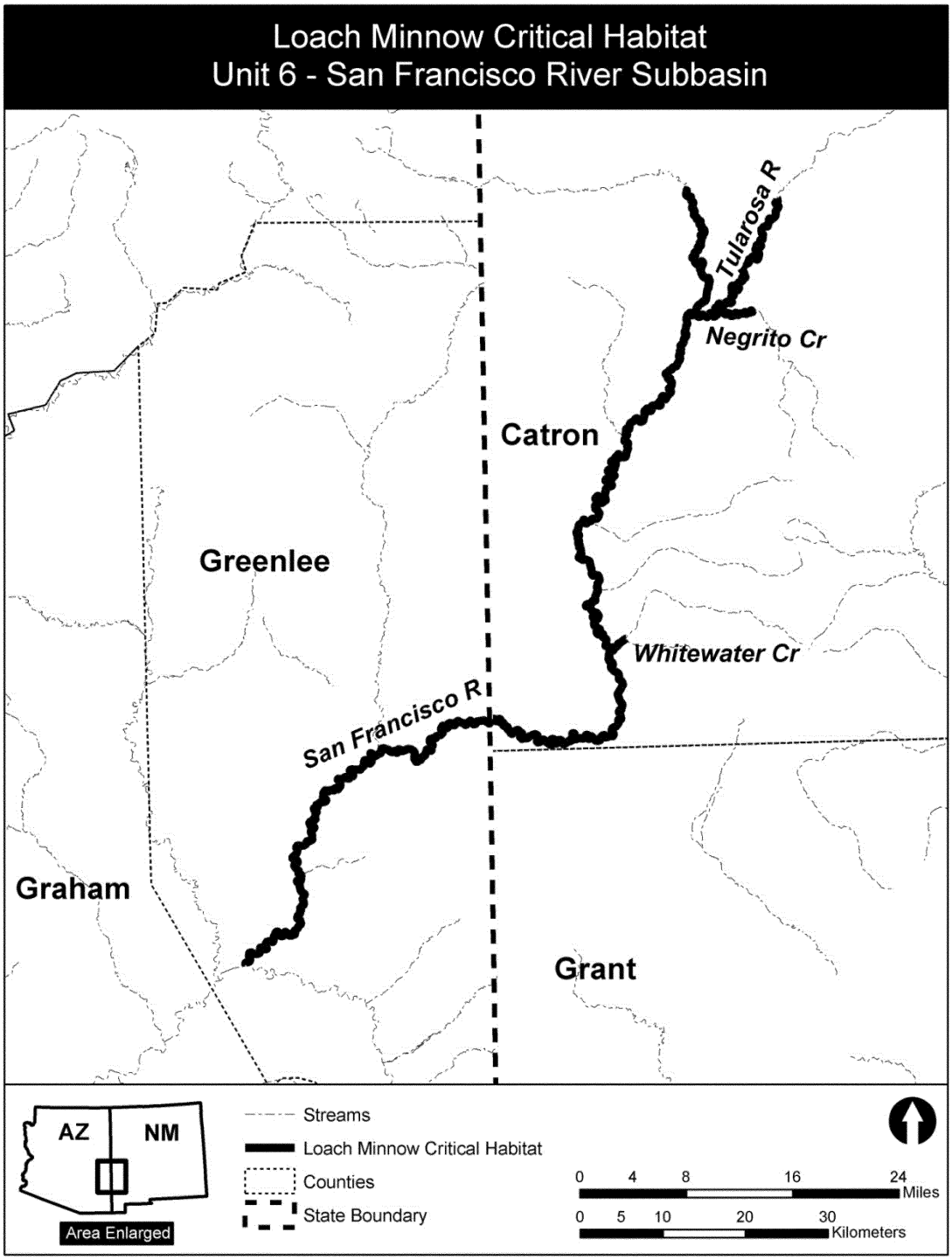
* * * * *

(12) * * *

(i) San Francisco River for approximately 202.6 km (125.9 mi) of the San Francisco River extending from the confluence with the Gila River in Arizona in Township 5 South, Range 29 East, southeast quarter of section 21 upstream to Township 6 South, Range 19 West, section 2 in New Mexico.

* * * * *

(v) *Note:* Map of Unit 6, San Francisco Subbasin, follows:

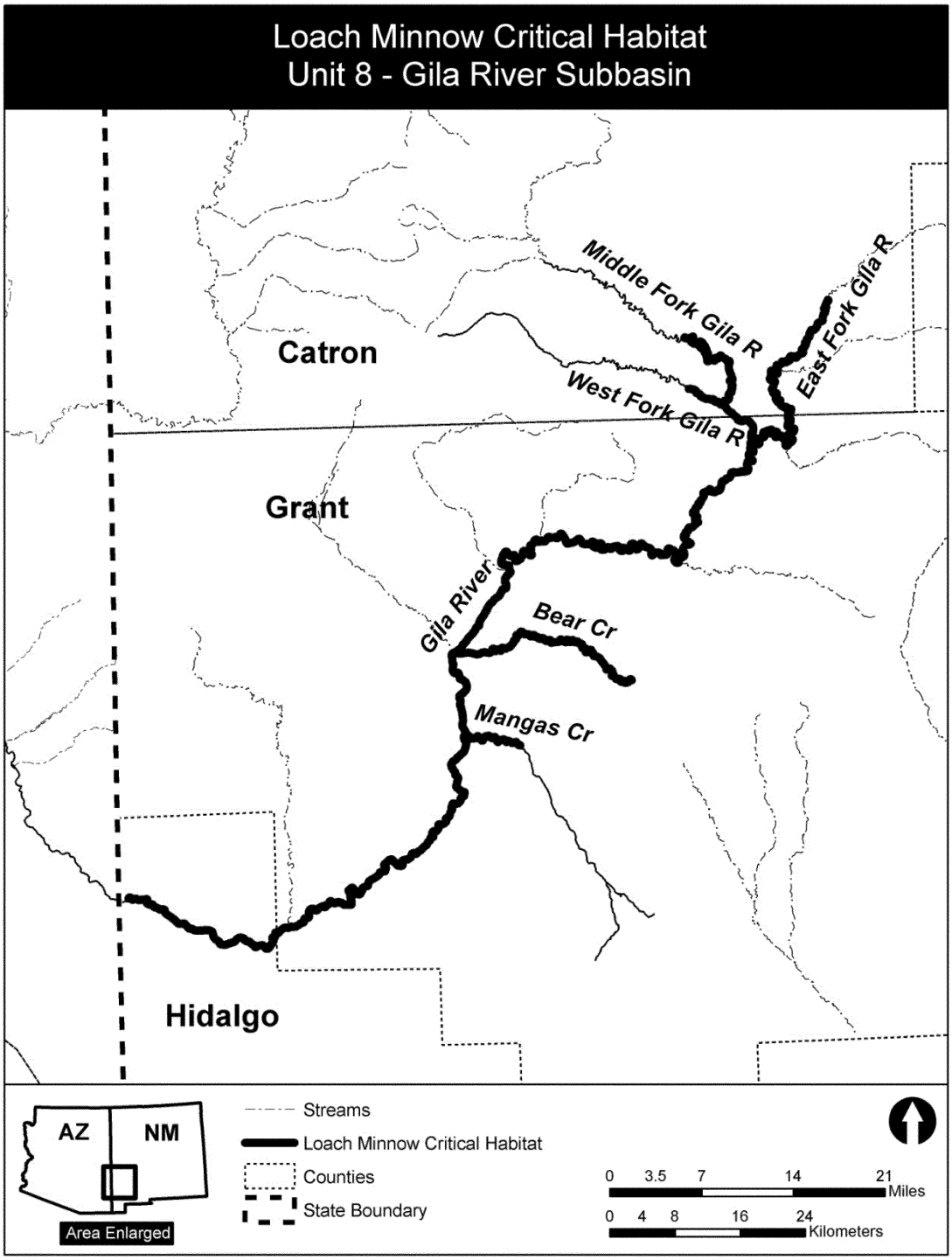


* * * * *

(14) * * *

(vi) Bear Creek for approximately 31.4 km (19.5 mi) extending from the confluence with the Gila River at Township 15 South, Range 17 West, center of section 33 upstream to the confluence with Sycamore and North Fork Walnut creeks at Township 16 South, Range 15 West, northeast quarter of section 15.

(vii) *Note:* Map of Unit 8, Gila River Subbasin, follows:



* * * * *

Authority

The authority for this action is the Endangered Species Act of 1973 (16 U.S.C. 1531 *et seq.*).

Dated: September 20, 2011.

Rachel Jacobson,

Acting Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 2011–25083 Filed 10–3–11; 8:45 am]

BILLING CODE 4310–55–C

Notices

Federal Register
Vol. 76, No. 192
Tuesday, October 4, 2011

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

Animal and Plant Health Inspection Service

[Docket No. APHIS–2011–0047]

Notice of Decision To Authorize the Importation of Dragon Fruit From Thailand Into the Continental United States

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice.

SUMMARY: We are advising the public of our decision to authorize the importation into the continental United States of dragon fruit (multiple genera and species) from Thailand. Based on the findings of a pest risk analysis, which we made available to the public for review and comment through a previous notice, we believe that the application of one or more designated phytosanitary measures will be sufficient to mitigate the risks of introducing or disseminating plant pests or noxious weeds via the importation of dragon fruit from Thailand.

DATES: *Effective Date:* October 4, 2011.

FOR FURTHER INFORMATION CONTACT: Ms. Claudia Ferguson, Regulatory Policy Specialist, Regulations, Permits, and Manuals, PPQ, APHIS, 4700 River Road Unit 133, Riverdale, MD 20737–1236; (301) 734–0754.

SUPPLEMENTARY INFORMATION:

Background

Under the regulations in ''Subpart—Fruits and Vegetables'' (7 CFR 319.56–1 through 319.56–51, referred to below as the regulations), the Animal and Plant Health Inspection Service (APHIS) of the U.S. Department of Agriculture prohibits or restricts the importation of fruits and vegetables into the United States from certain parts of the world to prevent plant pests from being introduced into and spread within the United States.

Section 319.56–4 of the regulations contains a performance-based process for approving the importation of commodities that, based on the findings of a pest risk analysis (PRA), can be safely imported subject to one or more of the designated phytosanitary measures listed in paragraph (b) of that section. Under that process, APHIS publishes a notice in the **Federal Register** announcing the availability of the PRA that evaluates the risks associated with the importation of a particular fruit or vegetable. Following the close of the 60-day comment period, APHIS may authorize the importation of the fruit or vegetable subject to the identified designated measures if: (1) No comments were received on the PRA; (2) the comments on the PRA revealed that no changes to the PRA were necessary; or (3) changes to the PRA were made in response to public comments, but the changes did not affect the overall conclusions of the analysis and the Administrator's determination of risk.

In accordance with that process, we published a notice [1] in the **Federal Register** on June 30, 2011 (76 FR 38349, Docket No. APHIS–2011–0047), in which we announced the availability, for review and comment, of a PRA that evaluates the risks associated with the importation into the continental United States of dragon fruit (multiple genera and species) from Thailand. We solicited comments on the notice for 60 days ending on August 29, 2011. We did not receive any comments by that date.

Therefore, in accordance with the regulations in § 319.56–4(c)(2)(ii), we are announcing our decision to authorize the importation into the continental United States of dragon fruit from Thailand subject to the following phytosanitary measures:

- The dragon fruit may be imported into the continental United States in commercial consignments only.
- The dragon fruit must be irradiated in accordance with 7 CFR part 305 with a minimum absorbed dose of 400 Gy.
- If the irradiation treatment is applied outside the United States, each consignment of fruit must be jointly inspected by APHIS and the national plant protection organization (NPPO) of Thailand and accompanied by a phytosanitary certificate (PC) attesting that the fruit received the required irradiation treatment.
- If the irradiation treatment is to be applied upon arrival in the United States, each consignment of fruit must be inspected by the NPPO of Thailand prior to departure and accompanied by a PC.
- This commodity is subject to inspection at the U.S. port of entry.

These conditions will be listed in the Fruits and Vegetables Import Requirements database (available at *http://www.aphis.usda.gov/favir*). In addition to these specific measures, dragon fruit from Thailand will be subject to the general requirements listed in § 319.56–3 that are applicable to the importation of all fruits and vegetables. Further, for fruits and vegetables requiring treatment as a condition of entry, the phytosanitary treatments regulations in 7 CFR part 305 contain administrative and procedural requirements that must be observed in connection with the application and certification of specific treatments.

Authority: 7 U.S.C. 450, 7701–7772, and 7781–7786; 21 U.S.C. 136 and 136a; 7 CFR 2.22, 2.80, and 371.3.

Done in Washington, DC, this 28th day of September 2011.

Kevin Shea,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 2011–25489 Filed 10–3–11; 8:45 am]

BILLING CODE 3410–34–P

[1] To view the notice and the PRA, go to *http://www.regulations.gov/#!docketDetail;D=APHIS–2011–0047.*

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. APHIS–2011–0039]

Notice of Decision To Authorize the Importation of Fresh Apricot, Sweet Cherry, and Plumcot Fruit From South Africa Into the Continental United States

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice.

SUMMARY: We are advising the public of our decision to authorize the importation into the continental United States of fresh apricot, sweet cherry, and plumcot fruit from South Africa. Based

on the findings of a pest risk analysis, which we made available to the public for review and comment through a previous notice, we believe that the application of one or more designated phytosanitary measures will be sufficient to mitigate the risks of introducing or disseminating plant pests or noxious weeds via the importation of fresh apricot, sweet cherry, and plumcot fruit from South Africa. We are also revising a treatment schedule in the Plant Protection and Quarantine Treatment Manual.

DATES: *Effective Date:* November 3, 2011.

FOR FURTHER INFORMATION CONTACT: Ms. Dorothy C. Wayson, Senior Regulatory Coordination Specialist, Regulations, Permits, and Manuals, PPQ, APHIS, 4700 River Road Unit 141, Riverdale, MD 20737; (301) 734–0772.

SUPPLEMENTARY INFORMATION:

Background

Under the regulations in ''Subpart—Fruits and Vegetables'' (7 CFR 319.56–1 through 319.56–51, referred to below as the regulations), the Animal and Plant Health Inspection Service (APHIS) of the U.S. Department of Agriculture prohibits or restricts the importation of fruits and vegetables into the United States from certain parts of the world to prevent plant pests from being introduced into and spreading within the United States. Under that process, APHIS may publish a notice in the **Federal Register** announcing the availability of a pest risk analysis that evaluates the risks associated with the importation of a particular fruit or vegetable. Following the close of the 60-day comment period, APHIS may authorize the importation of the fruit or vegetable subject to the risk-mitigation measures identified in the pest risk analysis if: (1) No comments were received on the pest risk analysis; (2) the comments on the pest risk analysis revealed that no changes to the pest risk analysis were necessary; or (3) changes to the pest risk analysis were made in response to public comments, but the changes did not affect the overall conclusions of the analysis and the Administrator's determination of risk.

In accordance with that process, we published a notice [1] in the **Federal Register** on June 1, 2011 (76 FR 31577–31578, Docket No. APHIS–2011–0039), in which we announced the availability, for review and comment, of a pest risk analysis evaluating the risks associated with the importation into the continental United States of fresh apricot, sweet cherry, and plumcot fruit from South Africa. The pest risk analysis consisted of a risk assessment identifying pests of quarantine significance that could follow the pathway of importation of fresh apricot, sweet cherry, and plumcot fruit from South Africa into the United States and a risk management document identifying phytosanitary measures to be applied to those commodities to mitigate the pest risk. In accordance with 7 CFR 305.3(a)(1), we also provided notice that we had determined that it was necessary to revise treatment schedule T107–e in the Plant Protection and Quarantine (PPQ) Treatment Manual [2] to include plumcots among the commodities to which that treatment schedule may be applied and the Mediterranean and the Bezzi fruit fly among the pests it is intended to eliminate. We solicited comments on the notice for 60 days ending on August 1, 2011. We did not receive any comments.

Therefore, in accordance with the regulations in 319.56–4(c)(2)(ii), we are announcing our decision to authorize the importation into the continental United States of fresh apricot, sweet cherry, and plumcot fruit from South Africa subject to the following phytosanitary measures:

- The fruit must be imported as a commercial consignment, as defined in 319.56–2.
- Each consignment of fruit must be accompanied by a phytosanitary certificate issued by the national plant protection organization of South Africa. For apricots and plumcots only, the phytosanitary certificate must include an additional declaration stating that the fruit was inspected and found free of cinch bug (*Macchiademus diplopterus*).
- Apricots and plumcots must be cold treated for fruit flies (*Ceratitis* spp.) and false codling moth (*Thaumatotibia leucotreta*) in accordance with 7 CFR part 305.
- Sweet cherries must be cold treated for the Mediterranean fruit fly (*Ceratitis capitata*) in accordance with 7 CFR part 305.
- Each consignment of fruit is subject to inspection upon arrival in the United States.

We are also updating the PPQ Treatment Manual as discussed earlier in this document.

The phytosanitary conditions listed above will also be listed in the Fruits and Vegetables Import Requirements database (available at *http://www.aphis.usda.gov/favir*). In addition to these specific measures, fresh apricot, sweet cherry, and plumcot fruit from South Africa will be subject to the general requirements listed in § 319.56–3 that are applicable to the importation of all fruits and vegetables. Further, for fruits and vegetables requiring treatment as a condition of entry, the phytosanitary treatment regulations in 7 CFR part 305 contain administrative and procedural requirements that must be observed in connection with the application and certification of specific treatments.

Authority: 7 U.S.C. 450, 7701–7772, and 7781–7786; 21 U.S.C. 136 and 136a; 7 CFR 2.22, 2.80, and 371.3.

Done in Washington, DC, this 28th day of September 2011.

Kevin Shea,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 2011–25490 Filed 10–3–11; 8:45 am]

BILLING CODE 3410–34–P

[1] To view the notice and the pest risk analysis, go to *http://www.regulations.gov/#!docketDetail;D=APHIS-2011-0039.*

[2] The Treatment Manual is available on the Internet at *http://www.aphis.usda.gov/import_export/plants/manuals/index.shtml* or by contacting the Animal and Plant Health Inspection Service, Plant Protection and Quarantine, Manuals Unit, 92 Thomas Johnson Drive, Suite 200, Frederick, MD 21702.

DEPARTMENT OF AGRICULTURE

Rural Business-Cooperative Service

Maximum Loan Amount Available for B&I Guaranteed Loans in Fiscal Year 2012

AGENCY: Rural Business-Cooperative Service, USDA.

ACTION: Notice.

SUMMARY: 7 CFR 4279.119(a)(1) allows the Rural Development Administrator, at the Administrator's discretion, to grant an exception to the $10 million limit for Business and Industry (B&I) guaranteed loans of $25 million or less under certain circumstances. Due to the limited program funds that will be available for Fiscal Year 2012 for the B&I Guaranteed Loan Program, the Administrator has decided not to grant exceptions to the $10 million limit during FY 2012 in an effort to make guaranteed loan funds go farther and to provide financing assistance to as many projects as possible. Limiting guaranteed loans to $10 million or less will allow the Agency to guarantee more loans and target smaller loans/projects impacting more small businesses and will assist the Agency to conserve scarce funding dollars at a time when there is unprecedented interest in the program.

Any applications that have been received as of the date of publication of this notice will be given full consideration.

DATES: *Effective Dates:* October 4, 2011.

FOR FURTHER INFORMATION CONTACT: Brenda Griffin, e-mail *Brenda.griffin@wdc.usda.gov*, Rural Development, Business Programs, Business and Industry Division, STOP 3224, 1400 Independence Avenue, SW., Washington, DC 20250–3224; telephone (202) 690–6802.

SUPPLEMENTAL INFORMATION: This action has been reviewed and determined not to be a rule or regulation as defined in Executive Order 12866 as amended by Executive Order 13258.

Dated: September 28, 2011.

Judith A. Canales,

Administrator, Rural Business-Cooperative Service.

[FR Doc. 2011–25563 Filed 10–3–11; 8:45 am]

BILLING CODE 3410–XY–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Docket T–3–2011]

Foreign-Trade Zone 72 Temporary/Interim Manufacturing Authority Brevini Wind USA, Inc., (Wind Turbine Gear Boxes); Notice of Approval

On July 14, 2011, the Executive Secretary of the Foreign-Trade Zones (FTZ) Board filed an application submitted by the Indianapolis Airport Authority, grantee of FTZ 72, requesting temporary/interim manufacturing (T/IM) authority, on behalf of Brevini Wind USA, Inc., to manufacture wind turbine gear boxes under FTZ procedures within FTZ 72—Site 14, in Yorktown, Indiana.

The application was processed in accordance with T/IM procedures, as authorized by FTZ Board Orders 1347 (69 FR 52857, 8/30/04) and 1480 (71 FR 55422, 9/22/06), including notice in the **Federal Register** inviting public comment (76 FR 43260, 7/20/2011). The FTZ staff examiner reviewed the application and determined that it meets the criteria for approval under T/IM procedures. Pursuant to the authority delegated to the FTZ Board Executive Secretary in the above-referenced Board Orders, the application is approved, effective this date, until September 27, 2013, subject to the FTZ Act and the Board's regulations, including Section 400.28.

Dated: September 27, 2011.

Andrew McGilvray,

Executive Secretary.

[FR Doc. 2011–25533 Filed 10–3–11; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–821–819]

Magnesium Metal from the Russian Federation: Amended Final Results of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

DATES: *Effective Date:* October 4, 2011.

FOR FURTHER INFORMATION CONTACT: Hermes Pinilla, AD/CVD Operations, Office 5, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–3477.

SUPPLEMENTARY INFORMATION:

Background

On September 13, 2011, the Department of Commerce (the Department) published the final results of the administrative review of the antidumping duty order on magnesium metal from the Russian Federation. See *Magnesium Metal from the Russian Federation: Preliminary Results of Antidumping Duty Administrative Review,* 76 FR 56396 (September 13, 2011) (*Final Results).*

We received a timely allegation of ministerial errors pursuant to 19 CFR 351.224(c) from US Magnesium LLC, the petitioner, alleging that we relied on unadjusted cost data to calculate constructed value for the respondent, PSC VSMPO–AVISMA Corporation (AVISMA), and that we inadvertently set constructed value selling expenses to zero in the calculations. We agree with the petitioner that the alleged errors are ministerial errors. Therefore, we are hereby amending the *Final Results* with respect to AVISMA to correct ministerial errors in our calculation of AVISMA's weighted-average margin in accordance with 19 CFR 351.224(e).

For details regarding the ministerial errors, see the memorandum from Hermes Pinilla to the File entitled ''Administrative Review of the Antidumping Duty Order on Magnesium Metal from the Russian Federation—Amended Final Results Analysis Memorandum for PSC VSMPO–AVISMA Corporation covering the period April 1, 2009, through March 31, 2010,'' concurrently with this notice.

Amended Final Results of the Review

As a result of our correction of ministerial errors, we determine that, for the period April 1, 2009, through March 31, 2010, a weighted-average dumping margin of 22.38 percent exists for AVISMA.

Assessment Rates

The Department shall determine and U.S. Customs and Border Protection (CBP) shall assess antidumping duties on all appropriate entries. In accordance with 19 CFR 351.212(b)(1), we have calculated an importer-specific assessment rate for AVISMA reflecting these amended final results of review.

The Department clarified its ''automatic assessment'' regulation on May 6, 2003. This clarification will apply to entries of subject merchandise during the POR produced by AVISMA for which AVISMA did not know its merchandise was destined for the United States. In such instances, we will instruct CBP to liquidate unreviewed entries of merchandise produced by AVISMA at the all-others rate if there is no rate for the intermediate company(ies) involved in the transaction. For a full discussion of this clarification, see *Antidumping and Countervailing Duty Proceedings: Assessment of Antidumping Duties,* 68 FR 23954 (May 6, 2003).

The Department intends to issue instructions to CBP 15 days after the publication of these amended final results of review.

Cash-Deposit Requirements

Because we revoked the order effective April 15, 2010, no cash deposit for estimated antidumping duties on future entries of subject merchandise is required.

Notifications

This notice serves as a final reminder to importers of their responsibility under 19 CFR 351.402(f) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Department's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of doubled antidumping duties.

This notice also serves as a reminder to parties subject to administrative protective order (APO) of their responsibility concerning the

disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Timely notification of destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

We are issuing and publishing this determination and notice in accordance with sections 751(a)(1) and 777(i) of the Tariff Act of 1930, as amended, and 19 CFR 351.224(e).

Dated: September 27, 2011.

Ronald K. Lorentzen,

Deputy Assistant Secretary for Import Administration.

[FR Doc. 2011–25532 Filed 10–3–11; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–583–820, A–570–822]

Certain Helical Spring Lock Washers From Taiwan and the People's Republic of China: Final Results of the Expedited Third Five-Year Sunset Reviews of the Antidumping Duty Orders

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

DATES: *Effective Date:* October 4, 2011.

SUMMARY: On June 1, 2011, the Department of Commerce (''Department'') initiated the third sunset reviews of the antidumping duty orders on certain helical spring lock washers (''lock washers'') from Taiwan and the People's Republic of China (''PRC''). The Department has conducted expedited sunset reviews of these orders. As a result of these reviews, the Department finds that revocation of the antidumping duty orders would likely lead to a continuation or recurrence of dumping at the margins identified in the ''Final Results of Review'' section of this notice.

FOR FURTHER INFORMATION CONTACT: Joshua Morris, AD/CVD Operations, Office 1, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone (202) 482–1779.

SUPPLEMENTARY INFORMATION:

Background

On June 1, 2011, the Department published the notice of initiation of the third sunset review of the antidumping duty orders on lock washers from Taiwan and the PRC pursuant to section 751(c) of the Tariff Act of 1930, as amended (''the Act''). *See Initiation of Five-Year (''Sunset'') Review,* 76 FR 31588 (June 1, 2011). On June 13, 2011, the Department received a notice of intent to participate in both of these reviews from Shakeproof Assembly Components Division of Illinois Tool Works Inc. (''Shakeproof''), within the deadline specified in 19 CFR 351.218(d)(1)(i). Shakeproof, Petitioner in these proceedings, claimed interested party status for both of these reviews under section 771(9)(C) of the Act, as a producer of the domestic like product.

On June 30, 2011, the Department received a complete substantive response from Petitioner for both reviews within the deadline specified in 19 CFR 351.218(d)(3)(i). We received no substantive responses from any respondent interested parties. As a result, pursuant to section 751(c)(3)(B) of the Act and 19 CFR 351.218(e)(1)(ii)(C)(2), the Department conducted expedited sunset reviews of these antidumping duty orders.

Scope of the Orders

The products covered by the orders are lock washers of carbon steel, of carbon alloy steel, or of stainless steel, heat-treated or non-heat-treated, plated or non-plated, with ends that are off-line. Lock washers are designed to: (1) Function as a spring to compensate for developed looseness between the component parts of a fastened assembly; (2) distribute the load over a larger area for screws or bolts; and (3) provide a hardened bearing surface. The scope does not include internal or external tooth washers, nor does it include spring lock washers made of other metals, such as copper.

Lock washers subject to the orders are currently classifiable under subheadings 7318.21.0000 and 7318.21.0030 of the Harmonized Tariff Schedule of the United States (''HTSUS''). Although the HTSUS subheading is provided for convenience and customs purposes, the written description of the scope of this proceeding is dispositive.[1]

Analysis of Comments Received

All issues raised in these reviews are addressed in the Issues and Decision Memorandum (''Decision Memorandum'') from Christian Marsh, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, to Ronald K. Lorentzen, Deputy Assistant Secretary for Import Administration, dated concurrently with this notice, which is hereby adopted by this notice. The issues discussed in the Decision Memorandum include the likelihood of continuation or recurrence of dumping and the magnitude of the margins likely to prevail if the orders were revoked. Parties can find a complete discussion of all issues raised in these reviews and the corresponding recommendations in this public memorandum, which is on file in the Central Records Unit in room 7046 of the main Department building.

In addition, a complete version of the Decision Memorandum can be accessed directly on the Internet at *http://www.ia.ita.doc.gov/frn.* The paper copy and electronic version of the Decision Memorandum are identical in content.

Final Results of Review

Pursuant to sections 752(c)(1) and (3) of the Act, we determine that revocation of the antidumping duty orders on lock washers from Taiwan and the PRC would be likely to lead to continuation or recurrence of dumping at the following weighted-average percentage margins:

Manufacturers/producers/exporters	Margin (percent)
Lock Washers From Taiwan	
Spring Lake Enterprises Co., Ltd	31.93
Ceimiko Industrial Co., Ltd	31.93
Par Excellence Industrial Co., Ltd	31.93
All-Others	31.93

[1] On September 30, 1997, the Department determined that lock washers which are imported into the United States in an uncut, coil form are within the scope of the orders. *See Notice of Scope Rulings,* 62 FR 62288 (November 21, 1997).

Exporters	Margin (percent)
Lock Washers from the PRC	
Hangzhou Spring Washer Co., Ltd. a/k/a Zhejiang Wanxin Group Co., Ltd. Co., Ltd. a/k/a Hangzhou Spring Washer Plant (“HSWP”)	69.88
HSWP via IFI Morgan Limited	69.88
HSWP via Carway Development Ltd	69.88
HSWP via Midway Fasteners Ltd	69.88
HSWP via Linkwell Industry Co., Ltd	69.88
HSWP via Fastwell Industry Co., Ltd	69.88
HSWP via Sunfast International Corp	69.88
HSWP via Winner Standard Parts Co., Ltd	69.88
PRC-wide	128.63

This notice also serves as the only reminder to parties subject to administrative protective order (''APO'') of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305. Timely notification of the return or destruction of APO materials or conversion to judicial protective orders is hereby requested. Failure to comply with the regulations and terms of an APO is a violation which is subject to sanction.

We are issuing and publishing the final results and notice in accordance with sections 751(c), 752(c), and 777(i)(1) of the Act.

Dated: September 27, 2011.

Ronald K. Lorentzen

Deputy Assistant Secretary for Import Administration.

[FR Doc. 2011–25594 Filed 10–3–11; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XA742

Endangered and Threatened Species; Take of Anadromous Fish

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

ACTION: Issuance of two scientific research permits.

SUMMARY: Notice is hereby given that NMFS has issued Permit 15824 to Santa Cruz County Environmental Health Services and Permit 16318 to Hagar Environmental Science.

ADDRESSES: The approved application for each permit is available on the Applications and Permits for Protected Species (APPS), *https://apps.nmfs.noaa.gov* Web site by searching the permit number within the Search Database page. The applications, issued permits and supporting documents are also available upon written request or by appointment: Protected Resources Division, NMFS, 777 Sonoma Avenue, Room 325, Santa Rosa, CA 95404 (ph: (707) 575–6097, fax: (707) 578–3435).

FOR FURTHER INFORMATION CONTACT: Jeffrey Jahn at 707–575–6097, or *e-mail: Jeffrey.Jahn@noaa.gov.*

SUPPLEMENTARY INFORMATION:

Authority

The issuance of permits and permit modifications, as required by the Endangered Species Act of 1973 (16 U.S.C. 1531–1543) (ESA), is based on a finding that such permits/modifications: (1) Are applied for in good faith; (2) would not operate to the disadvantage of the listed species which are the subject of the permits; and (3) are consistent with the purposes and policies set forth in section 2 of the ESA. Authority to take listed species is subject to conditions set forth in the permits. Permits and modifications are issued in accordance with and are subject to the ESA and NMFS regulations (50 CFR parts 222–226) governing listed fish and wildlife permits.

Species Covered in This Notice

This notice is relevant to federally endangered Central California Coast coho salmon (*Oncorhyncus kisutch*), threatened Central California Coast steelhead (*O. mykiss*), and threatened South-Central California Coast steelhead (*O. mykiss*).

Permits Issued

Permit 15824

A notice of the receipt of an application for a scientific research permit (15824) was published in the **Federal Register** on June 1, 2011 (76 FR 31590). Permit 15824 was issued to the County of Santa Cruz, Environmental Health Services on August 30, 2011.

Permit 15824 authorizes snorkel surveys, capture by backpack electrofishing and seining, handling (measuring), scale sampling, marking (fin-clipping), and release of juvenile Central California Coast (CCC) coho salmon, Central California Coast (CCC) steelhead, and South-California Coast (S–CCC) steelhead, henceforth referred to as ESA-listed salmonids. Permit 15824 authorizes unintentional lethal take of: Juvenile ESA-listed salmonids not to exceed one percent of the total number of fish captured. Permit 15824 does not authorize any non-lethal or lethal take of adult ESA-listed salmonids.

Permit 15824 is for research to be conducted in the San Lorenzo River, Aptos Creek, Soquel Creek, and Corralitos Creek in Santa Cruz County, California. The main purpose of the project is to track habitat conditions and site densities of juvenile salmonids in these watersheds. Permit 15824 expires on December 31, 2016.

Permit 16318

A notice of the receipt of an application for a scientific research permit renewal (16318) was published in the **Federal Register** on June 1, 2011 (76 FR 31590). Permit 16318 was issued to Hagar Environmental Science (HES) on August 30, 2011.

Permit 16318 authorizes HES to take juvenile ESA-listed salmonids associated with three research projects consisting of lagoon surveys and stream surveys in Santa Cruz, Monterey, and San Luis Obispo counties in central California. The data from lagoon and stream surveys will be used to track salmonid spawning and rearing conditions in lagoons and streams, prioritize restoration and conservation efforts, and inform land and water use decisions.

Under Permit 16318, authorized research methods include snorkel surveys, electrofishing, scale sampling,

passive integrated transponder (PIT) tagging, anesthetizing, and handling of fish. Permit 16318 does not authorize any intentional lethal take of ESA-listed salmonids. Permit 16318 authorizes unintentional lethal take of juvenile ESA-listed salmonids associated with research activities not to exceed one percent of the annual total expected take for each species associated with electrofishing and not to exceed two percent of the annual total expected take associated with beach seining and marking/tagging procedures. Permit 16318 expires on December 31, 2016.

Dated: September 29, 2011.

Angela Somma,

Chief, Endangered Species Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2011–25558 Filed 10–3–11; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XA745

New England Fishery Management Council; Public Meeting

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

ACTION: Notice; public meeting.

SUMMARY: The New England Fishery Management Council's (Council) Groundfish Committee will meet to consider actions affecting New England fisheries in the exclusive economic zone (EEZ).

DATES: The meeting will be held on Thursday, October 20, 2011 at 9:30 a.m.

ADDRESSES: The meeting will be held at the Sheraton Harborside Hotel, 250 Market Street, Portsmouth, NH 03801; *telephone:* (603) 431–2300; *fax:* (603) 433–5649.

Council address: New England Fishery Management Council, 50 Water Street, Mill 2, Newburyport, MA 01950.

FOR FURTHER INFORMATION CONTACT: Paul J. Howard, Executive Director, New England Fishery Management Council; *telephone:* (978) 465–0492.

SUPPLEMENTARY INFORMATION: The items of discussion in the agenda are:

The Committee and Advisory Panel will review gear stowage regulations. There will be a request for comments on vessel and gear marking. There will be an open comment period for the fishing industry, concerning Compliance and Effectiveness of Regulations for New England Fishery Management Plans. The Committee and Panel will comment on draft NOAA Enforcement Priority Setting Process. Some of the actions that the Committee and Panel may be asked to review are: Scallop management measures (Framework 24 and Amendment 16); Herring Amendment 5 management measures-preliminary review; Hake (Whiting) incidental possession limits when Total Allowable Landings are reached; Skate species identification at sea and at the dock. They also plan to schedule meetings for next year. Other business may be discussed.

Although non-emergency issues not contained in this agenda may come before this group for discussion, those issues may not be the subject of formal action during this meeting. Action will be restricted to those issues specifically identified in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the Council's intent to take final action to address the emergency.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Paul J. Howard (see **ADDRESSES**) at least 5 days prior to the meeting date.

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

Dated: September 28, 2011.

Tracey L. Thompson,

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

[FR Doc. 2011–25419 Filed 10–3–11; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XA599

Marine Mammals; File No. 16094

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

ACTION: Notice; issuance of permit.

SUMMARY: Notice is hereby given that a permit has been issued to the Alaska Department of Fish and Game, Juneau, AK to conduct research on marine mammals.

ADDRESSES: The permit and related documents are available for review upon written request or by appointment in the following offices:

Permits, Conservation and Education 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

Alaska Region, NMFS, P.O. Box 21668, Juneau, AK 99802–1668; phone (907) 586–7221; fax (907) 586–7249.

FOR FURTHER INFORMATION CONTACT: Tammy Adams or Joselyd Garcia-Reyes, (301) 427–8401.

SUPPLEMENTARY INFORMATION: On July 29, 2011, notice was published in the **Federal Register** (76 FR 45514) that a request for a permit to conduct research on harbor seals (*Phoca vitulina*) throughout their range in Alaska, including Southeast Alaska, Gulf of Alaska, and Bering Sea, had been submitted by the above-named applicant. The requested permit has been issued under the authority of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*), and the regulations governing the taking and importing of marine mammals (50 CFR part 216).

The permitted takes include aerial surveys for population census and radio tracking; ground surveys for photo-identification, counts and behavioral observations; vessel approaches of animals equipped with telemetry equipment; vessel surveys for radio tracking; and capture by entanglement in a net in the water or by hoop net or dip net on land. Captured animals will: be restrained (chemical or physical); be weighed and measured; have biological samples collected (blood, milk (lactating females), blubber, skin, muscle, hair, mucus membrane swabs, stomach lavage, tooth and vibrissae); be administered deuterated water; have measurement of blubber via ultrasound; be marked with flipper identification tags; and have internal (PIT tags) or external scientific instruments attached. Tissue samples will be collected from subsistence harvested animals and other mortalities and some samples will be exported to Canada for analysis. The permit is valid through December 31, 2016.

In compliance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*), a final determination has been made that the activity proposed is categorically excluded from the requirement to prepare an environmental assessment or environmental impact statement.

Dated: September 28, 2011.

P. Michael Payne,

Chief, Permits, Conservation and Education Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2011–25557 Filed 10–3–11; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF DEFENSE

Office of the Secretary

Senior Executive Service Performance Review Board

AGENCY: Department of Defense Office of Inspector General, Department of Defense (DoD).

ACTION: Notice.

SUMMARY: This notice announces the appointment of the members of the Senior Executive Service (SES) Performance Review Board (PRB) for the Department of Defense Office of Inspector General (DoD OIG), as required by 5 U.S.C. 4314(c)(4). The PRB provides fair and impartial review of SES performance appraisals and makes recommendations regarding performance ratings and performance awards to the Inspector General.

DATES: *Effective Date:* October 1, 2011.

FOR FURTHER INFORMATION CONTACT: Ms. Phyllis Hughes, Director, Human Capital Advisory Services, Administration and Management, DoD OIG, 400 Army Navy Drive, Arlington, VA 22202, (703) 602–4516.

SUPPLEMENTARY INFORMATION: In accordance with 5 U.S.C. 4314(c)(4), the following executives are appointed to the DoD OIG, PRB:

Kathy Buller Deputy Inspector General, (Foreign Service) Peace Corps

Asa E. Cunningham Assistant Inspector General for Inspections and Special Investigations, Department of Labor

Richard K. Delmar Counsel to the Inspector General, Department of the Treasury

Maria A. Freedman Assistant Inspector General for Audit, Department of the Treasury

Glenn P. Harris Counsel to the Inspector General, Small Business Administration

Elizabeth Martin General Counsel, United States Postal Service

Mary Mitchelson Deputy Inspector General, Department of Education

Daniel J. O'Rourke Assistant Inspector General for Investigations, Small Business Administration

Keith West Assistant Inspector General for Audit Services, Department of Education

Dated: September 28, 2011.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2011–25457 Filed 10–3–11; 8:45 am]

BILLING CODE 5001–06–P

DEFENSE NUCLEAR FACILITIES SAFETY BOARD

Sunshine Act Notice

AGENCY: Defense Nuclear Facilities Safety Board.

ACTION: Notice of public hearing and meeting.

SUMMARY: Pursuant to the provisions of the ''Government in the Sunshine Act'' (5 U.S.C. 552b), notice is hereby given of the Defense Nuclear Facilities Safety Board's (Board) public hearing and meeting described below. The Board will conduct a public hearing and meeting pursuant to 42 U.S.C. 2286b and invites any interested persons or groups to present any comments, technical information, or data concerning safety issues related to the matters to be considered.

TIME AND DATE OF MEETING: Session I: 1–5 p.m., November 17, 2011; Session II: 7–9 p.m., November 17, 2011.

PLACE: Santa Fe Community Convention Center, 201 West Marcy Street, Santa Fe, New Mexico 87501. Parking will be available at no cost.

STATUS: Open. While the Government in the Sunshine Act does not require that the scheduled discussion be conducted in a meeting, the Board has determined that an open meeting in this specific case furthers the public interests underlying both the Sunshine Act and the Board's enabling legislation.

MATTERS TO BE CONSIDERED: In this public hearing and meeting, the Board wishes to further explore safety matters and gather other information related to public and worker health and safety for defense nuclear facilities at the Los Alamos National Laboratory (LANL). During Session I, the Board will examine the seismic safety of the Plutonium Facility. The Board will receive testimony on National Nuclear Security Administration (NNSA) actions to address Plutonium Facility seismic vulnerabilities that lead to severe postulated accident scenarios. The Board is also interested in the status of actions identified in NNSA's response to the Board's Recommendation 2009–2, *Los Alamos National Laboratory Plutonium Facility Seismic Safety,* which was issued on October 26, 2009. The Board will also examine the status of emergency preparedness at the laboratory and will receive testimony concerning how well NNSA and its contractor are prepared to respond to site emergencies, including threats from natural phenomena. The Board is also interested in lessons learned from the events at the Fukushima Daiichi complex, the recent Las Conchas fire, and the 2000 Cerro Grande fire and the actions taken to incorporate these lessons learned at the site-wide level and in defense nuclear facility operations. During Session II, the Board will examine NNSA's efforts to mitigate risks to public and worker safety posed by existing aging defense nuclear facilities and NNSA's efforts to ensure the integration of safety-in-design for modern replacement facilities. The Board will receive testimony on the operations and safety basis at existing LANL defense nuclear facilities, including the Chemistry and Metallurgy Research Building, Area G in Technical Area-54, and the Radioactive Liquid Waste Treatment Facility. The Board will also receive testimony on the integration of safety-in-design for the Chemistry and Metallurgy Research Replacement project, the new Transuranic Waste Facility, and the Radioactive Liquid Waste Treatment Facility Upgrade project. The public hearing portion of this proceeding is authorized by 42 U.S.C. 2286b.

CONTACT PERSON FOR MORE INFORMATION: Brian Grosner, General Manager, Defense Nuclear Facilities Safety Board, 625 Indiana Avenue, NW., Suite 700, Washington, DC 20004–2901, (800) 788–4016. This is a toll-free number.

SUPPLEMENTARY INFORMATION: Public participation in the hearing is invited. The Board is setting aside thirty minutes at the end of each session of the hearing for presentations and comments from the public. Requests to speak may be submitted in writing or by telephone. The Board asks that commentators describe the nature and scope of their oral presentations. Those who contact the Board prior to close of business on November 10, 2011, will be scheduled to speak at the session of the hearing most relevant to their presentations. At the beginning of Session I, the Board will post a schedule for speakers at the entrance to the hearing room. Anyone who wishes to comment or provide technical information or data may do so in writing, either in lieu of, or in addition to, making an oral presentation. The Board Members may question presenters to the extent

deemed appropriate. Documents will be accepted at the meeting or may be sent to the Board's Washington, DC, office. The Board will hold the record open until December 19, 2011, for the receipt of additional materials. A transcript of the meeting, along with DVD video recordings of both sessions, will be made available by the Board for inspection and viewing by the public at the Board's Washington office and at the Department of Energy's (DOE) public reading room at the DOE Federal Building, 1000 Independence Avenue, SW., Washington, DC 20585. The Board specifically reserves its right to further schedule and otherwise regulate the course of the meeting and hearing, to recess, reconvene, postpone, or adjourn the meeting and hearing, conduct further reviews, and otherwise exercise its power under the Atomic Energy Act of 1954, as amended.

Dated: September 30, 2011.

Jessie H. Roberson,

Vice Chairman.

[FR Doc. 2011–25782 Filed 9–30–11; 4:15 pm]

BILLING CODE 3670–01–P

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

ACTION: Comment request.

SUMMARY: The Department of Education (the Department), in accordance with the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3506(c)(2)(A)), provides the general public and Federal agencies with an opportunity to comment on proposed and continuing collections of information. This helps the Department assess the impact of its information collection requirements and minimize the reporting burden on the public and helps the public understand the Department's information collection requirements and provide the requested data in the desired format. The Director, Information Collection Clearance Division, Privacy, Information and Records Management Services, Office of Management, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before December 5, 2011.

ADDRESSES: Comments regarding burden and/or the collection activity requirements should be electronically mailed to *ICDocketMgr@ed.gov* or mailed to U.S. Department of Education, 400 Maryland Avenue, SW., LBJ, Washington, DC 20202–4537. Please note that written comments received in response to this notice will be considered public records.

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, Regulatory Information 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.

Dated: September 29, 2011.

Darrin King,

Director, Information Collection Clearance Division, Privacy, Information and Records Management Services, Office of Management.

Office of Communications and Outreach

Type of Review: Extension.

Title of Collection: National Blue Ribbon Schools Program.

OMB Control Number: 1860–0506.

Agency Form Number(s): N/A.

Frequency of Responses: Once.

Affected Public: State, Local or Tribal Government; Not-for-profit institutions (public and private elementary, middle and high schools).

Total Estimated Number of Annual Responses: 413.

Total Estimated Annual Burden Hours: 16,420.

Abstract:. The National Blue Ribbon Schools Program honors public and private elementary, middle and high schools where students achieve at high levels or where the achievement gap is narrowing among all student subgroups. Each year since 1982, the U.S. Department of Education (ED) has sought out schools where students attain and maintain high academic goals, including those that beat the odds. The Program, part of a larger ED effort to identify and disseminate knowledge about best school leadership and teaching practices, is authorized by Public Law 107–110 (January 8, 2002), Part D—Fund for the Improvement of Education, Subpart 1, Sec. 5411(b)(5).

Copies of the proposed information collection request may be accessed from *http://edicsweb.ed.gov,* by selecting the ''Browse Pending Collections'' link and by clicking on link number 4702. When you access the information collection, click on ''Download Attachments'' to view. Written requests for information should be addressed to U.S. Department of Education, 400 Maryland Avenue, SW., LBJ, Washington, DC 20202–4537. Requests may also be electronically mailed to *ICDocketMgr@ed.gov* or faxed to 202–401–0920. Please specify the complete title of the information collection and OMB Control Number when making your request.

Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 2011–25554 Filed 10–3–11; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Notice of Submission for OMB Review

AGENCY: Department of Education.

ACTION: Comment request.

SUMMARY: The Director, Information Collection Clearance Division, Privacy, Information and Records Management Services, Office of Management, invites comments on the submission for OMB review as required by the Paperwork Reduction Act of 1995 (Pub. L. 104–13).

DATES: Interested persons are invited to submit comments on or before November 3, 2011.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Education Desk Officer, Office of Management and Budget, 725 17th Street, NW, Room 10222, New Executive Office Building, Washington, DC 20503, be faxed to (202) 395–5806 or e-mailed to *oira_submission@omb.eop.gov* with a cc: to *ICDocketMgr@ed.gov*. Please note that written comments received in response to this notice will be considered public records.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information

collection requests. The OMB is particularly interested in comments which: (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.

Dated: September 29, 2011.

Darrin King,

Director, Information Collection Clearance Division, Privacy, Information and Records Management Services, Office of Management.

Institute of Education Sciences

Type of Review: Revision.

Title of Collection: Early Childhood Longitudinal Study Kindergarten Class of 2010–11 (ECLS–K:2011) Spring First-Grade and Fall Second-Grade Data Collections.

OMB Control Number: 1850–0750.

Agency Form Number(s): N/A.

Frequency of Responses: Annually.

Affected Public: Individuals or Households.

Total Estimated Number of Annual Responses: 143,138.

Total Estimated Annual Burden Hours: 49,128.

Abstract: The Early Childhood Longitudinal Study, Kindergarten Class of 2010–11 (ECLS–K:2011), sponsored by the National Center for Education Statistics within the Institute of Education Sciences of the U.S. Department of Education, is a survey that focuses on children's early school experiences beginning with kindergarten and continuing through the fifth grade. It includes the collection of data from parents, teachers, school administrators, and non-parental care providers, as well as direct child assessments. Like its sister study, the Early Childhood Longitudinal Study, Kindergarten Class of 1998–99, the ECLS–K:2011 is exceptionally broad in its scope and coverage of child development, early learning, and school progress, drawing together information from multiple sources to provide rich data about the population of children who were kindergartners in the 2010–11 school year. This submission requests Office of Management and Budget's (OMB) clearance for (1) A spring 2012 first-grade national data collection; (2) a fall 2012 second-grade data collection with the same 30 percent subsample for which data will be collected in the fall 2011 first-grade collection; and (3) a 60-day **Federal Register** notice waiver for the next OMB clearance package to be submitted in June of 2012 for the spring 2013 second-grade data collection, recruitment for the spring 2014 third-grade data collection, and tracking students for the spring 2014 third-grade and spring 2015 fourth-grade data collection.

Copies of the information collection submission for OMB review may be accessed from the RegInfo.gov Web site at *http://www.reginfo.gov/public/do/PRAMain* or from the Department's Web site at *http://edicsweb.ed.gov,* by selecting the ''Browse Pending Collections'' link and by clicking on link number 4677. When you access the information collection, click on ''Download Attachments'' to view. Written requests for information should be addressed to U.S. Department of Education, 400 Maryland Avenue, SW., LBJ, Washington, DC 20202–4537. Requests may also be electronically mailed to the Internet address *ICDocketMgr@ed.gov* or faxed to 202–401–0920. Please specify the complete title of the information collection and OMB Control Number when making your request.

Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 2011–25556 Filed 10–3–11; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

President's Advisory Commission on Asian Americans and Pacific Islanders

AGENCY: U.S. Department of Education, President's Advisory Commission on Asian Americans and Pacific Islanders.

ACTION: Notice of an open meeting.

SUMMARY: The notice sets forth the schedule and agenda of the meeting of the President's Advisory Commission on Asian Americans and Pacific Islanders (Commission). The notice also describes the functions of the Commission. Notice of the meeting is required by section 10(a)(2) of the Federal Advisory Committee Act and intended to notify the public of its opportunity to attend.

Dates: October 13, 2011.

Time: 9 a.m.–5:30 p.m. P.DT.

Dates: October 15, 2011.

Time: 9 a.m.–3 p.m. P.D.T.

ADDRESSES: The Commission will meet in Las Vegas, Nevada at a specific venue to be determined. Members of the public seeking entrance to the meeting location should e-mail their request to *Kate.Moraras@ed.gov* by October 7, 2011. Additional updates as to the specific meeting location will be available on the Commission's Web site at *http://www2.ed.gov/about/inits/list/asian-americans-initiative/index.html.*

Phone: 202–453–5508.

FOR FURTHER INFORMATION CONTACT: Kate Moraras, White House Initiative on Asian Americans and Pacific Islanders, 400 Maryland Avenue, SW., Washington, DC 20202; *telephone:* (202) 453–5508 fax: 202–453–5632 or by e-mail at *whitehouseaapi@ed.gov.*

SUPPLEMENTARY INFORMATION: The President's Advisory Commission on Asian Americans and Pacific Islanders is established under Executive Order 13515, dated October 14, 2009. Per E.O. 13515, the Commission shall provide advice to the President, through the Secretaries of Education and Commerce, as Co-Chairs of the Initiative, on: (i) The development, monitoring, and coordination of executive branch efforts to improve the quality of life of AAPIs through increased participation in Federal programs in which such persons may be underserved; (ii) the compilation of research and data related to AAPI populations and subpopulations; (iii) the development, monitoring, and coordination of Federal efforts to improve the economic and community development of AAPI businesses; and (iv) strategies to increase public and private-sector collaboration, and community involvement in improving the health, education, environment, and well-being of AAPIs.

Agenda

The purpose of the meeting is to discuss strategic planning; review work of the White House Initiative on Asian Americans and Pacific Islanders; and determine key strategies to help meet the Commission's charge as established in E.O. 13515.

Additional Information

Individuals who will need accommodations for a disability in order to attend the meeting (*e.g.,* interpreting services, assistive listening devices, or material in alternative format) should notify Kate Moraras at (202) 453–5508, no later than Wednesday, October 5, 2011. We will attempt to meet requests for accommodations after this date, but,

cannot guarantee their availability. The meeting site is accessible to individuals with disabilities.

Records are kept of all Commission proceedings and are available for public inspection at the office of the White House Initiative on Asian Americans and Pacific Islanders, U.S. Department of Education, 400 Maryland Avenue, SW., Washington, DC 20202, Monday–Friday during the hours of 8:30 a.m. to 5 p.m.

Electronic Access to this Document: You may view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the internet at the following site: *http://www.ed.gov/news/fedregister/index.html.* To use PDF you must have Adobe Acrobat Reader, which is available free at this site. If you have questions about using PDF, call the U.S. Government Printing Office (GPO), toll free at 1–866–512–1800; or in the Washington, DC area at 202–512–0000.

Martha Kanter,

Under Secretary.

[FR Doc. 2011–25466 Filed 10–3–11; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Advisory Commission on Accessible Instructional Materials in Postsecondary Education for Students With Disabilities

AGENCY: U.S. Department of Education, Office of Special Education and Rehabilitative Services, Advisory Commission on Accessible Instructional Materials in Postsecondary Education for Students with Disabilities.

ACTION: Notice of an open meeting via conference call.

SUMMARY: The notice sets forth the schedule and agenda of the meeting of the Advisory Commission on Accessible Instructional Materials in Postsecondary Education for Students with Disabilities. The notice also describes the functions of the Commission. Notice of the meeting is required by section 10(a)(2) of the Federal Advisory Committee Act and is intended to notify the public of its opportunity to attend.

DATES: October 24, 2011.

Time: 11 a.m.–5 p.m., Eastern Standard Time.

ADDRESSES: The Commission will meet via conference call on October 24, 2011. Members of the public have the option of participating in the open meeting remotely. Remote access will be provided via an internet webinar service utilizing VoiP (Voice Over Internet Protocol). The login address for members of the public is *https://aimpsc.ilinc.com/join/vfhzhzk.* This login information is also provided via the Commission's public listserv at *pscpublic@lists.cast.org* and posted at the following site: *http://www2.ed.gov/about/bdscomm/list/aim/index.html.*

FOR FURTHER INFORMATION CONTACT: Elizabeth Shook, Program Specialist, Office of Special Education and Rehabilitative Services, United States Department of Education, 550 12th Street, SW., Washington, DC 20202; telephone: (202) 245–7642, fax: 202–245–7638.

SUPPLEMENTARY INFORMATION: The Advisory Commission on Accessible Instructional Materials in Postsecondary Education for Students with Disabilities (the Commission) is established under Section 772 of the Higher Education Opportunity Act, Public Law 110–315, dated August 14, 2008. The Commission is established to (a) conduct a comprehensive study, which will—(I) assess the barriers and systemic issues that may affect, and technical solutions available that may improve, the timely delivery and quality of accessible instructional materials for postsecondary students with print disabilities, as well as the effective use of such materials by faculty and staff; and (II) make recommendations related to the development of a comprehensive approach to improve the opportunities for postsecondary students with print disabilities to access instructional materials in specialized formats in a timeframe comparable to the availability of instructional materials for postsecondary nondisabled students.

In making recommendations for the study, the Commission shall consider—(I) how students with print disabilities may obtain instructional materials in accessible formats within a timeframe comparable to the availability of instructional materials for nondisabled students; and to the maximum extent practicable, at costs comparable to the costs of such materials for nondisabled students; (II) the feasibility and technical parameters of establishing standardized electronic file formats, such as the National Instructional Materials Accessibility Standard as defined in Section 674(e)(3) of the Individuals with Disabilities Education Act, to be provided by publishers of instructional materials to producers of materials in specialized formats, institutions of higher education, and eligible students; (III) the feasibility of establishing a national clearinghouse, repository, or file-sharing network for electronic files in specialized formats and files used in producing instructional materials in specialized formats, and a list of possible entities qualified to administer such clearinghouse, repository, or network; (IV) the feasibility of establishing market-based solutions involving collaborations among publishers of instructional materials, producers of materials in specialized formats, and institutions of higher education; (V) solutions utilizing universal design; and (VI) solutions for low-incidence, high-cost requests for instructional materials in specialized formats.

During the meeting, the Commission will review and approve the final draft of the Commission's report to Congress and the Secretary. Given the limited meeting time, the Commission does not anticipate that there will be an opportunity for public comment during the teleconference meeting. Members of the public are encouraged to submit written comments to the AIM Commission Web site at *aimcommission@ed.gov,* and the Commission will respond to the comments if possible. Members of the public who would like to offer comments as part of the meeting may submit written comments to *AIMCommission@ed.gov* or by mail to Advisory Commission on Accessible Instructional Materials in Postsecondary Education for Students with Disabilities, 550 12th St., SW., Room PCP–5113, Washington, DC 20202. All submissions will become part of the public record. Members of the public may also join the Commission's list serv at *PSCpublic@lists.cast.org.*

Detailed minutes of the meeting, including summaries of the activities of the closed sessions and related matters that are informative to the public and consistent with the policy of section 5 U.S.C. 552b(c) will be available to the public. Records are kept of all Commission proceedings and are available for public inspection at the Office of Special Education and Rehabilitative Services, United States Department of Education, 550 12th Street, SW., Washington, DC 20202, Monday–Friday during the hours of 8 a.m. to 4:30 p.m.

Additional Information

Individuals who will need accommodations for a disability in order to listen to the meeting (*e.g.,* interpreting services, assistive listening devices, or material in alternative format) should notify Elizabeth Shook at (202) 245–7642, no later than October 14, 2011. We will make every attempt to meet requests for accommodations after

this date, but, cannot guarantee their availability. The conference call will be accessible to individuals with disabilities.

Electronic Access to this Document: You may view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the internet at the following site: *http://www.ed.gov/news/fedregister/index.html.* To use PDF you must have Adobe Acrobat Reader, which is available free at this site. If you have questions about using PDF, call the U.S. Government Printing Office (GPO), toll free at 1–866–512–1800; or in the Washington, DC area at 202–512–0000.

Dated: September 28, 2011.

Alexa Posny,

Assistant Secretary, Office of Special Education and Rehabilitative Services.

[FR Doc. 2011–25542 Filed 10–3–11; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board, Paducah

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: This notice announces a meeting of the Environmental Management Site-Specific Advisory Board (EM SSAB), Paducah. The Federal Advisory Committee Act (Pub. L. No. 92–463, 86 Stat. 770) requires that public notice of this meeting be announced in the **Federal Register**.

DATES: Thursday, October 20, 2011, 6 p.m.

ADDRESSES: Barkley Centre, 111 Memorial Drive, Paducah, Kentucky 42001.

FOR FURTHER INFORMATION CONTACT: Reinhard Knerr, Deputy Designated Federal Officer, Department of Energy Paducah Site Office, Post Office Box 1410, MS–103, Paducah, Kentucky 42001. Phone (270) 441–6825.

SUPPLEMENTARY INFORMATION:

Purpose of the Board: The purpose of the Board is to make recommendations to DOE–EM and site management in the areas of environmental restoration, waste management, and related activities.

Tentative Agenda

- Call to Order, Introductions, Review of Agenda.
- Deputy Designated Federal Officer's Comments.
- Federal Coordinator's Comments.
- Liaisons' Comments.
- Administrative Issues:
  - Presentation by Kentucky Research Consortium for Energy and Environment (KRCEE): Ground Water Model.
  - Presentation by Swift & Staley: Environmental Information Center.
- Subcommittee Chairs' Comments.
- Public Comments.
- Final Comments.
- Adjourn.

Breaks Taken As Appropriate.

Public Participation: The EM SSAB, Paducah, welcomes the attendance of the public at its advisory committee meetings and will make every effort to accommodate persons with physical disabilities or special needs. If you require special accommodations due to a disability, please contact Reinhard Knerr as soon as possible in advance of the meeting at the telephone number listed above. Written statements may be filed with the Board either before or after the meeting. Individuals who wish to make oral statements pertaining to agenda items should contact Reinhard Knerr at the telephone number listed above. Requests must be received as soon as possible prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Deputy Designated Federal Officer is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Individuals wishing to make public comments will be provided a maximum of five minutes to present their comments. The EM SSAB, Paducah, will hear public comments pertaining to its scope (clean-up standards and environmental restoration; waste management and disposition; stabilization and disposition of non-stockpile nuclear materials; excess facilities; future land use and long-term stewardship; risk assessment and management; and clean-up science and technology activities). Comments outside of the scope may be submitted via written statement as directed above.

Minutes: Minutes will be available by writing or calling Reinhard Knerr at the address and phone number listed above. Minutes will also be available at the following Web site: *http://www.pgdpcab.energy.gov/2011Meetings.html.*

Issued at Washington, DC on September 28, 2011.

LaTanya R. Butler,

Acting Deputy Committee Management Officer.

[FR Doc. 2011–25559 Filed 10–3–11; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

DOE Response to Defense Nuclear Facilities Safety Board's Request for Clarification on Recommendation 2011–1, Safety Culture at the Waste Treatment and Immobilization Plant

AGENCY: Department of Energy.

ACTION: Notice.

SUMMARY: On August 12, 2011, the Defense Nuclear Facilities Safety Board (DNFSB) requested clarification on DOE's response to Recommendation 2011–1, *Safety Culture at the Waste Treatment and Immobilization Plant.* In accordance with section 315(b) of the Atomic Energy Act of 1954, as amended, 42 U.S.C. 2286d(b), the following represents the Secretary of Energy's clarification response to the DNFSB's request.

ADDRESSES: Send comments, data, views, or arguments concerning the Secretary's response to: Defense Nuclear Facilities Safety Board, 625 Indiana Avenue, NW., Suite 700, Washington, DC 20004 within thirty (30) days from the date of this publication.

FOR FURTHER INFORMATION CONTACT: Mr. John Vorderbrueggen, Nuclear Engineer, Departmental Representative to the Defense Nuclear Facilities Safety Board, Office of Health, Safety and Security, U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585.

Issued in Washington, DC, on September 19, 2011.

Mari-Josette Campagnone,

Departmental Representative to the Defense Nuclear Facilities Safety Board, Office of Health, Safety and Security.

September 19, 2011

The Honorable Peter S. Winokur
Chairman
Defense Nuclear Facilities Safety Board
625 Indiana Avenue, NW, Suite 700
Washington, DC 20004–2901

Dear Mr. Chairman:

This letter responds to your August 12, 2011 letter, which requested clarification on four areas identified in our original June 30, 2011, response to your Recommendation 2011–1, *Safety Culture at the Waste Treatment and Immobilization Plant (WTP).* As you know, because this issue is of such great importance to the Department of Energy (DOE), I have designated Deputy Secretary Poneman as the Responsible Manager for this Recommendation, and he has already begun our efforts to address the issues our staffs have discussed. The Department appreciates the opportunity to provide further

clarification and believes that keeping avenues of communication open will help improve our safety culture. In our previous correspondence, the Department conveyed its acceptance of the Recommendation 2011–1 and now offers the following clarification in the areas requested:

1. DOE's present assessment of the safety culture at WTP in light of the additional sources of supporting information now available to DOE.

The Department has reviewed the incoming public comments and additional WTP safety culture-related information. On one hand, we are pleased that individuals have felt encouraged to step forward and express their concerns, to the extent that indicates that our broad message welcoming such input is being heard. On the other hand, the content of many of these messages shows that we need to continue to improve WTP's safety culture. The Department will also continue to evaluate the efficacy of applicable DOE and contractor policies and procedures, including the procedures for resolving differing professional opinions and other employee concerns.

2. DOE's current understanding of the conclusions of the HSS report.

The Health, Safety and Security (HSS) report, like all reports based on interviews, captured a snapshot in time. The report reflected the views of the interviewees as they perceived the existing situation, as interpreted by the report's authors. As your letter implies, given our steadfast commitment to safety we must continually update data and refresh conclusions based on what we learn. We have done that by reviewing the incoming comments we have received during the Deputy Secretary's July visit to Hanford and subsequently through other channels; as noted above, these have made clear that we have more work to do. That is why we have asked HSS to conduct a follow-on safety culture review at WTP as part of its broader extent-of-condition review across the DOE complex. Those reviews are scheduled to begin later this month, and we will apply what we learn in those reviews to continue our efforts to improve the safety culture at Hanford.

3. DOE's present understanding and response to Sub-recommendation 3.

DOE understands the distinction being made by the Board that there is a difference between judging the merits of a particular case between opposing parties still in dispute, and the effect that the perceptions of that controversy—regardless of the merits of the underlying case—may have on a community. We also agree with the Board that such perceptions can have a material effect on the safety culture at a site and in a community. In developing our Implementation Plan on Recommendation 2011–1, the DOE therefore will continue to work to establish a strong safety culture that takes the power of perceptions fully into account.

4. The independence, public stature, and leadership experience of the implementation team that will be called upon to provide safety culture insights and assessments to the Secretary and Senior DOE leadership.

We accept the implicit premise of the request, i.e., that the independence, stature, and leadership experience of the implementation team that will be called upon to provide safety culture insights and assessments to the Secretary and Senior DOE leadership is of crucial importance. In this regard, the review team members are selected based on their technical competence, objectivity, experience in safety management, executive leadership, and a clear understanding of corporate culture. DOE recognizes the heightened need to include ''knowledgeable others'' in the safety culture review process. The Department will therefore engage independent industry safety culture experts to evaluate the Implementation Plan (IP), and also to evaluate the quality of major IP deliverables.

Both DOE and Bechtel National Incorporated (BNI) will be performing safety culture reviews at WTP. The Department welcomes BNI's initiative in engaging qualified industry experts. DOE will monitor and cooperate with—but not partner in—the BNI review in order to gauge the validity of the BNI process. DOE will also examine the results of the review for relevant findings.

Of course, BNI's activities are not a substitute for DOE-directed reviews, which is why we are undertaking our own assessment concurrently. The HSS review will also help update our understanding of the current status of nuclear safety culture at WTP. The results of the HSS review will, of course, be shared with the Board upon its completion.

I hope this clarification is helpful. We are enthusiastic about our work toward the shared goal of safety excellence throughout the DOE complex. Given the importance of this issue, I hope you will continue to work closely with Deputy Secretary Poneman as we strengthen our efforts to promote a strong safety culture at WTP and across the DOE complex.

Sincerely,

Steven Chu

[FR Doc. 2011–25523 Filed 10–3–11; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER11–4008–001.

Applicants: Public Service Company of New Mexico.

Description: Public Service Company of New Mexico submits tariff filing per 35: ANPP HVS Part. Agreement Rate Schedule 117 to be effective 9/7/2011.

Filed Date: 09/23/2011.

Accession Number: 20110923–5002.

Comment Date: 5 p.m. Eastern Time on Friday, October 14, 2011.

Docket Numbers: ER11–2224–010.

Applicants: New York Independent System Operator, Inc.

Description: New York Independent System Operator, Inc. submits tariff filing per 35: NYISO Compliance Filing Regarding ICAP Demand Curves to be effective 9/15/2011.

Filed Date: 09/22/2011.

Accession Number: 20110922–5121.

Comment Date: 5 p.m. Eastern Time on Monday, October 3, 2011.

Docket Numbers: ER11–4606–000.

Applicants: Dragon Energy, LLC.

Description: Dragon Energy, LLC submits tariff filing per 35.1: FERC Electric MBR Baseline Tariff Filing to be effective 9/22/2011.

Filed Date: 09/22/2011.

Accession Number: 20110922–5107.

Comment Date: 5 p.m. Eastern Time on Thursday, October 13, 2011.

Docket Numbers: ER11–4607–000.

Applicants: Energy Cooperative of New York, Inc.

Description: Energy Cooperative of New York, Inc submits tariff filing per 35.1: ECNY MBR Re-File to be effective 9/22/2011.

Filed Date: 09/22/2011.

Accession Number: 20110922–5113.

Comment Date: 5 p.m. Eastern Time on Thursday, October 13, 2011.

Docket Numbers: ER11–4608–000.

Applicants: New York Industrial Energy Buyers, LLC.

Description: New York Industrial Energy Buyers, LLC submits tariff filing per 35.1: NYIEB MBR Re-File to be effective 9/22/2011.

Filed Date: 09/22/2011.

Accession Number: 20110922–5117.

Comment Date: 5 p.m. Eastern Time on Thursday, October 13, 2011.

Docket Numbers: ER11–4609–000.

Applicants: Triton Power Michigan LLC.

Description: Triton Power Michigan LLC submits tariff filing per 35.1: Baseline eTariff Filing Pursuant to Order No. 714 to be effective 9/22/2011.

Filed Date: 09/22/2011.

Accession Number: 20110922–5118.

Comment Date: 5 p.m. Eastern Time on Thursday, October 13, 2011.

Docket Numbers: ER11–4610–000.

Applicants: PJM Interconnection, LLC.

Description: PJM Interconnection, LLC submits tariff filing per 35.13(a)(2)(iii): Queue Position V3–036; Original Service Agreement Nos. 3059 & 3060 to be effective 8/23/2011.

Filed Date: 09/22/2011.

Accession Number: 20110922–5120.

Comment Date: 5 p.m. Eastern Time on Thursday, October 13, 2011.

Docket Numbers: ER11–4611–000.

Applicants: Idaho Power Company.

Description: Idaho Power Company submits tariff filing per 35.13(a)(2)(iii): BPA NITSA Oct 2011 to be effective 10/1/2011.

Filed Date: 09/22/2011.

Accession Number: 20110922–5122.

Comment Date: 5 p.m. Eastern Time on Thursday, October 13, 2011.

Docket Numbers: ER11–4612–000.

Applicants: Barrick Goldstrike Mines Inc.

Description: BARRICK GOLDSTRIKE MINES INC. Notice of Cancellation of Market-Based Rate Tariff Issued.

Filed Date: 09/23/2011.

Accession Number: 20110923–5015.

Comment Date: 5 p.m. Eastern Time on Friday, October 14, 2011.

Docket Numbers: ER11–4613–000.

Applicants: DB Energy Trading LLC.

Description: DB Energy Trading LLC submits tariff filing per 35.1: DB Energy Trading LLC Rate Schedule FERC No. 1 Baseline Filing to be effective 9/23/2011.

Filed Date: 09/23/2011.

Accession Number: 20110923–5036.

Comment Date: 5 p.m. Eastern Time on Friday, October 14, 2011.

Docket Numbers: ER11–4614–000.

Applicants: Discount Energy Group, LLC.

Description: Discount Energy Group, LLC submits tariff filing per 35.1: Discount Energy FERC Electric Tariff, Volume No. 1 Baseline to be effective 9/23/2011.

Filed Date: 09/23/2011.

Accession Number: 20110923–5049.

Comment Date: 5 p.m. Eastern Time on Friday, October 14, 2011.

The filings are accessible in the Commission's eLibrary system by clicking on the links or querying the docket number.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: September 23, 2011.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2011–25439 Filed 10–3–11; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings

Take notice that the Commission has received the following Natural Gas Pipeline Rate and Refund Report filings:

Filings Instituting Proceedings

Docket Numbers: RP11–2581–000.

Applicants: CenterPoint Energy Gas Transmission Company, LLC.

Description: CenterPoint Energy Gas Transmission Company, LLC submits tariff filing per 154.403(d)(2): CEGT LLC—Fuel Tracker Filing, to be effective 11/1/2011.

Filed Date: 09/23/2011.

Accession Number: 20110923–5051

Comment Date: 5 p.m. Eastern Time on Wednesday, October 05, 2011.

Docket Numbers: RP11–2582–000.

Applicants: Viking Gas Transmission Company

Description: Viking Gas Transmission Company submits tariff filing per 154.204: Semi Annual FLRP—Fall 2011 to be effective 11/1/2011.

Filed Date: 09/23/2011.

Accession Number: 20110923–5052.

Comment Date: 5 p.m. Eastern Time on Wednesday, October 05, 2011.

Docket Numbers: RP11–2583–000.

Applicants: Guardian Pipeline, LLC.

Description: Guardian Pipeline, LLC submits tariff filing per 154.204: 2011 Transporter's Use Gas Annual Adjustment to be effective 11/1/2011.

Filed Date: 09/23/2011.

Accession Number: 20110923–5053

Comment Date: 5 p.m. Eastern Time on Wednesday, October 05, 2011.

Docket Numbers: RP11–2584–000.

Applicants: Texas Gas Transmission, LLC.

Description: Texas Gas Transmission, LLC submits tariff filing per 154.204: Storage Update Filing to be effective 11/1/2011.

Filed Date: 09/23/2011.

Accession Number: 20110923–5054.

Comment Date: 5 p.m. Eastern Time on Wednesday, October 05, 2011.

Docket Numbers: RP11–2585–000.

Applicants: Venice Gathering System, LLC.

Description: Venice Gathering System, LLC submits tariff filing per 154.204: Section 31, Off-System Capacity to be effective 10/24/2011.

Filed Date: 09/23/2011.

Accession Number: 20110923–5084.

Comment Date: 5 p.m. Eastern Time on Wednesday, October 05, 2011.

Docket Numbers: RP11–2586–000.

Applicants: Columbia Gas Transmission, LLC.

Description: Columbia Gas Transmission, LLC submits tariff filing per 154.204: Negotiated Rate Service Agreement—NJR to be effective 9/24/2011.

Filed Date: 09/23/2011.

Accession Number: 20110923–5097

Comment Date: 5 p.m. Eastern Time on Wednesday, October 05, 2011.

Docket Numbers: RP11–2587–000.

Applicants: USG Pipeline Company.

Description: USG Pipeline Company submits tariff filing per 154.204: Negotiated Rate filing with CDNAG to be effective 10/24/2011.

Filed Date: 09/23/2011.

Accession Number: 20110923–5141.

Comment Date: 5 p.m. Eastern Time on Wednesday, October 05, 2011.

Docket Numbers: RP11–2589–000.

Applicants: Gulf Crossing Pipeline Company LLC.

Description: Gulf Crossing Pipeline Company LLC submits tariff filing per 154.204: Create PAL Service to be effective 11/1/2011.

Filed Date: 09/26/2011.

Accession Number: 20110926–5066.

Comment Date: 5 p.m. Eastern Time on Tuesday, October 11, 2011.

Docket Numbers: RP11–2590–000.

Applicants: Dominion Cove Point LNG, LP.

Description: Dominion Cove Point LNG, LP submits tariff filing per 154.203: DCP—2011 Revenue Crediting Report to be effective N/A.

Filed Date: 09/26/2011.
Accession Number: 20110926–5079.
Comment Date: 5 p.m. Eastern Time on Tuesday, October 11, 2011.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR § 385.211 and § 385.214) on or before 5 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

Filings in Existing Proceedings

Docket Numbers: RP11–2486–001.
Applicants: Algonquin Gas Transmission, LLC.
Description: Algonquin Gas Transmission, LLC submits tariff filing per 154.205(b): Amendment to ConEd 2011–09–01 Releases to be effective 9/1/2011.
Filed Date: 09/26/2011.
Accession Number: 20110926–5089.
Comment Date: 5 p.m. Eastern Time on Tuesday, October 11, 2011.

Any person desiring to protest in any the above proceedings must file in accordance with Rule 211 of the Commission's Regulations (18 CFR 385.211) on or before 5 p.m. Eastern time on the specified comment date.

The filings are accessible in the Commission's eLibrary system by clicking on the links or querying the docket number.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, and service can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: September 27, 2011.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2011–25440 Filed 10–3–11; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings

Take notice that the Commission has received the following Natural Gas Pipeline Rate and Refund Report filings:

Filings Instituting Proceedings

Docket Numbers: RP11–1942–000.
Applicants: Tennessee Gas Pipeline Company.
Description: Tennessee Gas Pipeline Company submits tariff filing per: Quality Interchangeability Settlement Pro Forma to be effective 12/31/9998.
Filed Date: 09/22/2011.
Accession Number: 20110922–5090.
Initial Comment Date: 5 p.m. Eastern Time on Monday, October 03, 2011.
Reply Comment Date: 5 p.m. Eastern Time on Tuesday, October 11, 2011.

Docket Numbers: RP11–2577–000.
Applicants: Dominion Transmission, Inc.
Description: Dominion Transmission, Inc. submits tariff filing per 154.204: DTI—Abandonment of X–71 and X–72 to be effective 11/1/2011.
Filed Date: 09/22/2011.
Accession Number: 20110922–5088.
Comment Date: 5 p.m. Eastern Time on Tuesday, October 04, 2011.

Docket Numbers: RP11–2578–000.
Applicants: Guardian Pipeline, L.L.C.
Description: Guardian Pipeline, L.L.C. submits tariff filing per 154.204: EPC Semi Annual Adjustment—Fall 2011 to be effective 11/1/2011.
Filed Date: 09/22/2011.
Accession Number: 20110922–5096.
Comment Date: 5 p.m. Eastern Time on Tuesday, October 04, 2011.

Docket Numbers: RP11–2579–000.
Applicants: Mississippi Hub, LLC.
Description: Annual Penalty Disbursement Report of Mississippi Hub, LLC.
Filed Date: 09/23/2011.
Accession Number: 20110923–5016.
Comment Date: 5 p.m. Eastern Time on Wednesday, October 05, 2011.

Docket Numbers: RP11–2580–000.
Applicants: CenterPoint Energy—Mississippi River Transmission, LLC.
Description: CenterPoint Energy—Mississippi River Transmission, LLC submits tariff filing per 154.403(d)(2): 2011 Fuel Adjustment Filing to be effective 11/1/2011.
Filed Date: 09/23/2011.
Accession Number: 20110923–5022.
Comment Date: 5 p.m. Eastern Time on Wednesday, October 05, 2011.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

The filings are accessible in the Commission's eLibrary system by clicking on the links or querying the docket number.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, and service can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: September 23, 2011.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2011–25441 Filed 10–3–11; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. PR11–129–000]

Acadian Gas Pipeline System; Notice of Petition for Rate Approval

Take notice that on September 26, 2011, Acadian Gas Pipeline System (Acadian) filed a petition pursuant to section 284.123 of the Commission's regulations, a petition for approval of rates for transportation services authorized under Section 311(a)(2) of the Natural Gas Policy Act of 1978 and a revised Statement of Operating Conditions, as more fully described in the application.

Any person desiring to participate in this rate filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the date as indicated below. Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 7 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the ''eLibrary'' link and is available for

review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m. Eastern Time on Tuesday, October 11, 2011.

Dated: September 27, 2011.

Kimberly D. Bose,

Secretary.

[FR Doc. 2011–25474 Filed 10–3–11; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OAR–2003–0213; FRL–9474–9]

Agency Information Collection Activities; Submission to OMB for Review and Approval; Comment Request; Fuel and Fuel Additives (Renewal)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) (44 U.S.C. 3501 *et seq.*), this document announces that an Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval. This is a request to renew an existing approved collection. The ICR, which is abstracted below, describes the nature of the information collection and its estimated burden and cost.

DATES: Additional comments may be submitted on or before November 3, 2011.

ADDRESSES: Submit your comments, referencing Docket ID No. EPA–HQ–OAR–2003–0213, to (1) EPA online using *http://www.regulations.gov* (our preferred method), by e-mail to *a-and-r-Docket@epa.gov* or by mail to: EPA Docket Center, Environmental Protection Agency, Air and Radiation Docket, Mail code: 28221T, 1200 Pennsylvania Ave., NW., Washington, DC 20460, and (2) OMB by mail to: Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Attention: Desk Officer for EPA, 725 17th Street, NW., Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Jose M. Solar, Office of Transportation and Air Quality, mail code 6406J, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: 202–343–9027; fax number 202–343–2801; e-mail address: *Solar.Jose@epa.gov.*

SUPPLEMENTARY INFORMATION: EPA has submitted the following ICR to OMB for review and approval according to the procedures prescribed in 5 CFR 1320.12. On Wednesday, May 18, 2011 (76 FR 28768), EPA sought comments on this ICR pursuant to 5 CFR 1320.8(d). EPA received no comments. Any additional comments on this ICR should be submitted to EPA and OMB within 30 days of this notice.

EPA has established a public docket for this ICR under Docket ID No. EPA–HQ–OAR–2003–0213, which is available for online viewing at *http://www.regulations.gov,* or in person viewing at the Office of Air and Radiation Docket in the EPA Docket Center (EPA/DC), EPA West, Room 3334, 1301 Constitution Ave., NW., Washington, DC. The EPA/DC Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is 202–566–1744, and the telephone number for the Office of Air and Radiation Docket is 202–566–1742.

Use EPA's electronic docket and comment system at *http://www.regulations.gov,* to submit or view public comments, access the index listing of the contents of the docket, and to access those documents in the docket that are available electronically. Once in the system, select ''docket search,'' then key in the docket ID number identified above. Please note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing at *http://www.regulations.gov* as EPA receives them and without change, unless the comment contains copyrighted material, confidential business information (CBI), or other information whose public disclosure is restricted by statute. For further information about the electronic docket, go to *http://www.regulations.gov.*

Title: Fuel and Fuel Additives (Renewal).

ICR numbers: EPA ICR No. 1591.25, OMB Control No. 2060–0277.

ICR Status: This ICR is currently scheduled to expire on 10/31/11. Under OMB regulations, the Agency may continue to conduct or sponsor the collection of information while this submission is pending at OMB. An Agency may not conduct or sponsor, and a person is not required to respond to, a collection of information, unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in title 40 of the CFR, after appearing in the **Federal Register** when approved, are listed in 40 CFR part 9, are displayed either by publication in the **Federal Register** or by other appropriate means, such as on the related collection instrument or form, if applicable. The display of OMB control numbers in certain EPA regulations is consolidated in 40 CFR part 9.

Abstract: Gasoline combustion is the major source of air pollution in most urban areas. In the 1990 amendments to the Clean Air Act (Act), section 211(k), Congress required that gasoline dispensed in nine areas with severe air quality problems, and areas that opt-in, be reformulated to reduce toxic and ozone-forming emissions. Congress also required that, in the process of producing reformulated gasoline (RFG), dirty components removed in the reformulation process not be ''dumped'' into the remainder of the country's gasoline, known as conventional gasoline (CG). The Environmental Protection Agency (EPA) promulgated regulations at 40 CFR part 80, subpart D—Reformulated Gasoline, Subpart E—Anti-Dumping, and Subpart F—Attest Engagements, implementing the statutory requirements, which include standards for RFG (80.41) and CG (80.101). The regulations also contain reporting and recordkeeping requirements for the production, importation, transport and storage of gasoline, in order to demonstrate compliance and facilitate compliance and enforcement. The program is run by the Office of Transportation and Air Quality, Office of Air and Radiation. Enforcement is done by the Air Enforcement Division, Office of Regulatory Enforcement, Office of Enforcement and Compliance Assurance. This program excludes California, which has separate requirements for gasoline.

The United States has an annual gasoline consumption of about 133 billion gallons, of which about 30% is RFG. In 2009 EPA received reports from 255 refineries, 60 importer facilities/facility groups, 44 oxygenate blending facilities, 21 independent laboratory facilities, and the RFG Survey Association, Inc. under this program.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average 2.4 hours per response. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain,

or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements which have subsequently changed; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Respondents/Affected Entities: Refiners, Oxygenate Blenders, and Importers of Gasoline; Requirements for parties in the Gasoline Distribution Network.

Estimated Number of Respondents: 4,068.

Frequency of Response: Once, Quarterly, Annually, on Occasion.

Estimated Total Annual Hour Burden: 127,041.

Estimated Total Annual Cost: $38,686,442, which includes $24,713,032 annualized capital or O&M costs, and $13,973,410 in labor costs.

Changes in the Estimates: There is no change in the hour estimated burden currently identified in the OMB Inventory of Approved ICR Burdens.

Dated: September 28, 2011.

John Moses,

Director, Collection Strategies Division.

[FR Doc. 2011–25502 Filed 10–3–11; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–9475–2]

National Drinking Water Advisory Council; Request for Nominations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Request for Nominations.

SUMMARY: The EPA invites nominations from a diverse range of qualified candidates to be considered for a three-year appointment to the National Drinking Water Advisory Council (Council). The 15 member Council was established by the Safe Drinking Water Act (SDWA) to provide practical and independent advice, consultation and recommendations to the EPA Administrator on the activities, functions, policies, and regulations required by the SDWA. This notice solicits nominations to fill five (5) new vacancies through December 15, 2014. To maintain the representation required by statute, nominees will be selected to represent: State and local agencies (one vacancy), organizations or groups demonstrating an active interest in the field of public water supply and public health protection (two vacancies), and the general public (two vacancies).

DATES: Nominations should be submitted on or before October 31, 2011.

ADDRESSES: Submit nominations to Suzanne Kelly, Designated Federal Officer, National Drinking Water Advisory Council, U.S. Environmental Protection Agency, Office of Ground Water and Drinking Water (Mail Code 4601–M), 1200 Pennsylvania Avenue, NW., Washington, DC 20460. You may also e-mail nominations with the subject line NDWACResume2012 at *kelly.suzanne@epa.gov.*

FOR FURTHER INFORMATION CONTACT: E-mail your questions to Jacquelyn Springer, at *springer.jacquelyn@epa.gov* or call 202–564–9904.

SUPPLEMENTARY INFORMATION:

National Drinking Water Advisory Council: The Council was created by Congress on December 16, 1974, as part of the Safe Drinking Water Act of 1974, Public Law 93–523, 42 U.S.C. 300j–5 and is operated in accordance with the provisions of the Federal Advisory Committee Act (FACA), 5 U.S.C. App.2. The Council consists of 15 members, including a Chairperson, appointed by EPA's Deputy Administrator. Five members represent the general public; five members represent appropriate State and local agencies concerned with water hygiene and public water supply; and five members represent private organizations or groups demonstrating an active interest in the field of water hygiene and public water supply, of which two members shall represent small, rural public water systems. The current list of members is available on the EPA Web site at: *http://water.epa.gov/drink/ndwac/.*

The Council meets face-to-face twice each year, generally in the spring and fall. Additionally, members may be asked to participate in teleconference meetings or ad hoc workgroups to develop policy recommendations, advice letters and reports to address specific program issues.

Member Nominations: Any interested person and/or organization may nominate qualified individuals for membership. The EPA values and welcomes diversity. In an effort to obtain nominations of diverse candidates, the agency encourages nominations of women and men of all racial and ethnic groups.

All nominations will be fully considered, but applicants need to be aware of the specific representation required by statute: State and local agencies concerned with public water supply (one vacancy), organizations or groups demonstrating an active interest in the field of public water supply and public health protection (two vacancies, one associated with small, rural public water systems), and the general public (two vacancies). Other criteria used to evaluate nominees will include:

- Background and experience that would help members to contribute to the diversity of perspectives (e.g., geographic, economic, social and cultural);
- Demonstrated experience with drinking water issues at the national, State or local level; and
- Excellent interpersonal, oral and written communication and consensus-building skills.

Nominations must include a resume, providing the nominee's background, experience and educational qualifications, as well as a brief statement (one page or less) describing the nominee's interest in serving on the Council. Nominees should be identified by name, occupation, position, current business address, and e-mail and telephone number. Interested candidates may self nominate.

Persons selected for membership will receive compensation for travel and a nominal daily compensation (if appropriate) while attending meetings. Additionally, selected candidates will be required to fill out the ''Confidential Financial Disclosure Form for EPA Special Government Employees.'' This confidential form allows government officials to determine whether there is a statutory conflict between that person's public responsibilities (which includes membership on an EPA Federal advisory committee) and private interests and activities, or the appearance of a lack of impartiality, as defined by Federal regulation.

Other sources, in addition to this **Federal Register** notice, may also be utilized in the solicitation of nominees. To help the EPA in evaluating the effectiveness of its outreach efforts, please tell us how you learned of this opportunity.

Dated: September 28, 2011.

Cynthia C. Dougherty,

Director, Office of Ground Water and Drinking Water.

[FR Doc. 2011–25501 Filed 10–3–11; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

Information Collection Being Submitted for Review and Approval to the Office of Management and Budget

AGENCY: Federal Communications Commission.

ACTION: Notice and request for comments.

SUMMARY: The Federal Communications Commission (FCC), as part of its continuing effort to reduce paperwork burdens, invites the general public and other Federal agencies to take this opportunity to comment on the following information collection, as required by the *Paperwork Reduction Act* (PRA) of 1995. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the PRA that does not display a valid control number. Comments are requested concerning (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology; and (e) ways to further reduce the information collection burden on small business concerns with fewer than 25 employees.

The FCC may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the PRA that does not display a valid Office of Management and Budget (OMB) control number.

DATES: Written comments should be submitted on or before November 3, 2011. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contacts below as soon as possible.

ADDRESSES: Direct all PRA comments to Nicholas A. Fraser, OMB, via fax 202–395–5167, or via e-mail *Nicholas_A._Fraser@omb.eop.gov;* and to Cathy Williams, FCC, via e-mail *PRA@fcc.gov/mailto: PRA@fcc.gov* and to *Cathy.Williams@fcc.gov.* Include in the comments the OMB control number as shown in the **SUPPLEMENTARY INFORMATION** section below.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collection, contact Cathy Williams at (202) 418–2918. To view a copy of this information collection request (ICR) submitted to OMB: (1) Go to the web page *http://www.reginfo.gov/public/do/PRAMain,* (2) look for the section of the Web page called ''Currently Under Review,'' (3) click on the downward-pointing arrow in the ''Select Agency'' box below the ''Currently Under Review'' heading, (4) select ''Federal Communications Commission'' from the list of agencies presented in the ''Select Agency'' box, (5) click the ''Submit'' button to the right of the ''Select Agency'' box, (6) when the list of FCC ICRs currently under review appears, look for the OMB control number of this ICR and then click on the ICR Reference Number. A copy of the FCC submission to OMB will be displayed.

SUPPLEMENTARY INFORMATION:

OMB Control No.: 3060–1097.

Title: Service Rules and Policies for the Broadcasting Satellite Service (BSS).

Form No.: Not Applicable.

Type of Review: Revision of a currently approved collection.

Respondents: Business or other for-profit entities.

Number of Respondents: 8 respondents; 48 responses.

Estimated Time per Response: 2 hours—36 hours.

Frequency of Response: On occasion reporting requirement.

Obligation to Respond: Required to obtain or retain benefits. The Commission has statutory authority for the information collection requirements under Sections 1, 4(i), 4(j), 7(a), 301, 303(c), 303(f), 303(g), 303(r), 303(y) and 308 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154(i), 154(j), 157(a), 301, 303(c), 303(f), 303(g), 303(r), 303(y), and 308.

Total Annual Burden: 848 hours.

Total Annual Cost: $43,200 annual costs.

Privacy Act Impact Assessment: No impact(s).

Nature and Extent of Confidentiality: In general, there is no need for confidentiality pertaining to the information collection requirements in this collection.

Needs and Uses: The Federal Communications Commission (''Commission'') is requesting that the Office of Management and Budget (OMB) approve a new information collection titled, ''Establishment of Policies and Service Rules for the Broadcasting-Satellite Service at the 17.3–17.7 GHz Frequency Band and at the 17.7–17.8 GHz Frequency Band Internationally, and at the 24.75–25.25 GHz Frequency Band for Fixed Satellite Services Providing Feeder Links to the Broadcasting-Satellite Service and for the Satellite Services Operating Bi-directionally in the 17.3–17.8 GHz Frequency Band (17/24 GHz BSS).'' On June 14, 2011, the Commission released a Second Report and Order (Order) titled, ''In the Matter of The Establishment of Policies and Service Rules for the Broadcasting-Satellite Service at the 17.3–17.7 GHz Frequency Band and at the 17.7–17.8 Frequency Band Internationally, and at the 24.75–25.25 GHz Frequency Band for Fixed Satellite Services Providing Feeder Links to the Broadcasting-Satellite Service and for the Satellite Services Operating Bi-directionally in the 17.3–17.8 GHz Frequency Band'' IB Docket No. 06–123, FCC 11–93.

A total of 8 companies have applied to the Commission to provide Broadcasting Satellite Service (BSS) or are currently authorized by the Commission to provide Direct Broadcast Satellite Service (DBS).

This Order contains the following new information collection requirements for which we seek OMB approval:

New Information Collection Requirements

47 CFR 25.114(d)(15) (iv)—Applicants filing for a space station authorization must file the information required in Section 26.264(a)–(b).

47 CFR 25.114(d)(18)—Applicants filing for a space station authorization in the Direct Broadcast Satellite service or the 17/24 GHz broadcasting-satellite service, must provide maximum orbital eccentricity calculations.

47 CFR 25.264(a)—Each applicant for a space station license in the 17/24 GHz broadcasting-satellite service (BSS) must provide a series of tables or graphs with its application, that contain the predicted transmitting antenna off-axis gain information for each transmitting antenna in the 17.3–17.8 GHz frequency band. Using a Cartesian coordinate system wherein the X-axis is defined as tangent to the geostationary orbital arc with the positive direction pointing east, i.e., in the direction of travel of the satellite; the Y-axis is defined as parallel to a line passing through the geographic north and south poles of the Earth, with the positive direction pointing south; and the Z-axis is defined parallel to a line passing through the center of the

Earth, with the positive direction pointing toward the Earth, the applicant must provide the predicted transmitting antenna off-axis antenna gain information:

(1) In the X–Z plane, i.e., the plane of the geostationary orbit, over a range of ±30 Degrees from the positive and negative X-axes in increments of 5 degrees or less.

(2) In planes rotated from the X–Z plane about the Z-axis, over a range of up to ±60 degrees relative to the equatorial plane, in increments of 10 degrees or less.

(3) In both polarizations.

(4) At a minimum of three measurement frequencies determined with respect to the entire portion of the 17.3–17.8 GHz frequency band over which the space station is designed to transmit: 5 MHz above the lower edge of the band; at the band center frequency; and 5 MHz below the upper edge of the band.

(5) Over a greater angular measurement range, if necessary, to account for any planned spacecraft orientation bias or change in operating orientation relative to the reference coordinate system. The applicant must also explain its reasons for doing so.

47 CFR 25.264(b)—Each applicant for a space station license in the 17/24 GHz BSS must provide power flux density (pfd) calculations with its application that are based upon the predicted off-axis transmitting antenna gain information submitted in accordance with paragraph (a) of this section, as follows:

(1) The pfd calculations must be provided at the location of all prior-filed U.S. DBS space stations where the applicant's pfd level exceeds the coordination trigger of −117 dBW/m[FN2]/100 kHz in the 17.3–17.8 GHz band. In this rule, the term prior-filed U.S. DBS space station refers to any Direct Broadcast Satellite service space station application that was filed with the Commission (or authorization granted by the Commission) prior to the filing of the 17/24 GHz BSS application containing the predicted off-axis transmitting antenna gain information. The term prior-filed U.S. DBS space station does not include any applications (or authorizations) that have been denied, dismissed, or are otherwise no longer valid. Prior-filed U.S. DBS space stations may include foreign-licensed DBS space stations seeking authority to serve the United States market, but do not include foreign-licensed DBS space stations that have not filed applications with the Commission for market access in the United States.

(2) The pfd calculations must take into account the maximum longitudinal station-keeping tolerance, orbital inclination and orbital eccentricity of both the 17/24 GHz BSS and DBS space stations, and must:

(i) Identify each prior-filed U.S. DBS space station at whose location the coordination threshold pfd level of −117 dBW/m[FN2]/100 kHz is exceeded; and

(ii) Demonstrate the extent to which the applicant's transmissions in the 17.3–17.8 GHz band exceed the threshold pfd level of −117 dBW/m[FN2]/100 kHz at those prior-filed U.S. DBS space station locations.

(3) If the calculated pfd level is in excess of the threshold level of −117 dBW/m[FN2]/100 kHz at the location of any prior-filed U.S. DBS space station, the applicant must also provide with its application certification that all affected DBS operators acknowledge and do not object to the applicants higher off-axis pfd levels. No such certification is required in cases where the DBS and 17/24 GHz BSS assigned operating frequencies do not overlap.

47 CFR 25.264(c)—No later than nine months prior to launch, each 17/24 GHz BSS space station applicant or authorization holder must confirm the predicted transmitting antenna off-axis gain information provided in accordance with § 25.114(d)(15)(iv) by submitting measured transmitting antenna off-axis gain information over the angular ranges, measurement frequencies and polarizations described in paragraphs (a)(1)–(5) of this section. The transmitting antenna off-axis gain information should be measured under conditions as close to flight configuration as possible.

4.47 CFR 25.264(d)—No later than nine months prior to launch, each 17/24 GHz BSS space station applicant or authorization holder must provide pfd calculations based upon the measured transmitting antenna off-axis gain information that is submitted in accordance with paragraph (c) of this section as follows:

(1) The pfd calculations must be provided:

(i) At the location of all prior-filed U.S. DBS space stations as defined in paragraph (b)(1) of this section, where the applicant's pfd level in the 17.3–17.8 GHz band exceeds the coordination trigger of −117 dBW/m[FN2]/100 kHz; and

(ii) At the location of any subsequently-filed DBS U.S. DBS space station where the applicant's pfd level in the 17.3–17.8 GHz band exceeds the coordination trigger of −117 dBW/m[FN2]/100 kHz. In this rule, the term subsequently-filed U.S. DBS space station refers to any Direct Broadcast Satellite service space station application that was filed with the Commission (or authorization granted by the Commission) after the 17/24 GHz BSS operator submitted the predicted data required by paragraphs (a)–(b) of this section, but prior to the time the 17/24 GHz BSS operator submitted the measured data required in this paragraph. Subsequently-filed U.S. DBS space stations may include foreign-licensed DBS space stations seeking authority to serve the United States market. The term does not include any applications (or authorizations) that have been denied, dismissed, or are otherwise no longer valid, nor does it include foreign-licensed DBS space stations that have not filed applications with the Commission for market access in the United States.

(2) The pfd calculations must take into account the maximum longitudinal station-keeping tolerance, orbital inclination and orbital eccentricity of both the 17/24 GHz BSS and DBS space stations, and must:

(i) Identify each prior-filed U.S. DBS space station at whose location the coordination threshold pfd level of −117 dBW/m[FN2]/100 kHz is exceeded; and

(ii) Demonstrate the extent to which the applicant's or licensee's transmissions in the 17.3–17.8 GHz band exceed the threshold pfd level of −117 dBW/m[FN2]/100 kHz at those prior-filed U.S. DBS space station locations.

47 CFR 25.264(f)—The 17/24 GHz BSS applicant or licensee must modify its license, or amend its application, as appropriate, based upon new information:

(1) If the pfd levels submitted in accordance with paragraph (d) of this section, are in excess of those submitted in accordance with paragraph (b) of this section at the location of any prior-filed or subsequently-filed U.S. DBS space station as defined in paragraphs (b)(1) and (d)(1) of this section, or

(2) If the 17/24 GHz BSS operator adjusts its operating parameters in accordance with paragraphs (e)(1)(ii) or (e)(2)(ii) of this section.

Federal Communications Commission.

Marlene H. Dortch,

Secretary, Office of the Secretary, Office of Managing Director.

[FR Doc. 2011–25460 Filed 10–3–11; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

Information Collections Being Submitted for Review and Approval to the Office of Management and Budget

AGENCY: Federal Communications Commission.

ACTION: Notice and request for comments.

SUMMARY: The Federal Communications Commission (FCC), as part of its continuing effort to reduce paperwork burdens, invites the general public and other Federal agencies to take this opportunity to comment on the following information collection, as required by the *Paperwork Reduction Act (PRA) of 1995.* An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the PRA that does not display a valid control number. Comments are requested concerning (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology; and (e) ways to further reduce the information collection burden on small business concerns with fewer than 25 employees.

The FCC may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the PRA that does not display a valid Office of Management and Budget (OMB) control number.

DATES: Written comments should be submitted on or before November 3, 2011. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contacts below as soon as possible.

ADDRESSES: Direct all PRA comments to Nicholas A. Fraser, OMB, via fax 202–395–5167, or via e-mail *Nicholas_A._Fraser@omb.eop.gov*; and to Cathy Williams, FCC, via e-mail *PRA@fcc.gov* mail to: *PRA@fcc.gov* and to *Cathy.Williams@fcc.gov.* Include in the comments the OMB control number as shown in the **SUPPLEMENTARY INFORMATION** section below.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collection, contact Cathy Williams at (202) 418–2918. To view a copy of this information collection request (ICR) submitted to OMB: (1) Go to the web page *http://www.reginfo.gov/public/do/PRAMain*, (2) look for the section of the Web page called ''Currently Under Review,'' (3) click on the downward-pointing arrow in the ''Select Agency'' box below the ''Currently Under Review'' heading, (4) select ''Federal Communications Commission'' from the list of agencies presented in the ''Select Agency'' box, (5) click the ''Submit'' button to the right of the ''Select Agency'' box, (6) when the list of FCC ICRs currently under review appears, look for the OMB control number of this ICR and then click on the ICR Reference Number. A copy of the FCC submission to OMB will be displayed.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–0906.

Title: 47 CFR 73.624(g), FCC Form 317.

Form Number: FCC Form 317.

Type of Review: Revision of a currently approved collection.

Respondents: Business or other for profit entities; not for profit institutions; State, local or Tribal government.

Number of Respondents and Responses: 9,391 respondents; 18,782 responses.

Estimated Hours per Response: 2–4 hours.

Frequency of Response: Recordkeeping requirement; annual reporting requirement; one time reporting requirement.

Total Annual Burden: 56,346 hours.

Total Annual Cost: $1,408,650.

Obligation To Respond: Required to obtain or retain benefits. The statutory authority for this information collection is contained in Sections 154(i), 301, 303, 336 and 403 of the *Communications Act of 1934,* as amended.

Nature and Extent of Confidentiality: There is no need for confidentiality with this collection of information.

Privacy Act Assessment: No impact(s).

Needs and Uses: On July 15, 2011, the Commission adopted the Second Report and Order, In the Matter of Amendment of Parts 73 and 74 of the Commission's Rules to Establish Rules for Digital Low Power Television Translator, and Television Booster Stations and to Amend Rules for Digital Class A Television Stations, MB Docket No. 03–185, FCC 11–110 (''LPTV Digital Second Report and Order''). The LPTV Digital Second Report and Order contains rules and policies for low power stations (''LPTV'') to transition from analog to digital broadcasting and states that low power television, TV translator, and Class A television stations operating pursuant to Special Temporary Authority (STA) must comply with the requirements for feeable ancillary or supplementary services in Section 73.624(g) (using FCC Form 317). This requirement is being submitted to the Office of Management and Budget (OMB) for review and approval.

OMB Control Number: 3060–0386.

Title: Special Temporary Authorization (STA) Requests; Notifications; and Informal Filings; Sections 1.5, 73.1615, 73.1635, 73.1740, and 73.3598; CDBS Informal Forms; Section 74.788; Low Power Television, TV Translator and Class A Television Digital Transition Notifications; FCC Form 337.

Form Number: FCC Form 337.

Type of Review: Revision of a currently approved collection.

Respondents: Business or other for profit entities; not for profit institutions; State, local or Tribal government.

Number of Respondents and Responses: 6,509 respondents; 6,509 responses.

Estimated Hours per Response: 0.5 to 4 hours.

Frequency of Response: On occasion reporting requirement; one time reporting requirement.

Total Annual Burden: 5,325 hours.

Total Annual Cost: $2,126,510.

Obligation To Respond: Required to obtain or retain benefits. The statutory authority for this information collection is contained in Sections 1, 4(i) and (j), 7, 301, 302, 303, 307, 308, 309, 312, 316, 318, 319, 324, 325, 336 and 337 of the Communications Act of 1934, as amended.

Nature and Extent of Confidentiality: There is no need for confidentiality with this collection of information.

Privacy Act Assessment: No impact(s).

Needs and Uses: On July 15, 2011, the Commission adopted the Second Report and Order, In the Matter of Amendment of Parts 73 and 74 of the Commission's Rules to Establish Rules for Digital Low Power Television Translator, and Television Booster Stations and to Amend Rules for Digital Class A Television Stations, MB Docket No. 03–185, FCC 11–110 (''LPTV Digital Second Report and Order''). The LPTV Digital Second Report and Order contains rules and policies for low power stations (''LPTV'') to transition from analog to digital broadcasting and states that low

power television, TV translator, and Class A television stations that have not already transitioned to digital must submit a notification to the Commission (through an informal filing) of their decision to either flash cut on their existing analog channel or to continue operating their digital companion channel and return their analog license. This requirement is being submitted to the Office of Management and Budget (OMB) for review and approval.

Federal Communications Commission.

Marlene H. Dortch,

Secretary, Office of the Secretary, Office of Managing Director.

[FR Doc. 2011–25461 Filed 10–3–11; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL DEPOSIT INSURANCE CORPORATION

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: Federal Deposit Insurance Corporation (FDIC).

ACTION: Notice of information collection to be submitted to OMB for review and approval under the Paperwork Reduction Act.

SUMMARY: In accordance with requirements of the Paperwork Reduction Act of 1995 (''PRA''), 44 U.S.C. 3501 *et seq.,* the FDIC may not conduct or sponsor, and the respondent is not required to respond to, an information collection unless it displays a currently valid Office of Management and Budget (OMB) control number. The FDIC, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on the renewal of existing information collections, as required by the PRA. On July 20, 2011 (76 FR 43330), the FDIC solicited public comment for a 60-day period on renewal of the following information collection: Prompt Corrective Action (OMB No. 3064–0115). No comments were received. Therefore, the FDIC hereby gives notice of submission of its requests for renewal to OMB for review.

DATES: Comments must be submitted on or before November 3, 2011.

ADDRESSES: Interested parties are invited to submit written comments to the FDIC by any of the following methods:

- *http://www.FDIC.gov/regulations/laws/federal/notices.html.*
- *E-mail: comments@fdic.gov* Include the name of the collection in the subject line of the message.
- *Mail:* Gary A. Kuiper (202–898–3877), Counsel, Room F–1086, 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 17th Street Building (located on F Street), on business days between 7 a.m. and 5 p.m.

All comments should refer to the relevant OMB control number. A copy of the comments may also be submitted to the OMB desk officer for the FDIC: Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Gary A. Kuiper, at the FDIC address above.

SUPPLEMENTARY INFORMATION: Proposal to renew the following currently approved collections of information:

Title: Prompt Corrective Action.

OMB Number: 3064–0115.

Frequency of Response: On occasion.

Affected Public: Insured depository institutions.

Estimated Number of Respondents: 50.

Estimated Time per Response: 4 hours.

Total Annual Burden: 200 hours.

General Description of Collection: The Prompt Corrective Action provisions in Section 38 of the Federal Deposit Insurance Act (12 U.S.C. 1831o) permits and, in some cases requires, the FDIC and other federal banking agencies to take certain supervisory actions when FDIC-insured institutions fall within one of five capital categories. They also restrict or prohibit certain activities and require the submission of a capital restoration plan when an insured institution becomes undercapitalized.

Request for Comment

Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the FDIC's functions, including whether the information has practical utility; (b) the accuracy of the estimates of the burden of the information collection, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology. All comments will become a matter of public record.

Dated at Washington, DC, this 28th day of September 2011.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Executive Secretary.

[FR Doc. 2011–25434 Filed 10–3–11; 8:45 am]

BILLING CODE 6714–01–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 application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States.

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 28, 2011.

A. Federal Reserve Bank of San Francisco (Kenneth Binning, Vice President, Applications and Enforcement) 101 Market Street, San Francisco, California 94105–1579:

1. *Carpenter Fund Manager GP, LLC; Carpenter Fund Management Company, LLC; Carpenter Community BancFund, L.P.; Carpenter Community BancFund—A, L.P.; Carpenter Community BancFund—CA, L.P.; SCJ, Inc.; and CCFW, Inc.,* all in Irvine, California; to acquire an additional 6 percent, for a total of 37.6 percent, of Manhattan Bancorp, and thereby indirectly acquire additional voting shares of Bank of

Manhattan, N.A., both in El Segundo, California.

Board of Governors of the Federal Reserve System, September 29, 2011.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 2011–25514 Filed 10–3–11; 8:45 am]

BILLING CODE 6210–01–P

GENERAL SERVICES ADMINISTRATION

[Notice–R03–2011–01; Docket 2011–0006; Sequence 18]

Notice of Intent To Prepare an Environmental Impact Statement for the Foreign Affairs Security Training Center (FASTC) and To Announce Public Scoping Meetings

AGENCY: U.S. General Services Administration (GSA).

ACTION: Notice.

SUMMARY: Pursuant to the National Environmental Policy Act (NEPA) of 1969, as implemented by the Council on Environmental Quality regulations (40 Code of Federal Regulations [CFR] parts 1500–1508), the GSA announces its intent to prepare an Environmental Impact Statement (EIS) to analyze and assess the environmental impacts of site acquisition and development of the United States Department of State (DOS), Bureau of Diplomatic Security, the Foreign Affairs Security Training Center (FASTC) at the Virginia Army National Guard's Maneuver Training Center at Fort Pickett and Pickett Park in Nottoway County, Virginia. DOS, United States Army Corps of Engineers, United States Environmental Protection Agency and National Guard Bureau are cooperating agencies in this EIS.

DATES: A public scoping meeting in open house format will be held on October 18, 2011 from 6:30 p.m. to 8:30 p.m. to provide the public with an opportunity to provide comments, ask questions, and discuss concerns regarding the scope of the EIS with GSA and DOS representatives.

ADDRESSES: GSA will hold a public scoping meeting at the Blackstone Armory, 1008 Darvills Rd., Blackstone, VA 23824 from 6:30 p.m. to 8:30 p.m.

Written comments concerning the scope of the EIS may be mailed to Abigail Low, GSA Project Manager, 20 N 8th Street, Philadelphia, PA 19107, via e-mail to *FASTC.info@gsa.gov.* More detailed information on the FASTC program is available at *http://www.state.gov/recovery/fastc.*

FOR FURTHER INFORMATION CONTACT: Abigail Low, GSA Project Manager; 20 N 8th Street, Philadelphia, PA 19107 (215) 446–4815, *FASTC.info@gsa.gov.*

SUPPLEMENTARY INFORMATION:

Background: The purpose of the proposed FASTC at Fort Pickett is to consolidate existing dispersed training functions into a single suitable location to improve training efficiency and enhance training operations. The proposed FASTC is needed to establish a facility from which DOS Bureau of Diplomatic Security may conduct a wide array of law enforcement and security training to meet the increased demand for well trained personnel.

The proposed FASTC is expected to train 8,000–10,000 students per year and include both hard skills training, such as driving tracks, firing ranges, mock urban environmental, and explosives ranges; soft skills training, such as classrooms, simulation labs, and a fitness center; and support facilities such as administrative offices, dormitories, a dining hall, and emergency response facilities.

During the initial planning process, GSA conducted a comprehensive site evaluation process that identified and evaluated 41 candidate sites in the vicinity of the Washington, DC area. GSA identified land at Fort Pickett and Pickett Park in Nottoway County, Virginia, as the only potentially suitable location for the proposed FASTC facility.

GSA is focusing the proposed development of the FASTC on two adjacent available parcels, an approximately 750 acre Fort Pickett Local Reuse Authority (LRA) parcel 9 owned by Nottoway County, and an approximately 900 acre Virginia Army National Guard parcel referred to as Maneuver Area 21/20. The proposed project would be constructed in phases.

Possible action alternatives that will be evaluated in the EIS are alternative layouts for construction of facilities for hard skills training, soft skills training, life support and infrastructure on the LRA parcel 9 and 21/20 parcels at Fort Pickett. A ''No Action Alternative'', in which DOS would continue their training programs as currently conducted without constructing FASTC, will also be evaluated.

Resource areas to be addressed in the FASTC EIS will include, but not be limited to: air quality, noise, land use, socioeconomics, traffic, infrastructure and community services, natural resources, biological resources, cultural resources and safety and environmental hazards. The analysis will evaluate direct, indirect and cumulative impacts. Relevant and reasonable measures that could avoid or mitigate environmental effects will also be analyzed. Additionally, GSA will undertake any consultations required by applicable laws or regulations, including the National Historic Preservation Act.

This notice announces the initiation of the scoping process to identify community concerns and issues that should be addressed in the FASTC EIS. Federal, state, local agency representatives and interested parties or persons are encouraged to provide comments on the proposed action during the 30-day scoping period October 4, 2011 though November 3, 2011. These comments should clearly describe specific issues or topics of environmental concern that the commenter believes GSA should consider.

No decision will be made to implement any alternative until the NEPA process is completed and a Record of Decision is signed.

Dated: September 22, 2011.

Leonard Purzycki,

Director, Facilities Management & Services Programs, U.S. GSA, Mid-Atlantic Region.

[FR Doc. 2011–25458 Filed 10–3–11; 8:45 am]

BILLING CODE 6820–AE–P

DEPARTMENT OF HEALTH AND HUMAN SERVICE

Office of the Secretary

Agency Information Collection Activities: Proposed Collection; Comment Request; Generic Clearance for the Collection of Qualitative Feedback on Agency Service Delivery

AGENCY: Office of the Secretary, Office of the National Coordinator for Health Information Technology (ONC), HHS.

ACTION: 30-Day notice of submission of information collection approval from the Office of Management and Budget and request for comments.

SUMMARY: As part of a Federal Government-wide effort to streamline the process to seek feedback from the public on service delivery, the Office of the Secretary, Office of the National Coordinator for Health Information Technology (ONC), HHS has submitted a Generic Information Collection Request (Generic ICR): ''Generic Clearance for the Collection of Qualitative Feedback on Agency Service Delivery'' to OMB for approval under the *Paperwork Reduction Act* (PRA) (44 U.S.C. 3501 *et. seq.*).

DATES: Comments must be submitted November 3, 2011.

ADDRESSES: Written comments may be submitted to

Sherette.funncoleman@hhs.gov, or call the Reports Clearance Officer on (202) 690–5683. Send written comments and recommendations for the proposed information collections within 30 days of this notice directly to the OS OMB Desk Officer; faxed to OMB at 202–395–5806.

FOR FURTHER INFORMATION CONTACT: To request additional information, please contact *Sherette.funncoleman@hhs.gov,* or call the Reports Clearance Office on (202) 690–6162.

SUPPLEMENTARY INFORMATION:

Title: FedStrive Employee Wellness Program Social Media Survey.

Abstract: The information collection activity will garner qualitative customer and stakeholder feedback in an efficient, timely manner, in accordance with the Administration's commitment to improving service delivery. By qualitative feedback we mean information that provides useful insights on perceptions and opinions, but are not statistical surveys that yield quantitative results that can be generalized to the population of study. This feedback will provide insights into customer or stakeholder perceptions, experiences and expectations, provide an early warning of issues with service, or focus attention on areas where communication, training or changes in operations might improve delivery of products or services. These collections will allow for ongoing, collaborative and actionable communications between the Agency and its customers and stakeholders. It will also allow feedback to contribute directly to the improvement of program management.

Feedback collected under this generic clearance will provide useful information, but it will not yield data that can be generalized to the overall population. This type of generic clearance for qualitative information will not be used for quantitative information collections that are designed to yield reliably actionable results, such as monitoring trends over time or documenting program performance. Such data uses require more rigorous designs that address: the target population to which generalizations will be made, the sampling frame, the sample design (including stratification and clustering), the precision requirements or power calculations that justify the proposed sample size, the expected response rate, methods for assessing potential non-response bias, the protocols for data collection, and any testing procedures that were or will be undertaken prior fielding the study. Depending on the degree of influence the results are likely to have, such collections may still be eligible for submission for other generic mechanisms that are designed to yield quantitative results.

The Agency received 0 comments were received in response to the 60-day notice published in the **Federal Register** of December 22, 2010 (75 FR 80542).

Below we provide the Department of Health and Human Services, projected average estimates for the next three years:[1]

Current Actions: New collection of information.

Type of Review: New Collection.

Affected Public: Individuals and Households, Businesses and Organizations, State, Local or Tribal Government.

Average Expected Annual Number of Activities

Respondents: 3000.

Annual Responses: 3000.

Frequency of Response: Once per Request.

Average Minutes per Response: 5.

Burden Hours: 250 total.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid Office of Management and Budget control number.

Keith Tucker,

Office of the Secretary, Paperwork Reduction Act Clearance Officer.

[FR Doc. 2011–25143 Filed 10–3–11; 8:45 am]

BILLING CODE P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Findings of Research Misconduct

AGENCY: Office of the Secretary, HHS.

ACTION: Notice.

SUMMARY: Notice is hereby given that the Office of Research Integrity (ORI) has taken final action in the following case:

Scott Weber, Ed.D., MSN, University of Pittsburgh: Based on the letters from the Research Integrity Officer at the University of Pittsburgh (UP), ORI's oversight review, and an admission by the Respondent, ORI found that Dr. Scott Weber, former Assistant Professor, Health and Community Systems, School of Nursing, UP, engaged in research misconduct by (1) plagiarizing text and falsifying data from two publications supported by U.S. Public Health Service (PHS) funding (P30 MH60570; HS5 SM52671; PHS employee generated article) in two unpublished manuscripts, and (2) including significant portions of that plagiarized text in two grant applications to the National Institutes of Health (NIH) (1 L30 NR010444–01; 1 R03 HD062761–01).

ORI found that the Respondent engaged in research misconduct by plagiarizing text, falsifying data and references, and fabricating data from two publications (Mufson, L., Dorta, K.P., Wickramaratne, P., Nomura, Y., Olfson, M., Weissman, M.M. ''A randomized effectiveness trial of interpersonal psychotherapy for depressed adolescents.'' *Arch Gen Psychiatry* 61(6):577–84, 2004 June; hereafter referred to as ''Mufson *et al.* 2004;'' and Cho, M.J., Mościcki, E.K., Narrow, W.E., Rae, D.S., Locke, B.Z., Regier, D.A. ''Concordance between two measures of depression in the Hispanic Health and Nutrition Examination Survey.'' *Soc Psychiatry Psychiatr Epidemiol.* 28(4):156–63, 1993 August; hereafter referred to as ''Cho *et al.,* 1993'') supported by PHS in two journal article submissions. Specifically, ORI found that the Respondent plagiarized more than 90 percent of the text from Mufson *et al.* 2004 in a manuscript entitled ''A randomized effectiveness trial of psychiatric-mental health nurse practitioner-administered interpersonal psychotherapy for sexual minority adolescents with depression in primary care clinics'' and submitted to the *Journal of the American Academy of Nurse Practitioners* (*JAANP MS*). Furthermore, the Respondent plagiarized approximately 66 percent of the text from Cho *et al.* 1993 in a manuscript entitled ''Assessing the diagnostic predictive power of a screening tool for depression: Concordance between the CES–D and DIS in the Parent Identity Survey'' and submitted to the *Journal of GLBT Family Studies (JGMS MS).*

In both manuscripts, the Respondent falsified and fabricated tables and figures by using all or nearly all of the data in tables and graphs from the plagiarized articles while altering numbers and changing text to represent data as if from another subject population; he also copied most of the original bibliographic references but

[1] The 60-day notice included the following estimate of the aggregate burden hours for this generic clearance federal-wide:

Average Expected Annual Number of Activities: 25,000.

Average Number of Respondents per Activity: 200.

Annual Responses: 5,000,000.

Frequency of Response: Once per Request.

Average Minutes per Response: 30.

Burden Hours: 2,500,000.

falsified 35% of the copied references from *JAANP MS* and 25% of the copied references from *JGMS MS,* by changing volume numbers and/or publication years, apparently to hinder detection of the plagiarism. The data fabrication occurred when the Respondent altered or added values to Table 2 in each manuscript describing the demographic characteristics of the study population that was never studied.

ORI also finds that the Respondent engaged in research misconduct by plagiarizing text from Cho *et al.* 1993 in two NIH grant applications (1 L30 NR010444–01 and 1 R03 HD062761–01) by copying substantial word-for-word portions of the text describing the test instrument to be used in the proposed study without citing the Cho *et al.* 1993 paper.

Dr. Weber has voluntarily agreed for a period of three (3) years, beginning on September 7, 2011:

(1) To exclude himself from any contracting or subcontracting with any agency of the United States Government and from eligibility or involvement in nonprocurement programs of the United States Government referred to as ''covered transactions'' pursuant to HHS' Implementation (2 CFR part 376 *et seq.*) of OMB Guidelines to Agencies on Governmentwide Debarment and Suspension, 2 CFR part 180 (collectively the ''Debarment Regulations''); and

(2) to exclude himself from serving in any advisory capacity to PHS including, but not limited to, service on any PHS advisory committee, board, and/or peer review committee, or as a consultant.

FOR FURTHER INFORMATION CONTACT: Director, Division of Investigative Oversight, Office of Research Integrity, 1101 Wootton Parkway, Suite 750, Rockville, MD 20852, (240) 453–8800.

John Dahlberg, Ph.D.,

Director, Division of Investigative Oversight, Office of Research Integrity.

[FR Doc. 2011–25537 Filed 10–3–11; 8:45 am]

BILLING CODE 4150–31–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[60Day–11–0213]

Proposed Data Collections Submitted for Public Comment and Recommendations

In compliance with the requirement of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 for opportunity for public comment on proposed data collection projects, the Centers for Disease Control and Prevention (CDC) will publish periodic summaries of proposed projects. To request more information on the proposed project or to obtain a copy of data collection plans and instruments, call the CDC Reports Clearance Officer on 404–639–5960 or send comments to Daniel Holcomb, CDC Reports Clearance Officer, 1600 Clifton Road, MS–D74, Atlanta, GA 30333 or send an e-mail to *omb@cdc.gov*.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Written comments should be received within 60 days of this notice.

Proposed Project

National Vital Statistics Report Forms (OMB No. 0920–0213, Expiration Date April 30, 2012)—Extension—National Center for Health Statistics (NCHS), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

The compilation of national vital statistics dates back to the beginning of the 20th century and has been conducted since 1960 by the Division of Vital Statistics of the National Center for Health Statistics, CDC. The collection of the data is authorized by 42 U.S.C. 242k. This submission requests approval to collect the monthly and annually summary statistics for three years.

The Monthly Vital Statistics Report forms provide counts of monthly occurrences of births, deaths, infant deaths, marriages, and divorces. Similar data have been published since 1937 and are the sole source of these data at the National level. The data are used by the Department of Health and Human Services and by other government, academic, and private research and commercial organizations in tracking changes in trends of vital events. Respondents for the Monthly Vital Statistics Report Form are registration officials in each State and Territory, the District of Columbia, and New York City. In addition, local (county) officials in New Mexico who record marriages occurring and divorces and annulments granted in each county of New Mexico will use this form. This form is also designed to collect counts of monthly occurrences of births, deaths, infant deaths, marriages, and divorces immediately following the month of occurrence.

The Annual Vital Statistics Occurrence Report Form collects final annual counts of marriages and divorces by month for the United States and for each State. The statistical counts requested on this form differ from provisional estimates obtained on the Monthly Vital Statistics Report Form in that they represent complete counts of marriages, divorces, and annulments occurring during the months of the prior year. These final counts are usually available from State or county officials about eight months after the end of the data year. The data are widely used by government, academic, private research, and commercial organizations in tracking changes in trends of family formation and dissolution. Respondents for the Annual Vital Statistics Occurrence Report Form are registration officials in each State and Territory, the District of Columbia, and New York City.

There are no costs to respondents other than their time.

ESTIMATED ANNUALIZED BURDEN HOURS

Type of respondent	Form name	Number of respondents	Number of responses per respondent	Average burden per response (in hours)	Total burden hours
State, Territory and New Mexico County officials.	Monthly Vital Statistics Report	91	12	10/60	182

ESTIMATED ANNUALIZED BURDEN HOURS—Continued

Type of respondent	Form name	Number of respondents	Number of responses per respondent	Average burden per response (in hours)	Total burden hours
State, Territory and other officials	Annual Vital Statistics Occurrence Report.	58	1	30/60	29
Total	.....	.....	.....	.....	211

Dated: September 28, 2011.

Daniel Holcomb,

Reports Clearance Officer, Centers for Disease Control and Prevention.

[FR Doc. 2011–25621 Filed 10–3–11; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[30-Day–11–11AA]

Agency Forms Undergoing Paperwork Reduction Act Review

The Centers for Disease Control and Prevention (CDC) publishes a list of information collection requests under review by the Office of Management and Budget (OMB) in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). To request a copy of these requests, call the CDC Reports Clearance Officer at (404) 639–5960 or send an e-mail to *omb@cdc.gov.* Send written comments to CDC Desk Officer, Office of Management and Budget, Washington, DC or by fax to (202) 395–5806. Written comments should be received within 30 days of this notice.

Proposed Project

Central America Water and Sanitation Program Sustainability Evaluation and Qualitative Interview—NEW—National Center for Environmental Health (NCEH), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

There is little information available on the longevity of infrastructure and hygiene behavior change after water, sanitation and hygiene education (WASH) interventions are provided. Sustainability of these WASH interventions is a crucial factor in maintaining the health and well-being of a community.

In the Latin American and Caribbean region, 20% of the rural population in 2008 had no access to an improved drinking water source. Forty-five percent of this population also has unimproved sanitation facilities with 20% of that population not using any type of sanitation facility.

Sustainability of WASH interventions ties in to goal 7 of the Millennium Development Goals developed by the United Nations Development Program, to ensure environmental sustainability. Specifically, it is to ''reduce by half the proportion of the population without sustainable access to safe drinking water and basic sanitation'' by 2015.

In addition to this issue, significant natural disasters such as hurricanes and tropical storms have the potential to completely destroy infrastructure. In 1998, Central America (El Salvador, Guatemala, Honduras, and Nicaragua) was struck by Hurricane Mitch. After the hurricane, the American Red Cross (ARC) responded to the disaster and provided community- and household-level WASH to hundreds of communities. What began as a disaster response/reconstruction program in 1998, has developed into a study of the long-term sustainability of WASH interventions.

This research will focus on assessing up to 16 communities that were provided WASH interventions by the ARC post-Hurricane Mitch. This survey will help to evaluate the key factors that help communities to maintain their infrastructure. The results will be used to improve ARC programs as well as to help guide other non-governmental agencies on how to best maximize their investments to ensure long–term community health.

This research includes four components which will be done in each community: (1) A community survey with community leaders and/or the local water board; (2) a cross-sectional quantitative household survey and qualitative key informant interview; (3) water sampling and analysis of community water sources/systems and stored household water; and (4) an infrastructure inspection of the community water system and sanitation facilities. United States Agency for International Development (USAID) indicators were used as the basis for measuring WASH interventions using performance indicators. Performance indicators are a way to measure the performance of disaster-related water and sanitation programs.

Four indicators will be used in this evaluation. To measure the water intervention we will estimate (1) the percent of households with access to an improved water source. The sanitation indicator measures (2) the percent of households with access to improved sanitation. Hygiene education is evaluated using two indicators, (3) the percent of households with appropriate hand washing behavior and (4) the percent of the population using hygienic sanitation facilities.

The sustainability evaluation will first conduct a face-to-face interview with the community leaders and/or members of the water board from a maximum of sixteen communities.

Second, a cross-sectional household survey (n=256) will be administered across all four countries with a randomly selected female head of household. This survey contains questions on water use, access and availability; sanitation access, use and maintenance; and hygiene education-when was the last time it was presented to the community, what topics were discussed, when was it provided and by whom. The household interview will record data using a personal data assistant (PDA), reviewed each day and then transferred into one electronic database for statistical analysis and calculation of the indicators. The survey will be done with the female head of household and take approximately 30 to 45 minutes.

Third, a qualitative key informant interview with randomly selected female head of household (n=32), will be conducted to gather study participants thoughts and opinions on the WASH services provided to them and their community. This survey will be administered verbally and responses will be tape recorded and should take approximately 45 minutes to 1 hour complete.

Every household surveyed in each country will include qualitative testing of drinking water that is stored in the home (n=288). Total coliforms and E.

coli will be determined using a standard pre-measured Hach test kit. In addition, community water sources and water samples within the distribution system will be sampled (n=32). A total of 320 water samples will be completed. Additional testing will include measuring free chlorine in the community water system if chlorine is being used (n=16).

Lastly, an infrastructure evaluation for each community will be done by CDC personnel using a checklist. This evaluation will help to determine the strengths and weaknesses of the water and sanitation systems for each community.

The infrastructure survey and water sampling activity is not included in the burden table as CDC will complete this survey and activity independent of input or assistance from community leaders or study participants.

There is no cost to respondents to participate in the sustainability evaluation other than their time. The total estimated annual burden hours are 240.

ESTIMATED ANNUALIZED BURDEN HOURS

Type of respondent	Form name	Number of respondents	Number of responses per respondent	Average burden per response (in hours)
Community group-men and women	Community survey	16	1	1
Female head of household	Quantitative household survey	256	1	45/60
Female head of household	Key informant interview	32	1	1

Dated: September 28, 2011.

Daniel Holcomb,

Reports Clearance Officer, Centers for Disease Control and Prevention.

[FR Doc. 2011–25495 Filed 10–3–11; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Advisory Board on Radiation and Worker Health (ABRWH or Advisory Board), National Institute for Occupational Safety and Health (NIOSH)

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC), announces the following meeting for the aforementioned committee:

Time and date: 11 a.m.–3 p.m., October 20, 2011.

Place: Audio Conference Call via FTS Conferencing. The USA toll-free, dial-in number is 1–866–659–0537 and the pass code is 9933701.

Status: Open to the public. In the event an individual wishes to provide comments, written comments must be submitted prior to the meeting.

Background: The Advisory Board was established under the Energy Employees Occupational Illness Compensation Program Act of 2000 to advise the President on a variety of policy and technical functions required to implement and effectively manage the new compensation program. Key functions of the Advisory Board include providing advice on the development of probability of causation guidelines, which have been promulgated by the Department of Health and Human Services (HHS) as a final rule; advice on methods of dose reconstruction, which have also been promulgated by HHS as a final rule; advice on the scientific validity and quality of dose estimation and reconstruction efforts being performed for purposes of the compensation program; and advice on petitions to add classes of workers to the Special Exposure Cohort (SEC).

In December 2000, the President delegated responsibility for funding, staffing, and operating the Advisory Board to HHS, which subsequently delegated this authority to the CDC. NIOSH implements this responsibility for CDC. The charter was issued on August 3, 2001, renewed at appropriate intervals, most recently, August 3, 2011, and will expire on August 3, 2013.

Purpose: This Advisory Board is charged with (a) Providing advice to the Secretary, HHS, on the development of guidelines under Executive Order 13179; (b) providing advice to the Secretary, HHS, on the scientific validity and quality of dose reconstruction efforts performed for this program; and (c) upon request by the Secretary, HHS, advising the Secretary on whether there is a class of employees at any Department of Energy facility who were exposed to radiation but for whom it is not feasible to estimate their radiation dose, and on whether there is reasonable likelihood that such radiation doses may have endangered the health of members of this class.

Matters To Be Discussed: The agenda for the conference call includes: NIOSH SEC Petition Evaluations for Pantex Plant (Amarillo, Texas) and Hangar 481 (Kirtland Air Force Base); Subcommittee and Work Group Updates; DCAS SEC Petition Evaluations Update for the December 2011 Advisory Board Meeting; and Board Correspondence.

The agenda is subject to change as priorities dictate.

This meeting is open to the public. In the event an individual wishes to provide comments, written comments must be submitted prior to the meeting. Any written comments received will be provided at the meeting and should be submitted to the contact person below in advance of the meeting.

Contact Person for More Information: Theodore M. Katz, M.P.A., Executive Secretary, NIOSH, CDC, 1600 Clifton Road, NE., Mailstop E–20, Atlanta, Georgia 30333, Telephone: (513) 533–6800, Toll Free 1(800)CDC–INFO, E-mail *ocas@cdc.gov*.

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and Prevention, and the Agency for Toxic Substances and Disease Registry.

Dated: September 27, 2011.

Elaine L. Baker,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 2011–25482 Filed 10–3–11; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[CMS–5504–N2]

Bundled Payments for Care Improvement Initiative

AGENCY: Centers for Medicare & Medicaid Services (CMS), HHS.

ACTION: Notice of extension of deadlines.

SUMMARY: This notice extends the deadlines for the submission of the Bundled Payments for Care Improvement ''Model 1'' letters of intent and applications.

DATES: *Letter of Intent Submission Deadline:* For Model 1 of this initiative, interested organizations must submit a nonbinding letter of intent by October 6, 2011 as described on the CMS Innovation Center Web site *http://www.innovations.cms.gov/areas-of-focus/patient-care-models/bundled-payments-for-care-improvement.html. Application Submission Deadline:* For Model 1 of this initiative, applications must be received on or before November 18, 2011.

ADDRESSES: Letter of Intents and Applications should be submitted electronically in searchable PDF format via encrypted e-mail to the following e-mail address by the date specified in the **DATES** section of this notice: *BundledPayments@cms.hhs.gov.* Applications and appendices will only be accepted via e-mail.

FOR FURTHER INFORMATION CONTACT: *BundledPayments@cms.hhs.gov* for questions regarding the application process of the Bundled Payments for Care Improvement initiative.

SUPPLEMENTARY INFORMATION:

I. Background

We are committed to achieving the three-part aim of better health, better health care, and reduced expenditures through continuous improvement for Medicare, Medicaid and Children's Health Insurance Program beneficiaries. Beneficiaries can experience improved health outcomes and patient experience when health care providers work in a coordinated and patient-centered manner. To this end, CMS is interested in partnering with providers who are working to redesign patient care to deliver these aims. Episode payment approaches that reward providers who take accountability for the three-part aim at the level of individual patient care for an episode are potential mechanisms for developing these partnerships.

On August 23, 2011 we posted a request for applications (RFA) on the Innovation Center Web site. In addition, on August 25, 2011 we published a notice requesting applications in the **Federal Register** [76 FR 53137] to participate in the Bundled Payment for Care Improvement initiative. This initiative seeks proposals from health care providers who wish to align incentives between hospitals, physicians and nonphysician practitioners in order to better coordinate care throughout an episode of care. RFAs will test episode-based payment for acute care and associated post-acute care, using both retrospective and prospective bundled payment methods. The RFA requests applications to test models centered around acute care; these models will inform the design of future models, including care improvement for chronic conditions. For more details, see the RFA, which is available on the Innovation Center Web site at *http://www.innovations.cms.gov/areas-of-focus/patient-care-models/bundled-payments-for-care-improvement.html.*

II. Provisions of the Notice

The CMS Innovation Center has received much interest and a large number of inquiries about the BPCI initiative announced on the CMS Web site and in the **Federal Register**. There have also been many requests to allow for some additional time to prepare applications for Model 1 of the BPCI initiative. Based on the feedback from the community of potential applicants and our continued commitment to work in partnership with our stakeholders, the Innovation Center has modified the deadlines relating to Model 1 of the initiative: (1) The letter of intent will be due on or before October 6, 2011; and (2) the application will be due on or before November 18, 2011.

We have announced the deadline extensions via the CMS Web site and via listserv. Therefore we also wanted to announce the extensions of the deadlines via the **Federal Register**.

III. Collection of Information Requirements

Section 1115A(d)(3) of the Act specifies that the requirements of the Paperwork Reduction Act of 1995 do not apply with respect to the testing and evaluation of payment and service delivery models, or the expansion of these models.

Authority: Section 1115A of the Social Security Act.

Dated: September 28, 2011.

Donald M. Berwick,

Administrator, Centers for Medicare & Medicaid Services.

[FR Doc. 2011–25531 Filed 9–30–11; 4:15 pm]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[CMS–7022–N]

Medicare, Medicaid, and Children's Health Insurance Programs; Meeting of the Advisory Panel on Outreach and Education (APOE), November 17, 2011

AGENCY: Centers for Medicare & Medicaid Services (CMS), HHS.

ACTION: Notice of meeting.

SUMMARY: This notice announces a meeting of the Advisory Panel on Outreach and Education (APOE) (the Panel) in accordance with the Federal Advisory Committee Act. The Panel advises and makes recommendations to the Secretary of Health and Human Services and the Administrator of the Centers for Medicare & Medicaid Services on opportunities to enhance the effectiveness of consumer education strategies concerning Medicare, Medicaid, and the Children's Health Insurance Program (CHIP). This meeting is open to the public.

DATES: *Meeting Date:* Thursday, November 17, 2011 from 8:30 a.m. to 4 p.m., Eastern Standard Time (EST).

Deadline for Meeting Registration, Presentations and Comments: Thursday, November 3, 2011, 5 p.m., Eastern Daylight Time (EDT).

Deadline for Requesting Special Accommodations: Thursday, November 3, 2011, 5 p.m., EDT.

ADDRESSES: *Meeting Location:* The Embassy Row Hotel, 2015 Massachusetts Avenue, NW., Washington, DC 20036.

Meeting Registration, Presentations, and Written Comments: Jennifer Kordonski, Designated Federal Official (DFO), Division of Forum and Conference Development, Office of Communications, Centers for Medicare & Medicaid Services, 7500 Security Boulevard, Mailstop S1–13–05, Baltimore, MD 21244–1850 or contact Ms. Kordonski via e-mail at *mailto: Jennifer.Kordonski@cms.hhs.gov.*

REGISTRATION: The meeting is open to the public, but attendance is limited to the space available. Persons wishing to attend this meeting must register by

contacting the DFO at the address listed in the **ADDRESSES** section of this notice or by telephone at number listed in the **FOR FURTHER INFORMATION CONTACT** section of this notice, by the date listed in the **DATES** section of this notice. Individuals requiring sign language interpretation or other special accommodations should contact the DFO at the address listed in the **ADDRESSES** section of this notice by the date listed in the **DATES** section of this notice.

FOR FURTHER INFORMATION CONTACT: Jennifer Kordonski, (410) 786–1840, or on the Internet at *http://www.cms.gov/FACA/04_APOE.asp* for additional information. Press inquiries are handled through the CMS Press Office at (202) 690–6145.

SUPPLEMENTARY INFORMATION:

In accordance with section 10(a) of the Federal Advisory Committee Act (FACA), this notice announces a meeting of the Advisory Panel on Outreach and Education (APOE) (the Panel). Section 9(a)(2) of the Federal Advisory Committee Act authorizes the Secretary of Health and Human Services (the Secretary) to establish an advisory panel if the Secretary determines that the panel is ''in the public interest in connection with the performance of duties imposed * * * by law.'' Such duties are imposed by section 1804 of the Social Security Act (the Act), requiring the Secretary to provide informational materials to Medicare beneficiaries about the Medicare program, and section 1851(d) of the Act, requiring the Secretary to provide for ''activities * * * to broadly disseminate information to [M]edicare beneficiaries * * * on the coverage options provided under [Medicare Advantage] in order to promote an active, informed selection among such options.''

The Panel is also authorized by section 1114(f) of the Act (42 U.S.C. 1314(f)) and section 222 of the Public Health Service Act (42 U.S.C. 217a). The Secretary signed the charter establishing this Panel on January 21, 1999 (64 FR 7899, February 17, 1999) and approved the renewal of the charter on January 21, 2011 (76 FR 11782, March 3, 2011).

Pursuant to the amended charter, the Panel advises and makes recommendations to the Secretary of Health and Human Services and the Administrator of the Centers for Medicare & Medicaid Services (CMS) concerning optimal strategies for the following:

- Developing and implementing education and outreach programs for individuals enrolled in, or eligible for, Medicare, Medicaid and the Children's Health Insurance Program (CHIP).
- Enhancing the Federal government's effectiveness in informing Medicare, Medicaid, and CHIP consumers, providers and stakeholders pursuant to education and outreach programs of issues regarding these and other health coverage programs, including the appropriate use of public-private partnerships to leverage the resources of the private sector in educating beneficiaries, providers and stakeholders.
- Expanding outreach to vulnerable and underserved communities, including racial and ethnic minorities, in the context of Medicare, Medicaid, and CHIP education programs.
- Assembling and sharing an information base of ''best practices'' for helping consumers evaluate health plan options.
- Building and leveraging existing community infrastructures for information, counseling and assistance.
- Drawing the program link between outreach and education, promoting consumer understanding of health care coverage choices and facilitating consumer selection/enrollment, which in turn support the overarching goal of improved access to quality care, including prevention services, envisioned under health care reform.

The current members of the Panel are: Samantha Artiga, Principal Policy Analyst, Kaiser Family Foundation; Joseph Baker, President, Medicare Rights Center; Philip Bergquist, Manager, Health Center Operations, CHIPRA Outreach & Enrollment Project and Director, Michigan Primary Care Association, Marjorie Cadogan, Executive Deputy Commissioner, Department of Social Services; Jonathan Dauphine, Senior Vice President, AARP; Barbara Ferrer, Executive Director, Boston Public Health Commission; Shelby Gonzales, Senior Health Outreach Associate, Center on Budget & Policy Priorities; Jan Henning, Benefits Counseling & Special Projects Coordinator, North Central Texas Council of Governments' Area Agency on Aging; Warren Jones, Executive Director, Mississippi Institute for Improvement of Geographic Minority Health; Cathy Kaufmann, Administrator, Oregon Health Authority; Sandy Markwood, Chief Executive Officer, National Association of Area Agencies on Aging; Miriam Mobley-Smith, Dean, Chicago State University, College of Pharmacy; Ana Natal-Pereira, Associate Professor of Medicine, University of Medicine & Dentistry of New Jersey; Megan Padden, Vice President, Sentara Health Plans; David W. Roberts, Vice-President, Healthcare Information and Management System Society; Julie Bodën Schmidt, Associate Vice President, National Association of Community Health Centers; Alan Spielman, President & Chief Executive Officer, URAC; Winston Wong, Medical Director, Community Benefit Director, Kaiser Permanente and Darlene Yee-Melichar, Professor & Coordinator, San Francisco State University.

The agenda for the November 17, 2011 meeting will include the following:

- Recap of the Previous (July 28, 2011) Meeting
- Listening Session with CMS Leadership
- Affordable Care Act Initiatives
- An opportunity for public comment
- Next Steps

Individuals or organizations that wish to make a 5-minute oral presentation on an agenda topic should submit a written copy of the oral presentation to the DFO at the address listed in the **ADDRESSES** section of this notice by the date listed in the **DATES** section of this notice. The number of oral presentations may be limited by the time available. Individuals not wishing to make a presentation may submit written comments to the DFO at the address listed in the **ADDRESSES** section of this notice by the date listed in the **DATES** section of this notice.

Authority: Section 222 of the Public Health Service Act (42 U.S.C. 217a) and section 10(a) of Pub. L. 92–463 (5 U.S.C. App. 2, sec. 10(a) and 41 CFR 102–3).

(Catalog of Federal Domestic Assistance Program No. 93.733, Medicare—Hospital Insurance Program; and Program No. 93.774, Medicare—Supplementary Medical Insurance Program)

Dated: September 28, 2011.

Donald M. Berwick,

Administrator, Centers for Medicare & Medicaid Services.

[FR Doc. 2011–25544 Filed 10–3–11; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2009–N–0247]

Food and Drug Administration Transparency Initiative: Draft Proposals for Public Comment to Increase Transparency By Promoting Greater Access to the Agency's Compliance and Enforcement Data; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of availability; request for comments.

SUMMARY: As part of the Transparency Initiative, the Food and Drug Administration (FDA) is announcing the availability of a report entitled ''Food and Drug Administration Transparency Initiative: Draft Proposals for Public Comment to Increase Transparency By Promoting Greater Access to the Agency's Compliance and Enforcement Data.'' This report includes eight draft proposals to make FDA's publicly available compliance and enforcement data more accessible and user-friendly. FDA is seeking public comment on these draft proposals. The Transparency Task Force will ultimately recommend specific draft proposals to the Commissioner of Food and Drugs (the Commissioner) for consideration based on the comments it receives, the feasibility of the draft proposal, relative priority, and available resources.

DATES: Submit either electronic or written comments by December 2, 2011.

ADDRESSES: Submit electronic comments to *http://www.regulations.gov.* Submit written comments to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. All comments should be identified with the docket number found in brackets at the heading of this document and the draft proposal(s) that the comments address.

FOR FURTHER INFORMATION CONTACT: Lisa M. Dwyer, Office of the Commissioner, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 32, rm. 4228, Silver Spring, MD 20993, 301–796–4709, FAX: 301–847–8616, e-mail: *lisa.dwyer@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

FDA is announcing the availability of a report entitled ''FDA Transparency Initiative: Draft Proposals for Public Comment to Increase Transparency By Promoting Greater Access to the Food and Drug Administration's Compliance and Enforcement Data.'' FDA is responsible for a broad range of compliance and enforcement activities. Increasing the transparency of these activities allows the public to better understand the Agency's decisions, and it promotes accountability of the Agency and the regulated industry.

On January 18, 2011, President Obama issued a Presidential Memorandum on Regulatory Compliance, 76 FR 3825 (January 21, 2011), requiring Federal Agencies to make publicly available compliance information easily accessible, downloadable, and searchable online. In that memorandum, the President highlighted the achievements of the Environmental Protection Agency (EPA) and the Department of Labor (DOL) in developing Web sites (*http://www.epa-echo.gov* and *http://ogesdw.dol.gov,* respectively) that make their regulatory compliance information more accessible to the public.

FDA responded to the Presidential Memorandum on Regulatory Compliance in a memorandum to the Department of Health and Human Services (HHS), on May 6, 2011 (FDA Response). The FDA Response summarized the actions that the Agency already had implemented, as well as those that were underway or proposed, to make its regulatory compliance and enforcement information more accessible to the public. FDA took those actions in response to the Presidential Memorandum on Transparency and Open Government, 74 FR 4685 (January 26, 2009), which the President issued in January 2009, and as part of FDA's own Transparency Initiative, which the Commissioner, Dr. Margaret A. Hamburg, launched in June 2009.

In the FDA response, the Agency also committed to examining the manner in which EPA and DOL disclose compliance and enforcement information to determine whether there are additional steps FDA could take to make comparable information more accessible. Specifically, FDA stated that it would: (1) Within 150 days (by October 3, 2011), issue proposals for public comment, if it concluded that there were additional opportunities to increase the transparency of its compliance and enforcement data and (2) within 270 days (January 31, 2012), determine whether to adopt those proposals.

After meeting with EPA and DOL to discuss their methods for making compliance and enforcement data more accessible, FDA has determined that there are additional steps that it could take to make its own information more transparent and accessible to the public. This report contains FDA's draft proposals for public comment.

II. Comments

Interested persons may submit to the Division of Dockets Management (see **ADDRESSES**) either electronic or written comments regarding this document. It is only necessary to send one set of comments. It is no longer necessary to send two copies of mailed comments. Identify the draft proposal(s) which your comment addresses by the number assigned to the proposal. Identify comments with the docket number found in brackets in the heading of this document. Received comments may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

Dated: September 27, 2011.

Leslie Kux,

Acting Assistant Commissioner for Policy.

[FR Doc. 2011–25354 Filed 10–3–11; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2007–N–0270; formerly Docket No. 2007N–0357]

Medical Device User Fee and Modernization Act; Notice to Public of Web Site Location of Fiscal Year 2012 Proposed Guidance Development

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the Web site location where the Agency will post a list of guidance documents the Center for Devices and Radiological Health (CDRH) is considering for development. In addition, FDA has established a docket where stakeholders may provide comments and/or draft language for those topics as well as suggestions for new or different guidances.

DATES: Submit either electronic or written comments at any time.

ADDRESSES: 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: Philip Desjardins, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 66, rm. 5452, Silver Spring, MD 20993–0002, 301–796–5678.

I. Background

During negotiations over the reauthorization of the Medical Device User Fee and Modernization Act (MDUFMA), FDA agreed, in return for additional funding from industry, to meet a variety of quantitative and qualitative goals intended to help get safe and effective medical devices to market more quickly. These commitments include annually posting

a list of guidance documents that CDRH is considering for development and providing stakeholders an opportunity to provide comments and/or draft language for those topics, or suggestions for new or different guidances. This notice announces the Web site location of the list of guidances on which CDRH is intending to work over the next fiscal year (FY). We note that the Agency is not required to issue every guidance on the list, nor is it precluded from issuing guidance documents that are not on the list. The list includes topics that currently have no guidance associated with them, topics where updated guidance may be helpful, and topics for which CDRH has already issued level 1 drafts that may be finalized following review of public comments. We will consider stakeholder comments as we prioritize our guidance efforts.

FDA and CDRH priorities are subject to change at any time. Topics on this and past guidance priority lists may be removed or modified based on current priorities. We also note that CDRH's experience over the years has shown that there are many reasons CDRH staff does not complete the entire annual agenda of guidances it undertakes. Staff are frequently diverted from guidance development to other activities, including review of premarket submissions or postmarket problems. In addition, the center is required each year to issue a number of guidances that it cannot anticipate at the time the annual list is generated. These may involve newly identified public health issues as well as special control guidance documents for de novo classifications of devices. It will be helpful, therefore, to receive comments that indicate the relative priority of different guidance topics to interested stakeholders.

Through feedback from stakeholders, including draft language for guidance documents, CDRH expects to be able to better prioritize and more efficiently draft guidances that will be useful to industry and other stakeholders. This will be the fifth annual list CDRH has posted. FDA intends to update the list each year.

FDA invites interested persons to submit comments on any or all of the guidance documents on the list. FDA has established a docket where comments about the FY 2012 list, draft language for guidance documents on those topics, and suggestions for new or different guidances may be submitted (see **ADDRESSES**). FDA believes this docket is an important tool for receiving information from interested parties and for sharing this information with the public. Similar information about planned guidance development is included in the annual Agency-wide notice issued by FDA under its good guidance practices (21 CFR 10.115(f)(5)). This CDRH list, however, will be focused exclusively on device-related guidances and will be made available on FDA's Web site prior to the beginning of each FY from 2008 to 2012. To access the list of the guidance documents CDRH is considering for development in FY 2012, visit FDA's Web site *http://www.fda.gov/MedicalDevices/DeviceRegulationandGuidance/Overview/MedicalDeviceUserFeeandModernizationActMDUFMA/ucm109196.htm*.

II. Request for Comments

Interested persons may submit to the Division of Dockets Management (see **ADDRESSES**) either electronic or written comments regarding this document. It is only necessary to send one set of comments. It is no longer necessary to send two copies of mailed comments. Identify comments with the docket number found in brackets in the heading of this document. Received comments may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

Dated: September 29, 2011.

Nancy K. Stade,

Deputy Director for Policy, Center for Devices and Radiological Health.

[FR Doc. 2011–25507 Filed 10–3–11; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2011–N–0002]

Preparation for International Conference on Harmonization Steering Committee and Expert Working Group Meetings in Seville, Spain; Regional Public Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of public meeting.

The Food and Drug Administration (FDA) is announcing a public meeting entitled ''Preparation for ICH Steering Committee and Expert Working Group Meetings in Seville, Spain'' to provide information and receive comments on the International Conference on Harmonization (ICH) as well as the upcoming meetings in Seville, Spain. The topics to be discussed are the topics for discussion at the forthcoming ICH Steering Committee Meeting. The purpose of the meeting is to solicit public input prior to the next Steering Committee and Expert Working Group meetings in Seville, Spain, scheduled on November 5 through 10, 2011, at which discussion of the topics underway and the future of ICH will continue.

Date and Time: The public meeting will be held on October 25, 2011, from 2 p.m. to 4 p.m.

Location: The public meeting will be held at the Washington Theater room at the Hilton Washington DC/Rockville Hotel & Executive Meeting Center, 1750 Rockville Pike, Rockville, MD 20852.

Contact Person: All participants must register with Kimberly Franklin, Office of the Commissioner, Food and Drug Administration, 10903 New Hampshire Ave., Silver Spring, MD 20993–0002, e-mail: *Kimberly.Franklin@fda.hhs.gov,* or FAX: 301–595–7937.

Registration and Requests for Oral Presentations: Send registration information (including name, title, firm name, address, telephone, and fax number), written material, and requests to make oral presentations to the contact person (see *Contact Person*) by October 21, 2011.

Interested persons may present data, information, or views orally or in writing, on issues pending at the public meeting. Public oral presentations will be scheduled between approximately 3:30 p.m. and 4 p.m. Time allotted for oral presentations may be limited to 10 minutes. Those desiring to make oral presentations should notify the contact person (see *Contact Person*) by October 21, 2011, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses, telephone number, fax, and e-mail of proposed participants, and an indication of the approximate time requested to make their presentation.

If you need special accommodations due to a disability, please contact Kimberly Franklin (see *Contact Person*) at least 7 days in advance.

Transcripts: Please be advised that as soon as a transcript is available, it will be accessible at *http://www.regulations.gov*. It may be viewed at the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD. A transcript will also be available in either hardcopy or on CD–ROM, after submission of a Freedom of Information request. Written requests are to be sent to Division of Freedom of Information (ELEM–1029), 12420 Parklawn Dr., Element Bldg., Rockville, MD 20857.

SUPPLEMENTARY INFORMATION: The ICH was established in 1990 as a joint

regulatory/industry project to improve, through harmonization, the efficiency of the process for developing and registering new medicinal products in Europe, Japan, and the United States without compromising the regulatory obligations of safety and effectiveness.

In recent years, many important initiatives have been undertaken by regulatory authorities and industry associations to promote international harmonization of regulatory requirements. FDA has participated in many meetings designed to enhance harmonization and is committed to seeking scientifically based harmonized technical procedures for pharmaceutical development. One of the goals of harmonization is to identify and then reduce differences in technical requirements for medical product development among regulatory Agencies. ICH was organized to provide an opportunity for harmonization initiatives to be developed with input from both regulatory and industry representatives. ICH is concerned with harmonization among three regions: The European Union, Japan, and the United States. The six ICH sponsors are the European Commission; the European Federation of Pharmaceutical Industries Associations; the Japanese Ministry of Health, Labor, and Welfare; the Japanese Pharmaceutical Manufactures Association; the Centers for Drug Evaluation and Research and Biologics Evaluation and Research, FDA; and the Pharmaceutical Research and Manufacturers of America. The ICH Secretariat, which coordinates the preparation of documentation, is provided by the International Federation of Pharmaceutical Manufacturers Associations. The ICH Steering Committee includes representatives from each of the ICH sponsors and Health Canada, the European Free Trade Area and the World Health Organization. The ICH process has achieved significant harmonization of the technical requirements for the approval of pharmaceuticals for human use in the three ICH regions.

The current ICH process and structure can be found at the following Web site: *http://www.ich.org.* (FDA has verified the Web site addresses in this document, but FDA is not responsible for any subsequent changes to the Web sites after this document publishes in the **Federal Register**.)

The agenda for the public meeting will be made available on the Internet at *http://www.fda.gov/Drugs/NewsEvents/ucm248489.htm.*

Dated: September 28, 2011.

Leslie Kux,

Acting Assistant Commissioner for Policy.

[FR Doc. 2011–25480 Filed 10–3–11; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[USCG–2011–0914]

Information Collection Request to Office of Management and Budget

AGENCY: Coast Guard, DHS.

ACTION: Sixty-day notice requesting comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995, the U.S. Coast Guard intends to submit an Information Collection Request (ICR) to the Office of Management and Budget (OMB), Office of Information and Regulatory Affairs (OIRA), requesting approval of revisions to the following collection of information: 1625–0015, Bridge Permit Application Guide. Our ICR describes the information we seek to collect from the public. Before submitting this ICR to OIRA, the Coast Guard is inviting comments as described below.

DATES: Comments must reach the Coast Guard on or before December 5, 2011.

ADDRESSES: You may submit comments identified by Coast Guard docket number [USCG–2011–0914] to the Docket Management Facility (DMF) at the U.S. Department of Transportation (DOT). To avoid duplicate submissions, please use only one of the following means:

(1) *Online: http://www.regulations.gov.*

(2) *Mail:* DMF (M–30), DOT, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590–0001.

(3) *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.

(4) *Fax:* 202–493–2251. To ensure your comments are received in a timely manner, mark the fax, to attention Desk Officer for the Coast Guard.

The DMF maintains the public docket for this Notice. Comments and material received from the public, as well as documents mentioned in this Notice as being available in the docket, will become part of the docket and will be available for inspection or copying at room W12–140 on the West Building Ground Floor, 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. You may also find the docket on the Internet at *http://www.regulations.gov.*

A copy of the ICR is available through the docket on the Internet at *http://www.regulations.gov.* Additionally, copies are available from: Commandant (CG–611), Attn: Paperwork Reduction Act Manager, U.S. Coast Guard, 2100 2nd Street, SW., Stop 7101, Washington, DC 20593–7101.

FOR FURTHER INFORMATION CONTACT: Ms. Kenlinishia Tyler, Office of Information Management, telephone 202–475–3652, or fax 202–475–3929, for questions on these documents. Contact Ms. Renee V. Wright, Program Manager, Docket Operations, 202–366–9826, for questions on the docket.

SUPPLEMENTARY INFORMATION:

Public Participation and Request for Comments

This Notice relies on the authority of the Paperwork Reduction Act of 1995; 44 U.S.C. Chapter 35, as amended. An ICR is an application to OIRA seeking the approval, extension, or renewal of a Coast Guard collection of information (Collection). The ICR contains information describing the Collection's purpose, the Collection's likely burden on the affected public, an explanation of the necessity of the Collection, and other important information describing the Collection. There is one ICR for each Collection.

The Coast Guard invites comments on whether this ICR should be granted based on the Collection being necessary for the proper performance of Departmental functions. In particular, the Coast Guard would appreciate comments addressing: (1) The practical utility of the Collection; (2) the accuracy of the estimated burden of the Collection; (3) ways to enhance the quality, utility, and clarity of information subject to the Collection; and (4) ways to minimize the burden of the Collection on respondents, including the use of automated collection techniques or other forms of information technology. In response to your comments, we may revise this ICR or decide not to seek approval of revisions of the Collection. We will consider all comments and material received during the comment period.

We encourage you to respond to this request by submitting comments and related materials. Comments must contain the OMB Control Number of the ICR and the docket number of this request, [USCG–2011–0914], and must

be received by December 5, 2011. We will post all comments received, without change, to *http://www.regulations.gov.* They will include any personal information you provide. We have an agreement with DOT to use their DMF. Please see the ''Privacy Act'' paragraph below.

Submitting Comments

If you submit a comment, please include the docket number [USCG–2011–0914], indicate the specific section of the document to which each comment applies, providing a reason for each comment. If you submit a comment online via *http://www.regulations.gov,* 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 DMF. We recommend you include your name, mailing address, an e-mail address, or other contact information in the body of your document so that we can contact you if we have questions regarding your submission.

You may submit your comments and material by electronic means, mail, fax, or hand delivery to the DMF at the address under **ADDRESSES**; but please submit them by only one means. To submit your comment online, go to *http://www.regulations.gov*, and type ''USCG–2011–0914'' in the ''Keyword'' box. 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 will address them accordingly.

Viewing Comments and Documents

To view comments, as well as documents mentioned in this Notice as being available in the docket, go to *http://www.regulations.gov,* click on the ''read comments'' box, which will then become highlighted in blue. In the ''Keyword'' box insert ''USCG–2011–0914'' and click ''Search.'' Click the ''Open Docket Folder'' in the ''Actions'' column. You may also visit the DMF in Room W12–140 on the ground floor of the DOT West Building, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Privacy Act

Anyone can search the electronic form of comments received in 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 statement regarding Coast Guard public dockets in the January 17, 2008, issue of the **Federal Register** (73 FR 3316).

Information Collection Request

Title: Bridge Permit Application Guide.

OMB Control Number: 1625–0015.

Summary: The collection of information is a request for a bridge permit submitted as an application for approval by the Coast Guard of any proposed bridge project. An applicant must submit to the Coast Guard a letter of application along with letter-size drawings (plans) and maps showing the proposed project and its location.

Need: 33 U.S.C. 401, 491, and 525 authorize the Coast Guard to approve plans and locations for all bridges and causeways that go over navigable waters of the United States.

Forms: None.

Respondents: Public and private owners of bridges over navigable waters of the United States.

Frequency: On occasion.

Burden Estimate: The estimated burden is 10,760 hours a year.

Dated: September 29, 2011.

R.E. Day,

Rear Admiral, U.S. Coast Guard, Assistant Commandant for Command, Control, Communications, Computers and Information Technology.

[FR Doc. 2011–25543 Filed 10–3–11; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[USCG–2011–0948]

Great Lakes Pilotage Advisory Committee

AGENCY: Coast Guard, DHS.

ACTION: Committee Management; Notice of Federal Advisory Committee Meeting.

SUMMARY: The Great Lakes Pilotage Advisory Committee (GLPAC) will meet on October 18, 2011, in Washington, District of Columbia. The meeting will be open to the public.

DATES: GLPAC will meet on Tuesday, October 18, 2011, from 9 a.m. to 4 p.m. Please note the meeting may close early if the committee completes its business. Written material and requests to make oral presentations should reach us on or before October 14, 2011.

ADDRESSES: The meeting will be held at Coast Guard Headquarters, 2100 2nd Street Southwest, Washington, District of Columbia 20593, in conference room 51309. All visitors to Coast Guard Headquarters will have to pre-register to be admitted to the building. Please provide your name, telephone number and organization by close of business on October 14, 2011, to the contact person listed in **FOR FURTHER INFORMATION CONTACT:** below. Additionally, all visitors to Coast Guard Headquarters must produce valid photo identification for access to the facility.

For information on facilities or services for individuals with disabilities or to request special assistance at the meeting, contact the person listed in **FOR FURTHER INFORMATION CONTACT:** below as soon as possible.

To facilitate public participation, we are inviting public comment on the issues to be considered by the committee as listed in the ''Agenda'' section below. Comments must be submitted in writing no later than October 14, 2011, and must be identified by [USCG–2011–XXXX] and may be submitted by one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Fax:* 202–493–2251.
- *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.
- *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.

Instructions: All submissions received must include the words ''Department of Homeland Security'' and the docket number for this action. Comments received will be posted without alteration at *http://www.regulations.gov,* including any personal information provided. You may review a Privacy Act notice regarding our public dockets in the January 17, 2008, issue of the **Federal Register** (73 FR 3316).

Docket: For access to the docket to read documents or comments related to this notice, go to *http://www.regulations.gov,* and use ''USCG–2011–XXXX'' as your search term.

A public comment period will be held during the meeting on October 18, 2011, from 10 a.m. to 11 a.m., and speakers are requested to limit their comments to 5 minutes. Please note that the public comment period may end before the time indicated, following the last call for comments. Contact the individual listed below to register as a speaker.

FOR FURTHER INFORMATION CONTACT: Mr. David Dean, GLPAC Assistant Designated Federal Officer (ADFO), Commandant (CG–5522), U.S. Coast Guard Headquarters, 2100 Second Street, SW., Stop 7580, Washington, DC 20593–7580; telephone 202–372–1533, fax 202–372–1909, or e-mail at *David.J.Dean@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: Notice of this meeting is given under the Federal Advisory Committee Act, 5 U.S.C. App. (Pub. L. 92–463). GLPAC was established under the authority of 46 U.S.C. 9307, as amended, and makes recommendations to the Secretary of Homeland Security and the Coast Guard on matters relating to Great Lakes pilotage, including review of proposed Great Lakes pilotage regulations and policies.

GLPAC expects to meet twice per year but may also meet at other times at the call of the Secretary. Further information about GLPAC is available by searching on ''Great Lakes Pilotage Advisory Committee'' at *http://www.fido.gov/facadatabase/.*

Agenda

The GLPAC will meet to review, discuss and formulate recommendations on the following issues:

Discussion of the comprehensive bridge hour study of Great Lakes pilotage operations. This study will include:

1. Evaluation of current bridge hour definition and standards used in the ratemaking process.

2. Replacing the current standard with a broader, more inclusive, work hour definition and developing new standards for use in measuring pilot work load to more accurately establish rates.

Status of the 2012 Appendix A ratemaking rule, the Notice of Proposed Rulemaking which was published August 4, 2011 (76 FR 47095; correction, Aug. 16, 2011, 76 FR 50713.

Status of the audits for the 2013 Appendix A ratemaking rule.

Status of the Memorandum of Arrangements between the U.S. and Canada.

Discussion of relocating the Great Lakes Pilotage Division physical office from Washington, DC to the Great Lakes region.

Election of Chairman and Vice-Chairman of the Great Lakes Pilotage Advisory Committee for a 2 year term.

Materials relating to these issues appears in the docket, *http://www.regulations.gov.* Use ''USCG–2011–XXXX'' as your search term.

Dated: September 27, 2011.

D. A. Goward,

Director Marine Transportation Systems Management, U.S. Coast Guard.

[FR Doc. 2011–25464 Filed 10–3–11; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket ID FEMA–2011–0018]

All-Hazard Position Task Books for Type 3 Incident Management Teams

AGENCY: Federal Emergency Management Agency; DHS.

ACTION: Notice of availability; request for comments.

SUMMARY: The All-Hazard Position Task Books for Type 3 Incident Management Teams were developed to assist personnel achieve qualifications in the All-Hazard Incident Command System (ICS) positions. The position task books supplement the qualification requirements contained in the National Incident Management System (NIMS), Job Titles.

DATES: Comments must be received by November 3, 2011.

ADDRESSES: You may submit comments, identified by Docket ID FEMA–2011–0018, by one of the following methods:

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

E-mail: FEMA–POLICY@dhs.gov. Include Docket ID FEMA–2011–0018 in the subject line of the message.

Fax: 703–483–2999.

Mail/Hand Delivery/Courier: Legislation, Regulations, & Policy Division, Office of Chief Counsel, Federal Emergency Management Agency, Room 835, 500 C Street, SW., Washington, DC 20472.

Instructions: All submissions received must include the agency name and docket ID. Regardless of the method used for submitting comments or material, all submissions will be posted, without change, to the Federal eRulemaking Portal at *http://www.regulations.gov,* and will include any personal information you provide. Therefore, submitting this information makes it public. You may wish to read the Privacy Act notice that is available via a link in the footer of *http://www.regulations.gov.*

Docket: For access to the docket to read background documents or comments received, go to the Federal eRulemaking Portal at *http://www.regulations.gov.* Submitted comments may also be inspected at FEMA, Office of Chief Counsel, Room 835, 500 C Street, SW., Washington, DC 20472.

FOR FURTHER INFORMATION CONTACT: Tom Smith, National Integration Center, National Preparedness Directorate, Protection and National Preparedness, 500 C Street, SW., Washington, DC 20472. Phone: 202–646–3850 or e-mail: *FEMA–NIMS@dhs.gov.*

SUPPLEMENTARY INFORMATION: The All-Hazard Position Task Books for Type 3 Incident Management Teams were developed to assist personnel achieve qualifications in the All-Hazard ICS positions. The position task books also provide the documentation necessary for agencies and organizations to evaluate their personnel and certify their personnel as qualified to the positions. The position task books supplement the qualification requirements contained in the NIMS Job Titles, which specify any Education, Training, Experience, Physical/Medical Fitness, Currency, and Licensure/Certification for each position. The position task books have been derived from National Wildfire Coordinating Group position task books to leverage their successful experience in managing the qualifications of their personnel. The position task books in this initial group contain:

1. Incident Commander.
2. Public Information Officer.
3. Safety Officer.
4. Liaison Officer.
5. Operations Section Chief.
6. Planning Section Chief
7. Finance/Administration Section Chief.
8. Logistics Section Chief.
9. Service Branch Director/Support Branch Director.
10. Branch Director (Operations Section).
11. Division/Group Supervisor.
12. Unit Leader.
13. Strike Team/Task Force Leader.
14. Technical Specialist.

The All-Hazard Position Task Books for Type 3 Incident Management Teams are available for reviewing at *http://*

www.regulations.gov under docket ID FEMA–2011–0018. FEMA is accepting comments during this public comment period and will incorporate them, as appropriate, to finalize and release the All-Hazard Position Task Books for Type 3 Incident Management Teams.

Authority: 6 U.S.C. 320.

Dated: September 20, 2011.

W. Craig Fugate,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2011–25578 Filed 10–3–11; 8:45 am]

BILLING CODE 9111–46–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–3339–EM; Docket ID FEMA–2011–0001]

Pennsylvania; Emergency and Related Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of an emergency for the Commonwealth of Pennsylvania (FEMA–3339–EM), dated August 29, 2011, and related determinations.

DATES: *Effective Date:* August 29, 2011.

FOR FURTHER INFORMATION CONTACT: Peggy Miller, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–3886.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated August 29, 2011, the President issued an emergency declaration under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121–5208 (the Stafford Act), as follows:

I have determined that the emergency conditions in certain areas of the Commonwealth of Pennsylvania resulting from Hurricane Irene beginning on August 26, 2011, and continuing, are of sufficient severity and magnitude to warrant an emergency declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (''the Stafford Act''). Therefore, I declare that such an emergency exists in the Commonwealth of Pennsylvania.

You are authorized to provide appropriate assistance for required emergency measures, authorized under Title V of the Stafford Act, to save lives and to protect property and public health and safety, and to lessen or avert the threat of a catastrophe in the designated areas. Specifically, you are authorized to provide assistance for emergency protective measures (Category B), limited to direct Federal assistance, under the Public Assistance program. This assistance excludes regular time costs for subgrantees' regular employees.

Consistent with the requirement that Federal assistance is supplemental, any Federal funds provided under the Stafford Act for Public Assistance will be limited to 75 percent of the total eligible costs. In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes such amounts as you find necessary for Federal emergency assistance and administrative expenses.

Further, you are authorized to make changes to this declaration for the approved assistance to the extent allowable under the Stafford Act.

The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Administrator, Department of Homeland Security, under Executive Order 12148, as amended, Ed Smith, of FEMA is appointed to act as the Federal Coordinating Officer for this declared emergency.

The following areas of the Commonwealth of Pennsylvania have been designated as adversely affected by this declared emergency:

Bucks, Chester, Delaware, Lehigh, Luzerne, Monroe, Montgomery, Northampton, Philadelphia, Pike, Sullivan, Wayne, and Wyoming Counties for emergency protective measures (Category B), limited to direct Federal assistance, under the Public Assistance program.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households in Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

W. Craig Fugate,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2011–25549 Filed 10–3–11; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–3333–EM; Docket ID FEMA–2011–0001]

New Hampshire; Emergency and Related Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of an emergency for the State of New Hampshire (FEMA–3333–EM), dated August 27, 2011, and related determinations.

DATES: *Effective Date:* August 27, 2011.

FOR FURTHER INFORMATION CONTACT: Peggy Miller, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–3886.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated August 27, 2011, the President issued an emergency declaration under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121–5208 (the Stafford Act), as follows:

I have determined that the emergency conditions in certain areas of the State of New Hampshire resulting from Hurricane Irene beginning on August 26, 2011, and continuing, are of sufficient severity and magnitude to warrant an emergency declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 et seq. (''the Stafford Act''). Therefore, I declare that such an emergency exists in the State of New Hampshire.

You are authorized to provide appropriate assistance for required emergency measures, authorized under Title V of the Stafford Act, to save lives and to protect property and public health and safety, and to lessen or avert the threat of a catastrophe in the designated areas. Specifically, you are authorized to provide assistance for emergency protective measures (Category B), including direct Federal assistance, under the Public Assistance program. This assistance excludes regular time costs for subgrantees' regular employees.

Consistent with the requirement that Federal assistance is supplemental, any Federal funds provided under the Stafford Act for Public Assistance will be limited to 75 percent of the total eligible costs. In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes such amounts as you find necessary for Federal emergency assistance and administrative expenses.

Further, you are authorized to make changes to this declaration for the approved

assistance to the extent allowable under the Stafford Act.

The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Administrator, Department of Homeland Security, under Executive Order 12148, as amended, Craig A. Gilbert, of FEMA is appointed to act as the Federal Coordinating Officer for this declared emergency.

The following areas of the State of New Hampshire have been designated as adversely affected by this declared emergency:

Belknap, Carroll, Cheshire, Coos, Grafton, Hillsborough, Merrimack, Rockingham, Strafford, and Sullivan Counties for emergency protective measure (Category B), including direct federal assistance, under the Public Assistance program.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households in Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.)

W. Craig Fugate,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2011–25553 Filed 10–3–11; 8:45 am]

BILLING CODE 9110–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–3332–EM; Docket ID FEMA–2011–0001]

New Jersey; Emergency and Related Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of an emergency for the State of New Jersey (FEMA–3332–EM), dated August 27, 2011, and related determinations.

DATES: *Effective Date:* August 27, 2011.

FOR FURTHER INFORMATION CONTACT: Peggy Miller, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–3886.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated August 27, 2011, the President issued an emergency declaration under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121–5208 (the Stafford Act), as follows:

I have determined that the emergency conditions in certain areas of the State of New Jersey resulting from Hurricane Irene beginning on August 26, 2011, and continuing, are of sufficient severity and magnitude to warrant an emergency declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (''the Stafford Act''). Therefore, I declare that such an emergency exists in the State of New Jersey.

You are authorized to provide appropriate assistance for required emergency measures, authorized under Title V of the Stafford Act, to save lives and to protect property and public health and safety, and to lessen or avert the threat of a catastrophe in the designated areas. Specifically, you are authorized to provide assistance for emergency protective measures (Category B), including direct Federal assistance, under the Public Assistance program. This assistance excludes regular time costs for subgrantees' regular employees.

Consistent with the requirement that Federal assistance is supplemental, any Federal funds provided under the Stafford Act for Public Assistance will be limited to 75 percent of the total eligible costs. In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes such amounts as you find necessary for Federal emergency assistance and administrative expenses.

Further, you are authorized to make changes to this declaration for the approved assistance to the extent allowable under the Stafford Act.

The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Administrator, Department of Homeland Security, under Executive Order 12148, as amended, William L. Vogel, of FEMA is appointed to act as the Federal Coordinating Officer for this declared emergency.

The following areas of the State of New Jersey have been designated as adversely affected by this declared emergency:

All counties in the State of New Jersey for emergency protective measures (Category B), including direct Federal assistance, under the Public Assistance program.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households in Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.)

W. Craig Fugate,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2011–25581 Filed 10–3–11; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–3331–EM; Docket ID FEMA–2011–0001]

Connecticut; Emergency and Related Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of an emergency for the State of Connecticut (FEMA–3331–EM), dated August 27, 2011, and related determinations.

DATES: *Effective Date:* August 27, 2011.

FOR FURTHER INFORMATION CONTACT: Peggy Miller, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–3886.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated August 27, 2011, the President issued an emergency declaration under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121–5208 (the Stafford Act), as follows:

I have determined that the emergency conditions in the State of Connecticut resulting from Hurricane Irene beginning on August 26, 2011, and continuing, are of sufficient severity and magnitude to warrant an emergency declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 et seq. (''the Stafford Act''). Therefore, I declare that such an emergency exists in the State of Connecticut.

You are authorized to provide appropriate assistance for required emergency measures, authorized under Title V of the Stafford Act, to save lives and to protect property and public health and safety, and to lessen or

avert the threat of a catastrophe in the designated areas. Specifically, you are authorized to provide assistance for emergency protective measures (Category B), including direct Federal assistance, under the Public Assistance program. This assistance excludes regular time costs for subgrantees' regular employees.

Consistent with the requirement that Federal assistance is supplemental, any Federal funds provided under the Stafford Act for Public Assistance will be limited to 75 percent of the total eligible costs. In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes such amounts as you find necessary for Federal emergency assistance and administrative expenses.

Further, you are authorized to make changes to this declaration for the approved assistance to the extent allowable under the Stafford Act.

The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Administrator, Department of Homeland Security, under Executive Order 12148, as amended, Gary Stanley, of FEMA is appointed to act as the Federal Coordinating Officer for this declared emergency.

The following areas of the State of Connecticut have been designated as adversely affected by this declared emergency:

All eight counties in the State of Connecticut for emergency protective measures (Category B), including direct federal assistance, under the Public Assistance program.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

W. Craig Fugate,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2011–25560 Filed 10–3–11; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–3330–EM; Docket ID FEMA–2011–0001]

Massachusetts; Emergency and Related Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of an emergency for the Commonwealth of Massachusetts (FEMA–3330–EM), dated August 26, 2011, and related determinations.

DATES: *Effective Date:* August 26, 2011.

FOR FURTHER INFORMATION CONTACT: Peggy Miller, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–3886.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated August 26, 2011, the President issued an emergency declaration under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121–5208 (the Stafford Act), as follows:

I have determined that the emergency conditions in the Commonwealth of Massachusetts resulting from Hurricane Irene beginning on August 26, 2011, and continuing, are of sufficient severity and magnitude to warrant an emergency declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (''the Stafford Act''). Therefore, I declare that such an emergency exists in the Commonwealth of Massachusetts.

You are authorized to provide appropriate assistance for required emergency measures, authorized under Title V of the Stafford Act, to save lives and to protect property and public health and safety, and to lessen or avert the threat of a catastrophe in the designated areas. Specifically, you are authorized to provide assistance for emergency protective measures (Category B), including direct Federal assistance, under the Public Assistance program. This assistance excludes regular time costs for subgrantees' regular employees.

Consistent with the requirement that Federal assistance is supplemental, any Federal funds provided under the Stafford Act for Public Assistance will be limited to 75 percent of the total eligible costs. In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes such amounts as you find necessary for Federal emergency assistance and administrative expenses.

Further, you are authorized to make changes to this declaration for the approved assistance to the extent allowable under the Stafford Act.

The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Administrator, Department of Homeland Security, under Executive Order 12148, as amended, James N. Russo, of FEMA is appointed to act as the Federal Coordinating Officer for this declared emergency.

The following areas of the Commonwealth of Massachusetts have been designated as adversely affected by this declared emergency:

Emergency protective measures (Category B), including direct Federal assistance, under the Public Assistance program for the entire Commonwealth of Massachusetts.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

W. Craig Fugate,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2011–25552 Filed 10–3–11; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–4021–DR; Docket ID FEMA–2011–0001]

New Jersey; Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the State of New Jersey (FEMA–4021–DR), dated August 31, 2011, and related determinations.

DATES: *Effective Date:* August 31, 2011.

FOR FURTHER INFORMATION CONTACT: Peggy Miller, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–3886.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated August 31, 2011, the President issued a major disaster declaration under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (the ''Stafford Act''), as follows:

I have determined that the damage in certain areas of the State of New Jersey resulting from Hurricane Irene beginning on August 27, 2011, and continuing, is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (the ''Stafford Act''). Therefore, I declare that such a major disaster exists in the State of New Jersey.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Individual Assistance and Public Assistance in the designated areas and Hazard Mitigation throughout the State. Direct Federal assistance is authorized. Consistent with the requirement that Federal assistance is supplemental, any Federal funds provided under the Stafford Act for Public Assistance, Hazard Mitigation, and Other Needs Assistance will be limited to 75 percent of the total eligible costs.

Further, you are authorized to make changes to this declaration for the approved assistance to the extent allowable under the Stafford Act.

The time period prescribed for the implementation of section 310(a), Priority to Certain Applications for Public Facility and Public Housing Assistance, 42 U.S.C. 5153, shall be for a period not to exceed six months after the date of this declaration.

The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Administrator, under Executive Order 12148, as amended, William L. Vogel, of FEMA is appointed to act as the Federal Coordinating Officer for this major disaster.

The following areas of the State of New Jersey have been designated as adversely affected by this major disaster:

Bergen, Essex, Morris, Passaic, and Somerset Counties for Individual Assistance.

Atlantic, Cape May, Cumberland, and Salem Counties. Direct federal assistance is authorized for Public Assistance.

All counties within the State of New Jersey are eligible to apply for assistance under the Hazard Mitigation Grant Program.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households in Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.)

W. Craig Fugate,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2011–25564 Filed 10–3–11; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–4022–DR; Docket ID FEMA–2011–0001]

Vermont; Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the State of Vermont (FEMA–4022–DR), dated September 1, 2011, and related determinations.

DATES: *Effective Date:* September 1, 2011.

FOR FURTHER INFORMATION CONTACT: Peggy Miller, Recovery Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–3886.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated September 1, 2011, the President declared a major disaster under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121–5207 (the Stafford Act), as follows:

I have declared a major disaster under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (the ''Stafford Act''), for the State of Vermont due to damage resulting from Tropical Storm Irene beginning on August 29, 2011, and continuing. I have authorized Federal relief and recovery assistance in the affected area.

Individual Assistance, Public Assistance, and Hazard Mitigation will be provided. Consistent with the requirement that Federal assistance is supplemental, any Federal funds provided under the Stafford Act for Public Assistance, Hazard Mitigation, and Other Needs Assistance under Section 408 will be limited to 75 percent of the total eligible costs in the designated areas.

The Department of Homeland Security, Federal Emergency Management Agency (FEMA), will coordinate Federal assistance efforts and designate specific areas eligible for such assistance. The Federal Coordinating Officer will be Mr. Craig A. Gilbert of FEMA. He will consult with you and assist in the execution of the FEMA-State Agreement for disaster assistance governing the expenditure of Federal funds.

The time period prescribed for the implementation of section 310(a), Priority to Certain Applications for Public Facility and Public Housing Assistance, 42 U.S.C. 5153, shall be for a period not to exceed six months after the date of this declaration.

The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Administrator, under Executive Order 12148, as amended, Craig A. Gilbert, of FEMA is appointed to act as the Federal Coordinating Officer for this declared disaster.

The following areas of the State of Vermont have been designated as adversely affected by this declared major disaster:

Chittenden, Rutland, Washington, and Windsor Counties for Individual Assistance.

Addison, Bennington, Caledonia, Chittenden, Essex, Franklin, Lamoille, Orange, Orleans, Rutland, Washington, Windham, and Windsor Counties for Public Assistance. Direct federal assistance is authorized for Public Assistance.

All counties within the State of Vermont are eligible to apply for assistance under the Hazard Mitigation Grant Program.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households in Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

W. Craig Fugate,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2011–25573 Filed 10–3–11; 8:45 am]

BILLING CODE 9110–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket ID: FEMA–2011–0021]

NIMS Public Works Resources: Typed Resource Definitions (FEMA 508–7)

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice of availability; request for comment.

SUMMARY: The Federal Emergency Management Agency (FEMA) is requesting public comments on the *NIMS Public Works Resources: Typed Resource Definitions (FEMA 508–7).*

DATES: Comments must be received by November 3, 2011.

ADDRESSES: Comments must be identified by Docket ID FEMA–2011–0021 and may be submitted by one of the following methods:

Federal eRulemaking Portal: http://www.regulations.gov. Follow the instructions for submitting comments. Please note that this proposed policy is not a rulemaking and the Federal eRulemaking Portal is being utilized only as a mechanism for receiving comments.

Mail/Hand Delivery/Courier: Office of Chief Counsel, Federal Emergency Management Agency, Room 840, 500 C Street, SW., Washington, DC 20472.

FOR FURTHER INFORMATION CONTACT: Mike Forgy, Branch Chief; 999 E Street, NW., Washington, DC 20463; 202–646–2840 (phone); *michael.forgy@dhs.gov.*

SUPPLEMENTARY INFORMATION:

I. Public Participation

Instructions: All submissions received must include the agency name and docket ID. Regardless of the method used for submitting comments or material, all submissions will be posted, without change, to the Federal eRulemaking Portal at *http://www.regulations.gov,* and will include any personal information you provide. Therefore, submitting this information makes it public. You may wish to read the Privacy Act notice, which can be viewed by clicking on the ''Privacy Notice'' link in the footer of *http://www.regulations.gov.*

You may submit your comments and material by the methods specified in the **ADDRESSES** section. Please submit your comments and any supporting material by only one means to avoid the receipt and review of duplicate submissions.

Docket: The proposed policy is available in docket ID FEMA–2011–0021. For access to the docket to read background documents or comments received, go to the Federal eRulemaking Portal at *http://www.regulations.gov.* Submitted comments may also be inspected at FEMA, Office of Chief Counsel, Room 840, 500 C Street, SW., Washington, DC 20472.

II. Background

The National Incident Management System (NIMS) provides a consistent nationwide template to enable Federal, State, Tribal, and local governments, nongovernmental organizations, and the private sector to work together to prevent, protect against, respond to, recover from, and mitigate the effects of incidents, regardless of cause, size, location, or complexity. The Federal Emergency Management Agency (FEMA) is requesting public comments on the *NIMS Public Works Resources: Typed Resource Definitions (FEMA 508–7).* This document supports the Resource Management Component of NIMS. Emergency management and incident response activities require carefully managed resources (personnel, teams, facilities, equipment, and/or supplies) to meet incident needs. Utilization of the standardized resource management concepts such as typing, inventorying, organizing, and tracking will facilitate the dispatch, deployment, and recovery of resources before, during, and after an incident.

Resource typing is defined as categorizing, by capability, the resources requested, deployed, and used in incidents. Resource users at all levels use these standards to identify and inventory resources. Resource kinds may be divided into subcategories (*e.g.* Public Works) to define more precisely the capabilities needed to meet specific requirements.

FEMA seeks comment on the proposed policy. Based on the comments received, FEMA may make appropriate revisions to the proposed policy. Although FEMA will consider any comments received in the drafting of the final policy, FEMA will not provide a response to comments document. When or if FEMA issues a final policy, FEMA will publish a notice of availability in the **Federal Register** and make the final policy available at *http://www.regulations.gov* and it will be posted to the NIMS Resource Center at *http://www.fema.gov/nims.* The final policy will not have the force or effect of law.

Authority: 6 U.S.C. 312; Homeland Security Presidential Directive (HSPD)—5.

Dated: September 20, 2011.

W. Craig Fugate,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2011–25575 Filed 10–3–11; 8:45 am]

BILLING CODE 9111–46–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5486–N–22]

Notice of Proposed Information Collection for Public Comment: Tribal Colleges and University Programs

AGENCY: Office of the Assistant Secretary for Public Development and Research, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: *Comment Due Date:* December 5, 2011.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Susan Brunson, Office of University Partnerships, Department of Housing and Urban Development, 451 7th Street, SW., Room 8226, Washington, DC 20410–6000.

SUPPLEMENTARY INFORMATION: The Department of Housing and Urban Development will submit the proposed extension of information collection to OMB for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended).

This Notice is soliciting comments from members of the public and affected agencies concerning the proposed collection of information to: (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; (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 collection techniques or other forms of information

technology, *e.g.*, permitting electronic submission of responses.

This Notice also lists the following information:

Title of Proposal: Tribal College and Universities Program.

OMB Control Number: 2528–0215.

Description of the Need for the Information and Proposed Use: The information is being collected to monitor performance of grantees to ensure they meet statutory and program goals and requirements.

Agency Form Numbers: HUD_96010.

Members of the Affected Public: Tribal Colleges and Universities (TCU) that meet the definition of a TCU established in Title III of the 1998 Amendments to Higher Education Act of 1965 (Pub. L. 105–244, approved October 7, 1998).

Estimation of the total number of hours needed to prepare the information collection including number of respondents, frequency of response, and hours of response: Information pursuant to grant award will be submitted once a year. The following chart details the respondent burden on an annual and semi-annual basis:

	Number of respondents	Total annual responses	Hours per response	Total hours
Applicants	0	0	0	0
Quarterly Reports	15	60	10	600
Final Reports	5	1	15	75
Recordkeeping	15	1	5	75
Total			59	750

Status of the proposed information collection: Pending OMB approval.

Authority: Pub. L. 105–244.

Dated: September 24, 2011.

Raphael W. Bostic,

Assistant Secretary for Policy Development.

[FR Doc. 2011–25574 Filed 10–3–11; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5374–N–33]

Buy American Exceptions Under the American Recovery and Reinvestment Act of 2009

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Notice.

SUMMARY: In accordance with the American Recovery and Reinvestment Act of 2009 (Pub. L. 111–05, approved February 17, 2009) (Recovery Act), and implementing guidance of the Office of Management and Budget (OMB), this notice advises that certain exceptions to the Buy American requirement of the Recovery Act have been determined applicable for work using Capital Fund Recovery Formula and Competition (CFRFC) grant funds. Specifically, exceptions were granted to the Cambridge Housing Authority of Cambridge, MA for the purchase and installation of Venstar ColorTouch programmable limiting thermostats for the Harry S. Truman Apartments project, and to the Denver Housing Authority for the purchase and installation of refrigerators and microwave ovens for its 1099 Osage Apartments project.

FOR FURTHER INFORMATION CONTACT: Donald J. LaVoy, Deputy Assistant Secretary for Office of Field Operations, Office of Public and Indian Housing, Department of Housing and Urban Development, 451 7th Street, SW., Room 4112, Washington, DC 20410–4000, telephone number 202–402–8500 (this is not a toll-free number); or Dominique G. Blom, Deputy Assistant Secretary for Public Housing Investments, Office of Public Housing Investments, Office of Public and Indian Housing, Department of Housing and Urban Development, 451 7th Street, SW., Room 4130, Washington, DC 20410–4000, telephone number 202–402–8500 (this is not a toll-free number). Persons with hearing- or speech-impairments may access this number through TTY by calling the toll-free Federal Information Relay Service at 800–877–8339.

SUPPLEMENTARY INFORMATION: Section 1605(a) of the Recovery Act provides that none of the funds appropriated or made available by the Recovery Act may be used for a project for the construction, alteration, maintenance, or repair of a public building or public work unless all of the iron, steel, and manufactured goods used in the project are produced in the United States. Section 1605(b) provides that the Buy American requirement shall not apply in any case or category in which the head of a Federal department or agency finds that: (1) Applying the Buy American requirement would be inconsistent with the public interest; (2) iron, steel, and the relevant manufactured goods are not produced in the U.S. in sufficient and reasonably available quantities or of satisfactory quality, or (3) inclusion of iron, steel, and manufactured goods will increase the cost of the overall project by more than 25 percent. Section 1605(c) provides that if the head of a Federal department or agency makes a determination pursuant to section 1605(b), the head of the department or agency shall publish a detailed written justification in the **Federal Register**.

In accordance with section 1605(c) of the Recovery Act and OMB's implementing guidance published on April 23, 2009 (74 FR 18449), this notice advises the public that, on August 19, 2011, the following exceptions were granted:

1. Cambridge Housing Authority. Upon request of the Cambridge Housing Authority, HUD granted an exception to applicability of the Buy American requirements with respect to work, using CFRFC grant funds, in connection with the Harry S. Truman Apartments project. The exception was granted by HUD on the basis that the relevant manufactured goods, Venstar ColorTouch programmable limiting thermostats, are not produced in the U.S. in sufficient and reasonably available quantities or of satisfactory quality.

2. Denver Housing Authority. Upon request of the Denver Housing Authority, HUD granted an exception to applicability of the Buy American requirements with respect to work, using CFRFC grant funds, in connection with its 1099 Osage Apartments project. The exception was granted by HUD on the basis that the relevant manufactured goods (refrigerators and microwaves) are not produced in the U.S. in sufficient and reasonably available quantities or of satisfactory quality.

Dated: September 27, 2011.

Deborah Hernandez,

General Deputy Assistant Secretary for Public and Indian Housing.

[FR Doc. 2011–25577 Filed 10–3–11; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R1–R–2011–N099; 1265–0000–10137–S3]

Dungeness National Wildlife Refuge, Clallam County, WA; Comprehensive Conservation Plan and Environmental Assessment

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of intent; request for comments.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), intend to prepare a comprehensive conservation plan (CCP) and environmental assessment (EA) for Dungeness National Wildlife Refuge (Refuge or NWR) in Clallam County, Washington. We provide this notice in compliance with our CCP policy to advise other Federal and State agencies, Tribes, and the public of our intentions and to obtain suggestions and information on the scope of issues to consider in the planning process.

DATES: To ensure consideration, please send your written comments by November 3, 2011. We will announce opportunities for public input in local news media throughout the CCP process.

ADDRESSES: Additional information concerning the refuge is available on our *Web site: http://www.fws.gov/washingtonmaritime/dungeness/.* Send your comments or requests for more information by any of the following methods:

E-mail: FW1PlanningComments@fws.gov. Include ''Dungeness NWR CCP'' in the subject line of the message.

Fax: Attn: Kevin Ryan, Project Leader, (360) 457–9778.

U.S. Mail: Kevin Ryan, Project Leader, Dungeness National Wildlife Refuge, 715 Holgerson Road, Sequim, WA 98382.

In-Person Drop-off: You may drop off comments during regular business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Kevin Ryan, Project Leader, phone (360) 457–8451, or e-mail *kevin_ryan@fws.gov.*

SUPPLEMENTARY INFORMATION:

Introduction

With this notice, we initiate our process for developing a CCP/EA for Dungeness NWR. This notice complies with our CCP policy to (1) Advise other Federal and State agencies, Tribes, and the public of our intention to conduct detailed planning on this refuge and (2) obtain suggestions and information on the scope of issues to consider in the environmental document and during development of the CCP.

Background

The CCP Process

The National Wildlife Refuge System 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 compatible 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.

Each unit of the National Wildlife Refuge System was established for specific purposes. We use these purposes as the foundation for developing and prioritizing the management goals and objectives for each refuge within the National Wildlife Refuge System (NWRS), and to determine how the public can use each refuge. The planning process is a way for us and the public to evaluate management goals and objectives that will ensure the best possible approach to wildlife, plant, and habitat conservation, while providing for wildlife-dependent recreation opportunities that are compatible with each refuge's establishing purposes and the mission of the NWRS.

Our CCP process provides participation opportunities for the public; Tribal, State, and local governments; agencies; and organizations. At this time we encourage input in the form of issues, concerns, ideas, and suggestions for the future management of Dungeness Refuge.

We will conduct the environmental review of this project and develop an EA in accordance with the requirements of the National Environmental Policy Act of 1969, as amended (NEPA) (42 U.S.C. 4321 *et seq.*); NEPA regulations (40 CFR parts 1500–1508); other appropriate Federal laws and regulations; and our policies and procedures for compliance with those laws and regulations.

Dungeness Refuge

The refuge was established in 1915 as a ''refuge, preserve, and breeding ground for native birds'' (Executive Order 2123). The refuge's approved boundary encompasses 773 acres of sand spit, tidelands, and upland forest habitat along Washington's Strait of Juan de Fuca; of this, the Service manages 325 acres through perpetual easements and owns and manages approximately 448 acres.

Habitat types found on the refuge include beach, bluffs, coastal strand, eelgrass beds, mudflats, coastal lagoon, salt marsh, natural and constructed freshwater wetlands, and mixed conifer forests. At 5.5-miles (8.9 kilometers), Dungeness Spit is the longest natural sand spit in the United States. Graveyard Spit, which is attached to Dungeness Spit, is designated as a Research Natural Area due to the quality of its native plant community, which provides an excellent representation of coastal strand. The refuge's eelgrass beds are important over-wintering and staging areas for Brant. Numerous other birds use the refuge during migration and winter, including dabbling and diving ducks, shorebirds, and bald eagles. Dungeness Refuge also provides breeding habitat for black oystercatchers, pigeon guillemots, and forest birds. Harbor seals use the refuge to pup, haulout, and molt.

Scoping: Preliminary Issues, Concerns, and Opportunities

We have identified preliminary issues, concerns, and opportunities that we may address in the CCP. We have briefly summarized these issues below. During public scoping, we may identify additional issues.

- Should we actively manage the Dawley Unit's forest to enhance old growth forest characteristics and/or marbled murrelet habitat, and if so, how?
- Should we enhance the refuge's eelgrass beds, and/or mitigate

anticipated impacts to the eelgrass beds from climate change?

• How can we reduce marine debris and derelict fishing gear on and adjacent to the refuge?

• How can we reduce the risks of and impacts from oil spills and other contaminants on the refuge?

• Which invasive species should be our highest priorities for monitoring and control measures? How can we prevent the introduction and dispersal of invasive plants and animals?

• How should we address the anticipated impacts of climate change and sea level rise on the refuge's wildlife and habitat in the CCP and environmental document?

• What research or monitoring studies are needed to improve wildlife and habitat management?

• How can we reduce human-caused wildlife disturbance impacts on and adjacent to the refuge, and improve compliance with refuge regulations?

• How can we improve the refuge's environmental and cultural education and interpretation programs, partnerships, and other priority public uses that are compatible with the refuge's conservation purposes? How can we enhance opportunities for people with disabilities to experience refuge resources?

Public Meetings

We will give the public an opportunity to provide input at a public meeting. You can obtain the schedule from our Web site or the project leader (see **ADDRESSES**). We will also announce the public meeting through other media outlets. In addition, you may send comments anytime during the planning process by mail, e-mail, or fax (see **ADDRESSES**).

Public Availability of Comments

Before including your address, phone number, e-mail address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Dated: August 16, 2011.

Robyn Thorson,

Regional Director, Region 1, Portland, Oregon.

[FR Doc. 2011–25317 Filed 10–3–11; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R2–ES–2011–N183; 21450–1113–0000–C2]

Final Recovery Plan, Bexar County Karst Invertebrates

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of document availability.

SUMMARY: We, the Fish and Wildlife Service, announce the availability of our final recovery plan, for the nine Bexar County Karst Invertebrates under the *Endangered Species Act of 1973,* as amended (Act). These species occur in Bexar County, Texas.

ADDRESSES: You may download the recovery plan from the internet at *http://www.fws.gov/endangered/species/recovery-plans.html,* or you may obtain a copy from Cyndee Watson, U.S. Fish and Wildlife Service, 10711 Burnet Road, Suite #200, Austin, TX (512–490–0057 ext. 223).

FOR FURTHER INFORMATION CONTACT: Adam Zerrenner, at the above address; by phone at 512–490–0057, ext. 249; or by e-mail at *Adam_Zerrenner@fws.gov.*

SUPPLEMENTARY INFORMATION:

Background

Recovering endangered or threatened animals and plants to the point where they are again secure, self-sustaining members of their ecosystems is a primary goal of our endangered species program and the Act (16 U.S.C. 1531 *et seq.*). Recovery means improvement of the status of listed species to the point at which listing is no longer appropriate under the criteria set out in section 4(a)(1) of the Act. The Act requires the development of recovery plans for listed species, unless such a plan would not promote the conservation of a particular species.

Species' History

The following nine Bexar County karst invertebrates were listed as endangered species on December 26, 2000 (65 FR 81419): *Rhadine exilis, R. infernalis, Batrisodes venyivi, Texella cokendolpheri, Neoleptoneta microps, Cicurina baronia, C. madla, C. venii,* and *C. vespera.* These invertebrates are troglobites, spending their entire lives underground. They inhabit caves and mesocaverns (humanly impassable voids in karst limestone) in Bexar County, Texas. They are characterized by small or absent eyes and pale coloration.

Final Recovery Plan

The final recovery plan includes scientific information about the species and provides objectives and actions needed to recover the Bexar County karst invertebrates and to ultimately remove them from the list of threatened and endangered species. It also has incorporated public and peer review comments as applicable. Recovery actions designed to achieve these objectives include reducing threats to the species by securing an adequate quantity and quality of habitat. This includes selecting caves or cave clusters that represent the range of the species and potential genetic diversity for the nine species, and then preserving these karst habitats, including their drainage basins and surface communities upon which they rely. Some of the changes from the draft recovery plan include changes in the acreage requirements for medium and high quality preserves as well as the configuration of the preserves required to meet the recovery criteria. Because many aspects of the population dynamics and habitat requirements of the species are poorly understood, recovery is also dependant on incorporating research findings into adaptive management actions. Because three of these species are known to occur in only one cave, full recovery may not be possible for these species.

Authority

We developed our final recovery plan under the authority of section 4(f) of the Act, 16 U.S.C. 1533(f). We publish this notice under section 4(f) *Endangered Species Act of 1973,* as amended (16 U.S.C. 1531 *et seq.*).

Authority: 16 U.S.C. 1531 *et seq.*

Dated: September 13, 2011.

Joy E. Nicholopoulos,

Acting Regional Director, Southwest Region, Fish and Wildlife Service.

[FR Doc. 2011–25483 Filed 10–3–11; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLNML00000 L13110000.XH0000]

Notice of Public Meeting, Las Cruces District Resource Advisory Council Meeting, New Mexico

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Public Meeting.

SUMMARY: In accordance with the Federal Land Policy and Management Act and the Federal Advisory

Committee Act of 1972, the U.S. Department of the Interior, Bureau of Land Management (BLM), Las Cruces District Resource Advisory Council (RAC), will meet as indicated below.

DATES: The meeting date is October 20, 2011, at the BLM Las Cruces District Office, 1800 Marquess Street, Las Cruces, NM 88005, from 9 a.m.–4 p.m. The public may send written comments to the RAC at the above address.

FOR FURTHER INFORMATION CONTACT: Rena Gutierrez, BLM Las Cruces District, 1800 Marquess Street, Las Cruces, NM 88005, 575–525–4338. Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8229 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: The 10-member RAC advises the Secretary of the Interior, through the BLM, on a variety of planning and management issues associated with public land management in New Mexico. Planned agenda items include a welcome and introduction of new Council members, election of officers, overview and procedures of resource advisory councils, issues and concerns in the BLM Las Cruces District and future project work for the RAC. A half-hour public comment period during which the public may address the Council is scheduled to begin at 2:30 p.m. on October 20, 2011. All RAC meetings are open to the public. Depending on the number of individuals wishing to comment and time available, the time for individual oral comments may be limited.

Bill Childress,

District Manager, Las Cruces.

[FR Doc. 2011–25496 Filed 10–3–11; 8:45 am]

BILLING CODE 4310–VC–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WY–923–1310–FI; WYW163268]

Notice of Proposed Reinstatement of Terminated Oil and Gas Lease WYW163268, Wyoming

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: Under the provisions of the *Mineral Leasing Act of 1920,* as amended, the Bureau of Land Management (BLM) received a petition for reinstatement from Pogo Producing Company LLC for competitive oil and gas lease WYW163268 for land in Big Horn County, Wyoming. The petition was filed on time and was accompanied by all the rentals due since the date the lease terminated under the law.

FOR FURTHER INFORMATION CONTACT: Bureau of Land Management, Julie L. Weaver, Chief, Fluid Minerals Adjudication, at (307) 775–6176. 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: The lessee has agreed to the amended lease terms for rentals and royalties at rates of $10 per acre or fraction thereof, per year and 16⅔ percent, respectively. The lessee has paid the required $500 administrative fee and $159 to reimburse the Department for the cost of this **Federal Register** notice. The lessee has met all the requirements for reinstatement of the lease as set out in Sections 31(d) and (e) of the *Mineral Lands Leasing Act of 1920* (30 U.S.C. 188), and the BLM is proposing to reinstate lease WYW163268 effective June 1, 2011, under the original terms and conditions of the lease and the increased rental and royalty rates cited above. The BLM has not issued a valid lease to any other interest affecting the lands.

Julie L. Weaver,

Chief, Branch of Fluid Minerals Adjudication.

[FR Doc. 2011–25372 Filed 10–3–11; 8:45 am]

BILLING CODE 4310–22–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WY–923–1310–FI; WYW163269]

Notice of Proposed Reinstatement of Terminated Oil and Gas Lease WYW163269, Wyoming

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: Under the provisions of the *Mineral Leasing Act of 1920,* as amended, the Bureau of Land Management (BLM) received a petition for reinstatement from Pogo Producing Company LLC for competitive oil and gas lease WYW163269 for land in Big Horn County, Wyoming. The petition was filed on time and was accompanied by all the rentals due since the date the lease terminated under the law.

FOR FURTHER INFORMATION CONTACT: Bureau of Land Management, Julie L. Weaver, Chief, Fluid Minerals Adjudication, at (307) 775–6176. 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: The lessee has agreed to the amended lease terms for rentals and royalties at rates of $10 per acre or fraction thereof, per year and 16⅔ percent, respectively. The lessee has paid the required $500 administrative fee and $159 to reimburse the Department for the cost of this **Federal Register** notice. The lessee has met all the requirements for reinstatement of the lease as set out in Sections 31(d) and (e) of the *Mineral Lands Leasing Act of 1920* (30 U.S.C. 188), and the BLM is proposing to reinstate lease WYW163269 effective June 1, 2011, under the original terms and conditions of the lease and the increased rental and royalty rates cited above. The BLM has not issued a valid lease to any other interest affecting the lands.

Julie L. Weaver,

Chief, Branch of Fluid Minerals Adjudication.

[FR Doc. 2011–25369 Filed 10–3–11; 8:45 am]

BILLING CODE 4310–22–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WY–923–1310–FI; WYW163275]

Notice of Proposed Reinstatement of Terminated Oil and Gas Lease WYW163275, Wyoming

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: Under the provisions of the Mineral Leasing Act of 1920, as amended, the Bureau of Land Management (BLM) received a petition for reinstatement from Pogo Producing Company LLC for competitive oil and gas lease WYW163275 for land in Big Horn County, Wyoming. The petition

was filed on time and was accompanied by all the rentals due since the date the lease terminated under the law.

FOR FURTHER INFORMATION CONTACT: Bureau of Land Management, Julie L. Weaver, Chief, Fluid Minerals Adjudication, at (307) 775–6176. 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: The lessee has agreed to the amended lease terms for rentals and royalties at rates of $10 per acre or fraction thereof, per year and 16⅔ percent, respectively. The lessee has paid the required $500 administrative fee and $159 to reimburse the Department for the cost of this **Federal Register** notice. The lessee has met all the requirements for reinstatement of the lease as set out in Sections 31(d) and (e) of the Mineral Lands Leasing Act of 1920 (30 U.S.C. 188), and the BLM is proposing to reinstate lease WYW163275 effective June 1, 2011, under the original terms and conditions of the lease and the increased rental and royalty rates cited above. The BLM has not issued a valid lease to any other interest affecting the lands.

Julie L. Weaver,

Chief, Branch of Fluid Minerals Adjudication.

[FR Doc. 2011–25376 Filed 10–3–11; 8:45 am]

BILLING CODE 4310–22–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WY–923–1310–FI; WYW163276]

Notice of Proposed Reinstatement of Terminated Oil and Gas Lease WYW163276, Wyoming

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: Under the provisions of the Mineral Leasing Act of 1920, as amended, the Bureau of Land Management (BLM) received a petition for reinstatement from Pogo Producing Company LLC for competitive oil and gas lease WYW163276 for land in Big Horn County, Wyoming. The petition was filed on time and was accompanied by all the rentals due since the date the lease terminated under the law.

FOR FURTHER INFORMATION CONTACT: Bureau of Land Management, Julie L. Weaver, Chief, Fluid Minerals Adjudication, at (307) 775–6176. 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: The lessee has agreed to the amended lease terms for rentals and royalties at rates of $10 per acre or fraction thereof, per year and 16⅔ percent, respectively. The lessee has paid the required $500 administrative fee and $159 to reimburse the Department for the cost of this **Federal Register** notice. The lessee has met all the requirements for reinstatement of the lease as set out in Sections 31(d) and (e) of the Mineral Lands Leasing Act of 1920 (30 U.S.C. 188), and the BLM is proposing to reinstate lease WYW163276 effective June 1, 2011, under the original terms and conditions of the lease and the increased rental and royalty rates cited above. The BLM has not issued a valid lease to any other interest affecting the lands.

Julie L. Weaver,

Chief, Branch of Fluid Minerals Adjudication.

[FR Doc. 2011–25370 Filed 10–3–11; 8:45 am]

BILLING CODE 4310–22–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WY–923–1310–FI; WYW163277]

Notice of Proposed Reinstatement of Terminated Oil and Gas Lease WYW163277, Wyoming

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: Under the provisions of the Mineral Leasing Act of 1920, as amended, the Bureau of Land Management (BLM) received a petition for reinstatement from Pogo Producing Company LLC for competitive oil and gas lease WYW163277 for land in Big Horn County, Wyoming. The petition was filed on time and was accompanied by all the rentals due since the date the lease terminated under the law.

FOR FURTHER INFORMATION CONTACT: Bureau of Land Management, Julie L. Weaver, Chief, Fluid Minerals Adjudication, at (307) 775–6176. 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: The lessee has agreed to the amended lease terms for rentals and royalties at rates of $10 per acre or fraction thereof, per year and 16⅔ percent, respectively. The lessee has paid the required $500 administrative fee and $159 to reimburse the Department for the cost of this **Federal Register** notice. The lessee has met all the requirements for reinstatement of the lease as set out in Sections 31(d) and (e) of the Mineral Lands Leasing Act of 1920 (30 U.S.C. 188), and the BLM is proposing to reinstate lease WYW163277 effective June 1, 2011, under the original terms and conditions of the lease and the increased rental and royalty rates cited above. The BLM has not issued a valid lease to any other interest affecting the lands.

Julie L. Weaver,

Chief, Branch of Fluid Minerals Adjudication.

[FR Doc. 2011–25396 Filed 10–3–11; 8:45 am]

BILLING CODE 4310–22–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WY–923–1310–FI; WYW163278]

Notice of Proposed Reinstatement of Terminated Oil and Gas Lease WYW163278, Wyoming

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: Under the provisions of the *Mineral Leasing Act of 1920,* as amended, the Bureau of Land Management (BLM) received a petition for reinstatement from Pogo Producing Company LLC for competitive oil and gas lease WYW163278 for land in Big Horn County, Wyoming. The petition was filed on time and was accompanied by all the rentals due since the date the lease terminated under the law.

FOR FURTHER INFORMATION CONTACT: Bureau of Land Management, Julie L. Weaver, Chief, Fluid Minerals Adjudication, at (307) 775–6176. 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: The lessee has agreed to the amended lease terms for rentals and royalties at rates of $10 per acre or fraction thereof, per year and 16⅔ percent, respectively. The lessee has paid the required $500 administrative fee and $159 to reimburse the Department for the cost of this **Federal Register** notice. The lessee has met all the requirements for reinstatement of the lease as set out in Sections 31(d) and (e) of the *Mineral Lands Leasing Act of 1920* (30 U.S.C. 188), and the BLM is proposing to reinstate lease WYW163278 effective June 1, 2011, under the original terms and conditions of the lease and the increased rental and royalty rates cited above. The BLM has not issued a valid lease to any other interest affecting the lands.

Julie L. Weaver,

Chief, Branch of Fluid Minerals Adjudication.

[FR Doc. 2011–25377 Filed 10–3–11; 8:45 am]

BILLING CODE 4310–22–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WY–923–1310–FI; WYW163280]

Notice of Proposed Reinstatement of Terminated Oil and Gas Lease WYW163280, Wyoming

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: Under the provisions of the Mineral Leasing Act of 1920, as amended, the Bureau of Land Management (BLM) received a petition for reinstatement from Pogo Producing Company LLC for competitive oil and gas lease WYW163280 for land in Big Horn County, Wyoming. The petition was filed on time and was accompanied by all the rentals due since the date the lease terminated under the law.

FOR FURTHER INFORMATION CONTACT: Bureau of Land Management, Julie L. Weaver, Chief, Fluid Minerals Adjudication, at (307) 775–6176. 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: The lessee has agreed to the amended lease terms for rentals and royalties at rates of $10 per acre or fraction thereof, per year and 16⅔ percent, respectively. The lessee has paid the required $500 administrative fee and $159 to reimburse the Department for the cost of this **Federal Register** notice. The lessee has met all the requirements for reinstatement of the lease as set out in Sections 31(d) and (e) of the Mineral Lands Leasing Act of 1920 (30 U.S.C. 188), and the BLM is proposing to reinstate lease WYW163280 effective June 1, 2011, under the original terms and conditions of the lease and the increased rental and royalty rates cited above. The BLM has not issued a valid lease to any other interest affecting the lands.

Julie L. Weaver

Chief, Branch of Fluid Minerals Adjudication.

[FR Doc. 2011–25395 Filed 10–3–11; 8:45 am]

BILLING CODE 4310–22–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NRNHL–0911–8438; 2280–665]

National Register of Historic Places; Notification of Pending Nominations and Related Actions

Nominations for the following properties being considered for listing or related actions in the National Register were received by the National Park Service before September 10, 2011. Pursuant to section 60.13 of 36 CFR Part 60, written comments are being accepted concerning the significance of the nominated properties under the National Register criteria for evaluation. Comments may be forwarded by United States Postal Service, to the National Register of Historic Places, National Park Service, 1849 C St. NW., MS 2280, Washington, DC 20240; by all other carriers, National Register of Historic Places, National Park Service, 1201 Eye St. NW., 8th floor, Washington DC 20005; or by fax, 202–371–6447. Written or faxed comments should be submitted by October 19, 2011. Before including your address, phone number, e-mail address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

J. Paul Loether,

Chief, National Register of Historic Places, National Historic Landmarks Program.

CONNECTICUT

Fairfield County

Cassidy House, 891 Ellsworth St., Bridgeport, 11000749

Long Ridge Village Historic District (Boundary Increase), 1–130 Mill Rd., 189–247 Old Long Ridge Rd., 1257–1306 Rock Rimmon Rd., Stamford, 11000750

Webb, David Jr. and Sarah, House, 1161 Ponus Ridge, New Canaan, 11000751

NEW YORK

Monroe County

First Baptist Church, 124 Main St., Brockport, 11000752

Rensselaer County

Gifford Farmstead, (Farmsteads of Pittstown, New York MPS) 276 Gifford Rd., Tomhannock, 11000753

Steuben County

Cottages at Central Point, 14681–14697 Keuka Village Rd., Wayne, 11000754

Westchester County

West Somers Methodist Episcopal Church and Cemetery, 199 Tomahawk St., Somers, 11000755

UTAH

Davis County

Farmington Main Street Historic District, Approx. Main St. from 200 S. to 600 N., along 600 North St. to Park Ln. and 100 North St. from Main St. to 100 W., Farmington, 11000756

Morgan County

Morgan Union Pacific Depot, 98 N. Commercial St., Morgan, 11000757

WISCONSIN

Brown County

Steckart and Falck Double Block, 112–118 N. Broadway, De Pere, 11000758

[FR Doc. 2011–25467 Filed 10–3–11; 8:45 am]

BILLING CODE 4312–51–P

DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

Colorado River Basin Salinity Control Advisory Council

AGENCY: Bureau of Reclamation, Interior.

ACTION: Notice of public meeting.

SUMMARY: The Colorado River Basin Salinity Control Advisory Council (Council) was established by the Colorado River Basin Salinity Control Act of 1974 (Pub. L. 93–320) (Act) to receive reports and advise Federal agencies on implementing the Act. In accordance with the Federal Advisory Committee Act, the Bureau of Reclamation announces that the Council will meet as detailed below. The meeting of the Council is open to the public.

DATES: The Council will convene the meeting on Tuesday, October 25, 2011, at 1 p.m. and recess at approximately 5 p.m. The Council will reconvene the meeting on Wednesday, October 26, 2011, at 8:30 a.m. and adjourn the meeting at approximately 11:30 a.m.

ADDRESSES: The meeting will be held in Santa Fe, New Mexico, in the New Mexico State Capitol Building, in room 309. The Capitol Building is located at the corner of streets Old Santa Fe Trail and Paseo de Peralta. Send written comments to Mr. Kib Jacobson, Bureau of Reclamation, Upper Colorado Regional Office, 125 South State Street, Room 6107, Salt Lake City, Utah 84138–1147; telephone (801) 524–3753; facsimile (801) 524–3847; e-mail at: *kjacobson@usbr.gov.*

FOR FURTHER INFORMATION CONTACT: Kib Jacobson, telephone (801) 524–3753; facsimile (801) 524–3847; e-mail at: *kjacobson@usbr.gov.*

SUPPLEMENTARY INFORMATION: Any member of the public may file written statements with the Council before, during, or up to 30 days after the meeting either in person or by mail. To the extent that time permits, the Council chairman will allow public presentation of oral comments at the meeting. To allow full consideration of information by Council members, written notice must be provided at least 5 days prior to the meeting. Any written comments received prior to the meeting will be provided to Council members at the meeting.

The purpose of the meeting is to discuss the accomplishments of Federal agencies and make recommendations on future activities to control salinity. Council members will be briefed on the status of salinity control activities and receive input for drafting the Council's annual report. The Bureau of Reclamation, Bureau of Land Management, U.S. Fish and Wildlife Service, and United States Geological Survey of the Department of the Interior; the Natural Resources Conservation Service of the Department of Agriculture; and the Environmental Protection Agency will each present a progress report and a schedule of activities on salinity control in the Colorado River Basin. The Council will discuss salinity control activities, the contents of the reports, and the Basin States Program created by Public Law 110–246, which amended the Act.

Public Disclosure

Before including a name, address, telephone number, e-mail address, or other personal identifying information in the comment, please be advised that the entire comment—including personal identifying information—may be made publicly available at any time. While it can be requested to withhold personal identifying information from public review, Reclamation cannot guarantee that this will happen.

Dated: September 2, 2011.

Brent Rhees,

Deputy Regional Director, Upper Colorado Region.

[FR Doc. 2011–25620 Filed 10–3–11; 8:45 am]

BILLING CODE 4310–MN–P

DEPARTMENT OF JUSTICE

[OMB Number 1103–0098]

Agency Information Collection Activities: Revision of a Previously Approved Collection, With Change; Comments Requested; COPS Application Package

ACTION: 60-Day notice of information collection under review.

The Department of Justice (DOJ) Office of Community Oriented Policing Services (COPS), will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The revision of a previously approved information collection is published to obtain comments from the public and affected agencies.

The purpose of this notice is to allow for 60 days for public comment until December 5, 2011. This process is conducted in accordance with 5 CFR 1320.10.

If you have comments, especially on the estimated public burden or associated response time, suggestions, or need a copy of the proposed information collection instrument with instructions or additional information, please contact Ashley Hoornstra, Department of Justice Office of Community Oriented Policing Services, 145 N Street, NE., Washington, DC 20530.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

—Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

—Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

—Enhance the quality, utility, and clarity of the information to be collected; and

—Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection:* Revision of a previously approved collection, with change; comments requested.

(2) *Title of the Form/Collection:* COPS Application Package.

(3) *Agency form number, if any, and the applicable component of the Department sponsoring the collection:* None. U.S. Department of Justice Office of Community Oriented Policing Services.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Law enforcement agencies and other public and private entities that apply for COPS Office grants or cooperative agreements will be asked to complete the COPS Application Package. The COPS Application Package includes all of the necessary forms and instructions that an applicant needs to review and complete to apply for COPS grant funding. The package is used as a standard template for all COPS programs.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond/reply:* It is estimated that 4,200 respondents annually will complete the form within 9.4 hours.

(6) *An estimate of the total public burden (in hours) associated with the collection:* There are an estimated 39

total annual burden hours associated with this collection.

If additional information is required contact: Jerri Murray, Department Clearance Officer, United States Department of Justice, Justice Management Division, Policy and Planning Staff, Two Constitution Square, 145 N Street, NE., Room 2E–508, Washington, DC 20530.

Jerri Murray,

Department Clearance Officer, PRA, U.S. Department of Justice.

[FR Doc. 2011–25485 Filed 10–3–11; 8:45 am]

BILLING CODE 4410–AT–P

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Under the Clean Water Act

Notice is hereby given that on September 28, 2011, a proposed Consent Decree (the ''Consent Decree'') in *United States of America* v. *Trident Seafoods Corporation,* Civil Action No. 11–1616, was lodged with the United States District Court for the Western District of Washington. The case is a civil action under Section 309 of the Clean Water Act, 33 U.S.C. 1319 (''CWA''), for violations of CWA Section 301(a), 33 U.S.C. 1311(a), and violations of the permit conditions and limitations of the National Pollutant Discharge Elimination System (''NPDES'') permits issued to Trident by the EPA under Section 402(a) of the CWA, 33 U.S.C. 1342(a). To resolve Trident's liability, the Consent Decree requires, and Trident has agreed to pay a civil penalty of $2.5 million and to perform specified injunctive measures to reduce its discharge of seafood processing wastes and to address sea floor waste piles created by its discharges.

For thirty (30) days after the date of this publication, the Department of Justice will receive comments relating to the Consent Decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, and either e-mailed to *pubcomment-ees.enrd@usdoj.gov* or mailed to P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611. In either case, the comments should refer to *United States of America* v. *Trident Seafoods Corporation,* DJ. Ref. 90–5–1–1–2002/2.

During the comment period, the Consent Decree may be examined on the following Department of Justice website: *http://www.justice.gov/enrd/Consent_Decrees.html.* A copy of the Consent Decree may also be obtained by mail from the Consent Decree Library, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611, or by faxing or e-mailing a request to Tonia Fleetwood (*tonia.fleetwood@usdoj.gov*), fax no. (202) 514–0097, phone confirmation number (202) 514–1547. In requesting a copy from the Consent Decree Library, please enclose a check in the amount of $12.00 (25 cents per page reproduction cost) payable to the United States Treasury or, if by e-mail or fax, please forward a check in that amount to the Consent Decree Library at the stated address.

Robert E. Maher, Jr.,

Assistant Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 2011–25450 Filed 10–3–11; 8:45 am]

BILLING CODE 4410–15–P

DEPARTMENT OF LABOR

Notice of Initial Determination Revising the List of Products Requiring Federal Contractor Certification as to Forced/Indentured Child Labor Pursuant to Executive Order 13126

AGENCY: Bureau of International Labor Affairs (ILAB), Department of Labor.

ACTION: Request for comments.

SUMMARY: This initial determination proposes to revise the list required by Executive Order No. 13126 (''Prohibition of Acquisition of Products Produced by Forced or Indentured Child Labor'') in accordance with the Department of Labor's ''Procedural Guidelines for the Maintenance of the List of Products Requiring Federal Contractor Certification as to Forced or Indentured Child Labor.'' Under the procurement regulations implementing this Executive Order, federal contractors who supply products on the list published by the Department of Labor must certify that they have made a good faith effort to determine whether forced or indentured child labor was used to produce the items listed. This notice proposes to add 3 new items to the list that the Department of Labor preliminarily believes might have been mined, produced or manufactured by forced or indentured child labor. The Department of Labor invites public comment on this initial determination. The Department will consider all public comments prior to publishing a final determination updating the list of products, made in consultation and cooperation with the Department of State and the Department of Homeland Security.

DATES: Information should be submitted to the Office of Child Labor, Forced Labor and Human Trafficking (OCFT) via one of the methods described below by 5 p.m., December 3, 2011.

To Submit Information, or For Further Information, Contact: Information submitted to the Department should be submitted directly to OCFT, Bureau of International Labor Affairs, U.S. Department of Labor at (202) 693–4843 (this is not a toll free number). Comments, identified as ''Docket No. DOL–2011–0006,'' may be submitted by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* The portal includes instructions for submitting comments. Parties submitting responses electronically are encouraged not to submit paper copies.
- *Facsimile (fax):* OCFT at 202–693–4830.
- *Mail, Express Delivery, Hand Delivery, and Messenger Service (2 copies):* Rachel Rigby/Charita Castro at U.S. Department of Labor, OCFT, Bureau of International Labor Affairs, 200 Constitution Avenue, NW., Room S–5317, Washington, DC 20210.
- *E-mail: EO13126@dol.gov.*

SUPPLEMENTARY INFORMATION:

I. Information Sought

The Department is requesting public comment on the revisions to the List proposed below, as well as any other issue related to the fair and effective implementation of Executive Order (EO) 13126. This notice is a general solicitation of comments from the public. All submitted comments will be made a part of the public record and will be available for inspection on *http://www.regulations.gov.*

In conducting research for this initial determination, the Department considered a wide variety of materials based on its own research or originating from other U.S. Government agencies, foreign governments, international organizations, non-governmental organizations (NGOs), U.S. Government-funded technical assistance and field research projects, academic research, independent research, media and other sources. The Department of State and U.S. embassies and consulates abroad also provide important information by gathering data from contacts, conducting site visits and reviewing local media sources. For this initial determination, the Department also sought additional information from the public through a call for information published in the **Federal Register** on April 25, 2011.

In developing the revised List, the Department's review focused on information concerning the use of forced or indentured child labor that

was available from the above sources. A lack of information does not, by itself, establish that forced or indentured child labor is *not* being used in a particular country or for a particular product. The Department's ability to gather relevant information is constrained by available resources and information about working conditions in some countries is difficult or impossible to obtain, for a variety of reasons. For example, some governments are unable or unwilling to cooperate with international efforts or with the efforts of NGOs to uncover and address labor exploitation such as forced or indentured child labor. Institutions or organizations that might uncover such information, such as independent news media, trade unions and NGOs may not exist or may not be able to operate freely.

As outlined in the Procedural Guidelines, several factors were weighed in determining whether or not a product should be placed on the revised list: The nature of the information describing the use of forced or indentured child labor; the source of the information; the date of the information; the extent of corroboration of the information by other sources; whether the information involved more than an isolated incident; and whether recent and credible efforts are being made to address forced or indentured child labor in a particular country or industry.

This notice constitutes the initial determination updating the EO 13126 list issued May 31, 2011.

Based on recent, credible and appropriately corroborated information from various sources, the Departments of Labor, State, and Homeland Security have preliminarily concluded that there is a reasonable basis to believe that the following products, identified by their countries of origin, might have been mined, produced, or manufactured by forced or indentured child labor:

Product	Country
Bricks	Afghanistan.
Cassiterite	Democratic Republic of the Congo.
Coltan	Democratic Republic of the Congo.

The Department invites public comment on whether these products (and/or other products, regardless of whether they are mentioned in this Notice) should be included or removed from the revised List of products requiring federal contractor certification as to the use of forced or indentured child labor. To the extent possible, comments provided should address the criteria for inclusion of a product on the List contained in the Procedural Guidelines discussed above. The Department is also interested in public comments relating to whether products initially determined to be on the List are designated with appropriate specificity and whether alternative designations would better serve the purposes of EO 13126.

The documents and sources providing the preliminary basis for adding these goods and countries to the List are available on the Internet at *http://www.dol.gov/ILAB/regs/eo13126/main.htm.*

Following receipt and consideration of comments on the additions to the List set out above, the Department of Labor, in consultation and cooperation with the Departments of State Homeland Security, will issue a final determination in the **Federal Register.** The Department of Labor intends to continue to revise the List periodically to add and/or delete products as warranted by the receipt of new and credible information.

II. Background

On June 12, 1999 President Clinton signed EO 13126, which was published in the **Federal Register** on June 16, 1999 (64 FR 32383). EO 13126 declared that it was ''the policy of the United States Government * * * that the executive agencies shall take appropriate actions to enforce the laws prohibiting the manufacture or importation of goods, wares, articles, and merchandise mined, produced or manufactured wholly or in part by forced or indentured child labor.'' Pursuant to EO 13126, and following public notice and comment, the Department of Labor published in the January 18, 2001 **Federal Register** a list of products (the ''List''), along with their respective countries of origin, that the Department, in consultation and cooperation with the Departments of State and Treasury (whose relevant responsibilities are now within the Department of Homeland Security), had a reasonable basis to believe might have been mined, produced or manufactured with forced or indentured child labor (66 FR 5353). The Department also published the ''Procedural Guidelines for Maintenance of the List of Products Requiring Federal Contractor Certification as to Forced or Indentured Child Labor'' (Procedural Guidelines) on January 18, 2001, which provide procedures for the maintenance, review and, as appropriate, revision of the List (66 FR 5351).

The Procedural Guidelines provide that the List may be updated through consideration of submissions by individuals and on the Department's own initiative. When proposing to update the List, the Department of Labor must publish in the **Federal Register** a notice of initial determination, which includes any proposed alteration to the List. The Department will consider all public comments prior to the publication of a final determination of an updated list, which is made in consultation and cooperation with the Departments of State and Homeland Security.

On January 18, 2001, pursuant to Section 3 of the EO 13126, the Federal Acquisition Regulatory Council published a final rule to implement specific provisions of EO 13126 that requires, among other things, that federal contractors who supply products that appear on the List certify to the contracting officer that the contractor, or, in the case of an incorporated contractor, a responsible official of the contractor, has made a good faith effort to determine whether forced or indentured child labor was used to mine, produce or manufacture any product furnished under the contract and that, on the basis of those efforts, the contractor is unaware of any such use of child labor. *See* 48 CFR Subpart 22.15.

On September 11, 2009, the Department of Labor published an initial determination in the **Federal Register** proposing to update the List to include 29 products from 21 countries. The Notice requested public comments for a period of 90 days. Public comments were received and reviewed by all relevant agencies and a final determination was issued on July 20, 2010 that included all products proposed in the initial determination except for carpets from India. Carpets from India were excluded from the final determination based on public comments that provided sufficient information on a reduction of forced child labor in this sector to warrant further consideration before placing carpets on the List. 75 FR 42164.

On December 16, 2010, The Department of Labor published an initial determination in the **Federal Register** proposing to update the List to add one product to the List and remove one product from the List. The Notice requested public comments for a period of 60 days. Public comments were received and reviewed by all relevant agencies, and a final determination was issued on May 31, 2011 that included all revisions proposed in the initial determination. 76 FR 31365.

The current List and the Procedural Guidelines can be accessed on the Internet at *http://www.dol.gov/ILAB/*

regs/eo13126/main.htm or can be obtained from: OCFT, Bureau of International Labor Affairs, Room S–5317, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210; *telephone:* (202) 693–4843; fax (202) 693–4830.

III. Definitions

Under Section 6(c) of EO 13126:

''Forced or indentured child labor'' means all work or service—

(1) exacted from any person under the age of 18 under the menace of any penalty for its nonperformance and for which the worker does not offer himself voluntarily; or

(2) performed by any person under the age of 18 pursuant to a contract the enforcement of which can be accomplished by process or penalties.

Signed at Washington, DC, this 19th day of September, 2011.

Carol Pier,

Associate Deputy Undersecretary, Bureau of International Labor Affairs.

[FR Doc. 2011–24622 Filed 10–3–11; 8:45 am]

BILLING CODE 4510–28–P

DEPARTMENT OF LABOR

Bureau of Labor Statistics

Data Users Advisory Committee; Notice of Meeting and Agenda

The Bureau of Labor Statistics Data Users Advisory Committee will meet on Tuesday, October 25, 2011. The meeting will be held in the Postal Square Building, 2 Massachusetts Avenue, NE., Washington, DC.

The Committee provides advice to the Bureau of Labor Statistics from the points of view of data users from various sectors of the U.S. economy, including the labor, business, research, academic, and government communities, on technical matters related to the collection, analysis, dissemination, and use of the Bureau's statistics, on its published reports, and on the broader aspects of its overall mission and function.

The meeting will be held in Meeting Rooms 1, 2, and 3 of the Postal Square Building Conference Center. The schedule and agenda for the meeting are as follows:

8:30 a.m. Registration.

8:45 a.m. Introductions and Welcome.

9 a.m. Commissioner's Introduction.

9:45 a.m. Follow-up from Past Recommendations.

10:45 a.m. Discuss initiative, Current Employment Statistics data by size class.

1 p.m. Discuss initiative, Competitiveness measures in the International Price Program.

2 p.m. Request for DUAC suggestions for improving Data Access/Query Tools and Output Formats on the BLS Web site.

3 p.m. Discuss initiative, Consolidating BLS Publications.

4 p.m. Request for DUAC suggestions for reaching targeted industries with low data collection response rates.

5 p.m. Wrap-up.

The meeting is open to the public. Any questions concerning the meeting should be directed to Kathy Mele, Data Users Advisory Committee, on 202–691–6102. Individuals who require special accommodations should contact Ms. Mele at least two days prior to the meeting date.

Kimberley D. Hill,

Chief, Division of Management Systems, Bureau of Labor Statistics.

[FR Doc. 2011–25402 Filed 10–3–11; 8:45 am]

BILLING CODE 4510–24–P

MILLENNIUM CHALLENGE CORPORATION

[MCC FR 11–10]

Report on the Criteria and Methodology for Determining the Eligibility of Candidate Countries for Millennium Challenge Account Assistance in Fiscal Year 2011

AGENCY: Millennium Challenge Corporation.

ACTION: Notice.

SUMMARY: This report to Congress is provided in accordance with Section 608(b) of the Millennium Challenge Act of 2003, as amended, 22 U.S.C. 7707(b) (the ''Act'').

Dated: September 29, 2011.

Melvin F. Williams, Jr.,

VP/General Counsel and Corporate Secretary, Millennium Challenge Corporation.

Report on the Criteria and Methodology for Determining the Eligibility of Candidate Countries for Millennium Challenge Account Assistance in Fiscal Year 2012

Summary

This report to Congress is provided in accordance with section 608(b) of the Millennium Challenge Act of 2003, as amended, 22 U.S.C. 7707(b) (the ''Act'').

The Act authorizes the provision of Millennium Challenge Account (''MCA'') assistance to countries that enter into a Millennium Challenge Compact with the United States to support policies and programs that advance the prospects of such countries achieving lasting economic growth and poverty reduction. The Act requires the Millennium Challenge Corporation (''MCC'') to take a number of steps in determining what countries will be selected as eligible for MCA compact assistance for fiscal year 2012 (''FY12'') based on the countries' demonstrated commitment to just and democratic governance, economic freedom, and investing in their people, as well as MCC's opportunity to reduce poverty and generate economic growth in the country. These steps include the submission of reports to the congressional committees specified in the Act and publication of notices in the Federal Register that identify:

The countries that are ''candidate countries'' for MCA assistance for FY12 based on their per-capita income levels and their eligibility to receive assistance under U.S. law. This report also identifies countries that would be candidate countries but for specified legal prohibitions on assistance (section 608(a) of the Act; 22 U.S.C. § 7707(a));

The criteria and methodology that MCC's Board of Directors (''the Board'') will use to measure and evaluate the policy performance of the candidate countries consistent with the requirements of section 607 of the Act (22 U.S.C. 7706) in order to determine ''MCA eligible countries'' from among the ''candidate countries'' (section 608(b) of the Act); and

The list of countries determined by the Board to be ''MCA eligible countries'' for FY12, with justification for eligibility determination and selection for compact negotiation, including which of the MCA eligible countries the Board will seek to enter into MCA compacts (section 608(d) of the Act).

This report sets out the criteria and methodology to be applied in determining eligibility for FY12 MCA assistance.

Criteria and Methodology for FY12

The Board will base its selection of eligible countries on several factors including the country's overall performance in three broad policy categories—Ruling Justly, Encouraging Economic Freedom, and Investing in People; MCC's opportunity to reduce poverty and generate economic growth in a country; and the availability of funds to MCC.

Section 607 of the Act requires that the Board's determination of eligibility be based ''to the maximum extent possible, upon objective and quantifiable indicators of a country's

demonstrated commitment'' to the criteria set out in the Act.

For FY12, there will be two groups of candidate countries—low income countries (''LIC'') and lower-middle income countries (''LMIC''). As outlined in the Report on Countries that are Candidates for Millennium Challenge Account Eligibility for Fiscal Year 2012 and Countries that would be Candidates but for Legal Prohibitions (August 2011), LIC candidates refer to those countries that have a per capita income equal to or less than $1,915 and are not ineligible to receive United States economic assistance under part I of the Foreign Assistance Act of 1961 by reason of the application of any provision of the Foreign Assistance Act or any other provision of law. LMIC candidates are those countries that have a per capita income between $1,916 and $3,975 and are not ineligible to receive United States economic assistance under the same stipulations.

Changes to the Criteria and Methodology for FY12

MCC reviews all of its indicators annually to ensure the best measures are being used and, from time to time, recommends changes or refinements if MCC identifies better indicators or improved sources of data. MCC takes into account public comments received on the previous year's criteria and methodology and consults with a broad range of experts in the development community and within the U.S. Government. In assessing new indicators, MCC favors those that: (1) Are developed by an independent third party; (2) utilize objective and high quality data that rely upon an analytically rigorous methodology; (3) are publicly available; (4) have broad country coverage; (5) are comparable across countries; (6) have a clear theoretical or empirical link to economic growth and poverty reduction; (7) are policy linked (i.e., measure factors that governments can influence within a two to three year horizon); and (8) have broad consistency in results from year to year. There have been numerous noteworthy improvements to data quality and availability as a result of MCC's application of the indicators and the regular dialogue MCC has established with the indicator institutions.

MCC also annually reviews the methodology used to evaluate country performance. Since FY04, the methodology has been that the Board considers whether a country performs above the median [1] in relation to its peers on at least half of the indicators in each of the three policy categories and above the median on the Control of Corruption indicator. The Board may exercise discretion in evaluating and translating the indicators into a final list of eligible countries and, in this respect, the Board may also consider whether any adjustments should be made for data gaps, lags, trends or other weaknesses in particular indicators. Where necessary, the Board may also take into account other data and quantitative and qualitative information to determine whether a country performed satisfactorily in relation to its peers in a given category (''supplemental information''). Through this report, the Board publically affirms that it remains strongly committed to identifying countries for MCC eligibility that have demonstrated sound policies in each of the three policy categories.

For FY12, MCC will implement a number of changes that modify the overall evaluation of candidate country performance. While improvements to the selection criteria and methodology are critical, MCC is also mindful of the need to provide countries with a fairly stable set of policy criteria to meet, if MCC is to create significant incentives for reform. Therefore, for this year of transition, the Board of Directions will consider countries' performance based on two sets of criteria and methodologies in FY12: the status quo set of indicators and decisions rules, and a revised set. Both of these are outlined below. By encouraging the Board to consider how countries would have performed under the previous system, as well as how countries perform under the new system, MCC will provide a transition year that allows countries to learn how they are being measured, engage in dialogue with MCC about performance, and solicit feedback from the institutions that produce these indicators.

It is important to recognize that all of MCC's indicators have limitations, including these revised indicators. Over the next year, MCC intends to continue working with the indicator institutions to ensure the data and methodology are the best available.

Indicators

In FY12 the Board will use two sets of indicators to assess the policy performance of individual countries. These indicators are grouped under the three policy categories listed below. The changes to the revised indicators include one substitution in Ruling Justly; two additions in Economic Freedom; and three substitutions/additions in Investing in People. Specific definitions of the indicators and their sources are set out in the attached Annex A.

Status Quo

Civil Liberties
Political Rights
Voice and Accountability
Government Effectiveness
Rule of Law
Control of Corruption
Inflation
Fiscal Policy
Business Start-Up
Trade Policy
Regulatory Quality
Land Rights and Access
Public Expenditure on Health
Public Expenditure on Primary Education
Immunization Rates
Girls' Primary Education Completion
Natural Resource Management

Revised

Civil Liberties
Political Rights
Freedom of Information
Government Effectiveness
Rule of Law
Control of Corruption
Inflation
Fiscal Policy
Business Start-Up
Trade Policy
Regulatory Quality
Land Rights and Access
Access to Credit
Gender in the Economy
Public Expenditure on Health
Public Expenditure on Primary Education
Immunization Rates
Girls' Education:
Primary Education Completion (LICs)
Secondary Education Enrolment (LMICs)
Child Health
Natural Resource Protection

Methodology

Similarly, in FY12 the Board will apply a status quo methodology, and a revised methodology to the respective indicator groupings. These are described below.

Status Quo

In making its determination of eligibility with respect to a particular candidate country, the Board will consider whether a country performs above the median in relation to its income level peers (LIC or LMIC) on at

[1] The only exception is the Inflation indicator, which uses an absolute threshold of 15% as opposed to the median as its performance standard.

least three of the indicators in each of the Ruling Justly, Encouraging Economic Freedom, and Investing in People categories, and above the median on the Control of Corruption indicator. One exception to this methodology is that the median is not used for the Inflation indicator. Instead, to pass the Inflation indicator a country's inflation rate must be under an absolute threshold of 15 percent. The Board may also take into consideration whether a country performs substantially below the median on any indicator (i.e., below the 25th percentile) and has not taken appropriate measures to address this shortcoming.

Revised

In making its determination of eligibility with respect to a particular candidate country, the Board will consider whether a country performs above the median or absolute threshold on at least half of the indicators and at least one indicator per category, above the median on the Control of Corruption indicator, and above the absolute threshold on either the Civil Liberties or Political Rights indicators. Indicators with absolute thresholds in lieu of a median include a) Inflation, on which a country's inflation rate must be under a fixed ceiling of 15 percent; b) Immunization Rates (LMICs only), on which an LMIC must have immunization coverage above 90%; c) Political Rights, on which countries must score above 17 and d) Civil Liberties, on which countries must score above 25. The Board will also take into consideration whether a country performs substantially worse in any category (Ruling Justly, Investing in People, or Economic Freedoms) than they do on the overall scorecard. Further details on how this methodology differs from the status quo can be found in Annex B.

Other Considerations for the Board of Directors

Approach to Income Classification Transition

Each year a number of countries shift income groups, and some countries formerly classified as LICs suddenly face new, higher performance standards in the LMIC group. As a result, they typically perform worse relative to LMIC countries, than they did compared to other LIC countries, even if in absolute terms they maintained or improved their performance over the previous year. To address the challenges associated with sudden changes in performance standards for these countries, MCC has adopted an approach to income category transition whereby the Board may consider the indicator performance of countries that transitioned from the LIC to the LMIC category both relative to their LMIC peers as well as in comparison to the current fiscal year's LIC pool for a period of three years.

Supplementary Information

Consistent with the Act, the indicators will be the predominant basis for determining which countries will be eligible for MCA assistance. However, the Board may exercise discretion when evaluating performance on the indicators and determining a final list of eligible countries. Where necessary, the Board also may take into account other quantitative and qualitative information (supplemental information) to determine whether a country performed satisfactorily in relation to its peers in a given income category. There are elements of the criteria set out in the Act for which there is either limited quantitative information (e.g., the rights of people with disabilities) or no well-developed performance indicator. Until such data and/or indicators are developed, the Board may rely on additional data and qualitative information to assess policy performance. For example, the State Department Human Rights Report contains qualitative information to make an assessment on a variety of criteria outlined by Congress, such as the rights of people with disabilities, the treatment of women and children, workers rights, and human rights. Similarly, MCC may consult a variety of third party sources to better understand the domestic potential for private sector led investment and growth.

The Board may also consider whether supplemental information should be considered to make up for data gaps, lags, trends, or other weaknesses in particular indicators. As additional information in the area of corruption, the Board may consider how a country is evaluated by supplemental sources like Transparency International's Corruption Perceptions Index, the Global Integrity Report, and the Extractive Industry Transparency Initiative among others, as well as on the defined indicator.

Consideration for Subsequent Compacts

Countries nearing the end of compact implementation may be considered for eligibility for a subsequent compact. In determining eligibility for subsequent compacts, MCC recommends that the Board consider, among other factors, the country's policy performance using the methodology and criteria described above, the opportunity to reduce poverty and generate economic growth in the country, the funds available to MCC to carry out compact assistance, and the country's track record of performance implementing its prior compact. To assess implementation of a prior compact, MCC recommends that the Board consider the nature of the country partnership with MCC, the degree to which the country has demonstrated a commitment and capacity to achieve program results, and the degree to which the country has implemented the compact in accordance with MCC's core policies and standards.

Continuing Policy Performance

Country partners that are developing or implementing a compact are expected to seek to maintain and improve policy performance. MCC recognizes that country partners may not meet the eligibility criteria from time to time due to a number of factors, such as changes in the peer-group median; transition into a new income category (e.g., from LIC to LMIC); numerical declines in score that are within the statistical margin of error; slight declines in policy performance; revisions or corrections of data; the introduction of new sub-data sources; or changes in the indicators used to measure performance. None of these factors alone signifies a significant policy reversal nor warrants suspension or termination of eligibility and/or assistance.

However, countries that demonstrate a significant policy reversal may be issued a warning, suspension, or termination of eligibility and/or assistance. According to MCC's authorizing legislation, ''[a]fter consultation with the Board, the Chief Executive Officer may suspend or terminate assistance in whole or in part for a country or entity * * * if * * * the country or entity has engaged in a pattern of actions inconsistent with the criteria used to determine the eligibility of the country or entity. * * *'' This pattern of actions need not be captured in the indicators for MCC to take action.

Potential Future Changes

MCC will continue to explore potential changes to the indicators for future years. There are important areas of policy performance in which indicators have not yet been developed, or expanded, to the degree needed for inclusion in the MCC selection system. MCC would not envision expanding the number of indicators beyond the current twenty indicators. However, MCC remains interested in indicators that measure policy performance related to educational quality, maternal health, environmental degradation, budget

transparency, and more actionable indicators of corruption, which could be used to substitute for existing indicators in the future or as supplemental information. While we have reviewed some indicators with promise—including education policy and quality indicators piloted by the World Bank's Education for All, measures of maternal health from the World Health Organization or the United Nations (including skilled birth attendants or process indicators regarding access to emergency obstetric care), preliminary data on air pollution provided by NASA satellites, assessments of budget transparency by Open Budget Index, and corruption assessments published by Global Integrity—none of these indicators have sufficient periodicity and country coverage to be incorporated into MCC's scorecard at this time.

It should be noted that the new Freedom of Information indicator adopted as part of the revised methodology draws on independent, third party data, but is compiled by MCC, similar to how MCC compiles third party data for the Land Rights and Access indicator. MCC welcomes the efforts of third party institutions to improve and publish similar and improved indicators.

Relationship to Legislative Criteria

Within each policy category, the Act sets out a number of specific selection criteria. As indicated above, a set of objective and quantifiable policy indicators is used to determine eligibility for MCA assistance and measure the relative performance by candidate countries against these criteria. The Board's approach to determining eligibility ensures that performance against each of these criteria is assessed by at least one of the objective indicators. Most are addressed by multiple indicators. The specific indicators appear in parentheses next to the corresponding criterion set out in the Act.

Section 607(b)(1): Just and democratic governance, including a demonstrated commitment to —promote political pluralism, equality and the rule of law (Political Rights, Civil Liberties, and Rule of Law, Gender in the Economy); respect human and civil rights, including the rights of people with disabilities (Political Rights, Civil Liberties, and Freedom of Information); protect private property rights (Civil Liberties, Regulatory Quality, Rule of Law, and Land Rights and Access); encourage transparency and accountability of government (Political Rights, Civil Liberties, Freedom of Information, Control of Corruption, Rule of Law, and Government Effectiveness); and combat corruption (Political Rights, Civil Liberties, Rule of Law, Freedom of Information, and Control of Corruption);

Section 607(b)(2): Economic freedom, including a demonstrated commitment to economic policies that—encourage citizens and firms to participate in global trade and international capital markets (Fiscal Policy, Inflation, Trade Policy, and Regulatory Quality); promote private sector growth (Inflation, Business Start-Up, Fiscal Policy, Land Rights and Access, Access to Credit, Gender in the Economy, and Regulatory Quality); strengthen market forces in the economy (Fiscal Policy, Inflation, Trade Policy, Business Start-Up, Land Rights and Access, Access to Credit, and Regulatory Quality); and respect worker rights, including the right to form labor unions (Civil Liberties and Gender in the Economy);

Section 607(b)(3): Investments in the people of such country, particularly women and children, including programs that—promote broad-based primary education (Girls' Primary Education Completion, Girls' Secondary Education, and Public Expenditure on Primary Education); strengthen and build capacity to provide quality public health and reduce child mortality (Immunization Rates, Public Expenditure on Health, and Child Health); and promote the protection of biodiversity and the transparent and sustainable management and use of natural resources (Natural Resource Protection).

Annex A: Indicator Definitions

MCC is incorporating six new measures into the selection criteria and dropping two previous measures. MCC's Board of Directors approved these changes for the FY12 selection process, though the Board will also consider how countries perform on the previous set of indicators. This gradual integration of the indicators was designed to provide adequate notice to compact, threshold and candidate countries of the new measures and their performance before the new indicators fully replaced the previous indicators. A brief summary of the indicators follows; a detailed rationale for the adoption of these indicators can be found in the Public Guide to the Indicators (available at *http://www.mcc.gov*).

The following indicators will be used to measure candidate countries' demonstrated commitment to the criteria found in section 607(b) of the Act. The indicators are intended to assess the degree to which the political and economic conditions in a country serve to promote broad-based sustainable economic growth and reduction of poverty and thus provide a sound environment for the use of MCA funds. The indicators are not goals in themselves; rather they are proxy measures of policies that are linked to broad-based sustainable economic growth. The indicators were selected based on their (i) relationship to economic growth and poverty reduction, (ii) the number of countries they cover, (iii) transparency and availability, and (iv) relative soundness and objectivity. Where possible, the indicators are developed by independent sources.

Ruling Justly

Civil Liberties: Independent experts rate countries on: freedom of expression; association and organizational rights; rule of law and human rights; and personal autonomy and economic rights, among other things. Source: Freedom House

Political Rights: Independent experts rate countries on: the prevalence of free and fair elections of officials with real power; the ability of citizens to form political parties that may compete fairly in elections; freedom from domination by the military, foreign powers, totalitarian parties, religious hierarchies and economic oligarchies; and the political rights of minority groups, among other things. Source: Freedom House

Voice and Accountability (status quo indicators only): An index of surveys and expert assessments that rate countries on: the ability of institutions to protect civil liberties; the extent to which citizens of a country are able to participate in the selection of governments; and the independence of the media, among other things. Source: Worldwide Governance Indicators (World Bank/Brookings)

Freedom of Information (revised indicators only): Measures the legal and practical steps taken by a government to enable or allow information to move freely through society; this includes measures of press freedom, national freedom of information laws, and the extent to which a county is filtering internet content or tools. Source: Freedom House/FRINGE Special/Open Net Initiative

Government Effectiveness: An index of surveys and expert assessments that rate countries on: the quality of public service provision; civil servants' competency and independence from political pressures; and the government's ability to plan and implement sound policies, among other things. Source: Worldwide Governance Indicators (World Bank/Brookings)

Rule of Law: An index of surveys and expert assessments that rate countries on: the extent to which the public has confidence in and abides by the rules of society; the incidence and impact of violent and nonviolent crime; the effectiveness, independence, and predictability of the judiciary; the protection of property rights; and the enforceability of contracts, among other things. Source: Worldwide Governance Indicators (World Bank/Brookings)

Control of Corruption: An index of surveys and expert assessments that rate countries on: ''grand corruption'' in the political arena; the frequency of petty corruption; the effects of corruption on the business environment; and the tendency of elites to engage in ''state capture'', among other things. Source: Worldwide Governance Indicators (World Bank/Brookings)

Encouraging Economic Freedom

Inflation: The most recent average annual change in consumer prices. Source: The International Monetary Fund's World Economic Outlook Database

Fiscal Policy: The overall budget balance divided by GDP, averaged over a three-year period. The data for this measure come primarily from IMF country reports or, where public IMF data are outdated or unavailable, are provided directly by the recipient government with input from U.S. missions in host countries. All data are cross-checked with the IMF's World Economic Outlook database to try to ensure consistency across countries and made publicly available. Source: International Monetary Fund Country Reports, National Governments, and the International Monetary Fund's World Economic Outlook Database

Business Start-Up: An index that rates countries on the time and cost of complying with all procedures officially required for an entrepreneur to start up and formally operate an industrial or commercial business. Source: International Finance Corporation

Trade Policy: A measure of a country's openness to international trade based on weighted average tariff rates and non-tariff barriers to trade. Source: The Heritage Foundation

Regulatory Quality: An index of surveys and expert assessments that rate countries on: the burden of regulations on business; price controls; the government's role in the economy; and foreign investment regulation, among other areas. Source: Worldwide Governance Indicators (World Bank)

Land Rights and Access: An index that rates countries on the extent to which the institutional, legal, and market framework provide secure land tenure and equitable access to land in rural areas and the time and cost of property registration in urban and peri-urban areas. Source: The International Fund for Agricultural Development and the International Finance Corporation

Access to Credit (revised indicators only): An index that rates countries on rules and practices affecting the coverage, scope and accessibility of credit information available through either a public credit registry or a private credit bureau; as well as legal rights in collateral laws and bankruptcy laws. Source: International Finance Corporation

Gender in the Economy (revised indicators only): An index that measures the extent to which laws provide men and women equal capacity to generate income or participate in the economy, including the capacity to access institutions, get a job, register a business, sign a contract, open a bank account, choose where to live, and travel freely. Source: International Finance Corporation

Investing in People

Public Expenditure on Health: Total expenditures on health by government at all levels divided by GDP. Source: The World Health Organization

Immunization Rates: The average of DPT3 and measles immunization coverage rates for the most recent year available. Source: The World Health Organization and the United Nations Children's Fund

Total Public Expenditure on Primary Education: Total expenditures on primary education by government at all levels divided by GDP. Source: The United Nations Educational, Scientific and Cultural Organization and National Governments

Girls' Primary Completion Rate: The number of female students enrolled in the last grade of primary education minus repeaters divided by the population in the relevant age cohort (gross intake ratio in the last grade of primary). Source: United Nations Educational, Scientific and Cultural Organization

Girls Secondary Education (revised indicators only): The number of female pupils enrolled in lower secondary school, regardless of age, expressed as a percentage of the population of females in the theoretical age group for lower secondary education. Lower middle income counties (LMICs) will be assessed on this indicator instead of Girls Primary Completion Rates. Source: United Nations Educational, Scientific and Cultural Organization

Natural Resource Management (status quo indicators only): An index made up of four indicators: eco-region protection, access to improved water, access to improved sanitation, and child (ages 1–4) mortality. Source: The Center for International Earth Science Information Network and the Yale Center for Environmental Law and Policy

Natural Resource Protection (revised indicators only): Assesses whether countries are protecting up to 10 percent of all their biomes (e.g., deserts, tropical rainforests, grasslands, savannas and tundra). Source: The Center for International Earth Science Information Network and the Yale Center for Environmental Law and Policy

Child Health (revised indicators only): An index made up of three indicators: access to improved water, access to improved sanitation, and child (ages 1–4) mortality. Source: The Center for International Earth Science Information Network and the Yale Center for Environmental Law and Policy

Annex B: Changes to the Methodology

New Absolute Thresholds

Political Rights: Countries that receive a score above 17 will be considered as passing this indicator. The median will no longer be calculated or utilized.

Civil Liberties: Countries that receive a score above 25 will be considered as passing this indicator. The median will no longer be calculated or utilized.

Immunization Rates: Lower middle income countries (LMICs) that exceed an immunization coverage rate of 90% will be considered as passing this indicator. The median will no longer be calculated or utilized for countries classified as LMICs.

New Democratic Rights Hard Hurdle

In making its determination of eligibility with respect to a particular candidate country, the Board will consider whether a country performs above the thresholds described above on either Political Rights or Civil Liberties.

Require Countries to Pass Half of the Indicators Overall

In making its determination of eligibility with respect to a particular candidate country, the Board will consider whether a country performs above the median or absolute threshold on at least half of the indicators and at least one indicator per category. In order to maintain a focus on the breadth of sound policy performance, the Board will also take into consideration whether a country performs substantially worse on any category (Ruling Justly, Investing in People, or Economic Freedoms).

As with the current selection system, the Board may exercise discretion in evaluating and translating the indicators into a final list of eligible countries and, in this respect, the Board may also consider whether any adjustments should be made for data gaps, lags, trends or other weaknesses in particular indicators. Where necessary, the Board may also take into account other data and quantitative and qualitative information to determine whether a country performed satisfactorily in relation to its peers in a given category (''supplemental information'').

[FR Doc. 2011–25540 Filed 9–29–11; 4:15 pm]

BILLING CODE 9211–03–P

NUCLEAR REGULATORY COMMISSION

[Docket No. NRC–2011–0123]

Agency Information Collection Activities: Submission for the Office of Management and Budget (OMB) Review; Comment Request

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of the OMB review of information collection and solicitation of public comment.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) has recently submitted to OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35). The NRC hereby informs potential respondents that an agency may not conduct or sponsor, and that a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The NRC published a **Federal Register** Notice with a 60-day comment period on this information collection on June 14, 2011 (76 FR 34762).

1. *Type of submission, new, revision, or extension:* Extension.

2. *The title of the information collection:* NRC Form 445—Request for Approval of Official Foreign Travel.

3. *Current OMB approval number:* 3150–0193.

4. *The form number if applicable:* NRC Form 445.

5. *How often the collection is required:* On occasion.

6. *Who will be required or asked to report:* Non-Federal consultants, contractors and invited travelers.

7. *An estimate of the number of annual responses:* 50.

8. *The estimated number of annual respondents:* 50.

9. *An estimate of the total number of hours needed annually to complete the requirement or request:* 50.

10. *Abstract:* NRC Form 445, ''Request for Approval of Foreign Travel,'' is supplied by consultants, contractors, and NRC invited travelers who must travel to foreign countries in the course of conducting business for the NRC. In accordance with 48 CFR part 20, ''NRC Acquisition Regulation,'' contractors traveling to foreign countries are required to complete this form. The information requested includes the name of the Office Director/Regional Administrator or Chairman, as appropriate, the traveler's identifying information, purpose of travel, listing of the trip coordinators, other NRC travelers and contractors attending the same meeting, and a proposed itinerary.

The public may examine and have copied for a fee publicly available documents, including the final supporting statement, at the NRC's Public Document Room, Room O–1F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland. OMB clearance requests are available at the NRC Web site: *http://www.nrc.gov/public-involve/doc-comment/omb/index.html.* The document will be available on the NRC home page site for 60 days after the signature date of this notice.

Comments and questions should be directed to the OMB reviewer listed below by November 3, 2011. Comments received after this date will be considered if it is practical to do so, but assurance of consideration cannot be given to comments received after this date.

Chad Whiteman, Desk Officer, Office of Information and Regulatory Affairs (3150–0193), NEOB–10202, Office of Management and Budget, Washington, DC 20503.

Comments can also be e-mailed to *CWhiteman@omb.eop.gov* or submitted by telephone at 202–395–4718.

The NRC Clearance Officer is Tremaine Donnell, 301–415–6258.

Dated at Rockville, Maryland, this 27th day of September, 2011.

For the Nuclear Regulatory Commission.

Tremaine Donnell,

NRC Clearance Officer, Office of Information Services.

[FR Doc. 2011–25462 Filed 10–3–11; 8:45 am]

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NUCLEAR REGULATORY COMMISSION

[NRC–2011–0230]

Biweekly Notice Applications and Amendments to Facility Operating 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 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 7, 2011, to September 21, 2011. The last biweekly notice was published on September 20, 2011 (76 FR 58303).

ADDRESSES: Please include Docket ID NRC–2011–0230 in the subject line of your comments. For additional instructions on submitting comments and instructions on accessing documents related to this action, see ''Submitting Comments and Accessing Information'' in the **SUPPLEMENTARY INFORMATION** section of this document. You may submit comments by any one of the following methods:

- *Federal Rulemaking Web site:* Go to *http://www.regulations.gov* and search for documents filed under Docket ID NRC–2011–0230. Address questions about NRC dockets to Carol Gallagher, telephone: 301–492–3668; e-mail: *Carol.Gallagher@nrc.gov.*
- *Mail comments to:* Cindy Bladey, 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.

SUPPLEMENTARY INFORMATION:

Submitting Comments and Accessing Information

Comments submitted in writing or in electronic form will be posted on the NRC Web site and on the Federal rulemaking Web site, *http://*

www.regulations.gov. Because your comments will not be edited to remove any identifying or contact information, the NRC cautions you against including any information in your submission that you do not want to be publicly disclosed.

The NRC requests that any party soliciting or aggregating comments received from other persons for submission to the NRC inform those persons that the NRC will not edit their comments to remove any identifying or contact information, and therefore, they should not include any information in their comments that they do not want publicly disclosed.

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

• *NRC's Public Document Room (PDR):* The public may examine and have copied, for a fee, publicly available documents at the NRC's PDR, Room O1–F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.

• *NRC's Agencywide Documents Access and Management System (ADAMS):* Publicly available documents created or received at the NRC are available online in the NRC Library at *http://www.nrc.gov/reading-rm/adams.html.* From this page, the public can gain entry into ADAMS, which provides text and image files of the NRC's public documents. If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the NRC's PDR reference staff at 1–800–397–4209, 301–415–4737, or by e-mail to *pdr.resource@nrc.gov.*

• *Federal Rulemaking Web site:* Public comments and supporting materials related to this notice can be found at *http://www.regulations.gov* by searching on Docket ID NRC–2011–0230.

Notice of Consideration of Issuance of Amendments to Facility Operating Licenses, Proposed No Significant Hazards Consideration Determination, And Opportunity for a Hearing

The Commission has made a proposed determination that the following amendment requests involve no significant hazards consideration. Under the Commission's regulations in Title 10 of the Code of Federal Regulations (10 CFR), 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) Involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. The basis for this proposed determination for each amendment request is shown below.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendment until the expiration of 60 days after the date of publication of this notice. The Commission may issue the license amendment before expiration of the 60-day period provided that its final determination is that the amendment involves no significant hazards consideration. In addition, the Commission may issue the amendment prior to the expiration of the 30-day comment period should circumstances change during the 30-day comment period such that failure to act in a timely way would result, for example in derating or shutdown of the facility. Should the Commission take action prior to the expiration of either the comment period or the notice period, it will publish in the **Federal Register** a notice of issuance. Should the Commission make a final No Significant Hazards Consideration Determination, any hearing will take place after issuance. The Commission expects that the need to take this action will occur very infrequently.

Within 60 days after the date of publication of this notice, any person(s) whose interest may be affected by this action may file a request for a hearing and a petition to intervene with respect to issuance of the amendment to the subject facility operating license. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's ''Rules of Practice for Domestic Licensing Proceedings'' in 10 CFR part 2. Interested person(s) should consult a current copy of 10 CFR 2.309, which is available at the NRC's PDR, located at One White Flint North, Room O1–F21, 11555 Rockville Pike (first floor), Rockville, Maryland 20852. NRC regulations are accessible electronically from the NRC Library on the NRC 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 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 e-mail 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 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 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 public Web site at *http://www.nrc.gov/site-help/e-submittals.html.* A filing is considered complete at the time the documents are submitted through the NRC's E-Filing system. To be timely, an electronic filing must be submitted to the E-Filing system no later than 11:59 p.m. Eastern Time on the due date. Upon receipt of a transmission, the E-Filing system time-stamps the document and sends the submitter an e-mail notice confirming receipt of the document. The E-Filing system also distributes an e-mail notice that provides access to the document to the NRC Office of the General Counsel and any others who have advised the Office of the Secretary that they wish to participate in the proceeding, so that the filer need not serve the documents on those participants separately. Therefore, applicants and other participants (or their counsel or representative) must apply for and receive a digital ID certificate before a hearing request/petition to intervene is filed so that they can obtain access to the document via the E-Filing system.

A person filing electronically using the agency's adjudicatory E-Filing system may seek assistance by contacting the NRC Meta System Help Desk through the ''Contact Us'' link located on the NRC Web site at *http://www.nrc.gov/site-help/e-submittals.html,* by e-mail at *MSHD.Resource@nrc.gov,* or by a toll-free call at 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 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. Non-timely filings will not be entertained absent a determination by the presiding

officer that the petition or request should be granted or the contentions should be admitted, based on a balancing of the factors specified in 10 CFR 2.309(c)(1)(i)–(viii).

For further details with respect to this license amendment application, see the application for amendment 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 PDR Reference staff at 1–800–397–4209, 301–415–4737, or by e-mail to *pdr.resource@nrc.gov.*

Arizona Public Service Company, et al., Docket Nos. STN 50–528, STN 50–529, and STN 50–530, Palo Verde Nuclear Generating Station, Units 1, 2, and 3, Maricopa County, Arizona

Date of Amendment Request: June 22, 2011.

Description of Amendment Request: The amendments would revise Technical Specification (TS) 3.7.4, ''Atmospheric Dump Valves (ADVs).'' Specifically, the amendment would revise the Limiting Condition for Operation for TS 3.7.4, with corresponding revisions to the TS Conditions, Required Actions, and Completion Times associated with one or more inoperable ADV lines. The proposed change would require four ADV lines to be operable in MODES 1, 2, and 3, as well as in MODE 4 when a steam generator (SG) is relied upon for heat removal.

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 will revise TS 3.7.4, to require four ADV lines be OPERABLE in MODES 1, 2, and 3, as well as in MODE 4, when a SG is relied upon for heat removal. The proposed change to TS 3.7.4 is consistent with the PVNGS UFSAR [Updated Final Safety Analysis Report] Chapters 6 and 15 safety analyses. The proposed change does not involve any design or physical changes to the facility, including the ADV lines and their associated ADVs, block valves, pneumatic controllers, instrument power circuits, or control circuits. The design and functional performance requirements, operational characteristics, and reliability of the ADV lines remain unchanged. Therefore, there is no impact on the design safety function of the ADVs to open (which mitigates certain postulated accidents by providing Reactor Coolant System heat removal) nor on the design safety function of the ADVs to close (which mitigates certain postulated accidents by providing containment isolation). Furthermore, there is no change with respect to an inadvertent opening of an ADV (as a potential transient initiator).

With regard to the consequences of postulated design basis accidents and the equipment required for mitigation of those accidents, the proposed TS changes involve no design or physical changes to the ADV lines or any other equipment required for accident mitigation. The proposed ADV TS change does not affect any design basis analysis or the results of those analyses. The change provides additional assurance that ADVs will be available as required.

Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously analyzed.

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 amendment will revise TS 3.7.4, to require four ADV lines be OPERABLE in MODES 1, 2, and 3, as well as in MODE 4, when a SG is relied upon for heat removal. The proposed change to TS 3.7.4 is consistent with the PVNGS UFSAR Chapters 6 and 15 safety analyses. The proposed change does not involve any design or physical changes to the facility, including the ADV lines and their associated ADVs, block valves, pneumatic controllers, instrument power circuits, or control circuits. No physical alteration of the plant is involved. The proposed change does not involve or introduce any changes to plant procedures that could cause a new or different kind of accident from any previously evaluated. The proposed change ensures that the ADVs perform their intended functions during all design basis accidents for which they are credited. The proposed change does not involve the creation of any new or different kind of accident initiator. The proposed change does not create any new failure modes for the ADVs and does not affect the interaction between the ADVs and any other system.

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 amendment involve a significant reduction in a margin of safety?

Response: No.

The proposed amendment will revise TS 3.7.4, to require four ADV lines be OPERABLE in MODES 1, 2, and 3, as well as in MODE 4, when a SG is relied upon for heat removal. The proposed change to TS 3.7.4 is consistent with the PVNGS UFSAR Chapters 6 and 15 safety analyses. The proposed change does not alter the manner in which safety limits or limiting safety system settings are determined. No changes to instrument and/or system actuation setpoints are involved. Safety and Branch Technical Position (BTP) RSB 5–1 analysis acceptance criteria are not impacted by this change and the proposed change will not permit plant operation in a configuration outside the design basis.

Therefore, the proposed change does not involve a significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on that review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the request for amendments involves no significant hazards consideration.

Attorney for Licensee: Michael G. Green, Senior Regulatory Counsel, Pinnacle West Capital Corporation, P.O. Box 52034, Mail Station 8695, Phoenix, Arizona 85072–2034.

NRC Branch Chief: Michael T. Markley.

Detroit Edison, Docket No. 50–341, Fermi 2, Monroe County, Michigan

Date of Amendment Request: August 12, 2011.

Description of Amendment Request: The proposed amendment would revise TS 3.8.3, ''Diesel Fuel Oil and Starting Air,'' by relocating the current stored diesel fuel oil numerical volume requirements from the Technical Specifications (TS) to the TS Bases so that it may be modified under licensee control. The TS is modified so that the stored diesel fuel oil inventory will require that a 7 day supply be available for each diesel generator. Condition A in the Action table and Surveillance Requirement (SR) 3.8.3.1 are revised to reflect the above change.

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 relocates the volume of diesel fuel oil required to support 7 day operation of the onsite diesel generators, and the volume equivalent to a 6 day supply, to licensee control. The specific volume of fuel oil equivalent to a 7 and 6 day supply is calculated using the NRC-approved methodology described in Regulatory Guide 1.137, Revision 1, ''Fuel-Oil Systems for Standby Diesel Generators'' and ANSI–N195 1976, ''Fuel Oil Systems for Standby Diesel-Generators'' based on the diesel generator manufacturer's consumption values including consideration of minimum required energy content. Because the requirement to maintain a 7 day supply of diesel fuel oil is not changed and is consistent with the assumptions in the accident analyses, and the actions taken when the volume of fuel oil are less than a 6 day supply have not changed, neither the probability nor the consequences of any accident previously evaluated will be affected.

The proposed change also relocates the volume of diesel fuel oil required to support one hour of diesel generator operation at full load in the day tank. The specific volume and time is not changed and is consistent with the existing plant design basis to support the emergency diesel generator under accident loading conditions.

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 change does not involve a physical alteration of the plant (i.e., no new or different type of equipment will be installed) or a change in the methods governing normal plant operation. The change does not alter assumptions made in the safety analysis but ensures that the diesel generator operates as assumed in the accident analysis. The proposed change is consistent with the 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 change involve a significant reduction in a margin of safety?

Response: No

The proposed change relocates the volume of diesel fuel oil required to support 7 day operation of the onsite diesel generators, and the volume equivalent to a 6 day supply, and one hour day tank supply to licensee control. As the bases for the existing limits on diesel fuel oil are not changed, no change is made to the accident analysis assumptions and no margin of safety is reduced as part of this change.

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: Bruce R. Masters, DTE Energy, General Council—Regulatory, 688 WCB, One Energy Plaza, Detroit, MI 48226–1279.

NRC Branch Chief: Robert J. Pascarelli.

Entergy Operations, Inc., Docket No. 50–382, Waterford Steam Electric Station, Unit 3 (Waterford 3), St. Charles Parish, Louisiana

Date of amendment request: July 20, 2011.

Description of Amendment Request: Entergy Operations, Inc. (the licensee), will be replacing the two Waterford 3 steam generators (SGs) during the 18th refueling outage which will commence in the fall of 2012. The existing Waterford 3 Technical Specification (TS) 6.5.9, ''Steam Generator (SG) Program,'' contains an alternate repair criterion for SG tube inspections that is no longer applicable to the replacement SGs. Additionally, the replacement SGs will contain improved Alloy 690 thermally treated (TT) tubing material. Therefore, the SG tubing inservice inspection frequencies may be extended beyond that currently allowed by the Waterford TSs. The proposed amendment would modify TS 3/4.4.4, ''Steam Generator (SG) Tube Integrity,'' TS 6.5.9, and TS 6.9.1.5, ''Steam Generator Tube Inspection Report,'' to reflect the above changes.

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 continues to implement the Waterford 3 Steam Generator (SG) Program performance criteria for tube structural integrity, accident induced leakage, and operational leakage for the replacement SGs. Meeting the performance criteria provides reasonable assurance that the replacement SG tubing will remain capable of fulfilling its specific safety function of maintaining reactor coolant system (RCS) pressure boundary integrity throughout each operating cycle and in the unlikely event of a design basis accident.

Sufficient SG tube structural margin above the 40 [percent (%)] SG tube plugging criteria is retained for the replacement SGs to ensure that the probability of an accident is unchanged. The replacement SGs are designed with substantial margin to burst. Therefore, the proposed change does not affect the probability of a[n] SGTR [steam generator tube rupture] accident. The extension of the SG tube inspection frequency after initial inspection is based on the low likelihood of having potential tube flaws and is considered to be an acceptable inspection period to preserve pressure boundary integrity. As a result, there will be no affect on the previous dose analysis reported in the Updated Final Safety Analysis Report [(UFSAR)] and the consequences of any accident are unchanged.

Therefore, this 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.

Steam generator tube rupture events have already been postulated and analyzed in the Waterford 3 [UFSAR]. The improved Alloy 690TT SG tubing material in the Waterford 3 replacement SG reduces the likelihood of creating new or different types of tubing flaws. The proposed changes do not reduce the design requirements of the SG tubes that would affect the current accident analysis. The proposed amendment does not impact any other plant systems or components. The SG tube inspection TS requirements assure that potential tubing flaws will be detected prior to affecting tube integrity and the RCS pressure boundary.

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.

The structural integrity, accident induced leakage, and operational leakage performance criteria required by the Waterford 3 technical specifications provide substantial design margin for assuring SG tube integrity against the possibility of a[n] SG tube pressure boundary failure. The analyzed 55% structural limit provides sufficient margin above the SG tube plugging criteria of 40% for consideration of eddy current measurement uncertainty and allowance for inspection cycle flaw growth. The proposed change removes an existing alternate repair criterion that is not applicable to the replacement SGs and establishes appropriate SG tube subsequent inspection periods consistent with the new SG tubing design. The replacement SGs will continue to meet their required performance criteria. The Waterford 3 SG tube inspection program will assure that this margin is maintained through the operational life of the plant.

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: Joseph A. Aluise, Associate General Council—Nuclear, Entergy Services, Inc., 639 Loyola Avenue, New Orleans, Louisiana 70113.

NRC Branch Chief: Michael T. Markley.

Exelon Generation Company, LLC, Docket No. 50–461, Clinton Power Station, Unit 1, DeWitt County, Illinois

Date of Amendment Request: June 13, 2011.

Description of Amendment Request: The proposed amendment would revise the Limiting Condition for Operation (LCO) 3.1.2, ''Reactivity Anomalies,'' through a revision to the method for calculating core reactivity for the purpose of performing an anomaly check.

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 TS change does not affect any plant systems, structures, or components designed for the prevention or mitigation of previously evaluated accidents. The amendment would only change how the reactivity anomaly check is performed. Verifying that the core reactivity is consistent with predicted values ensures that accident and transient safety analyses remain valid. This amendment changes the LCO 3.1.2 and Surveillance Requirement (SR) 3.1.2.1 requirements such that the check is performed by a direct comparison of k_{eff} rather than by comparing predicted to actual control rod density. On-line core monitoring systems, such as the one currently in use at Clinton Power Station, Unit 1 (CPS), are capable of performing the direct measurement of reactivity.

Therefore, since the reactivity anomaly check will continue to be performed by a viable method, the proposed amendment does not involve a significant increase in the probability or consequence of any previously evaluated accident.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

This TS amendment request does not involve any changes to the operation, testing, or maintenance of any safety-related or otherwise important to safety, system. All systems that are important to safety will continue to be operated and maintained within their design bases. The proposed changes to LCO 3.1.2 and SR 3.1.2.1 will only provide a new, efficient method of detecting an unexpected change in core reactivity.

Since all systems continue to be operated within their design bases, no new failure modes are introduced, nor is the possibility of a new or different kind of accident created.

3. Does the proposed change involve a significant reduction in a margin of safety?

Response: No.

This proposed TS amendment proposes to change the method for performing the reactivity anomaly surveillance from a comparison of predicted to actual control rod density to a comparison of predicted to actual k_{eff}. The direct comparison of k_{eff} provides a more direct method of calculating any differences in the expected core reactivity. The reactivity anomaly check will continue to be performed at the same frequency as is currently required by the TS, only the method of performing the check will be changed. Consequently, core reactivity assumptions made in safety analyses will continue to be adequately verified.

Therefore, the proposed amendment does not therefore 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. Bradley J. Fewell, Associate General Counsel, Exelon Generation Company, LLC, 4300 Winfield Road, Warrenville, IL 60555.

NRC Branch Chief: Jacob I. Zimmerman.

Indiana Michigan Power Company (the licensee), Docket Nos. 50–315 and 50–316, Donald C. Cook Nuclear Plant (CNP), Units 1 and 2, Berrien County, Michigan

Date of amendment request: July 1, 2011, as supplemented on September 2, 2011.

Description of amendment request: Currently CNP Units 1 and 2 have a fire protection program that is based on compliance with 10 CFR 50.48(a), 10 CFR 50.48(b), 10 CFR Part 50, Appendix R, NRC guidance document Branch Technical Position APCSB 9.5–1 Appendix A, and a license condition for each unit. The proposed amendment would transition the CNP 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.'' In the rulemaking that led to promulgation of 10 CFR 50.48(c), the NRC stated that NFPA 805 provides an acceptable alternative to 10 CFR 50.48(b), and satisfies 10 CFR 50.48(a) and General Design Criterion 3 of Appendix A to 10 CFR Part 50. Upon approval of the transition to NFPA 805, the CNP licensing basis per 10 CFR 50.48(b) and 10 CFR Part 50, Appendix R will be superseded. To achieve the transition to the new requirements outlined in NFPA 805, the licensee is implementing the methodology identified in Nuclear Energy Institute (NEI) document 04–02, ''Guidance for Implementing a Risk-informed, Performance-Based Fire Protection Program Under 10 CFR 50.48(c).''

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 performed its own analysis, 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.

Upon approval by the NRC staff, the risk-informed and performance-based NFPA 805 fire protection program will provide the same level of safety as the current licensing basis. None of the accidents evaluated in the CNP Updated Final Safety Analysis Report (UFSAR) were postulated to be initiated by fire protection equipment or elements of the fire protection program. Thus, the proposed transition of the fire protection licensing basis to NFPA 805 will not involve any change, increase or decrease, in the probability of previously evaluated accidents.

Elements or equipment of the CNP fire protection program have no impact in the evaluation of the consequences of accidents in the UFSAR; thus, the consequences of the previously evaluated accidents will remain the same regardless of whether the current fire protection licensing basis or NFPA 805 is in place.

Therefore, the proposed licensing basis change will not lead to any change, increase or decrease, of the consequences of previously evaluated accidents.

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 of the fire protection licensing basis to NFPA 805 pertains only to the fire protection program and equipment (e.g., modifying fire wrap, modifying control circuitry of certain fire protection systems, changing the carbon dioxide system from manual actuation to automatic). The proposed change does not affect structures, systems, or components that were involved with previously evaluated accidents.

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.

The proposed change does not alter the manner in which safety limits, limiting safety system settings, or limiting conditions for operation are determined. The proposed change does not involve any safety analysis acceptance criteria in the current CNP licensing basis, and does not adversely affect existing plant safety margins or the reliability of equipment assumed to mitigate accidents in the UFSAR.

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 the NRC staff's own analysis, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the proposed amendment involves no significant hazards consideration.

Attorney for Licensee: James M. Petro, Jr., Senior Nuclear Counsel, Indiana Michigan Power Company, One Cook Place, Bridgman, MI 49106.

NRC Branch Chief: Robert J. Pascarelli.

Luminant Generation Company LLC, Docket Nos. 50–445 and 50–446, Comanche Peak Nuclear Power Plant, Units 1 and 2, Somervell County, Texas

Date of Amendment Request: August 1, 2011, as supplemented by letter dated August 17, 2011.

Brief Description of Amendments: The proposed change requests the adoption of an approved change to the Standard Technical Specifications (STS) for Westinghouse Plants (NUREG–1431), to allow relocation of specific technical specification (TS) surveillance frequencies to a licensee-controlled program. The proposed change is described in and consistent with the U.S. Nuclear Regulatory Commission (NRC)-approved Technical Specification Task Force (TSTF) Traveler 425–A, Revision 3, ''Relocate Surveillance Frequencies to Licensee Control—Risk Informed Technical Specifications Task Force (RI–TSTF) Initiative 5b'' (Agencywide Documents Access and Management System (ADAMS) Accession No. ML090850642). The Notice of Availability of TSTF–425, Revision 3 was published in the **Federal Register** on July 6, 2009 (74 FR 31996). The proposed change would relocate surveillance frequencies to a licensee-controlled program termed as the Surveillance Frequency Control Program (SFCP). This change is applicable to licensees using probabilistic risk guidelines contained in NRC-approved Nuclear Energy Institute (NEI) 04–10, Revision 1, ''Risk-Informed Technical Specifications Initiative 5b, Risk-Informed Method for Control of Surveillance Frequencies'' (ADAMS Accession No. ML071360456).

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 (consistent with the no significant hazards consideration published in the **Federal Register** on July 6, 2009 (74 FR 31996) for TSTF–425, Revision 3), which is presented below:

1. Does the proposed change involve a significant increase in the probability or consequences of any accident previously evaluated?

Response: No.

The proposed change relocates the specified frequencies for periodic surveillance requirements to licensee control under a new Surveillance Frequency Control Program. Surveillance frequencies are not an initiator to any accident previously evaluated. As a result, the probability of any accident previously evaluated is not significantly increased. The systems and components required by the technical specifications for which the surveillance frequencies are relocated are still required to be operable, meet the acceptance criteria for the surveillance requirements, and be capable of performing any mitigation function assumed in the accident analysis. As a result, the consequences of any accident previously evaluated are not significantly increased.

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 previously evaluated?

Response: No.

No new or different accidents result from utilizing the proposed change. The changes do not involve a physical alteration of the plant (i.e., no new or different type of equipment will be installed) or a change in the methods governing normal plant operation. In addition, the changes do not impose any new or different requirements. The changes do not alter assumptions made in the safety analysis. The proposed changes are consistent with the safety analysis assumptions and current plant operating practice.

Therefore, the proposed changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the proposed change involve a significant reduction in the margin of safety?

Response: No.

The design, operation, testing methods, and acceptance criteria for systems, structures, and components (SSCs), specified in applicable codes and standards (or alternatives approved for use by the NRC) will continue to be met as described in the plant licensing basis (including the Final Safety Analysis Report and Bases to TS), since these are not affected by changes to the surveillance frequencies. Similarly, there is no impact to safety analysis acceptance criteria as described in the plant licensing basis. To evaluate a change in the relocated surveillance frequency, Luminant Power [Luminant Generation Company LLC] will perform a probabilistic risk evaluation using the guidance contained in NRC approved NEI 04–10, Rev. 1 in accordance with the TS SFCP. NEI 04–10, Rev. 1, methodology provides reasonable acceptance guidelines and methods for evaluating the risk increase of proposed changes to surveillance frequencies consistent with Regulatory Guide 1.177 [''An Approach for Plant-Specific, Risk-Informed Decision-making: Technical Specifications,'' August 1998 (ADAMS Accession No. ML003740176)].

Therefore, the proposed changes do not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for Licensee: Timothy P. Matthews, *Esq.,* Morgan, Lewis and Bockius, 1800 M Street, NW., Washington, DC 20036.

NRC Branch Chief: Michael T. Markley.

Yankee Atomic Electric Company, Docket No. 50–29, Yankee Nuclear Power Station, Franklin County, Massachusetts.

Date of Amendment Request: August 10, 2011.

Description of Amendment Request: The amendment proposes to revise License Condition C(3) ''Physical Protection''. It is proposed to update the title of the Physical Security Plan, from the ''Yankee Nuclear Power Station Defueled Security Plan'' Revision 0, dated October 13, 1992, and ''Yankee Defueled Security Training and Qualification Plan'' Revision 0, dated October 13, 1992, to the ''Physical Security Plan for Yankee Rowe Independent Spent Fuel Storage Installation.''

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 is a title change only. There is no reduction in commitments in the Physical Security Plan 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 amendment is a title change only. There is no reduction in commitments in the Physical Security Plan 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 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: Joseph Fay, Yankee Atomic Electric Company, 362 Injun Hollow Road, East Hampton, Connecticut, 06424–3099.

NRC Branch Chief: Michael D. Waters.

Notice of Issuance of Amendments to Facility Operating Licenses

During the period since publication of the last biweekly notice, the Commission has issued the following amendments. The Commission has determined for each of these amendments that the application complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment.

Notice of Consideration of Issuance of Amendment to Facility Operating License, Proposed No Significant Hazards Consideration Determination, and Opportunity for A Hearing in connection with these actions was published in the **Federal Register** as indicated.

Unless otherwise indicated, the Commission has determined that these amendments satisfy the criteria for categorical exclusion in accordance with 10 CFR 51.22. Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared for these amendments. If the Commission has prepared an environmental assessment under the special circumstances provision in 10 CFR 51.22(b) and has made a determination based on that assessment, it is so indicated.

For further details with respect to the action see (1) The applications for amendment, (2) the amendment, and (3) the Commission's related letter, Safety Evaluation and/or Environmental Assessment as indicated. All of these items are available for public inspection at the 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 e-mail to *pdr.resource@nrc.gov.*

Calvert Cliffs Nuclear Power Plant, LLC, Docket Nos. 50–317 and 50–318, Calvert Cliffs Nuclear Power Plant, Units 1 and 2, Calvert County, Maryland, Date of Application for Amendments: May 11, 2011

Brief Description of Amendments: The amendments revise a note to Technical Specification (TS) 3.3.1, ''Reactor Protective System (RPS) Instrumentation—Operating,'' to change the value at which the RPS trip function, Steam Generator Pressure—Low, is bypassed from 785 psig to 785 psia. The revision corrects an administrative error that occurred during Calvert Cliffs' conversion to the Improved Standard TSs.

Date of Issuance: September 8, 2011.

Effective Date: As of the date of issuance to be implemented within 45 days.

Amendment Nos.: 300 and 277.

Renewed Facility Operating License Nos. DPR–53 and DPR–69: Amendments revised the License and Technical Specifications.

Date of Initial Notice in ***Federal Register:*** June 14, 2011 (76 FR 34766).

The Commission's related evaluation of these amendments is contained in a Safety Evaluation dated September 8, 2011.

No Significant Hazards Consideration Comments Received: No.

Dominion Energy Kewaunee, Inc. Docket No. 50–305, Kewaunee Power Station, Kewaunee County, Wisconsin

Date of Application for Amendment: July 12, 2010, as supplemented by letters dated August 5, 2010, September 23, 2010, November 10, 2010, December 13, 2010, April 4, 2011, and May 17, 2011.

Brief Description of Amendment: The amendment approves the Cyber Security Plan (CSP) and associated implementation schedule, and revises the license condition regarding physical protection to reflect such approval. The amendment specifies that the licensee fully implement and maintain in effect all provisions of the Commission-approved CSP as required by 10 CFR 73.54.

Date of Issuance: August 31, 2011.

Effective Date: This license amendment is effective as of the date of its issuance. The implementation of the CSP, including the key intermediate milestone dates and the full implementation date, shall be in accordance with the implementation schedule submitted by the licensee on April 4, 2011, and approved by the NRC staff with this license amendment. All subsequent changes to the NRC-approved CSP implementation schedule will require prior NRC approval pursuant to 10 CFR 50.90.

Amendment Nos.: 210.

Facility Operating License No. DPR–43: The amendment revised the Renewed Facility Operating License.

Date of Initial Notice in ***Federal Register***: November 9, 2010 (75 FR 68834). The supplemental letters contain clarifying information, did not change the scope of the license amendment request, did not change the NRC staff's initial proposed finding of no significant hazards consideration determination, and did not expand the scope of the original **Federal Register** notice.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated August 31, 2011.

No Significant Hazards Consideration Comments Received: No.

Duke Power Company LLC, Docket Nos. 50–369 and 50–370, McGuire Nuclear Station, Units 1 and 2, Mecklenburg County, North Carolina

Date of Application for Amendments: May 28, 2010, as supplemented by letters dated November 15, 2010, March 23, 2011, and May 2, 2011.

Brief Description of Amendments: The amendments revised the Technical Specifications to allow manual operation of the containment spray system and to change the setpoints for the refueling water storage tank.

Date of Issuance: September 12, 2011.

Effective Date: As of the date of issuance and shall be implemented prior to the first entry into Mode 4 after the refueling outage where all of the modifications associated with the amendment have been completed.

Amendment Nos.: 265/245.

Renewed Facility Operating License Nos. NPF–9 and NPF–17: Amendments revised the Licenses and the Technical Specifications.

Date of Initial Notice in ***Federal Register:*** October 5, 2010 (75 FR 61524). The supplements dated November 15, 2010, March 23, 2011, and May 2, 2011, provided additional information that clarified the application, did not expand the scope of the application as originally noticed, and did not change the staff's original proposed no significant hazards consideration determination.

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated September 12, 2011.

No Significant Hazards Consideration Comments Received: No.

Entergy Nuclear Operations, Inc., Docket No. 50–286, Indian Point Nuclear Generating Unit No. 3, Westchester County, New York

Date of application for amendment: October 6, 2010.

Brief description of amendment: The amendment revised the note in Surveillance Requirement 3.5.4.1 for the Refueling Water Storage Tank (RWST) Technical Specification (TS). Specifically, the amendment will require monitoring of the RWST temperature every 24 hours when the RWST heating steam supply isolation valves are not locked closed.

Date of Issuance: September 19, 2011.

Effective Date: As of the date of issuance, and shall be implemented within 30 days.

Amendment No.: 244.

Facility Operating License No. DPR–64: The amendment revised the License and the Technical Specifications.

Date of Initial Notice in ***Federal Register:*** December 28, 2010 (75 FR 81669).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation Dated September 19, 2011.

No Significant Hazards Consideration Comments Received: No.

Entergy Operations, Inc., System Energy Resources, Inc., South Mississippi Electric Power Association, and Entergy Mississippi, Inc., Docket No. 50–416, Grand Gulf Nuclear Station, Unit 1, Claiborne County, Mississippi

Date of Application for Amendment: April 6, 2011.

Brief Description of Amendment: The amendment modified the Technical Specifications (TSs) to define a new time limit for restoring inoperable reactor coolant system (RCS) leakage detection instrumentation to operable status; establish alternate methods of monitoring RCS leakage when one or more required monitors are inoperable; and make TS Bases changes which reflect the proposed changes and more accurately reflect the contents of the facility design basis related to operability of the RCS leakage detection instrumentation. These changes are consistent with NRC-approved Revision 3 to Technical Specification Task Force (TSTF) Change Traveler TSTF–514, ''Revise BWR [Boiling-Water Reactor] Operability Requirements and Actions for RCS Leakage Instrumentation,'' as part of the consolidated line item improvement process.

Date of Issuance: September 12, 2011.

Effective Date: As of the date of issuance and shall be implemented within 90 days of issuance.

Amendment No: 187.

Facility Operating License No. NPF–29: The amendment revised the Facility Operating License and Technical Specifications.

Date of Initial Notice in ***Federal Register:*** May 3, 2011 (76 FR 24928).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated September 12, 2011.

No Significant Hazards Consideration Comments Received: No.

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: September 24, 2010, supplemented by letters dated March 18, 2011, April 21, 2011, and May 27, 2011.

Brief Description of Amendment: The amendment revises Technical

Specification 3.4.1.2.3, to allow up to two Main Steam Safety Valves (MSSVs) per steam generator to be inoperable with no required reduction in power level. It also revises the required maximum overpower trip setpoints for any additional inoperable MSSVs consistent with the plant transient analysis. The change requires that with less than four MSSVs associated with either steam generator operable, the plant would be required to be brought to the hot shutdown condition.

Date of Issuance: September 14, 2011.

Effective Date: Immediately, and shall be implemented within 60 days.

Amendment No.: 277.

Renewed Facility Operating License No. DPR–50: Amendment revised the license and the technical specifications.

Date of initial Notice in ***Federal Register:*** November 30, 2010 (75 FR 74096).

The supplements dated March 18, 2011, April 21, 2011, and May 27, 2011, provided additional information that clarified the application, did not expand the scope of the application as originally noticed, and did not change the NRC staff's original proposed no significant hazards determination.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated September 14, 2011.

No Significant Hazards Consideration Comments Received: No.

NextEra Energy Duane Arnold, LLC, Docket No. 50–331, Duane Arnold Energy Center, Linn County, Iowa

Date of Application for Amendment: October 15, 2010.

Brief Description of Amendment: The amendment modifies the Duane Arnold Energy Center Renewed Facility Operating License No. DPR–49 to remove the parent company guarantee Licensing Condition and apply other administrative changes to the formatting of the affected renewed license pages.

Date of Issuance: September 8, 2011.

Effective Date: As of the date of issuance and shall be implemented within 30 days.

Amendment No.: 279.

Renewed Facility Operating License No. DPR–49: The amendment did not revise the Technical Specifications.

Date of initial notice in ***Federal Register:*** February 22, 2011 (76 FR 9825).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated September 8, 2011.

No Significant Hazards Consideration Comments Received: No.

PPL Susquehanna, LLC, Docket Nos. 50–387 and 50–388, Susquehanna Steam Electric Station, Units 1 and 2, Luzerne County, Pennsylvania

Date of Application for Amendments: April 8, 2011.

Brief Description of Amendments: The amendments revised and added a new Condition C to Technical Specification (TS) 3.4.6, ''RCS [Reactor Coolant System] Leakage Detection Instrumentation'' and revise the associated TS Bases. New Condition C is applicable when the primary containment atmosphere gaseous radiation monitor is the only operable TS-required instrument monitoring RCS leakage, *i.e.,* TS-required particulate and sump monitors are inoperable. New Condition C Required Actions require monitoring RCS leakage by obtaining and analyzing grab samples of the primary containment atmosphere every 12 hours, monitoring RCS leakage using administrative means every 12 hours, and taking action to restore monitoring capability using another monitor within 7 days. Additionally, minor editorial revisions are proposed to ensure continuity of the TS format. These changes are the result of new Condition C and consist of re-lettering existing Conditions C and D as Conditions D and E, respectively.

Date of Issuance: September 8, 2011.

Effective Date: As of the date of issuance to be implemented within 60 days.

Amendment Nos.: 256 for Unit 1 and 236 for Unit 2.

Facility Operating License Nos. NPF–14 and NPF–22: The amendments revised the Licenses and Technical Specifications.

Date of initial Notice in ***Federal Register:*** May 31, 2011 (76 FR 31376).

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated September 8, 2011.

No Significant Hazards Consideration Comments Received: No.

PSEG Nuclear LLC, Docket No. 50–354, Hope Creek Generating Station, Salem County, New Jersey

Date of Application for Amendment: September 22, 2010, as supplemented by letter dated April 28, 2011.

Brief description of Amendments: The amendment allows Hope Creek Generating Station to operate at a reduced feedwater temperature for purposes of extending the normal fuel cycle. The amendment also allows operation with feedwater heaters out-of-service at any time during the operating cycle. In addition, the amendment revises surveillance requirements related to testing of the Oscillation Power Range Monitor.

Date of Issuance: September 14, 2011.

Effective Date: As of the date of issuance, to be implemented within 90 days.

Amendment No.: 190.

Facility Operating License No. NPF–57: The amendment revised the Technical Specifications and the Facility Operating License.

Date of Initial Notice in ***Federal Register:*** January 10, 2011 (76 FR 1466). The letter dated April 28, 2011, provided clarifying information that did not change the initial proposed no significant hazards consideration determination or expand the application beyond the scope of the original **Federal Register** notice.

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated September 14, 2011.

No Significant Hazards Consideration Comments Received: No.

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 application for amendment: July 12, 2010, as supplemented by letters dated August 5, 2010, September 23, 2010, November 10, 2010, December 13, 2010, April 4, 2011, and May 17, 2011.

Brief Description of Amendment: The amendments approve the cyber security plan (CSP) and associated implementation schedule, and revise the license condition regarding physical protection to reflect such approval. The amendments specify that the licensee fully implement and maintain in effect all provisions of the Commission-approved CSP as required by 10 CFR 73.54.

Date of Issuance: August 31, 2011.

Effective Date: These license amendments are effective as of the date of issuance. The implementation of the CSP, including the key intermediate milestone dates and the full implementation date, shall be in accordance with the implementation schedule submitted by the licensee on April 4, 2011, and approved by the NRC staff with this license amendment. All subsequent changes to the NRC-approved CSP implementation schedule will require prior NRC approval pursuant to 10 CFR 50.90.

Amendment Nos.: 264 (for Unit 1) and 245 (for Unit 2).

Facility Operating License Nos. NPF–4 and NPF–7: The amendments revised

the Renewed Facility Operating Licenses.

Date of Initial Notice in ***Federal Register:*** December 7, 2010 (75 FR 76047). The supplemental letters contain clarifying information, did not change the scope of the license amendment request, did not change the NRC staff's initial proposed finding of no significant hazards consideration determination, and did not expand the scope of the original **Federal Register** notice.

The Commission's related evaluation of the amendment is contained in a safety evaluation dated August 31, 2011.

No Significant Hazards Consideration Comments Received: No.

Virginia Electric and Power Company, et al., Docket Nos. 50–280 and 50–281, Surry Power Station, Units 1 and 2, Surry County, Virginia

Date of Application for Amendment: July 12, 2010, as supplemented by letters dated August 5, 2010, September 23, 2010, November 10, 2010, December 13, 2010, April 4, 2011, and May 17, 2011.

Brief Description of Amendment: The amendments approve the cyber security plan (CSP) and associated implementation schedule, and revises the license condition regarding physical protection to reflect such approval. The amendments specify that the licensee fully implement and maintain in effect all provisions of the Commission-approved CSP as required by 10 CFR 73.54.

Date of Issuance: August 31, 2011.

Effective Date: These license amendments are effective as of the date of issuance. The implementation of the CSP, including the key intermediate milestone dates and the full implementation date, shall be in accordance with the implementation schedule submitted by the licensee on April 4, 2011, and approved by the NRC staff with this license amendment. All subsequent changes to the NRC-approved CSP implementation schedule will require prior NRC approval pursuant to 10 CFR 50.90.

Amendment Nos.: 276 (for Unit 1) and 276 (for Unit 2)

Facility Operating License Nos. DPR–32 and DPR–37: The amendments revised the Renewed Facility Operating License.

Date of initial notice in ***Federal Register:*** December 7, 2010 (75 FR 76047). The supplemental letters contain clarifying information did not change the scope of the license amendment request, did not change the NRC staff's initial proposed finding of no significant hazards consideration determination, and did not expand the scope of the original **Federal Register** notice.

The Commission's related evaluation of the amendment is contained in a safety evaluation dated August 31, 2011.

No Significant Hazards Consideration Comments Received: No.

Dated at Rockville, Maryland, this 22nd day of September 2011.

For the Nuclear Regulatory Commission.

Joseph G. Giitter,

Director, Division of Operating Reactor Licensing, Office of Nuclear Reactor Regulation.

[FR Doc. 2011–25492 Filed 10–3–11; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 52–12–COL and 52–13–COL; ASLBP No. 09–885–08–COL–BD01]

Atomic Safety and Licensing Board; In the Matter of Nuclear Innovation North America LLC (South Texas Project Units 3 and 4); Evidentiary Hearing to Receive Testimony and Exhibits Regarding the Application

September 28, 2011.

Before Administrative Judges: Michael M. Gibson, Chairman, Gary S. Arnold, Dr. Randall J. Charbeneau.

Notice

(Notice of Hearing and Opportunity to Submit Written Limited Appearance Statements)

On October 31, 2011, the Atomic Safety and Licensing Board will convene an evidentiary hearing to receive testimony and exhibits regarding the application of Nuclear Innovation North America LLC (NINA) for combined licenses for the construction and operation of two new nuclear reactor units on an existing site near Bay City, Texas. In addition, in accordance with 10 CFR 2.315(a), the Board will entertain written limited appearance statements from members of the public in connection with this proceeding. Finally, the Board gives notice that it may hold oral argument on a new contention proposed by Intervenors [1] related to the Fukushima Dai-ichi accident.

A. Matters to be Considered at Evidentiary Hearing

This evidentiary hearing will consider an environmental contention originally scheduled to be heard in August 2011. The Board deferred—without objection by NINA or Staff—hearing this contention in August 2011 because Intervenors' expert witness was unavailable as a result of a medical emergency. This contention, referred to as DEIS–1–G, relates to accounting for energy efficient building code rules in the assessment of a need for power.

B. Date, Time, and Location of Evidentiary Hearing

The Board will conduct this evidentiary hearing [2] beginning at 9:30 a.m., Eastern Daylight Time (EDT) on Monday, October 31, 2011, at the Atomic Safety and Licensing Board Panel Hearing Room, Two White Flint North Building, Third Floor, Room T–3B45, 11545 Rockville Pike, Rockville, Maryland. The hearing will continue day-to-day until concluded.

Any members of the public who plan to attend the evidentiary hearing are advised that security measures will be employed at the entrance to the facility, including searches of hand-carried items such as briefcases or backpacks.

C. Submitting Written Limited Appearance Statements

As provided in 10 CFR 2.315(a), any person (other than a party or the representative of a party to this proceeding) may submit a written statement setting forth his or her position on matters of concern relating to this proceeding. Although these statements do not constitute testimony or evidence, they nonetheless may help the Board or the parties in their consideration of the issues in this proceeding.

A written limited appearance statement may be submitted at any time and should be sent to the Office of the Secretary using one of the methods prescribed below:

Mail: Office of the Secretary, Rulemakings and Adjudications Staff, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

Fax: (301) 415–1101 (verification (301) 415–1966).

E-mail: hearingdocket@nrc.gov.

In addition, using the same method of service, a copy of the written limited appearance statement should be sent to the Chairman of this Licensing Board as follows:

Mail: Administrative Judge Michael M. Gibson, Atomic Safety and Licensing Board Panel, Mail Stop T–3 F23, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

[1] Intervenors are the Sustainable Energy and Economic Development Coalition, the South Texas Association for Responsible Energy, and Public Citizen.

[2] NINA, NRC Staff, and Intervenors will be parties to the hearing and will present witnesses and evidentiary material.

Fax: (301) 415–5599 (verification (301) 415–7332).

E-mail: Michael.Gibson@nrc.gov and *Jonathan.Eser@nrc.gov.*

D. Notice of Oral Argument

The Board may hold oral argument on Intervenors' newly proffered Fukushima-related contention immediately after the conclusion of the evidentiary hearing. As with hearing attendance, members of the public are welcome to attend oral argument, subject to facility security protocol.

E. Availability of Documentary Information Regarding the Proceeding

NINA's application and various Staff documents relating to the application are available on the NRC Web site at *http://www.nrc.gov/reactors/new-reactors/col/south-texas-project.html.*

These and other documents relating to this proceeding are available for public inspection at the Commission's Public Document Room, located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, MD 20852, or electronically from the publicly available records component of NRC's document system (ADAMS). ADAMS is accessible from the NRC Web site at *http://www.nrc.gov/reading-rm/adams.html* (the Public Electronic Reading Room). Persons who do not have access to ADAMS or who encounter problems in accessing the documents located in ADAMS should contact the NRC Public Document Room reference staff by telephone at (800) 397–4209 or (301) 415–4737 (available between 8 a.m. and 4 p.m., Eastern Time (E.T.), Monday through Friday except federal holidays), or by e-mail to *pdr@nrc.gov.*

It is so *ordered.*

September 28, 2011.

For the Atomic Safety and Licensing Board.

Michael M. Gibson,

Administrative Judge.

[FR Doc. 2011–25488 Filed 10–3–11; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2011–0233]

Draft Nuclear Regulatory Commission Fiscal Year 2012–2016 Strategic Plan

AGENCY: Nuclear Regulatory Commission.

ACTION: Draft NUREG; request for comment.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is announcing the availability of and requesting comment on draft NUREG–1614, Volume 5. ''U.S. Nuclear Regulatory Commission, FY 2012–2016 Strategic Plan,'' dated September 2011. The NRC's draft FY 2012–2016 strategic plan describes the agency's mission and strategic objective, which remain unchanged. The NRC's priority continues to be ensuring the adequate protection of public health and safety, and promoting the common defense and security.

DATES: Submit comments on the draft strategic plan by November 2, 2011. Comments received after the above date will be considered if it is practical to do so, but the NRC is able to assure consideration only for comments received on or before this date.

ADDRESSES: Please include Docket ID NRC–2011–0233 in the subject line of your comments. For additional instructions on submitting comments and instructions on accessing documents related to this action, see ''Submitting Comments and Accessing Information'' in the **SUPPLEMENTARY INFORMATION** section of this document. You may submit comments by any one of the following methods:

- *Federal Rulemaking Web Site:* Go to *http://www.regulations.gov* and search for documents filed under Docket ID NRC–2011–0233. Address questions about NRC dockets to Carol Gallagher, telephone: 301–492–3668; e-mail: *Carol.Gallagher@nrc.gov.*
- *Mail comments to:* Cindy Bladey, 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.

SUPPLEMENTARY INFORMATION:

Submitting Comments and Accessing Information

Comments submitted in writing or in electronic form will be posted on the NRC Web site and on the Federal rulemaking Web site, *http://www.regulations.gov.* Because your comments will not be edited to remove any identifying or contact information, the NRC cautions you against including any information in your submission that you do not want to be publicly disclosed.

The NRC requests that any party soliciting or aggregating comments received from other persons for submission to the NRC inform those persons that the NRC will not edit their comments to remove any identifying or contact information, and therefore, they should not include any information in their comments that they do not want publicly disclosed.

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

- *NRC's Public Document Room (PDR):* The public may examine and have copied, for a fee, publicly available documents at the NRC's PDR, O1–F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.
- *NRC's Agencywide Documents Access and Management System (ADAMS):* Publicly available documents created or received at the NRC are available online in the NRC Library at *http://www.nrc.gov/reading-rm/adams.html.* From this page, the public can gain entry into ADAMS, which provides text and image files of the NRC's public documents. If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the NRC's PDR reference staff at 1–800–397–4209, 301–415–4737, or by e-mail to *pdr.resource@nrc.gov.* The draft strategic plan is available electronically under ADAMS Accession No. ML11270A135.
- *Federal Rulemaking Web Site:* Public comments and supporting materials related to this notice can be found at *http://www.regulations.gov* by searching on Docket ID NRC–2011–0233. Some publications in the NUREG series that are posted at NRC's Web site address *http://www.nrc.gov/reading-rm/doc-collections* are updated regularly and may differ from the last printed version.

FOR FURTHER INFORMATION CONTACT: James E. Coyle, Planning and Performance Management Branch, Division of Planning and Budget, Office of the Chief Financial Officer, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–6087, e-mail: *James.Coyle@nrc.gov.*

Background

The Government Performance and Results Act Modernization Act of 2010 (GRPAMA) requires that an agency's strategic plan be updated for submission to the Congress and the President every four years. The NRC is developing a new strategic plan for FY 2012–2016 to replace the agency's existing strategic plan.

The NRC's draft FY 2012–2016 strategic plan describes the agency's mission and strategic objective, which remain unchanged. The NRC's priority continues to be ensuring the adequate protection of public health and safety,

and promoting the common defense and security.

The draft strategic plan reflects the agency's Safety and Security goals, and their associated strategic outcomes. The goals continue to accurately describe the agency's core functions and therefore remain essentially unchanged. This focus on Safety and Security ensures that the NRC remains a strong, independent, stable, and effective regulator.

The draft strategic plan addresses the challenges the NRC will face due to changes in the regulatory environment. This includes the review of applications to construct and operate new nuclear power plants including small modular reactors, while continuing to ensure the safe and secure operation of the existing licensed facilities, as well as addressing any national policy decisions related to the management of radioactive waste.

The draft Strategic Plan also describes the agency's Organizational Excellence Objectives of Openness, Regulatory Effectiveness, and Operational Excellence, which characterize the manner in which the agency intends to achieve its mission. The NRC encourages all interested parties to comment on the draft strategic plan.

The draft strategic plan establishes the agency's long-term strategic direction and outcomes. It provides a foundation to guide the NRC's work and to allocate the NRC's resources.

Stakeholder feedback will be valuable in helping the Commission develop a final plan that has the benefit of the many views in the regulated civilian nuclear industry.

The final version of NUREG–1614, Volume 5, is expected to be released in the spring of 2012.

Dated at Rockville, Maryland, this 28 day of September 2011.

For the Nuclear Regulatory Commission.

Jennifer Golder,

Director, Division of Planning and Budget, Office of the Chief Financial Officer.

[FR Doc. 2011–25491 Filed 10–3–11; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2011–0006].

Sunshine Federal Register Notice

AGENCY HOLDING THE MEETINGS: Nuclear Regulatory Commission;

DATE: Weeks of October 3, 10, 17, 24, 31, November 7, 2011.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Public and Closed.

Week of October 3, 2011

Thursday, October 6, 2011

9 a.m. Briefing on NRC International Activities (Public Meeting). (Contact: Karen Henderson, 301–415–0202.)

This meeting will be webcast live at the Web address—*http://www.nrc.gov.*

Week of October 10, 2011—Tentative

Tuesday, October 11, 2011

9 a.m. Briefing on the Japan Near Term Task Force Report—Prioritization of Recommendations (Public Meeting). (Contact: Rob Taylor, 301–415–3172.)

This meeting will be webcast live at the Web address—*http://www.nrc.gov.*

Wednesday, October 12, 2011

9 a.m. Mandatory Hearing—South Carolina Electric & Gas Company and South Carolina Public Service Authority (Also Referred to as Santee Cooper); Combined Licenses for Virgil C. Summer Nuclear Station, Units 2 and 3 (Public Meeting). (Contact: Rochelle Bavol, 301–415–1651.)

This meeting will be webcast live at the Web address—*http://www.nrc.gov*.

Thursday, October 13, 2011

9 a.m. Continued from Previous Day—

Mandatory Hearing—South Carolina Electric & Gas Company and South Carolina Public Service Authority (Also Referred to as Santee Cooper); Combined Licenses for Virgil C. Summer Nuclear Station, Units 2 and 3 (Public Meeting). (Contact: Rochelle Bavol, 301–415–1651.)

This meeting will be webcast live at the Web address—*http://www.nrc.gov*.

Week of October 17, 2011—Tentative

Tuesday, October 18, 2011

9 a.m. Briefing on Browns Ferry Unit 1 (Public Meeting). (Contact: Eugene Guthrie, 404–997–4662.)

This meeting will be webcast live at the Web address—*http://www.nrc.gov*.

Thursday, October 20, 2011

1:30 p.m. NRC All Employees Meeting (Public Meeting), Marriott Bethesda North Hotel, 5701 Marinelli Road, Rockville, MD 20852.

Week of October 24, 2011—Tentative

There are no meetings scheduled for the week of October 24, 2011.

Week of October 31, 2011—Tentative

Tuesday, November 1, 2011

9 a.m. Briefing on the Fuel Cycle Oversight Program (Public Meeting). (Contact: Margie Kotzalas, 301–492–3550.)

This meeting will be webcast live at the Web address—*http://www.nrc.gov*.

Week of November 7, 2011—Tentative

There are no meetings scheduled for the week of November 7, 2011.

* The schedule for Commission meetings is subject to change on short notice. To verify the status of meetings, call (recording)—(301) 415–1292. Contact person for more information: Rochelle Bavol, (301) 415–1651.

The NRC Commission Meeting Schedule can be found on the Internet at: *http://www.nrc.gov/public-involve/public-meetings/schedule.html.*

The NRC provides reasonable accommodation to individuals with disabilities where appropriate. If you need a reasonable accommodation to participate in these public meetings, or need this meeting notice or the transcript or other information from the public meetings in another format (e.g., braille, large print), please notify Bill Dosch, Chief, Work Life and Benefits Branch, at 301–415–6200, TDD: 301–415–2100, or by e-mail at *william.dosch@nrc.gov.* Determinations on requests for reasonable accommodation will be made on a case-by-case basis.

This notice is distributed electronically to subscribers. If you no longer wish to receive it, or would like to be added to the distribution, please contact the Office of the Secretary, Washington, DC 20555 (301–415–1969), or send an e-mail to *darlene.wright@nrc.gov.*

Dated: September 29, 2011.

Rochelle Bavol,

Policy Coordinator, Office of the Secretary.

[FR Doc. 2011–25683 Filed 9–30–11; 4:15 pm]

BILLING CODE 7590–01–P

POSTAL REGULATORY COMMISSION

[Docket No. A2011–86; Order No. 878]

Post Office Closing

AGENCY: Postal Regulatory Commission.

ACTION: Notice.

SUMMARY: This document informs the public that an appeal of the closing of the Redfield, New York post office has been filed. It identifies preliminary steps and provides a procedural schedule. Publication of this document

will allow the Postal Service, petitioners, and others to take appropriate action.

DATES: *Administrative record due (from Postal Service*): October 11, 2011; *deadline for notices to intervene:* October 21, 2011. *See* the Procedural Schedule in the **SUPPLEMENTARY INFORMATION** section for other dates of interest.

ADDRESSES: Submit comments electronically by accessing the ''Filing Online'' link in the banner at the top of the Commission's Web site (*http://www.prc.gov*) or by directly accessing the Commission's Filing Online system at *https://www.prc.gov/prc-pages/filing-online/login.aspx.* Commenters who cannot submit their views electronically should contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section as the source for case-related information for advice on alternatives to electronic filing.

FOR FURTHER INFORMATION CONTACT: Stephen L. Sharfman, General Counsel, at 202–789–6820 (case-related information) or *DocketAdmins@prc.gov* (electronic filing assistance).

SUPPLEMENTARY INFORMATION: Notice is hereby given that, pursuant to 39 U.S.C. 404(d), on September 23, 2011, the Commission received a petition for review and application for suspension of the Postal Service's determination to close the Redfield post office in Redfield, New York. The petition was filed by the Redfield Citizens Committee, Kathleen M. Gallo, Martha A. Harvey and Tanya M. Yerdon (Petitioners) and is postmarked September 20, 2011. The Commission hereby institutes a proceeding under 39 U.S.C. 404(d)(5) and establishes Docket No. A2011–86 to consider Petitioners' appeal. If Petitioners would like to further explain their position with supplemental information or facts, Petitioners may either file a Participant Statement on PRC Form 61 or file a brief with the Commission no later than October 28, 2011.

Category of issues apparently raised. Petitioners contend that: (1) The Postal Service failed to consider the effect of the closing on the community (*see* 39 U.S.C. 404(d)(2)(A)(i)); and (2) the Postal Service failed to consider whether or not it will continue to provide a maximum degree of effective and regular postal services to the community (*see* 39 U.S.C. 404(d)(2)(A)(iii)).

After the Postal Service files the administrative record and the Commission reviews it, the Commission may find that there are more legal issues than those set forth above, or that the Postal Service's determination disposes of one or more of those issues. The deadline for the Postal Service to file the applicable administrative record with the Commission is October 11, 2011. *See* 39 CFR 3001.113. In addition, the due date for any responsive pleading by the Postal Service to this notice is October 11, 2011.

Application for Suspension of Determination. In addition to their Petition, the Petitioners filed an application for suspension of the Postal Service's determination (*see* 39 CFR 3001.114). Commission rules allow for the Postal Service to file an answer to such application within 10 days after the application is filed. The Postal Service shall file an answer to the application no later than October 3, 2011.

Availability; Web site posting. The Commission has posted the appeal and supporting material on its Web site at *http://www.prc.gov.* Additional filings in this case and participants' submissions also will be posted on the Commission's Web site, if provided in electronic format or amenable to conversion, and not subject to a valid protective order. Information on how to use the Commission's Web site is available online or by contacting the Commission's webmaster via telephone at 202–789–6873 or via electronic mail at *prc-webmaster@prc.gov.*

The appeal and all related documents are also available for public inspection in the Commission's docket section. Docket section hours are 8 a.m. to 4:30 p.m., eastern time, Monday through Friday, except on Federal government holidays. Docket section personnel may be contacted via electronic mail at *prc-dockets@prc.gov* or via telephone at 202–789–6846.

Filing of documents. All filings of documents in this case shall be made using the Internet (Filing Online) pursuant to Commission rules 9(a) and 10(a) at the Commission's Web site, *http://www.prc.gov,* unless a waiver is obtained. *See* 39 CFR 3001.9(a) and 3001.10(a). Instructions for obtaining an account to file documents online may be found on the Commission's Web site or by contacting the Commission's docket section at *prc-dockets@prc.gov* or via telephone at 202–789–6846.

The Commission reserves the right to redact personal information which may infringe on an individual's privacy rights from documents filed in this proceeding.

Intervention. Persons, other than Petitioners and respondent, wishing to be heard in this matter are directed to file a notice of intervention. *See* 39 CFR 3001.111(b). Notices of intervention in this case are to be filed on or before October 24, 2011. A notice of intervention shall be filed using the Internet (Filing Online) at the Commission's Web site unless a waiver is obtained for hardcopy filing. *See* 39 CFR 3001.9(a) and 3001.10(a).

Further procedures. By statute, the Commission is required to issue its decision within 120 days from the date it receives the appeal. *See* 39 U.S.C. 404(d)(5). A procedural schedule has been developed to accommodate this statutory deadline. In the interest of expedition, in light of the 120-day decision schedule, the Commission may request the Postal Service or other participants to submit information or memoranda of law on any appropriate issue. As required by the Commission rules, if any motions are filed, responses are due 7 days after any such motion is filed. *See* 39 CFR 3001.21.

It is ordered:

1. The Postal Service shall file an answer to the application for suspension of the Postal Service's determination no later than October 3, 2011.

2. The Postal Service shall file the applicable administrative record regarding this appeal no later than October 11, 2011.

3. Any responsive pleading by the Postal Service to this notice is due no later than October 11, 2011.

4. The procedural schedule listed below is hereby adopted.

5. Pursuant to 39 U.S.C. 505, James F. Callow is designated officer of the Commission (Public Representative) to represent the interests of the general public.

6. The Secretary shall arrange for publication of this notice and order in the **Federal Register**.

By the Commission.

Shoshana M. Grove,

Secretary.

PROCEDURAL SCHEDULE

September 23, 2011	Filing of Appeal.
October 3, 2011	Deadline for the Postal Service to file an answer responding to application for suspension.
October 11, 2011	Deadline for the Postal Service to file the applicable administrative record in this appeal.

PROCEDURAL SCHEDULE—Continued

October 11, 2011	Deadline for the Postal Service to file any responsive pleading.
October 24, 2011	Deadline for notices to intervene (*see* 39 CFR 3001.111(b)).
October 28, 2011	Deadline for Petitioners' Form 61 or initial brief in support of petition (*see* 39 CFR 3001.115(a) and (b)).
November 17, 2011	Deadline for answering brief in support of the Postal Service (*see* 39 CFR 3001.115(c)).
December 2, 2011	Deadline for reply briefs in response to answering briefs (*see* 39 CFR 3001.115(d)).
December 9, 2011	Deadline for motions by any party requesting oral argument; the Commission will schedule oral argument only when it is a necessary addition to the written filings (*see* 39 CFR 3001.116).
January 12, 2012	Expiration of the Commission's 120-day decisional schedule (*see* 39 U.S.C. 404(d)(5)).

[FR Doc. 2011–25486 Filed 10–3–11; 8:45 am]
BILLING CODE 7710–FW–P

POSTAL REGULATORY COMMISSION

[Docket No. A2011–87; Order No. 879]

Post Office Closing

AGENCY: Postal Regulatory Commission.
ACTION: Notice.

SUMMARY: This document informs the public that an appeal of the closing of the Pomfret Center, Connecticut post office has been filed. It identifies preliminary steps and provides a procedural schedule. Publication of this document will allow the Postal Service, petitioners, and others to take appropriate action.

DATES: *Administrative record due (from Postal Service):* October 11, 2011; *deadline for notices to intervene:* October 24, 2011. *See* the Procedural Schedule in the **SUPPLEMENTARY INFORMATION** section for other dates of interest.

ADDRESSES: Submit comments electronically by accessing the ''Filing Online'' link in the banner at the top of the Commission's Web site (*http://www.prc.gov*) or by directly accessing the Commission's Filing Online system at *https://www.prc.gov/prc-pages/filing-online/login.aspx.* Commenters who cannot submit their views electronically should contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section as the source for case-related information for advice on alternatives to electronic filing.

FOR FURTHER INFORMATION CONTACT: Stephen L. Sharfman, General Counsel, at 202–789–6820 (case-related information) or *DocketAdmins@prc.gov* (electronic filing assistance).

SUPPLEMENTARY INFORMATION: Notice is hereby given that, pursuant to 39 U.S.C. 404(d), on September 23, 2011, the Commission received a petition for review of the Postal Service's determination to close the Pomfret Center post office in Pomfret Center, Connecticut. The petition was filed by Tima Smith (Petitioner) and is postmarked September 9, 2011. The Commission hereby institutes a proceeding under 39 U.S.C. 404(d)(5) and establishes Docket No. A2011–87 to consider Petitioner's appeal. If Petitioner would like to further explain her position with supplemental information or facts, Petitioner may either file a Participant Statement on PRC Form 61 or file a brief with the Commission no later than October 28, 2011.

Category of issues apparently raised. Petitioner contends that the Postal Service failed to consider the effect of the closing on the community. *See* 39 U.S.C. 404(d)(2)(A)(i).

After the Postal Service files the administrative record and the Commission reviews it, the Commission may find that there are more legal issues than the one set forth above, or that the Postal Service's determination disposes of one or more of those issues. The deadline for the Postal Service to file the applicable administrative record with the Commission is October 11, 2011. *See* 39 CFR 3001.113. In addition, the due date for any responsive pleading by the Postal Service to this notice is October 11, 2011.

Availability; Web site posting. The Commission has posted the appeal and supporting material on its Web site at *http://www.prc.gov.* Additional filings in this case and participants' submissions also will be posted on the Commission's Web site, if provided in electronic format or amenable to conversion, and not subject to a valid protective order. Information on how to use the Commission's Web site is available online or by contacting the Commission's webmaster via telephone at 202–789–6873 or via electronic mail at *prc-webmaster@prc.gov.*

The appeal and all related documents are also available for public inspection in the Commission's docket section. Docket section hours are 8 a.m. to 4:30 p.m., eastern time, Monday through Friday, except on Federal government holidays. Docket section personnel may be contacted via electronic mail at *prc-dockets@prc.gov* or via telephone at 202–789–6846.

Filing of documents. All filings of documents in this case shall be made using the Internet (Filing Online) pursuant to Commission rules 9(a) and 10(a) at the Commission's Web site, *http://www.prc.gov,* unless a waiver is obtained. *See* 39 CFR 3001.9(a) and 3001.10(a). Instructions for obtaining an account to file documents online may be found on the Commission's Web site or by contacting the Commission's docket section at *prc-dockets@prc.gov* or via telephone at 202–789–6846.

The Commission reserves the right to redact personal information which may infringe on an individual's privacy rights from documents filed in this proceeding.

Intervention. Persons, other than Petitioner and respondent, wishing to be heard in this matter are directed to file a notice of intervention. *See* 39 CFR 3001.111(b). Notices of intervention in this case are to be filed on or before October 24, 2011. A notice of intervention shall be filed using the Internet (Filing Online) at the Commission's Web site unless a waiver is obtained for hardcopy filing. *See* 39 CFR 3001.9(a) and 3001.10(a).

Further procedures. By statute, the Commission is required to issue its decision within 120 days from the date it receives the appeal. *See* 39 U.S.C. 404(d)(5). A procedural schedule has been developed to accommodate this statutory deadline. In the interest of expedition, in light of the 120-day decision schedule, the Commission may request the Postal Service or other participants to submit information or memoranda of law on any appropriate issue. As required by the Commission rules, if any motions are filed, responses are due 7 days after any such motion is filed. *See* 39 CFR 3001.21.

It is ordered:

1. The Postal Service shall file the applicable administrative record regarding this appeal no later than October 11, 2011.

2. Any responsive pleading by the Postal Service to this notice is due no later than October 11, 2011.

3. The procedural schedule listed below is hereby adopted.

4. Pursuant to 39 U.S.C. 505, Derrick D. Dennis is designated officer of the Commission (Public Representative) to

represent the interests of the general public.

5. The Secretary shall arrange for publication of this notice and order in the **Federal Register.**

By the Commission.

Shoshana M. Grove,

Secretary.

PROCEDURAL SCHEDULE

September 23, 2011	Filing of Appeal.
October 11, 2011	Deadline for the Postal Service to file the applicable administrative record in this appeal.
October 11, 2011	Deadline for the Postal Service to file any responsive pleading.
October 24, 2011	Deadline for notices to intervene (*see* 39 CFR 3001.111(b)).
October 28, 2011	Deadline for Petitioners' Form 61 or initial brief in support of petition (*see* 39 CFR 3001.115(a) and (b)).
November 17, 2011	Deadline for answering brief in support of the Postal Service (*see* 39 CFR 3001.115(c)).
December 2, 2011	Deadline for reply briefs in response to answering briefs (*see* 39 CFR 3001.115(d)).
December 9, 2011	Deadline for motions by any party requesting oral argument; the Commission will schedule oral argument only when it is a necessary addition to the written filings (*see* 39 CFR 3001.116).
January 9, 2012	Expiration of the Commission's 120-day decisional schedule (*see* 39 U.S.C. 404(d)(5)).

[FR Doc. 2011–25503 Filed 10–3–11; 8:45 am]

BILLING CODE 7710–FW–P

POSTAL SERVICE

Board of Governors; Sunshine Act Meeting

DATE AND TIME: Tuesday, October 18, 2011, at 10 a.m.

PLACE: Washington, DC, at U.S. Postal Service Headquarters, 475 L'Enfant Plaza, SW.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

Tuesday, October 18, at 10 a.m. (Closed)

1. Strategic Issues.
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. 2011–25622 Filed 9–30–11; 11:15 am]

BILLING CODE 7710–12–P

PRESIDIO TRUST

Notice of Public Meeting

AGENCY: The Presidio Trust.

ACTION: Notice of Public Meeting.

SUMMARY: In accordance with § 103(c)(6) of the Presidio Trust Act, 16 U.S.C. 460bb appendix, and in accordance with the Presidio Trust's bylaws, notice is hereby given that a public meeting of the Presidio Trust Board of Directors will be held commencing 6:30 p.m. on Wednesday, October 19, 2011, at the Golden Gate Club, 135 Fisher Loop, Presidio of San Francisco, California. The Presidio Trust was created by Congress in 1996 to manage approximately eighty percent of the former U.S. Army base known as the Presidio, in San Francisco, California.

The purposes of this meeting are to take action on the minutes of a previous Board meeting, to provide the Chairperson's report, to provide the Executive Director's report, to take action on the Archaeological Collections Policy, to provide project updates, and to receive public comment on other matters in accordance with the Trust's Public Outreach Policy.

Individuals requiring special accommodation at this meeting, such as needing a sign language interpreter, should contact Mollie Matull at 415.561.5300 prior to October 12, 2011.

Time: The meeting will begin at 6:30 p.m. on Wednesday, October 19, 2011.

ADDRESSES: The meeting will be held at the Golden Gate Club, 135 Fisher Loop, Presidio of San Francisco.

FOR FURTHER INFORMATION CONTACT: Karen Cook, General Counsel, the Presidio Trust, 34 Graham Street, P.O. Box 29052, San Francisco, California 94129–0052, *Telephone:* 415–561–5300.

Dated: September 28, 2011.

Karen A. Cook,

General Counsel.

[FR Doc. 2011–25487 Filed 10–3–11; 8:45 am]

BILLING CODE 4310–4R–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 6, 2011 at 9:30 a.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 Paredes, 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 6, 2011 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 29, 2011.

Elizabeth M. Murphy,

Secretary.

[FR Doc. 2011–25659 Filed 9–30–11; 11:15 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–65424, File No. SR–MSRB–2011–11]

Self-Regulatory Organizations; Municipal Securities Rulemaking Board; Order Granting Approval of Amendments to Rule A–3, on Membership on the Board

September 28, 2011.

I. Introduction

On August 11, 2011, the Municipal Securities Rulemaking Board (''MSRB'' or ''Board''), filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Exchange Act''),[1] and Rule 19b–4 thereunder,[2] a proposed rule change consisting of amendments to Rule A–3, on membership on the Board, in order to establish a permanent Board structure of 21 Board members divided into three classes, each class being comprised of seven members who would serve three year terms. The proposed rule change was published for comment in the **Federal Register** on August 23, 2011.[3] The Commission received three comment letters regarding the proposed rule change and the MSRB's response to these comment letters.[4]

This order approves the proposed rule change.

II. Background and Description of Proposal

The purpose of the proposed rule change is to make changes to MSRB Rule A–3 as are necessary and appropriate to establish a permanent Board structure of 21 Board members divided into three classes, each class being comprised of seven members who would serve three year terms. The terms would be staggered and, each year, one class would be nominated and elected to the Board of Directors.

Rule A–3 would include a transitional provision, Rule A–3(h), applicable for the Board's fiscal years commencing October 1, 2012 and ending September 30, 2014, which would provide that Board members who were elected prior to July 2011 and whose terms end on or after September 30, 2012 may be considered for term extensions not exceeding two years, in order to facilitate the transition to three staggered classes of seven Board members per class. The transitional provision would further provide that Board members would be nominated for term extensions by a Special Nominating Committee formed pursuant to Rule A–6, on committees of the Board, and that the Board would then vote on each proposed term extension. The selection of Board members whose terms would be extended would be consistent with ensuring that the Board is in compliance with the composition requirements of revised Section (a) of Rule A–3 during such extension periods.

In an order approving changes to MSRB Rule A–3 to comply with the provisions of the Dodd-Frank Wall Street Reform and Consumer Protection Act[5] (the ''Dodd-Frank Act'') requiring the Board to have a majority of independent public members and municipal advisor representation,[6] the Commission approved a transitional provision of the rule that increased the Board from 15 to 21 members, 11 of whom would be independent public members and 10 of whom would be members representing regulated entities. Of the public members, at least one would be representative of municipal entities, at least one would be representative of institutional or retail investors, and at least one would be a member of the public with knowledge of or experience in the municipal industry. Of the regulated members, at least one would be representative of broker-dealers, at least one would be representative of bank dealers, and at least one, but not less than 30 percent of the regulated members, would be representative of municipal advisors that are not associated with broker-dealers or bank dealers.

The Commission also approved a provision in MSRB Rule A–3 that defined an independent public member as one with no material business relationship with an MSRB regulated entity, meaning that, within the last two years, the individual was not associated with a municipal securities broker, municipal securities dealer, or municipal advisor, and that the individual has no relationship with any such entity, whether compensatory or otherwise, that reasonably could affect the independent judgment or decision making of the individual. The rule further provided that the Board, or by delegation, its Nominating and Governance Committee, could also determine that additional circumstances involving the individual could constitute a material business relationship with an MSRB regulated entity.

In finding that the proposed rule change was reasonable and consistent with the requirements of the Exchange Act, in that it provided for fair representation of public representatives and MSRB regulated entities, the Commission noted that the MSRB had committed to monitor the effectiveness of the structure of the Board to determine to what extent, if any, proposed changes might be appropriate. Additionally, in its response to comment letters to the transitional rule proposal, the MSRB suggested that, at the end of the transitional period, the MSRB would be in a better position to make long-term decisions regarding representation, size and related matters. While the transitional period has not yet concluded, the Board believes it is now in a position to establish a permanent structure. A more complete description of the proposal is provided in the Commission's Notice.

III. Discussion of Comments and MSRB's Response

The Commission received three comment letters and a response from the MSRB to the comment letters.[7] The comment letters and the MSRB's responses are discussed in greater detail below.

A. Comments Regarding Board Size

SIFMA opposed a permanent Board of 21 members. SIFMA stated that such a Board is too big, would result in problems filling the ''public'' seats with qualified members, and would impose unnecessary costs. SIFMA noted that the 21-member Board exceeds the statutory minimum Board size provided in the Dodd-Frank Act, and believes any deviation from the Board size referenced in the statute should be for compelling reasons. SIFMA believes that a Board that includes 11 public representatives will create challenges in terms of recruiting candidates for Board seats with sufficient knowledge and expertise in the municipal securities market so as

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 65158 (August 18, 2011), 76 FR 52724 (the ''Commission's Notice'').

[4] *See* letter from Colette J. Irwin-Knott, President, National Association of Independent Public Finance Advisors (''NAIPFA''), dated September 12, 2011; letter from Michael Decker, Managing Director and Co-Head of Municipal Securities, Securities Industry and Financial Markets Association (''SIFMA''), dated September 13, 2011; letter from Susan Gaffney, Director, Federal Liaison Center, Government Finance Officers Association (''GFOA''), dated September 16, 2011; and letter from Lawrence P. Sandor, Senior Associate General Counsel, MSRB, dated September 19, 2011.

[5] Public Law 111–203, 124 Stat. 1376 (2010).

[6] *See* Securities Exchange Act Release No. 63025 (September 30, 2010), 75 FR 61806 (October 6, 2010) (File No. SR–MSRB–2010–08) (''Transitional Board Approval'').

[7] *See supra* note 4.

to contribute effectively in the Board's discussions. SIFMA also stated that the MSRB's resources would be better directed to key initiatives to improve the functioning of the market than to maintaining a larger Board with higher costs attributable to travel and related expenses for Board meetings and other events. SIFMA urged the MSRB to restore the Board to 15 members in the future.

The MSRB responded that it provided a strong justification for a 21-member Board in its proposed rule change. In the proposal, the MSRB stated that, given the diversity of municipal entities, broker-dealers, bank dealers, and municipal advisors, a Board of 21 members provides more flexibility to provide representation from various sectors of the markets. The MSRB also stated that, at a 21-member level, the Board would be similar in size to its counterpart, the Board of Governors of the Financial Industry Regulatory Authority, and that a Board of 21 members is appropriate and consistent with industry norms. The MSRB does not agree with SIFMA's comment concerning the difficulty of filling the ''public'' seats with individuals with sufficient knowledge and expertise in the municipal securities market. The MSRB stated that the municipal securities market is replete with individuals who, while satisfying Rule A–3's definition of ''independent,'' are very knowledgeable about the workings of the municipal securities market and have devoted a considerable amount of their time to the improvement of that market, and that previous MSRB searches for public Board members have elicited strong responses from such public servants.

The MSRB also stated that the additional costs associated with a larger Board were not substantial, and estimated the incremental cost of the larger Board at approximately one percent of its budget. The Board further stated that it does not consider such additional costs to be an impediment to the fulfillment of its key initiatives, and that the larger Board contributes significantly to those initiatives.

The Commission finds that the 21-member Board size is not inconsistent with the Exchange Act. Section 15B(b)(2)(B)(iii) of the Exchange Act provides that the rules of the Board may increase the number of Board members over the default 15-member Board structure set forth in the Exchange Act,[8] provided that such number is an odd number.[9] Although a 21-member Board would entail higher costs than a smaller Board, the larger Board would allow greater representation of the interests of the various sectors of the municipal securities market, and, as stated by the MSRB, the larger Board size is not inconsistent with industry norms. The MSRB also believes the 21-member Board has worked efficiently and effectively during the transition period.[10]

B. Comments Regarding Board Composition

All three commenters raised concerns about the Board's composition. NAIPFA agreed with the rule's requirement that there be at least one municipal advisor representative who is not associated with a broker-dealer in each elected class of board members, but commented that the Board's composition of seven broker-dealer and bank dealer members compared to three municipal advisor members did not constitute ''fair representation'' of municipal advisors as was called for by the Dodd-Frank Act.

SIFMA opposed the proposal's mandate that at least 30 percent of ''regulated'' members of the Board be representatives of municipal advisor firms that are not broker-dealers or bank dealers. SIFMA indicated that there is no comparable minimum for representatives of broker-dealers or bank dealers, noted that the 30 percent minimum representation for municipal advisors exceeds the statutory minimum, and stated that the MSRB offered no justification for this provision.

GFOA stated that the MSRB should ensure that there is adequate issuer representation on its Board in light of the MSRB's new mission to protect municipal entities and obligated persons in addition to investors. GFOA acknowledged that the Dodd-Frank Act states that the Board must be comprised of ''at least'' one issuer and ''at least'' one investor, but recommended that, if the Board remains at 21 members, the Board should include four issuers, four investors, and three general public members. GFOA also stated that the issuer positions should be filled by qualified and long-standing representatives of various-sized state and local governments so that there would be a balanced representation of the issuer community. GFOA further stated that these issuer representatives should generally come from general purpose governments that issue the most often used types of debt (*e.g.,* general obligation bonds, revenue bonds, *etc.*).

GFOA also stated that having adequate independent financial advisors on the Board is essential and that the number of such independent financial advisor representatives should be no less than the number of those representing banks and broker-dealers; GFOA further recommended allowing only those financial advisors who are unaffiliated with broker-dealers and banks to serve as the municipal advisor representatives on the Board.

In addition, GFOA said that, in order for a public Board member to be considered ''independent'' from a regulated entity, such member should have had no material business relationship with a regulated entity for the past five years, rather than the two years provided for in Rule A–3. GFOA said that this two-year bar is set too low to guarantee that a public board member has true independence, and that other criteria may also be needed to ensure that any particular independent board position be filled by a professional that has significant experience in the particular community for which he or she serves on the Board.

The MSRB stated that it has carefully considered the interests of municipal advisors, broker-dealers, and bank dealers as regulated entities, the MSRB's obligation to write rules that protect investors and municipal entities, and the statutory mandate that there be fair representation on the Board of broker-dealers, bank dealers, municipal advisors, and the public. The MSRB indicated that while the statute requires that there be at least one municipal advisor representative on the Board, it is the view of the Board that no less than 30 percent of the members representing regulated entities should be municipal advisors that are not associated with broker-dealers or bank dealers. The MSRB did not agree with SIFMA's comment that the level of representation of municipal advisors is disproportionately large, noting that the development of rules for municipal advisors is not complete and that it is essential that municipal advisors participate in the development of rules that affect them. The MSRB also did not agree with NAIPFA's comment that this level of representation of municipal advisors is disproportionately small, in relation to the representation of broker-dealers and bank dealers, stating that because many broker-dealers and bank dealers engage in municipal advisory activities, it is inappropriate to assume that the interests of the municipal advisor Board representatives and the

[8] *See* 15 U.S.C. 78*o*–4(b)(1) (as amended by the Dodd-Frank Act).

[9] *See* 15 U.S.C. 78*o*–4(b)(2)(B)(iii) (as amended by the Dodd-Frank Act).

[10] *See* Commission's Notice.

broker-dealer and bank dealer Board representatives are adverse.

The MSRB believes that the proposal adequately addresses GFOA's concerns about the adequacy of issuer representation on the Board and its proposed independence standards. The MSRB does not believe that Rule A–3 should be amended to provide for a greater minimum number of municipal entity representatives than that mandated by the Exchange Act, and noted that they have a mandate to protect all municipal entities. The MSRB also noted that the proposed rule language already addresses GFOA's concern that municipal advisor representatives not be broker-dealers or bank dealers. Further, the MSRB believes that no change to the definition of ''independent'' in Rule A–3 is warranted because the definition is already more stringent than the definition used by other self-regulatory organizations (''SROs''), and because the definition strikes the right conservative balance of ensuring sufficient independence while not permanently restricting knowledgeable individuals.

The Commission finds that the proposed Board composition is consistent with the requirements of the Exchange Act, and the rules and regulations thereunder applicable to the MSRB, including the fair representation requirements of the Exchange Act. Section 15B(b)(2)(B) of the Exchange Act requires, among other things, that the rules of the Board establish fair procedures for the nomination and election of members of the Board and assure fair representation in such nominations and elections of public representatives, broker-dealer representatives, bank representatives, and advisor representatives.[11] Section 15B(b)(2)(B)(i) of the Exchange Act provides that the number of public representatives of the Board must at all times exceed the total number of regulated representatives.[12]

The MSRB proposes that the permanent Board, like the current Board operating under the transitional rule for the Board's fiscal years commencing October 1, 2010 and ending September 30, 2012, consist of 11 public representatives and 10 regulated representatives. Of those 10 regulated representatives, the MSRB proposes that at least one, and not less than 30 percent shall be advisor representatives (*i.e.,* three out of 10).

As noted in the Transitional Board Approval,[13] previously, the Commission has considered whether the proposed governance rules of an SRO are consistent with the Exchange Act's requirements under Sections 6 and 15A for fair representation of SRO members generally.[14] For example, the Commission has approved an SRO's governance rules that require that the SRO's members as a whole be able to select at least 20 percent of the total number of directors of the exchange's or association's board.[15] In addition, the Commission has previously found SRO rules that provide sub-categories of regulated persons with the right to select a specified number of directors to be consistent with the Exchange Act.[16]

Under the MSRB proposal, of the 10 regulated representatives, at least one would be a broker-dealer representative, at least one would be a bank representative, and at least one, and not less than 30 percent of the total regulated representatives (*i.e.,* three out of 10), would be an advisor representative. Section 15B(b)(2)(B)(i) of the Exchange Act requires the Board to consist of a majority of public representatives, leaving a minority of the Board available to achieve ''fair representation'' of the three sub-categories of regulated representatives.[17] Accordingly, ''fair representation'' of each of the sub-categories must necessarily mean something less than the 20 percent standard, in relation to an entire board, previously approved by the Commission for SRO members generally under Sections 6 and 15A of the Exchange Act.

The Commission also notes that Section 15B(b)(1) of the Exchange Act sets forth minimum representation requirements for bank, broker-dealer and advisor representatives.[18] It does not mandate the specific number of any class of representatives that should serve on the Board, nor does it set forth maximum Board composition or representation requirements.[19] Thus, as with the interpretation of ''fair representation'' with respect to other SROs, the Commission has flexibility in determining what constitutes ''fair representation'' for purposes of the Board's composition under Section 15B of the Exchange Act. Based on the constraints of Section 15B(b)(2)(B)(i) noted above, and the Commission's consideration of ''fair representation'' in other contexts, the Commission believes that the MSRB's proposal to ensure that representatives of municipal advisors (that are not associated with a broker, dealer or municipal securities dealer), which first became subject to MSRB rulemaking in the Dodd-Frank Act,[20] would constitute at least 30 percent of the directors that may be representative of the three sub-categories of regulated representatives, is reasonable, and consistent with Section 15B(b)(2)(B) of the Exchange Act.[21]

[11] *See* 15 U.S.C. 78*o*–4(b)(2)(B) (as amended by the Dodd-Frank Act).

[12] *See* 15 U.S.C. 78*o*–4(b)(2)(B)(i) (as amended by the Dodd-Frank Act).

[13] *See supra,* note 6.

[14] Section 6(b)(3) of the Exchange Act provides that: ''An exchange shall not be registered as a national securities exchange unless the Commission determines that * * * (3) The rules of the exchange assure a fair representation of its members in the selection of its directors and administration of its affairs and provide that one or more directors shall be representative of issuers and investors and not be associated with a member of the exchange, broker, or dealer.'' 15 U.S.C. 78f(b)(3). Section 15A(b)(4) of the Exchange Act contains an identical requirement with respect to the rules of a national securities association. *See* 15 U.S.C. 78*o*–3(b)(4).

[15] *See, e.g.,* Securities Exchange Act Release No. 58324 (August 7, 2008), 73 FR 46936 (August 12, 2008) (stating that ''the requirement under BSE By-Laws that at least 20% of the BSE Directors represent members * * * [is] designed to ensure the fair representation of BSE members on the BSE Board''); Securities Exchange Act Release No. 53128 (January 13, 2006), 71 FR 3550 (January 23, 2006) (stating that ''the requirement in [Nasdaq's] By-Laws that twenty percent of the directors be 'Member Representative Directors' * * * provides for the fair representation of members in the selection of directors * * * consistent with the requirement in section 6(b)(3) of the Exchange Act''); Securities Exchange Act Release No. 48946 (December 17, 2003), 68 FR 74678 (December 24, 2003) (stating that the amended Constitution of the New York Stock Exchange, which gives Exchange members the ability to nominate no less than 20% of the directors on the Board, satisfies the Section 6(b)(3) fair representation requirement); *see also* Securities Exchange Act Release No. 50699 (November 18, 2004), 69 FR 71126 (December 8, 2004) (stating that ''[c]onsistent with the fair representation requirement, the [Commission's] proposed [SRO] governance rules would require that the Nominating Committee administer a fair process that provides members with the opportunity to select at least 20% of the total number of directors 'member candidates') * * * This '20% standard' for member candidates comports with previously-approved SRO rule changes that raised the issue of fair representation'').

[16] *See, e.g.,* Securities Exchange Act Release No. 56145 (July 26, 2007), 72 FR 42169 (August 1, 2007) (approving the composition of the FINRA (f/k/a NASD) Board of Governors to include three small firm Governors, one mid-size firm Governor, and three large-firm Governors, elected by members of FINRA according to their classification as a small firm, mid-size firm, or large firm).

[17] *See* 15 U.S.C. 78*o*–4(b)(2)(B)(i) (as amended by the Dodd-Frank Act).

[18] *See* 15 U.S.C. 78*o*–4(b)(1) (as amended by the Dodd-Frank Act).

[19] *See id.*

[20] *See* 15 U.S.C. 78*o*-4(b)(2) (as amended by the Dodd-Frank Act). In addition, the Dodd-Frank Act amended Section 15B of the Exchange Act to require municipal advisors to register with the Commission as of October 1, 2010. *See* Securities Exchange Act Release No. 62824 (September 1, 2010), 75 FR 54465 (September 8, 2010) (adopting interim final temporary Rule 15Ba2–6T under the Exchange Act to require the temporary registration of municipal advisors on Form MA–T).

[21] *See* 15 U.S.C. 78*o*-4(b)(2)(B) (as amended by the Dodd-Frank Act).

In finding that the transitional Board was reasonable and consistent with the requirements of the Exchange Act, the Commission noted that the MSRB had committed to monitor the effectiveness of the structure of the Board to determine to what extent, if any, proposed changes in representation might be appropriate.[22] Based on its experience during the transitional period, the MSRB has determined that the current transitional Board composition is working effectively and efficiently.[23] Accordingly, the Commission believes that the proposed Board composition, like the transitional Board composition, complies with the Exchange Act.[24] The Commission also agrees that allotting at least 30 percent of the regulated entity positions to municipal advisors that are not associated with broker-dealers or bank dealers, which is higher than the minimum representation of municipal advisors required by the Dodd-Frank Act,[25] will assist the Board in its rulemaking process with respect to municipal advisors, and will help inform the Board's decisions regarding other municipal advisory activities while not detracting from the Board's ability to continue its existing rulemaking duties with respect to broker-dealer and bank activity in the municipal securities market. The Commission also agrees with the MSRB that the existing definition of ''independent of any municipal securities broker, municipal securities dealer or municipal advisor'' in Rule A–3, which was not changed by the proposed rule change, strikes a reasonable balance of ensuring sufficient independence while not permanently restricting knowledgeable individuals. In approving the independence definition in Rule A–3, the Commission noted that the two-year cooling off period is a minimum requirement and would allow the Board, or by delegation, its Nominating Committee, to determine additional circumstances involving the individual that would constitute a ''material business relationship'' with a municipal securities broker, municipal securities dealer, or municipal advisor.[26]

C. Comments Regarding Transparency of Board Processes

NAIPFA and GFOA expressed concerns about the transparency of various Board processes. NAIPFA requested that the MSRB's Board member selection and leadership processes become more transparent in order to ensure that the public interest is being served. The MSRB responded by noting that the Board recently made the application process for Board members more transparent by establishing a policy of publishing the names of all applicants on the Board's website within one week of the publication of the names of the new Board members. NAIPFA also expressed concern that the Board members who are to serve on the Special Nominating Committee to be established as part of the proposed rule have already been selected, and expressed concerns regarding the process by which the Special Nominating Committee members were selected. The MSRB responded to the concerns about the Special Nominating Committee by stating that the selection complied with MSRB Rule A–6(a), which permits the Board to establish special committees by resolution, and noting that the members who were selected for the Special Nominating Committee for term extensions were the only Board members who met their criteria of being ''disinterested'' in the selection process because of their ineligibility for a term extension.

NAIPFA also requested that the MSRB utilize a more transparent process with regard to future rulemaking by giving member firms more information about the rules the MSRB addresses at particular Board meetings and providing the timeline with which the MSRB anticipates rule releases. NAIPFA suggested that the MSRB post meeting agendas at least 48 hours in advance of a meeting date, and allow for public attendance at Board meetings and public participation in Board conference calls. In addition, NAIPFA requested that the MSRB act to ensure that statements made by leadership are consistent with the actions of the Board.

GFOA also stated that there is a need for greater transparency with Board practices. GFOA suggested that the Board hold their meetings in public and allow for outside participation. GFOA also suggested that Board meeting agendas be made available well before the scheduled meetings, and that the meeting minutes be published within 10 business days of each meeting.

The MSRB responded that it believes its rulemaking process provides considerable opportunities for full public involvement and comment on regulatory initiatives, and that the Board is careful to consider all feedback regarding potential improvements to its governance processes. The Board does not believe that there have been inconsistencies between statements made by MSRB leadership and actions of the Board. The MSRB stated that its Board meetings are closed to the public in order to promote free and frank discussion on all topics and to promote an environment in which impartial judgment may be exercised. However, the Board indicated that it is exploring other alternatives to promote transparency, as transparency is an important priority of the Board.

Although the provisions of the proposed rule change do not directly relate to the transparency of Board processes, the Commission notes that the Board has indicated that it is exploring alternatives to promote transparency.

IV. Discussion and Commission Findings

The Commission has carefully considered the proposed rule change, the comment letters received, and the MSRB's response to the comment letters and finds that the proposed rule change is consistent with the requirements of the Exchange Act and the rules and regulations thereunder applicable to the MSRB.[27] In particular, the proposed rule change is consistent with Section 15B(b)(1) of the Act,[28] which requires, among other things, that the Board shall consist of at least eight public representatives (with at least one investor representative, at least one issuer representative, and at least one general public representative) and seven regulated representatives (with at least one broker-dealer representative, at least one bank representative, and at least one advisor representative).

The proposed rule change is also consistent with Section 15B(b)(2)(B) of the Act,[29] which provides that the MSRB's rules shall:

> Establish fair procedures for the nomination and election of members of the Board and assure fair representation in such nominations and elections of public representatives, broker dealer representatives, bank representatives, and advisor representatives. Such rules—
>
> (i) Shall provide that the number of public representatives of the Board shall at all times exceed the total number of regulated representatives and that the membership shall at all times be as evenly divided in number as possible between public representatives and regulated representatives;

[22] *See* Transitional Board Approval, *supra* note 6.

[23] *See* Commission's Notice.

[24] *See* Transitional Board Approval, *supra* note 6.

[25] *See* 15 U.S.C. 78*o*-4(b)(1) (as amended by the Dodd-Frank Act).

[26] *See* Transitional Board Approval, *supra* note 6.

[27] In approving this proposed rule change, the Commission notes that it has considered the proposed rule's impact on efficiency, competition and capital formation. 15 U.S.C. 78c(f).

[28] 15 U.S.C. 78*o*–4(b)(1).

[29] 15 U.S.C. 78*o*–4(b)(2)(B).

(ii) shall specify the length or lengths of terms members shall serve;

(iii) may increase the number of members which shall constitute the whole Board, provided that such number is an odd number; and

(iv) shall establish requirements regarding the independence of public representatives.

The Commission believes that the proposal provides for fair representation of public representatives, broker-dealers, bank dealers and municipal advisors consistent with the Exchange Act, and that providing a minimum number of non-dealer municipal advisor representatives—at least 30 percent of the regulated representatives—is reasonable, and consistent with the Exchange Act. The Commission notes that the proposal provides that the number of public representatives on the Board shall exceed the total number of regulated representatives by one so that the membership shall be as evenly divided as possible between public representatives and regulated representatives—11 to 10. The proposal specifies the length of terms that Board members will serve—three years—which is consistent with the length of the terms served by Board members prior to the adoption of the Dodd-Frank Act. The proposal increases the size of the Board from 15 to 21, consistent with the size of the Board during the transitional period that commenced on October 1, 2010. Finally, the proposal maintains the existing requirement regarding the independence of public representatives.

V. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Exchange Act,[30] that the proposed rule change (SR–MSRB–2011–11) be, and it hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[31]

Elizabeth M. Murphy,

Secretary.

[FR Doc. 2011–25478 Filed 10–3–11; 8:45 am]

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[30] 15 U.S.C. 78s(b)(2).

[31] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–65418; File No. SR–NYSEArca–2011–66]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Amending Commentary .04 to Rule 6.4 in Order To Simplify the $1 Strike Price Program

September 28, 2011.

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 26, 2011, NYSE Arca, Inc. (the ''Exchange'' or ''NYSE Arca'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend Commentary .04 to Rule 6.4 in order to simplify the $1 Strike Price Program. The text of the proposed rule change is available on the Exchange's Web site at *http://www.nyse.com,* at the Exchange's principal office, on the Commission's Web site at *http://www.sec.gov,* and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange is proposing to amend Commentary .04 to Rule 6.4 in order to simplify the $1 Strike Price Program (''Program'').

In 2003, the Commission issued an order permitting the Exchange to establish the Program on a pilot basis.[3] At that time, the underlying stock had to close at or below $20 on the previous trading day in order to qualify for the Program. The range of available $1 strike price intervals was limited to a range between $3 and $20 and no strike price was permitted that was greater than $5 from the underlying stock's closing price on the previous trading day. Series in $1 strike price intervals were not permitted within $0.50 of an existing strike. In addition, the Exchange was limited to selecting five (5) classes and reciprocal listing was permitted. Furthermore, Long-Term Equity Option Series (''LEAPS'') in $1 strike price intervals were not permitted for classes selected to participate in the Program.

The Exchange renewed the pilot program on a yearly basis and, in 2008, the Exchange adopted the pilot program on a permanent basis.[4] At that time, the Program was expanded to increase the upper limit of the permissible strike price range from $20 to $50. In addition, the number of class selections per exchange was increased from five (5) to ten (10).

Since the Program was made permanent, the number of class selections per exchange has been increased from ten (10) classes to 55 classes [5] and subsequently increased from 55 classes to 150 classes.[6]

The most recent expansion of the Program was approved by the Commission in early 2011 and increased the number of $1 strike price intervals permitted within the $1 to $50 range.[7]

Amendments To Simplify Non-LEAPS Rule Text

These numerous expansions have resulted in very lengthy rule text that the Exchange believes is complicated and difficult to understand. The Exchange believes that the proposed changes to simplify the rule text of the Program would benefit market

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 48045 (June 17, 2003), 68 FR 37594 (June 24, 2003) (SR–PCX–2003–28).

[4] *See* Securities Exchange Act Release No. 57130 (January 10, 2008), 73 FR 3302 (January 17, 2008) (SR–NYSEArca–2008–04).

[5] *See* Securities Exchange Act Release No. 59587 (March 17, 2009), 74 FR 12414 (March 24, 2009) (SR–NYSEArca–2009–10).

[6] *See* Securities Exchange Act Release No. 62450 (July 2, 2010), 75 FR 39712 (July 12, 2010) (SR–NYSEArca–2010–66).

[7] *See* Securities Exchange Act Release No. 63770 (January 25, 2011), 76 FR 5627 (February 1, 2011) (SR–NYSEArca–2010–106).

participants since the Program will be easier to understand and would maintain the expansions made to the Program, including those in early 2011. Through the current proposal, the Exchange also hopes to make administration of the Program easier, *e.g.,* system programming efforts. To simplify the rules of the Program and, as a proactive attempt to mitigate any unintentional listing of improper strikes, the Exchange is proposing the following streamlining amendments:

- When the price of the underlying stock is equal to or less than $20, permit $1 strike price intervals with an exercise price up to 100% above and 100% below the price of the underlying stock.[8]
  - However, the above restriction would not prohibit the listing of at least five (5) strike prices above and below the price of the underlying stock per expiration month in an option class.[9]
  - For example, if the price of the underlying stock is $2, the Exchange would be permitted to list the following series: $1, $2, $3, $4, $5, $6 and $7.[10]
- When the price of the underlying stock is greater than $20, permit $1 strike price intervals with an exercise price up to 50% above and 50% below the price of the underlying security up to $50.[11]
- For the purpose of adding strikes under the Program, the ''price of the underlying stock'' shall be measured in the same way as ''the price of the underlying security'' is, as set forth in Rule 6.4A(b)(1).[12]
- Prohibit the listing of additional series in $1 strike price intervals if the underlying stock closes at or above $50 in its primary market and provide that additional series in $1 strike price intervals may not be added until the underlying stock closes again below $50.[13]

Amendments To Simplify LEAPS Rule Text

The early 2011 expansion of the Program permitted for some limited listing of LEAPS in $1 strike price intervals for classes that participate in the Program. The Exchange is proposing to maintain the expansion as to LEAPS, but simplify the language and provide examples of the simplified rule text. These changes are set forth in proposed new paragraph (b)(v) to Commentary .04 to Rule 6.4.

For stocks in the Program, the Exchange may list one $1 strike price interval between each standard $5 strike price interval, with the $1 strike price interval being $2 above the standard strike for each interval above the price of the underlying stock, and $2 below the standard strike for each interval below the price of the underlying stock (''$2 wings''). For example, if the price of the underlying stock is $24.50, the Exchange may list the following standard strikes in $5 intervals: $15, $20, $25, $30 and $35. Between these standard $5 strikes, the Exchange may list the following $2 wings: $18, $27 and $32.[14]

In addition, the Exchange may list the $1 strike price interval which is $2 above the standard strike just below the underlying price at the time of listing. In the above example, since the standard strike just below the underlying price ($24.50) is $20, the Exchange may list a $22 strike. The Exchange may add additional LEAP strikes as the price of the underlying stock moves, consistent with the Options Listing Procedures Plan (''OLPP'').

Non-Substantive Amendments to Rule Text

The early 2011 expansion of the Program prohibited the listing of $2.50 strike price intervals for classes that participate in the Program. This prohibition applies to non-LEAPS and LEAPS. The Exchange proposes to maintain this prohibition and codify it in paragraph (a) to Commentary .04 to Rule 6.4 (Program Description).

For ease of reference, the Exchange is proposing to add the headings ''Program Description,'' ''Initial and Additional Series'' and ''LEAPS'' to Commentary .04 to Rule 6.4.

The Exchange is proposing to more accurately reflect the nature of the Program and is proposing to make stylistic changes throughout Commentary .04 to Rule 6.4 by renaming the Program ''The $1 Strike Price Interval Program'' and by adding the phrase ''price interval.''

The Exchange proposes to reorganize certain text of Commentary .04 to Rule 6.4 and portions of the Delisting Policy therein in order to better organize Commentary .04. This would include moving current paragraph (b) out of Commentary .04 and instead including the text as new Commentary .13 to Rule 6.4.

Lastly, the Exchange is making technical changes to Commentary .04 to Rule 6.4, *e.g.,* replacing the word ''security'' with the word ''stock.''

The Exchange represents that it has the necessary systems capacity to support the increase in new options series that would result from the proposed streamlining changes to the Program.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,[15] in general, and furthers the objectives of Section 6(b)(5) of the Act,[16] in particular, because it is designed to promote just and equitable principles of trade, remove impediments to and perfect the mechanisms of a free and open market and a national market system and, in general, to protect investors and the public interest. In particular, the proposed rule change seeks to reduce investor confusion and to simplify the provisions of the $1 Strike Price Interval Program.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,[17] in general, and furthers the objectives of Section 6(b)(5) of the Act,[18] in particular, because it is designed to promote just and equitable

[8] *See* proposed new paragraph (b)(i) to Commentary .04 to Rule 6.4.

[9] *Id.*

[10] *Id.*

[11] *See* proposed new paragraph (b)(ii) to Commentary .04 to Rule 6.4.

[12] *See* proposed new paragraph (b)(iii) to Commentary .04 to Rule 6.4. Rule 6.4A(b)(1) provides, ''[t]he price of the underlying security is measured by: (1) For intra-day add-on series and next-day series additions, the daily high and low of all prices reported by all national securities exchanges; (2) for new expiration months, the daily high and low of all prices reported by all national securities exchanges on the day the Exchange determines its preliminary notification of new series; and (3) for options series to be added as a result of pre-market trading, the most recent share price reported by all national securities exchanges between 8:45 a.m. and 9:30 a.m. Eastern Time.''

[13] *See* proposed new paragraph (b)(iv) to Commentary .04 to Rule 6.4. The Exchange believes that it is important to codify this additional series criterion because there have been conflicting interpretations among the exchanges that have adopted similar programs. The $50 price criterion for additional series was intended when the Program was originally established (as a pilot) in 2003. *See supra* note 4 (''the Exchange may list an additional expiration month for a $1 strike series provided that the underlying strike price closes b[e]low $20 on its primary market on expiration Friday. If the underlying closes at or above $20 on expiration Friday, the Exchange would not list an additional month for $1 strike series until the stock again closes below $20.'').

[14] The Exchange notes that a $2 wing is not permitted between the standard $20 and $25 strikes in the above example. This is because the $2 wings are added based on reference to the price of the underlying and as being between the standard strikes above and below the price of the underlying stock. Since the price of the underlying stock ($24.50) straddles the standard strikes of $20 and $25, no $2 wing is permitted between these standard strikes.

[15] 15 U.S.C. 78f(b).

[16] 15 U.S.C. 78f(b)(5).

[17] 15 U.S.C. 78f(b).

[18] 15 U.S.C. 78f(b)(5).

principles of trade, remove impediments to and perfect the mechanisms of a free and open market and a national market system and, in general, to protect investors and the public interest. In particular, the proposed rule change seeks to reduce investor confusion and to simplify the provisions of the $1 Strike Price Interval Program.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not significantly affect the protection of investors or the public interest, does not impose any significant burden on competition, and, by its terms, does not become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act [19] and Rule 19b–4(f)(6) thereunder.[20]

The Exchange has requested that the Commission waive the 30-day operative delay. The Commission believes that waiver of the operative delay is consistent with the protection of investors and the public interest because the proposal is substantially similar to that of another exchange that has been approved by the Commission.[21] Therefore, the Commission designates the proposal operative upon filing.[22]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–NYSEArca–2011–66 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–NYSEArca–2011–66. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make publicly available. All submissions should refer to File Number SR–NYSEArca–2011–66 and should be submitted on or before October 25, 2011.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[23]

Elizabeth M. Murphy,

Secretary.

[FR Doc. 2011–25475 Filed 10–3–11; 8:45 am]

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[19] 15 U.S.C. 78s(b)(3)(A).

[20] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6)(iii) requires the Exchange to give the Commission written notice of the Exchange's intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied the five-day prefiling requirement.

[21] *See* Securities Exchange Act Release No. 65383 (September 22, 2011) (SR–CBOE–2011–040) (order approving proposed rule change to simplify the $1 Strike Price Interval Program).

[22] For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[23] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–65420; File No. SR–Phlx–2011–128]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by NASDAQ OMX PHLX LLC Regarding Simplification of the Exchange's $1 Strike Price Program

September 28, 2011.

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 27, 2011, NASDAQ OMX PHLX LLC (''Phlx'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange is filing with the Commission a proposal to modify Commentary .05 to Phlx Rule 1012 (Series of Options Open for Trading) to simplify the Exchange's $1 Strike Price Program (the ''$1 Strike Program'' or ''Program'').

The Exchange requests that the Commission waive the 30-day operative delay period contained in Exchange Act Rule 19b–4(f)(6)(iii).[3]

The text of the proposed rule change is available on the Exchange's Web site at *http://nasdaqomxphlx.cchwallstreet.com/NASDAQOMXPHLX/Filings/,* at the Exchange's principal office, on the Commission's Web site at *http://www.sec.gov,* and at the Commission's Public Reference Room.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 17 CFR 240.19b–4(f)(6)(iii).

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 this proposed rule change is to modify Commentary .05 to Phlx Rule 1012 to simplify the Exchange's $1 Strike Program.

In 2003, the Commission issued an order permitting the Exchange to establish the Program on a pilot basis.[4] At that time, the underlying stock had to close at $20 on the previous trading day in order to qualify for the Program. The range of available $1 strike price intervals was limited to a range between $3 and $20 and no strike price was permitted that was greater than $5 from the underlying stock's closing price on the previous trading day. Series in $1 strike price intervals were not permitted within $0.50 of an existing strike. In addition, the Exchange was limited to selecting five (5) classes and reciprocal listing was permitted. Furthermore, LEAPS[5] in $1 strike price intervals were not permitted for classes selected to participate in the Program. The Exchange renewed the pilot program on a yearly basis.[6]

In 2008, the Program was expanded and the Commission granted permanent approval of the Program.[7] At that time, the Program was expanded to increase the upper limit of the permissible strike price range from $20 to $50. In addition, the number of class selections per exchange was increased from five (5) to ten (10). Since the Program was made permanent, the number of class selections per exchange has been increased from ten (10) classes to 55 classes.[8] The number of class selections per exchange has been last expanded to 150 classes in 2010.[9]

Amendments To Simplify Non-LEAPS Rule Text

The development and expansion of the Program has resulted in very lengthy rule text that is complicated and could be difficult to understand. The Exchange believes that the proposed changes to simplify the rule text of the Program will benefit market participants since the Program will be easier to understand and will maintain the expansions that were made to the Program in 2010. Through the current proposal, the Exchange also hopes to make administration of the Program easier (*e.g.,* system programming efforts). To simply the rules of the Program and, as a proactive attempt to mitigate any unintentional listing of improper strikes, the Exchange is proposing the following streamlining amendments:

- When the price of the underlying stock is equal to or less than $20, permit $1 strike price intervals with an exercise price up to 100% above and 100% below the price of the underlying stock.[10]
  - However, the above restriction would not prohibit the listing of at least five (5) strike prices above and below the price of the underlying stock per expiration month in an option class.[11]
  - For example, if the price of the underlying stock is $2, the Exchange would be permitted to list the following series: $1, $2, $3, $4, $5, $6 and $7.[12]
- When the price of the underlying stock is greater than $20, permit $1 strike price intervals with an exercise price up to 50% above and 50% below the price of the underlying security up to $50.[13]
- For the purpose of adding strikes under the Program, the ''price of the underlying stock'' shall be measured in the same way as ''the price of the underlying security'' set forth in subparagraph (a) of Commentary .10 to Rule 1012.[14]
- Prohibit the listing of additional series in $1 strike price intervals if the underlying stock closes at or above $50 in its primary market and provide that additional series in $1 strike price intervals may not be added until the underlying stock closes again below $50.[15]

Amendments To Simplify LEAPS Rule Text

The 2010 expansion of the Program permitted for some limited listing of LEAPS in $1 strike price intervals for classes that participate in the Program. The Exchange is proposing to maintain the expansion as to LEAPS, but simplify the language and provide examples of the simplified rule text. These changes are set forth in proposed subparagraph (a)(i)(B)(5) of Commentary .05 to Rule 1012.

For stocks in the Program, the Exchange may list one $1 strike price interval between each standard $5 strike interval, with the $1 strike price interval being $2 above the standard strike for each interval above the price of the underlying stock, and $2 below the standard strike for each interval below the price of the underlying stock (''$2 wings''). For example, if the price of the underlying stock is $24.50, the Exchange may list the following standard strikes in $5 intervals: $15, $20, $25, $30 and $35. Between these standard $5 strikes, the Exchange may list the following $2 wings: $18, $27 and $32.[16]

[4] *See* Securities Exchange Act Release No. 48013 (June 11, 2003), 68 FR 35933 (June 17, 2003) (SR–Phlx–2002–55) (approval of pilot program).

[5] Long-Term Equity Anticipation Securities (LEAPS) are long-term options that generally have up to thirty-nine months from the time they are listed until expiration. Commentary .03 to Rule 1012. Long-term FLEX options and index options are considered separately in Rules 1079(a)(6) and 1101A(b)(iii), respectively.

[6] Securities Exchange Act Release Nos. 49801 (June 3, 2004), 69 FR 32652 (June 10, 2004) (SR–Phlx–2004–38); 51768 (May 31, 2005), 70 FR 33250 (June 7, 2005) (SR–Phlx–2005–35); 53938 (June 5, 2006), 71 FR 34178 (June 13, 2006) (SR–Phlx–2006–36); and 55666 (April 25, 2007), 72 FR 23879 (May 1, 2007) (SR–Phlx–2007–29).

[7] *See* Securities Exchange Act Release No. 57111 (January 8, 2008), 73 FR 2297 (January 14, 2008) (SR–Phlx–2008–01).

[8] *See* Securities Exchange Act Release No. 59590 (March 17, 2009), 74 FR 12412 (March 24, 2009) (SR–Phlx–2009–21).

[9] *See* Securities Exchange Act Release No. 62420 (June 30, 2010), 75 FR 39593 (July 9, 2010) (SR–Phlx–2010–72).

[10] *See* proposed new subparagraph (a)(i)(B)(1) of Commentary .05 to Rule 1012.

[11] *Id.*

[12] *Id.*

[13] *See* proposed new subparagraph (a)(i)(B)(2) of Commentary .05 to Rule 1012.

[14] *See* proposed new subparagraph (a)(i)(B)(3) of Commentary .05 to Rule 1012. Subparagraph (a) of Commentary .10 to Rule 1012 provides, in relevant part, that the price of the underlying security is measured by: (i) For intra-day add-on series and next-day series additions, the daily high and low of all prices reported by all national securities exchanges; (ii) for new expiration months, the daily high and low of all prices reported by all national securities exchanges on the day the Exchange determines to list a new series; and (iii) for option series to be added as a result of pre-market trading, the most recent share price reported by all national securities exchanges between 8:45 a.m. and 9:30 a.m. Eastern Time.

[15] The Exchange believes that other markets that have $1 strike programs will submit similar proposals to the Commission, and therefore proposes the $50 dollar prohibition in this filing for purposes of uniformity. The Exchange intends, however, to subsequently propose an amendment to the $50 prohibition so that it would not impede addition series in $1 strike price intervals in certain circumstances (*e.g.* stock gapping).

[16] The Exchange notes that a $2 wing is not permitted between the standard $20 and $25 strikes in the above example. This is because the $2 wings are added based on reference to the price of the underlying and as being between the standard

In addition, the Exchange may list the $1 strike price interval which is $2 above the standard strike just below the underlying price at the time of listing. In the above example, since the standard strike just below the underlying price ($24.50) is $20, the Exchange may list a $22 strike. The Exchange may add additional long-term options series strikes as the price of the underlying stock moves, consistent with the OLPP.

Non-Substantive Amendments to Rule Text

The 2010 expansion of the Program prohibited the listing of $2.50 strike price intervals for classes that participate in the Program. This prohibition applies to non-LEAP and LEAPS. The Exchange proposes to maintain this prohibition and codify it in proposed new subparagraph (a)(i)(A) of Commentary .05 to Rule 1012.

For ease of reference, the Exchange is proposing to add the headings ''$1 Strike Price Interval Program,'' ''Initial and Additional Series,'' and ''LEAPS'' to Commentary .05 of Rule 1012. And finally, the Exchange is making non-substantive, technical changes to the proposed rule such as replacing the word ''security'' with the word ''stock.''

The Exchange represents that it has the necessary systems capacity to support the increase in new options series that will result from the proposed streamlining changes to the Program.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act [17] in general, and furthers the objectives of Section 6(b)(5) of the Act [18] in particular, in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general to protect investors and the public interest. In particular, the proposed rule change seeks to reduce investor confusion and to simplify the provisions of the $1 Strike Program.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not significantly affect the protection of investors or the public interest, does not impose any significant burden on competition, and, by its terms, does not become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act [19] and Rule 19b–4(f)(6) thereunder.[20]

The Exchange has requested that the Commission waive the 30-day operative delay. The Commission believes that waiver of the operative delay is consistent with the protection of investors and the public interest because the proposal is substantially similar to that of another exchange that has been approved by the Commission.[21] Therefore, the Commission designates the proposal operative upon filing.[22]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–Phlx–2011–128 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–Phlx–2011–128. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make publicly available. All submissions should refer to File Number SR–Phlx–2011–128 and should be submitted on or before October 25, 2011.

strikes above and below the price of the underlying stock. Since the price of the underlying stock ($24.50) straddles the standard strikes of $20 and $25, no $2 wing is permitted between these standard strikes.

[17] 15 U.S.C. 78f(b).

[18] 15 U.S.C. 78f(b)(5).

[19] 15 U.S.C. 78s(b)(3)(A).

[20] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6)(iii) requires the Exchange to give the Commission written notice of the Exchange's intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Commission has waived the five-day prefiling requirement in this case.

[21] *See* Securities Exchange Act Release No. 65383 (September 22, 2011) (SR–CBOE–2011–040) (order approving proposed rule change to simplify the $1 Strike Price Interval Program).

[22] For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[23]

Elizabeth M. Murphy,

Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–65435; File No. SR–NASDAQ–2011–131]

Self-Regulatory Organizations; The Nasdaq Stock Market LLC; Notice of Filing of Proposed Rule Change To Revise the Methodology for Determining When to Halt Trading Due to Extraordinary Market Volatility

September 28, 2011.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on September 27, 2011, The NASDAQ Stock Market LLC (''NASDAQ'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I and II, below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange, pursuant to Section 19(b)(1) of the Act[3] and Rule 19b–4 thereunder,[4] proposes to amend Exchange Rule 4121 to revise the methodology for determining when to halt trading in all stocks due to extraordinary market volatility. The proposal is made in conjunction with all national securities exchanges and the Financial Industry Regulatory Authority (''FINRA'').

The text of the proposed rule change is available on the Exchange's Web site at *http://nasdaq.cchwallstreet.com,* at the principal office of the Exchange, at the Commission's Public Reference Room, and at the Commission's Web site at *http://www.sec.gov.*

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 Exchange proposes to amend Exchange Rule 4121 to revise the current methodology for determining when to halt trading in all stocks due to extraordinary market volatility. The Exchange is proposing this rule change in consultation with other equity, options, and futures markets, the Financial Industry Regulatory Authority, Inc. (''FINRA''), and staffs of the Commission and the Commodity Futures Trading Commission.

Since May 6, 2010, when the markets experienced excessive volatility in an abbreviated time period, *i.e.,* the ''flash crash,'' the exchanges and FINRA have implemented market-wide measures designed to restore investor confidence by reducing the potential for excessive market volatility. Among the measures adopted include pilot plans for stock-by-stock trading pauses[5] and related changes to the clearly erroneous execution rules[6] and more stringent market maker quoting requirements.[7] In addition, on April 5, 2011, the equities exchanges and FINRA filed a plan pursuant to Rule 608 of Regulation NMS to address extraordinary market volatility (the ''Limit Up-Limit Down Plan'').[8] As proposed, the Limit Up-Limit Down Plan is designed to prevent trades in individual NMS stocks from occurring outside specified price bands.

The Joint CFTC–SEC Advisory Committee on Emerging Regulatory Issues (''Committee'') has recommended that, in addition to the initiatives already adopted or proposed, the markets should consider reforming the existing market-wide circuit breakers. Among other things, the Committee noted that the interrelatedness of today's highly electronic markets warrants the need to review the present operation of the system-wide circuit breakers now in place. Specifically, the Committee recommended that the markets consider replacing the Dow Jones Industrial Average (''DJIA'') with the S&P 500® Index (''S&P 500''), revising the 10%, 20%, and 30% decline percentages, reducing the length of trading halts, and allowing halts to be triggered up to 3:30 p.m.[9]

The exchanges and FINRA have taken into consideration the Committee's recommendations, and with some modifications, have proposed changes to market-wide circuit breakers that the Exchange believes will provide for a more meaningful measure in today's faster, more electronic markets, of when to halt stocks on a market-wide basis as a result of rapid market declines.

Background

The Exchange adopted Rule 4121 when it registered as an exchange in January of 2006.[10] Rule 4121 provides that upon SEC request Nasdaq will halt all domestic trading in both securities listed on Nasdaq and securities traded on Nasdaq pursuant to unlisted trading privileges if other major securities markets initiate marketwide trading halts in response to extraordinary market conditions. In effect, the Exchange agreed via Rule 4121 to abide by marketwide halts called for by the SEC in conjunction with other listing markets. The standards governing such halts were adopted in 1988 as part of an effort by the securities and futures markets to implement a coordinated means to address potentially destabilizing market volatility.[11]

The purpose of a marketwide halt, as embodied in Rule 4121, is to enable market participants to establish an equilibrium between buying and selling interest and to ensure that market participants have an opportunity to become aware of and respond to significant price movements. Importantly, the market-wide circuit breakers were not intended to prevent markets from adjusting to new price levels; rather, they provide for a speed

[23] 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)(1).

[4] 17 CFR 240.19b–4.

[5] NASDAQ Rule 4120(a)(11).

[6] NASDAQ Rule 11890.

[7] NASDAQ Rule 4613.

[8] *See* Securities Exchange Act Release No. 64547 (May 25, 2011), 76 FR 31647 (June 1, 2011).

[9] *See* Summary Report of the Committee, ''Recommendations Regarding Regulatory Responses to the Market Events of May 6, 2010'' (Feb, 18, 2011).

[10] *See* Securities Exchange Act Release No. 53128 (Jan. 13, 2006).

[11] *See* Securities Exchange Act Release No. 26198 (Oct. 19, 1988).

bump for extremely rapid market declines.[12]

The current standard, set forth in the rules of other exchanges,[13] provides for Level 1, 2, and 3 declines and specified trading halts following such declines. The values of Levels 1, 2 and 3 are calculated at the beginning of each calendar quarter, using 10%, 20% and 30%, respectively, of the average closing value of the DJIA for the month prior to the beginning of the quarter. Each percentage calculation is rounded to the nearest fifty points to create the Levels' trigger points. The values then remain in effect until the next quarterly calculation, notwithstanding whether the DJIA has moved and a Level 1, 2, or 3 decline is no longer equal to an actual 10%, 20%, or 30% decline in the most recent closing value of the DJIA.

Once a marketwide circuit breaker is in effect, trading in all stocks halt for the time periods specified below:

Level 1 Halt

anytime before 2 p.m.—one hour;
at or after 2 p.m. but before 2:30 p.m.—30 minutes;
at or after 2:30 p.m.—trading shall continue, unless there is a Level 2 Halt.

Level 2 Halt

anytime before 1 p.m.—two hours;
at or after 1 p.m. but before 2 p.m.—one hour;
at or after 2 p.m.—trading shall halt and not resume for the rest of the day.

Level 3 Halt

at any time—trading shall halt and not resume for the rest of the day.

Unless stocks are halted for the remainder of the trading day, price indications are disseminated during a Rule 80B trading halt for stocks that comprise the DJIA.

Proposed Amendments

As noted above, the Exchange, other equities, options, and futures markets, and FINRA propose to amend the market-wide circuit breakers to take into consideration the recommendations of the Committee, and to provide for more meaningful measures in today's markets of when to halt trading in all stocks. Accordingly, the Exchange proposes to amend Rule 4121 to create the following standards: (i) Replace the DJIA with the S&P 500; (ii) replace the quarterly calendar recalculation of Rule 80B triggers with daily recalculations; (iii) replace the 10%, 20%, and 30% market decline percentages with 7%, 13%, and 20% market decline percentages; (iv) modify the length of the trading halts associated with each market decline level; and (v) modify the times when a trading halt may be triggered. The Exchange believes that these proposed amendments update the rule to reflect today's high-speed, highly electronic trading market while still ensuring that market participants have an opportunity to become aware of and respond to significant price movements.

First, the Exchange proposes to replace the DJIA with the S&P 500. The Exchange believes that because the S&P 500 is based on the trading prices of 500 stocks, as compared to the 30 stocks that comprise the DJIA, the S&P 500 represents a broader base of securities against which to measure whether extraordinary market-wide volatility is occurring. In addition, as noted by the Committee, using an index that correlates closely with derivative products, such as the E–Mini and SPY, will allow for a better cross-market measure of market volatility.

Second, the Exchange proposes to change the recalculation of the trigger values from once every calendar quarter to daily. The Exchange believes that updating the trigger values daily will better reflect current market conditions. In particular, a daily recalculation will ensure that the percentage drop triggers relate to current market conditions, and are not compared to what may be stale market conditions. As noted in the proposed rule, the daily calculations of the trigger values will be published before the trading day begins.[14]

Third, the Exchange proposes to decrease the current Level 1, 2, and 3 declines of 10%, 20%, and 30% to a Level 1 Market Decline of 7%, a Level 2 Market Decline of 13%, and Level 3 Market Decline of 20%. In particular, as demonstrated by the May 6, 2010 flash crash, the current Level 1 10% decline may be too high a threshold before determining whether to halt trading across all securities. In fact, since adoption, the markets have halted only once, on October 27, 1997.[15] Accordingly, to reflect the potential that a lower, yet still significant decline may warrant a market-wide trading halt, the Exchange proposes to lower the market decline percentage thresholds.

As further proposed, the Exchange would halt trading based on a Level 1 or Level 2 Market Decline only once per day. For example, if a Level 1 Market Decline were to occur and trading were halted, following the reopening of trading, the Exchange would not halt the market again unless a Level 2 Market Decline were to occur. Likewise, following the reopening of trading after a Level 2 Market Decline, the Exchange would not halt trading again unless a Level 3 Market Decline were to occur, at which point, trading in all stocks would be halted until the primary market opens the next trading day.

Fourth, to correspond with the lower percentages associated with triggering a trading halt, the Exchange also proposes to shorten the length of the market-wide trading halts associated with each Level. As proposed, a Level 1 or 2 Market Decline occurring after 9:30 a.m. Eastern and up to and including 3:25 p.m. Eastern, would result in a trading halt in all stocks for 15 minutes.

The Exchange believes that by reducing the percentage threshold, coupled with the reduced length of a trading halt, the proposed rule would allow for trading halts for serious market declines, while at the same time, would minimize disruption to the market by allowing for trading to continue after the proposed more-abbreviated trading halt. The Exchange believes that in today's markets, where trading information travels in micro-second speed, a 15-minute trading halt strikes the appropriate balance between the need to halt trading for market participants to assess the market, while at the same time reducing the time that the market is halted.

Finally, because the proposed Level 1 and Level 2 trading halts will now be 15 minutes, the Exchange proposes amending the rule to allow for a Level 1 or 2 Market Decline to trigger a trading halt up to 3:25 p.m. (or, in the case of scheduled early closure, at 12:25 p.m.). Under the current rule, a trading halt cannot be triggered after 2:30 p.m., and this time corresponds to the need for the markets both to reopen following a 30-minute halt and to engage in a fair and orderly closing process. However, as the markets experienced on May 6, 2010,

[12] *Id.*

[13] The rule was last amended in 1998, when declines based on specified point drops in the DJIA were replaced with the current methodology of using a percentage decline that is recalculated quarterly. *See* Securities Exchange Act Release No. 39846 (April 9, 1998), 63 FR 18477 (April 15, 1998) (SR–NYSE–98–06, SR–Amex–98–09, SR–BSE–98–06, SR–CHX–98–08, SR–NASD–98–27, and SR–Phlx–98–15).

[14] The Exchange and other markets will advise via Trader Update the specific methodology for publishing the daily calculations, as well as the manner by which the markets will halt trading in all stocks should a Rule 4121 trading halt be triggered.

[15] At that time, the triggers were based on absolute declines in the DJIA (350 point decrease for a Level 1 halt and 550 point decrease for a Level 2 halt).

even if the Level 1 decline had occurred that day, because the market decline occurred after 2:30 p.m., it would not have triggered a halt under the current rule. The Committee recommended that trading halts be triggered up to 3:30 p.m. The Exchange agrees that the proposed amendments must strike the appropriate balance between permitting trading halts as late in the day as feasible without interrupting the closing process.

Accordingly, to accommodate existing Exchange rules concerning closing procedures, including the publication of imbalance information beginning at 3:50 p.m. and the restrictions on entry and cancellation of market on close (''MOC'') and limit on close (''LOC'') orders after 3:45 p.m.,[16] the Exchange proposes that the last Level 1 or Level 2 Market Decline trading halt should begin no later than 3:25 p.m. (or, in the case of scheduled early closure, at 12:25 p.m.). The Exchange proposes 3:25 p.m. as the cut-off time so that there is time following the 15-minute trading halt for the markets to reopen before the 3:45 cut-off for entry and cancellation of MOC and LOC orders under Exchange rules.

Under the proposed rule, a Level 3 Market Decline would halt trading for the remainder of the trading day, including any trading that may take place after 4 p.m., Eastern, and would not resume until the next trading day.

In addition to these proposed changes, the Exchange proposes to add to Rule 4121 how the markets will reopen following a 15-minute trading halt. In particular, the Exchange proposes that if the primary market halts trading in all stocks, all markets will halt trading in those stocks until the primary market has resumed trading or notice has been provided by the primary market that trading may resume. As further proposed, if the primary market does not re-open a security within 15 minutes following the end of the trading halt, other markets may resume trading in that security.

2. Statutory Basis

The statutory basis for the proposed rule change is Section 6(b)(5) of the Act,[17] which requires the rules of an exchange to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest. The proposed rule change also is designed to support the principles of Section 11A(a)(1)[18] of the Act in that it seeks to assure fair competition among brokers and dealers and among exchange markets. The Exchange believes that the proposed rule meets these requirements in that it promotes transparency and uniformity across markets concerning decisions to pause [sic] trading in a security when there are significant price movements.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission

Action

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) As the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the Exchange consents, the Commission will:

(A) By order approve or disapprove such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed changes to the market-wide circuit breaker regime are consistent with the Act. The Commission specifically requests comment on the following:

• As discussed above, the proposed rule change would narrow the percentage market declines that would trigger a market-wide halt in trading. How would the proposed changes interact with the existing single-stock circuit breaker pilot program[19] or, if approved, the proposed NMS Plan to establish a limit-up/limit-down mechanism for individual securities?[20]

• To what extent could the concurrent triggering of single stock circuit breakers in many S&P 500 Index stocks lead to difficulties in calculating the index? Would the triggering of many single stock circuit breakers in a general market downturn cause the index calculation to become stale and thereby delay the triggering of the market-wide circuit breaker?

• Should the market-wide circuit breaker be triggered if a sufficient number of single-stock circuit breakers or price limits are triggered, and materially affect calculations of the S&P 500 Index?

• Should market centers implement rules that mandate cancellation of pending orders in the event a market-wide circuit breaker is triggered? If so, should such a rule require cancellation of all orders or only certain order types (*e.g.,* limit orders)? Should all trading halts trigger such cancellation policies or should the cancellation policies apply only to a Level 3 Market Decline?

• Should some provision be made to end the regular trading session if a market decline suddenly occurs after 3:25 p.m. but does not reach the 20% level?

• In the event of a Level 3 Market Decline, should some provision be made for the markets to hold a closing auction?

• Should the primary market have a longer period (*e.g.,* 30 minutes) to reopen trading following a Level 2 Market Decline before trading resumes in other venues?

• In the event of a Level 3 Market Decline, should the markets wait for the primary market to reopen trading in a particular security on the next trading day before trading in that security resumes?

Comments may be submitted by any of the following methods:

Electronic Comments

• Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or

• Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–NASDAQ–2011–131 on the subject line.

[16] *See* NASDAQ Rule 4754(b).

[17] 15 U.S.C. 78f(b)(5).

[18] 15 U.S.C. 78k–1(a)(1).

[19] *See* Securities Exchange Act Release No. 64735 (June 23, 2011), 76 FR 38243 (June 29, 2011) (SR–BATS–2011–016; SR–BYX–2011–011; SR–BX–2011–025; SR–CBOE–2011–049; SR–CHX–2011–09; SR–EDGA–2011–15; SR–EDGX–2011–14; SR–FINRA–2011–023; SR–ISE–2011–028; SR–NASDAQ–2011–067; SR–NYSE–2011–21; SR–NYSEAmex–2011–32; SR–NYSEArca–2011–26; SR–NSX–2011–06; SR–Phlx–2011–64) (approving the ''Phase III Pilot Program''). The Phase III Pilot Program has been extended through January 2012. *See, e.g.,* Securities Exchange Act Release 65094 (August 10, 2011), 76 FR 50779 (August 16, 2011) (SR–NASDAQ–2011–011).

[20] *See* Securities Exchange Act Release No. 64547 (May 25, 2011), 76 FR 31647 (June 1, 2011).

Paper Comments

• Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NASDAQ–2011–131. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make publicly available. All submissions should refer to File Number SR–NASDAQ–2011–131 and should be submitted on or before October 25, 2011.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[21]

Elizabeth M. Murphy,

Secretary.

[FR Doc. 2011–25517 Filed 10–3–11; 8:45 am]

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[21] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–65434; File No. SR–Phlx–2011–129]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by NASDAQ OMX PHLX LLC Relating to Trading Halts Due to Extraordinary Market Volatility

September 28, 2011.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on September 27, 2011, NASDAQ OMX PHLX LLC (''Phlx'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I and II, below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend Exchange Rule 133 to revise the methodology for determining when to halt trading in all stocks due to extraordinary market volatility. The proposal is made in conjunction with all national securities exchanges and the Financial Industry Regulatory Authority (''FINRA'').

The text of the proposed rule change is available on the Exchange's Web site at *http://www.nasdaqtrader.com/micro.aspx?id=PHLXRulefilings,* at the principal office of the Exchange, at the Commission's Public Reference Room, and at the Commission's Web site at *http://www.sec.gov.*

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend Exchange Rule 133 to revise the current methodology for determining when to halt trading in all stocks due to extraordinary market volatility. The Exchange is proposing this rule change in consultation with other equity, options, and futures markets, the Financial Industry Regulatory Authority, Inc. (''FINRA''), and staffs of the Commission and the Commodity Futures Trading Commission.

Since May 6, 2010, when the markets experienced excessive volatility in an abbreviated time period, i.e., the ''flash crash,'' the exchanges and FINRA have implemented market-wide measures designed to restore investor confidence by reducing the potential for excessive market volatility. Among the measures adopted include pilot plans for stock-by-stock trading pauses[3] and related changes to the clearly erroneous execution rules.[4] In addition, on April 5, 2011, the equities exchanges and FINRA filed a plan pursuant to Rule 608 of Regulation NMS to address extraordinary market volatility (the ''Limit Up-Limit Down Plan'').[5] As proposed, the Limit Up-Limit Down Plan is designed to prevent trades in individual NMS stocks from occurring outside specified price bands.

The Joint CFTC–SEC Advisory Committee on Emerging Regulatory Issues (''Committee'') has recommended that, in addition to the initiatives already adopted or proposed, the markets should consider reforming the existing market-wide circuit breakers. Among other things, the Committee noted that the interrelatedness of today's highly electronic markets warrants the need to review the present operation of the system-wide circuit breakers now in place. Specifically, the Committee recommended that the markets consider replacing the Dow Jones Industrial Average (''DJIA'') with the S&P 500® Index (''S&P 500''), revising the 10%, 20%, and 30% decline percentages, reducing the length of trading halts, and allowing halts to be triggered up to 3:30 p.m.[6]

[3] PHLX Rule 3120.

[4] PHLX Rule 3312.

[5] *See* Securities Exchange Act Release No. 64547 (May 25, 2011), 76 FR 31647 (June 1, 2011).

[6] *See* Summary Report of the Committee, ''Recommendations Regarding Regulatory Responses to the Market Events of May 6, 2010'' (Feb, 18, 2011).

The exchanges and FINRA have taken into consideration the Committee's recommendations, and with some modifications, have proposed changes to market-wide circuit breakers that the Exchange believes will provide for a more meaningful measure in today's faster, more electronic markets, of when to halt stocks on a market-wide basis as a result of rapid market declines.

Background

The Exchange adopted Rule 133 in October 1988 as part of an effort by the securities and futures markets to implement a coordinated means to address potentially destabilizing market volatility.[7] Rule 133 provides for market-wide halts in trading at specified levels in order to promote stability and investor confidence during a period of significant stress. As the Commission noted in its approval order, Rule 133 was intended to enable market participants to establish an equilibrium between buying and selling interest and to ensure that market participants have an opportunity to become aware of and respond to significant price movements. Importantly, the market-wide circuit breakers were not intended to prevent markets from adjusting to new price levels; rather, they provide for a speed bump for extremely rapid market declines.[8]

In its current form,[9] the rule provides for Level 1, 2, and 3 declines and specified trading halts following such declines. The values of Levels 1, 2 and 3 are calculated at the beginning of each calendar quarter, using 10%, 20% and 30%, respectively, of the average closing value of the DJIA for the month prior to the beginning of the quarter. Each percentage calculation is rounded to the nearest fifty points to create the Levels' trigger points. The Exchange disseminates the new trigger levels quarterly to the media and via an Information Memo and is [sic] available on the Exchange's website. The values then remain in effect until the next quarterly calculation, notwithstanding whether the DJIA has moved and a Level 1, 2, or 3 decline is no longer equal to an actual 10%, 20%, or 30% decline in the most recent closing value of the DJIA.

Once a marketwide circuit breaker is in effect, trading in all stocks halt for the time periods specified below:

Level 1 Halt

Anytime before 2 p.m.—one hour;
at or after 2 p.m. but before 2:30 p.m.—30 minutes;
at or after 2:30 p.m.—trading shall continue, unless there is a Level 2 Halt.

Level 2 Halt

Anytime before 1 p.m.—two hours;
at or after 1 p.m. but before 2 p.m.—one hour;
at or after 2 p.m.—trading shall halt and not resume for the rest of the day.

Level 3 Halt

At any time—trading shall halt and not resume for the rest of the day.

Unless stocks are halted for the remainder of the trading day, price indications are disseminated during a Rule 80B trading halt for stocks that comprise the DJIA.

Proposed Amendments

As noted above, the Exchange, other equities, options, and futures markets, and FINRA propose to amend the market-wide circuit breakers to take into consideration the recommendations of the Committee, and to provide for more meaningful measures in today's markets of when to halt trading in all stocks. Accordingly, the Exchange proposes to amend Rule 133 to create the following standards: (i) Replace the DJIA with the S&P 500; (ii) replace the quarterly calendar recalculation of Rule 133 triggers with daily recalculations; (iii) replace the 10%, 20%, and 30% market decline percentages with 7%, 13%, and 20% market decline percentages; (iv) modify the length of the trading halts associated with each market decline level; and (v) modify the times when a trading halt may be triggered. The Exchange believes that these proposed amendments update the rule to reflect today's high-speed, highly electronic trading market while still ensuring that market participants have an opportunity to become aware of and respond to significant price movements.

First, the Exchange proposes to replace the DJIA with the S&P 500. The Exchange believes that because the S&P 500 is based on the trading prices of 500 stocks, as compared to the 30 stocks that comprise the DJIA, the S&P 500 represents a broader base of securities against which to measure whether extraordinary market-wide volatility is occurring. In addition, as noted by the Committee, using an index that correlates closely with derivative products, such as the E-Mini and SPY, will allow for a better cross-market measure of market volatility.

Second, the Exchange proposes to change the recalculation of the trigger values from once every calendar quarter to daily. The Exchange believes that updating the trigger values daily will better reflect current market conditions. In particular, a daily recalculation will ensure that the percentage drop triggers relate to current market conditions, and are not compared to what may be stale market conditions. As noted in the proposed rule, the daily calculations of the trigger values will be published before the trading day begins.[10]

Third, the Exchange proposes to decrease the current Level 1, 2, and 3 declines of 10%, 20%, and 30% to a Level 1 Market Decline of 7%, a Level 2 Market Decline of 13%, and Level 3 Market Decline of 20%. In particular, as demonstrated by the May 6, 2010 flash crash, the current Level 1 10% decline may be too high a threshold before determining whether to halt trading across all securities. In fact, since adoption, the markets have halted only once, on October 27, 1997.[11] Accordingly, to reflect the potential that a lower, yet still significant decline may warrant a market-wide trading halt, the Exchange proposes to lower the market decline percentage thresholds.

As further proposed, the Exchange would halt trading based on a Level 1 or Level 2 Market Decline only once per day. For example, if a Level 1 Market Decline were to occur and trading were halted, following the reopening of trading, the Exchange would not halt the market again unless a Level 2 Market Decline were to occur. Likewise, following the reopening of trading after a Level 2 Market Decline, the Exchange would not halt trading again unless a Level 3 Market Decline were to occur, at which point, trading in all stocks would be halted until the primary market opens the next trading day.

Fourth, to correspond with the lower percentages associated with triggering a trading halt, the Exchange also proposes to shorten the length of the market-wide trading halts associated with each Level. As proposed, a Level 1 or 2 Market Decline occurring after 9:30 a.m. Eastern

[7] *See* Securities Exchange Act Release No. 26198 (Oct. 19, 1988).

[8] *Id.*

[9] The rule was last amended in 1998, when declines based on specified point drops in the DJIA were replaced with the current methodology of using a percentage decline that is recalculated quarterly. *See* Securities Exchange Act Release No. 39846 (April 9, 1998), 63 FR 18477 (April 15, 1998) (SR–NYSE–98–06, SR–Amex-98–09, SR–BSE–98–06, SR–CHX–98–08, SR–NASD–98–27, and SR–Phlx–98–15).

[10] The Exchange and other markets will advise via Trader Update the specific methodology for publishing the daily calculations, as well as the manner by which the markets will halt trading in all stocks should a Rule 133 trading halt be triggered.

[11] At that time, the triggers were based on absolute declines in the DJIA (350 point decrease for a Level 1 halt and 550 point decrease for a Level 2 halt).

and up to and including 3:25 p.m. Eastern, would result in a trading halt in all stocks for 15 minutes.

The Exchange believes that by reducing the percentage threshold, coupled with the reduced length of a trading halt, the proposed rule would allow for trading halts for serious market declines, while at the same time, would minimize disruption to the market by allowing for trading to continue after the proposed more-abbreviated trading halt. The Exchange believes that in today's markets, where trading information travels in micro-second speed, a 15-minute trading halt strikes the appropriate balance between the need to halt trading for market participants to assess the market, while at the same time reducing the time that the market is halted.

Finally, because the proposed Level 1 and Level 2 trading halts will now be 15 minutes, the Exchange proposes amending the rule to allow for a Level 1 or 2 Market Decline to trigger a trading halt up to 3:25 p.m. (or, in the case of scheduled early closure, at 12:25 p.m.). Under the current rule, a trading halt cannot be triggered after 2:30 p.m., and this time corresponds to the need for the markets both to reopen following a 30-minute halt and to engage in a fair and orderly closing process. However, as the markets experienced on May 6, 2010, even if the Level 1 decline had occurred that day, because the market decline occurred after 2:30 p.m., it would not have triggered a halt under the current rule. The Committee recommended that trading halts be triggered up to 3:30 p.m. The Exchange agrees that the proposed amendments must strike the appropriate balance between permitting trading halts as late in the day as feasible without interrupting the closing process.

Accordingly, to accommodate existing rules of other exchanges concerning closing procedures, including the publication of imbalance information beginning at 3:50 p.m. and the restrictions on entry and cancellation of market on close (''MOC'') and limit on close (''LOC'') orders after 3:45 p.m., the Exchange proposes that the last Level 1 or Level 2 Market Decline trading halt should begin no later than 3:25 p.m. (or, in the case of scheduled early closure, at 12:25 p.m.). The Exchange proposes 3:25 p.m. as the cut-off time so that there is time following the 15-minute trading halt for the markets to reopen before the 3:45 cut-off for entry and cancellation of MOC and LOC orders under Exchange rules.

Under the proposed rule, a Level 3 Market Decline would halt trading for the remainder of the trading day, including any trading that may take place after 4:00 p.m., Eastern, and would not resume until the next trading day.

In addition to these proposed changes, the Exchange proposes to add to Rule 133 how the markets will reopen following a 15-minute trading halt. In particular, the Exchange proposes that if the primary market halts trading in all stocks, all markets will halt trading in those stocks until the primary market has resumed trading or notice has been provided by the primary market that trading may resume. As further proposed, if the primary market does not re-open a security within 15 minutes following the end of the trading halt, other markets may resume trading in that security.

2. Statutory Basis

The statutory basis for the proposed rule change is Section 6(b)(5) of the Act,[12] which requires the rules of an exchange to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest. The proposed rule change also is designed to support the principles of Section 11A(a)(1)[13] of the Act in that it seeks to assure fair competition among brokers and dealers and among exchange markets. The Exchange believes that the proposed rule meets these requirements in that it promotes transparency and uniformity across markets concerning decisions to pause [sic] trading in a security when there are significant price movements.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 45 days of the date of publication of this notice in the Federal Register or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the Exchange consents, the Commission will:

(A) By order approve or disapprove such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed changes to the market-wide circuit breaker regime are consistent with the Act. The Commission specifically requests comment on the following:

- As discussed above, the proposed rule change would narrow the percentage market declines that would trigger a market-wide halt in trading. How would the proposed changes interact with the existing single-stock circuit breaker pilot program[14] or, if approved, the proposed NMS Plan to establish a limit-up/limit-down mechanism for individual securities?[15]
- To what extent could the concurrent triggering of single stock circuit breakers in many S&P 500 Index stocks lead to difficulties in calculating the index? Would the triggering of many single stock circuit breakers in a general market downturn cause the index calculation to become stale and thereby delay the triggering of the market-wide circuit breaker?
- Should the market-wide circuit breaker be triggered if a sufficient number of single-stock circuit breakers or price limits are triggered, and materially affect calculations of the S&P 500 Index?
- Should market centers implement rules that mandate cancellation of pending orders in the event a market-wide circuit breaker is triggered? If so, should such a rule require cancellation of all orders or only certain order types (*e.g.,* limit orders)? Should all trading halts trigger such cancellation policies

[12] 15 U.S.C. 78f(b)(5).

[13] 15 U.S.C. 78k–1(a)(1).

[14] *See* Securities Exchange Act Release No. 64735 (June 23, 2011), 76 FR 38243 (June 29, 2011) (SR–BATS–2011–016; SR–BYX–2011–011; SR–BX–2011–025; SR–CBOE–2011–049; SR–CHX–2011–09; SR–EDGA–2011–15; SR–EDGX–2011–14; SR–FINRA–2011–023; SR–ISE–2011–028; SR–NASDAQ–2011–067; SR–NYSE–2011–21; SR–NYSEAmex–2011–32; SR–NYSEArca–2011–26; SR–NSX–2011–06; SR–Phlx–2011–64) (approving the ''Phase III Pilot Program''). The Phase III Pilot Program has been extended through January 2012. *See, e.g.,* Securities Exchange Act Release 65094 (August 10, 2011), 76 FR 50779 (August 16, 2011) (SR–NASDAQ–2011–011).

[15] *See* Securities Exchange Act Release No. 64547 (May 25, 2011), 76 FR 31647 (June 1, 2011).

or should the cancellation policies apply only to a Level 3 Market Decline?

• Should some provision be made to end the regular trading session if a market decline suddenly occurs after 3:25 p.m. but does not reach the 20% level?

• In the event of a Level 3 Market Decline, should some provision be made for the markets to hold a closing auction?

• Should the primary market have a longer period (*e.g.,* 30 minutes) to reopen trading following a Level 2 Market Decline before trading resumes in other venues?

• In the event of a Level 3 Market Decline, should the markets wait for the primary market to reopen trading in a particular security on the next trading day before trading in that security resumes?

Comments may be submitted by any of the following methods:

Electronic Comments

• Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or

• Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–Phlx–2011–129 on the subject line.

Paper Comments

• Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–Phlx–2011–129. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make publicly available. All submissions should refer to File Number SR–Phlx–2011–129 and should be submitted on or before October 25, 2011.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[16]

Elizabeth M. Murphy,

Secretary.

[FR Doc. 2011–25515 Filed 10–3–11; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–65432; File No. SR–NYSEAMEX–2011–73]

Self-Regulatory Organizations; NYSE Amex LLC; Notice of Filing of Proposed Rule Change Amending NYSE Amex Equities Rule 80B To Revise the Current Methodology for Determining When To Halt Trading in All Stocks Due to Extraordinary Market Volatility

September 28, 2011.

Pursuant to Section 19(b)(1)[1] of the Securities Exchange Act of 1934 (the ''Act'')[2] and Rule 19b–4 thereunder,[3] notice is hereby given that, on September 27, 2011, NYSE Amex LLC (the ''Exchange'' or ''NYSE Amex'') 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 self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to NYSE Amex Equities Rule 80B to revise the current methodology for determining when to halt trading in all stocks due to extraordinary market volatility. The text of the proposed rule change is available at the Exchange, the Commission's Public Reference Room, and *http://www.nyse.com.*

[16] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend NYSE Amex Equities Rule 80B to revise the current methodology for determining when to halt trading in all stocks due to extraordinary market volatility. The Exchange is proposing this rule change in consultation with other equity, options, and futures markets, the Financial Industry Regulatory Authority, Inc. (''FINRA''), and staffs of the Commission and the Commodity Futures Trading Commission.

Since May 6, 2010, when the markets experienced excessive volatility in an abbreviated time period, i.e., the ''flash crash,'' the exchanges and FINRA have implemented market-wide measures designed to restore investor confidence by reducing the potential for excessive market volatility. Among the measures adopted include pilot plans for stock-by-stock trading pauses[4] and related changes to the clearly erroneous execution rules[5] and more stringent market maker quoting requirements.[6] In addition, on April 5, 2011, the equities exchanges and FINRA filed a plan pursuant to Rule 608 of Regulation NMS to address extraordinary market volatility (the ''Limit Up-Limit Down Plan'').[7] As proposed, the Limit Up-Limit Down Plan is designed to prevent trades in individual NMS stocks from occurring outside specified price bands.

The Joint CFTC–SEC Advisory Committee on Emerging Regulatory Issues (''Committee'') has recommended that, in addition to the initiatives already adopted or proposed, the

[4] NYSE Amex Equities Rule 80C.

[5] NYSE Amex Equities Rule 128.

[6] NYSE Amex Equities Rule 104(a)(1)(B).

[7] *See* Securities Exchange Act Release No. 64547 (May 25, 2011), 76 FR 31647 (June 1, 2011).

markets should consider reforming the existing market-wide circuit breakers. Among other things, the Committee noted that the interrelatedness of today's highly electronic markets warrants the need to review the present operation of the system-wide circuit breakers now in place. Specifically, the Committee recommended that the markets consider replacing the Dow Jones Industrial Average (''DJIA'') with the S&P 500® Index (''S&P 500''), revising the 10%, 20%, and 30% decline percentages, reducing the length of trading halts, and allowing halts to be triggered up to 3:30 p.m.[8]

The exchanges and FINRA have taken into consideration the Committee's recommendations, and with some modifications, have proposed changes to market-wide circuit breakers that the Exchange believes will provide for a more meaningful measure in today's faster, more electronic markets, of when to halt stocks on a market-wide basis as a result of rapid market declines.

Background

The Exchange adopted Amex Rule 117 in October 1988 as part of an effort by the securities and futures markets to implement a coordinated means to address potentially destabilizing market volatility.[9] At the same time, the New York Stock Exchange LLC (''NYSE'') adopted NYSE Rule 80B. NYSE Rule 80B provides for market-wide halts in trading at specified levels in order to promote stability and investor confidence during a period of significant stress. As the Commission noted in its approval order, NYSE Rule 80B and Amex Rule 117 were intended to enable market participants to establish an equilibrium between buying and selling interest and to ensure that market participants have an opportunity to become aware of and respond to significant price movements. Importantly, the market-wide circuit breakers were not intended to prevent markets from adjusting to new price levels; rather, they provide for a speed bump for extremely rapid market declines.[10]

In its current form,[11] NYSE Amex Equities Rule 80B provides for Level 1, 2, and 3 declines and specified trading halts following such declines. The values of Levels 1, 2 and 3 are calculated at the beginning of each calendar quarter, using 10%, 20% and 30%, respectively, of the average closing value of the DJIA for the month prior to the beginning of the quarter. Each percentage calculation is rounded to the nearest fifty points to create the Levels' trigger points. The Exchange disseminates the new trigger levels quarterly to the media and via an Information Memo and is available on the Exchange's Web site.[12] The values then remain in effect until the next quarterly calculation, notwithstanding whether the DJIA has moved and a Level 1, 2, or 3 decline is no longer equal to an actual 10%, 20%, or 30% decline in the most recent closing value of the DJIA.

Once a Rule 80B circuit breaker is in effect, trading in all stocks halt for the time periods specified below:

Level 1 Halt

Anytime before 2 p.m.—one hour;
At or after 2 p.m. but before 2:30 p.m.—30 minutes;
At or after 2:30 p.m.—trading shall continue, unless there is a Level 2 Halt.

Level 2 Halt

Any time before 1 p.m.—two hours;
At or after 1 p.m. but before 2 p.m.—one hour;
At or after 2 p.m.—trading shall halt and not resume for the rest of the day.

Level 3 Halt

At any time—trading shall halt and not resume for the rest of the day.

Unless stocks are halted for the remainder of the trading day, price indications are disseminated during a Rule 80B trading halt for stocks that comprise the DJIA.

Proposed Amendments

As noted above, the Exchange, other equities, options, and futures markets, and FINRA propose to amend the market-wide circuit breakers to take into consideration the recommendations of the Committee, and to provide for more meaningful measures in today's markets of when to halt trading in all stocks. Accordingly, the Exchange proposes to amend NYSE Amex Equities Rule 80B as follows: (i) Replace the DJIA with the S&P 500; (ii) replace the quarterly calendar recalculation of Rule 80B triggers with daily recalculations; (iii) replace the 10%, 20%, and 30% market decline percentages with 7%, 13%, and 20% market decline percentages; (iv) modify the length of the trading halts associated with each market decline level; and (v) modify the times when a trading halt may be triggered. The Exchange believes that these proposed amendments update the rule to reflect today's high-speed, highly electronic trading market while still meeting the original purpose of Rule 80B: to ensure that market participants have an opportunity to become aware of and respond to significant price movements.

First, the Exchange proposes to replace the DJIA with the S&P 500. The Exchange believes that because the S&P 500 is based on the trading prices of 500 stocks, as compared to the 30 stocks that comprise the DJIA, the S&P 500 represents a broader base of securities against which to measure whether extraordinary market-wide volatility is occurring. In addition, as noted by the Committee, using an index that correlates closely with derivative products, such as the E-Mini and SPY, will allow for a better cross-market measure of market volatility.

Second, the Exchange proposes to change the recalculation of the trigger values from once every calendar quarter to daily. The Exchange believes that updating the trigger values daily will better reflect current market conditions. In particular, a daily recalculation will ensure that the percentage drop triggers relate to current market conditions, and are not compared to what may be stale market conditions. As noted in the proposed rule, the daily calculations of the trigger values will be published before the trading day begins.[13]

Third, the Exchange proposes to decrease the current Level 1, 2, and 3 declines of 10%, 20%, and 30% to a

[8] *See* Summary Report of the Committee, ''Recommendations Regarding Regulatory Responses to the Market Events of May 6, 2010'' (Feb, 18, 2011). The Exchange notes that NYSE Euronext submitted a comment letter to the Committee that recommended, among other things, reform of the market-wide circuit breaker rules. *See* Letter to Elizabeth Murphy, Secretary, Commission, from Janet M. Kissane, SVP and Corporate Secretary, NYSE Euronext (July 19, 2010). The proposed reforms set forth in this rule proposal differ slightly from the changes recommended in that comment letter, and represent consensus among the markets of how to address reform of the market-wide circuit breakers.

[9] *See* Securities Exchange Act Release No. 26198 (Oct. 19, 1988) (SR–CBOE–88–14, SR–NASD–88–46, SR–NYSE–88–22, SR–NYSE–88–23, SR–NYSE–88–24, and SR–Amex–88–24). In December 2008, pursuant to NYSE Amex Rule 0(b), all NYSE Amex Equities Trading Systems transactions, including trading halts due to extraordinary volatility, are governed by NYSE Amex Equities rules. Accordingly, NYSE Amex Equities Rule 80B, which is identical to NYSE Rule 80B, is now the operative rule in place of NYSE Amex Rule 117.

[10] *Id.*

[11] The rule was last amended in 1998, when declines based on specified point drops in the DJIA were replaced with the current methodology of using a percentage decline that is recalculated quarterly. *See* Securities Exchange Act Release No. 39846 (April 9, 1998), 63 FR 18477 (April 15, 1998) (SR–NYSE–98–06, SR–Amex–98–09, SR–BSE–98–06, SR–CHX–98–08, SR–NASD–98–27, and SR–Phlx–98–15).

[12] *See e.g.,* NYSE Regulation Information Memos 11–19 (June 30, 2011) and 11–10 (March 31, 2011).

[13] The Exchange and other markets will advise via Trader Update the specific methodology for publishing the daily calculations, as well as the manner by which the markets will halt trading in all stocks should a Rule 80B trading halt be triggered.

Level 1 Market Decline of 7%, a Level 2 Market Decline of 13%, and Level 3 Market Decline of 20%. In particular, as demonstrated by the May 6, 2010 flash crash, the current Level 1 10% decline may be too high a threshold before determining whether to halt trading across all securities. In fact, since adoption, the markets have halted only once, on October 27, 1997.[14] Accordingly, to reflect the potential that a lower, yet still significant decline may warrant a market-wide trading halt, the Exchange proposes to lower the market decline percentage thresholds.

As further proposed, the Exchange would halt trading based on a Level 1 or Level 2 Market Decline only once per day. For example, if a Level 1 Market Decline were to occur and trading were halted, following the reopening of trading, the Exchange would not halt the market again unless a Level 2 Market Decline were to occur. Likewise, following the reopening of trading after a Level 2 Market Decline, the Exchange would not halt trading again unless a Level 3 Market Decline were to occur, at which point, trading in all stocks would be halted until the primary market reopens the next trading day.

Fourth, to correspond with the lower percentages associated with triggering a trading halt, the Exchange also proposes to shorten the length of the market-wide trading halts associated with each Level. As proposed, a Level 1 or 2 Market Decline occurring after 9:30 a.m. Eastern and up to and including 3:25 p.m. Eastern, or in the case of an early scheduled close, 12:25 p.m. Eastern, would result in a trading halt in all stocks for 15 minutes.

The Exchange believes that by reducing the percentage threshold, coupled with the reduced length of a trading halt, the proposed rule would allow for trading halts for serious market declines, while at the same time, would minimize disruption to the market by allowing for trading to continue after the proposed more-abbreviated trading halt. The Exchange believes that in today's markets, where trading information travels in micro-second speed, a 15-minute trading halt strikes the appropriate balance between the need to halt trading for market participants to assess the market, while at the same time reducing the time that the market is halted.

Finally, because the proposed Level 1 and Level 2 trading halts will now be 15 minutes, the Exchange proposes amending the rule to allow for a Level 1 or 2 Market Decline to trigger a trading halt up to 3:25 p.m. Under the current rule, a trading halt cannot be triggered after 2:30 p.m., and this time corresponds to the need for the markets both to reopen following a 30-minute halt and to engage in a fair and orderly closing process. However, as the markets experienced on May 6, 2010, even if the Level 1 decline had occurred that day, because the market decline occurred after 2:30 p.m., it would not have triggered a halt under the current rule. The Committee recommended that trading halts be triggered up to 3:30 p.m. The Exchange agrees that the proposed amendments must strike the appropriate balance between permitting trading halts as late in the day as feasible without interrupting the closing process.

Accordingly, to accommodate existing Exchange rules concerning closing procedures, including the publication of imbalance information beginning at 3:45 p.m. and the restrictions on entry and cancellation of market on close (''MOC'') and limit on close (''LOC'') orders after 3:45 p.m.,[15] the Exchange proposes that the last Level 1 or Level 2 Market Decline trading halt should be 3:25 p.m. The Exchange proposes 3:25 p.m. as the cut-off time so that there is time following the 15-minute trading halt for the markets to reopen before the 3:45 cut-off for entry and cancellation of MOC and LOC orders under Exchange rules.

As with current Level 3 declines, under the proposed rule, a Level 3 Market Decline would halt trading for the remainder of the trading day, including any trading that may take place after 4 p.m., Eastern, and would not resume until the next trading day.

In addition to these proposed changes, the Exchange proposes to add to Rule 80B how the markets will reopen following a 15-minute trading halt. In particular, similar to the reopening procedures set forth in Rule 80C, the Exchange proposes that if the primary market halts trading in all stocks, all markets will halt trading in those stocks until the primary market has resumed trading or notice has been provided by the primary market that trading may resume. As further proposed, if the primary market does not re-open a security within 15 minutes following the end of the trading halt, other markets may resume trading in that security.

Finally, because NYSE Amex Equities Rule 80B governs market-wide trading halts, the Exchange proposes to delete NYSE Amex Rule 117 as moot.

The Exchange proposes to implement the changes to Rule 80B at the same time that the Limit Up-Limit Down Plan, if approved, is implemented.

2. Statutory Basis

The basis under the Act for these proposed rule changes are [sic] the requirement under Section 6(b)(5)[16] that an Exchange have rules that are designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest. Specifically, this rule proposal supports the objectives of perfecting the mechanism of a free and open market and the national market system because it promotes uniformity across markets concerning when and how to halt trading in all stocks as a result of extraordinary market volatility.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) As the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) by order approve or disapprove the proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed

[14] At that time, the triggers were based on absolute declines in the DJIA (350 point decrease for a Level 1 halt and 550 point decrease for a Level 2 halt).

[15] *See* NYSE Amex Equities Rule 123C.

[16] 15 U.S.C. 78f(b)(5).

changes to the market-wide circuit breaker regime are consistent with the Act. The Commission specifically requests comment on the following:

• As discussed above, the proposed rule change would narrow the percentage market declines that would trigger a market-wide halt in trading. How would the proposed changes interact with the existing single-stock circuit breaker pilot program [17] or, if approved, the proposed NMS Plan to establish a limit-up/limit-down mechanism for individual securities? [18]

• To what extent could the concurrent triggering of single stock circuit breakers in many S&P 500 Index stocks lead to difficulties in calculating the index? Would the triggering of many single stock circuit breakers in a general market downturn cause the index calculation to become stale and thereby delay the triggering of the market-wide circuit breaker?

• Should the market-wide circuit breaker be triggered if a sufficient number of single-stock circuit breakers or price limits are triggered, and materially affect calculations of the S&P 500 Index?

• Should market centers implement rules that mandate cancellation of pending orders in the event a market-wide circuit breaker is triggered? If so, should such a rule require cancellation of all orders or only certain order types (*e.g.,* limit orders)? Should all trading halts trigger such cancellation policies or should the cancellation policies apply only to a Level 3 Market Decline?

• Should some provision be made to end the regular trading session if a market decline suddenly occurs after 3:25 p.m. but does not reach the 20% level?

• In the event of a Level 3 Market Decline, should some provision be made for the markets to hold a closing auction?

• Should the primary market have a longer period (*e.g.,* 30 minutes) to reopen trading following a Level 2 Market Decline before trading resumes in other venues?

• In the event of a Level 3 Market Decline, should the markets wait for the primary market to reopen trading in a particular security on the next trading day before trading in that security resumes?

Comments may be submitted by any of the following methods:

Electronic Comments

• Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or

• Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–NYSEAMEX–2011–73 on the subject line.

Paper Comments

• Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSEAMEX–2011–73. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make publicly available. All submissions should refer to File Number SR–NYSEAMEX–2011–73 and should be submitted on or before October 25, 2011.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[19]

Elizabeth M. Murphy,

Secretary.

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[17] *See* Securities Exchange Act Release No. 64735 (June 23, 2011), 76 FR 38243 (June 29, 2011) (SR–BATS–2011–016; SR–BYX–2011–011; SR–BX–2011–025; SR–CBOE–2011–049; SR–CHX–2011–09; SR–EDGA–2011–15; SR–EDGX–2011–14; SR–FINRA–2011–023; SR–ISE–2011–028; SR–NASDAQ–2011–067; SR–NYSE–2011–21; SR–NYSEAmex–2011–32; SR–NYSEArca-2011–26; SR–NSX–2011–06; SR–Phlx–2011–64) (approving the ''Phase III Pilot Program''). The Phase III Pilot Program has been extended through January 2012. *See, e.g.,* Securities Exchange Act Release 65094 (August 10, 2011), 76 FR 50779 (August 16, 2011) (SR–NASDAQ–2011–011).

[18] *See* Securities Exchange Act Release No. 64547 (May 25, 2011), 76 FR 31647 (June 1, 2011).

[19] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–65431; File No. SR–EDGA–2011–31]

Self-Regulatory Organizations; EDGA Exchange, Inc.; Notice of Filing of Proposed Rule Change by EDGA Exchange, Inc. To Amend EDGA Rule 11.14 To Revise the Current Methodology for Determining When To Halt Trading in All Stocks Due to Extraordinary Market Volatility

September 28, 2011.

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 27, 2011 EDGA Exchange, Inc. (the ''Exchange'' or ''EDGA'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend Exchange Rule 11.14 to revise the current methodology for determining when trading in all stocks will be halted due to extraordinary market volatility. The text of the proposed rule change is attached as Exhibit 5 [3] and is available on the Exchange's Web site at *http://www.directedge.com*, at the Exchange's principal office, and at the Public Reference Room of 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 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

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] The Commission notes that Exhibit 5 is attached to the filing, not to this Notice.

statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in Sections A, B and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend Exchange Rule 11.14 to revise the current methodology for determining when trading in all stocks will be halted due to extraordinary market volatility. The Exchange is proposing this rule change in consultation with other equity, options and futures markets, the Financial Industry Regulatory Authority, Inc. (''FINRA'') and staffs of the Commission and the Commodity Futures Trading Commission.

Since May 6, 2010, when the markets experienced excessive volatility in an abbreviated time period, i.e., the ''flash crash,'' the exchanges and FINRA have implemented market-wide measures designed to restore investor confidence by reducing the potential for excessive market volatility. Among the measures adopted include pilot plans for stock-by-stock trading pauses [4] and related changes to the clearly erroneous execution rules [5] and more stringent market maker quoting requirements. [6] In addition, on April 5, 2011, the equities exchanges and FINRA filed a plan pursuant to Rule 608 of Regulation NMS to address extraordinary market volatility (the ''Limit Up-Limit Down Plan'').[7] As proposed, the Limit Up-Limit Down Plan is designed to prevent trades in individual NMS stocks from occurring outside specified price bands.

The Joint CFTC–SEC Advisory Committee on Emerging Regulatory Issues (''Committee'') has recommended that, in addition to the initiatives already adopted or proposed, the markets should consider reforming the existing market-wide circuit breakers. Among other things, the Committee noted that the interrelatedness of today's highly electronic markets warrants the need to review the present operation of the system-wide circuit breakers now in place. Specifically, the Committee recommended that the markets consider replacing the Dow Jones Industrial Average (''DJIA'') with the S&P 500® Index (''S&P 500''), revising the 10%, 20% and 30% decline percentages, reducing the length of trading halts, and allowing halts to be triggered up to 3:30 p.m.[8]

The exchanges and FINRA have taken into consideration the Committee's recommendations, and with some modifications, have proposed changes to market-wide circuit breakers. The Exchange believes these proposed changes will provide for a more meaningful measure, in today's faster, more electronic markets, of when to halt stocks on a market-wide basis as a result of rapid market declines.

Background

EDGA Rule 11.14 provides for market-wide halts in trading at specified levels in order to promote stability and investor confidence during a period of significant stress. As the Commission noted in its approval order for the analogous rule from the New York Stock Exchange (''NYSE''),[9] the rule was intended to enable market participants to establish equilibrium between buying and selling interest and to ensure that market participants have an opportunity to become aware of and respond to significant price movements. Importantly, the market-wide circuit breakers were not intended to prevent markets from adjusting to new price levels; rather, they provide for a speed bump for extremely rapid market declines.[10]

In its current form,[11] the rule provides for Level 1, 2 and 3 declines and specified trading halts following such declines (each a ''Level 1, 2 or 3 Halt,'' respectively). The values of Levels 1, 2 and 3 are calculated at the beginning of each calendar quarter by the primary listing market, using 10%, 20% and 30%, respectively, of the average closing value of the DJIA for the month prior to the beginning of the quarter. Each percentage calculation is rounded to the nearest fifty points to create the levels' trigger points. The primary listing markets disseminate the new trigger levels quarterly to the media, via information memos and publication on their websites. The values then remain in effect until the next quarterly calculation, notwithstanding whether the DJIA has moved and a Level 1, 2 or 3 decline is no longer equal to an actual 10%, 20% or 30% decline in the most recent closing value of the DJIA.

Once a Rule 11.14 circuit breaker is in effect, trading in all stocks halt for the time periods specified below:

Level 1 Halt

Anytime before 2 p.m.—one hour; at or after 2 p.m. but before 2:30 p.m.—30 minutes; at or after 2:30 p.m.—trading shall continue, unless there is a Level 2 Halt.

Level 2 Halt

Anytime before 1 p.m.—two hours; at or after 1 p.m. but before 2 p.m.—one hour; at or after 2 p.m.—trading shall halt and not resume for the rest of the day.

Level 3 Halt

At any time—trading shall halt and not resume for the rest of the day.

Unless stocks are halted for the remainder of the trading day, price indications are disseminated by the primary listing market during a Rule 11.14 trading halt for stocks that comprise the DJIA.

Proposed Amendments

As noted above, the Exchange, other equities, options, and futures markets, and FINRA propose to amend the market-wide circuit breakers to take into consideration the recommendations of the Committee, and to provide for more meaningful measures in today's markets of when to halt trading in all stocks. Accordingly, the Exchange proposes to amend Rule 11.14 as follows: (i) Replace the DJIA with the S&P 500; (ii) replace the quarterly calendar recalculation of Rule 11.14 triggers with daily recalculations; (iii) replace the 10%, 20% and 30% market decline percentages with 7%, 13% and 20% market decline percentages (each a ''Level 1, 2 or 3 Market Decline,'' respectively); (iv) modify the length of the trading halts associated with each market decline level; and (v) modify the times when a trading halt may be

[4] EDGA Rule 11.14.

[5] EDGA Rule 11.13.

[6] *See* SR–EDGA–2011–29 (August 30, 2011) (mirroring the market making standards in other exchange rules, such as NYSE Rule 104(a)(1)(B), Nasdaq Rule 4613(a), and BATS Rule 11.8(d)(2)).

[7] *See* Securities Exchange Act Release No. 64547 (May 25, 2011), 76 FR 31647 (June 1, 2011).

[8] *See* Summary Report of the Committee, ''Recommendations Regarding Regulatory Responses to the Market Events of May 6, 2010'' (Feb, 18, 2011). The Exchange notes that NYSE Euronext submitted a comment letter to the Committee that recommended, among other things, reform of the market-wide circuit breaker rules. *See* Letter to Elizabeth Murphy, Secretary, Commission, from Janet M. Kissane, SVP and Corporate Secretary, NYSE Euronext (July 19, 2010). The proposed reforms set forth in this rule proposal differ slightly from the changes recommended in that comment letter, and represent consensus among the markets of how to address reform of the market-wide circuit breakers.

[9] *See* NYSE Rule 80B.

[10] *See* Securities Exchange Act Release No. 26198 (Oct. 19, 1988).

[11] NYSE Rule 80B was last amended in 1998, when declines based on specified point drops in the DJIA were replaced with the current methodology of using a percentage decline that is recalculated quarterly. *See* Securities Exchange Act Release No. 39846 (April 9, 1998), 63 FR 18477 (April 15, 1998) (SR–NYSE–98–06, SR–Amex–98–09, SR–BSE–98–06, SR–CHX–98–08, SR–NASD–98–27, and SR–Phlx–98–15).

triggered. The Exchange believes that these proposed amendments update the rule to reflect today's high-speed, highly electronic trading market while still meeting the original purpose of the rule: To ensure that market participants have an opportunity to become aware of and respond to significant price movements.

First, the Exchange proposes to replace the DJIA with the S&P 500. The Exchange believes that because the S&P 500 is based on the trading prices of 500 stocks, as compared to the 30 stocks that comprise the DJIA, the S&P 500 represents a broader base of securities against which to measure whether extraordinary market-wide volatility is occurring. In addition, as noted by the Committee, using an index that correlates closely with derivative products, such as the E–Mini and SPDR S&P 500 Exchange-Traded Fund (''SPY''), will allow for a better cross-market measure of market volatility.

Second, the Exchange proposes to change the recalculation of the trigger values from once every calendar quarter to daily. The Exchange believes that updating the trigger values daily will better reflect current market conditions. In particular, a daily recalculation will ensure that the percentage drop triggers relate to current market conditions, and are not compared to what may be stale market conditions. As noted in the proposed rule, the daily calculations of the trigger values will be published before the trading day begins.[12]

Third, the Exchange proposes to decrease the current Level 1, 2 and 3 declines of 10%, 20% and 30% to a Level 1 Market Decline of 7%, a Level 2 Market Decline of 13% and Level 3 Market Decline of 20%. In particular, as demonstrated by the May 6, 2010 flash crash, the current Level 1 10% decline may be too high a threshold for determining whether to halt trading across all securities. In fact, since adoption, the markets have halted only once, on October 27, 1997.[13] Accordingly, to reflect the potential that a lower, yet still significant decline may warrant a market-wide trading halt, the Exchange proposes to lower the market decline percentage thresholds.

As further proposed, trading on the Exchange will be halted based on a Level 1 or Level 2 Market Decline only once per day. For example, if a Level 1 Market Decline was to occur and trading was halted, following the re-opening of trading, trading would not halt again unless a Level 2 Market Decline was to occur. Likewise, following the re-opening of trading after a Level 2 Market Decline, trading would not be halted again unless a Level 3 Market Decline was to occur, at which point, trading in all stocks would be halted until the primary listing market opens the next trading day.

Fourth, to correspond with the lower percentages associated with triggering a trading halt, the Exchange also proposes to shorten the length of the market-wide trading halts associated with each level. As proposed, a Level 1 or 2 Market Decline occurring after 9:30 a.m. Eastern Time (''ET'')[14] and up to and including 3:25 p.m. ET, would result in a trading halt in all stocks for 15 minutes.

The Exchange believes that by reducing the percentage threshold, coupled with the reduced length of a trading halt, the proposed rule would allow for trading halts for serious market declines, while at the same time, would minimize disruption to the market by allowing for trading to continue after the proposed more-abbreviated trading halt. The Exchange believes that in today's markets, where trading information travels in micro-second speeds, a 15-minute trading halt strikes the appropriate balance between the need to halt trading for market participants to assess the market, while at the same time reducing the time that the market is halted.

Finally, because the proposed Level 1 and Level 2 trading halts will now be 15 minutes, the Exchange proposes amending the rule to allow for a Level 1 or 2 Market Decline to trigger a trading halt up to 3:25 p.m. Under the current rule, a trading halt cannot be triggered after 2:30 p.m., and this time corresponds to the need for the markets both to re-open following a 30-minute halt and to engage in a fair and orderly closing process. However, as the markets experienced on May 6, 2010, even if the Level 1 decline had occurred that day, because the market decline occurred after 2:30 p.m., it would not have triggered a halt under the current rule. The Committee recommended that trading halts be triggered up to 3:30 p.m. The Exchange agrees that the proposed amendments must strike the appropriate balance between permitting trading halts as late in the day as feasible without interrupting the closing process.

Accordingly, to accommodate existing primary listing market rules concerning closing procedures, including the publication of imbalance information beginning at 3:45 p.m. and the restrictions on entry and cancellation of market on close (''MOC'') and limit on close (''LOC'') orders after 3:45 p.m.,[15] the Exchange proposes that the last Level 1 or Level 2 Market Decline trading halt should be 3:25 p.m. The Exchange proposes 3:25 p.m. as the cut-off time so that there is time following the 15-minute trading halt for the markets to re-open before the 3:45 p.m. cut-off for entry and cancellation of MOC and LOC orders under primary listing market rules.[16]

As with current Level 3 declines, under the proposed rule, a Level 3 Market Decline would halt trading for the remainder of the trading day, including any trading that may take place after 4 p.m. and would not resume until the next trading day.

In addition to these proposed changes, the Exchange proposes to add to Rule 11.14 how the markets will re-open following a 15-minute trading halt. In particular, similar to the re-opening procedures set forth in Rule 11.14, the Exchange proposes that if the primary listing market halts trading in all stocks, all markets will halt trading in those stocks until the primary listing market has resumed trading or notice has been provided by the primary listing market that trading may resume. As further proposed, if the primary listing market does not re-open a security within 15 minutes following the end of the trading halt, other markets may resume trading in that security.

As a result of the proposed changes described above, the Exchange proposes to delete Interpretations and Policies .01–.04 to Rule 11.14, move Interpretations and Policies .03 and .04 into the rule text of Rule 11.14 as sections (c)(1) and (f), respectively, and re-number existing Interpretation and Policy .05 to Rule 11.14 as Interpretation and Policy .01 to Rule 11.14. In addition, a conforming amendment is proposed to be made in Rule 11.13(c)(1) to re-number the cross-reference to Interpretation .05 of Rule 11.14 as Interpretation .01 of Rule 11.14.

2. Statutory Basis

The basis under the Act for these proposed rule changes are [sic] the requirement under Section 6(b)(5)[17] that an Exchange have rules that are designed to promote just and equitable

[12] The primary listing markets will advise via Trader Update the specific methodology for publishing the daily calculations, as well as the manner by which the markets will halt trading in all stocks should a Rule 11.14 trading halt be triggered.

[13] At that time, the triggers were based on absolute declines in the DJIA (350 point decrease for a Level 1 halt and 550 point decrease for a Level 2 halt).

[14] The Exchange notes that all times listed throughout this filing are in Eastern Time.

[15] *See, e.g.,* NYSE Rule 123C.

[16] *Id.*

[17] 15 U.S.C. 78f(b)(5).

principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest. Specifically, this rule proposal supports the objectives of perfecting the mechanism of a free and open market and the national market system because it promotes uniformity across markets concerning when and how to halt trading in all stocks as a result of extraordinary market volatility.

B. Self-Regulatory Organization's Statement on Burden on Competition

The proposed rule change does not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange has not solicited, and does not intend to solicit, comments on this proposed rule change. The Exchange has not received any unsolicited written comments from members or other interested parties.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(a) By order approve or disapprove such proposed rule change; or

(b) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed changes to the market-wide circuit breaker regime are consistent with the Act. The Commission specifically requests comment on the following:

- As discussed above, the proposed rule change would narrow the percentage market declines that would trigger a market-wide halt in trading. How would the proposed changes interact with the existing single-stock circuit breaker pilot program [18] or, if approved, the proposed NMS Plan to establish a limit-up/limit-down mechanism for individual securities? [19]
- To what extent could the concurrent triggering of single stock circuit breakers in many S&P 500 Index stocks lead to difficulties in calculating the index? Would the triggering of many single stock circuit breakers in a general market downturn cause the index calculation to become stale and thereby delay the triggering of the market-wide circuit breaker?
- Should the market-wide circuit breaker be triggered if a sufficient number of single-stock circuit breakers or price limits are triggered, and materially affect calculations of the S&P 500 Index?
- Should market centers implement rules that mandate cancellation of pending orders in the event a market-wide circuit breaker is triggered? If so, should such a rule require cancellation of all orders or only certain order types (*e.g.,* limit orders)? Should all trading halts trigger such cancellation policies or should the cancellation policies apply only to a Level 3 Market Decline?
- Should some provision be made to end the regular trading session if a market decline suddenly occurs after 3:25 p.m. but does not reach the 20% level?
- In the event of a Level 3 Market Decline, should some provision be made for the markets to hold a closing auction?
- Should the primary market have a longer period (*e.g.,* 30 minutes) to reopen trading following a Level 2 Market Decline before trading resumes in other venues?
- In the event of a Level 3 Market Decline, should the markets wait for the primary market to reopen trading in a particular security on the next trading day before trading in that security resumes?

Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–EDGA–2011–31 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–EDGA–2011–31. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make publicly available. All submissions should refer to File Number SR–EDGA–2011–31 and should be submitted on or before October 25, 2011.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[20]

Elizabeth M. Murphy,

Secretary.

[FR Doc. 2011–25512 Filed 10–3–11; 8:45 am]

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[18] *See* Securities Exchange Act Release No. 64735 (June 23, 2011), 76 FR 38243 (June 29, 2011) (SR–BATS–2011–016; SR–BYX–2011–011; SR–BX–2011–025; SR–CBOE–2011–049; SR–CHX–2011–09; SR–EDGA–2011–15; SR–EDGX–2011–14; SR–FINRA–2011–023; SR–ISE–2011–028; SR–NASDAQ–2011–067; SR–NYSE–2011–21; SR–NYSEAmex–2011–32; SR–NYSEArca–2011–26; SR–NSX–2011–06; SR–Phlx–2011–64) (approving the ''Phase III Pilot Program''). The Phase III Pilot Program has been extended through January 2012. *See, e.g.,* Securities Exchange Act Release 65094 (August 10, 2011), 76 FR 50779 (August 16, 2011) (SR–NASDAQ–2011–011).

[19] *See* Securities Exchange Act Release No. 64547 (May 25, 2011), 76 FR 31647 (June 1, 2011).

[20] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–65430; File No. SR–FINRA–2011–054]

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing of Proposed Rule Change To Update Rule 6121 (Trading Halts Due to Extraordinary Market Volatility) and Amend Rule 6440 (Trading and Quotation Halt in OTC Equity Securities)

September 28, 2011.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on September 27, 2011, Financial Industry Regulatory Authority, Inc. (''FINRA'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by FINRA. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

FINRA is proposing to update Rule 6121 (Trading Halts Due to Extraordinary Market Volatility) (i) To reflect changes to market-wide circuit breaker triggers for NMS stocks, and (ii) amend Rule 6440 (Trading and Quotation Halt in OTC Equity Securities) to provide specifically for a halt in trading in all OTC Equity Securities when a market-wide circuit breaker is in effect for NMS stocks.

The text of the proposed rule change is available on FINRA's Web site at *http://www.finra.org,* at the principal office of FINRA and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, FINRA included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. FINRA has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

FINRA is proposing to amend Rule 6121 (Trading Halts Due to Extraordinary Market Volatility) to update the methodology for determining when to halt trading due to extraordinary market volatility and Rule 6440 (Trading and Quotation Halt in OTC Equity Securities) to provide specifically that FINRA will halt trading in all OTC Equity Securities pursuant to its authority under Rule 6440(a)(3)[3] until the market-wide circuit breaker no longer is in effect for NMS stocks.[4] FINRA is proposing this rule change in consultation with the self-regulatory organizations (''SROs'') and staffs of the Commission and the Commodity Futures Trading Commission (''CFTC'').

Since May 6, 2010, when the markets experienced excessive volatility in an abbreviated time period, *i.e.,* the ''flash crash,'' FINRA and the national securities exchanges (''other SROs'') have implemented market-wide measures designed to restore investor confidence by reducing the potential for excessive market volatility. The measures adopted include pilot plans for stock-by-stock trading pauses[5] and related changes to the clearly erroneous rules.[6] In addition, on April 5, 2011, FINRA and the other SROs filed a plan pursuant to Rule 608 of SEC Regulation NMS to address extraordinary market volatility (the ''Limit Up-Limit Down Plan'').[7] As proposed, the Limit Up-Limit Down Plan is designed to prevent trades in individual NMS stocks from occurring outside specified price bands.

The Joint CFTC–SEC Advisory Committee on Emerging Regulatory Issues (''Committee'') has recommended that, in addition to the initiatives already adopted or proposed, the SROs consider reforming the existing market-wide circuit breakers. Among other things, the Committee noted that the interrelatedness of today's highly electronic markets warrants a review of the present operation of the system-wide circuit breakers now in place. Specifically, the Committee recommended that the SROs consider replacing the Dow Jones Industrial Average (''DJIA'') with the S&P 500® Index (''S&P 500''), revising the 10%, 20% and 30% decline percentages, reducing the length of trading halts, and allowing halts to be triggered up to 3:30 p.m.[8]

FINRA and the other SROs have taken into consideration the Committee's recommendations and, with some modifications, are proposing changes to address market-wide circuit breakers. FINRA believes that this proposal will provide for a more meaningful measure in today's faster, more electronic markets, of when to halt stocks on a market-wide basis as a result of rapid market declines.

Background

In 1988, the SEC approved several SRO rule proposals that provided for market-wide circuit breakers at specified levels to promote stability and investor confidence during a period of significant stress, along with a policy statement by FINRA (then known as NASD) that provided trading halt authority in the event of severe market declines.[9] These measures were adopted

[3] Rule 6440(a)(3) provides that FINRA may halt quoting and trading in an OTC Equity Security if it determines that an ''extraordinary event'' has occurred or is ongoing that has had a material effect on the market for the OTC Equity Security or has caused or has the potential to cause major disruption to the marketplace and/or significant uncertainty in the settlement and clearance process.

[4] On October 7, 2008, FINRA filed a Uniform Practice Code Advisory that provides notice that FINRA will halt trading in OTC Equity Securities under Rule 6440(a)(3) (formerly Rule 6460(a)(3)) if there is a market-wide halt in trading in NMS stocks. *See* Securities Exchange Act Release No. 58754 (October 8, 2008); 73 FR 61178 (October 15, 2008) (Notice of Filing and Immediate Effectiveness of SR–FINRA–2008–049) (''OTC Circuit Breaker Filing''). In the OTC Circuit Breaker Filing, FINRA stated that FINRA considers a market-wide halt in the trading of exchange-listed securities to be an ''extraordinary event'' under paragraph (a)(3) and, therefore, FINRA will halt quoting and trading in OTC Equity Securities under these circumstances. The instant proposed rule change codifies this interpretation in the text of FINRA Rule 6440.

[5] *See* FINRA Rule 6121.01 (Trading Pauses); *See* Securities Exchange Act Release No. 62251 (June 10, 2010), 75 FR 34183 (June 16, 2010) (Order Approving SR–FINRA–2010–025); *See* Securities Exchange Act Release No. 62883 (September 10, 2010); 75 FR 56608 (September 16, 2010) (Order Approving SR–FINRA–2010–033); *See* Securities Exchange Act Release No. 64735 (June 23, 2011), 76 FR 38243 (June 29, 2011) (Order Approving SR–FINRA–2011–023).

[6] *See* FINRA Rule 11892 (Clearly Erroneous Transactions in Exchange-Listed Securities); *See* Securities Exchange Act Release No. 62885 (September 10, 2010); 75 FR 56641 (September 16, 2010) (Order Approving SR–FINRA–2010–032); *See* Securities Exchange Act Release No. 65101 (August 11, 2011), 76 FR 51097 (August 17, 2011) (Order Approving SR–FINRA–2011–039).

[7] *See* Securities Exchange Act Release No. 64547 (May 25, 2011), 76 FR 31647 (June 1, 2011).

[8] *See* Summary Report of the Committee, Recommendations Regarding Regulatory Responses to the Market Events of May 6, 2010 (February 18, 2011).

[9] *See* Securities Exchange Act Release No. 26198 (October 19, 1988), 53 FR 41637 (October 24, 1988) (Order Approving SR–NASD–88–46). FINRA's Policy Statement on Market Closings (''Policy Statement'') provided, among other things, that when other major securities markets initiate market-wide trading halts in response to extraordinary

Continued

as part of an effort by the securities and futures markets to implement a coordinated means to address potentially destabilizing market volatility.[10]

On October 7, 2008, FINRA permanently adopted a new rule—Rule 6121—that authorizes FINRA to halt over-the-counter trading in NMS stocks if other major U.S. securities markets initiate market-wide trading halts in response to their rules or extraordinary market conditions, or if otherwise directed by the SEC.[11] Rule 6121 provides for a halt in trading otherwise than on an exchange in any NMS stock to promote stability and investor confidence during a period of significant stress.

As the Commission noted in the Order Approving SR–NASD–88–46, circuit breakers were intended to enable market participants to establish an equilibrium between buying and selling interest and to ensure that market participants have an opportunity to become aware of and respond to significant price movements. Importantly, the circuit breakers were not intended to prevent markets from adjusting to new price levels; rather, they provide a speed bump for extremely rapid market declines.[12]

Proposed Amendments

As noted above, FINRA and the other SROs are proposing amendments to their respective rules to take into consideration the recommendations of the Committee, and to provide for more meaningful measures in today's markets in determining when to halt trading in stocks on a market-wide basis. Accordingly, FINRA is proposing, in coordination with the other SROs, to update the methodology for determining the trigger for market-wide circuit breakers for trading otherwise than on an exchange in all NMS stocks and to provide specifically that FINRA will halt trading in all OTC Equity Securities until the market-wide circuit breaker no longer is in effect for NMS stocks. FINRA's proposed parameters and thresholds for market-wide circuit breakers for trading otherwise than on an exchange would track those being proposed by the other SROs.

First, FINRA and the other SROs propose to use the S&P 500 as the benchmark index for the market-wide circuit breakers.[13] FINRA believes that because the S&P 500 is based on the trading prices of 500 stocks, it represents a broader base of securities against which to measure whether extraordinary market-wide volatility is occurring.

Second, FINRA proposes to reference the triggers by the primary markets that establish a Level 1 Market Decline of 7%, a Level 2 Market Decline of 13% and a Level 3 Market Decline of 20%. As demonstrated by the May 6, 2010 flash crash, the SROs believe that the current Level 1 10% decline may be too high a threshold before determining whether to halt trading across all securities. Since adoption, the exchanges have halted only once, on October 27, 1997.[14] Accordingly, to reflect the potential that a lower, yet still significant decline may warrant a market-wide trading halt, the SROs are proposing to lower the decline percentage thresholds.

FINRA and the other SROs would halt trading based on a Level 1 or a Level 2 Market Decline only once per day. For example, if a Level 1 Market Decline was to occur and trading otherwise than on an exchange in all NMS stocks and all OTC Equity Securities was halted, following the reopening of trading on the primary listing market or the commencement of trading by another national securities exchange, FINRA would not halt market-wide trading again unless a Level 2 Market Decline was to occur. Likewise, following the resumption of trading after a Level 2 Market Decline, FINRA would not halt trading otherwise than on an exchange in all NMS stocks and all OTC Equity Securities again unless a Level 3 Market Decline was to occur, at which point all trading otherwise than on an exchange in all NMS stocks and all OTC Equity Securities would be halted until the primary listing market opens the next trading day. As proposed, a Level 1 or a Level 2 Market Decline may trigger a market-wide circuit breaker after 9:30 a.m. Eastern and up to and including 3:25 p.m. Eastern, or in the case of an early scheduled close, 12:25 p.m. Eastern.[15] The proposed rule would require that members halt quoting and trading otherwise than on an exchange in any NMS stock as of the time the market-wide trading halt is publicly disseminated.

Third, as proposed, a Level 1 or a Level 2 Market Decline would result in a market-wide circuit breaker in trading otherwise than on an exchange in all NMS stocks and all OTC Equity Securities for the duration of 15 minutes. When a primary listing market halts trading in all NMS stocks for a Level 1 or a Level 2 Market Decline, FINRA's halt on trading otherwise than on an exchange in all NMS stocks would continue until trading has resumed on the primary listing market. If, however, the primary listing market does not reopen trading within 15 minutes following the end of the 15-minute halt period, FINRA may permit the resumption of trading otherwise than on an exchange in that security if trading in the security has commenced on at least one other national securities exchange.

Following a market-wide circuit breaker due to a Level 1 or a Level 2 Market Decline, trading in OTC Equity Securities would remain halted until the market-wide circuit breaker no longer is in effect for NMS stocks, even if some individual NMS stocks have not yet resumed trading, for example, due to significant imbalances in those securities. The proposed rule would require that members halt quoting and trading in all OTC Equity Securities as of the time the market-wide trading halt in NMS stocks is publicly disseminated.

FINRA and the other SROs believe that the proposed percentage thresholds—coupled with the proposed duration of the market-wide circuit breakers for Level 1 and Level 2 Market Declines—allows for trading halts for serious market declines, while at the

market conditions, FINRA will, upon SEC request, halt domestic trading in all securities in equity and equity-related securities in the OTC market. As part of the approval order, the SEC requested that FINRA impose a trading halt as quickly as practicable whenever the NYSE and other equity markets have suspended trading. The language in the Policy Statement was subsequently codified, on a pilot basis, in Interpretive Material (IM) 4120–3 (later renumbered IM–4120–4). *See* Securities Exchange Act Release No. 39846 (April 9, 1998), 63 FR 18477 (April 15, 1998) (Order Approving SR–NASD–98–27). The IM–4120–3 pilot, which also was extended numerous times, expired on April 30, 2002.

[10] *See* Order Approving SR–NASD–88–46.

[11] *See* Securities Exchange Act Release No. 58753 (October 8, 2008), 73 FR 61177 (October 15, 2008) (Order Approving SR–FINRA–2008–048).

[12] *See* Order Approving SR–NASD–88–46.

[13] The current rules of the exchanges use the DJIA, not the S&P 500. The Committee noted that using an index that correlates closely with derivative products, such as the E–Mini and SPY, will allow for a better cross-market measure of market volatility.

[14] At that time, the triggers were based on absolute declines in the DJIA (350 point decrease for a Level 1 halt and 550 point decrease for a Level 2 halt).

[15] As the markets experienced on May 6, 2010, even if the Level 1 decline had occurred that day, because the market decline occurred after 2:30 p.m., it would not have triggered a market-wide circuit breaker under the other SROs' existing rules. The Committee recommended that trading halts be triggered up to 3:30 p.m and FINRA and the other SROs agree that the proposed amendments must strike the appropriate balance between permitting trading halts as late in the day as feasible, without interrupting the closing process. The SROs are proposing 3:25 p.m. as the cut-off time so that there is time following the 15-minute trading halt for the markets to reopen before the 3:45 cut-off for entry and cancellation of certain orders under other SROs' rules.

same time minimizing disruption to the markets by allowing for trading to continue after the halt. FINRA and the other SROs believe that in today's markets, where trading information may travel at a speed of micro-seconds, a 15-minute trading halt for a Level 1 and a Level 2 Market Decline strikes the appropriate balance between halting trading for market participants to assess the market and minimizing the time needed for an effective halt.

Upon the occurrence of a Level 3 Market Decline occurring at any time during the trading day, FINRA would halt trading otherwise than on an exchange in all NMS stocks until the primary listing market opens the next trading day. As is the case with a Level 1 or Level 2 Market Decline, upon the occurrence of a Level 3 Market Decline, the proposed rule would require members to halt quoting and trading in all OTC Equity Securities as of the time the market-wide trading halt in NMS stocks is publicly disseminated. FINRA would halt trading in all OTC Equity Securities until such time that the market-wide circuit breaker no longer is in effect for NMS stocks, even if some individual NMS stocks have not yet resumed trading, for example, due to significant imbalances in those securities.

2. Statutory Basis

FINRA believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,[16] which requires, among other things, that FINRA rules must be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade and, in general, to protect investors and the public interest. Specifically, this proposal promotes uniformity concerning when and how to halt trading in all stocks as a result of extraordinary market volatility. FINRA believes that the proposed rule change is consistent with the market-wide circuit breaker rules of other SROs and will promote the goal of investor protection by further providing for a coordinated means to address potentially destabilizing market volatility.

B. Self-Regulatory Organization's Statement on Burden on Competition

FINRA does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

[16] 15 U.S.C. 78o–3(b)(6).

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve or disapprove such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed changes to the market-wide circuit breaker regime are consistent with the Act. The Commission specifically requests comment on the following:

- As discussed above, the proposed rule change would narrow the percentage market declines that would trigger a market-wide halt in trading. How would the proposed changes interact with the existing single-stock circuit breaker pilot program [17] or, if approved, the proposed NMS Plan to establish a limit-up/limit-down mechanism for individual securities? [18]
- To what extent could the concurrent triggering of single stock circuit breakers in many S&P 500 Index stocks lead to difficulties in calculating the index? Would the triggering of many single stock circuit breakers in a general market downturn cause the index calculation to become stale and thereby delay the triggering of the market-wide circuit breaker?
- Should the market-wide circuit breaker be triggered if a sufficient number of single-stock circuit breakers or price limits are triggered, and materially affect calculations of the S&P 500 Index?
- Should market centers implement rules that mandate cancellation of pending orders in the event a market-wide circuit breaker is triggered? If so, should such a rule require cancellation of all orders or only certain order types (*e.g.,* limit orders)? Should all trading halts trigger such cancellation policies or should the cancellation policies apply only to a Level 3 Market Decline?
- Should some provision be made to end the regular trading session if a market decline suddenly occurs after 3:25 p.m. but does not reach the 20% level?
- In the event of a Level 3 Market Decline, should some provision be made for the markets to hold a closing auction?
- Should the primary market have a longer period (*e.g.,* 30 minutes) to reopen trading following a Level 2 Market Decline before trading resumes in other venues?
- In the event of a Level 3 Market Decline, should the markets wait for the primary market to reopen trading in a particular security on the next trading day before trading in that security resumes?

Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–FINRA–2011–054 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–FINRA–2011–054. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written

[17] *See* Securities Exchange Act Release No. 64735 (June 23, 2011), 76 FR 38243 (June 29, 2011) (SR–BATS–2011–016; SR–BYX–2011–011; SR–BX–2011–025; SR–CBOE–2011–049; SR–CHX–2011–09; SR–EDGA–2011–15; SR–EDGX–2011–14; SR–FINRA–2011–023; SR–ISE–2011–028; SR–NASDAQ–2011–067; SR–NYSE–2011–21; SR–NYSEAmex–2011–32; SR–NYSEArca–2011–26; SR–NSX–2011–06; SR–Phlx–2011–64) (approving the ''Phase III Pilot Program''). The Phase III Pilot Program has been extended through January 2012. *See, e.g.,* Securities Exchange Act Release 65094 (August 10, 2011), 76 FR 50779 (August 16, 2011) (SR–NASDAQ–2011–011).

[18] *See* Securities Exchange Act Release No. 64547 (May 25, 2011), 76 FR 31647 (June 1, 2011).

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 FINRA. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make publicly available. All submissions should refer to File Number SR–FINRA–2011–054 and should be submitted on or before October 25, 2011.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[19]

Elizabeth M. Murphy,

Secretary.

[FR Doc. 2011–25511 Filed 10–3–11; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–65429; File No. SR–BYX–2011–025]

Self-Regulatory Organizations; BATS Exchange, Inc.; Notice of Filing of a Proposed Rule Change To Modify the Rule for Halting Trading in All Stocks Due to Extraordinary Market Volatility

September 28, 2011.

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 27, 2011, BATS Y-Exchange, Inc. (the ''Exchange'' or ''BYX'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The 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 filing with the Commission a proposal to modify BYX Rule 11.18, entitled ''Trading Halts Due to Extraordinary Market Volatility,'' to revise the current methodology for determining when to halt trading in all stocks due to extraordinary market volatility.

The text of the proposed rule change is available at the Exchange's Web site at *http://www.batstrading.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend BYX Rule 11.18 to revise the current methodology for determining when to halt trading in all stocks due to extraordinary market volatility. The Exchange is proposing this rule change in consultation with other equity, options, and futures markets, the Financial Industry Regulatory Authority, Inc. (''FINRA''), and staffs of the Commission and the Commodity Futures Trading Commission.

Since May 6, 2010, when the markets experienced excessive volatility in an abbreviated time period, i.e., the ''flash crash,'' the exchanges and FINRA have implemented market-wide measures designed to restore investor confidence by reducing the potential for excessive market volatility. Among the measures adopted include pilot plans for stock-by-stock trading pauses [3] and related changes to the clearly erroneous execution rules [4] and more stringent market maker quoting requirements.[5] In addition, on April 5, 2011, the equities exchanges and FINRA filed a plan pursuant to Rule 608 of Regulation NMS to address extraordinary market volatility (the ''Limit Up-Limit Down Plan'').[6] As proposed, the Limit Up-Limit Down Plan is designed to prevent trades in individual NMS stocks from occurring outside specified price bands.

The Joint CFTC–SEC Advisory Committee on Emerging Regulatory Issues (''Committee'') has recommended that, in addition to the initiatives already adopted or proposed, the markets should consider reforming the existing market-wide circuit breakers. Among other things, the Committee noted that the interrelatedness of today's highly electronic markets warrants the need to review the present operation of the system-wide circuit breakers now in place. Specifically, the Committee recommended that the markets consider replacing the Dow Jones Industrial Average (''DJIA'') with the S&P 500® Index (''S&P 500''), revising the 10%, 20%, and 30% decline percentages, reducing the length of trading halts, and allowing halts to be triggered up to 3:30 p.m.[7]

The exchanges and FINRA have taken into consideration the Committee's recommendations, and with some modifications, have proposed changes to market-wide circuit breakers that the Exchange believes will provide for a more meaningful measure in today's faster, more electronic markets, of when to halt stocks on a market-wide basis as a result of rapid market declines.

Background

The market-wide halt rules currently in effect were initially adopted in October 1988 as part of an effort by the securities and futures markets to implement a coordinated means to address potentially destabilizing market volatility.[8] Accordingly, BYX Rule 11.18 provides for market-wide halts in trading at specified levels in order to promote stability and investor confidence during a period of significant stress. As the Commission noted in its approval order for the current market-wide halt rule, the rule

[19] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] BYX Rule 11.18(d) (under the proposal, to be re-numbered as Rule 11.18(e)).

[4] BYX Rule 11.17.

[5] BYX Rule 11.8(d).

[6] *See* Securities Exchange Act Release No. 64547 (May 25, 2011), 76 FR 31647 (June 1, 2011).

[7] *See* Summary Report of the Committee, ''Recommendations Regarding Regulatory Responses to the Market Events of May 6, 2010'' (Feb, 18, 2011). The Exchange notes that NYSE Euronext submitted a comment letter to the Committee that recommended, among other things, reform of the market-wide circuit breaker rules. *See* Letter to Elizabeth Murphy, Secretary, Commission, from Janet M. Kissane, SVP and Corporate Secretary, NYSE Euronext (July 19, 2010). The proposed reforms set forth in this rule proposal differ slightly from the changes recommended in that comment letter, and represent consensus among the markets of how to address reform of the market-wide circuit breakers.

[8] *See* Securities Exchange Act Release No. 26198 (Oct. 19, 1988).

was intended to enable market participants to establish equilibrium between buying and selling interest and to ensure that market participants have an opportunity to become aware of and respond to significant price movements. Importantly, the market-wide circuit breakers were not intended to prevent markets from adjusting to new price levels; rather, they provide for a speed bump for extremely rapid market declines.[9]

In its current form,[10] the rule provides for Level 1, 2, and 3 declines and specified trading halts following such declines. The values of Levels 1, 2 and 3 are calculated at the beginning of each calendar quarter, using 10%, 20% and 30%, respectively, of the average closing value of the DJIA for the month prior to the beginning of the quarter. Each percentage calculation is rounded to the nearest fifty points to create the Levels' trigger points. The New York Stock Exchange LLC (''NYSE'') currently disseminates the new trigger levels quarterly to the media and via an Information Memo and is [sic] available on the NYSE's Web site.[11] The values then remain in effect until the next quarterly calculation, notwithstanding whether the DJIA has moved and a Level 1, 2, or 3 decline is no longer equal to an actual 10%, 20%, or 30% decline in the most recent closing value of the DJIA.

Once a Rule 11.18 market-wide circuit breaker is in effect, trading in all stocks halt for the time periods specified below:

Level 1 Halt

Anytime before 2 p.m.—one hour; at or after 2 p.m. but before 2:30 p.m.—30 minutes; at or after 2:30 p.m.—trading shall continue, unless there is a Level 2 Halt.

Level 2 Halt

Anytime before 1 p.m.—two hours; at or after 1 p.m. but before 2 p.m.—one hour; at or after 2 p.m.—trading shall halt and not resume for the rest of the day.

Level 3 Halt

at any time—trading shall halt and not resume for the rest of the day.

Unless stocks are halted for the remainder of the trading day, price indications are disseminated during a Rule 11.18 market-wide trading halt for stocks that comprise the DJIA.

Proposed Amendments

As noted above, the Exchange, other equities, options, and futures markets, and FINRA propose to amend the market-wide circuit breakers to take into consideration the recommendations of the Committee, and to provide for more meaningful measures in today's markets of when to halt trading in all stocks. Accordingly, the Exchange proposes to amend Rule 11.18 as follows: (i) Replace the DJIA with the S&P 500; (ii) replace the quarterly calendar recalculation of Rule 11.18 triggers with daily recalculations: (iii) replace the 10%, 20%, and 30% market decline percentages with 7%, 13%, and 20% market decline percentages; (iv) modify the length of the trading halts associated with each market decline level; and (v) modify the times when a trading halt may be triggered. The Exchange believes that these proposed amendments update the rule to reflect today's high-speed, highly electronic trading market while still meeting the original purpose of the market-wide trading halt rule: to ensure that market participants have an opportunity to become aware of and respond to significant price movements.

First, the Exchange proposes to replace the DJIA with the S&P 500. The Exchange believes that because the S&P 500 is based on the trading prices of 500 stocks, as compared to the 30 stocks that comprise the DJIA, the S&P 500 represents a broader base of securities against which to measure whether extraordinary market-wide volatility is occurring. In addition, as noted by the Committee, using an index that correlates closely with derivative products, such as the E–Mini and SPY, will allow for a better cross-market measure of market volatility.

Second, the Exchange proposes to change the recalculation of the trigger values from once every calendar quarter to daily. The Exchange believes that updating the trigger values daily will better reflect current market conditions. In particular, a daily recalculation will ensure that the percentage drop triggers relate to current market conditions, and are not compared to what may be stale market conditions. As noted in the proposed rule, the daily calculations of the trigger values will be published before the trading day begins.[12]

Third, the Exchange proposes to decrease the current Level 1, 2, and 3 declines of 10%, 20%, and 30% to a Level 1 Market Decline of 7%, a Level 2 Market Decline of 13%, and Level 3 Market Decline of 20%. In particular, as demonstrated by the May 6, 2010 flash crash, the current Level 1 10% decline may be too high a threshold before determining whether to halt trading across all securities. In fact, since adoption, the markets have halted only once, on October 27, 1997.[13] Accordingly, to reflect the potential that a lower, yet still significant decline may warrant a market-wide trading halt, the Exchange proposes to lower the market decline percentage thresholds.

As further proposed, the Exchange would halt trading based on a Level 1 or Level 2 Market Decline only once per day. For example, if a Level 1 Market Decline were to occur and trading were halted, following the reopening of trading, the Exchange would not halt the market again unless a Level 2 Market Decline were to occur. Likewise, following the reopening of trading after a Level 2 Market Decline, the Exchange would not halt trading again unless a Level 3 Market Decline were to occur, at which point, trading in all stocks would be halted until the primary listing market opens the next trading day.

Fourth, to correspond with the lower percentages associated with triggering a trading halt, the Exchange also proposes to shorten the length of the market-wide trading halts associated with each Level. As proposed, a Level 1 or 2 Market Decline occurring after 9:30 a.m.[14] and up to and including 3:25 p.m., or in the case of an early scheduled close, 12:25 p.m., would result in a trading halt in all stocks for 15 minutes.

The Exchange believes that by reducing the percentage threshold, coupled with the reduced length of a trading halt, the proposed rule would allow for trading halts for serious market declines, while at the same time, would minimize disruption to the market by allowing for trading to continue after the proposed more-abbreviated trading halt. The Exchange believes that in today's markets, where trading information travels in micro-second speed, a 15-minute trading halt

[9] *Id.*

[10] The rule was last amended in 1998, when declines based on specified point drops in the DJIA were replaced with the current methodology of using a percentage decline that is recalculated quarterly. *See* Securities Exchange Act Release No. 39846 (April 9, 1998), 63 FR 18477 (April 15, 1998) (SR–NYSE–98–06, SR–Amex–98–09, SR–BSE–98–06, SR–CHX–98–08, SR–NASD–98–27, and SR–Phlx–98–15).

[11] *See, e.g.,* NYSE Regulation Information Memos 11–19 (June 30, 2011) and 11–10 (March 31, 2011).

[12] The Exchange and other markets will advise [sic] provide notice to market participants regarding the specific methodology for publishing the daily calculations, as well as the manner by which the markets will halt trading in all stocks should a Rule 11.18 market-wide trading halt be triggered.

[13] At that time, the triggers were based on absolute declines in the DJIA (350 point decrease for a Level 1 halt and 550 point decrease for a Level 2 halt).

[14] As set forth in proposed paragraph (g) to Rule 11.18, all times referenced in the rule and in this proposal are Eastern Time.

strikes the appropriate balance between the need to halt trading for market participants to assess the market, while at the same time reducing the time that the market is halted.

Finally, because the proposed Level 1 and Level 2 trading halts will now be 15 minutes, the Exchange proposes amending the rule to allow for a Level 1 or 2 Market Decline to trigger a trading halt up to 3:25 p.m., or in the case of an early scheduled close, 12:25 p.m. Under the current rule, a trading halt cannot be triggered after 2:30 p.m., and this time corresponds to the need for the markets both to reopen following a 30-minute halt and to engage in a fair and orderly closing process. However, as the markets experienced on May 6, 2010, even if the Level 1 decline had occurred that day, because the market decline occurred after 2:30 p.m., it would not have triggered a halt under the current rule. The Committee recommended that trading halts be triggered up to 3:30 p.m. The Exchange agrees that the proposed amendments must strike the appropriate balance between permitting trading halts as late in the day as feasible without interrupting the closing process.

Accordingly, to accommodate existing Exchange rules concerning closing procedures, the Exchange proposes that the last Level 1 or Level 2 Market Decline trading halt should be 3:25 p.m., or in the case of an early scheduled close, 12:25 p.m.

As with current Level 3 declines, under the proposed rule, a Level 3 Market Decline would halt trading for the remainder of the trading day, including any trading that may take place after 4:00 p.m., and would not resume until the next trading day.

In addition to these proposed changes, the Exchange proposes to add to Rule 11.18 how the markets will reopen following a 15-minute market-wide trading halt. In particular, similar to the reopening procedures set forth in current Rule 11.18(d), the Exchange proposes that if the primary listing market halts trading in all stocks, all markets will halt trading in those stocks until the primary listing market has resumed trading or notice has been provided by the primary listing market that trading may resume. As further proposed, if the primary listing market does not re-open a security within 15 minutes following the end of the trading halt, other markets may resume trading in that security.

2. Statutory Basis

The Exchange believes that its proposal is consistent with the requirements of the Act and the rules and regulations thereunder that are applicable to a national securities exchange, and, in particular, with the requirements of Section 6(b) of the Act.[15] In particular, the proposal is consistent with Section 6(b)(5) of the Act,[16] because it would promote just and equitable principles of trade, remove impediments to, and perfect the mechanism of, a free and open market and a national market system. Specifically, this rule proposal supports the objectives of perfecting the mechanism of a free and open market and the national market system because it promotes uniformity across markets concerning when and how to halt trading in all stocks as a result of extraordinary market volatility.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change imposes any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange has neither solicited nor received written comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) As the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the Exchange consents, the Commission will:

A. By order approve or disapprove such proposed rule change, or

B. Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed changes to the market-wide circuit breaker regime are consistent with the Act. The Commission specifically requests comment on the following:

• As discussed above, the proposed rule change would narrow the percentage market declines that would trigger a market-wide halt in trading. How would the proposed changes interact with the existing single-stock circuit breaker pilot program [17] or, if approved, the proposed NMS Plan to establish a limit-up/limit-down mechanism for individual securities? [18]

• To what extent could the concurrent triggering of single stock circuit breakers in many S&P 500 Index stocks lead to difficulties in calculating the index? Would the triggering of many single stock circuit breakers in a general market downturn cause the index calculation to become stale and thereby delay the triggering of the market-wide circuit breaker?

• Should the market-wide circuit breaker be triggered if a sufficient number of single-stock circuit breakers or price limits are triggered, and materially affect calculations of the S&P 500 Index?

• Should market centers implement rules that mandate cancellation of pending orders in the event a market-wide circuit breaker is triggered? If so, should such a rule require cancellation of all orders or only certain order types (*e.g.,* limit orders)? Should all trading halts trigger such cancellation policies or should the cancellation policies apply only to a Level 3 Market Decline?

• Should some provision be made to end the regular trading session if a market decline suddenly occurs after 3:25 p.m. but does not reach the 20% level?

• In the event of a Level 3 Market Decline, should some provision be made for the markets to hold a closing auction?

• Should the primary market have a longer period (*e.g.,* 30 minutes) to reopen trading following a Level 2 Market Decline before trading resumes in other venues?

• In the event of a Level 3 Market Decline, should the markets wait for the primary market to reopen trading in a particular security on the next trading day before trading in that security resumes?

Comments may be submitted by any of the following methods:

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[15] 15 U.S.C. 78f(b).

[16] 15 U.S.C. 78f(b)(5).

[17] *See* Securities Exchange Act Release No. 64735 (June 23, 2011), 76 FR 38243 (June 29, 2011) (SR–BATS–2011–016; SR–BYX–2011–011; SR–BX–2011–025; SR–CBOE–2011–049; SR–CHX–2011–09; SR–EDGA–2011–15; SR–EDGX–2011–14; SR–FINRA–2011–023; SR–ISE–2011–028; SR–NASDAQ–2011–067; SR–NYSE–2011–21; SR–NYSEAmex–2011–32; SR–NYSEArca–2011–26; SR–NSX–2011–06; SR–Phlx–2011–64) (approving the ''Phase III Pilot Program''). The Phase III Pilot Program has been extended through January 2012. *See, e.g.,* Securities Exchange Act Release 65094 (August 10, 2011), 76 FR 50779 (August 16, 2011) (SR–NASDAQ–2011–011).

[18] *See* Securities Exchange Act Release No. 64547 (May 25, 2011), 76 FR 31647 (June 1, 2011).

Electronic Comments

• Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or

• Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–BYX–2011–025 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–BYX–2011–025. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make publicly available. All submissions should refer to File Number SR–BYX–2011–025 and should be submitted on or before October 25, 2011.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[19]

Elizabeth M. Murphy,

Secretary.

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[19] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–65428; File No. SR–BX–2011–068]

Self-Regulatory Organizations; NASDAQ OMX BX, Inc.; Notice of Filing of Proposed Rule Change To Revise the Methodology for Determining When to Halt Trading Due to Extraordinary Market Volatility

September 28, 2011.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 [2] thereunder, notice is hereby given that on September 27, 2011, NASDAQ OMX BX, Inc. (''BX'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I, II, and III, below, which Items have been prepared by the Exchange. 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, pursuant to Section 19(b)(1) of the Act [3] and Rule 19b–4 thereunder,[4] proposes to amend Exchange Rule 4121 to revise the methodology for determining when to halt trading in all stocks due to extraordinary market volatility. The proposal is made in conjunction with all national securities exchanges and the Financial Industry Regulatory Authority (''FINRA'').

The text of the proposed rule change is available on the Exchange's Web site at *http://nasdaqomxbx.cchwallstreet.com*, at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The 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 Exchange proposes to amend Exchange Rule 4121 to revise the current methodology for determining when to halt trading in all stocks due to extraordinary market volatility. The Exchange is proposing this rule change in consultation with other equity, options, and futures markets, the Financial Industry Regulatory Authority, Inc. (''FINRA''), and staffs of the Commission and the Commodity Futures Trading Commission.

Since May 6, 2010, when the markets experienced excessive volatility in an abbreviated time period, i.e., the ''flash crash,'' the exchanges and FINRA have implemented market-wide measures designed to restore investor confidence by reducing the potential for excessive market volatility. Among the measures adopted include pilot plans for stock-by-stock trading pauses [5] and related changes to the clearly erroneous execution rules [6] and more stringent market maker quoting requirements.[7] In addition, on April 5, 2011, the equities exchanges and FINRA filed a plan pursuant to Rule 608 of Regulation NMS to address extraordinary market volatility (the ''Limit Up-Limit Down Plan'').[8] As proposed, the Limit Up-Limit Down Plan is designed to prevent trades in individual NMS stocks from occurring outside specified price bands.

The Joint CFTC–SEC Advisory Committee on Emerging Regulatory Issues (''Committee'') has recommended that, in addition to the initiatives already adopted or proposed, the markets should consider reforming the existing market-wide circuit breakers. Among other things, the Committee noted that the interrelatedness of today's highly electronic markets warrants the need to review the present operation of the system-wide circuit breakers now in place. Specifically, the Committee recommended that the markets consider replacing the Dow Jones Industrial Average (''DJIA'') with the S&P 500® Index (''S&P 500''), revising the 10%, 20%, and 30% decline percentages, reducing the length

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(1).

[4] 17 CFR 240.19b–4.

[5] BX Rule 4120(a)(11).

[6] BX Rule 11890.

[7] BX Rule 4613.

[8] *See* Securities Exchange Act Release No. 64547 (May 25, 2011), 76 FR 31647 (June 1, 2011).

of trading halts, and allowing halts to be triggered up to 3:30 p.m.[9]

The exchanges and FINRA have taken into consideration the Committee's recommendations, and with some modifications, have proposed changes to market-wide circuit breakers that the Exchange believes will provide for a more meaningful measure in today's faster, more electronic markets, of when to halt stocks on a market-wide basis as a result of rapid market declines.

Background

The Exchange adopted Rule 4121 in 2008. Rule 4121 provides that upon SEC request the Exchange will halt all domestic trading in both securities listed on Nasdaq and securities traded [*sic*] the Exchange pursuant to unlisted trading privileges if other major securities markets initiate marketwide trading halts in response to extraordinary market conditions. In effect, the Exchange agreed via Rule 4121 to abide by marketwide halts called for by the SEC in conjunction with other listing markets. The standards governing such halts were adopted in 1988 as part of an effort by the securities and futures markets to implement a coordinated means to address potentially destabilizing market volatility.[10]

The purpose of a marketwide halt, as embodied in Rule 4121, is to enable market participants to establish an equilibrium between buying and selling interest and to ensure that market participants have an opportunity to become aware of and respond to significant price movements. Importantly, the market-wide circuit breakers were not intended to prevent markets from adjusting to new price levels; rather, they provide for a speed bump for extremely rapid market declines.[11]

The current standard, set forth in the rules of other exchanges,[12] provides for Level 1, 2, and 3 declines and specified trading halts following such declines. The values of Levels 1, 2 and 3 are calculated at the beginning of each calendar quarter, using 10%, 20% and 30%, respectively, of the average closing value of the DJIA for the month prior to the beginning of the quarter. Each percentage calculation is rounded to the nearest fifty points to create the Levels' trigger points. The values then remain in effect until the next quarterly calculation, notwithstanding whether the DJIA has moved and a Level 1, 2, or 3 decline is no longer equal to an actual 10%, 20%, or 30% decline in the most recent closing value of the DJIA.

Once a marketwide circuit breaker is in effect, trading in all stocks halt for the time periods specified below:

Level 1 Halt

Anytime before 2 p.m.—one hour; at or after 2 p.m. but before 2:30 p.m.—30 minutes; at or after 2:30 p.m.—trading shall continue, unless there is a Level 2 Halt.

Level 2 Halt

Anytime before 1 p.m.—two hours; at or after 1 p.m. but before 2 p.m.—one hour; at or after 2 p.m.—trading shall halt and not resume for the rest of the day.

Level 3 Halt

At any time—trading shall halt and not resume for the rest of the day.

Unless stocks are halted for the remainder of the trading day, price indications are disseminated during a Rule 80B trading halt for stocks that comprise the DJIA.

Proposed Amendments

As noted above, the Exchange, other equities, options, and futures markets, and FINRA propose to amend the market-wide circuit breakers to take into consideration the recommendations of the Committee, and to provide for more meaningful measures in today's markets of when to halt trading in all stocks. Accordingly, the Exchange proposes to amend Rule 4121 to create the following standards: (i) Replace the DJIA with the S&P 500; (ii) replace the quarterly calendar recalculation of Rule 80B triggers with daily recalculations: (iii) replace the 10%, 20%, and 30% market decline percentages with 7%, 13%, and 20% market decline percentages; (iv) modify the length of the trading halts associated with each market decline level; and (v) modify the times when a trading halt may be triggered. The Exchange believes that these proposed amendments update the rule to reflect today's high-speed, highly electronic trading market while still ensuring that market participants have an opportunity to become aware of and respond to significant price movements.

First, the Exchange proposes to replace the DJIA with the S&P 500. The Exchange believes that because the S&P 500 is based on the trading prices of 500 stocks, as compared to the 30 stocks that comprise the DJIA, the S&P 500 represents a broader base of securities against which to measure whether extraordinary market-wide volatility is occurring. In addition, as noted by the Committee, using an index that correlates closely with derivative products, such as the E-Mini and SPY, will allow for a better cross-market measure of market volatility.

Second, the Exchange proposes to change the recalculation of the trigger values from once every calendar quarter to daily. The Exchange believes that updating the trigger values daily will better reflect current market conditions. In particular, a daily recalculation will ensure that the percentage drop triggers relate to current market conditions, and are not compared to what may be stale market conditions. As noted in the proposed rule, the daily calculations of the trigger values will be published before the trading day begins.[13]

Third, the Exchange proposes to decrease the current Level 1, 2, and 3 declines of 10%, 20%, and 30% to a Level 1 Market Decline of 7%, a Level 2 Market Decline of 13%, and Level 3 Market Decline of 20%. In particular, as demonstrated by the May 6, 2010 flash crash, the current Level 1 10% decline may be too high a threshold before determining whether to halt trading across all securities. In fact, since adoption, the markets have halted only once, on October 27, 1997.[14] Accordingly, to reflect the potential that a lower, yet still significant decline may warrant a market-wide trading halt, the Exchange proposes to lower the market decline percentage thresholds.

As further proposed, the Exchange would halt trading based on a Level 1 or Level 2 Market Decline only once per day. For example, if a Level 1 Market Decline were to occur and trading were halted, following the reopening of trading, the Exchange would not halt the market again unless a Level 2 Market Decline were to occur. Likewise, following the reopening of trading after a Level 2 Market Decline, the Exchange would not halt trading again unless a

[9] *See* Summary Report of the Committee, ''Recommendations Regarding Regulatory Responses to the Market Events of May 6, 2010'' (Feb, 18, 2011).

[10] *See* Securities Exchange Act Release No. 26198 (Oct. 19, 1988).

[11] *Id.*

[12] The rule was last amended in 1998, when declines based on specified point drops in the DJIA were replaced with the current methodology of using a percentage decline that is recalculated quarterly. *See* Securities Exchange Act Release No. 39846 (April 9, 1998), 63 FR 18477 (April 15, 1998) (SR–NYSE–98–06, SR–Amex–98–09, SR–BSE–98–06, SR–CHX–98–08, SR–NASD–98–27, and SR–Phlx–98–15).

[13] The Exchange and other markets will advise via Trader Update the specific methodology for publishing the daily calculations, as well as the manner by which the markets will halt trading in all stocks should a Rule 4121 trading halt be triggered.

[14] At that time, the triggers were based on absolute declines in the DJIA (350 point decrease for a Level 1 halt and 550 point decrease for a Level 2 halt).

Level 3 Market Decline were to occur, at which point, trading in all stocks would be halted until the primary market opens the next trading day.

Fourth, to correspond with the lower percentages associated with triggering a trading halt, the Exchange also proposes to shorten the length of the market-wide trading halts associated with each Level. As proposed, a Level 1 or 2 Market Decline occurring after 9:30 a.m. Eastern and up to and including 3:25 p.m. Eastern, would result in a trading halt in all stocks for 15 minutes.

The Exchange believes that by reducing the percentage threshold, coupled with the reduced length of a trading halt, the proposed rule would allow for trading halts for serious market declines, while at the same time, would minimize disruption to the market by allowing for trading to continue after the proposed more-abbreviated trading halt. The Exchange believes that in today's markets, where trading information travels in micro-second speed, a 15-minute trading halt strikes the appropriate balance between the need to halt trading for market participants to assess the market, while at the same time reducing the time that the market is halted.

Finally, because the proposed Level 1 and Level 2 trading halts will now be 15 minutes, the Exchange proposes amending the rule to allow for a Level 1 or 2 Market Decline to trigger a trading halt up to 3:25 p.m. (or, in the case of scheduled early closure, at 12:25 p.m.). Under the current rule, a trading halt cannot be triggered after 2:30 p.m., and this time corresponds to the need for the markets both to reopen following a 30-minute halt and to engage in a fair and orderly closing process. However, as the markets experienced on May 6, 2010, even if the Level 1 decline had occurred that day, because the market decline occurred after 2:30 p.m., it would not have triggered a halt under the current rule. The Committee recommended that trading halts be triggered up to 3:30 p.m. The Exchange agrees that the proposed amendments must strike the appropriate balance between permitting trading halts as late in the day as feasible without interrupting the closing process.

Accordingly, to accommodate existing rules at other Exchange [*sic*] concerning closing procedures, including the publication of imbalance information beginning at 3:50 p.m. and the restrictions on entry and cancellation of market on close (''MOC'') and limit on close (''LOC'') orders after 3:45 p.m., the Exchange proposes that the last Level 1 or Level 2 Market Decline trading halt should begin no later than 3:25 p.m. (or, in the case of scheduled early closure, at 12:25 p.m.). The Exchange proposes 3:25 p.m. as the cut-off time so that there is time following the 15-minute trading halt for the markets to reopen before the 3:45 cut-off for entry and cancellation of MOC and LOC orders under Exchange rules.

Under the proposed rule, a Level 3 Market Decline would halt trading for the remainder of the trading day, including any trading that may take place after 4 p.m., Eastern, and would not resume until the next trading day.

In addition to these proposed changes, the Exchange proposes to add to Rule 4121 how the markets will reopen following a 15-minute trading halt. In particular, the Exchange proposes that if the primary market halts trading in all stocks, all markets will halt trading in those stocks until the primary market has resumed trading or notice has been provided by the primary market that trading may resume. As further proposed, if the primary market does not re-open a security within 15 minutes following the end of the trading halt, other markets may resume trading in that security.

2. Statutory Basis

The statutory basis for the proposed rule change is Section 6(b)(5) of the Securities Exchange Act of 1934 (the ''Act''),[15] which requires the rules of an exchange to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest. The proposed rule change also is designed to support the principles of Section 11A(a)(1)[16] of the Act in that it seeks to assure fair competition among brokers and dealers and among exchange markets. The Exchange believes that the proposed rule meets these requirements in that it promotes transparency and uniformity across markets concerning decisions to pause trading in a security when there are significant price movements.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

[15] 15 U.S.C. 78f(b)(5).

[16] 15 U.S.C. 78k–1(a)(1).

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the Exchange consents, the Commission will:

A. By order approve or disapprove such proposed rule change, or

B. Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed changes to the market-wide circuit breaker regime are consistent with the Act. The Commission specifically requests comment on the following:

- As discussed above, the proposed rule change would narrow the percentage market declines that would trigger a market-wide halt in trading. How would the proposed changes interact with the existing single-stock circuit breaker pilot program[17] or, if approved, the proposed NMS Plan to establish a limit-up/limit-down mechanism for individual securities?[18]
- To what extent could the concurrent triggering of single stock circuit breakers in many S&P 500 Index stocks lead to difficulties in calculating the index? Would the triggering of many single stock circuit breakers in a general market downturn cause the index calculation to become stale and thereby delay the triggering of the market-wide circuit breaker?

[17] *See* Securities Exchange Act Release No. 64735 (June 23, 2011), 76 FR 38243 (June 29, 2011) (SR–BATS–2011–016; SR–BYX–2011–011; SR–BX–2011–025; SR–CBOE–2011–049; SR–CHX–2011–09; SR–EDGA–2011–15; SR–EDGX–2011–14; SR–FINRA–2011–023; SR–ISE–2011–028; SR–NASDAQ–2011–067; SR–NYSE–2011–21; SR–NYSEAmex–2011–32; SR–NYSEArca–2011–26; SR–NSX–2011–06; SR–Phlx–2011–64) (approving the ''Phase III Pilot Program''). The Phase III Pilot Program has been extended through January 2012. *See, e.g.*, Securities Exchange Act Release 65094 (August 10, 2011), 76 FR 50779 (August 16, 2011) (SR–NASDAQ–2011–011).

[18] *See* Securities Exchange Act Release No. 64547 (May 25, 2011), 76 FR 31647 (June 1, 2011).

• Should the market-wide circuit breaker be triggered if a sufficient number of single-stock circuit breakers or price limits are triggered, and materially affect calculations of the S&P 500 Index?

• Should market centers implement rules that mandate cancellation of pending orders in the event a market-wide circuit breaker is triggered? If so, should such a rule require cancellation of all orders or only certain order types (*e.g.,* limit orders)? Should all trading halts trigger such cancellation policies or should the cancellation policies apply only to a Level 3 Market Decline?

• Should some provision be made to end the regular trading session if a market decline suddenly occurs after 3:25 p.m. but does not reach the 20% level?

• In the event of a Level 3 Market Decline, should some provision be made for the markets to hold a closing auction?

• Should the primary market have a longer period (*e.g.,* 30 minutes) to reopen trading following a Level 2 Market Decline before trading resumes in other venues?

• In the event of a Level 3 Market Decline, should the markets wait for the primary market to reopen trading in a particular security on the next trading day before trading in that security resumes?

Comments may be submitted by any of the following methods:

Electronic Comments

• Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or

• Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–BX–2011–068 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–BX–2011–068. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make publicly available. All submissions should refer to File Number SR–BX–2011–068 and should be submitted on or before October 25, 2011.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[19]

Elizabeth M. Murphy,

Secretary.

[FR Doc. 2011–25509 Filed 10–3–11; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–65425; File No. SR–ISE–2011–61]

Self-Regulatory Organizations; International Securities Exchange, LLC; Notice of Proposed Rule Change Related to Trading Halts Due to Extraordinary Market Volatility

September 28, 2011.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on September 27, 2011, the International Securities Exchange, LLC (''Exchange'' or ''ISE'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to adopt Rule 2102(g) to set forth the methodology for determining when trading in all stocks will be halted due to extraordinary market volatility.

The text of the proposed rule change is available on the Exchange's Internet Web site at *http://www.ise.com,* at the principal office of the Exchange, at the Commission's Public Reference Room, and at the Commission's Web site at *http://www.sec.gov*.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections A, B and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to adopt section (g) of Rule 2102 to set forth the current methodology for determining when trading in all stocks will be halted due to extraordinary market volatility. The Exchange is proposing this rule change in consultation with other equity, options and futures markets, the Financial Industry Regulatory Authority, Inc. (''FINRA'') and staffs of the Commission and the Commodity Futures Trading Commission.

Since May 6, 2010, when the markets experienced excessive volatility in an abbreviated time period, *i.e.,* the ''flash crash,'' the exchanges and FINRA have implemented market-wide measures designed to restore investor confidence by reducing the potential for excessive market volatility. Among the measures adopted include pilot plans for stock-by-stock trading pauses[3] and related changes to the clearly erroneous execution rules.[4] In addition, on April 5, 2011, the equities exchanges and FINRA filed a plan pursuant to Rule 608 of Regulation NMS to address

[19] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] ISE Rule 2102(f).

[4] ISE Rule 2128.

extraordinary market volatility (the ''Limit Up-Limit Down Plan'').[5] As proposed, the Limit Up-Limit Down Plan is designed to prevent trades in individual NMS stocks from occurring outside specified price bands.

The Joint CFTC-SEC Advisory Committee on Emerging Regulatory Issues (''Committee'') has recommended that, in addition to the initiatives already adopted or proposed, the markets should consider reforming the existing market-wide circuit breakers. Among other things, the Committee noted that the interrelatedness of today's highly electronic markets warrants the need to review the present operation of the system-wide circuit breakers now in place. Specifically, the Committee recommended that the markets consider replacing the Dow Jones Industrial Average (''DJIA'') with the S&P 500® Index (''S&P 500''), revising the 10%, 20% and 30% decline percentages, reducing the length of trading halts, and allowing halts to be triggered up to 3:30 p.m.[6]

The exchanges and FINRA have taken into consideration the Committee's recommendations, and with some modifications, have proposed changes to market-wide circuit breakers. The Exchange believes these proposed changes will provide for a more meaningful measure, in today's faster, more electronic markets, of when to halt stocks on a market-wide basis as a result of rapid market declines.

Background

New York Stock Exchange (''NYSE'') Rule 80B provides for market-wide halts in trading at specified levels in order to promote stability and investor confidence during a period of significant stress. As the Commission noted in its approval order, the rule was intended to enable market participants to establish equilibrium between buying and selling interest and to ensure that market participants have an opportunity to become aware of and respond to significant price movements. Importantly, the market-wide circuit breakers were not intended to prevent markets from adjusting to new price levels; rather, they provide for a speed bump for extremely rapid market declines.[7]

In its current form, the rule provides for Level 1, 2 and 3 declines and specified trading halts following such declines (each a ''Level 1, 2 or 3 Halt,'' respectively). The values of Levels 1, 2 and 3 are calculated at the beginning of each calendar quarter by the primary listing market, using 10%, 20% and 30%, respectively, of the average closing value of the DJIA for the month prior to the beginning of the quarter. Each percentage calculation is rounded to the nearest fifty points to create the levels' trigger points. The primary listing markets disseminate the new trigger levels quarterly to the media, via information memos and publication on their Web sites. The values then remain in effect until the next quarterly calculation, notwithstanding whether the DJIA has moved and a Level 1, 2 or 3 decline is no longer equal to an actual 10%, 20% or 30% decline in the most recent closing value of the DJIA.

Once a NYSE Rule 80B circuit breaker is in effect, trading in all stocks halt for the time periods specified below:

Level 1 Halt

Anytime before 2 p.m.—one hour; at or after 2 p.m. but before 2:30 p.m.—30 minutes; at or after 2:30 p.m.—trading shall continue, unless there is a Level 2 Halt.

Level 2 Halt

Anytime before 1 p.m.—two hours; at or after 1 p.m. but before 2 p.m.—one hour; at or after 2 p.m.—trading shall halt and not resume for the rest of the day.

Level 3 Halt

At any time—trading shall halt and not resume for the rest of the day.

Unless stocks are halted for the remainder of the trading day, price indications are disseminated by the primary listing market during a NYSE Rule 80B trading halt for stocks that comprise the DJIA.

Proposed Amendments

As noted above, the Exchange, other equities, options, and futures markets, and FINRA propose to amend the market-wide circuit breakers to take into consideration the recommendations of the Committee, and to provide for more meaningful measures in today's markets of when to halt trading in all stocks. Accordingly, the Exchange proposes to adopt Rule 2102(g), which will reflect the follows [sic] changes to current NYSE Rule 80B: (i) Replace the DJIA with the S&P 500; (ii) replace the quarterly calendar recalculation of NYSE Rule 80B triggers with daily recalculations; (iii) replace the 10%, 20% and 30% market decline percentages with 7%, 13% and 20% market decline percentages (each a ''Level 1, 2 or 3 Market Decline,'' respectively); (iv) modify the length of the trading halts associated with each market decline level; and (v) modify the times when a trading halt may be triggered. The Exchange believes that these proposed amendments update the rule to reflect today's high-speed, highly electronic trading market while still meeting the original purpose of the rule: To ensure that market participants have an opportunity to become aware of and respond to significant price movements.

First, the Exchange proposes to replace the DJIA with the S&P 500. The Exchange believes that because the S&P 500 is based on the trading prices of 500 stocks, as compared to the 30 stocks that comprise the DJIA, the S&P 500 represents a broader base of securities against which to measure whether extraordinary market-wide volatility is occurring. In addition, as noted by the Committee, using an index that correlates closely with derivative products, such as the E–Mini and SPDR S&P 500 Exchange-Traded Fund (''SPY''), will allow for a better cross-market measure of market volatility.

Second, the Exchange proposes to change the recalculation of the trigger values from once every calendar quarter to daily. The Exchange believes that updating the trigger values daily will better reflect current market conditions. In particular, a daily recalculation will ensure that the percentage drop triggers relate to current market conditions, and are not compared to what may be stale market conditions. As noted in the proposed rule, the daily calculations of the trigger values will be published before the trading day begins.[8]

Third, the Exchange proposes to decrease the current Level 1, 2 and 3 declines of 10%, 20% and 30% to a Level 1 Market Decline of 7%, a Level 2 Market Decline of 13% and Level 3 Market Decline of 20%. In particular, as demonstrated by the May 6, 2010 flash crash, the current Level 1 10% decline may be too high a threshold for

[5] *See* Securities Exchange Act Release No. 64547 (May 25, 2011), 76 FR 31647 (June 1, 2011).

[6] *See* Summary Report of the Committee, ''Recommendations Regarding Regulatory Responses to the Market Events of May 6, 2010'' (Feb, 18, 2011). The Exchange notes that NYSE Euronext submitted a comment letter to the Committee that recommended, among other things, reform of the market-wide circuit breaker rules. *See* Letter to Elizabeth Murphy, Secretary, Commission, from Janet M. Kissane, SVP and Corporate Secretary, NYSE Euronext (July 19, 2010). The proposed reforms set forth in this rule proposal differ slightly from the changes recommended in that comment letter, and represent consensus among the markets of how to address reform of the market-wide circuit breakers.

[7] *See* Securities Exchange Act Release No. 26198 (Oct. 19, 1988).

[8] The primary listing markets will advise via Trader Update the specific methodology for publishing the daily calculations, as well as the manner by which the markets will halt trading in all stocks should a Rule 11.14 trading halt be triggered.

determining whether to halt trading across all securities. In fact, since adoption, the markets have halted only once, on October 27, 1997.[9] Accordingly, to reflect the potential that a lower, yet still significant decline may warrant a market-wide trading halt, the Exchange proposes to lower the market decline percentage thresholds.

As further proposed, trading on the Exchange will be halted based on a Level 1 or Level 2 Market Decline only once per day. For example, if a Level 1 Market Decline was to occur and trading was halted, following the re-opening of trading, trading would not halt again unless a Level 2 Market Decline was to occur. Likewise, following the re-opening of trading after a Level 2 Market Decline, trading would not be halted again unless a Level 3 Market Decline was to occur, at which point, trading in all stocks would be halted until the primary listing market opens the next trading day.

Fourth, to correspond with the lower percentages associated with triggering a trading halt, the Exchange also proposes to shorten the length of the market-wide trading halts associated with each level. As proposed, a Level 1 or 2 Market Decline occurring after 9:30 a.m. Eastern Time (''ET'') [10] and up to and including 3:25 p.m. ET, would result in a trading halt in all stocks for 15 minutes.

The Exchange believes that by reducing the percentage threshold, coupled with the reduced length of a trading halt, the proposed rule would allow for trading halts for serious market declines, while at the same time, would minimize disruption to the market by allowing for trading to continue after the proposed more-abbreviated trading halt. The Exchange believes that in today's markets, where trading information travels in micro-second speeds, a 15-minute trading halt strikes the appropriate balance between the need to halt trading for market participants to assess the market, while at the same time reducing the time that the market is halted.

Finally, because the proposed Level 1 and Level 2 trading halts will now be 15 minutes, the Exchange proposes amending the rule to allow for a Level 1 or 2 Market Decline to trigger a trading halt up to 3:25 p.m. Under the current rule, a trading halt cannot be triggered after 2:30 p.m., and this time corresponds to the need for the markets both to re-open following a 30-minute halt and to engage in a fair and orderly closing process. However, as the markets experienced on May 6, 2010, even if the Level 1 decline had occurred that day, because the market decline occurred after 2:30 p.m., it would not have triggered a halt under the current rule. The Committee recommended that trading halts be triggered up to 3:30 p.m. The Exchange agrees that the proposed amendments must strike the appropriate balance between permitting trading halts as late in the day as feasible without interrupting the closing process.

Accordingly, to accommodate existing primary listing market rules concerning closing procedures, including the publication of imbalance information beginning at 3:45 p.m. and the restrictions on entry and cancellation of market on close (''MOC'') and limit on close (''LOC'') orders after 3:45 p.m.,[11] the Exchange proposes that the last Level 1 or Level 2 Market Decline trading halt should be 3:25 p.m. The Exchange proposes 3:25 p.m. as the cut-off time so that there is time following the 15-minute trading halt for the markets to re-open before the 3:45 p.m. cut-off for entry and cancellation of MOC and LOC orders under primary listing market rules.[12]

As with current Level 3 declines, under the proposed rule, a Level 3 Market Decline would halt trading for the remainder of the trading day, including any trading that may take place after 4:00 p.m. and would not resume until the next trading day.

In addition to these proposed changes, the Exchange proposes to add to Rule 2102(g) how the Exchange will re-open following a 15-minute trading halt and to Rule 2102(f) how the Exchange will re-open following a 10-minute trading pause. In particular, the Exchange proposes that if the primary listing market halts trading in all stocks, the Exchange will halt trading in those stocks until the primary listing market has resumed trading or notice has been provided by the primary listing market that trading may resume. As further proposed, if the primary listing market does not re-open a security within 15 minutes following the end of the trading halt, or within 10 minutes following the end of a trading pause, the Exchange may resume trading in that security.

As a result of the proposed changes described above, the Exchange proposes to clarify that 2102(e) applies to trading halts in new derivative securities, so as to not be confused with newly proposed provisions for trading halts in 2102(g). ISE Rule 2102(e) governs trading halts in new derivative securities products when a temporary interruption occurs in the calculation or wide dissemination of the intraday indicative value (''IIV'') or the value of the underlying index by a major market data vendor. Therefore, ISE is clarifying that this subsection applies to halts in new derivative securities products and proposed ISE Rule 2102(g) applies to trading halts due to extraordinary market volatility.

2. Statutory Basis

The statutory basis for the proposed rule change is Section 6(b)(5) of the Act,[13] which require that an Exchange have rules that are designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest. Specifically, this rule proposal supports the objectives of perfecting the mechanism of a free and open market and the national market system because it promotes uniformity across markets concerning when and how to halt trading in all stocks as a result of extraordinary market volatility.

B. Self-Regulatory Organization's Statement on Burden on Competition

The proposed rule change does not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange has not solicited, and does not intend to solicit, comments on this proposed rule change. The Exchange has not received any unsolicited written comments from members or other interested parties.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 45 days of the date of publication of this notice in the Federal Register or within such longer period (i) As the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve or disapprove such proposed rule change, or

[9] At that time, the triggers were based on absolute declines in the DJIA (350 point decrease for a Level 1 halt and 550 point decrease for a Level 2 halt).

[10] The Exchange notes that all times listed throughout this filing are in Eastern Time.

[11] *See, e.g.,* NYSE Rule 123C.

[12] *Id.*

[13] 15 U.S.C. 78f(b)(5).

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed changes to the market-wide circuit breaker regime are consistent with the Act. The Commission specifically requests comment on the following:

- As discussed above, the proposed rule change would narrow the percentage market declines that would trigger a market-wide halt in trading. How would the proposed changes interact with the existing single-stock circuit breaker pilot program [14] or, if approved, the proposed NMS Plan to establish a limit-up/limit-down mechanism for individual securities? [15]
- To what extent could the concurrent triggering of single stock circuit breakers in many S&P 500 Index stocks lead to difficulties in calculating the index? Would the triggering of many single stock circuit breakers in a general market downturn cause the index calculation to become stale and thereby delay the triggering of the market-wide circuit breaker?
- Should the market-wide circuit breaker be triggered if a sufficient number of single-stock circuit breakers or price limits are triggered, and materially affect calculations of the S&P 500 Index?
- Should market centers implement rules that mandate cancellation of pending orders in the event a market-wide circuit breaker is triggered? If so, should such a rule require cancellation of all orders or only certain order types (*e.g.,* limit orders)? Should all trading halts trigger such cancellation policies or should the cancellation policies apply only to a Level 3 Market Decline?
- Should some provision be made to end the regular trading session if a market decline suddenly occurs after 3:25 p.m. but does not reach the 20% level?
- In the event of a Level 3 Market Decline, should some provision be made for the markets to hold a closing auction?
- Should the primary market have a longer period (*e.g.,* 30 minutes) to reopen trading following a Level 2 Market Decline before trading resumes in other venues?
- In the event of a Level 3 Market Decline, should the markets wait for the primary market to reopen trading in a particular security on the next trading day before trading in that security resumes?

Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–ISE–2011–61 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–ISE–2011–61. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make publicly available. All submissions should refer to File Number SR–ISE–2011–61 and should be submitted on or before October 25, 2011.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[16]

Elizabeth M. Murphy,

Secretary.

[FR Doc. 2011–25508 Filed 10–3–11; 8:45 am]

BILLING CODE 8011–01–P

[14] *See* Securities Exchange Act Release No. 64735 (June 23, 2011), 76 FR 38243 (June 29, 2011) (SR–BATS–2011–016; SR–BYX–2011–011; SR–BX–2011–025; SR–CBOE–2011–049; SR–CHX–2011–09; SR–EDGA–2011–15; SR–EDGX–2011–14; SR–FINRA–2011–023; SR–ISE–2011–028; SR–NASDAQ–2011–067; SR–NYSE–2011–21; SR–NYSEAmex–2011–32; SR–NYSEArca–2011–26; SR–NSX–2011–06; SR–Phlx–2011–64) (approving the ''Phase III Pilot Program''). The Phase III Pilot Program has been extended through January 2012. *See, e.g.,* Securities Exchange Act Release 65094 (August 10, 2011), 76 FR 50779 (August 16, 2011) (SR–NASDAQ–2011–011).

[15] *See* Securities Exchange Act Release No. 64547 (May 25, 2011), 76 FR 31647 (June 1, 2011).

[16] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–65419 ; File No. SR–Nasdaq-2011–133]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by The NASDAQ Stock Market LLC Regarding Simplification of the Exchange's $1 Strike Price Program

September 28, 2011.

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 27, 2011, The NASDAQ Stock Market LLC (''NASDAQ'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

NASDAQ is filing with the Securities and Exchange Commission (''SEC'' or ''Commission'') a proposal for the NASDAQ Options Market (''NOM'' or ''Exchange'') to amend Chapter IV, Supplementary Material .02 to Section 6 (Series of Options Contracts Open for Trading) to simplify the Exchange's $1 Strike Price Program (the ''$1 Strike Program'' or ''Program'').

The Exchange requests that the Commission waive the 30-day operative delay period contained in Exchange Act Rule 19b–4(f)(6)(iii).[3]

The text of the proposed rule change is available from NASDAQ's Web site at *http://nasdaq.cchwallstreet.com/Filings/,* at NASDAQ's principal office, on the Commission's Web site at *http://*

[1] 15 U.S.C.78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 17 CFR 240.19b–4(f)(6)(iii).

www.sec.gov, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, NASDAQ included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. NASDAQ has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of this proposed rule change is to modify Chapter IV, Supplementary Material .02 to Section 6 to simplify the Exchange's $1 Strike Program.

In 2008, the Commission issued an order permitting the Exchange to establish the Program on a pilot basis.[4] At that time, the underlying stock had to close at $20 on the previous trading day in order to qualify for the Program. The range of available $1 strike price intervals was limited to a range between $3 and $20 and no strike price was permitted that was greater than $5 from the underlying stock's closing price on the previous trading day. Series in $1 strike price intervals were not permitted within $0.50 of an existing strike. In addition, the Exchange was limited to selecting five (5) classes and reciprocal listing was permitted. Furthermore, LEAPS[5] in $1 strike price intervals were not permitted for classes selected to participate in the Program.

In 2008, the Program was expanded and the Commission granted permanent approval of the Program.[6] At that time, the Program was expanded to increase the upper limit of the permissible strike price range from $20 to $50. In addition, the number of class selections per exchange was increased from five (5) to ten (10). Since the Program was made permanent, the number of class selections per exchange has been increased from ten (10) classes to 55 classes.[7] The number of class selections per exchange has been last expanded to 150 classes in 2010.[8]

Amendments To Simplify Non-LEAPS Rule Text

The development and expansion of the Program has resulted in very lengthy rule text that is complicated and could be difficult to understand. The Exchange believes that the proposed changes to simplify the rule text of the Program will benefit market participants since the Program will be easier to understand and will maintain the expansions that were made to the Program in 2010. Through the current proposal, the Exchange also hopes to make administration of the Program easier (*e.g.,* system programming efforts). To simply the rules of the Program and, as a proactive attempt to mitigate any unintentional listing of improper strikes, the Exchange is proposing the following streamlining amendments:

- When the price of the underlying stock is equal to or less than $20, permit $1 strike price intervals with an exercise price up to 100% above and 100% below the price of the underlying stock.[9]
  - However, the above restriction would not prohibit the listing of at least five (5) strike prices above and below the price of the underlying stock per expiration month in an option class.[10]
  - For example, if the price of the underlying stock is $2, the Exchange would be permitted to list the following series: $1, $2, $3, $4, $5, $6 and $7.[11]
- When the price of the underlying stock is greater than $20, permit $1 strike price intervals with an exercise price up to 50% above and 50% below the price of the underlying security up to $50.[12]
- For the purpose of adding strikes under the Program, the ''price of the underlying stock'' shall be measured in the same way as ''the price of the underlying security'' set forth in Chapter IV, Section 6, subparagraph .06(a) of Supplementary Material to Section 6.[13]
- Prohibit the listing of additional series in $1 strike price intervals if the underlying stock closes at or above $50 in its primary market and provide that additional series in $1 strike price intervals may not be added until the underlying stock closes again below $50.[14]

Amendments To Simplify LEAPS Rule Text

The 2010 expansion of the Program permitted for some limited listing of LEAPS in $1 strike price intervals for classes that participate in the Program. The Exchange is proposing to maintain the expansion as to LEAPS, but simplify the language and provide examples of the simplified rule text. These changes are set forth in proposed Chapter IV, Section 6, subparagraph .02(b)(v) of Supplementary Material to Section 6.

For stocks in the Program, the Exchange may list one $1 strike price interval between each standard $5 strike interval, with the $1 strike price interval being $2 above the standard strike for each interval above the price of the underlying stock, and $2 below the standard strike for each interval below the price of the underlying stock (''$2 wings''). For example, if the price of the underlying stock is $24.50, the Exchange may list the following standard strikes in $5 intervals: $15, $20, $25, $30 and $35. Between these standard $5 strikes, the Exchange may

[4] *See* Securities Exchange Act Release No. 57478 (March 12, 2008), 73 FR 14521 (March 18, 2008) (SR–NASDAQ–2007–004 and SR–NASDAQ–2007–080) (order approving).

[5] Long-Term Equity Anticipation Securities (LEAPS) are long term options that generally expire from twelve to thirty-nine months from the time they are listed. Chapter IV, Section 8. Long-term index options are considered separately in Chapter XIV, Section 11. For purposes of the Program, long-term options (LEAPS) are considered to be option series having greater than nine months until expiration. Chapter IV, Supplementary Material .02 to Section 6.

[6] *See* Securities Exchange Act Release No. 58093 (July 3, 2008), 73 FR 39756 (July 10, 2008) (SR–NASDAQ–2008–057).

[7] *See* Securities Exchange Act Release No. 59588 (March 17, 2009), 74 FR 12410 (March 24, 2009) (SR–NASDAQ–2009–025).

[8] *See* Securities Exchange Act Release No. 62451 (July 6, 2010), 75 FR 40001 (July 13, 2010) (SR–NASDAQ–2010–083).

[9] *See* proposed Chapter IV, Section 6, subparagraph .02(b)(i) of Supplementary Material to Section 6.

[10] *Id.*

[11] *Id.*

[12] *See* proposed Chapter IV, Section 6, subparagraph .02(b)(ii) of Supplementary Material to Section 6.

[13] *See* proposed Chapter IV, Section 6, subparagraph .02(b)(iii) of Supplementary Material to Section 6. Chapter IV, Section 6, subparagraph .06(a) of Supplementary Material to Section 6 provides, in relevant part, that the price of the underlying security is measured by: (i) For intra-day add-on series and next-day series additions, the daily high and low of all prices reported by all national securities exchanges; (ii) for new expiration months, the daily high and low of all prices reported by all national securities exchanges on the day the Exchange determines to list a new series; and (iii) for option series to be added as a result of pre-market trading, the most recent share price reported by all national securities exchanges between 8:45 a.m. and 9:30 a.m. Eastern Time.

[14] The Exchange believes that other markets that have $1 strike programs will submit similar proposals to the Commission, and therefore proposes the $50 dollar prohibition in this filing for purposes of uniformity. The Exchange intends, however, to subsequently propose an amendment to the $50 prohibition so that it would not impede addition series in $1 strike price intervals in certain circumstances (*e.g.* stock gapping).

list the following $2 wings: $18, $27 and $32.[15]

In addition, the Exchange may list the $1 strike price interval which is $2 above the standard strike just below the underlying price at the time of listing. In the above example, since the standard strike just below the underlying price ($24.50) is $20, the Exchange may list a $22 strike. The Exchange may add additional long-term options series strikes as the price of the underlying stock moves, consistent with the OLPP.

Non-Substantive Amendments to Rule Text

The 2010 expansion of the Program prohibited the listing of $2.50 strike price intervals for classes that participate in the Program. This prohibition applies to non-LEAP and LEAPS. The Exchange proposes to maintain this prohibition and codify it in proposed Chapter IV, Section 6, subparagraph .02(a) of Supplementary Material to Section 6.

For ease of reference, the Exchange is proposing to add the headings ''$1 Strike Price Interval Program,'' ''Initial and Additional Series,'' and ''LEAPS'' to Chapter IV, Section 6, Supplementary Material to Section 6. And finally, the Exchange is making non-substantive, technical changes to the proposed rule such as replacing the word ''security'' with the word ''stock.''

The Exchange also proposes to call the Program the $1 Strike Program in Supplementary Material .02 to Section 6 for purposes of consistency.

The Exchange represents that it has the necessary systems capacity to support the increase in new options series that will result from the proposed streamlining changes to the Program.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act[16] in general, and furthers the objectives of Section 6(b)(5) of the Act[17] in particular, in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general to protect investors and the public interest. In particular, the proposed rule change seeks to reduce investor confusion and to simplify the provisions of the $1 Strike Program.

B. Self-Regulatory Organization's Statement on Burden on Competition

NASDAQ does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not significantly affect the protection of investors or the public interest, does not impose any significant burden on competition, and, by its terms, does not become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act[18] and Rule 19b–4(f)(6) thereunder.[19]

The Exchange has requested that the Commission waive the 30-day operative delay. The Commission believes that waiver of the operative delay is consistent with the protection of investors and the public interest because the proposal is substantially similar to that of another exchange that has been approved by the Commission.[20] Therefore, the Commission designates the proposal operative upon filing.[21]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–Nasdaq-2011–133 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–Nasdaq-2011–133. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make

[15] The Exchange notes that a $2 wing is not permitted between the standard $20 and $25 strikes in the above example. This is because the $2 wings are added based on reference to the price of the underlying and as being between the standard strikes above and below the price of the underlying stock. Since the price of the underlying stock ($24.50) straddles the standard strikes of $20 and $25, no $2 wing is permitted between these standard strikes.

[16] 15 U.S.C. 78f(b).

[17] 15 U.S.C. 78f(b)(5).

[18] 15 U.S.C. 78s(b)(3)(A).

[19] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6)(iii) requires the Exchange to give the Commission written notice of the Exchange's intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Commission has waived the five-day prefiling requirement in this case.

[20] *See* Securities Exchange Act Release No. 65383 (September 22, 2011) (SR–CBOE–2011–040) (order approving proposed rule change to simplify the $1 Strike Price Interval Program).

[21] For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

publicly available. All submissions should refer to File Number SR–Nasdaq-2011–133 and should be submitted on or before October 25, 2011.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[22]

Elizabeth M. Murphy,

Secretary.

[FR Doc. 2011–25505 Filed 10–3–11; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–65440; File No. SR–EDGX–2011–30]

Self-Regulatory Organizations; EDGX Exchange, Inc.; Notice of Filing of Proposed Rule Change To Amend EDGX Rule 11.14

September 28, 2011.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on September 27, 2011, EDGX Exchange, Inc. (the ''Exchange'' or ''EDGX'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II, below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend Exchange Rule 11.14 to revise the current methodology for determining when trading in all stocks will be halted due to extraordinary market volatility. The text of the proposed rule change is available on the Exchange's Web site at *http://www.directedge.com,* at the Exchange's principal office and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in Sections A, B and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend Exchange Rule 11.14 to revise the current methodology for determining when trading in all stocks will be halted due to extraordinary market volatility. The Exchange is proposing this rule change in consultation with other equity, options and futures markets, the Financial Industry Regulatory Authority, Inc. (''FINRA'') and staffs of the Commission and the Commodity Futures Trading Commission.

Since May 6, 2010, when the markets experienced excessive volatility in an abbreviated time period, *i.e.,* the ''flash crash,'' the exchanges and FINRA have implemented market-wide measures designed to restore investor confidence by reducing the potential for excessive market volatility. Among the measures adopted include pilot plans for stock-by-stock trading pauses[3] and related changes to the clearly erroneous execution rules[4] and more stringent market maker quoting requirements.[5] In addition, on April 5, 2011, the equities exchanges and FINRA filed a plan pursuant to Rule 608 of Regulation NMS to address extraordinary market volatility (the ''Limit Up-Limit Down Plan'').[6] As proposed, the Limit Up-Limit Down Plan is designed to prevent trades in individual NMS stocks from occurring outside specified price bands.

The Joint CFTC–SEC Advisory Committee on Emerging Regulatory Issues (''Committee'') has recommended that, in addition to the initiatives already adopted or proposed, the markets should consider reforming the existing market-wide circuit breakers. Among other things, the Committee noted that the interrelatedness of today's highly electronic markets warrants the need to review the present operation of the system-wide circuit breakers now in place. Specifically, the Committee recommended that the markets consider replacing the Dow Jones Industrial Average (''DJIA'') with the S&P 500® Index (''S&P 500''), revising the 10%, 20% and 30% decline percentages, reducing the length of trading halts, and allowing halts to be triggered up to 3:30 p.m.[7]

The exchanges and FINRA have taken into consideration the Committee's recommendations, and with some modifications, have proposed changes to market-wide circuit breakers. The Exchange believes these proposed changes will provide for a more meaningful measure, in today's faster, more electronic markets, of when to halt stocks on a market-wide basis as a result of rapid market declines.

Background

EDGX Rule 11.14 provides for market-wide halts in trading at specified levels in order to promote stability and investor confidence during a period of significant stress. As the Commission noted in its approval order for the analogous rule from the New York Stock Exchange (''NYSE''),[8] the rule was intended to enable market participants to establish equilibrium between buying and selling interest and to ensure that market participants have an opportunity to become aware of and respond to significant price movements. Importantly, the market-wide circuit breakers were not intended to prevent markets from adjusting to new price levels; rather, they provide for a speed bump for extremely rapid market declines.[9]

In its current form,[10] the rule provides for Level 1, 2 and 3 declines and specified trading halts following such declines (each a ''Level 1, 2 or 3 Halt,'' respectively). The values of Levels 1, 2 and 3 are calculated at the beginning of each calendar quarter by the primary listing market, using 10%, 20% and

[22] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] EDGX Rule 11.14.

[4] EDGX Rule 11.13.

[5] *See* SR–EDGX–2011–28 (August 30, 2011) (mirroring the market making standards in other exchange rules, such as NYSE Rule 104(a)(1)(B), Nasdaq Rule 4613(a), and BATS Rule 11.8(d)(2)).

[6] *See* Securities Exchange Act Release No. 64547 (May 25, 2011), 76 FR 31647 (June 1, 2011).

[7] *See* Summary Report of the Committee, ''Recommendations Regarding Regulatory Responses to the Market Events of May 6, 2010'' (Feb, 18, 2011). The Exchange notes that NYSE Euronext submitted a comment letter to the Committee that recommended, among other things, reform of the market-wide circuit breaker rules. *See* Letter to Elizabeth Murphy, Secretary, Commission, from Janet M. Kissane, SVP and Corporate Secretary, NYSE Euronext (July 19, 2010). The proposed reforms set forth in this rule proposal differ slightly from the changes recommended in that comment letter, and represent consensus among the markets of how to address reform of the market-wide circuit breakers.

[8] *See* NYSE Rule 80B.

[9] *See* Securities Exchange Act Release No. 26198 (Oct. 19, 1988).

[10] NYSE Rule 80B was last amended in 1998, when declines based on specified point drops in the DJIA were replaced with the current methodology of using a percentage decline that is recalculated quarterly. *See* Securities Exchange Act Release No. 39846 (April 9, 1998), 63 FR 18477 (April 15, 1998) (SR–NYSE–98–06, SR–Amex-98–09, SR–BSE–98–06, SR–CHX–98–08, SR–NASD–98–27, and SR–Phlx-98–15).

30%, respectively, of the average closing value of the DJIA for the month prior to the beginning of the quarter. Each percentage calculation is rounded to the nearest fifty points to create the levels' trigger points. The primary listing markets disseminate the new trigger levels quarterly to the media, via information memos and publication on their Web sites. The values then remain in effect until the next quarterly calculation, notwithstanding whether the DJIA has moved and a Level 1, 2 or 3 decline is no longer equal to an actual 10%, 20% or 30% decline in the most recent closing value of the DJIA.

Once a Rule 11.14 circuit breaker is in effect, trading in all stocks halts for the time periods specified below:

Level 1 Halt
- Anytime before 2 p.m.—one hour;
- At or after 2 p.m. but before 2:30 p.m.—30 minutes;
- At or after 2:30 p.m.—trading shall continue, unless there is a Level 2 Halt.

Level 2 Halt
- Anytime before 1 p.m.—two hours;
- At or after 1 p.m. but before 2 p.m.—one hour;
- At or after 2 p.m.—trading shall halt and not resume for the rest of the day.

Level 3 Halt
- At any time—trading shall halt and not resume for the rest of the day.

Unless stocks are halted for the remainder of the trading day, price indications are disseminated by the primary listing market during a Rule 11.14 trading halt for stocks that comprise the DJIA.

Proposed Amendments

As noted above, the Exchange, other equities, options, and futures markets, and FINRA propose to amend the market-wide circuit breakers to take into consideration the recommendations of the Committee, and to provide for more meaningful measures in today's markets of when to halt trading in all stocks. Accordingly, the Exchange proposes to amend Rule 11.14 as follows: (i) Replace the DJIA with the S&P 500; (ii) replace the quarterly calendar recalculation of Rule 11.14 triggers with daily recalculations; (iii) replace the 10%, 20% and 30% market decline percentages with 7%, 13% and 20% market decline percentages (each a ''Level 1, 2 or 3 Market Decline,'' respectively); (iv) modify the length of the trading halts associated with each market decline level; and (v) modify the times when a trading halt may be triggered. The Exchange believes that these proposed amendments update the rule to reflect today's high-speed, highly electronic trading market while still meeting the original purpose of the rule: to ensure that market participants have an opportunity to become aware of and respond to significant price movements.

First, the Exchange proposes to replace the DJIA with the S&P 500. The Exchange believes that because the S&P 500 is based on the trading prices of 500 stocks, as compared to the 30 stocks that comprise the DJIA, the S&P 500 represents a broader base of securities against which to measure whether extraordinary market-wide volatility is occurring. In addition, as noted by the Committee, using an index that correlates closely with derivative products, such as the E–Mini and SPDR S&P 500 Exchange-Traded Fund (''SPY''), will allow for a better cross-market measure of market volatility.

Second, the Exchange proposes to change the recalculation of the trigger values from once every calendar quarter to daily. The Exchange believes that updating the trigger values daily will better reflect current market conditions. In particular, a daily recalculation will ensure that the percentage drop triggers relate to current market conditions, and are not compared to what may be stale market conditions. As noted in the proposed rule, the daily calculations of the trigger values will be published before the trading day begins.[11]

Third, the Exchange proposes to decrease the current Level 1, 2 and 3 declines of 10%, 20% and 30% to a Level 1 Market Decline of 7%, a Level 2 Market Decline of 13% and Level 3 Market Decline of 20%. In particular, as demonstrated by the May 6, 2010, flash crash, the current Level 1 10% decline may be too high a threshold for determining whether to halt trading across all securities. In fact, since adoption, the markets have halted only once, on October 27, 1997.[12] Accordingly, to reflect the potential that a lower, yet still significant decline may warrant a market-wide trading halt, the Exchange proposes to lower the market decline percentage thresholds.

As further proposed, trading on the Exchange will be halted based on a Level 1 or Level 2 Market Decline only once per day. For example, if a Level 1 Market Decline was to occur and trading was halted, following the re-opening of trading, trading would not halt again unless a Level 2 Market Decline was to occur. Likewise, following the re-opening of trading after a Level 2 Market Decline, trading would not be halted again unless a Level 3 Market Decline was to occur, at which point, trading in all stocks would be halted until the primary listing market opens the next trading day.

Fourth, to correspond with the lower percentages associated with triggering a trading halt, the Exchange also proposes to shorten the length of the market-wide trading halts associated with each level. As proposed, a Level 1 or 2 Market Decline occurring after 9:30 a.m. Eastern Time (''ET'')[13] and up to and including 3:25 p.m. E.T., would result in a trading halt in all stocks for 15 minutes.

The Exchange believes that by reducing the percentage threshold, coupled with the reduced length of a trading halt, the proposed rule would allow for trading halts for serious market declines, while at the same time, would minimize disruption to the market by allowing for trading to continue after the proposed more-abbreviated trading halt. The Exchange believes that in today's markets, where trading information travels in micro-second speeds, a 15-minute trading halt strikes the appropriate balance between the need to halt trading for market participants to assess the market, while at the same time reducing the time that the market is halted.

Finally, because the proposed Level 1 and Level 2 trading halts will now be 15 minutes, the Exchange proposes amending the rule to allow for a Level 1 or 2 Market Decline to trigger a trading halt up to 3:25 p.m. Under the current rule, a trading halt cannot be triggered after 2:30 p.m., and this time corresponds to the need for the markets both to re-open following a 30-minute halt and to engage in a fair and orderly closing process. However, as the markets experienced on May 6, 2010, even if the Level 1 decline had occurred that day, because the market decline occurred after 2:30 p.m., it would not have triggered a halt under the current rule. The Committee recommended that trading halts be triggered up to 3:30 p.m. The Exchange agrees that the proposed amendments must strike the appropriate balance between permitting trading halts as late in the day as feasible without interrupting the closing process.

Accordingly, to accommodate existing primary listing market rules concerning

[11] The primary listing markets will advise via Trader Update the specific methodology for publishing the daily calculations, as well as the manner by which the markets will halt trading in all stocks should a Rule 11.14 trading halt be triggered.

[12] At that time, the triggers were based on absolute declines in the DJIA (350 point decrease for a Level 1 halt and 550 point decrease for a Level 2 halt).

[13] The Exchange notes that all times listed throughout this filing are in Eastern Time.

closing procedures, including the publication of imbalance information beginning at 3:45 p.m. and the restrictions on entry and cancellation of market on close (''MOC'') and limit on close (''LOC'') orders after 3:45 p.m.,[14] the Exchange proposes that the last Level 1 or Level 2 Market Decline trading halt should be 3:25 p.m. The Exchange proposes 3:25 p.m. as the cut-off time so that there is time following the 15-minute trading halt for the markets to re-open before the 3:45 p.m. cut-off for entry and cancellation of MOC and LOC orders under primary listing market rules.[15]

As with current Level 3 declines, under the proposed rule, a Level 3 Market Decline would halt trading for the remainder of the trading day, including any trading that may take place after 4:00 p.m. and would not resume until the next trading day.

In addition to these proposed changes, the Exchange proposes to add to Rule 11.14 how the markets will re-open following a 15-minute trading halt. In particular, similar to the re-opening procedures set forth in Rule 11.14, the Exchange proposes that if the primary listing market halts trading in all stocks, all markets will halt trading in those stocks until the primary listing market has resumed trading or notice has been provided by the primary listing market that trading may resume. As further proposed, if the primary listing market does not re-open a security within 15 minutes following the end of the trading halt, other markets may resume trading in that security.

As a result of the proposed changes described above, the Exchange proposes to delete Interpretations and Policies .01–.04 to Rule 11.14, move Interpretations and Policies .03 and .04 into the rule text of Rule 11.14 as sections (c)(1) and (f), respectively, and re-number existing Interpretation and Policy .05 to Rule 11.14 as Interpretation and Policy .01 to Rule 11.14. In addition, a conforming amendment is proposed to be made in Rule 11.13(c)(1) to re-number the cross-reference to Interpretation .05 of Rule 11.14 as Interpretation .01 of Rule 11.14.

2. Statutory Basis

The basis under the Act for these proposed rule changes are the requirement under Section 6(b)(5)[16] that an Exchange have rules that are designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest. Specifically, this rule proposal supports the objectives of perfecting the mechanism of a free and open market and the national market system because it promotes uniformity across markets concerning when and how to halt trading in all stocks as a result of extraordinary market volatility.

B. Self-Regulatory Organization's Statement on Burden on Competition

The proposed rule change does not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange has not solicited, and does not intend to solicit, comments on this proposed rule change. The Exchange has not received any unsolicited written comments from members or other interested parties.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve or disapprove such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed changes to the market-wide circuit breaker regime are consistent with the Act. The Commission specifically requests comment on the following:

- As discussed above, the proposed rule change would narrow the percentage market declines that would trigger a market-wide halt in trading. How would the proposed changes interact with the existing single-stock circuit breaker pilot program[17] or, if approved, the proposed NMS Plan to establish a limit-up/limit-down mechanism for individual securities?[18]
- To what extent could the concurrent triggering of single stock circuit breakers in many S&P 500 Index stocks lead to difficulties in calculating the index? Would the triggering of many single stock circuit breakers in a general market downturn cause the index calculation to become stale and thereby delay the triggering of the market-wide circuit breaker?
- Should the market-wide circuit breaker be triggered if a sufficient number of single-stock circuit breakers or price limits are triggered, and materially affect calculations of the S&P 500 Index?
- Should market centers implement rules that mandate cancellation of pending orders in the event a market-wide circuit breaker is triggered? If so, should such a rule require cancellation of all orders or only certain order types (*e.g.,* limit orders)? Should all trading halts trigger such cancellation policies or should the cancellation policies apply only to a Level 3 Market Decline?
- Should some provision be made to end the regular trading session if a market decline suddenly occurs after 3:25 p.m. but does not reach the 20% level?
- In the event of a Level 3 Market Decline, should some provision be made for the markets to hold a closing auction?
- Should the primary market have a longer period (*e.g.,* 30 minutes) to reopen trading following a Level 2 Market Decline before trading resumes in other venues?
- In the event of a Level 3 Market Decline, should the markets wait for the primary market to reopen trading in a particular security on the next trading day before trading in that security resumes?

Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File

[14] *See, e.g.,* NYSE Rule 123C.

[15] *Id.*

[16] 15 U.S.C. 78f(b)(5).

[17] *See* Securities Exchange Act Release No. 64735 (June 23, 2011), 76 FR 38243 (June 29, 2011) (SR–BATS–2011–016; SR–BYX–2011–011; SR–BX–2011–025; SR–CBOE–2011–049; SR–CHX–2011–09; SR–EDGA–2011–15; SR–EDGX–2011–14; SR–FINRA–2011–023; SR–ISE–2011–028; SR–NASDAQ–2011–067; SR–NYSE–2011–21; SR–NYSEAmex–2011–32; SR–NYSEArca–2011–26; SR–NSX–2011–06; SR–Phlx–2011–64) (approving the ''Phase III Pilot Program''). The Phase III Pilot Program has been extended through January 2012. *See, e.g.,* Securities Exchange Act Release 65094 (August 10, 2011), 76 FR 50779 (August 16, 2011) (SR–NASDAQ–2011–011).

[18] *See* Securities Exchange Act Release No. 64547 (May 25, 2011), 76 FR 31647 (June 1, 2011).

Number SR–EDGX–2011–30 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–EDGX–2011–30. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make publicly available. All submissions should refer to File Number SR–EDGX–2011–30 and should be submitted on or before October 25, 2011.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[19]

Elizabeth M. Murphy,

Secretary.

[FR Doc. 2011–25529 Filed 10–3–11; 8:45 am]

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[19] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–65438; File No. SR–CBOE–2011–087]

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Proposed Rule Change Related to Market-Wide Circuit Breakers

September 28, 2011.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on September 27, 2011, the Chicago Board Options Exchange, Incorporated (''Exchange'' or ''CBOE'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II, below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend Exchange Rule 6.3B to revise the current methodology for determining when to halt trading in all stock options trading on CBOE and in all stocks trading on the CBOE Stock Exchange, LLC (''CBSX,'' the CBOE's stock trading facility), due to extraordinary market volatility. The text of the rule proposal is available on the Exchange's Web site (*http://www.cboe.org/legal*), at the Exchange's Office of the Secretary, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend its rules to revise the current methodology for determining when to halt trading in all stocks and stock options due to extraordinary market volatility. The Exchange is proposing this rule change in consultation with other equity, options, and futures markets, the Financial Industry Regulatory Authority, Inc. (''FINRA''), and staffs of the Commission and the Commodity Futures Trading Commission (''CFTC'').

Since May 6, 2010, when the markets experienced excessive volatility in an abbreviated time period, *i.e.,* the ''flash crash,'' the exchanges and FINRA have implemented market-wide measures designed to restore investor confidence by reducing the potential for excessive market volatility. Among the measures adopted include pilot plans for stock-by-stock trading pauses[3] and related changes to the stock market clearly erroneous execution rules[4] and more stringent stock market maker quoting requirements.[5] In addition, on April 5, 2011, the equities exchanges and FINRA filed a plan pursuant to Rule 608 of Regulation NMS to address extraordinary market volatility (the ''Limit Up-Limit Down Plan'').[6] As proposed, the Limit Up-Limit Down Plan is designed to prevent trades in individual NMS stocks from occurring outside specified price bands.

The Joint CFTC–SEC Advisory Committee on Emerging Regulatory Issues (''Committee'') has recommended that, in addition to the initiatives already adopted or proposed, the markets should consider reforming the existing market-wide circuit breakers. Among other things, the Committee noted that the interrelatedness of today's highly electronic markets warrants the need to review the present operation of the system-wide circuit breakers now in place. Specifically, the Committee recommended that the markets consider replacing the Dow Jones Industrial Average (''DJIA'') with the S&P 500® Index (''S&P 500''), revising the 10%, 20%, and 30% decline percentages, reducing the length of trading halts, and allowing halts to be

[3] Exchange Rule 6.3C.

[4] Exchange Rule 52.4.

[5] Exchange Rules 53.23.01 and 53.56.01.

[6] *See* Securities Exchange Act Release No. 64547 (May 25, 2011), 76 FR 31647 (June 1, 2011).

triggered up to 2:30 p.m. (all times herein are Central).[7]

The exchanges and FINRA have taken into consideration the Committee's recommendations, and with some modifications, have proposed changes to market-wide circuit breakers that the Exchange believes will provide for a more meaningful measure in today's faster, more electronic markets, of when to halt stocks and stock options on a market-wide basis as a result of rapid market declines.

Background

The Exchange adopted is its rule on market-wide trading halts in October 1988 as part of an effort by the securities and futures markets to implement a coordinated means to address potentially destabilizing market volatility.[8] The rule, currently reflected in Exchange Rule 6.3B, provides for market-wide halts in trading at specified levels in order to promote stability and investor confidence during a period of significant stress.[9] As the Commission noted in the 1987 approval order, the rule was intended to enable market participants to establish an equilibrium between buying and selling interest and to ensure that market participants have an opportunity to become aware of and respond to significant price movements. Importantly, the market-wide circuit breakers were not intended to prevent markets from adjusting to new price levels; rather, they provide for a speed bump for extremely rapid market declines.[10]

In its current form,[11] the rule provides for Level 1, 2, and 3 declines and specified trading halts following such declines. The values of Levels 1, 2 and 3 are calculated at the beginning of each calendar quarter, using 10%, 20% and 30%, respectively, of the average closing value of the DJIA for the month prior to the beginning of the quarter. Each percentage calculation is rounded to the nearest fifty points to create the Levels' trigger points. The NYSE distributes new trigger levels quarterly to the media and via an NYSE Information Memo, and the new trigger levels are also available on the NYSE Web site.[12] The values then remain in effect until the next quarterly calculation, notwithstanding whether the DJIA has moved and a Level 1, 2, or 3 decline is no longer equal to an actual 10%, 20%, or 30% decline in the most recent closing value of the DJIA.

Once a market-wide circuit breaker is in effect, trading in all securities on the Exchange, including stock options on CBOE and stocks on CBSX, halt for the time periods specified below:

Level 1 Halt

Anytime before 2 p.m.—one hour;
At or after 2 p.m. but before 2:30 p.m.—30 minutes;
At or after 2:30 p.m.—trading shall continue, unless there is a Level 2 Halt.

*Level 2 Hal*t

Anytime before 1 p.m.—two hours;
At or after 1 p.m. but before 2 p.m.—one hour;
At or after 2 p.m.—trading shall halt and not resume for the rest of the day.

Level 3 Halt

At any time—trading shall halt and not resume for the rest of the day.

Proposed Amendments

As noted above, the Exchange, other equities, options, and futures markets, and FINRA propose to amend the market-wide circuit breakers to take into consideration the recommendations of the Committee, and to provide for more meaningful measures in today's markets of when to halt trading in all stocks and stock options. Accordingly, the Exchange proposes to amend Rule 6.3B as follows: (i) Replace the DJIA with the S&P 500; (ii) replace the quarterly calendar recalculation of Rule 6.3B triggers with daily recalculations: (iii) replace the 10%, 20%, and 30% market decline percentages with 7%, 13%, and 20% market decline percentages; (iv) modify the length of the trading halts associated with each market decline level; and (v) modify the times when a trading halt may be triggered. The Exchange believes that these proposed amendments update the rule to reflect today's high-speed, highly electronic trading market while still meeting the original purpose of the market-wide circuit breaker rules: to ensure that market participants have an opportunity to become aware of and respond to significant price movements.

First, the Exchange proposes to replace the DJIA with the S&P 500. The Exchange believes that because the S&P 500 is based on the trading prices of 500 stocks, as compared to the 30 stocks that comprise the DJIA, the S&P 500 represents a broader base of stocks against which to measure whether extraordinary market-wide volatility is occurring. In addition, as noted by the Committee, using an index that correlates closely with derivative products, such as the E–Mini and SPY, will allow for a better cross-market measure of market volatility.

Second, the Exchange proposes to change the recalculation of the trigger values from once every calendar quarter to daily. The Exchange believes that updating the trigger values daily will better reflect current market conditions. In particular, a daily recalculation will ensure that the percentage drop triggers relate to current market conditions, and are not compared to what may be stale market conditions. As noted in the proposed rule, the daily calculations of the trigger values will be published before the trading day begins.[13]

Third, the Exchange proposes to decrease the current Level 1, 2, and 3 declines of 10%, 20%, and 30% to a Level 1 Market Decline of 7%, a Level 2 Market Decline of 13%, and Level 3 Market Decline of 20%. In particular, as demonstrated by the May 6, 2010 flash crash, the current Level 1 10% decline may be too high a threshold before determining whether to halt trading across all securities. In fact, since adoption, the markets have halted only once, on October 27, 1997.[14] Accordingly, to reflect the potential that a lower, yet still significant decline may

[7] *See* Summary Report of the Committee, ''Recommendations Regarding Regulatory Responses to the Market Events of May 6, 2010'' (Feb, 18, 2011). The Exchange notes that CBOE submitted a comment letter to the Committee that recommended, among other things, reform of the market-wide circuit breaker rules. *See* Letter to Mary Schapiro, Chairman, Commission, and Gary Gensler, Chairman, CFTC, from Edward J. Joyce, President and Chief Operating Officer, CBOE (August 3, 2010). The proposed reforms set forth in this rule proposal differ slightly from the changes recommended in that comment letter, and represent consensus among the markets of how to address reform of the market-wide circuit breakers.

[8] *See* Securities Exchange Act Release No. 26198 (Oct. 19, 1988).

[9] Exchange Rule 6.3B does not currently contain any reference to the specific levels of decline in the DJIA that would trigger a market-wide trading halt. Instead, the rule was amended in 1997 to provide that a market-wide halt will be triggered on the Exchange whenever a market-wide halt is in effect on the New York Stock Exchange (''NYSE''). *See* Securities Exchange Act Release No. 38221 (January 31, 1997), 62 FR 5871 (February 7, 1997)(SR–CBOE–96–78).

[10] *See* note 8, *supra.*

[11] The methodology for calculating market-wide trading halts was last amended in 1998, when declines based on specified point drops in the DJIA were replaced with the current methodology of using a percentage decline that is recalculated quarterly. *See* Securities Exchange Act Release No. 39846 (April 9, 1998), 63 FR 18477 (April 15, 1998) (SR–NYSE–98–06, SR–Amex–98–09, SR–BSE–98–06, SR–CHX–98–08, SR–NASD–98–27, and SR–Phlx–98–15).

[12] *See, e.g.,* NYSE Regulation Information Memos 11–19 (June 30, 2011) and 11–10 (March 31, 2011).

[13] The Exchange and other markets will advise via Circular (or Trader Alert or similar notice) the specific methodology for publishing the daily calculations, as well as the manner by which the markets will halt trading in all stocks and stock options should a Rule 6.3B trading halt be triggered.

[14] At that time, the triggers were based on absolute declines in the DJIA (350 point decrease for a Level 1 halt and 550 point decrease for a Level 2 halt).

warrant a market-wide trading halt, the Exchange proposes to lower the market decline percentage thresholds.

As further proposed, the Exchange would halt trading based on a Level 1 or Level 2 Market Decline only once per day. For example, if a Level 1 Market Decline were to occur and trading were halted, following the reopening of trading, the Exchange would not halt the market again unless a Level 2 Market Decline were to occur. Likewise, following the reopening of trading after a Level 2 Market Decline, the Exchange would not halt trading again unless a Level 3 Market Decline were to occur, at which point, trading in all stocks and stock options would be halted until the next trading day.

Fourth, to correspond with the lower percentages associated with triggering a trading halt, the Exchange also proposes to shorten the length of the market-wide trading halts associated with each Level. As proposed, a Level 1 or 2 Market Decline occurring after 8:30 a.m. and up to and including 2:25 p.m. or, in the case of an early scheduled close, 11:25 a.m., would result in a trading halt in all stocks and stock options for 15 minutes.

The Exchange believes that by reducing the percentage threshold, coupled with the reduced length of a trading halt, the proposed rule would allow for trading halts for serious market declines, while at the same time, would minimize disruption to the market by allowing for trading to continue after the proposed more-abbreviated trading halt. The Exchange believes that in today's markets, where trading information travels in micro-second speed, a 15-minute trading halt strikes the appropriate balance between the need to halt trading for market participants to assess the market, while at the same time reducing the time that the market is halted.

Finally, because the proposed Level 1 and Level 2 trading halts will now be 15 minutes, the Exchange proposes amending the rule to allow for a Level 1 or 2 Market Decline to trigger a trading halt up to 2:25 p.m. (or, in the case of an early scheduled close, 11:25 a.m.) Under the current rule, a trading halt cannot be triggered after 1:30 p.m., and this time corresponds to the need for the markets both to reopen following a 30-minute halt and to engage in a fair and orderly closing process. However, as the markets experienced on May 6, 2010, even if the Level 1 decline had occurred that day, because the market decline occurred after 1:30 p.m., it would not have triggered a halt under the current rule. The Committee recommended that trading halts be triggered up to 2:30 p.m. The Exchange agrees that the proposed amendments must strike the appropriate balance between permitting trading halts as late in the day as feasible without interrupting the closing process.

Accordingly, to accommodate certain existing exchange rules concerning closing procedures, including, for example, the publication of imbalance information beginning at 2:45 p.m. and the restrictions on entry and cancellation of market on close (''MOC'') and limit on close (''LOC'') orders after 2:45 p.m.,[15] the Exchange proposes that the last Level 1 or Level 2 Market Decline trading halt should be 2:25 p.m. (or, in the case of an early scheduled close, 11:25 a.m.). The Exchange proposes 2:25 p.m. as the cut-off time so that there is time following the 15-minute trading halt for the markets to reopen before the 2:45 cut-off for entry and cancellation of MOC and LOC orders under exchange rules.

As with current Level 3 declines, under the proposed rule, a Level 3 Market Decline would halt trading for the remainder of the trading day, including any trading that may take place after 3 p.m., and would not resume until the next trading day.

In addition to these proposed changes, the Exchange proposes to add to Rule 6.3B how the markets will reopen following a 15-minute trading halt.[16] For stocks, similar to the reopening procedures set forth in Rule 6.3C, the Exchange proposes that if a circuit breaker is initiated in all stocks, all markets will halt trading in those stocks until the primary listing market has resumed trading in the stock or notice has been provided by the primary listing market that trading may resume. As further proposed, if the primary listing market does not reopen a stock within 15 minutes following the end of the trading halt, other markets may resume trading in that stock. For options overlying stocks, similar to the reopening procedures set forth in Rule 6.3.06, the Exchange proposes that if a circuit breaker is initiated in all stocks, all markets will halt trading in the options on those stocks until the primary listing market has resumed trading in the stock or notice has been provided by the primary listing market that trading may resume. If the primary listing market does not reopen a stock within 15 minutes following the end of the trading halt, other markets may resume trading in the options on that stock if at least one market has resumed traded [sic] in the stock. For all other stock options, *e.g.,* stock index options, the Exchange proposes that if a circuit breaker is initiated in all stocks, all markets shall halt trading in such other stock options and may resume trading in such options anytime after the 15-minute halt period.[17]

2. Statutory Basis

The basis under the Act for these proposed rule changes are [sic] the requirement under Section 6(b)(5)[18] that an Exchange have rules that are designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest. Specifically, this rule proposal supports the objectives of perfecting the mechanism of a free and open market and the national market system because it promotes uniformity across markets concerning when and how to halt trading in all stocks and stock options as a result of extraordinary market volatility.

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 not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange neither solicited nor received comments on the proposal.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period (i)

[15] *See, e.g.,* NYSE Rule 123C.

[16] Upon reopening, a rotation shall be held in each class of options and stock in accordance with the Exchange's opening procedures, *see, e.g.,* Rules 6.3B and 51.3, unless the Exchange concludes that a different method of reopening is appropriate under the circumstances, including but not limited to, no rotation, an abbreviated rotation or any other variation in the manner of the rotation.

[17] The Exchange understands that other markets are submitting similar rule changes and revising procedures to address market-wide circuit breakers and reopenings for stocks, options and futures. The Exchange believes it is integral that the markets have consistent procedures for market-wide circuit breakers and reopenings (*e.g.,* our intention is to have [sic] same ability to reopen trading in stock index options when futures markets reopen). As a result, to the extent it may be necessary, the Exchange reserves the right to modify its proposed rule change in order to conform its procedures based on a review of the rule change filings and procedures of the other equities, options and futures markets.

[18] 15 U.S.C. 78f(b)(5).

As the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve or disapprove such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed changes to the market-wide circuit breaker regime are consistent with the Act. The Commission specifically requests comment on the following:

• As discussed above, the proposed rule change would narrow the percentage market declines that would trigger a market-wide halt in trading. How would the proposed changes interact with the existing single-stock circuit breaker pilot program [19] or, if approved, the proposed NMS Plan to establish a limit-up/limit-down mechanism for individual securities? [20]

• To what extent could the concurrent triggering of single stock circuit breakers in many S&P 500 Index stocks lead to difficulties in calculating the index? Would the triggering of many single stock circuit breakers in a general market downturn cause the index calculation to become stale and thereby delay the triggering of the market-wide circuit breaker?

• Should the market-wide circuit breaker be triggered if a sufficient number of single-stock circuit breakers or price limits are triggered, and materially affect calculations of the S&P 500 Index?

• Should market centers implement rules that mandate cancellation of pending orders in the event a market-wide circuit breaker is triggered? If so, should such a rule require cancellation of all orders or only certain order types (*e.g.,* limit orders)? Should all trading halts trigger such cancellation policies or should the cancellation policies apply only to a Level 3 Market Decline?

• Should some provision be made to end the regular trading session if a market decline suddenly occurs after 3:25 p.m. but does not reach the 20% level?

• In the event of a Level 3 Market Decline, should some provision be made for the markets to hold a closing auction?

• Should the primary market have a longer period (*e.g.,* 30 minutes) to reopen trading following a Level 2 Market Decline before trading resumes in other venues?

• In the event of a Level 3 Market Decline, should the markets wait for the primary market to reopen trading in a particular security on the next trading day before trading in that security resumes?

Comments may be submitted by any of the following methods:

Electronic Comments

• Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or

• Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–CBOE–2011–087 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–CBOE–2011–087. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of CBOE. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make publicly available. All submissions should refer to File Number SR–CBOE–2011–087 and should be submitted on or before October 25, 2011.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[21]

Elizabeth M. Murphy,

Secretary.

[FR Doc. 2011–25528 Filed 10–3–11; 8:45 am]

BILLING CODE 8011–01–P

[19] *See* Securities Exchange Act Release No. 64735 (June 23, 2011), 76 FR 38243 (June 29, 2011) (SR–BATS–2011–016; SR–BYX–2011–011; SR–BX–2011–025; SR–CBOE–2011–049; SR–CHX–2011–09; SR–EDGA–2011–15; SR–EDGX–2011–14; SR–FINRA–2011–023; SR–ISE–2011–028; SR–NASDAQ–2011–067; SR–NYSE–2011–21; SR–NYSEAmex–2011–32; SR–NYSEArca–2011–26; SR–NSX–2011–06; SR–Phlx–2011–64) (approving the ''Phase III Pilot Program''). The Phase III Pilot Program has been extended through January 2012. *See, e.g.,* Securities Exchange Act Release 65094 (August 10, 2011), 76 FR 50779 (August 16, 2011) (SR–NASDAQ–2011–011).

[20] *See* Securities Exchange Act Release No. 64547 (May 25, 2011), 76 FR 31647 (June 1, 2011).

[21] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–65436; File No. SR–NSX–2011–11]

Self-Regulatory Organizations; National Stock Exchange, Inc.; Notice of Filing of Proposed Rule Change To Revise the Current Methodology for Determining When To Halt Trading in All Stocks Due to Extraordinary Market Volatility

September 28, 2011.

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 27, 2011, National Stock Exchange, Inc. filed with the Securities and Exchange Commission (''Commission'') the proposed rule change, as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comment on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

National Stock Exchange, Inc. (''NSX®'' or ''Exchange'') proposes to amend its Rule 11.20A to revise the current methodology for determining when to halt trading in all stocks due to extraordinary market volatility.

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

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend Exchange Rule 11.20A to revise the current methodology for determining when to halt trading in all stocks due to extraordinary market volatility. The Exchange is proposing this rule change in consultation with other equity, options, and futures markets, the Financial Industry Regulatory Authority, Inc. (''FINRA''), and staffs of the Securities and Exchange Commission (''SEC'' or the ''Commission'') and the Commodity Futures Trading Commission (''CFTC'').

Since May 6, 2010, when the markets experienced excessive volatility in an abbreviated time period, *i.e.,* the ''flash crash,'' the exchanges and FINRA have implemented market-wide measures designed to restore investor confidence by reducing the potential for excessive market volatility. Among the measures adopted include pilot plans for stock-by-stock trading pauses [3] and related changes to the clearly erroneous execution rules [4] and more stringent market maker quoting requirements. In addition, on April 5, 2011, the equities exchanges and FINRA filed a plan pursuant to Rule 608 of Regulation NMS to address extraordinary market volatility (the ''Limit Up-Limit Down Plan'').[5] As proposed, the Limit Up-Limit Down Plan is designed to prevent trades in individual NMS stocks from occurring outside specified price bands.

The Joint CFTC–SEC Advisory Committee on Emerging Regulatory Issues (''Committee'') has recommended that, in addition to the initiatives already adopted or proposed, the markets should consider reforming the existing market-wide circuit breakers. Among other things, the Committee noted that the interrelatedness of today's highly electronic markets warrants the need to review the present operation of the system-wide circuit breakers now in place. Specifically, the Committee recommended that the markets consider replacing the Dow Jones Industrial Average (''DJIA'') with the S&P 500® Index (''S&P 500''), revising the 10%, 20%, and 30% decline percentages, reducing the length of trading halts, and allowing halts to be triggered up to 3:30 p.m. Eastern Time.[6]

The Exchange, along with other markets and FINRA, has taken into consideration the Committee's recommendations, and with some modifications, has proposed changes to market-wide circuit breakers that the Exchange believes will provide for a more meaningful measure in today's faster, more electronic markets, of when to halt stocks on a market-wide basis as a result of rapid market declines.

Background

NSX Rule 11.20A provides for market-wide halts in trading at specified levels in order to promote stability and investor confidence during a period of significant stress. As the Commission noted in its approval order, Rule 11.20 was intended to enable market participants to establish an equilibrium between buying and selling interest and to ensure that market participants have an opportunity to become aware of and respond to significant price movements. Importantly, the market-wide circuit breakers were not intended to prevent markets from adjusting to new price levels; rather, they provide for a speed bump for extremely rapid market declines.

In its current form, the rule provides for Level 1, 2, and 3 declines and specified trading halts following such declines. The values of Levels 1, 2 and 3 are calculated at the beginning of each calendar quarter, using 10%, 20% and 30%, respectively, of the average closing value of the DJIA for the month prior to the beginning of the quarter. Each percentage calculation is rounded to the nearest fifty points to create the Levels' trigger points. The new trigger levels are disseminated quarterly to the media and via an NYSE Euronext Information Memo and are available on the NYSE Euronext's Web site.[7] The values then remain in effect until the next quarterly calculation, notwithstanding whether the DJIA has moved and a Level 1, 2, or 3 decline is no longer equal to an actual 10%, 20%, or 30% decline in the most recent closing value of the DJIA.

Once a Rule 11.20A circuit breaker is in effect, trading in all stocks halt for the time periods specified below:

Level 1 Halt

Anytime before 2 p.m.[8]—one hour; at or after 2 p.m. but before 2:30 p.m.—30 minutes; at or after 2:30 p.m.—trading shall continue, unless there is a Level 2 Halt.

Level 2 Halt

Anytime before 1 p.m.—two hours; at or after 1 p.m. but before 2 p.m.—one hour; at or after 2 p.m.—trading shall halt and not resume for the rest of the day.

Level 3 Halt

At any time—trading shall halt and not resume for the rest of the day.

Unless stocks are halted for the remainder of the trading day, price indications are disseminated during a Rule 11.20A trading halt for stocks that comprise the DJIA.

Proposed Amendments

As noted above, the Exchange, other equities, options, and futures markets, and FINRA propose to amend the market-wide circuit breakers to take into consideration the recommendations of the Committee, and to provide for more meaningful measures in today's markets of when to halt trading in all stocks. Accordingly, the Exchange proposes to amend Rule 11.20A as follows: (i) Replace the DJIA with the S&P 500; (ii) replace the quarterly calendar recalculation of Rule 11.20A triggers with daily recalculations; (iii) replace the 10%, 20%, and 30% market decline percentages with 7%, 13%, and 20% market decline percentages; (iv) modify the length of the trading halts associated with each market decline level; and (v) modify the times when a trading halt may be triggered. The Exchange believes that these proposed amendments update the rule to reflect today's high-speed, highly electronic trading market while still meeting the original purpose of Rule 11.20A: to ensure that market participants have an opportunity to become aware of and respond to significant price movements.

[3] NSX Rule 11.20.

[4] NSX Rule 11.19.

[5] *See* Securities Exchange Act Release No. 64547 (May 25, 2011), 76 FR 31647 (June 1, 2011).

[6] *See* Summary Report of the Committee, ''Recommendations Regarding Regulatory Responses to the Market Events of May 6, 2010'' (Feb, 18, 2011). The Exchange notes that NYSE Euronext submitted a comment letter to the Committee that recommended, among other things, reform of the market-wide circuit breaker rules. *See* Letter to Elizabeth Murphy, Secretary, Commission, from Janet M. Kissane, SVP and Corporate Secretary, NYSE Euronext (July 19, 2010). The proposed reforms set forth in this rule proposal differ slightly from the changes recommended in that comment letter, and represent consensus among the markets of how to address reform of the market-wide circuit breakers.

[7] *See, e.g.,* NYSE Regulation Information Memos 11–19 (June 30, 2011) and 11–10 (March 31, 2011).

[8] Please note all referenced times herein are Eastern Time.

First, the Exchange proposes to replace the DJIA with the S&P 500. The Exchange believes that because the S&P 500 is based on the trading prices of 500 stocks, as compared to the 30 stocks that comprise the DJIA, the S&P 500 represents a broader base of securities against which to measure whether extraordinary market-wide volatility is occurring. In addition, as noted by the Committee, using an index that correlates closely with derivative products, such as the E-Mini and SPY, will allow for a better cross-market measure of market volatility.

Second, the Exchange proposes to change the recalculation of the trigger values from once every calendar quarter to daily. The Exchange believes that updating the trigger values daily will better reflect current market conditions. In particular, a daily recalculation will ensure that the percentage drop triggers relate to current market conditions, and are not compared to what may be stale market conditions. As noted in the proposed rule, the daily calculations of the trigger values will be published before the trading day begins.[9]

Third, the Exchange proposes to decrease the current Level 1, 2, and 3 declines of 10%, 20%, and 30% to a Level 1 Market Decline of 7%, a Level 2 Market Decline of 13%, and Level 3 Market Decline of 20%. In particular, as demonstrated by the May 6, 2010 flash crash, the current Level 1 10% decline may be too high a threshold before determining whether to halt trading across all securities. In fact, since adoption, the markets have halted only once, on October 27, 1997.[10] Accordingly, to reflect the potential that a lower, yet still significant decline may warrant a market-wide trading halt, the Exchange proposes to lower the market decline percentage thresholds.

As further proposed, the Exchange would halt trading based on a Level 1 or Level 2 Market Decline only once per day. For example, if a Level 1 Market Decline were to occur and trading were halted, following the reopening of trading, the Exchange would not halt the market again unless a Level 2 Market Decline were to occur. Likewise, following the reopening of trading after a Level 2 Market Decline, the Exchange would not halt trading again unless a Level 3 Market Decline were to occur, at which point, trading in all stocks would be halted until the primary market opens the next trading day.

Fourth, to correspond with the lower percentages associated with triggering a trading halt, the Exchange also proposes to shorten the length of the market-wide trading halts associated with each Level. As proposed, a Level 1 or 2 Market Decline occurring after 9:30 a.m. and up to and including 3:25 p.m., would result in a trading halt in all stocks for 15 minutes.

The Exchange believes that by reducing the percentage threshold, coupled with the reduced length of a trading halt, the proposed rule would allow for trading halts for serious market declines, while at the same time, would minimize disruption to the market by allowing for trading to continue after the proposed more-abbreviated trading halt. The Exchange believes that in today's markets, where trading information travels in micro-second speed, a 15-minute trading halt strikes the appropriate balance between the need to halt trading for market participants to assess the market, while at the same time reducing the time that the market is halted.

Finally, because the proposed Level 1 and Level 2 trading halts will now be 15 minutes, the Exchange proposes amending the rule to allow for a Level 1 or 2 Market Decline to trigger a trading halt up to 3:25 p.m. (or in the case of an early scheduled close, 12:25 p.m.). Under the current rule, a trading halt cannot be triggered after 2:30 p.m., and this time corresponds to the need for the markets both to reopen following a 30-minute halt and to engage in a fair and orderly closing process. However, as the markets experienced on May 6, 2010, even if the Level 1 decline had occurred that day, because the market decline occurred after 2:30 p.m., it would not have triggered a halt under the current rule. The Committee recommended that trading halts be triggered up to 3:30 p.m. The Exchange agrees that the proposed amendments must strike the appropriate balance between permitting trading halts as late in the day as feasible without interrupting the closing process.

Accordingly, to accommodate existing Exchange rules concerning closing procedures, the Exchange proposes that the last Level 1 or Level 2 Market Decline trading halt should be 3:25 p.m. (or in the case of an early scheduled close, 12:25 p.m.). The Exchange proposes 3:25 p.m. (or in the case of an early scheduled close, 12:25 p.m.) as the cut-off time so that there is time following the 15-minute trading halt for the markets to reopen before the 3:45 cut-off (and a 12:45 p.m. cut-off time for an early scheduled close) for certain stocks under Exchange rules.

As with current Level 3 declines, under the proposed rule, a Level 3 Market Decline would halt trading for the remainder of the trading day, including any trading that may take place after 4:00 p.m., and would not resume until the next trading day.

In addition to these proposed changes, the Exchange proposes to add to Rule 11.20A how the markets will reopen following a 15-minute trading halt. In particular, similar to the reopening procedures set forth in Rule 11.20B(b), the Exchange proposes that if the primary market halts trading in all stocks, all markets will halt trading in those stocks until the primary market has resumed trading or notice has been provided by the primary market that trading may resume. As further proposed, if the primary market does not re-open a security within 15 minutes following the end of the trading halt, other markets may resume trading in that security.

2. Statutory Basis

The basis under the Act for these proposed rule changes are the requirement under Section 6(b)(5)[11] that an Exchange have rules that are designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest. Specifically, this rule proposal supports the objectives of perfecting the mechanism of a free and open market and the national market system because it promotes uniformity across markets concerning when and how to halt trading in all stocks as a result of extraordinary market volatility.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any inappropriate burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange has neither solicited nor received written comments on the proposed rule change.

[9] The listing exchanges, has advised the Exchange and other markets that they will issue a circular regarding the specific methodology for publishing the daily calculations, as well as the manner by which all markets will halt trading in all stocks should a Rule 11.20A trading halt be triggered.

[10] At that time, the triggers were based on absolute declines in the DJIA (350 point decrease for a Level 1 halt and 550 point decrease for a Level 2 halt).

[11] 15 U.S.C. 78f(b)(5).

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 45 days of the date of publication of this notice in the Federal Register or within such longer period (i) As the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) by order approve or disapprove the proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed changes to the market-wide circuit breaker regime are consistent with the Act. The Commission specifically requests comment on the following:

- As discussed above, the proposed rule change would narrow the percentage market declines that would trigger a market-wide halt in trading. How would the proposed changes interact with the existing single-stock circuit breaker pilot program [12] or, if approved, the proposed NMS Plan to establish a limit-up/limit-down mechanism for individual securities? [13]
- To what extent could the concurrent triggering of single stock circuit breakers in many S&P 500 Index stocks lead to difficulties in calculating the index? Would the triggering of many single stock circuit breakers in a general market downturn cause the index calculation to become stale and thereby delay the triggering of the market-wide circuit breaker?
- Should the market-wide circuit breaker be triggered if a sufficient number of single-stock circuit breakers or price limits are triggered, and materially affect calculations of the S&P 500 Index?
- Should market centers implement rules that mandate cancellation of pending orders in the event a market-wide circuit breaker is triggered? If so, should such a rule require cancellation of all orders or only certain order types (*e.g.,* limit orders)? Should all trading halts trigger such cancellation policies or should the cancellation policies apply only to a Level 3 Market Decline?
- Should some provision be made to end the regular trading session if a market decline suddenly occurs after 3:25 p.m. but does not reach the 20% level?
- In the event of a Level 3 Market Decline, should some provision be made for the markets to hold a closing auction?
- Should the primary market have a longer period (*e.g.,* 30 minutes) to reopen trading following a Level 2 Market Decline before trading resumes in other venues?
- In the event of a Level 3 Market Decline, should the markets wait for the primary market to reopen trading in a particular security on the next trading day before trading in that security resumes?

Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–NSX–2011–11 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NSX–2011–11. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's 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 NSX. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make publicly available. All submissions should refer to File Number SR–NSX–2011–11 and should be submitted on or before October 25, 2011.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[14]

Elizabeth M. Murphy,

Secretary.

[FR Doc. 2011–25527 Filed 10–3–11; 8:45 am]

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[12] *See* Securities Exchange Act Release No. 64735 (June 23, 2011), 76 FR 38243 (June 29, 2011) (SR–BATS–2011–016; SR–BYX–2011–011; SR–BX–2011–025; SR–CBOE–2011–049; SR–CHX–2011–09; SR–EDGA–2011–15; SR–EDGX–2011–14; SR–FINRA–2011–023; SR–ISE–2011–028; SR–NASDAQ–2011–067; SR–NYSE–2011–21; SR–NYSEAmex–2011–32; SR–NYSEArca–2011–26; SR–NSX–2011–06; SR–Phlx–2011–64) (approving the ''Phase III Pilot Program''). The Phase III Pilot Program has been extended through January 2012. *See, e.g.,* Securities Exchange Act Release 65094 (August 10, 2011), 76 FR 50779 (August 16, 2011) (SR–NASDAQ–2011–011).

[13] *See* Securities Exchange Act Release No. 64547 (May 25, 2011), 76 FR 31647 (June 1, 2011).

[14] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–65433; File No. SR–C2–2011–024]

Self-Regulatory Organizations; C2 Options Exchange, Incorporated; Notice of Proposed Rule Change Related to Market-Wide Circuit Breakers

September 28, 2011.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 thereunder,[2] notice is hereby given that on September 27, 2011, the C2 Options Exchange, Incorporated (''Exchange'' or ''C2'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II, below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend Exchange Rule 6.32.03 to revise the current methodology for determining when to halt trading in all stock options on C2 due to extraordinary market volatility. The text of the rule proposal is available on the Exchange's Web site

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

(*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 self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend its rules to revise the current methodology for determining when to halt trading in all stock options due to extraordinary market volatility. The Exchange is proposing this rule change in consultation with other equity, options, and futures markets, the Financial Industry Regulatory Authority, Inc. (''FINRA''), and staffs of the Commission and the Commodity Futures Trading Commission (''CFTC'').

Since May 6, 2010, when the markets experienced excessive volatility in an abbreviated time period, *i.e.,* the ''flash crash,'' the exchanges and FINRA have implemented market-wide measures designed to restore investor confidence by reducing the potential for excessive market volatility. Among the measures adopted include pilot plans for stock-by-stock trading pauses [3] and related changes to the stock market clearly erroneous execution rules [4] and more stringent stock market maker quoting requirements.[5] In addition, on April 5, 2011, the equities exchanges and FINRA filed a plan pursuant to Rule 608 of Regulation NMS to address extraordinary market volatility (the ''Limit Up-Limit Down Plan'').[6] As proposed, the Limit Up-Limit Down Plan is designed to prevent trades in individual NMS stocks from occurring outside specified price bands.

The Joint CFTC–SEC Advisory Committee on Emerging Regulatory Issues (''Committee'') has recommended that, in addition to the initiatives already adopted or proposed, the markets should consider reforming the existing market-wide circuit breakers. Among other things, the Committee noted that the interrelatedness of today's highly electronic markets warrants the need to review the present operation of the system-wide circuit breakers now in place. Specifically, the Committee recommended that the markets consider replacing the Dow Jones Industrial Average (''DJIA'') with the S&P 500® Index (''S&P 500''), revising the 10%, 20%, and 30% decline percentages, reducing the length of trading halts, and allowing halts to be triggered up to 2:30 p.m. (all times herein are Chicago Time).[7]

The exchanges and FINRA have taken into consideration the Committee's recommendations, and with some modifications, have proposed changes to market-wide circuit breakers that the Exchange believes will provide for a more meaningful measure in today's faster, more electronic markets, of when to halt stocks and stock options on a market-wide basis as a result of rapid market declines.

Background

The markets' rules on market-wide trading halts were adopted in October 1988 as part of an effort by the securities and futures markets to implement a coordinated means to address potentially destabilizing market volatility.[8] The rule, currently reflected in Exchange Rule 6.32.03, provides for market-wide halts in trading at specified levels in order to promote stability and investor confidence during a period of significant stress.[9] As the Commission noted in the 1987 approval order, the market-wide circuit breaker rules were intended to enable market participants to establish an equilibrium between buying and selling interest and to ensure that market participants have an opportunity to become aware of and respond to significant price movements. Importantly, the market-wide circuit breakers were not intended to prevent markets from adjusting to new price levels; rather, they provide for a speed bump for extremely rapid market declines.[10]

In its current form,[11] the rule provides for Level 1, 2, and 3 declines and specified trading halts following such declines. The values of Levels 1, 2 and 3 are calculated at the beginning of each calendar quarter, using 10%, 20% and 30%, respectively, of the average closing value of the DJIA for the month prior to the beginning of the quarter. Each percentage calculation is rounded to the nearest fifty points to create the Levels' trigger points. The NYSE distributes new trigger levels quarterly to the media and via an NYSE Information Memo, and the new trigger levels are also available on the NYSE Web site.[12] The values then remain in effect until the next quarterly calculation, notwithstanding whether the DJIA has moved and a Level 1, 2, or 3 decline is no longer equal to an actual 10%, 20%, or 30% decline in the most recent closing value of the DJIA.

Once a market-wide circuit breaker is in effect, trading in all securities on the Exchange, which currently includes only options, halts for the time periods specified below:

Level 1 Halt

Anytime before 2 p.m.—one hour; at or after 2 p.m. but before 2:30 p.m.—30 minutes; at or after 2:30 p.m.—trading shall continue, unless there is a Level 2 Halt.

Level 2 Halt

Anytime before 1 p.m.—two hours; at or after 1 p.m. but before 2 p.m.—one hour; at or after 2 p.m.—trading shall

[3] *See, e.g.,* Chicago Board Options Exchange (''CBOE'') Rule 6.3C.

[4] *See, e.g.,* CBOE Rule 52.4.

[5] *See, e.g.,* CBOE Rules 53.23.01 and 53.56.01.

[6] *See* Securities Exchange Act Release No. 64547 (May 25, 2011), 76 FR 31647 (June 1, 2011).

[7] *See* Summary Report of the Committee, ''Recommendations Regarding Regulatory Responses to the Market Events of May 6, 2010'' (Feb, 18, 2011). The Exchange notes that CBOE, C2's affiliate, submitted a comment letter to the Committee that recommended, among other things, reform of the market-wide circuit breaker rules. *See* Letter to Mary Schapiro, Chairman, Commission, and Gary Gensler, Chairman, CFTC, from Edward J. Joyce, President and Chief Operating Officer, CBOE (August 3, 2010). The proposed reforms set forth in this rule proposal differ slightly from the changes recommended in that comment letter, and represent consensus among the markets of how to address reform of the market-wide circuit breakers.

[8] *See* Securities Exchange Act Release No. 26198 (Oct. 19, 1988). Exchange Rule 6.32.03 was adopted as part of C2's original rule set when it was approved as a registered national securities exchange on December 10, 2009.

[9] Exchange Rule 6.32.03 does not currently contain any reference to the specific levels of decline in the DJIA that would trigger a market-wide trading halt. Instead, the rule provides that a market-wide halt will be triggered on the Exchange whenever a market-wide halt is in effect on the New York Stock Exchange (''NYSE'').

[10] *See* note 8, *supra.*

[11] The methodology for calculating market-wide trading halts was last amended by the markets in 1998, when declines based on specified point drops in the DJIA were replaced with the current methodology of using a percentage decline that is recalculated quarterly. *See* Securities Exchange Act Release No. 39846 (April 9, 1998), 63 FR 18477 (April 15, 1998) (SR–NYSE–98–06, SR–Amex-98–09, SR–BSE–98–06, SR–CHX–98–08, SR–NASD–98–27, and SR–Phlx–98–15).

[12] *See, e.g.,* NYSE Regulation Information Memos 11–19 (June 30, 2011) and 11–10 (March 31, 2011).

halt and not resume for the rest of the day.

Level 3 Halt

At any time—trading shall halt and not resume for the rest of the day.

Proposed Amendments

As noted above, the Exchange, other equities, options, and futures markets, and FINRA propose to amend the market-wide circuit breakers to take into consideration the recommendations of the Committee, and to provide for more meaningful measures in today's markets of when to halt trading in all stocks and stock options. Accordingly, the Exchange proposes to amend Rule 6.3B as follows: (i) Replace the DJIA with the S&P 500; (ii) replace the quarterly calendar recalculation of Rule 6.3B triggers with daily recalculations: (iii) replace the 10%, 20%, and 30% market decline percentages with 7%, 13%, and 20% market decline percentages; (iv) modify the length of the trading halts associated with each market decline level; and (v) modify the times when a trading halt may be triggered. The Exchange believes that these proposed amendments update the rule to reflect today's high-speed, highly electronic trading market while still meeting the original purpose of the market-wide circuit breaker rules: to ensure that market participants have an opportunity to become aware of and respond to significant price movements.

First, the Exchange proposes to replace the DJIA with the S&P 500. The Exchange believes that because the S&P 500 is based on the trading prices of 500 stocks, as compared to the 30 stocks that comprise the DJIA, the S&P 500 represents a broader base of stocks against which to measure whether extraordinary market-wide volatility is occurring. In addition, as noted by the Committee, using an index that correlates closely with derivative products, such as the E-Mini and SPY, will allow for a better cross-market measure of market volatility.

Second, the Exchange proposes to change the recalculation of the trigger values from once every calendar quarter to daily. The Exchange believes that updating the trigger values daily will better reflect current market conditions. In particular, a daily recalculation will ensure that the percentage drop triggers relate to current market conditions, and are not compared to what may be stale market conditions. As noted in the proposed rule, the daily calculations of the trigger values will be published before the trading day begins.[13]

Third, the Exchange proposes to decrease the current Level 1, 2, and 3 declines of 10%, 20%, and 30% to a Level 1 Market Decline of 7%, a Level 2 Market Decline of 13%, and Level 3 Market Decline of 20%. In particular, as demonstrated by the May 6, 2010 flash crash, the current Level 1 10% decline may be too high a threshold before determining whether to halt trading across all securities. In fact, since adoption, the markets have halted only once, on October 27, 1997.[14] Accordingly, to reflect the potential that a lower, yet still significant decline may warrant a market-wide trading halt, the Exchange proposes to lower the market decline percentage thresholds.

As further proposed, the Exchange would halt trading based on a Level 1 or Level 2 Market Decline only once per day. For example, if a Level 1 Market Decline were to occur and trading were halted, following the reopening of trading, the Exchange would not halt the market again unless a Level 2 Market Decline were to occur. Likewise, following the reopening of trading after a Level 2 Market Decline, the Exchange would not halt trading again unless a Level 3 Market Decline were to occur, at which point, trading in all stock options would be halted until the next trading day.

Fourth, to correspond with the lower percentages associated with triggering a trading halt, the Exchange also proposes to shorten the length of the market-wide trading halts associated with each Level. As proposed, a Level 1 or 2 Market Decline occurring after 8:30 a.m. and up to and including 2:25 p.m. or, in the case of an early scheduled close, 11:25 a.m., would result in a trading halt in all stocks options for 15 minutes.

The Exchange believes that by reducing the percentage threshold, coupled with the reduced length of a trading halt, the proposed rule would allow for trading halts for serious market declines, while at the same time, would minimize disruption to the market by allowing for trading to continue after the proposed more-abbreviated trading halt. The Exchange believes that in today's markets, where trading information travels in micro-second speed, a 15-minute trading halt strikes the appropriate balance between the need to halt trading for market participants to assess the market, while at the same time reducing the time that the market is halted.

Finally, because the proposed Level 1 and Level 2 trading halts will now be 15 minutes, the Exchange proposes amending the rule to allow for a Level 1 or 2 Market Decline to trigger a trading halt up to 2:25 p.m. (or, in the case of an early scheduled close, 11:25 a.m.). Under the current rule, a trading halt cannot be triggered after 1:30 p.m., and this time corresponds to the need for the markets both to reopen following a 30-minute halt and to engage in a fair and orderly closing process. However, as the markets experienced on May 6, 2010, even if the Level 1 decline had occurred that day, because the market decline occurred after 1:30 p.m., it would not have triggered a halt under the current rule. The Committee recommended that trading halts be triggered up to 2:30 p.m. The Exchange agrees that the proposed amendments must strike the appropriate balance between permitting trading halts as late in the day as feasible without interrupting the closing process.

Accordingly, to accommodate certain existing exchange rules concerning closing procedures, including, for example, the publication of imbalance information beginning at 2:45 p.m. and the restrictions on entry and cancellation of market on close (''MOC'') and limit on close (''LOC'') orders after 2:45 p.m.,[15] the Exchange proposes that the last Level 1 or Level 2 Market Decline trading halt should be 2:25 p.m. (or, in the case of an early scheduled close, 11:25 a.m.). The Exchange proposes 2:25 p.m. as the cut-off time so that there is time following the 15-minute trading halt for the markets to reopen before the 2:45 cut-off for entry and cancellation of MOC and LOC orders under exchange rules.

As with current Level 3 declines, under the proposed rule, a Level 3 Market Decline would halt trading for the remainder of the trading day, including any trading that may take place after 3:00 p.m., and would not resume until the next trading day.

In addition to these proposed changes, the Exchange proposes to add to Rule 6.3B how the markets will reopen following a 15-minute trading halt.[16] For options overlying stocks,

[13] The Exchange and other markets will advise via Circular (or Trader Alert or similar notice) the specific methodology for publishing the daily calculations, as well as the manner by which the markets will halt trading in all stocks and stock options should a Rule 6.32B trading halt be triggered.

[14] At that time, the triggers were based on absolute declines in the DJIA (350 point decrease for a Level 1 halt and 550 point decrease for a Level 2 halt).

[15] *See, e.g.,* NYSE Rule 123C.

[16] Upon reopening, a rotation shall be held in each class of options in accordance with Exchange Rule 6.11, unless the Exchange concludes that a

Continued

similar to the reopening procedures set forth in Rule 6.3.06, the Exchange proposes that if a circuit breaker is initiated in all stocks, all markets will halt trading in the options on those stocks until the primary listing market has resumed trading in the stock or notice has been provided by the primary listing market that trading may resume. If the primary listing market does not reopen a stock within 15 minutes following the end of the trading halt, other markets may resume trading in the options on that stock if at least one market has resumed traded [sic] in the stock. For all other stock options, *e.g.,* stock index options, the Exchange proposes that if a circuit breaker is initiated in all stocks, all markets shall halt trading in such other stock options and may resume trading in such options anytime after the 15-minute halt period.[17]

2. Statutory Basis

The basis under the Act for these proposed rule changes are [sic] the requirement under Section 6(b)(5)[18] that an Exchange have rules that are designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest. Specifically, this rule proposal supports the objectives of perfecting the mechanism of a free and open market and the national market system because it promotes uniformity across markets concerning when and how to halt trading in all stock options as a result of extraordinary market volatility in a manner that is consistent with that being proposed for stocks.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

The Exchange neither solicited nor received comments on the proposal.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 45 days of the date of publication of this notice in the Federal Register or within such longer period (i) As the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve or disapprove such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed changes to the market-wide circuit breaker regime are consistent with the Act. The Commission specifically requests comment on the following:

- As discussed above, the proposed rule change would narrow the percentage market declines that would trigger a market-wide halt in trading. How would the proposed changes interact with the existing single-stock circuit breaker pilot program[19] or, if approved, the proposed NMS Plan to establish a limit-up/limit-down mechanism for individual securities?[20]
- To what extent could the concurrent triggering of single stock circuit breakers in many S&P 500 Index stocks lead to difficulties in calculating the index? Would the triggering of many single stock circuit breakers in a general market downturn cause the index calculation to become stale and thereby delay the triggering of the market-wide circuit breaker?
- Should the market-wide circuit breaker be triggered if a sufficient number of single-stock circuit breakers or price limits are triggered, and materially affect calculations of the S&P 500 Index?
- Should market centers implement rules that mandate cancellation of pending orders in the event a market-wide circuit breaker is triggered? If so, should such a rule require cancellation of all orders or only certain order types (*e.g.,* limit orders)? Should all trading halts trigger such cancellation policies or should the cancellation policies apply only to a Level 3 Market Decline?
- Should some provision be made to end the regular trading session if a market decline suddenly occurs after 3:25 p.m. but does not reach the 20% level?
- In the event of a Level 3 Market Decline, should some provision be made for the markets to hold a closing auction?
- Should the primary market have a longer period (*e.g.,* 30 minutes) to reopen trading following a Level 2 Market Decline before trading resumes in other venues?
- In the event of a Level 3 Market Decline, should the markets wait for the primary market to reopen trading in a particular security on the next trading day before trading in that security resumes?

Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–C2–2011–024 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–C2–2011–024. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements

different method of reopening is appropriate under the circumstances, including but not limited to, no rotation, an abbreviated rotation or any other variation in the manner of the rotation.

[17] The Exchange understands that other markets are submitting similar rule changes and revising procedures to address market-wide circuit breakers and reopenings for stocks, options and futures. The Exchange believes it is integral that the markets have consistent procedures for market-wide circuit breakers and reopenings (*e.g.,* our intention is to have same ability to reopen trading in stock index options when futures markets reopen). As a result, to the extent it may be necessary, the Exchange reserves the right to modify its proposed rule change in order to conform its procedures based on a review of the rule change filings and procedures of the other equities, options and futures markets.

[18] 15 U.S.C. 78f(b)(5).

[19] *See* Securities Exchange Act Release No. 64735 (June 23, 2011), 76 FR 38243 (June 29, 2011) (SR–BATS–2011–016; SR–BYX–2011–011; SR–BX–2011–025; SR–CBOE–2011–049; SR–CHX–2011–09; SR–EDGA–2011–15; SR–EDGX–2011–14; SR–FINRA–2011–023; SR–ISE–2011–028; SR–NASDAQ–2011–067; SR–NYSE–2011–21; SR–NYSEAmex–2011–32; SR–NYSEArca–2011–26; SR–NSX–2011–06; SR–Phlx–2011–64) (approving the ''Phase III Pilot Program''). The Phase III Pilot Program has been extended through January 2012. *See, e.g.,* Securities Exchange Act Release 65094 (August 10, 2011), 76 FR 50779 (August 16, 2011) (SR–NASDAQ–2011–011).

[20] *See* Securities Exchange Act Release No. 64547 (May 25, 2011), 76 FR 31647 (June 1, 2011).

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 publicly available. All submissions should refer to File Number SR–C2–2011–024 and should be submitted on or before October 25, 2011.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[21]

Elizabeth M. Murphy,

Secretary.

[FR Doc. 2011–25526 Filed 10–3–11; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–65427; File No. SR–NYSE–2011–48]

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing of Proposed Rule Change Amending Exchange Rule 80B To Revise the Current Methodology For Determining When To Halt Trading in All Stocks Due to Extraordinary Market Volatility

September 28, 2011.

Pursuant to Section 19(b)(1)[1] of the Securities Exchange Act of 1934 (the ''Act'')[2] and Rule 19b–4 thereunder,[3] notice is hereby given that, on September 27, 2011, New York Stock Exchange LLC (''NYSE'' or the ''Exchange'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend Exchange Rule 80B to revise the current methodology for determining when to halt trading in all stocks due to extraordinary market volatility. The text of the proposed rule change is available at the Exchange, the Commission's Public Reference Room, and *http://www.nyse.com.*

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend Exchange Rule 80B to revise the current methodology for determining when to halt trading in all stocks due to extraordinary market volatility. The Exchange is proposing this rule change in consultation with other equity, options, and futures markets, the Financial Industry Regulatory Authority, Inc. (''FINRA''), and staffs of the Commission and the Commodity Futures Trading Commission.

Since May 6, 2010, when the markets experienced excessive volatility in an abbreviated time period, *i.e.,* the ''flash crash,'' the exchanges and FINRA have implemented market-wide measures designed to restore investor confidence by reducing the potential for excessive market volatility. Among the measures adopted include pilot plans for stock-by-stock trading pauses[4] and related changes to the clearly erroneous execution rules[5] and more stringent market maker quoting requirements.[6] In addition, on April 5, 2011, the equities exchanges and FINRA filed a plan pursuant to Rule 608 of Regulation NMS to address extraordinary market volatility (the ''Limit Up-Limit Down Plan'').[7] As proposed, the Limit Up-Limit Down Plan is designed to prevent trades in individual NMS stocks from occurring outside specified price bands.

The Joint CFTC–SEC Advisory Committee on Emerging Regulatory Issues (''Committee'') has recommended that, in addition to the initiatives already adopted or proposed, the markets should consider reforming the existing market-wide circuit breakers. Among other things, the Committee noted that the interrelatedness of today's highly electronic markets warrants the need to review the present operation of the system-wide circuit breakers now in place. Specifically, the Committee recommended that the markets consider replacing the Dow Jones Industrial Average (''DJIA'') with the S&P 500® Index (''S&P 500''), revising the 10%, 20%, and 30% decline percentages, reducing the length of trading halts, and allowing halts to be triggered up to 3:30 p.m.[8]

The exchanges and FINRA have taken into consideration the Committee's recommendations, and with some modifications, have proposed changes to market-wide circuit breakers that the Exchange believes will provide for a more meaningful measure in today's faster, more electronic markets, of when to halt stocks on a market-wide basis as a result of rapid market declines.

Background

The Exchange adopted Rule 80B in October 1988 as part of an effort by the securities and futures markets to implement a coordinated means to address potentially destabilizing market volatility.[9] NYSE Rule 80B provides for market-wide halts in trading at specified levels in order to promote stability and investor confidence during a period of significant stress. As the Commission noted in its approval order, Rule 80B

[21] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C.78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

[4] NYSE Rule 80C.

[5] NYSE Rule 128.

[6] NYSE Rule 104(a)(1)(B).

[7] *See* Securities Exchange Act Release No. 64547 (May 25, 2011), 76 FR 31647 (June 1, 2011).

[8] *See* Summary Report of the Committee, ''Recommendations Regarding Regulatory Responses to the Market Events of May 6, 2010'' (Feb, 18, 2011). The Exchange notes that NYSE Euronext submitted a comment letter to the Committee that recommended, among other things, reform of the market-wide circuit breaker rules. *See* Letter to Elizabeth Murphy, Secretary, Commission, from Janet M. Kissane, SVP and Corporate Secretary, NYSE Euronext (July 19, 2010). The proposed reforms set forth in this rule proposal differ slightly from the changes recommended in that comment letter, and represent consensus among the markets of how to address reform of the market-wide circuit breakers.

[9] *See* Securities Exchange Act Release No. 26198 (Oct. 19, 1988) (SR–CBOE–88–14, SR–NASD–88–46, SR–NYSE–88–22, SR–NYSE–88–23, SR–NYSE–88–24, and SR–Amex–88–24).

was intended to enable market participants to establish an equilibrium between buying and selling interest and to ensure that market participants have an opportunity to become aware of and respond to significant price movements. Importantly, the market-wide circuit breakers were not intended to prevent markets from adjusting to new price levels; rather, they provide for a speed bump for extremely rapid market declines.[10]

In its current form,[11] the rule provides for Level 1, 2, and 3 declines and specified trading halts following such declines. The values of Levels 1, 2 and 3 are calculated at the beginning of each calendar quarter, using 10%, 20%, and 30%, respectively, of the average closing value of the DJIA for the month prior to the beginning of the quarter. Each percentage calculation is rounded to the nearest fifty points to create the Levels' trigger points. The Exchange disseminates the new trigger levels quarterly to the media and via an Information Memo and is available on the Exchange's Web site.[12] The values then remain in effect until the next quarterly calculation, notwithstanding whether the DJIA has moved and a Level 1, 2, or 3 decline is no longer equal to an actual 10%, 20%, or 30% decline in the most recent closing value of the DJIA.

Once a Rule 80B circuit breaker is in effect, trading in all stocks halt for the time periods specified below:

Level 1 Halt

Anytime before 2 p.m.—one hour; at or after 2 p.m. but before 2:30 p.m.—30 minutes; at or after 2:30 p.m.—trading shall continue, unless there is a Level 2 Halt.

Level 2 Halt

Anytime before 1 p.m.—two hours; at or after 1 p.m. but before 2 p.m.—one hour; at or after 2 p.m.—trading shall halt and not resume for the rest of the day.

Level 3 Halt

At any time—trading shall halt and not resume for the rest of the day.

Unless stocks are halted for the remainder of the trading day, price indications are disseminated during a Rule 80B trading halt for stocks that comprise the DJIA.

Proposed Amendments

As noted above, the Exchange, other equities, options, and futures markets, and FINRA propose to amend the market-wide circuit breakers to take into consideration the recommendations of the Committee, and to provide for more meaningful measures in today's markets of when to halt trading in all stocks. Accordingly, the Exchange proposes to amend Rule 80B as follows: (i) Replace the DJIA with the S&P 500; (ii) replace the quarterly calendar recalculation of Rule 80B triggers with daily recalculations: (iii) replace the 10%, 20%, and 30% market decline percentages with 7%, 13%, and 20% market decline percentages; (iv) modify the length of the trading halts associated with each market decline level; and (v) modify the times when a trading halt may be triggered. The Exchange believes that these proposed amendments update the rule to reflect today's high-speed, highly electronic trading market while still meeting the original purpose of Rule 80B: To ensure that market participants have an opportunity to become aware of and respond to significant price movements.

First, the Exchange proposes to replace the DJIA with the S&P 500. The Exchange believes that because the S&P 500 is based on the trading prices of 500 stocks, as compared to the 30 stocks that comprise the DJIA, the S&P 500 represents a broader base of securities against which to measure whether extraordinary market-wide volatility is occurring. In addition, as noted by the Committee, using an index that correlates closely with derivative products, such as the E-Mini and SPY, will allow for a better cross-market measure of market volatility.

Second, the Exchange proposes to change the recalculation of the trigger values from once every calendar quarter to daily. The Exchange believes that updating the trigger values daily will better reflect current market conditions. In particular, a daily recalculation will ensure that the percentage drop triggers relate to current market conditions, and are not compared to what may be stale market conditions. As noted in the proposed rule, the daily calculations of the trigger values will be published before the trading day begins.[13]

Third, the Exchange proposes to decrease the current Level 1, 2, and 3 declines of 10%, 20%, and 30% to a Level 1 Market Decline of 7%, a Level 2 Market Decline of 13%, and Level 3 Market Decline of 20%. In particular, as demonstrated by the May 6, 2010 flash crash, the current Level 1 10% decline may be too high a threshold before determining whether to halt trading across all securities. In fact, since adoption, the markets have halted only once, on October 27, 1997.[14] Accordingly, to reflect the potential that a lower, yet still significant decline may warrant a market-wide trading halt, the Exchange proposes to lower the market decline percentage thresholds.

As further proposed, the Exchange would halt trading based on a Level 1 or Level 2 Market Decline only once per day. For example, if a Level 1 Market Decline were to occur and trading were halted, following the reopening of trading, the Exchange would not halt the market again unless a Level 2 Market Decline were to occur. Likewise, following the reopening of trading after a Level 2 Market Decline, the Exchange would not halt trading again unless a Level 3 Market Decline were to occur, at which point, trading in all stocks would be halted until the primary market opens the next trading day.

Fourth, to correspond with the lower percentages associated with triggering a trading halt, the Exchange also proposes to shorten the length of the market-wide trading halts associated with each Level. As proposed, a Level 1 or 2 Market Decline occurring after 9:30 a.m. Eastern and up to and including 3:25 p.m. Eastern, or in the case of an early scheduled close, 12:25 p.m. Eastern, would result in a trading halt in all stocks for 15 minutes.

The Exchange believes that by reducing the percentage threshold, coupled with the reduced length of a trading halt, the proposed rule would allow for trading halts for serious market declines, while at the same time, would minimize disruption to the market by allowing for trading to continue after the proposed more-abbreviated trading halt. The Exchange believes that in today's markets, where trading information travels in micro-second speed, a 15-minute trading halt strikes the appropriate balance between the need to halt trading for market participants to assess the market, while at the same time reducing the time that the market is halted.

[10] *Id.*

[11] The rule was last amended in 1998, when declines based on specified point drops in the DJIA were replaced with the current methodology of using a percentage decline that is recalculated quarterly. *See* Securities Exchange Act Release No. 39846 (April 9, 1998), 63 FR 18477 (April 15, 1998) (SR–NYSE–98–06, SR–Amex–98–09, SR–BSE–98–06, SR–CHX–98–08, SR–NASD–98–27, and SR–Phlx–98–15).

[12] *See e.g.*, NYSE Regulation Information Memos 11–19 (June 30, 2011) and 11–10 (March 31, 2011).

[13] The Exchange and other markets will advise via Trader Update the specific methodology for publishing the daily calculations, as well as the manner by which the markets will halt trading in all stocks should a Rule 80B trading halt be triggered.

[14] At that time, the triggers were based on absolute declines in the DJIA (350 point decrease for a Level 1 halt and 550 point decrease for a Level 2 halt).

Finally, because the proposed Level 1 and Level 2 trading halts will now be 15 minutes, the Exchange proposes amending the rule to allow for a Level 1 or 2 Market Decline to trigger a trading halt up to 3:25 p.m. Under the current rule, a trading halt cannot be triggered after 2:30 p.m., and this time corresponds to the need for the markets both to reopen following a 30-minute halt and to engage in a fair and orderly closing process. However, as the markets experienced on May 6, 2010, even if the Level 1 decline had occurred that day, because the market decline occurred after 2:30 p.m., it would not have triggered a halt under the current rule. The Committee recommended that trading halts be triggered up to 3:30 p.m. The Exchange agrees that the proposed amendments must strike the appropriate balance between permitting trading halts as late in the day as feasible without interrupting the closing process.

Accordingly, to accommodate existing Exchange rules concerning closing procedures, including the publication of imbalance information beginning at 3:45 p.m. and the restrictions on entry and cancellation of market on close (''MOC'') and limit on close (''LOC'') orders after 3:45 p.m.,[15] the Exchange proposes that the last Level 1 or Level 2 Market Decline trading halt should be 3:25 p.m. The Exchange proposes 3:25 p.m. as the cut-off time so that there is time following the 15-minute trading halt for the markets to reopen before the 3:45 cut-off for entry and cancellation of MOC and LOC orders under Exchange rules.

As with current Level 3 declines, under the proposed rule, a Level 3 Market Decline would halt trading for the remainder of the trading day, including any trading that may take place after 4 p.m., Eastern, and would not resume until the next trading day.

In addition to these proposed changes, the Exchange proposes to add to Rule 80B how the markets will reopen following a 15-minute trading halt. In particular, similar to the reopening procedures set forth in Rule 80C, the Exchange proposes that if the primary market halts trading in all stocks, all markets will halt trading in those stocks until the primary market has resumed trading or notice has been provided by the primary market that trading may resume. As further proposed, if the primary market does not re-open a security within 15 minutes following the end of the trading halt, other markets may resume trading in that security.

The Exchange proposes to implement the changes to Rule 80B at the same time that the Limit Up-Limit Down Plan, if approved, is implemented.

2. Statutory Basis

The basis under the Act for these proposed rule changes are [sic] the requirement under Section 6(b)(5)[16] that an Exchange have rules that are designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest. Specifically, this rule proposal supports the objectives of perfecting the mechanism of a free and open market and the national market system because it promotes uniformity across markets concerning when and how to halt trading in all stocks as a result of extraordinary market volatility.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) As the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve or disapprove the proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed changes to the market-wide circuit breaker regime are consistent with the Act. The Commission specifically requests comment on the following:

- As discussed above, the proposed rule change would narrow the percentage market declines that would trigger a market-wide halt in trading. How would the proposed changes interact with the existing single-stock circuit breaker pilot program[17] or, if approved, the proposed NMS Plan to establish a limit-up/limit-down mechanism for individual securities?[18]
- To what extent could the concurrent triggering of single stock circuit breakers in many S&P 500 Index stocks lead to difficulties in calculating the index? Would the triggering of many single stock circuit breakers in a general market downturn cause the index calculation to become stale and thereby delay the triggering of the market-wide circuit breaker?
- Should the market-wide circuit breaker be triggered if a sufficient number of single-stock circuit breakers or price limits are triggered, and materially affect calculations of the S&P 500 Index?
- Should market centers implement rules that mandate cancellation of pending orders in the event a market-wide circuit breaker is triggered? If so, should such a rule require cancellation of all orders or only certain order types (*e.g.,* limit orders)? Should all trading halts trigger such cancellation policies or should the cancellation policies apply only to a Level 3 Market Decline?
- Should some provision be made to end the regular trading session if a market decline suddenly occurs after 3:25 p.m. but does not reach the 20% level?
- In the event of a Level 3 Market Decline, should some provision be made for the markets to hold a closing auction?
- Should the primary market have a longer period (*e.g.,* 30 minutes) to reopen trading following a Level 2 Market Decline before trading resumes in other venues?
- In the event of a Level 3 Market Decline, should the markets wait for the primary market to reopen trading in a

[15] *See* NYSE Rule 123C.

[16] 15 U.S.C. 78f(b)(5).

[17] *See* Securities Exchange Act Release No. 64735 (June 23, 2011), 76 FR 38243 (June 29, 2011) (SR–BATS–2011–016; SR–BYX–2011–011; SR–BX–2011–025; SR–CBOE–2011–049; SR–CHX–2011–09; SR–EDGA–2011–15; SR–EDGX–2011–14; SR–FINRA–2011–023; SR–ISE–2011–028; SR–NASDAQ–2011–067; SR–NYSE–2011–21; SR–NYSEAmex–2011–32; SR–NYSEArca–2011–26; SR–NSX–2011–06; SR–Phlx–2011–64) (approving the ''Phase III Pilot Program''). The Phase III Pilot Program has been extended through January 2012. *See, e.g.,* Securities Exchange Act Release 65094 (August 10, 2011), 76 FR 50779 (August 16, 2011) (SR–NASDAQ–2011–011).

[18] *See* Securities Exchange Act Release No. 64547 (May 25, 2011), 76 FR 31647 (June 1, 2011).

particular security on the next trading day before trading in that security resumes?

Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–NYSE–2011–48 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSE–2011–48. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make publicly available. All submissions should refer to File Number SR–NYSE–2011–48 and should be submitted on or before October 25, 2011.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[19]

Elizabeth M. Murphy,

Secretary.

[FR Doc. 2011–25525 Filed 10–3–11; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–65426; File No. SR–CHX–2011–30]

Self-Regulatory Organizations; Chicago Stock Exchange, Inc.; Notice of Filing Proposed Rule Change To Revise the Current Methodology for Determining When To Halt Trading in All Stocks Due To Extraordinary Market Volatility

September 28, 2011.

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 27, 2011, the Chicago Stock Exchange, Inc. (''Exchange'' or ''CHX'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes [sic] amend Exchange Article 20, Rule 2 to revise the current methodology for determining when to halt trading in all stocks due to extraordinary market volatility. The text of this proposed rule change is available on the Exchange's Web site at (*http://www.chx.com*), at the Exchange's Office of the Secretary and in the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the CHX included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received regarding the proposal. The text of these statements may be examined at the places specified in Item IV below. The CHX has prepared summaries, set forth in sections A, B and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend Exchange Article 20, Rule 2 to revise the current methodology for determining when to halt trading in all stocks due to extraordinary market volatility. The Exchange is proposing this rule change in consultation with other equity, options, and futures markets, the Financial Industry Regulatory Authority, Inc. (''FINRA''), and staffs of the Commission and the Commodity Futures Trading Commission.

Since May 6, 2010, when the markets experienced excessive volatility in an abbreviated time period, i.e., the ''flash crash,'' the exchanges and FINRA have implemented market-wide measures designed to restore investor confidence by reducing the potential for excessive market volatility. Among the measures adopted include pilot plans for stock-by-stock trading pauses[3] and related changes to the clearly erroneous execution rules[4] and more stringent market maker quoting requirements.[5] In addition, on April 5, 2011, the equities exchanges and FINRA filed a plan pursuant to Rule 608 of Regulation NMS to address extraordinary market volatility (the ''Limit Up-Limit Down Plan'').[6] As proposed, the Limit Up-Limit Down Plan is designed to prevent trades in individual NMS stocks from occurring outside specified price bands.

The Joint CFTC–SEC Advisory Committee on Emerging Regulatory Issues (''Committee'') has recommended that, in addition to the initiatives already adopted or proposed, the markets should consider reforming the existing market-wide circuit breakers. Among other things, the Committee noted that the interrelatedness of today's highly electronic markets warrants the need to review the present operation of the system-wide circuit breakers now in place. Specifically, the Committee recommended that the markets consider replacing the Dow Jones Industrial Average (''DJIA'') with the S&P 500® Index (''S&P 500''), revising the 10%, 20%, and 30% decline percentages, reducing the length

[19] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] CHX Article 20, Rule 2(e).

[4] CHX Article 20, Rule 10.

[5] CHX Article 16, Rule 8a(2).

[6] *See* Securities Exchange Act Release No. 64547 (May 25, 2011), 76 FR 31647 (June 1, 2011).

of trading halts, and allowing halts to be triggered up to 2:30 p.m. Central Time.[7]

The exchanges and FINRA have taken into consideration the Committee's recommendations, and with some modifications, have proposed changes to market-wide circuit breakers that the Exchange believes will provide for a more meaningful measure in today's faster, more electronic markets, of when to halt stocks on a market-wide basis as a result of rapid market declines.

Background

The Exchange adopted Article 20, Rule 2 in October 1988 as part of an effort by the securities and futures markets to implement a coordinated means to address potentially destabilizing market volatility.[8] CHX Article 20, Rule 2 provides for market-wide halts in trading at specified levels in order to promote stability and investor confidence during a period of significant stress. As the Commission noted in its approval order, Article 20, Rule 2 was intended to enable market participants to establish an equilibrium between buying and selling interest and to ensure that market participants have an opportunity to become aware of and respond to significant price movements. Importantly, the market-wide circuit breakers were not intended to prevent markets from adjusting to new price levels; rather, they provide for a speed bump for extremely rapid market declines.[9]

In its current form,[10] the rule provides for Level 1, 2, and 3 declines and specified trading halts following such declines. The values of Levels 1, 2 and 3 are calculated at the beginning of each calendar quarter, using 10%, 20% and 30%, respectively, of the average closing value of the DJIA for the month prior to the beginning of the quarter. Each percentage calculation is rounded to the nearest fifty points to create the Levels' trigger points. The NYSE disseminates the new trigger levels quarterly to the media and via an Information Memo and is available on the Exchange's Web site.[11] The values then remain in effect until the next quarterly calculation, notwithstanding whether the DJIA has moved and a Level 1, 2, or 3 decline is no longer equal to an actual 10%, 20%, or 30% decline in the most recent closing value of the DJIA.

Once an Article 20, Rule 2 circuit breaker is in effect, trading in all stocks halt [sic] for the time periods (all times are Central Time) specified below:

Level 1 Halt

Anytime before 1 p.m.—one hour; at or after 1 p.m. but before 1:30 p.m.—30 minutes; at or after 1:30 p.m.—trading shall continue, unless there is a Level 2 Halt.

Level 2 Halt

Anytime before 12 p.m.—two hours; at or after 12 p.m. but before 1 p.m.—one hour; at or after 1 p.m.—trading shall halt and not resume for the rest of the day.

Level 3 Halt

At any time—trading shall halt and not resume for the rest of the day.

Unless stocks are halted for the remainder of the trading day, price indications are disseminated during an Article 20, Rule 2 trading halt for stocks that comprise the DJIA.

Proposed Amendments

As noted above, the Exchange, other equities, options, and futures markets, and FINRA propose to amend the market-wide circuit breakers to take into consideration the recommendations of the Committee, and to provide for more meaningful measures in today's markets of when to halt trading in all stocks. Accordingly, the Exchange proposes to amend Article 20, Rule 2 as follows: (i) Replace the DJIA with the S&P 500; (ii) replace the quarterly calendar recalculation of Article 20, Rule 2 triggers with daily recalculations; (iii) replace the 10%, 20%, and 30% market decline percentages with 7%, 13%, and 20% market decline percentages; (iv) modify the length of the trading halts associated with each market decline level; and (v) modify the times when a trading halt may be triggered. The Exchange believes that these proposed amendments update the rule to reflect today's high-speed, highly electronic trading market while still meeting the original purpose of Article 20, Rule 2: to ensure that market participants have an opportunity to become aware of and respond to significant price movements.

First, the Exchange proposes to replace the DJIA with the S&P 500. The Exchange believes that because the S&P 500 is based on the trading prices of 500 stocks, as compared to the 30 stocks that comprise the DJIA, the S&P 500 represents a broader base of securities against which to measure whether extraordinary market-wide volatility is occurring. In addition, as noted by the Committee, using an index that correlates closely with derivative products, such as the E-Mini and SPY, will allow for a better cross-market measure of market volatility.

Second, the Exchange proposes to change the recalculation of the trigger values from once every calendar quarter to daily. The Exchange believes that updating the trigger values daily will better reflect current market conditions. In particular, a daily recalculation will ensure that the percentage drop triggers relate to current market conditions, and are not compared to what may be stale market conditions. As noted in the proposed rule, the daily calculations of the trigger values will be published before the trading day begins.[12]

Third, the Exchange proposes to decrease the current Level 1, 2, and 3 declines of 10%, 20%, and 30% to a Level 1 Market Decline of 7%, a Level 2 Market Decline of 13%, and Level 3 Market Decline of 20%. In particular, as demonstrated by the May 6, 2010 flash crash, the current Level 1 10% decline may be too high a threshold before determining whether to halt trading across all securities. In fact, since adoption, the markets have halted only once, on October 27, 1997.[13] Accordingly, to reflect the potential that a lower, yet still significant decline may warrant a market-wide trading halt, the Exchange proposes to lower the market decline percentage thresholds.

As further proposed, the Exchange would halt trading based on a Level 1 or Level 2 Market Decline only once per day. For example, if a Level 1 Market Decline were to occur and trading were halted, following the reopening of trading, the Exchange would not halt the market again unless a Level 2

[7] *See* Summary Report of the Committee, ''Recommendations Regarding Regulatory Responses to the Market Events of May 6, 2010'' (Feb. 18, 2011). The Exchange notes that NYSE Euronext submitted a comment letter to the Committee that recommended, among other things, reform of the market-wide circuit breaker rules. *See* Letter to Elizabeth Murphy, Secretary, Commission, from Janet M. Kissane, SVP and Corporate Secretary, NYSE Euronext (July 19, 2010). The proposed reforms set forth in this rule proposal differ slightly from the changes recommended in that comment letter, and represent consensus among the markets of how to address reform of the market-wide circuit breakers.

[8] *See* Securities Exchange Act Release No. 26198 (Oct. 19, 1988).

[9] *Id.*

[10] The rule was last amended in 1998, when declines based on specified point drops in the DJIA were replaced with the current methodology of using a percentage decline that is recalculated quarterly. *See* Securities Exchange Act Release No. 39846 (April 9, 1998), 63 FR 18477 (April 15, 1998) (SR–NYSE–98–06, SR–Amex–98–09, SR–BSE–98–06, SR–CHX–98–08, SR–NASD–98–27, and SR–Phlx–98–15).

[11] *See, e.g.,* NYSE Regulation Information Memos 11–19 (June 30, 2011) and 11–10 (March 31, 2011).

[12] The NYSE and other markets will advise via Trader Update the specific methodology for publishing the daily calculations, as well as the manner by which the markets will halt trading in all stocks should an Article 20, Rule 2 trading halt be triggered.

[13] At that time, the triggers were based on absolute declines in the DJIA (350 point decrease for a Level 1 halt and 550 point decrease for a Level 2 halt).

Market Decline were to occur. Likewise, following the reopening of trading after a Level 2 Market Decline, the Exchange would not halt trading again unless a Level 3 Market Decline were to occur, at which point, trading in all stocks would be halted until the primary market opens the next trading day.

Fourth, to correspond with the lower percentages associated with triggering a trading halt, the Exchange also proposes to shorten the length of the market-wide trading halts associated with each Level. As proposed, a Level 1 or 2 Market Decline occurring after 8:30 a.m. Central Time and up to and including 2:25 p.m. or in the case of an early scheduled close, 11:25 a.m. Central Time, would result in a trading halt in all stocks for 15 minutes.

The Exchange believes that by reducing the percentage threshold, coupled with the reduced length of a trading halt, the proposed rule would allow for trading halts for serious market declines, while at the same time, would minimize disruption to the market by allowing for trading to continue after the proposed more-abbreviated trading halt. The Exchange believes that in today's markets, where trading information travels in micro-second speed, a 15-minute trading halt strikes the appropriate balance between the need to halt trading for market participants to assess the market, while at the same time reducing the time that the market is halted.

Finally, because the proposed Level 1 and Level 2 trading halts will now be 15 minutes, the Exchange proposes amending the rule to allow for a Level 1 or 2 Market Decline to trigger a trading halt up to 2:25 p.m. or in the case of an early scheduled close, 11:25 a.m. Central Time. Under the current rule, a trading halt cannot be triggered after 1:30 p.m., and this time corresponds to the need for the markets both to reopen following a 30-minute halt and to engage in a fair and orderly closing process. However, as the markets experienced on May 6, 2010, even if the Level 1 decline had occurred that day, because the market decline occurred after 1:30 p.m., it would not have triggered a halt under the current rule. The Committee recommended that trading halts be triggered up to 2:30 p.m. Central Time. The Exchange agrees that the proposed amendments must strike the appropriate balance between permitting trading halts as late in the day as feasible without interrupting the closing process.

Accordingly, to accommodate existing NYSE rules concerning closing procedures, including the publication of imbalance information beginning at 2:45 p.m. Central, and the restrictions on entry and cancellation of market on close (''MOC'') and limit on close (''LOC'') orders after 2:45 p.m.,[14] the Exchange proposes that the last Level 1 or Level 2 Market Decline trading halt should be 2:25 p.m. or in the case of an early scheduled close, 11:25 a.m. Central Time. The Exchange proposes 2:25 p.m. or in the case of an early scheduled close, 11:25 a.m. Central Time as the cut-off time so that there is time following the 15-minute trading halt for the markets to reopen before the 2:45 cut-off for entry and cancellation of MOC and LOC orders under NYSE rules.

As with current Level 3 declines, under the proposed rule, a Level 3 Market Decline would halt trading for the remainder of the trading day, including any trading that may take place after 3 p.m., Central Time, and would not resume until the next trading day.

In addition to these proposed changes, the Exchange proposes to add to Article 20, Rule 2 how the markets will reopen following a 15-minute trading halt. In particular, similar to the reopening procedures set forth in Article 20, Rule 2, the Exchange proposes that if the primary market halts trading in all stocks, all markets will halt trading in those stocks until the primary market has resumed trading or notice has been provided by the primary market that trading may resume. As further proposed, if the primary market does not re-open a security within 15 minutes following the end of the trading halt, other markets may resume trading in that security.

2. Statutory Basis

The bases under the Act for these proposed rule changes are the requirement under Section 6(b)(5)[15] that an Exchange have rules that are designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest. Specifically, this rule proposal supports the objectives of perfecting the mechanism of a free and open market and the national market system because it promotes uniformity across markets concerning when and how to halt trading in all stocks as a result of extraordinary market volatility.

[14] See NYSE Rule 123C.

[15] 15 U.S.C. 78f(b)(5).

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designated up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve or disapprove such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed changes to the market-wide circuit breaker regime are consistent with the Act. The Commission specifically requests comment on the following:

- As discussed above, the proposed rule change would narrow the percentage market declines that would trigger a market-wide halt in trading. How would the proposed changes interact with the existing single-stock circuit breaker pilot program[16] or, if approved, the proposed NMS Plan to establish a limit-up/limit-down mechanism for individual securities?[17]
- To what extent could the concurrent triggering of single stock

[16] *See* Securities Exchange Act Release No. 64735 (June 23, 2011), 76 FR 38243 (June 29, 2011) (SR–BATS–2011–016; SR–BYX–2011–011; SR–BX–2011–025; SR–CBOE–2011–049; SR–CHX–2011–09; SR–EDGA–2011–15; SR–EDGX–2011–14; SR–FINRA–2011–023; SR–ISE–2011–028; SR–NASDAQ–2011–067; SR–NYSE–2011–21; SR–NYSEAmex-2011–32; SR–NYSEArca-2011–26; SR–NSX–2011–06; SR–Phlx-2011–64) (approving the ''Phase III Pilot Program''). The Phase III Pilot Program has been extended through January 2012. *See, e.g.,* Securities Exchange Act Release 65094 (August 10, 2011), 76 FR 50779 (August 16, 2011) (SR–NASDAQ–2011–011).

[17] *See* Securities Exchange Act Release No. 64547 (May 25, 2011), 76 FR 31647 (June 1, 2011).

circuit breakers in many S&P 500 Index stocks lead to difficulties in calculating the index? Would the triggering of many single stock circuit breakers in a general market downturn cause the index calculation to become stale and thereby delay the triggering of the market-wide circuit breaker?

• Should the market-wide circuit breaker be triggered if a sufficient number of single-stock circuit breakers or price limits are triggered, and materially affect calculations of the S&P 500 Index?

• Should market centers implement rules that mandate cancellation of pending orders in the event a market-wide circuit breaker is triggered? If so, should such a rule require cancellation of all orders or only certain order types (*e.g.,* limit orders)? Should all trading halts trigger such cancellation policies or should the cancellation policies apply only to a Level 3 Market Decline?

• Should some provision be made to end the regular trading session if a market decline suddenly occurs after 3:25 p.m. but does not reach the 20% level?

• In the event of a Level 3 Market Decline, should some provision be made for the markets to hold a closing auction?

• Should the primary market have a longer period (*e.g.,* 30 minutes) to reopen trading following a Level 2 Market Decline before trading resumes in other venues?

• In the event of a Level 3 Market Decline, should the markets wait for the primary market to reopen trading in a particular security on the next trading day before trading in that security resumes?

Comments may be submitted by any of the following methods:

Electronic Comments

• Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or

• Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–CHX–2011–30 on the subject line.

Paper Comments

• Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–CHX–2011–30. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make publicly available. All submissions should refer to File Number SR–CHX–2011–30 and should be submitted on or before October 25, 2011.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[18]

Elizabeth M. Murphy,

Secretary.

[FR Doc. 2011–25524 Filed 10–3–11; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–65439; File No. SR–NYSEArca–2011–68]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing of Proposed Rule Change Amending NYSE Arca Equities Rule 7.12 To Revise the Current Methodology for Determining When To Halt Trading in All Stocks Due to Extraordinary Market Volatility

September 28, 2011

Pursuant to Section 19(b)(1)[1] of the Securities Exchange Act of 1934 (the ''Act'')[2] and Rule 19b–4 thereunder,[3] notice is hereby given that, on September 27, 2011, NYSE Arca, Inc. (the ''Exchange'' or ''NYSE Arca'') 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 self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend NYSE Arca Equities Rule 7.12 to revise the current methodology for determining when to halt trading in all stocks due to extraordinary market volatility. The text of the proposed rule change is available at the Exchange, the Commission's Public Reference Room, and *http://www.nyse.com.*

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend NYSE Arca Equities Rule 7.12 to revise the current methodology for determining when to halt trading in all stocks due to extraordinary market volatility. The Exchange is proposing this rule change in consultation with other equity, options, and futures markets, the Financial Industry Regulatory Authority, Inc. (''FINRA''), and staffs of the Commission and the Commodity Futures Trading Commission.

Since May 6, 2010, when the markets experienced excessive volatility in an abbreviated time period, i.e., the ''flash crash,'' the exchanges and FINRA have implemented market-wide measures designed to restore investor confidence by reducing the potential for excessive market volatility. Among the measures adopted include pilot plans for stock-by-stock trading pauses[4] and related changes to the clearly erroneous

[18] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

[4] NYSE Arca Equities Rule 7.11.

execution rules [5] and more stringent market maker quoting requirements.[6] In addition, on April 5, 2011, the equities exchanges and FINRA filed a plan pursuant to Rule 608 of Regulation NMS to address extraordinary market volatility (the ''Limit Up-Limit Down Plan'').[7] As proposed, the Limit Up-Limit Down Plan is designed to prevent trades in individual NMS stocks from occurring outside specified price bands.

The Joint CFTC–SEC Advisory Committee on Emerging Regulatory Issues (''Committee'') has recommended that, in addition to the initiatives already adopted or proposed, the markets should consider reforming the existing market-wide circuit breakers. Among other things, the Committee noted that the interrelatedness of today's highly electronic markets warrants the need to review the present operation of the system-wide circuit breakers now in place. Specifically, the Committee recommended that the markets consider replacing the Dow Jones Industrial Average (''DJIA'') with the S&P 500® Index (''S&P 500''), revising the 10%, 20%, and 30% decline percentages, reducing the length of trading halts, and allowing halts to be triggered up to 3:30 p.m.[8]

The exchanges and FINRA have taken into consideration the Committee's recommendations, and with some modifications, have proposed changes to market-wide circuit breakers that the Exchange believes will provide for a more meaningful measure in today's faster, more electronic markets, of when to halt stocks on a market-wide basis as a result of rapid market declines.

Background

In October 1988 as part of an effort by the securities and futures markets to implement a coordinated means to address potentially destabilizing market volatility, the New York Stock Exchange, LLC (''NYSE'') and other markets adopted rules governing Trading Halts Due to Extraordinary Market Volatility (i.e., NYSE Rule 80B).[9] NYSE Rule 80B provides for market-wide halts in trading at specified levels in order to promote stability and investor confidence during a period of significant stress. As the Commission noted in its approval order, NYSE Rule 80B was intended to enable market participants to establish an equilibrium between buying and selling interest and to ensure that market participants have an opportunity to become aware of and respond to significant price movements. Importantly, the market-wide circuit breakers were not intended to prevent markets from adjusting to new price levels; rather, they provide for a speed bump for extremely rapid market declines.[10]

In its current form,[11] NYSE Arca Equities Rule 7.12 provides for Level 1, 2, and 3 declines and specified trading halts following such declines. The values of Levels 1, 2 and 3 are calculated at the beginning of each calendar quarter, using 10%, 20% and 30%, respectively, of the average closing value of the DJIA for the month prior to the beginning of the quarter. Each percentage calculation is rounded to the nearest fifty points to create the Levels' trigger points. The NYSE disseminates the new trigger levels quarterly to the media and via an Information Memo and is available on the NYSE's Web site.[12] The values then remain in effect until the next quarterly calculation, notwithstanding whether the DJIA has moved and a Level 1, 2, or 3 decline is no longer equal to an actual 10%, 20%, or 30% decline in the most recent closing value of the DJIA.

Once a Rule 7.12 circuit breaker is in effect, trading in all stocks halt for the time periods specified below:

Level 1 Halt

Anytime before 2 p.m.—one hour; at or after 2 p.m. but before 2:30 p.m.—30 minutes; at or after 2:30 p.m.—trading shall continue, unless there is a Level 2 Halt.

Level 2 Halt

Anytime before 1 p.m.—two hours; at or after 1 p.m. but before 2 p.m.—one hour; at or after 2 p.m.—trading shall halt and not resume for the rest of the day.

Level 3 Halt

At any time—trading shall halt and not resume for the rest of the day.

Proposed Amendments

As noted above, the Exchange, other equities, options, and futures markets, and FINRA propose to amend the market-wide circuit breakers to take into consideration the recommendations of the Committee, and to provide for more meaningful measures in today's markets of when to halt trading in all stocks. Accordingly, the Exchange proposes to amend NYSE Arca Equities Rule 7.12 as follows: (i) Replace the DJIA with the S&P 500; (ii) replace the quarterly calendar recalculation of Rule 7.12 triggers with daily recalculations; (iii) replace the 10%, 20%, and 30% market decline percentages with 7%, 13%, and 20% market decline percentages; (iv) modify the length of the trading halts associated with each market decline level; and (v) modify the times when a trading halt may be triggered. The Exchange believes that these proposed amendments update the rule to reflect today's high-speed, highly electronic trading market while still meeting the original purpose of Rule 7.12: To ensure that market participants have an opportunity to become aware of and respond to significant price movements.

First, the Exchange proposes to replace the DJIA with the S&P 500. The Exchange believes that because the S&P 500 is based on the trading prices of 500 stocks, as compared to the 30 stocks that comprise the DJIA, the S&P 500 represents a broader base of securities against which to measure whether extraordinary market-wide volatility is occurring. In addition, as noted by the Committee, using an index that correlates closely with derivative products, such as the E-Mini and SPY, will allow for a better cross-market measure of market volatility.

Second, the Exchange proposes to change the recalculation of the trigger values from once every calendar quarter to daily. The Exchange believes that updating the trigger values daily will better reflect current market conditions.

[5] NYSE Arca Equities Rule 7.10.

[6] NYSE Arca Equities Rule 7.23(a)(1).

[7] *See* Securities Exchange Act Release No. 64547 (May 25, 2011), 76 FR 31647 (June 1, 2011).

[8] *See* Summary Report of the Committee, ''Recommendations Regarding Regulatory Responses to the Market Events of May 6, 2010'' (Feb, 18, 2011). The Exchange notes that NYSE Euronext submitted a comment letter to the Committee that recommended, among other things, reform of the market-wide circuit breaker rules. *See* Letter to Elizabeth Murphy, Secretary, Commission, from Janet M. Kissane, SVP and Corporate Secretary, NYSE Euronext (July 19, 2010). The proposed reforms set forth in this rule proposal differ slightly from the changes recommended in that comment letter, and represent consensus among the markets of how to address reform of the market-wide circuit breakers.

[9] *See* Securities Exchange Act Release No. 26198 (Oct. 19, 1988) (SR–CBOE–88–14, SR–NASD–88–46, SR–NYSE–88–22, SR–NYSE–88–23, SR–NYSE–88–24, and SR–Amex–88–24). NYSE Arca Equities Rule 7.12 was adopted in 2001 when the Pacific Exchange, Inc. filed a rule proposal to create an electronic trading facility called the Archipelago Exchange (''ArcaEx''). *See* Securities Exchange Act Release No. 44983 (Oct. 25, 2001), 66 FR 55225 (Nov. 1, 2001) (SR–PCX–00–25). The Pacific Exchange, Inc. is now known as NYSE Arca, and ArcaEx is now known as NYSE Arca Equities.

[10] *Id.*

[11] The rule was last amended in 1998, when declines based on specified point drops in the DJIA were replaced with the current methodology of using a percentage decline that is recalculated quarterly. *See* Securities Exchange Act Release No. 39846 (April 9, 1998), 63 FR 18477 (April 15, 1998) (SR–NYSE–98–06, SR–Amex–98–09, SR–BSE–98–06, SR–CHX–98–08, SR–NASD–98–27, and SR–Phlx–98–15).

[12] *See e.g.,* NYSE Regulation Information Memos 11–19 (June 30, 2011) and 11–10 (March 31, 2011).

In particular, a daily recalculation will ensure that the percentage drop triggers relate to current market conditions, and are not compared to what may be stale market conditions. As noted in the proposed rule, the daily calculations of the trigger values will be published before the trading day begins.[13]

Third, the Exchange proposes to decrease the current Level 1, 2, and 3 declines of 10%, 20%, and 30% to a Level 1 Market Decline of 7%, a Level 2 Market Decline of 13%, and Level 3 Market Decline of 20%. In particular, as demonstrated by the May 6, 2010 flash crash, the current Level 1 10% decline may be too high a threshold before determining whether to halt trading across all securities. In fact, since adoption, the markets have halted only once, on October 27, 1997.[14] Accordingly, to reflect the potential that a lower, yet still significant decline may warrant a market-wide trading halt, the Exchange proposes to lower the market decline percentage thresholds.

As further proposed, the Exchange would halt trading based on a Level 1 or Level 2 Market Decline only once per day. For example, if a Level 1 Market Decline were to occur and trading were halted, following the reopening of trading, the Exchange would not halt the market again unless a Level 2 Market Decline were to occur. Likewise, following the reopening of trading after a Level 2 Market Decline, the Exchange would not halt trading again unless a Level 3 Market Decline were to occur, at which point, trading in all stocks would be halted until the primary market reopens the next trading day.

Fourth, to correspond with the lower percentages associated with triggering a trading halt, the Exchange also proposes to shorten the length of the market-wide trading halts associated with each Level. As proposed, a Level 1 or 2 Market Decline occurring after 9:30 a.m. Eastern and up to and including 3:25 p.m. Eastern, or in the case of an early scheduled close, 12:25 p.m. Eastern, would result in a trading halt in all stocks for 15 minutes.[15]

The Exchange believes that by reducing the percentage threshold, coupled with the reduced length of a trading halt, the proposed rule would allow for trading halts for serious market declines, while at the same time, would minimize disruption to the market by allowing for trading to continue after the proposed more-abbreviated trading halt. The Exchange believes that in today's markets, where trading information travels in micro-second speed, a 15-minute trading halt strikes the appropriate balance between the need to halt trading for market participants to assess the market, while at the same time reducing the time that the market is halted.

Finally, because the proposed Level 1 and Level 2 trading halts will now be 15 minutes, the Exchange proposes amending the rule to allow for a Level 1 or 2 Market Decline to trigger a trading halt up to 3:25 p.m. Eastern. Under the current rule, a trading halt cannot be triggered after 2:30 p.m., and this time corresponds to the need for the markets both to reopen following a 30-minute halt and to engage in a fair and orderly closing process. However, as the markets experienced on May 6, 2010, even if the Level 1 decline had occurred that day, because the market decline occurred after 2:30 p.m., it would not have triggered a halt under the current rule. The Committee recommended that trading halts be triggered up to 3:30 p.m. The Exchange agrees that the proposed amendments must strike the appropriate balance between permitting trading halts as late in the day as feasible without interrupting the closing process.

Accordingly, to accommodate existing NYSE rules concerning closing procedures, including the publication of imbalance information beginning at 3:45 p.m. Eastern and the restrictions on entry and cancellation of market on close (''MOC'') and limit on close (''LOC'') orders after 3:45 p.m.,[16] the Exchange proposes that the last Level 1 or Level 2 Market Decline trading halt should be 3:25 p.m. The Exchange proposes 3:25 p.m. as the cut-off time so that there is time following the 15-minute trading halt for the markets to reopen before the 3:45 cut-off for entry and cancellation of MOC and LOC orders under Exchange rules.

As with current Level 3 declines, under the proposed rule, a Level 3 Market Decline would halt trading for the remainder of the trading day, including any trading that may take place after 4:00 p.m., Eastern, and would not resume until the next trading day.

In addition to these proposed changes, the Exchange proposes to add to Rule 7.12 how the markets will reopen following a 15-minute trading halt. In particular, similar to the reopening procedures set forth in Rule 7.12, the Exchange proposes that if the primary market halts trading in all stocks, all markets will halt trading in those stocks until the primary market has resumed trading or notice has been provided by the primary market that trading may resume. As further proposed, if the primary market does not re-open a security within 15 minutes following the end of the trading halt, other markets may resume trading in that security.

The Exchange proposes to implement the changes to NYSE Arca Equities Rule 7.12 at the same time that the Limit Up-Limit Down Plan, if approved, is implemented.

2. Statutory Basis

The basis under the Act for these proposed rule changes are [sic] the requirement under Section 6(b)(5)[17] that an Exchange have rules that are designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest. Specifically, this rule proposal supports the objectives of perfecting the mechanism of a free and open market and the national market system because it promotes uniformity across markets concerning when and how to halt trading in all stocks as a result of extraordinary market volatility.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and

[13] The Exchange and other markets will advise via Trader Update the specific methodology for publishing the daily calculations, as well as the manner by which the markets will halt trading in all stocks should a Rule 7.12 trading halt be triggered.

[14] At that time, the triggers were based on absolute declines in the DJIA (350 point decrease for a Level 1 halt and 550 point decrease for a Level 2 halt).

[15] Consistent with the current Rule 7.12 and NYSE Arca Equities Rule 1.1(j), the proposed Rule 7.12 uses Pacific Time instead of Eastern Time.

[16] *See* NYSE Rule 123C.

[17] 15 U.S.C. 78f(b)(5).

publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve or disapprove the proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed changes to the market-wide circuit breaker regime are consistent with the Act. The Commission specifically requests comment on the following:

- As discussed above, the proposed rule change would narrow the percentage market declines that would trigger a market-wide halt in trading. How would the proposed changes interact with the existing single-stock circuit breaker pilot program [18] or, if approved, the proposed NMS Plan to establish a limit-up/limit-down mechanism for individual securities? [19]
- To what extent could the concurrent triggering of single stock circuit breakers in many S&P 500 Index stocks lead to difficulties in calculating the index? Would the triggering of many single stock circuit breakers in a general market downturn cause the index calculation to become stale and thereby delay the triggering of the market-wide circuit breaker?
- Should the market-wide circuit breaker be triggered if a sufficient number of single-stock circuit breakers or price limits are triggered, and materially affect calculations of the S&P 500 Index?
- Should market centers implement rules that mandate cancellation of pending orders in the event a market-wide circuit breaker is triggered? If so, should such a rule require cancellation of all orders or only certain order types (*e.g.,* limit orders)? Should all trading halts trigger such cancellation policies or should the cancellation policies apply only to a Level 3 Market Decline?
- Should some provision be made to end the regular trading session if a market decline suddenly occurs after 3:25 p.m. but does not reach the 20% level?
- In the event of a Level 3 Market Decline, should some provision be made for the markets to hold a closing auction?
- Should the primary market have a longer period (*e.g.,* 30 minutes) to reopen trading following a Level 2 Market Decline before trading resumes in other venues?
- In the event of a Level 3 Market Decline, should the markets wait for the primary market to reopen trading in a particular security on the next trading day before trading in that security resumes?

Comments may be submitted by any of the following methods:

Electronic comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–NYSEArca–2011–68 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–NYSEArca– 2011–68. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of NYSE Arca. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make publicly available. All submissions should refer to File Number SR–NYSEArca–2011–68 and should be submitted on or before October 25, 2011.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[20]

Elizabeth M. Murphy,

Secretary.

[FR Doc. 2011–25519 Filed 10–3–11; 8:45 am]

BILLING CODE 8011–01–P

[18] *See* Securities Exchange Act Release No. 64735 (June 23, 2011), 76 FR 38243 (June 29, 2011) (SR–BATS–2011–016; SR–BYX–2011–011; SR–BX–2011–025; SR–CBOE–2011–049; SR–CHX–2011–09; SR–EDGA–2011–15; SR–EDGX–2011–14; SR–FINRA–2011–023; SR–ISE–2011–028; SR–NASDAQ–2011–067; SR–NYSE–2011–21; SR–NYSEAmex–2011–32; SR–NYSEArca–2011–26; SR–NSX–2011–06; SR–Phlx–2011–64) (approving the ''Phase III Pilot Program''). The Phase III Pilot Program has been extended through January 2012. *See, e.g.,* Securities Exchange Act Release 65094 (August 10, 2011), 76 FR 50779 (August 16, 2011) (SR–NASDAQ–2011–011).

[19] *See* Securities Exchange Act Release No. 64547 (May 25, 2011), 76 FR 31647 (June 1, 2011).

[20] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–65437; File No. SR–BATS–2011–038]

Self-Regulatory Organizations; BATS Exchange, Inc.; Notice of Filing of a Proposed Rule Change To Modify the Rule for Halting Trading in All Stocks Due to Extraordinary Market Volatility

September 28, 2011.

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 27, 2011, BATS Exchange, Inc. (the ''Exchange'' or ''BATS'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The 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 filing with the Commission a proposal to modify BATS Rule 11.18, entitled ''Trading Halts Due to Extraordinary Market Volatility,'' to revise the current methodology for determining when to halt trading in all stocks due to extraordinary market volatility.

The text of the proposed rule change is available at the Exchange's Web site at *http://www.batstrading.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend BATS Rule 11.18 to revise the current methodology for determining when to halt trading in all stocks due to extraordinary market volatility. The Exchange is proposing this rule change in consultation with other equity, options, and futures markets, the Financial Industry Regulatory Authority, Inc. (''FINRA''), and staffs of the Commission and the Commodity Futures Trading Commission.

Since May 6, 2010, when the markets experienced excessive volatility in an abbreviated time period, *i.e.,* the ''flash crash,'' the exchanges and FINRA have implemented market-wide measures designed to restore investor confidence by reducing the potential for excessive market volatility. Among the measures adopted include pilot plans for stock-by-stock trading pauses [3] and related changes to the clearly erroneous execution rules [4] and more stringent market maker quoting requirements.[5] In addition, on April 5, 2011, the equities exchanges and FINRA filed a plan pursuant to Rule 608 of Regulation NMS to address extraordinary market volatility (the ''Limit Up-Limit Down Plan'').[6] As proposed, the Limit Up-Limit Down Plan is designed to prevent trades in individual NMS stocks from occurring outside specified price bands.

The Joint CFTC–SEC Advisory Committee on Emerging Regulatory Issues (''Committee'') has recommended that, in addition to the initiatives already adopted or proposed, the markets should consider reforming the existing market-wide circuit breakers. Among other things, the Committee noted that the interrelatedness of today's highly electronic markets warrants the need to review the present operation of the system-wide circuit breakers now in place. Specifically, the Committee recommended that the markets consider replacing the Dow Jones Industrial Average (''DJIA'') with the S&P 500® Index (''S&P 500''), revising the 10%, 20%, and 30% decline percentages, reducing the length of trading halts, and allowing halts to be triggered up to 3:30 p.m.[7]

The exchanges and FINRA have taken into consideration the Committee's recommendations, and with some modifications, have proposed changes to market-wide circuit breakers that the Exchange believes will provide for a more meaningful measure in today's faster, more electronic markets, of when to halt stocks on a market-wide basis as a result of rapid market declines.

Background

The market-wide halt rules currently in effect were initially adopted in October 1988 as part of an effort by the securities and futures markets to implement a coordinated means to address potentially destabilizing market volatility.[8] Accordingly, BATS Rule 11.18 provides for market-wide halts in trading at specified levels in order to promote stability and investor confidence during a period of significant stress. As the Commission noted in its approval order for the current market-wide halt rule, the rule was intended to enable market participants to establish equilibrium between buying and selling interest and to ensure that market participants have an opportunity to become aware of and respond to significant price movements. Importantly, the market-wide circuit breakers were not intended to prevent markets from adjusting to new price levels; rather, they provide for a speed bump for extremely rapid market declines.[9]

In its current form,[10] the rule provides for Level 1, 2, and 3 declines and specified trading halts following such declines. The values of Levels 1, 2 and 3 are calculated at the beginning of each calendar quarter, using 10%, 20% and 30%, respectively, of the average closing value of the DJIA for the month prior to the beginning of the quarter. Each percentage calculation is rounded to the nearest fifty points to create the Levels' trigger points. The New York Stock Exchange LLC (''NYSE'') currently disseminates the new trigger levels quarterly to the media and via an Information Memo and is available on the NYSE's Web site.[11] The values then remain in effect until the next quarterly calculation, notwithstanding whether the DJIA has moved and a Level 1, 2, or 3 decline is no longer equal to an actual 10%, 20%, or 30% decline in the most recent closing value of the DJIA.

Once a Rule 11.18 market-wide circuit breaker is in effect, trading in all stocks halt for the time periods specified below:

Level 1 Halt
- Anytime before 2 p.m.—one hour;
- At or after 2 p.m. but before 2:30 p.m.—30 minutes;
- At or after 2:30 p.m.—trading shall continue, unless there is a Level 2 Halt.

Level 2 Halt
- Anytime before 1 p.m.—two hours;
- At or after 1 p.m. but before 2 p.m.—one hour;
- At or after 2 p.m.—trading shall halt and not resume for the rest of the day.

Level 3 Halt
- At any time—trading shall halt and not resume for the rest of the day.

Unless stocks are halted for the remainder of the trading day, price indications are disseminated during a Rule 11.18 market-wide trading halt for stocks that comprise the DJIA.

Proposed Amendments

As noted above, the Exchange, other equities, options, and futures markets, and FINRA propose to amend the market-wide circuit breakers to take into consideration the recommendations of the Committee, and to provide for more meaningful measures in today's markets

[3] BATS Rule 11.18(d) (under the proposal, to be re-numbered as Rule 11.18(e)).

[4] BATS Rule 11.17.

[5] BATS Rule 11.8(d).

[6] *See* Securities Exchange Act Release No. 64547 (May 25, 2011), 76 FR 31647 (June 1, 2011).

[7] *See* Summary Report of the Committee, ''Recommendations Regarding Regulatory Responses to the Market Events of May 6, 2010'' (Feb, 18, 2011). The Exchange notes that NYSE Euronext submitted a comment letter to the Committee that recommended, among other things, reform of the market-wide circuit breaker rules. *See* Letter to Elizabeth Murphy, Secretary, Commission, from Janet M. Kissane, SVP and Corporate Secretary, NYSE Euronext (July 19, 2010). The proposed reforms set forth in this rule proposal differ slightly from the changes recommended in that comment letter, and represent consensus among the markets of how to address reform of the market-wide circuit breakers.

[8] *See* Securities Exchange Act Release No. 26198 (Oct. 19, 1988).

[9] *Id.*

[10] The rule was last amended in 1998, when declines based on specified point drops in the DJIA were replaced with the current methodology of using a percentage decline that is recalculated quarterly. *See* Securities Exchange Act Release No. 39846 (April 9, 1998), 63 FR 18477 (April 15, 1998) (SR–NYSE–98–06, SR–Amex–98–09, SR–BSE–98–06, SR–CHX–98–08, SR–NASD–98–27, and SR–Phlx–98–15).

[11] *See, e.g.,* NYSE Regulation Information Memos 11–19 (June 30, 2011) and 11–10 (March 31, 2011).

of when to halt trading in all stocks. Accordingly, the Exchange proposes to amend Rule 11.18 as follows: (i) Replace the DJIA with the S&P 500; (ii) replace the quarterly calendar recalculation of Rule 11.18 triggers with daily recalculations; (iii) replace the 10%, 20%, and 30% market decline percentages with 7%, 13%, and 20% market decline percentages; (iv) modify the length of the trading halts associated with each market decline level; and (v) modify the times when a trading halt may be triggered. The Exchange believes that these proposed amendments update the rule to reflect today's high-speed, highly electronic trading market while still meeting the original purpose of the market-wide trading halt rule: to ensure that market participants have an opportunity to become aware of and respond to significant price movements.

First, the Exchange proposes to replace the DJIA with the S&P 500. The Exchange believes that because the S&P 500 is based on the trading prices of 500 stocks, as compared to the 30 stocks that comprise the DJIA, the S&P 500 represents a broader base of securities against which to measure whether extraordinary market-wide volatility is occurring. In addition, as noted by the Committee, using an index that correlates closely with derivative products, such as the E-Mini and SPY, will allow for a better cross-market measure of market volatility.

Second, the Exchange proposes to change the recalculation of the trigger values from once every calendar quarter to daily. The Exchange believes that updating the trigger values daily will better reflect current market conditions. In particular, a daily recalculation will ensure that the percentage drop triggers relate to current market conditions, and are not compared to what may be stale market conditions. As noted in the proposed rule, the daily calculations of the trigger values will be published before the trading day begins.[12]

Third, the Exchange proposes to decrease the current Level 1, 2, and 3 declines of 10%, 20%, and 30% to a Level 1 Market Decline of 7%, a Level 2 Market Decline of 13%, and Level 3 Market Decline of 20%. In particular, as demonstrated by the May 6, 2010 flash crash, the current Level 1 10% decline may be too high a threshold before determining whether to halt trading across all securities. In fact, since adoption, the markets have halted only once, on October 27, 1997.[13] Accordingly, to reflect the potential that a lower, yet still significant decline may warrant a market-wide trading halt, the Exchange proposes to lower the market decline percentage thresholds.

As further proposed, the Exchange would halt trading based on a Level 1 or Level 2 Market Decline only once per day. For example, if a Level 1 Market Decline were to occur and trading were halted, following the reopening of trading, the Exchange would not halt the market again unless a Level 2 Market Decline were to occur. Likewise, following the reopening of trading after a Level 2 Market Decline, the Exchange would not halt trading again unless a Level 3 Market Decline were to occur, at which point, trading in all stocks would be halted until the primary listing market opens the next trading day.

Fourth, to correspond with the lower percentages associated with triggering a trading halt, the Exchange also proposes to shorten the length of the market-wide trading halts associated with each Level. As proposed, a Level 1 or 2 Market Decline occurring after 9:30 a.m.[14] and up to and including 3:25 p.m., or in the case of an early scheduled close, 12:25 p.m., would result in a trading halt in all stocks for 15 minutes.

The Exchange believes that by reducing the percentage threshold, coupled with the reduced length of a trading halt, the proposed rule would allow for trading halts for serious market declines, while at the same time, would minimize disruption to the market by allowing for trading to continue after the proposed more-abbreviated trading halt. The Exchange believes that in today's markets, where trading information travels in micro-second speed, a 15-minute trading halt strikes the appropriate balance between the need to halt trading for market participants to assess the market, while at the same time reducing the time that the market is halted.

Finally, because the proposed Level 1 and Level 2 trading halts will now be 15 minutes, the Exchange proposes amending the rule to allow for a Level 1 or 2 Market Decline to trigger a trading halt up to 3:25 p.m., or in the case of an early scheduled close, 12:25 p.m. Under the current rule, a trading halt cannot be triggered after 2:30 p.m., and this time corresponds to the need for the markets both to reopen following a 30-minute halt and to engage in a fair and orderly closing process. However, as the markets experienced on May 6, 2010, even if the Level 1 decline had occurred that day, because the market decline occurred after 2:30 p.m., it would not have triggered a halt under the current rule. The Committee recommended that trading halts be triggered up to 3:30 p.m. The Exchange agrees that the proposed amendments must strike the appropriate balance between permitting trading halts as late in the day as feasible without interrupting the closing process.

Accordingly, to accommodate existing Exchange rules concerning closing procedures, the Exchange proposes that the last Level 1 or Level 2 Market Decline trading halt should be 3:25 p.m., or in the case of an early scheduled close, 12:25 p.m.

As with current Level 3 declines, under the proposed rule, a Level 3 Market Decline would halt trading for the remainder of the trading day, including any trading that may take place after 4:00 p.m., and would not resume until the next trading day.

In addition to these proposed changes, the Exchange proposes to add to Rule 11.18 how the markets will reopen following a 15-minute market-wide trading halt. In particular, similar to the reopening procedures set forth in current Rule 11.18(d), the Exchange proposes that if the primary listing market halts trading in all stocks, all markets will halt trading in those stocks until the primary listing market has resumed trading or notice has been provided by the primary listing market that trading may resume. As further proposed, if the primary listing market does not re-open a security within 15 minutes following the end of the trading halt, other markets may resume trading in that security.

2. Statutory Basis

The Exchange believes that its proposal is consistent with the requirements of the Act and the rules and regulations thereunder that are applicable to a national securities exchange, and, in particular, with the requirements of Section 6(b) of the Act.[15] In particular, the proposal is consistent with Section 6(b)(5) of the Act,[16] because it would promote just and equitable principles of trade, remove impediments to, and perfect the mechanism of, a free and open market and a national market system. Specifically, this rule proposal supports

[12] The Exchange and other markets will provide notice to market participants regarding the specific methodology for publishing the daily calculations, as well as the manner by which the markets will halt trading in all stocks should a Rule 11.18 market-wide trading halt be triggered.

[13] At that time, the triggers were based on absolute declines in the DJIA (350 point decrease for a Level 1 halt and 550 point decrease for a Level 2 halt).

[14] As set forth in proposed paragraph (g) to Rule 11.18, all times referenced in the rule and in this proposal are Eastern Time.

[15] 15 U.S.C. 78f(b).

[16] 15 U.S.C. 78f(b)(5).

the objectives of perfecting the mechanism of a free and open market and the national market system because it promotes uniformity across markets concerning when and how to halt trading in all stocks as a result of extraordinary market volatility.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change imposes any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange has neither solicited nor received written comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 45 days of the date of publication of this notice in the Federal Register or within such longer period (i) As the Commission may designated up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve or disapprove such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed changes to the market-wide circuit breaker regime are consistent with the Act. The Commission specifically requests comment on the following:

• As discussed above, the proposed rule change would narrow the percentage market declines that would trigger a market-wide halt in trading. How would the proposed changes interact with the existing single-stock circuit breaker pilot program[17] or, if approved, the proposed NMS Plan to establish a limit-up/limit-down mechanism for individual securities?[18]

• To what extent could the concurrent triggering of single stock circuit breakers in many S&P 500 Index stocks lead to difficulties in calculating the index? Would the triggering of many single stock circuit breakers in a general market downturn cause the index calculation to become stale and thereby delay the triggering of the market-wide circuit breaker?

• Should the market-wide circuit breaker be triggered if a sufficient number of single-stock circuit breakers or price limits are triggered, and materially affect calculations of the S&P 500 Index?

• Should market centers implement rules that mandate cancellation of pending orders in the event a market-wide circuit breaker is triggered? If so, should such a rule require cancellation of all orders or only certain order types (*e.g.,* limit orders)? Should all trading halts trigger such cancellation policies or should the cancellation policies apply only to a Level 3 Market Decline?

• Should some provision be made to end the regular trading session if a market decline suddenly occurs after 3:25 p.m. but does not reach the 20% level?

• In the event of a Level 3 Market Decline, should some provision be made for the markets to hold a closing auction?

• Should the primary market have a longer period (*e.g.,* 30 minutes) to reopen trading following a Level 2 Market Decline before trading resumes in other venues?

• In the event of a Level 3 Market Decline, should the markets wait for the primary market to reopen trading in a particular security on the next trading day before trading in that security resumes?

Comments may be submitted by any of the following methods:

Electronic Comments

• Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or

• Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–BATS–2011–038 on the subject line.

Paper Comments

• Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–BATS–2011–038. This file number should be ncluded on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of BATS. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make publicly available. All submissions should refer to File Number SR–BATS–2011–038 and should be submitted on or before October 25, 2011.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[19]

Elizabeth M. Murphy,

Secretary.

[FR Doc. 2011–25518 Filed 10–3–11; 8:45 am]

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[17] *See* Securities Exchange Act Release No. 64735 (June 23, 2011), 76 FR 38243 (June 29, 2011) (SR–BATS–2011–016; SR–BYX–2011–011; SR–BX–2011–025; SR–CBOE–2011–049; SR–CHX–2011–09; SR–EDGA–2011–15; SR–EDGX–2011–14; SR–FINRA–2011–023; SR–ISE–2011–028; SR–NASDAQ–2011–067; SR–NYSE–2011–21; SR–NYSEAmex–2011–32; SR–NYSEArca–2011–26; SR–NSX–2011–06; SR–Phlx–2011–64) (approving the ''Phase III Pilot Program''). The Phase III Pilot Program has been extended through January 2012. *See, e.g.,* Securities Exchange Act Release 65094 (August 10, 2011), 76 FR 50779 (August 16, 2011) (SR–NASDAQ–2011–011).

[18] *See* Securities Exchange Act Release No. 64547 (May 25, 2011), 76 FR 31647 (June 1, 2011).

[19] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–65421; File No. SR–NYSEAmex-2011–70]

Self-Regulatory Organizations; NYSE Amex LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Amending Commentary .06 to Rule 903 in Order To Simplify the $1 Strike Price Program

September 28, 2011.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act'')[1] and Rule 19b–4 thereunder,[2]

[1] 15 U.S.C.78s(b)(1).

[2] 17 CFR 240.19b–4.

notice is hereby given that, on September 26, 2011, NYSE Amex LLC (the ''Exchange'' or ''NYSE Amex'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend Commentary .06 to Rule 903 in order to simplify the $1 Strike Price Program. The text of the proposed rule change is available on the Exchange's Web site at *http://www.nyse.com,* at the Exchange's principal office, on the Commission's website at *http://www.sec.gov*, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange is proposing to amend Commentary .06 to Rule 903 in order to simplify the $1 Strike Price Program (''Program'').

In 2003, the Commission issued an order permitting the Exchange to establish the Program on a pilot basis.[3] At that time, the underlying stock had to close at or below $20 on the previous trading day in order to qualify for the Program. The range of available $1 strike price intervals was limited to a range between $3 and $20 and no strike price was permitted that was greater than $5 from the underlying stock's closing price on the previous trading day. Series in $1 strike price intervals were not permitted within $0.50 of an existing strike. In addition, the Exchange was limited to selecting five (5) classes and reciprocal listing was permitted. Furthermore, Long-Term Equity Option Series (''LEAPS'') in $1 strike price intervals were not permitted for classes selected to participate in the Program.

The Exchange renewed the pilot program on a yearly basis and, in 2008, the Commission granted permanent approval of the Program.[4] At that time, the Program was expanded to increase the upper limit of the permissible strike price range from $20 to $50. In addition, the number of class selections per exchange was increased from five (5) to ten (10).

Since the Program was made permanent, the number of class selections per exchange has been increased from ten (10) classes to 55 classes[5] and subsequently increased from 55 classes to 150 classes.[6]

The most recent expansion of the Program was approved by the Commission in early 2011 and increased the number of $1 strike price intervals permitted within the $1 to $50 range.[7]

Amendments To Simplify Non-LEAPS Rule Text

These numerous expansions have resulted in very lengthy rule text that the Exchange believes is complicated and difficult to understand. The Exchange believes that the proposed changes to simplify the rule text of the Program would benefit market participants since the Program will be easier to understand and would maintain the expansions made to the Program, including those in early 2011. Through the current proposal, the Exchange also hopes to make administration of the Program easier, *e.g.,* system programming efforts. To simplify the rules of the Program and, as a proactive attempt to mitigate any unintentional listing of improper strikes, the Exchange is proposing the following streamlining amendments:

- When the price of the underlying stock is equal to or less than $20, permit $1 strike price intervals with an exercise price up to 100% above and 100% below the price of the underlying stock.[8]

o However, the above restriction would not prohibit the listing of at least five (5) strike prices above and below the price of the underlying stock per expiration month in an option class.[9]

○ For example, if the price of the underlying stock is $2, the Exchange would be permitted to list the following series: $1, $2, $3, $4, $5, $6 and $7.[10]

- When the price of the underlying stock is greater than $20, permit $1 strike price intervals with an exercise price up to 50% above and 50% below the price of the underlying security up to $50.[11]
- For the purpose of adding strikes under the Program, the ''price of the underlying stock'' shall be measured in the same way as ''the price of the underlying security'' is, as set forth in Rule 903A(b)(1).[12]
- Prohibit the listing of additional series in $1 strike price intervals if the underlying stock closes at or above $50 in its primary market and provide that additional series in $1 strike price intervals may not be added until the underlying stock closes again below $50.[13]

Amendments To Simplify LEAPS Rule Text

The early 2011 expansion of the Program permitted for some limited listing of LEAPS in $1 strike price intervals for classes that participate in

[3] *See* Securities Exchange Act Release No. 48024 (June 12, 2003), 68 FR 36617 (June 18, 2003) (SR–Amex-2003–36).

[4] *See* Securities Exchange Act Release No. 57110 (January 8, 2008), 73 FR 2292 (January 14, 2008) (SR–Amex-2007–141).

[5] *See* Securities Exchange Act Release No. 59587 (March 17, 2009), 74 FR 12414 (March 24, 2009) (SR–NYSEALTR–2009–11).

[6] *See* Securities Exchange Act Release No. 62449 (July 2, 2010), 75 FR 40012 (July 13, 2010) (SR–NYSEAmex-2010–67).

[7] *See* Securities Exchange Act Release No. 63773 (January 25, 2011), 76 FR 5646 (February 1, 2011) (SR–NYSEAmex-2010–109).

[8] *See* proposed new paragraph (b)(i) to Commentary .06 to Rule 903.

[9] *Id.*

[10] *Id.*

[11] *See* proposed new paragraph (b)(ii) to Commentary .06 to Rule 903.

[12] *See* proposed new paragraph (b)(iii) to Commentary .06 to Rule 903. Rule 903A(b)(1) provides, ''[t]he price of the underlying security is measured by: (1) For intra-day add-on series and next-day series additions, the daily high and low of all prices reported by all national securities exchanges; (2) for new expiration months, the daily high and low of all prices reported by all national securities exchanges on the day the Exchange determines its preliminary notification of new series; and (3) for options series to be added as a result of pre-market trading, the most recent share price reported by all national securities exchanges between 8:45 a.m. and 9:30 a.m. Eastern Time.''

[13] *See* proposed new paragraph (b)(iv) to Commentary .06 to Rule 903. The Exchange believes that it is important to codify this additional series criterion because there have been conflicting interpretations among the exchanges that have adopted similar programs. The $50 price criterion for additional series was intended when the Program was originally established (as a pilot) in 2003. *See supra* note 4 (''Amex will list an additional expiration month upon expiration of the near-term month, provided that the underlying stock prices closes below $20 on Expiration Friday. If the underlying closes at or above $20 on its primary market on Expiration Friday, the Exchange will not list an additional month of $1 strike price series until the stock again closes below $20.'').

the Program. The Exchange is proposing to maintain the expansion as to LEAPS, but simplify the language and provide examples of the simplified rule text. These changes are set forth in proposed new paragraph (b)(v) to Commentary .06 to Rule 903.

For stocks in the Program, the Exchange may list one $1 strike price interval between each standard $5 strike price interval, with the $1 strike price interval being $2 above the standard strike for each interval above the price of the underlying stock, and $2 below the standard strike for each interval below the price of the underlying stock (''$2 wings''). For example, if the price of the underlying stock is $24.50, the Exchange may list the following standard strikes in $5 intervals: $15, $20, $25, $30 and $35. Between these standard $5 strikes, the Exchange may list the following $2 wings: $18, $27 and $32.[14]

In addition, the Exchange may list the $1 strike price interval which is $2 above the standard strike just below the underlying price at the time of listing. In the above example, since the standard strike just below the underlying price ($24.50) is $20, the Exchange may list a $22 strike. The Exchange may add additional LEAP strikes as the price of the underlying stock moves, consistent with the Options Listing Procedures Plan (''OLPP'').

Non-Substantive Amendments to Rule Text

The early 2011 expansion of the Program prohibited the listing of $2.50 strike price intervals for classes that participate in the Program. This prohibition applies to non-LEAPS and LEAPS. The Exchange proposes to maintain this prohibition and codify it in paragraph (a) to Commentary .06 to Rule 903 (Program Description).

For ease of reference, the Exchange is proposing to add the headings ''Program Description,'' ''Initial and Additional Series'' and ''LEAPS'' to Commentary .06 to Rule 903.

The Exchange is proposing to more accurately reflect the nature of the Program and is proposing to make stylistic changes throughout Commentary .06 to Rule 903 by renaming the Program ''The $1 Strike Price Interval Program'' and by adding the phrase ''price interval.''

The Exchange proposes to reorganize current paragraphs (c) through (f) of Commentary .06 to Rule 903 and portions of the Delisting Policy therein in order to better organize Commentary .06. This would include moving current paragraph (d) out of Commentary .06 and instead including the text as new Commentary .13 to Rule 903.

Lastly, the Exchange is making technical changes to Commentary .06 to Rule 903, *e.g.,* replacing the word ''security'' with the word ''stock.''

The Exchange represents that it has the necessary systems capacity to support the increase in new options series that would result from the proposed streamlining changes to the Program.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,[15] in general, and furthers the objectives of Section 6(b)(5) of the Act,[16] in particular, because it is designed to promote just and equitable principles of trade, remove impediments to and perfect the mechanisms of a free and open market and a national market system and, in general, to protect investors and the public interest. In particular, the proposed rule change seeks to reduce investor confusion and to simplify the provisions of the $1 Strike Price Interval Program.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not significantly affect the protection of investors or the public interest, does not impose any significant burden on competition, and, by its terms, does not become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act[17] and Rule 19b-4(f)(6) thereunder.[18]

The Exchange has requested that the Commission waive the 30-day operative delay. The Commission believes that waiver of the operative delay is consistent with the protection of investors and the public interest because the proposal is substantially similar to that of another exchange that has been approved by the Commission.[19] Therefore, the Commission designates the proposal operative upon filing.[20]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–NYSEAmex–2011–70 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission,

[14] The Exchange notes that a $2 wing is not permitted between the standard $20 and $25 strikes in the above example. This is because the $2 wings are added based on reference to the price of the underlying and as being between the standard strikes above and below the price of the underlying stock. Since the price of the underlying stock ($24.50) straddles the standard strikes of $20 and $25, no $2 wing is permitted between these standard strikes.

[15] 15 U.S.C. 78f(b).

[16] 15 U.S.C. 78f(b)(5).

[17] 15 U.S.C. 78s(b)(3)(A).

[18] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6)(iii) requires the Exchange to give the Commission written notice of the Exchange's intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied the five-day prefiling requirement.

[19] *See* Securities Exchange Act Release No. 65383 (September 22, 2011) (SR–CBOE–2011–040) (order approving proposed rule change to simplify the $1 Strike Price Interval Program).

[20] For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSEAmex–2011–70. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make publicly available. All submissions should refer to File Number SR–NYSEAmex–2011–70 and should be submitted on or before October 25, 2011.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[21]

Elizabeth M. Murphy,

Secretary.

[FR Doc. 2011–25477 Filed 10–3–11; 8:45 am]

BILLING CODE 8011–01–P

DEPARTMENT OF STATE

[Public Notice: 7634]

Culturally Significant Objects Imported for Exhibition

Determinations: ''The Game of Kings: Medieval Ivory Chessmen From the Isle of Lewis''

SUMMARY: Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985; 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978, the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.;* 22 U.S.C. 6501 note, *et seq.*), Delegation of Authority No. 234 of October 1, 1999, and Delegation of Authority No. 236–3 of August 28, 2000 (and, as appropriate, Delegation of Authority No. 257 of April 15, 2003), I hereby determine that the objects to be included in the exhibition ''The Game of Kings: Medieval Ivory Chessmen from the Isle of Lewis,'' imported from abroad for temporary exhibition within the United States, are of cultural significance. The objects are imported pursuant to a loan agreement with the foreign owner or custodian. I also determine that the exhibition or display of the exhibit objects at the Metropolitan Museum of Art, New York, New York, from on or about November 14, 2011, until on or about April 22, 2012, and at possible additional exhibitions or venues yet to be determined, is in the national interest. I have ordered that Public Notice of these Determinations be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: For further information, including a list of the exhibit objects, contact Paul W. Manning, Attorney-Adviser, Office of the Legal Adviser, U.S. Department of State (telephone: 202–632–6469). The mailing address is U.S. Department of State, SA–5, L/PD, Fifth Floor (Suite 5H03), Washington, DC 20522–0505.

Dated: September 27, 2011.

J. Adam Ereli,

Principal Deputy Assistant Secretary, Bureau of Educational and Cultural Affairs, Department of State.

[FR Doc. 2011–25534 Filed 10–3–11; 8:45 am]

BILLING CODE 4710–05–P

DEPARTMENT OF STATE

[Public Notice: 7633]

Determination Pursuant to Section 2121(h) of the Full-Year Continuing Appropriations Act, 2011, Relating to Foreign Military Financing for Lebanon

Pursuant to Section 2121(h) of the Full-Year Continuing Appropriations Act, 2011 (Div. B, Pub. L. 112–10) (CR), I hereby determine that provision of $74,850,000 in Foreign Military Financing funds appropriated by the CR for assistance for Lebanon is in the national security interest of the United States.

This determination shall be published in the **Federal Register** and copies shall be provided to the Congress together with the accompanying Memorandum of Justification.

Dated: September 27, 2011.

Thomas R. Nides,

Deputy Secretary of State for Management and Resources.

[FR Doc. 2011–25535 Filed 10–3–11; 8:45 am]

BILLING CODE 4710–05–P

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Revised Fiscal Year 2011 Tariff-Rate Quota Allocations for Refined Sugar

AGENCY: Office of the United States Trade Representative.

ACTION: Notice.

SUMMARY: The Office of the United States Trade Representative (USTR) is providing notice of additional country-by-country allocations of the fiscal year (FY) 2011 in-quota quantity of the tariff-rate quota (TRQ) for imported refined sugar for entry through November 30, 2011.

DATES: *Effective Date:* October 4, 2011.

ADDRESSES: Inquiries may be mailed or delivered to Ann Heilman-Dahl, Director of Agricultural Affairs, Office of Agricultural Affairs, Office of the United States Trade Representative, 600 17th Street, NW., Washington, DC 20508.

FOR FURTHER INFORMATION CONTACT: Ann Heilman-Dahl, Office of Agricultural Affairs, *telephone:* 202–395–6127 or *facsimile:* 202–395–4579.

SUPPLEMENTARY INFORMATION: Pursuant to Additional U.S. Note 5 to chapter 17 of the Harmonized Tariff Schedule of the United States (HTS), the United States maintains a tariff-rate quota for imports of refined sugar.

Section 404(d)(3) of the Uruguay Round Agreements Act (19 U.S.C. 3601(d)(3)) authorizes the President to allocate the in-quota quantity of a TRQ for any agricultural product among supplying countries or customs areas. The President delegated this authority to the USTR under Presidential Proclamation 6763 (60 FR 1007).

On August 5, 2010, the Secretary of Agriculture established the FY 2011 (October 1, 2010—September 30, 2011) refined sugar TRQ at an aggregate quantity of 99,111 MTRV, of which 20,344 MTRV was refined sugar other than specialty sugar. On August 17, 2010, USTR allocated this refined sugar as follows: 10,300 MTRV to Canada; 2,954 MTRV to Mexico; and 7,090 MTRV to be administered on a first-come, first-served basis. On August 2, 2011, the Secretary of Agriculture increased the FY 2011 specialty sugar TRQ by 9,072 MTRV, resulting in a FY 2011 specialty sugar TRQ of 87,839

[21] 17 CFR 200.30–3(a)(12).

MTRV and a FY 2011 refined sugar TRQ of 108,183 MTRV.

On September 29, 2011, the Secretary of Agriculture announced an increase in the FY 2011 refined sugar TRQ of 136,078 MTRV, to a total of 244,261 MTRV, none of which is reserved for specialty sugars. This addition to the refined sugar TRQ will open on September 29, 2011, and may be entered until November 30, 2011. This sugar must have a sucrose content, by weight in the dry state, corresponding to a polarimeter reading of 99.5 degrees or more. 25,000 MTRV is being allocated to Canada, increasing Canada's allocation from 10,300 to 35,300 MTRV. The remaining 111,078 MTRV of the increased in-quota quantity may be supplied by any country on a first-come, first-served basis, subject to any other provision of law, which raises the first-come, first-served in-quota quantity from 7,090 to 118,168 MTRV. The certificate of quota eligibility is required for sugar entering under the TRQ for refined sugar that is the product of a country that has been allocated a share of the tariff-rate quota for refined sugar.

* *Conversion factor:* 1 metric ton = 1.10231125 short tons.

Ronald Kirk,

United States Trade Representative.

[FR Doc. 2011–25555 Filed 10–3–11; 8:45 am]

BILLING CODE 3190–W1–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. PE–2011–38]

Petition for Exemption; Summary of Petition Received

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petition for exemption received.

SUMMARY: This notice contains a summary of a petition seeking relief from specified requirements of 14 CFR. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of the petition or its final disposition.

DATES: Comments on this petition must identify the petition docket number involved and must be received on or before October 24, 2011.

ADDRESSES: You may send comments identified by Docket Number FAA–2011–0728 using any of the following methods:

• *Government-wide rulemaking Web site:* Go to *http://www.regulations.gov* and follow the instructions for sending your comments electronically.

• *Mail:* Send comments to the Docket Management Facility; U.S. Department of Transportation, 1200 New Jersey Avenue, SE., West Building Ground Floor, Room W12–140, Washington, DC 20590.

• *Fax:* Fax comments to the Docket Management Facility at 202–493–2251.

• *Hand Delivery:* Bring comments to the Docket Management Facility in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Privacy: We will post all comments we receive, without change, to *http://www.regulations.gov,* including any personal information you provide. Using the search function of our docket Web site, anyone can find and read the comments received into any of our dockets, including the name of the individual sending the comment (or signing the comment for an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477–78).

Docket: To read background documents or comments received, go to *http://www.regulations.gov* at any time or to the Docket Management Facility in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Keira Jones (202) 267–4024, Tyneka Thomas (202) 267–7626, or David Staples (202) 267–4058, Office of Rulemaking, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591.

This notice is published pursuant to 14 CFR 11.85.

Issued in Washington, DC, on September 29, 2011.

Dennis R. Pratte,

Acting Director, Office of Rulemaking.

Petition for Exemption

Docket No.: FAA–2011–0728.

Petitioner: Landmark Aviation.

Section of 14 CFR Affected: 14 CFR 135.151.

Description of Relief Sought: Landmark Aviation has requested relief to allow its aircrafts to utilize Controller Pilot Data Link Communication (CPDLC) prior to the availability of datalink recording software from Gulfstream that enables the capability of recording data link communications.

[FR Doc. 2011–25585 Filed 10–3–11; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. PE–2011–36]

Petition for Exemption; Summary of Petition Received

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petition for exemption received.

SUMMARY: This notice contains a summary of a petition seeking relief from specified requirements of title 14 CFR. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of the petition or its final disposition.

DATES: Comments on this petition must identify the petition docket number and must be received on or before October 24, 2011.

ADDRESSES: You may send comments identified by Docket Number FAA–2011–0824 using any of the following methods:

• *Government-wide rulemaking Web site:* Go to *http://www.regulations.gov* and follow the instructions for sending your comments electronically.

• *Mail:* Send comments to the Docket Management Facility; U.S. Department of Transportation, 1200 New Jersey Avenue, SE., West Building Ground Floor, Room W12–140, Washington, DC 20590.

• *Fax:* Fax comments to the Docket Management Facility at 202–493–2251.

• *Hand Delivery:* Bring comments to the Docket Management Facility in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Privacy: We will post all comments we receive, without change, to *http://www.regulations.gov,* including any personal information you provide. Using the search function of our docket Web site, anyone can find and read the comments received into any of our dockets, including the name of the individual sending the comment (or

signing the comment for an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477–78).

Docket: To read background documents or comments received, go to *http://www.regulations.gov* at any time or to the Docket Management Facility in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: David Staples, 202–267–4058, Keira Jones, 202–267–4025, or Tyneka L. Thomas, 202–267–7626, Office of Rulemaking, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591.

This notice is published pursuant to 14 CFR 11.85.

Issued in Washington, DC, on September 29, 2011.

Dennis R. Pratte,

Acting Director, Office of Rulemaking.

Petition for Exemption

Docket No.: FAA–2011–0824.

Petitioner: American Eurocopter.

Section of 14 CFR Affected: 14 CFR 60 Table C2A, paragraph 4.b.3.

Description of Relief Sought: American Eurocopter is seeking relief from the requirement that any geometric error between the image generator eye point and the pilot eye point must be 8 degrees or less for the EC175 Level D FFS currently being designed. American Eurocopter requests that a geometric error of 10 to 12 degrees be allowed subject to justification and agreement with the National Simulator Program Manager (NSPM) in accordance with helicopter characteristics and training needs.

[FR Doc. 2011–25590 Filed 10–3–11; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. PE–2011–43

Petition for Exemption; Summary of Petition Received

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petition for exemption received.

SUMMARY: This notice contains a summary of a petition seeking relief from specified requirements of 14 CFR. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of the petition or its final disposition.

DATES: Comments on this petition must identify the petition docket number involved and must be received on or before October 24, 2011.

ADDRESSES: You may send comments identified by Docket Number FAA–2011–1018 using any of the following methods:

- *Government-wide rulemaking Web site:* Go to *http://www.regulations.gov* and follow the instructions for sending your comments electronically.
- *Mail:* Send comments to the Docket Management Facility; U.S. Department of Transportation, 1200 New Jersey Avenue, SE., West Building Ground Floor, Room W12–140, Washington, DC 20590.
- *Fax:* Fax comments to the Docket Management Facility at 202–493–2251.
- *Hand Delivery:* Bring comments to the Docket Management Facility in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Privacy: We will post all comments we receive, without change, to *http://www.regulations.gov,* including any personal information you provide. Using the search function of our docket web site, anyone can find and read the comments received into any of our dockets, including the name of the individual sending the comment (or signing the comment for an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477–78).

Docket: To read background documents or comments received, go to *http://www.regulations.gov* at any time or to the Docket Management Facility in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Keira Jones (202) 267–4024, Tyneka Thomas (202) 267–7626, or David Staples (202) 267–4058, Office of Rulemaking, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591.

This notice is published pursuant to 14 CFR 11.85.

Issued in Washington, DC, on September 29, 2011.

Dennis R. Pratte,

Acting Director, Office of Rulemaking.

Petition for Exemption

Docket No.: FAA–2011–1018.

Petitioner: Era Helicopter, LLC.

Section of 14 CFR Affected: 14 CFR 133.45(e)(1).

Description of Relief Sought: Era Helicopter requests relief to conduct Class D Rotorcraft External Load Operations with exemption relief from that portion 14 CFR 133(e)(1) requiring; ''The rotorcraft to be used must have been type certificated under transport Category A for the operating weight and provide hover capability with one engine inoperative at that operating weight and altitude.''. The request for relief is specifically related to relief from the ''* * * hover capability with one engine inoperative * * *'' requirement.

[FR Doc. 2011–25593 Filed 10–3–11; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Public Notice For Waiver of Aeronautical Land-Use Assurance; Indianapolis International Airport, Indianapolis, IN

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 change a portion of the airport from aeronautical use to non-aeronautical use and to authorize the release of 75.46 acres of airport property for non-aeronautical development. The land consists of portions of 11 original airport acquired parcels. These parcels were acquired under grants: 6–18–0038–10 and 6–18–0038–14 or without federal participation. The land is currently vacant. The future use of the property is for non-aviation development.

There are no impacts to the airport by allowing the Indianapolis Airport Authority to dispose of the property.

The land is not needed for aeronautical use. Approval does not constitute a commitment by the FAA to financially assist in the sale or lease 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 3, 2011.

ADDRESSES: Written comments on the Sponsor's request must be delivered or mailed to: Melanie Myers, Program Manager, Chicago Airports District Office, 2300 East Devon Avenue, Des Plaines, IL 60018.

FOR FURTHER INFORMATION CONTACT: Melanie Myers, Program Manager, Federal Aviation Administration, Great Lakes Region, Detroit Airports District Office, CHI–ADO 609, 2300 East Devon Avenue, Des Plaines, IL 60018 Telephone Number (847–294–7525)/ FAX Number (847–294–7046). Documents reflecting this FAA action may be reviewed at this same location or at Indianapolis International Airport, Indianapolis, Indiana.

SUPPLEMENTARY INFORMATION:

Parcel 112

A part of the Northeast Quarter, the Northwest Quarter, the Southwest Quarter, and the Southeast Quarter of Section 33, Township 15 North, Range 2 East, Decatur Township, Marion County, Indiana, more particularly described as follows: Commencing at a brass disk (IAA monument 33–M) found at the Southeast corner of the Northwest Quarter of said Section 33; thence South 88 degrees 54 minutes 54 seconds West (all bearings are based on the Indiana State Plane Coordinate system, East Zone (NAD 83)) along the South line of said Northwest Quarter 164.56 feet; thence North 01 degrees 05 minutes 06 seconds West perpendicular to the last described line 316.96 feet to the POINT OF BEGINNING; thence South 87 degrees 58 minutes 46 seconds East 138.95 feet; thence South 62 degrees 24 minutes 14 seconds East 639.29 feet; thence South 48 degrees 54 minutes 55 seconds East 516.42 feet; thence South 60 degrees 57 minutes 17 seconds East 91.32 feet; thence South 53 degrees 40 minutes 33 seconds West 157.81 feet; thence South 45 degrees 00 minutes 17 seconds East 889.05 feet; thence South 45 degrees 07 minutes 10 seconds West 116.20 feet; thence South 44 degrees 52 minutes 50 seconds East 121.69 feet; thence North 45 degrees 07 minutes 10 seconds East 116.47 feet; thence South 45 degrees 00 minutes 17 seconds East 360.66 feet to the North right of way of I–70 per Indiana Department of Transportation plans for Project No. ST–70–3(Q) (the following two courses are along said North right of way); (1) thence South 68 degrees 47 minutes 46 seconds West 613.10 feet to a tangent curve to the left having a radius of 20,040.00 feet, the radius point of which bears South 21 degrees 12 minutes 14 seconds East; (2) thence Southwesterly along said curve 849.39 feet to a point which bears North 23 degrees 37 minutes 57 seconds West from said radius point; thence North 86 degrees 06 minutes 02 seconds West 439.92 feet to the Eastern right of way of the I–70 Off-ramp to the Midfield Terminal per Indiana Department of Transportation plans for said Project No. ST–70–3(Q) (the following twelve courses are along said Eastern right of way); (1) thence North 29 degrees 09 minutes 48 seconds West 219.65 feet; (2) thence North 24 degrees 52 minutes 02 seconds West 208.94 feet; (3) thence North 38 degrees 55 minutes 00 seconds West 235.07 feet; (4) thence North 33 degrees 00 minutes 23 seconds West 271.99 feet; (5) thence North 29 degrees 06 minutes 08 seconds West 244.10 feet; (6) thence North 20 degrees 02 minutes 46 seconds West 147.56 feet; (7) thence North 11 degrees 10 minutes 40 seconds West 127.36 feet; (8) thence North 06 degrees 26 minutes 54 seconds West 94.15 feet; (9) thence North 02 degrees 09 minutes 53 seconds East 115.55 feet; (10) thence North 18 degrees 28 minutes 47 seconds East 338.00 feet; (11) thence North 27 degrees 48 minutes 50 seconds East 129.82 feet to a non-tangent curve to the right having a radius of 1125.00 feet, the point of which bears South 58 degrees 52 minutes 42 seconds East; (12) thence Northeasterly along said curve 264.92 feet to a point which bears North 45 degrees 23 minutes 10 seconds West from said radius point; thence North 44 degrees 36 minutes 50 seconds East 198.54 feet to the POINT OF BEGINNING, containing 75.390 acres, more or less.

Issued in Des Plaines, Illinois, on September 22, 2011.

Jack Delaney,

Acting Manager, Chicago Airports District Office, FAA, Great Lakes Region.

[FR Doc. 2011–25566 Filed 10–3–11; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Environmental Impact Statement: Walton and Bay Counties, Florida

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of intent.

SUMMARY: The FHWA is issuing this notice to advise the public that an Environmental Impact Statement (EIS) will be prepared for a proposed highway project in Walton and Bay Counties, Florida.

FOR FURTHER INFORMATION CONTACT: Ms. Cathy Kendall, Environmental Specialist, Federal Highway Administration, 545 John Knox Road, Suite 200, Tallahassee, FL, 32303, Telephone (850) 553–2225

SUPPLEMENTARY INFORMATION: The FHWA, in partnership with the Florida Department of Transportation (FDOT) will prepare an EIS for a proposal to develop a new alignment extension of CR 388 from SR 79 in Bay County, FL westward to SR 30 (US 98) in Walton County, FL. The FDOT refers to this project as West Bay Parkway, Segment 1. This proposed Segment 1 project would extend CR 388 to the west from its current western terminus at SR 79 and provide a new four-lane divided highway and potentially a new high level bridge across the Intracoastal Waterway (ICWW). Depending on the alternative selected, the project is approximately 9 to 12 miles in length.

Alternatives under consideration include (1) Taking no action; (2) widening SR 30 (US 98) to a six or eight lane divided roadway; (3) alternate corridors.

Letters describing the proposed action and soliciting comments will be sent to appropriate Federal, State, and local agencies, and to private organizations and citizens who have expressed interest in this proposal.

A series of public meetings in Santa Rosa Beach in Walton County, and Panama City Beach in Bay County began in April 2010 and will continue to be held through December 2012. In addition a public hearing will be held. Public notice will be given for the time and place of the meetings and hearing. The Draft EIS will be made available for public and agency review and comment. Additional project information can be found at the following web address: *http://www.westbayparkway.com.*

To ensure that the full range of issues related to the proposed action is addressed and all significant issues identified, comments and suggestions are invited from all interested parties. Comments or question concerning this proposed action and the EIS should be directed to the FHWA at the address provided above.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Research, Planning and Construction. The regulations implementing Executive Order 12372 regarding inter-governmental consultation on Federal programs and activities apply to this program.)

Issued on: September 27, 2011.

Martin C. Knopp,

Division Administrator, Tallahassee, FL .

[FR Doc. 2011–25360 Filed 10–3–11; 8:45 am]

BILLING CODE 4910–22–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Notice of Final Federal Agency Actions on Proposed Highway in Utah

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of Limitation on Claims for Judicial Review of Actions by FHWA.

SUMMARY: This notice announces actions taken by the FHWA that are final within the meaning of 23 U.S.C. 139(*l*)(1). The actions relate to a proposed multi-modal project (Provo-Orem Bus Rapid Transit) that addresses roadway and transit infrastructure needs in Utah County, State of Utah. Those actions grant licenses, permits, and approvals for the project.

DATES: By this notice, the FHWA is advising the public of final agency actions subject to 23 U.S.C. 139(*l*)(1). A claim seeking judicial review of the Federal agency actions on the highway project will be barred unless the claim is filed on or before April 1, 2012. If the Federal law that authorizes judicial review of a claim provides a time period of less than 180 days for filing such claim, then that shorter time period still applies.

FOR FURTHER INFORMATION CONTACT: For FHWA: Mr. Edward T. Woolford, Environmental Program Manager, Federal Highway Administration, 2520 West 4700 South, Suite 9A, Salt Lake City, UT 84118. FHWA's regular business hours are Monday through Friday, 7:30 a.m. to 4:30 p.m. MST. For UDOT: Mr. Brandon Weston, 4501 South 2700 West, Salt Lake City, Utah 84119–5998; *Telephone:* (801) 965–4603; *e-mail: brandonweston@utah.gov.* The UDOT's normal business hours are Monday through Friday, 7 a.m. to 4:30 p.m. MST.

SUPPLEMENTARY INFORMATION: Notice is hereby given that the FHWA has taken final agency actions subject to 23 U.S.C. 139(*l*)(1) by issuing licenses, permits, and approvals for the following highway project in the State of Utah: The Provo-Orem Bus Rapid Transit project number F–R399(83). The project has roadway and transit components. This notice covers the roadway portions of the selected alternative from the Environmental Assessment which include: Two additional general purpose lanes on University Parkway from State Street to University Avenue in Provo, Utah; New high-occupancy/toll (HOT) interchange at 800 South and I–15 in Orem to serve automobiles, transit vehicles, pedestrians, and cyclists. These improvements will increase transportation capacity to accommodate growing population, employment, student enrollment, and travel demand in the year 2030; improve multimodal connectivity across I–15 and from I–15 to Orem and Provo, Utah.

The actions by the Federal agency, and the laws under which such actions were taken, are described in the Environmental Assessment (EA) for the project, approved on April 8, 2011, in the FHWA Finding of No Significant Impact (FONSI) decision issued on September 6, 2011, and in other documents in the FHWA project records. The EA, FONSI, and other project records are available by contacting FHWA or the Utah Department of Transportation at the addresses provided above. The FHWA EA and FONSI can be viewed at public libraries in the project area.

This notice applies to all Federal agency decisions as of the issuance date of this notice and all laws under which such actions were taken, including but not limited to:

1. General: National Environmental Policy Act (NEPA) [42 U.S.C. 4321–4351]; Federal-Aid Highway Act [23 U.S.C. 109 and 23 U.S.C. 128].

2. Air: Clean Air Act [42 U.S.C. 7401–7671(q)].

3. Land: Section 4(f) of the Department of Transportation Act of 1966 [49 U.S.C. 303];.

4. Wildlife: Endangered Species Act [16 U.S.C. 1531–1544 and Section 1536]; Migratory Bird Treaty Act [16 U.S.C. 703–712].

5. Historic and Cultural Resources: Section 106 of the National Historic Preservation Act of 1966, as amended [16 U.S.C. 470(f) *et seq.*]; .

6. Social and Economic: Civil Rights Act of 1964 [42 U.S.C. 2000(d)–2000(d)(1)]; Farmland Protection Policy Act (FPPA) [7 U.S.C. 4201–4209].

7. Executive Orders: E.O. 11990, Protection of Wetlands; E.O. 11988, Floodplain Management; E.O. 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low Income Populations; E.O. 13175, Consultation and Coordination with Indian Tribal Governments; E.O. 13112, Invasive Species.

(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.)

Authority: 23 U.S.C. 139(*l*)(1).

Issued on: September 26, 2011.

James Christian,

Division Administrator, Salt Lake City.

[FR Doc. 2011–25459 Filed 10–3–11; 8:45 am]

BILLING CODE 4910–RY–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

[Docket Number FRA–2011–0071]

Petition for Waiver of Compliance

In accordance with Part 211 of Title 49 of the Code of Federal Regulations (CFR), this document provides the public notice that by a document dated August 23, 2011, the Canadian National Railway (CN) 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 part 236. FRA assigned the petition Docket Number FRA–2011–0071.

CN seeks relief from the 2-year periodic testing requirements of the rules, standards, and instructions contained in 49 CFR 236.377, *Approach locking;* 236.378, *Time locking;* 236.379, *Route locking;* 236.380, *Indication locking;* 236.381, *Traffic locking;* and 236.109, *Time releases, timing relays and timing devices;* on vital microprocessor-based systems. CN proposes that except when placed in service, disarranged, or vital software modifications are made, that the following test be completed at least once every 4 years to ensure the safety of microprocessor-based locking systems. These tests, at this interval, would replace the tests currently required for these systems.

- Verify and record that the software has not changed since the previous testing. This is accomplished by verifying the Cyclic Redundancy Code, checksum, and/or unique check number (UCN) of the software in the solid-state device.
- Test and record the interconnection to the signaling hardware and equipment outside of the processor (switch indication, switch locking, track circuits and indications, and searchlight signal indications).
- Verify and record duration of any variable timers unless protected by a UCN.

The relief is requested for the following three cases:

1. Locations as listed in Exhibit B.

2. All future purchases of microprocessor-controlled interlocking locations.

3. Interlocking sites upgraded to microprocessor control.

A copy of the petition, as well as any written communications concerning the petition, is available for review online at *http://www.regulations.gov* and in person at the U.S. Department of Transportation's (DOT) Docket Operations Facility, 1200 New Jersey Ave., 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.

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 by November 18, 2011 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 28, 2011.

Robert C. Lauby,

Deputy Associate Administrator for Regulatory and Legislative Operations.

[FR Doc. 2011–25582 Filed 10–3–11; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

Petition for Exemption from the Vehicle Theft Prevention Standard; Volkswagen

AGENCY: National Highway Traffic Safety Administration (NHTSA), U.S. Department of Transportation (DOT).

ACTION: Grant of petition for exemption.

SUMMARY: This document grants in full the Volkswagen Group of America's (VW) petition for exemption of the Audi A4 allroad vehicle line in accordance with § 543.9(c)(2) of 49 CFR part 543, *Exemption from the Theft Prevention Standard.* This petition is granted, because the agency has determined that the antitheft device to be placed on the line as standard equipment is likely to be as effective in reducing and deterring motor vehicle theft as compliance with the parts-marking requirements of the Theft Prevention Standard (49 CFR part 541).

DATES: The exemption granted by this notice is effective beginning with the 2013 model year.

FOR FURTHER INFORMATION CONTACT: Ms. Carlita Ballard, Office of International Policy, Fuel Economy and Consumer Programs, NHTSA,1200 New Jersey Avenue, SE., West Building, W43–439, Washington, DC 20590. Ms. Ballard's phone number is (202) 366–5222. Her fax number is (202) 493–2990.

SUPPLEMENTARY INFORMATION: In a petition dated August 8, 2011, VW requested an exemption from the parts-marking requirements of the Theft Prevention Standard(49 CFR part 541) for the Audi A4 allroad vehicle line beginning with MY 2013. The petition requested an exemption from parts-marking pursuant to 49 CFR part 543, *Exemption from Vehicle Theft Prevention Standard,* based on the installation of an antitheft device as standard equipment for an entire vehicle line.

Under § 543.5(a), a manufacturer may petition NHTSA to grant an exemption for one vehicle line per model year. In its petition, VW provided a detailed description and diagram of the identity, design and location of the components of the antitheft device for its new Audi A4 allroad vehicle line. VW will install its passive, transponder-based electronic engine immobilizer antitheft device as standard equipment on its Audi A4 allroad vehicle line. VW stated that its antitheft device is an electronic engine immobilizer which utilizes a transponder ignition key and an alarm system. Key components of the antitheft device will include a passive electronic engine immobilizer, electronic ignition lock, adapted ignition key, engine control unit, electronic steering column lock and an automatic transmission gear box (if available). VW stated that its vehicle line will also include an antitheft alarm system as standard equipment. Specifically, VW stated that when the vehicle is locked, the alarm system monitors and protects the engine compartment, luggage compartment and doors, and when the system is activated, the alarm will trigger if one of the doors, the engine hood or the rear hatch lid are opened. Specifically, VW stated that when any of the protected components within its vehicle enclosure deterrent system are violated, an audible horn signal is emitted and the vehicle's emergency flasher system is activated. VW's submission is considered a complete petition as required by 49 CFR 543.7, in that it meets the general requirements contained in § 543.5 and the specific content requirements of § 543.6.

VW stated that activation occurs when the key fob advanced key system is removed from the car, or when the mechanical ignition key is switched to the OFF position causing lock out of the engine control unit. VW also stated that deactivation of the antitheft system occurs when the mechanical ignition key is switched to the ON position or while the key fob advanced key is located inside the car. VW stated that the key transponder sends a fixed code to the immobilizer control unit, and if the code is identified as the correct code, a variable code is generated in the immobilizer control unit and sent to the transponder. VW further stated that after the electronic steering column is unlocked and there is full authorization for the ignition switch to be on, the engine control unit sends a variable code to the immobilizer control unit, enabling start up of the vehicle. VW believes that the code is undecipherable because a new variable code is generated each time during this secret computing process.

In addressing the specific content requirements of 543.6, VW provided information on the reliability and durability of its proposed device. To ensure reliability and durability of the

device, VW stated that it certifies that its antitheft device for the Audi A4 allroad has been tested for compliance to the corporate requirements for electrical and electronic assemblies in motor vehicles related to performance. VW provided a detailed list of the tests conducted (*i.e.,* electrical system temperature stability, mechanical integrity, electrical performance, EMC, environmental compatibility and service life) and believes that the device is reliable and durable since the device complied with its specific requirements for each test. Furthermore, VW stated that after the electronic module is recognized by the key transponder, a pairing between the key and the immobilizer occurs at which point the key can no longer be used for any other immobilizer.

VW stated that the Audi A4 allroad will be a new, small multipurpose passenger vehicle (MPV) line based on the Audi A4 sedan. The Audi A4 allroad has no theft rate history or data available. However, VW provided data on the theft reduction benefits experienced by other vehicle lines installed with immobilizer devices that have already been granted petitions for exemptions by the agency.

VW compared the device proposed for its vehicle line with other devices which NHTSA has determined to be as effective in reducing and deterring motor vehicle theft as would compliance with the parts-marking requirements of the Theft Prevention Standard. VW stated that except for the 2004 MY, the Audi allroad MPV had a lower theft rate than its passenger car counterpart, Audi A6. Specifically, the agency's data show that theft rates for the Audi A6 for MYs 2006–2008 are 1.8143, 1.5437 and 1.4414 respectively. Using an average of 3 MYs' data (2006–2008), the theft rate for the Audi A6 is well below the median at 1.5998. VW also stated that the theft rates for the Audi A4 have been near the median and based on comparison, the Audi A4 allroad is expected to have a lower theft rate. Specifically, the agency's data show that theft rates for the Audi A4 for MYs' 2006–2008 are 1.0203, 1.2892 and 1.1463 respectively. Using an average of 3 MYs' data (2006–2008), the theft rate for the Audi A4 vehicle line is well below the median at 1.1520. VW also provided data from NICB in support of the effectiveness of immobilizer-installed vehicles to reduce thefts. VW stated that according to the National Insurance Crime Bureau (NICB) theft statistics, MY 1997 Ford Mustangs installed with a standard immobilizer showed a 70% reduction in theft rate when compared to MY 1995 Ford Mustangs without an immobilizer.

Based on the evidence submitted by VW, the agency believes that the antitheft device for the Audi A4 allroad vehicle line is likely to be as effective in reducing and deterring motor vehicle theft as compliance with the parts-marking requirements of the Theft Prevention standard (49 CFR part 541).

Pursuant to 49 U.S.C. 33106 and 49 CFR 543.7(b), the agency grants a petition for exemption from the parts-marking requirements of part 541 either in whole or in part, if it determines that, based upon substantial evidence, the standard equipment antitheft device is likely to be as effective in reducing and deterring motor vehicle theft as compliance with the parts marking requirements of part 541. The agency finds that VW has provided adequate reasons for its belief that the antitheft device for the VW Audi A4 allroad vehicle line is likely to be as effective in reducing and deterring motor vehicle theft as compliance with the parts-marking requirements of the Theft Prevention Standard (49 CFR part 541). This conclusion is based on the information VW provided about its device.

The agency concludes that the device will provide the five types of performance listed in § 543.6(a)(3): promoting activation; attracting attention to the efforts of an unauthorized person to enter or move a vehicle by means other than a key; preventing defeat or circumvention of the device by unauthorized persons; preventing operation of the vehicle by unauthorized entrants; and ensuring the reliability and durability of the device.

For the foregoing reasons, the agency hereby grants in full VW's petition for exemption for the VW Audi A4 allroad vehicle line from the parts-marking requirements of 49 CFR Part 541. The agency notes that 49 CFR Part 541, Appendix A–1, identifies those lines that are exempted from the Theft Prevention Standard for a given model year. 49 CFR part 543.7(f) contains publication requirements incident to the disposition of all Part 543 petitions. Advanced listing, including the release of future product nameplates, the beginning model year for which the petition is granted and a general description of the antitheft device is necessary in order to notify law enforcement agencies of new vehicle lines exempted from the parts-marking requirements of the Theft Prevention Standard.

If VW decides not to use the exemption for this line, it must formally notify the agency. If such a decision is made, the line must be fully marked according to the requirements under 49 CFR 541.5 and 541.6 (marking of major component parts and replacement parts).

NHTSA notes that if VW wishes in the future to modify the device on which this exemption is based, the company may have to submit a petition to modify the exemption. Part 543.7(d) states that a Part 543 exemption applies only to vehicles that belong to a line exempted under this part and equipped with the anti-theft device on which the line's exemption is based. Further, Part 543.9(c)(2) provides for the submission of petitions ''to modify an exemption to permit the use of an antitheft device similar to but differing from the one specified in that exemption.''

The agency wishes to minimize the administrative burden that Part 543.9(c)(2) could place on exempted vehicle manufacturers and itself. The agency did not intend in drafting Part 543 to require the submission of a modification petition for every change to the components or design of an antitheft device. The significance of many such changes could be *de minimis.* Therefore, NHTSA suggests that if the manufacturer contemplates making any changes, the effects of which might be characterized as de minimis, it should consult the agency before preparing and submitting a petition to modify.

Authority: 49 U.S.C. 33106; delegation of authority at 49 CFR 1.50.

Issued on: September 28, 2011.

Christopher J. Bonanti,

Associate Administrator for Rulemaking.

[FR Doc. 2011–25541 Filed 10–3–11; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF THE TREASURY

Open Meeting of the President's Council on Jobs and Competitiveness (PCJC)

AGENCY: Departmental Offices, Treasury.

ACTION: Notice of open meeting.

SUMMARY: The President's Council on Jobs and Competitiveness will meet on October 11, 2011, in Pittsburgh, Pennsylvania at 12 p.m. Eastern Time. The meeting will be open to the public via live Webcast at *http://www.whitehouse.gov/live.*

DATES: The meeting will be held on October 11, 2011 at 12 p.m. Eastern Time.

ADDRESSES: The PCJC will convene its meeting in Pittsburgh, Pennsylvania. The public is invited to submit written

statements to the PCJC by any of the following methods:

Electronic Statements:

• Send written statements to the PCJC's electronic mailbox at *PCJC@treasury.gov;* or

Paper Statements:

• Send paper statements in triplicate to John Oxtoby, Designated Federal Officer, President's Council on Jobs and Competitiveness, Office of the Under Secretary for Domestic Finance, Room 1325A, Department of the Treasury, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

In general, all statements will be posted on the White House Web site (*http://www.whitehouse.gov*) without change, including any business or personal information provided such as names, addresses, e-mail addresses, or telephone numbers. The Department will also make such statements available for public inspection and copying in the Department's Library, Room 1428, Main Department Building, 1500 Pennsylvania Avenue, NW., Washington, DC 20220, on official business days between the hours of 10 a.m. and 5 p.m. Eastern Time. You can make an appointment to inspect statements by telephoning (202) 622–0990. All statements received, including attachments and other supporting materials, are part of the public record and subject to public disclosure. You should submit only information that you wish to make publicly available.

FOR FURTHER INFORMATION CONTACT: John Oxtoby, Designated Federal Officer, President's Council on Jobs and Competitiveness, Office of the Under Secretary for Domestic Finance, Department of the Treasury, Main Department Building, 1500 Pennsylvania Avenue, NW., Washington, DC 20220, at (202) 622–2000.

SUPPLEMENTARY INFORMATION: In accordance with Section 10(a) of the Federal Advisory Committee Act, 5 U.S.C. App. II, 10(a), and the regulations thereunder, John Oxtoby, Designated Federal Officer of the PCJC, has ordered publication of this notice that the PCJC will convene its next meeting on October 4, 2011, in Pittsburgh, Pennsylvania beginning at 12 p.m. Eastern Time. The meeting will be broadcast on the internet via live Webcast at *http://www.whitehouse.gov/live.* The purpose of this meeting is to discuss initiatives and policies to strengthen the economy, promote and accelerate job growth and bolster America's competitiveness around the world. The President will continue the discussion focused on identifying practical ways the government and business can work together to foster growth and create jobs. Due to the significant logistical difficulties of convening the members of the PCJC, the meeting has been scheduled with less than 15 days notice (see 41 CFR 102–3.150(b)).

Dated: September 26, 2011.

Al Fitzpayne,

Executive Secretary, U.S. Department of the Treasury.

[FR Doc. 2011–25437 Filed 10–3–11; 8:45 am]

BILLING CODE 4810–25–P

DEPARTMENT OF THE TREASURY

Bureau of the Public Debt

Proposed Collection: Comment Request

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A). Currently the Bureau of the Public Debt within the Department of the Treasury is soliciting comments concerning Regulations governing U.S. Treasury Securities—State and Local Government Series.

DATES: Written comments should be received on or before December 7, 2011, to be assured of consideration.

ADDRESSES: Direct all written comments to Bureau of the Public Debt, Bruce A. Sharp, 200 Third Street A4–A, Parkersburg, WV 26106–1328, or bruce.sharp@bpd.treas.gov. The opportunity to make comments online is also available at *http://www.pracomment.gov.*

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies should be directed to Bruce A. Sharp, Bureau of the Public Debt, 200 Third Street A4–A, Parkersburg, WV 26106–1328, (304) 480–8150.

SUPPLEMENTARY INFORMATION:

Title: Regulations Governing United States Treasury Certificates Of Indebtedness—State and Local Government Series, United States Treasury Notes—State and Local Government Series, and United States Treasury Bonds—State and Local Government Series.

OMB Number: 1535–0091.

Abstract: The information is requested to establish consideration for a waiver of regulations.

Current Actions: None.

Type of Review: Extension.

Affected Public: State or local governments.

Estimated Number of Respondents: 2,000.

Estimated Time Per Respondent: 13 minutes.

Estimated Total Annual Burden Hours: 433.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: September 28, 2011.

Bruce A. Sharp,

Bureau Clearance Officer.

[FR Doc. 2011–25516 Filed 10–3–11; 8:45 am]

BILLING CODE 4810–39–P



FEDERAL REGISTER

Vol. 76 Tuesday,
No. 192 October 4, 2011

Part II

Department of the Interior

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Endangered Status for the Alabama Pearlshell, Round Ebonyshell, Southern Sandshell, Southern Kidneyshell, and Choctaw Bean, and Threatened Status for the Tapered Pigtoe, Narrow Pigtoe, and Fuzzy Pigtoe; with Critical Habitat; Proposed Rule

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

[FWS–R4–ES–2011–0050; MO 92210–0–0008–B2]

RIN 1018–AW92

Endangered and Threatened Wildlife and Plants; Endangered Status for the Alabama Pearlshell, Round Ebonyshell, Southern Sandshell, Southern Kidneyshell, and Choctaw Bean, and Threatened Status for the Tapered Pigtoe, Narrow Pigtoe, and Fuzzy Pigtoe; With Critical Habitat

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: We, the U.S. Fish and Wildlife Service, propose to list the Alabama pearlshell (*Margaritifera marrianae*), round ebonyshell (*Fusconaia rotulata*), southern sandshell (*Hamiota australis*), southern kidneyshell (*Ptychobranchus jonesi*), and Choctaw bean (*Villosa choctawensis*) as endangered, and the tapered pigtoe (*Fusconaia burkei*), narrow pigtoe (*Fusconaia escambia*), and fuzzy pigtoe (*Pleurobema strodeanum*) as threatened, under the Endangered Species Act of 1973, as amended (Act).

These eight species are endemic to portions of the Escambia River, Yellow River, and Choctawhatchee River basins of Alabama and Florida; and to localized portions of the Mobile River Basin in Alabama. These mussel species have disappeared from other portions of their natural ranges primarily due to habitat deterioration and poor water quality as a result of excessive sedimentation and environmental contaminants.

We are also proposing to designate critical habitat under the Act for these eight species. In total, approximately 2,406 (kilometers (km) (1,495) miles (mi)) of stream and river channels fall within the boundaries of the proposed critical habitat designation. The proposed critical habitat is located in Bay, Escambia, Holmes, Jackson, Okaloosa, Santa Rosa, Walton, and Washington Counties, FL; and Barbour, Bullock, Butler, Coffee, Conecuh, Covington, Crenshaw, Dale, Escambia, Geneva, Henry, Houston, Monroe, and Pike Counties, Alabama.

These proposals, if made final, would implement Federal protection provided by the Act.

DATES: We will accept comments received or postmarked on or before December 5, 2011. We must receive requests for public hearings, in writing, at the address shown in the **ADDRESSES** section by November 18, 2011.

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 Keyword box, enter Docket No. FWS–R4–ES–2011–0050, which is the docket number for this rulemaking. Then, in the Search panel on the left side of the screen, under the Document Type heading, click on the Proposed Rules link to locate this document. You may submit a comment by clicking on ''Send a Comment or Submission.''

(2) *By hard copy:* Submit by U.S. mail or hand-delivery to: Public Comments Processing, Attn: FWS–R4–ES–2011–0050; 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 e-mail or faxes. We will post all comments on *http://www.regulations.gov.* This generally means that we will post any personal information you provide us (see the Public Comments section below for more information).

FOR FURTHER INFORMATION CONTACT: Don Imm, Field Supervisor, U.S. Fish and Wildlife Service, Panama City, FL, Fish and Wildlife Office, 1601 Balboa Avenue, Panama City, FL 32405; telephone 850–769–0552; facsimile 850–763–2177. If you use a telecommunications device for the deaf (TDD), call the Federal Information Relay Service (FIRS) at 800–877–8339.

SUPPLEMENTARY INFORMATION: This document consists of: (1) A proposed rule to list the Alabama pearlshell (*Margaritifera marrianae*), round ebonyshell (*Fusconaia rotulata*), southern sandshell (*Hamiota australis*), southern kidneyshell (*Ptychobranchus jonesi*), and Choctaw bean (*Villosa choctawensis*) as endangered, and the tapered pigtoe (*Fusconaia burkei*), narrow pigtoe (*Fusconaia escambia*), and fuzzy pigtoe (*Pleurobema strodeanum*) as threatened; and (2) proposed critical habitat designations for the Alabama pearlshell, round ebonyshell, southern sandshell, southern kidneyshell, Choctaw bean, tapered pigtoe, narrow pigtoe, and fuzzy pigtoe.

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, the scientific community, industry, or any other interested parties concerning this proposed rule. We particularly seek comments concerning:

(1) Biological, commercial trade, or other relevant data concerning any threats (or lack thereof) to these species and regulations that may be addressing those threats.

(2) Additional information concerning the historical and current status, range, distribution, and population size of any of these species, including the locations of any additional populations.

(3) Any information on the biological or ecological requirements of these species, and ongoing conservation measures for the species and their habitat.

(4) Current or planned activities in the areas occupied by these species and possible impacts of these activities on these species.

(5) The reasons why we should or should not designate habitat as ''critical habitat'' under section 4 of the Act (16 U.S.C. 1531 *et seq.*) including whether there are threats to these species from human activity, the degree of which can 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:

(a) The amount and distribution of habitat for these eight mussels;

(b) What areas, that were occupied at the time of listing (or are currently occupied) and that contain features essential to the conservation of these species, should be included in the designation and why;

(c) Special management considerations or protection that may be needed in critical habitat areas we are proposing, 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 these species and why.

(7) Land use designations and current or planned activities in the subject areas and their possible impacts on proposed critical habitat.

(8) Information on the projected and reasonably likely impacts of climate change on these species and proposed critical habitat.

(9) Any probable economic, national security, or other relevant impacts of designating any area that may be included in the final designation; in particular, any impacts on small entities or families, and the benefits of including

or excluding areas that exhibit these impacts.

(10) Whether any specific areas we are proposing for critical habitat designation should be considered for exclusion under section 4(b)(2) of the Act, and whether the benefits of potentially excluding any specific area outweigh the benefits of including that area under section 4(b)(2) of the Act.

(11) 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 a threatened or endangered 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 **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, 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, Panama City, FL, Fish and Wildlife Office (see **FOR FURTHER INFORMATION CONTACT**).

Previous Federal Actions

The Alabama pearlshell, round ebonyshell, southern sandshell, southern kidneyshell, Choctaw bean, tapered pigtoe, narrow pigtoe, and fuzzy pigtoe were first identified as candidates for protection under the Act in the May 4, 2004, **Federal Register** (69 FR 24876). Candidate species are assigned Listing Priority Numbers (LPNs) based on immediacy and the magnitude of threat, as well as their taxonomic status. The lower the LPN, the higher priority that species is for us to determine appropriate action using our available resources. In the 2004, 2005 (70 FR 24870), 2006 (71 FR 53756), 2007 (72 FR 69034), 2008 (73 FR 75176), 2009 (74 FR 57869), and 2010 (75 FR 69221) **Federal Register** Candidate Notices of Review, the Alabama pearlshell, round ebonyshell, and southern kidneyshell were identified as LPN 2 candidate species; the narrow pigtoe, southern sandshell, fuzzy pigtoe, and Choctaw bean were identified as LPN 5 candidate species; and the tapered pigtoe was identified as an LPN 11 candidate species. In our Notices of Review, we determined that publication of a proposed rule to list these species was precluded by our work on higher priority listing actions. These eight species were included in a listing petition filed by the Center for Biological Diversity on April 20, 2010. In a separate action, we found the petition presented substantial information that the species may be warranted for listing. Because we have already made the equivalent 12-month finding on these species through our annual candidate assessment and notice process, we have also made a determination that the species warrant listing. Therefore, we have made the requisite findings with regards to the April 20, 2010, petition.

Background

It is our intent to discuss only those topics directly relevant to the listing of the Alabama pearlshell, round ebonyshell, southern sandshell, southern kidneyshell, and Choctaw bean as endangered; and the tapered pigtoe, narrow pigtoe and fuzzy pigtoe as threatened in this section of the proposed rule. For information relevant to the designation of critical habitat, see ''Critical Habitat'' section below.

Introduction

North American freshwater mussel fauna is the richest in the world and historically numbered around 300 species (Williams *et al.* 1993, p. 6). Freshwater mussels are in decline, however, and in the past century have become more imperiled than any other group of organisms (Williams *et al.* 2008, p. 55; Natureserve 2011). Approximately 66 percent of North America's freshwater mussel species are considered vulnerable to extinction or possibly extinct (Williams *et al.* 1993, p. 6). Within North America, the southeastern United States is the hot spot for mussel diversity. Seventy-five percent of southeastern mussel species are in varying degrees of rarity or possibly extinct (Neves *et al.* 1997, pp. 47–51). The central reason for the decline of freshwater mussels is the modification and destruction of their habitat, especially from sedimentation, dams, and degraded water quality (Neves *et al.* 1997, p. 60; Bogan 1998, p. 376). These eight mussels, like many other southeastern mussel species, have undergone reductions in total range and population density.

These eight species are all freshwater bivalve mussels of the families Margaritiferidae and Unionidae. The Alabama pearlshell is a member of the family Margaritiferidae, while the round ebonyshell, southern sandshell, southern kidneyshell, Choctaw bean, tapered pigtoe, narrow pigtoe, and fuzzy pigtoe belong to the family Unionidae. These mussels are endemic to portions of three Coastal Plain rivers that drain south-central and southeastern Alabama and northwestern Florida: the Escambia (known as the Escambia River in Florida and the Conecuh River in Alabama), the Yellow, and the Choctawhatchee. All three rivers originate in Alabama and flow across the Florida panhandle before emptying into the Gulf of Mexico, and are entirely contained within the East Gulf Coastal Plain Physiographic Region. The Alabama pearlshell is also known from three locations in the Mobile River Basin; however, only one of those is considered to be currently occupied.

General Biology

Freshwater mussels generally live embedded in the bottom of rivers, streams, and other bodies of water. They siphon water into their shells and across four gills that are specialized for respiration and food collection. Food items include detritus (disintegrated organic debris), algae, diatoms, and bacteria (Strayer *et al.* 2004, pp. 430–431). Adults are filter feeders and generally orient themselves on or near the substrate surface to take in food and oxygen from the water column. Juveniles typically burrow completely beneath the substrate surface and are pedal (foot) feeders (bringing food particles inside the shell for ingestion that adhere to the foot while it is extended outside the shell) until the structures for filter feeding are more fully developed (Yeager *et al.* 1994, pp. 200–221; Gatenby *et al.* 1996, p. 604).

Sexes in margaritiferid and unionid mussels are usually separate. Males release sperm into the water column, which females take in through their

siphons during feeding and respiration. Fertilization takes place inside the shell. The eggs are retained in the gills of the female until they develop into mature larvae called glochidia. The glochidia of most freshwater mussel species, including all eight species addressed in this rule, have a parasitic stage during which they must attach to the gills, fins, or skin of a fish to transform into a juvenile mussel. Depending on the mussel species, females release glochidia either separately, in masses known as conglutinates, or in one large mass known as a superconglutinate. The duration of the parasitic stage varies by mussel species, water temperature, and perhaps host fish species. When the transformation is complete, the juvenile mussels drop from their fish host and sink to the stream bottom where, given suitable conditions, they grow and mature into adults.

Survey Data

Recent distributions are based on surveys conducted from 1995 to 2011, and historical distributions are based on collections made prior to 1995. Historical distribution data from museum records and surveys dated between the late 1800s and 1994 are sparse, and most of these species were more than likely present throughout their respective river basins. Knowledge of historical and current distribution and abundance data were summarized from Butler 1989; Williams *et al.* 2000 (unpublished), Blalock-Herod *et al.* 2002, Blalock-Herod *et al.* 2005, Pilarczyk *et al.* 2006, and Gangloff and Hartfield 2009). These studies represent a compilation of museum records and recent status surveys conducted between 1990 and 2007. We also used various other sources to identify the historical and current locations occupied by these species. These include surveys, reports, and field notes prepared by biologists from the Alabama Department of Conservation and Natural Resources, Marion, AL; Geological Survey of Alabama, Tuscaloosa, AL; Florida Fish and Wildlife Conservation Commission, Gainesville, FL; U.S. Geological Survey, Gainesville, FL; Alabama Malacological Research Center, Mobile, AL; Troy University, Troy, AL; Appalachian State University, Boone, NC; various private consulting groups; and the U.S. Fish and Wildlife Service, Daphne, AL, and Panama City, FL. In addition, we obtained occurrence data from the collection databases of the Museum of Fluviatile Mollusks (MFM), Athearn collection; Auburn University Natural History Museum (AUNHM), Auburn, Alabama; and Florida Museum of Natural History (FLMNH), Gainesville, FL.

Assessing Status

Assessing the state of a freshwater mussel population is challenging. We looked at trends in distribution (range) and abundance (numbers), by comparing recent occurrence data to historical data. One difficulty of investigating temporal trends in these eight species is the lack of historical collection data within the drainages, particularly in the lower portion of the main channels. Athearn (1964, p. 134) noted the streams of western Florida were inadequately sampled, particularly the lower Choctawhatchee, Yellow, and the lower Escambia Rivers. Blalock-Herod *et al.* (2005, p. 2) stated that little collecting effort had been expended in the Choctawhatchee River drainage as compared to other nearby river systems like the Apalachicola and Mobile River drainages. This paucity of historical occurrence data may create the appearance of an increase in the number of localities or a larger range than historically; however, this is most likely due to increased sampling efforts. We also considered each species' relative abundance in comparison to other mussel species with which they co-occur. In addition, we relied on various published documents whose authors are considered experts on these species. These publications either described the status of these species or assigned a conservation ranking, and include Williams *et al.* 1993, Garner *et al.* 2004, Blalock-Herod *et al.* 2005, and Williams *et al.* 2008.

Most of the eight species have experienced a decline in populations and numbers of individuals within populations, but not all have experienced a decline in range. Recent, targeted surveys for the Alabama pearlshell and southern kidneyshell show a dramatic decline in historical range. The southern sandshell, Choctaw bean, narrow pigtoe, fuzzy pigtoe and tapered pigtoe still occur in much of their historical range; however, their current range is fragmented and their numbers appear to be declining.

Taxonomy, Life History, and Distribution

Alabama Pearlshell

The Alabama pearlshell (*Margaritifera marrianae,* Johnson 1983) is a medium-sized freshwater mussel known from a few tributaries of the Alabama and Escambia River drainages in south-central Alabama (Johnson 1983, pp. 299–304; Mirarchi *et al.* 2004, p. 40; Williams *et al.* 2008, pp. 98–99). The pearlshell is oblong and grows up to 95 millimeters (mm) (3.8 inches (in)) in length. The outside of the shell (periostracum) is smooth and shiny and somewhat roughened along the posterior slope. The inside of the shell (nacre) is whitish or purplish and moderately iridescent (refer to Johnson 1983 for a full description).

The Alabama pearlshell is one of five North American species in the family Margaritiferidae. The family is represented by only two genera, *Margaritifera* (Schumacher 1816) and *Cumberlandia* (Ortmann 1912). In Alabama, each genus is represented by a single species. The spectaclecase (*Cumberlandia monodonta*) occurs in the Tennessee River Basin (Williams *et al.* 2008, pp. 94–95) and the Alabama pearlshell occurs in the Escambia and Alabama River basins in lower Alabama. Prior to 1983, the Alabama pearlshell was thought to be the same species as the Louisiana pearlshell (*Margaritifera hembeli* Conrad 1838) (Simpson 1914; Clench and Turner 1956), a species now considered endemic to central Louisiana.

The Alabama pearlshell typically inhabits small headwater streams with mixed sand and gravel substrates, occasionally in sandy mud, with slow to moderate current. Very little is known about the life-history requirements of this species. However, Shelton (1995, p. 5 unpub. data) suggests that the Alabama pearlshell, as opposed to the Louisiana pearlshell, which occurs in large colonies, typically occurs in low numbers. The Alabama pearlshell is also believed to occur in male-female pairs. Of the 68 Alabama pearlshell observed by Shelton (1995, p. 5 unpub. data), 85 percent occurred in pairs. Males were always located upstream of the females and were typically not more than 1 meter (m) apart, and juveniles were usually found just a few inches apart. The species is believed to be a long-term brooder, where gravid females have been observed in December. The host fish and other aspects of its life history are currently unknown.

Historically, the Alabama pearlshell occurred in portions of the Escambia River drainage, and has also been reported from two systems in the Alabama River drainage. The Alabama pearlshell's known historical and current occurrences, by water body and county, are shown in Table 1 below.

TABLE 1—KNOWN HISTORICAL AND CURRENT OCCURRENCES OF ALABAMA PEARLSHELL

Water body	Drainage	County	State	Historical or current
Big Flat Creek	Alabama	Monroe	AL	Historical and Current.
Brushy Creek	Alabama	Monroe	AL	Historical.
Limestone Creek	Alabama	Monroe	AL	Historical.
Amos Mill Creek	Escambia	Conecuh	AL	Current.
Autrey Creek	Escambia	Conecuh	AL	Historical.
Beaver Creek	Escambia	Conecuh	AL	Historical.
Bottle Creek	Escambia	Conecuh	AL	Historical and Current.
Brushy Creek	Escambia	Conecuh	AL	Historical.
Burnt Corn Creek	Escambia	Conecuh	AL	Historical and Current.
Horse Creek	Escambia	Crenshaw	AL	Historical.
Hunter Creek	Escambia	Conecuh	AL	Historical and Current.
Jordan Creek	Escambia	Conecuh	AL	Historical and Current.
Little Cedar Creek	Escambia	Conecuh	AL	Historical and Current.
Murder Creek	Escambia	Conecuh	AL	Historical.
Otter Creek	Escambia	Conecuh	AL	Historical and Current.
Sandy Creek	Escambia	Conecuh	AL	Historical and Current.

The Amos Mill population, discovered in 2010, represents a new record, and possibly the only known surviving population in the Sepulga River drainage. The Burnt Corn and Otter Creek populations reaffirm historical records that had not been reported in nearly 30 years. Two of the Sandy Creek locations, discovered in 2011, are new populations. Since the late 1990's, more than 70 locations within the Alabama River Basin were surveyed for mollusks (McGregor *et al.* 1999, pp. 13–14; Powell and Ford 2010 pers. obs.; Buntin 2011 pers. comm.; Fobian 2011 pers. comm.), 35 of which were located in the Limestone and Big Flat Creek drainages, and no live Alabama pearlshell were reported. The last documented occurrence in Big Flat Creek was a fresh dead individual collected in 1995 (Shelton 1995, p. 3 unpub. data), and the last reported occurrence in the Limestone Creek drainage was 1974 where Williams (2009 pers. comm.) reported it as common. Despite numerous visits, the pearlshell has not been collected in this system since 1974. A fresh dead individual, collected by Shelton (1998), represents the most recent record from the Big Flat Creek drainage.

Recent data suggest that, of the nine remaining populations, the largest populations may occur in Little Cedar and Otter Mill Creeks. In 2011, Fobian and Pritchett reported new populations at two locations in an unnamed tributary to Sandy Creek. Although this is not the first report from the Sandy Creek basin, it is, however, the first for the two unnamed tributaries. In 2010, Buntin and Fobian (2011 pers. comm.) reported 10 live individuals from Otter Creek. This is the first time since 1981 that the pearlshell has been reported from this drainage. Also in 2010, Powell and Ford reported 3 individuals, and several relic shells, from Amos Mill Creek, in Escambia County, AL. This is the first report of the pearlshell from this drainage, and county, and the first live individual from the Sepulga River system in nearly 50 years. Little Cedar Creek supported good numbers of Alabama pearlshell in the late 1990's (54 individuals reported in 1998). However, during a qualitative search of the same area in 2005, only two live pearlshell were found (Powell 2005 pers. obs.), and in 2006, three live pearlshells were observed (Johnson 2006 in litt.). Live Alabama pearlshell have not been observed in Hunter Creek since 1998, when eight live individuals were reported (Shelton 1998 pers. comm.). During two visits to the stream in 1999, Shelton found no evidence of the species (Shelton 1999 in litt.), and reported high levels of sedimentation. However, in 2005 the shells of three fresh dead Alabama pearlshells were reported from Hunter Creek, indicating the persistence of the species in that drainage (Powell, pers. obs. 2005).

Evidence suggests that much of the rangewide decline of this species has occurred within the past few decades. Specific causes of the decline and disappearance of the Alabama pearlshell from historical stream localities are unknown. However, they are likely related to past and present land use patterns. Many of the small streams historically inhabited by the Alabama pearlshell are impacted to various degrees by nonpoint-source pollution.

Round Ebonyshell

The round ebonyshell (*Fusconaia rotulata,* Wright 1899) is a medium-sized freshwater mussel endemic to the Escambia River drainage in Alabama and Florida (Williams *et al.* 2008, p. 320). The round ebonyshell is round to oval in shape and reaches about 70 mm (2.8 in.) in length. The shell is thick and the outside is smooth and dark brown to black in color. The shell interior is white to silvery and iridescent (Williams and Butler 1994, p. 61; Williams *et al.* 2008, p. 319). The round ebonyshell was originally described by B. H. Wright in 1899 and placed in the genus *Unio.* Simpson (1900) reexamined the type specimen and assigned it to the genus *Obovaria.* Based on shell characters, Williams and Butler (1994, p. 61) recognized it as clearly a species of the genus *Fusconaia,* and its placement in the genus is supported genetically (Lydeard *et al.* 2000, p. 149).

Very little is known about the habitat requirements or life history of the round ebonyshell. It occurs typically in stable substrates of sand, small gravel, or sandy mud in slow to moderate current. It is believed to be a short-term brooder, and gravid females have been observed in the spring and summer. The fish host(s) for the round ebonyshell is currently unknown (Williams *et al.* 2008, p. 320).

The round ebonyshell is known only from the main channel of the Escambia-Conecuh River and is the only mussel species endemic to the drainage (Williams *et al.* 2008, p. 320). Due to recent survey data, its known range was extended downstream the Escambia River to near Mystic Springs in Florida (Shelton *et al.* 2007, p. 9 unpub. data), and upstream the Conecuh River to just above the Covington County line in Alabama (Williams *et al.* 2008, p. 320). The round ebonyshell's known historical and current occurrences, by water body and county, are shown in Table 2 below.

TABLE 2—KNOWN HISTORICAL AND CURRENT OCCURRENCES OF THE ROUND EBONYSHELL

Water body	Drainage	County	State	Historical or current
Conecuh River	Escambia	Escambia, Covington	AL	Historical and Current.
Escambia River	Escambia	Escambia, Santa Rosa	FL	Historical and Current.

The round ebonyshell has one of the most restricted distributions of any North American unionid (Williams and Butler 1994, p. 61). Its current range (based on live individuals and shell material) is confined to approximately 120 km (75 mi) of river channel. The round ebonyshell is also extremely rare (Williams *et al.* 2008, p. 320). Researchers collected a total of three live individuals during a 2006 status survey (Shelton *et al.* 2007, pp. 8–10 unpub. data). At stations where the species was present, roughly 950 mussels were collected for every 1 round ebonyshell. Its limited distribution and small population size makes round ebonyshell particularly vulnerable to catastrophic events such as droughts, flood scour, and contaminant spills. Due to its limited distribution and rarity, Garner *et al.* (2004, p. 56) considered the round ebonyshell vulnerable to extinction, and classified it as a species of highest conservation concern in Alabama. Williams *et al.* (1993, p. 11) considered the round ebonyshell as endangered throughout its range.

Southern Sandshell

The southern sandshell (*Hamiota australis,* Simpson 1900) is a medium-sized freshwater mussel known from the Escambia River drainage in Alabama, and the Yellow and Choctawhatchee River drainages in Alabama and Florida (Williams *et al.* 2008, p. 338). The southern sandshell is elliptical in shape and reaches about 83 mm (2.3 in.) in length. Its shell is smooth and shiny, and greenish in color in young specimens, becoming dark greenish brown to black with age, with many variable green rays. The shell interior is bluish white and iridescent. Sexual dimorphism is present as a slight inflation of the posterioventral shell margin of females (Williams and Butler 1994, p. 97; Williams *et al.* 2008, p. 337). The southern sandshell (*Hamiota australis*) was originally described by C. T. Simpson (1900) as *Lampsilis australis.* Heard (1979), however, designated it as a species of *Villosa.* It was placed in the genus *Hamiota* by Roe and Hartfield (2005, pp. 1–3) who confirmed earlier published suggestions by Fuller and Bereza (1973, p. 53) and O'Brien and Brim Box (1999, pp. 135–136) that this species and three others of the genus *Lampsilis* represent a distinct genus. This separation from other *Lampsilis* is supported genetically (Roe *et al.* 2001, p. 2230). The new genus, *Hamiota,* is distinguished based on several characters including unique shape and placement of the marsupia (where females brood developing larvae), and production of a single large conglutinate, termed a superconglutinate.

The southern sandshell is typically found in small creeks and rivers in stable substrates of sand or mixtures of sand and fine gravel, with slow to moderate current. It is a long-term brooder, and females are gravid from late summer or autumn to the following spring (Williams *et al.* 2008, p. 338). The southern sandshell is one of only four species that produce a superconglutinate to attract a host. A superconglutinate is a mass that mimics the shape, coloration, and movement of a fish and is produced by the female mussel to hold the glochidia (larval mussels) from one year's reproductive effort (Haag *et al.* 1995, p. 472). After release, the superconglutinate is tethered to the female mussel by a mucus strand, and it appears to dart and swim in the current. Although the fish host for the southern sandshell has not been identified, it likely uses predatory sunfishes such as basses, like other *Hamiota* species (Haag *et al.* 1995, p. 475; O'Brien and Brim Box 1999, p. 134; Blalock-Herod *et al.* 2002, p. 1885).

The southern sandshell is endemic to the Escambia River drainage in Alabama, and the Yellow and Choctawhatchee River drainages in Alabama and Florida (Blalock–Herod *et al.* 2002, pp. 1882, 1884). The southern sandshell's known historical and current occurrences, by water body and county, are shown in Table 3 below.

TABLE 3—KNOWN HISTORICAL AND CURRENT OCCURRENCES OF THE SOUTHERN SANDSHELL

Water body	Drainage	County	State	Historical or current
Alligator Creek	Choctawhatchee	Washington	FL	Historical.
Bruce Creek	Choctawhatchee	Walton	FL	Current.
Choctawhatchee River	Choctawhatchee	Geneva	AL	Historical.
Choctawhatchee River	Choctawhatchee	Holmes, Dale	FL, AL	Historical and Current.
Corner Creek	Choctawhatchee	Geneva	AL	Current.
Double Bridges Creek	Choctawhatchee	Coffee	AL	Current.
East Fork Choctawhatchee R.	Choctawhatchee	Henry	AL	Historical and Current.
East Fork Choctawhatchee R.	Choctawhatchee	Dale	AL	Historical.
Eightmile Creek	Choctawhatchee	Walton, Geneva	FL, AL	Current.
Flat Creek	Choctawhatchee	Geneva	AL	Current.
Holmes Creek	Choctawhatchee	Holmes	FL	Historical.
Jordan Creek	Choctawhatchee	Conecuh	AL	Current.
Limestone Creek	Choctawhatchee	Walton	FL	Historical.
Little Choctawhatchee River	Choctawhatchee	Dale, Houston	AL	Historical.
Natural Bridge Creek	Choctawhatchee	Geneva	AL	Current.
Patsaliga Creek	Choctawhatchee	Crenshaw	AL	Current.
Pauls Creek	Choctawhatchee	Barbour	AL	Current.
Pea Creek (Barbour Co.)	Choctawhatchee	Barbour	AL	Historical and Current.
Pea Creek (Dale Co.)	Choctawhatchee	Dale	AL	Historical.
Pea River	Choctawhatchee	Geneva, Barbour	AL	Historical.
Pea River	Choctawhatchee	Coffee, Dale, Pike	AL	Historical and Current.
Sikes Creek	Choctawhatchee	Barbour	AL	Current.

TABLE 3—KNOWN HISTORICAL AND CURRENT OCCURRENCES OF THE SOUTHERN SANDSHELL—Continued

Water body	Drainage	County	State	Historical or current
Tenmile Creek	Choctawhatchee	Holmes	FL	Historical.
West Fork Choctawhatchee R.	Choctawhatchee	Barbour, Dale	AL	Historical and Current.
Whitewater Creek	Choctawhatchee	Coffee	AL	Historical.
Wrights Creek	Choctawhatchee	Holmes	FL	Current.
Burnt Corn Creek	Escambia	Escambia, Conecuh	AL	Historical.
Conecuh River	Escambia	Pike	AL	Current.
Conecuh River	Escambia	Covington, Crenshaw	AL	Historical.
Little Patsaliga Creek	Escambia	Crenshaw	AL	Historical.
Sepulga River	Escambia	Conecuh	AL	Historical.
Five Runs Creek	Yellow	Covington	AL	Historical and Current.
Pond Creek	Yellow	Okaloosa, Walton	FL	Historical.
Shoal River	Yellow	Okaloosa	FL	Current.
Yellow River	Yellow	Okaloosa	FL	Current.
Yellow River	Yellow	Covington	AL	Historical and Current.

The southern sandshell persists in its historical range; however, its range is fragmented and numbers appear to be declining (Williams *et al.* 2008, p. 338). The number of locations in the Escambia drainage known to support the species has declined. It is known from a total of nine locations, however, only three are recent occurrences. Also, its numbers are very low; a total of four individuals (live and shell material) have been collected in the Escambia drainage since 1995. In the Yellow River drainage, the number of locations known to support southern sandshell populations has declined from a total of 15 to 10 currently. The number of locations known to support the species in the Choctawhatchee River drainage has declined from 44 to 25 currently; and it may be extirpated from central portions of the Choctawhatchee River main channel and from some of its tributaries. Sedimentation could be one factor contributing to its decline. In order to reproduce, the southern sandshell must attract a site-feeding fish to its superconglutinate lure. Waters clouded by silt and sediment would reduce the chance of this interaction occurring (Haag *et al.* 1995, p. 475).

The southern sandshell is classified as a species of highest conservation concern in Alabama by Garner *et al.* (2004, p. 60), and considered threatened throughout its range by Williams *et al.* (1993, p. 11).

Southern Kidneyshell

The southern kidneyshell (*Ptychobranchus jonesi,* van der Schalie 1934) is a medium-sized freshwater mussel known from the Escambia and Choctawhatchee River drainages in Alabama and Florida, and the Yellow River drainage in Alabama (Williams *et al.* 2008, p. 624). The southern kidneyshell is elliptical and reaches about 72 mm (2.8 in.) in length. Its shell is smooth and shiny, and greenish yellow to dark brown or black in color, sometimes with weak rays. The shell interior is bluish white with some iridescence (Williams and Butler 1994, p. 126; Williams *et al.* 2008, p. 624). The southern kidneyshell was described by H. van der Schalie (1934) as *Lampsilis jonesi.* Following the examination of gills of gravid females, Fuller and Bereza (1973, p. 53) determined it belonged in the genus *Ptychobranchus.* When gravid, the marsupial gills form folds along the outer edge, a characteristic unique to the genus *Ptychobranchus* (Williams *et al.* 2008, p. 609).

Very little is known about the habitat requirements or life history of the southern kidneyshell. It is typically found in medium creeks to medium rivers in firm sand substrates with slow to moderate current (Williams *et al.* 2008, pp. 625). A recent status survey in the Choctawhatchee basin in Alabama found its preferred habitat to be stable substrates near bedrock outcroppings (Gangloff and Hartfield 2009, p. 25). The southern kidneyshell is believed to be a long-term brooder, with females gravid from autumn to the following spring or summer. Preliminary reproductive studies found that females release their glochidia in small conglutinates that are bulbous at one end and tapered at the other (Alabama Aquatic Biodiversity Center 2006 unpub. data). Host fish for the southern kidneyshell are currently unknown; however, darters serve as primary glochidial hosts to other members of the genus *Ptychobranchus* (Luo 1993, p. 16; Haag and Warren 1997, p. 580).

The southern kidneyshell is endemic to the Escambia, Choctawhatchee, and Yellow River drainages in Alabama and Florida (Williams *et al.* 2008, p. 624), but is currently known only from the Choctawhatchee drainage. The southern kidneyshell's known historical and current occurrences, by water body and county, are shown in Table 4 below.

TABLE 4—KNOWN HISTORICAL AND CURRENT OCCURRENCES OF THE SOUTHERN KIDNEYSHELL

Water body	Drainage	County	State	Historical or current
Choctawhatchee River	Choctawhatchee	Dale	AL	Historical and Current.
Choctawhatchee River	Choctawhatchee	Walton, Geneva	FL, AL	Historical.
East Fork Choctawhatchee R	Choctawhatchee	Dale, Henry	AL	Historical.
Flat Creek	Choctawhatchee	Geneva	AL	Historical.
Holmes Creek	Choctawhatchee	Washington	AL	Current.
Pea River	Choctawhatchee	Geneva	AL	Current.
Pea River	Choctawhatchee	Pike, Barbour	AL	Historical.
Pea River	Choctawhatchee	Coffee, Dale	AL	Historical and Current.
Sandy Creek	Choctawhatchee	Walton	FL	Historical.
West Fork Choctawhatchee R	Choctawhatchee	Barbour	AL	Historical and Current.
West Fork Choctawhatchee R	Choctawhatchee	Dale	AL	Historical.
Whitewater Creek	Choctawhatchee	Coffee	AL	Historical.

TABLE 4—KNOWN HISTORICAL AND CURRENT OCCURRENCES OF THE SOUTHERN KIDNEYSHELL—Continued

Water body	Drainage	County	State	Historical or current
Burnt Corn Creek	Escambia	Escambia	AL	Historical.
Conecuh River	Escambia	Covington, Crenshaw	AL	Historical.
Jordan Creek	Escambia	Conecuh	AL	Historical.
Little Patsaliga Creek	Escambia	Crenshaw	AL	Historical.
Patsaliga Creek	Escambia	Covington, Crenshaw	AL	Historical.
Sepulga River	Escambia	Conecuh	AL	Historical.
Hollis Creek	Yellow	Covington	AL	Historical.

Since 1995, the southern kidneyshell has been detected at only 10 locations within the Choctawhatchee River drainage. The species appears to have been common historically (In 1964, H. D. Athearn collected 98 individuals at one site on the West Fork Choctawhatchee), but it is currently considered one of the most imperiled species in the United States (Blalock-Herod *et al.* 2005, p. 16; Williams *et al.* 2008, p. 625). In addition to a reduction in range, its population numbers also appear to be very low. A 2006–2007 status survey in the Alabama portions of the Choctawhatchee basin found the southern kidneyshell was extremely rare. A total of 13 were encountered alive, and the species comprised less than 0.3 percent of the total mussel assemblage (Gangloff and Hartfield 2009, p. 249). It is classified as a species of highest conservation concern in Alabama by Garner *et al.* (2004, p. 83), and considered threatened throughout its range by Williams *et al.* (1993, p. 14)

Choctaw Bean

The Choctaw bean (*Villosa choctawensis,* Athearn 1964) is a small freshwater mussel known from the Escambia, Yellow, and Choctawhatchee River drainages of Alabama and Florida. The oval shell of the Choctaw bean reaches about 49 mm (2.0 in.) in length, and is shiny and greenish-brown in color, typically with thin green rays, though the rays are often obscured in darker individuals. The shell interior color varies from bluish white to smoky brown with some iridescence (Williams and Butler 1994, p. 100; Williams *et al.* 2008, p. 758). The sexes are dimorphic, with females truncate or widely rounded posteriorly, and sometimes slightly more inflated (Athearn 1964, p. 137). The Choctaw bean was originally described by H. D. Athearn in 1964.

Very little is known about the habitat requirements or life history of the Choctaw bean. It is found in large creeks and small rivers in stable substrates of silty sand to sandy clay with moderate current. It is believed to be a long-term brooder, with females gravid from late summer or autumn to the following summer. Its fish host is currently unknown (Williams *et al.* 2008, p. 758).

The Choctaw bean is known from the Escambia, Yellow, and Choctawhatchee River drainages in Alabama and Florida (Williams *et al.* 2008, p. 758). The Choctaw bean's known historical and current occurrences, by water body and county, are shown in the table below.

TABLE 5—KNOWN HISTORICAL AND CURRENT OCCURRENCES FOR THE CHOCTAW BEAN

Water body	Drainage	County	State	Historical or current
Big Sandy Creek	Choctawhatchee	Bullock	AL	Current.
Bruce Creek	Choctawhatchee	Walton	FL	Current.
Choctawhatchee River	Choctawhatchee	Dale	AL	Current.
Choctawhatchee River	Choctawhatchee	Holmes	AL	Historical.
Choctawhatchee River	Choctawhatchee	Washington, Geneva	FL, AL	Historical and Current.
Claybank Creek	Choctawhatchee	Dale	AL	Current.
East Fork Choctawhatchee R.	Choctawhatchee	Barbour	AL	Current.
East Fork Choctawhatchee R.	Choctawhatchee	Henry	AL	Historical and Current.
Flat Creek	Choctawhatchee	Geneva	AL	Current.
Holmes Creek	Choctawhatchee	Washington	FL	Current.
Judy Creek	Choctawhatchee	Dale	AL	Current.
Limestone Creek	Choctawhatchee	Walton	FL	Current.
Paul's Creek	Choctawhatchee	Barbour	AL	Current.
Pea Creek	Choctawhatchee	Barbour	AL	Current.
Pea River	Choctawhatchee	Coffee	AL	Current.
Pea River	Choctawhatchee	Geneva, Pike, Barbour	AL	Historical and Current.
West Fork Choctawhatchee R.	Choctawhatchee	Dale	AL	Current.
West Fork Choctawhatchee R.	Choctawhatchee	Pike, Barbour	AL	Historical and Current.
Whitewater Creek	Choctawhatchee	Coffee	AL	Current.
Wrights Creek	Choctawhatchee	Holmes	FL	Current.
Conecuh River	Escambia	Crenshaw, Pike	AL	Current.
Escambia River	Escambia	Santa Rosa	FL	Historical.
Escambia River	Escambia	Escambia	FL	Historical and Current.
Little Patsaliga Creek	Escambia	Crenshaw	AL	Historical.
Murder Creek	Escambia	Conecuh	AL	Historical.
Olustee Creek	Escambia	Pike	AL	Current.
Patsaliga Creek	Escambia	Crenshaw	AL	Historical and Current.
Pigeon Creek	Escambia	Butler	AL	Historical.
Five Runs Creek	Yellow	Covington	AL	Historical and Current.
Yellow River	Yellow	Okaloosa, Covington	FL, AL	Historical and Current.

The Choctaw bean persists in most of its historical range. However, its populations are fragmented and its numbers are low, particularly in the Escambia and Yellow drainages. The number of locations in the Escambia River drainage known to support the species has declined from a total of 13 to 6 currently. Also, its numbers within the drainage are very low; a total of only 10 individuals have been collected since 1995. The number of locations known to support the Choctaw bean in the Yellow River drainage has declined from a total of 7 to 4 currently. Since 1995, a total of 28 individuals have been collected within the Yellow drainage. In the Choctawhatchee River drainage, the Choctaw bean continues to persist in most areas. It is known from a total of 40 locations throughout the drainage, 34 of which are recent occurrences.

Heard assessed the status of the Choctaw bean in 1975 (p. 17) and stated that it was formerly abundant in the main channel of the Choctawhatchee River in Florida, but has become quite rare. Garner *et al.* (2004, p. 103) considered the Choctaw bean vulnerable to extinction due to its limited distribution and habitat degradation, and classified it as a species of high conservation concern in Alabama. Williams *et al.* (1993, p. 14) considered the Choctaw bean as threatened throughout its range.

Tapered Pigtoe

The tapered pigtoe (*Fusconaia burkei,* Walker 1922) is a small to medium-sized mussel endemic to the Choctawhatchee river drainage in Alabama and Florida (Williams *et al.* 2008, p. 296). The elliptical to subtriangular shell of the tapered pigtoe reaches about 75 mm (3.0 in.) in length, and is sculptured with plications (parallel ridges) that radiate from the posterior ridge. In younger individuals, the shell exterior is greenish brown to yellowish brown in color, occasionally with faint dark-green rays, and with pronounced sculpture often covering the entire shell; in older individuals the shell becomes dark brown to black with age and sculpture is often subtle. The shell interior is bluish white (Williams *et al.* 2008, p. 295). The tapered pigtoe was described by B. Walker (1922) (in Ortmann and Walker) as *Quincuncina burkei,* a new genus and species (the genus description was done by A. E. Ortmann and the species description by Walker). In the description, Ortmann noted the species had gill features characteristic of the genus *Fusconaia;* however, this was dismissed based on the presence of sculpture on the shell. Genetic analysis by Lydeard *et al.* (2000, p. 149) determined it to be a sister taxon to *Fusconaia escambia.* Based on genetic results and soft anatomy similarity, Williams *et al.* (2008, p. 296) recognized *burkei* as belonging to the genus *Fusconaia.*

The tapered pigtoe is found in small to medium rivers in stable substrates of sand, small gravel, or sandy mud, with slow to moderate current (Williams *et al.* 2008, p. 296). The reproductive biology of the tapered pigtoe was studied by White *et al.* (2008). It is a short-term brooder, with females gravid from mid-March to May. The blacktail shiner (*Cyprinella venusta*) was found to serve as a host for tapered pigtoe glochidia in the preliminary host trial (White *et al.* 2008, p. 122–123).

The tapered pigtoe is endemic to the Choctawhatchee River drainage in Alabama and Florida (Williams *et al.* 2008, p. 296). Its historical and current distribution includes several oxbow lakes in Florida; some with a flowing connection to main channel. The tapered pigtoe's known historical and current occurrences, by water body and county, are shown in the table below.

TABLE 6—KNOWN HISTORICAL AND CURRENT OCCURRENCES FOR THE TAPERED PIGTOE

Water body	Drainage	County	State	Historical or current
Bear Creek	Choctawhatchee	Houston	AL	Historical.
Big Creek	Choctawhatchee	Barbour	AL	Current.
Blue Creek	Choctawhatchee	Holmes	FL	Current.
Bruce Creek	Choctawhatchee	Walton	FL	Current.
Choctawhatchee River	Choctawhatchee	Dale	AL	Historical.
Choctawhatchee River	Choctawhatchee	Washington, Walton, Holmes.	FL	Historical and Current.
Cowford Island channel	Choctawhatchee	Washington	FL	Historical and Current.
Crawford Lake	Choctawhatchee	Washington	FL	Historical.
Crews Lake	Choctawhatchee	Washington	FL	Current.
East Fork Choctawhatchee R.	Choctawhatchee	Dale	AL	Historical.
East Fork Choctawhatchee R.	Choctawhatchee	Henry	AL	Historical and Current.
East Pittman Creek	Choctawhatchee	Holmes	FL	Historical and Current.
Eightmile Creek	Choctawhatchee	Walton, Geneva	FL, AL	Current.
Flat Creek	Choctawhatchee	Geneva	AL	Historical and Current.
Holmes Creek	Choctawhatchee	Washington, Holmes, Jackson.	FL	Historical and Current.
Horseshoe Lake	Choctawhatchee	Washington	FL	Historical.
Hurricane Creek	Choctawhatchee	Geneva	AL	Historical.
Judy Creek	Choctawhatchee	Dale	AL	Current.
Limestone Creek	Choctawhatchee	Walton	FL	Historical and Current.
Little Choctawhatchee River	Choctawhatchee	Dale, Houston	AL	Historical.
Panther Creek	Choctawhatchee	Houston	AL	Historical.
Parrot Creek	Choctawhatchee	Holmes	FL	Current.
Paul's Creek	Choctawhatchee	Barbour	AL	Current.
Pea Creek	Choctawhatchee	Barbour	AL	Current.
Pea River	Choctawhatchee	Dale, Barbour	AL	Historical.
Pea River	Choctawhatchee	Coffee, Pike	AL	Historical and Current.
Pine Log Creek	Choctawhatchee	Washington, Bay	FL	Current.
Sandy Creek	Choctawhatchee	Walton	FL	Current.
Tenmile Creek	Choctawhatchee	Holmes	FL	Historical.
West Fork Choctawhatchee R.	Choctawhatchee	Dale, Pike	AL	Historical.
West Fork Choctawhatchee R.	Choctawhatchee	Barbour	AL	Historical and Current.
West Pittman Creek	Choctawhatchee	Holmes	FL	Current.

TABLE 6—KNOWN HISTORICAL AND CURRENT OCCURRENCES FOR THE TAPERED PIGTOE—Continued

Water body	Drainage	County	State	Historical or current
Wrights Creek	Choctawhatchee	Holmes	FL	Current.

The tapered pigtoe appears to be absent from portions of its historical range and found only in isolated locations (Blalock-Herod *et al.* 2005, p. 17). The species is known from a total of 60 locations within the Choctawhatchee River drainage. It was not detected at 11 historical sites examined during recent status surveys (9 additional historic locations were not examined). Many of those historic occurrences are in the middle section of the drainage, and the species appears to be declining in that portion of its range. The tapered pigtoe continues to persist in isolated locations, mainly in the Choctawhatchee River main channel in Florida and in the headwaters in Alabama.

Due to its limited distribution, rarity, and habitat degradation, Garner *et al.* (2004, p. 105) consider the tapered pigtoe vulnerable to extinction, and classified it as a species of high conservation concern in Alabama. The tapered pigtoe is considered threatened throughout its range by Williams *et al.* (1993, p. 14).

Narrow Pigtoe

The narrow pigtoe (*Fusconaia escambia,* Clench and Turner 1956) is a small to medium-sized mussel known from the Escambia River drainage in Alabama and Florida, and the Yellow River drainage in Florida. The subtriangular to squarish shaped shell of the narrow pigtoe reaches about 75 mm (3.0 in.) in length. The shell is moderately thick and is usually reddish brown to black in color. The shell interior is white to salmon in color with iridescence near the posterior margin (Williams and Butler 1994, p. 77; Williams *et al.* 2008, p. 316). The narrow pigtoe was originally described by W.J. Clench and R.D. Turner in 1956.

Little is known about the habitat requirements or life history of the narrow pigtoe. It is found in creeks and small to medium rivers in stable substrates of sand, sand and gravel, or silty sand, with slow to moderate current. It is believed to be a short-term brooder, with females gravid during spring and summer. The host fish for the narrow pigtoe is currently unknown (Williams *et al.* 2008, p. 317). The species is somewhat unusual in that it does tolerate a small reservoir environment (Williams 2009 pers. comm.). Reproducing narrow pigtoe populations were found recently in some areas of Point A Lake and Gantt Lake reservoirs.

The narrow pigtoe is endemic to the Escambia River drainage in Alabama and Florida, and to the Yellow River drainage in Florida (Williams *et al.* 2008, p. 317). The narrow pigtoe's known historical and current occurrences, by water body and county, are shown in Table 7 below.

TABLE 7—KNOWN HISTORICAL AND CURRENT OCCURRENCES FOR THE NARROW PIGTOE

Water body	Drainage	County	State	Historical or current
Bottle Creek	Escambia	Conecuh	AL	Historical.
Burnt Corn Creek	Escambia	Conecuh	AL	Current.
Conecuh River	Escambia	Pike	AL	Current.
Conecuh River	Escambia	Escambia, Covington, Crenshaw.	AL	Historical and Current.
Escambia River	Escambia	Escambia, Santa Rosa	FL	Historical and Current.
Murder Creek	Escambia	Conecuh	AL	Historical.
Panther Creek	Escambia	Butler	AL	Historical.
Patsaliga Creek	Escambia	Covington, Crenshaw	AL	Current.
Persimmon Creek	Escambia	Butler	AL	Current.
Three Run Creek	Escambia	Butler	AL	Current.
Yellow River	Yellow	Santa Rosa	FL	Historical.
Yellow River	Yellow	Okaloosa	FL	Historical and Current.

The narrow pigtoe still occurs in much of its historic range, but may be extirpated from localized areas. In the Escambia drainage, the number of locations that support the species has declined from 32 to 24 currently. It was not detected at two historical sites examined recently (four historical sites were not examined) in the drainage. In the Yellow drainage, the number of sites supporting narrow pigtoe populations has declined from four to three currently. The species is rare in the Yellow River drainage; a total of only 23 individuals from 3 locations have been collected since 1995.

Garner *et al.* (2004, p. 55) considered the narrow pigtoe vulnerable to extinction because of its limited distribution, rarity, and susceptibility to habitat degradation, and classified it as a species of highest conservation concern in Alabama. Williams *et al.* (1993, p. 11) considered the narrow pigtoe threatened throughout its range.

Fuzzy Pigtoe

The fuzzy pigtoe (*Pleurobema strodeanum,* Wright (1898) is a small to medium-sized mussel known from the Escambia, Yellow, and Choctawhatchee River drainages in Alabama and Florida (Williams *et al.* 2008, p. 574). The fuzzy pigtoe is oval to subtriangular and reaches about 75 mm (3.0 in.) in length. Its shell surface is usually dark brown to black in color. The shell interior is bluish white, with slight iridescence near the margin (Williams and Butler 1994, p. 90; Williams *et al.* 2008, p. 573). The fuzzy pigtoe was described by B. H. Wright (1898) as *Unio strodeanus.* Simpson (1900) reexamined the type specimen and reassigned it to the genus *Pleurobema.* The uniqueness of the fuzzy pigtoe has been verified by Williams *et al.* (2008, p. 574).

The fuzzy pigtoe is found in medium creeks and rivers in stable substrates of sand and silty sand with slow to moderate current. The reproductive biology of the fuzzy pigtoe was studied by White *et al.* (2008, p. 122–123). It is a short-term brooder, with females

gravid from mid-March to May. The blacktail shiner (*Cyprinella venusta*) was found to serve as a host for fuzzy pigtoe glochidia in the preliminary study trial.

The fuzzy pigtoe is endemic to the Escambia, Yellow, and Choctawhatchee River drainages in Alabama and Florida (Williams *et al.* 2008, p. 574). The fuzzy pigtoe's known historical and current occurrences, by water body and county, are shown in Table 8 below.

TABLE 8—KNOWN HISTORICAL AND CURRENT OCCURRENCES OF THE FUZZY PIGTOE

Water body	Drainage	County	State	Historical or current
Big Sandy Creek	Choctawhatchee	Bullock	AL	Current.
Blue Creek	Choctawhatchee	Holmes	FL	Current.
Choctawhatchee River	Choctawhatchee	Washington, Walton, Holmes, Geneva, Dale.	FL, AL	Historical and Current.
Claybank Creek	Choctawhatchee	Dale	AL	Current.
East Fork Choctawhatchee R.	Choctawhatchee	Dale	AL	Current.
East Fork Choctawhatchee R.	Choctawhatchee	Henry	AL	Historical and Current.
East Pittman Creek	Choctawhatchee	Holmes	FL	Current.
Eightmile Creek	Choctawhatchee	Walton, Geneva	FL, AL	Current.
Flat Creek	Choctawhatchee	Geneva	AL	Current.
Holmes Creek	Choctawhatchee	Holmes, Jackson	FL	Current.
Holmes Creek	Choctawhatchee	Washington	FL	Historical and Current.
Hurricane Creek	Choctawhatchee	Geneva	AL	Current.
Judy Creek	Choctawhatchee	Dale	AL	Current.
Limestone Creek	Choctawhatchee	Walton	FL	Historical.
Little Choctawhatchee River	Choctawhatchee	Dale, Houston	AL	Historical.
Panther Creek	Choctawhatchee	Houston	AL	Historical.
Pauls Creek	Choctawhatchee	Barbour	AL	Current.
Pea Creek	Choctawhatchee	Barbour	AL	Current.
Pea River	Choctawhatchee	Pike, Barbour	AL	Current.
Pea River	Choctawhatchee	Geneva, Coffee, Dale	AL	Historical and Current.
Sandy Creek	Choctawhatchee	Walton	FL	Current.
Steep Head Creek	Choctawhatchee	Coffee	AL	Current.
unnamed trib. to Lindsey Cr.	Choctawhatchee	Barbour	AL	Current.
Walnut Creek	Choctawhatchee	Pike	AL	Current.
West Fork Choctawhatchee R.	Choctawhatchee	Dale, Barbour	AL	Historical and Current.
West Pittman Creek	Choctawhatchee	Holmes	FL	Current.
Wrights Creek	Choctawhatchee	Holmes	FL	Historical and Current.
Bottle Creek	Escambia	Conecuh	AL	Historical and Current.
Burnt Corn Creek	Escambia	Conecuh	AL	Historical and Current.
Conecuh River	Escambia	Escambia, Covington, Crenshaw, Pike.	AL	Historical and Current.
Escambia River	Escambia	Escambia, Santa Rosa	FL	Historical and Current.
Jordan Creek	Escambia	Conecuh	AL	Current.
Little Patsaliga Creek	Escambia	Crenshaw	AL	Historical and Current.
Mill Creek	Escambia	Pike	AL	Historical.
Murder Creek	Escambia	Conecuh	AL	Historical and Current.
Patsaliga Creek	Escambia	Crenshaw	AL	Historical and Current.
Persimmon Creek	Escambia	Butler	AL	Current.
Pigeon Creek	Escambia	Covington	AL	Historical and Current.
Sandy Creek	Escambia	Conecuh	AL	Historical.
Sepulga River	Escambia	Conecuh	AL	Historical.
Yellow River	Yellow	Covington	AL	Historical.
Yellow River	Yellow	Okaloosa	FL	Historical and Current.

Within the Escambia River drainage, the fuzzy pigtoe is historically known from a total of 38 locations. It is currently known from 20 of these locations, however, its status in the Escambia drainage is difficult to assess as 15 of the 18 remaining historical sites have not be surveyed since 1995. The fuzzy pigtoe is exceedingly rare in the Yellow River drainage, where it is known from a total of only five localities. A single individual collected in 2010 in the Florida portion of the main channel is the only recent record of the species in the drainage. Its range in the Yellow drainage has declined, and the species may no longer occur in the Alabama portions of the drainage. In the Choctawhatchee River drainage, the number of locations that support fuzzy pigtoe populations has declined from 61 to 54. At one site on Limestone Creek, a once abundant population may have disappeared: A total of 56 individuals was collected in 1988; only 3 were collected in 1993 by the same collector; and none were collected during site visits at the same location in 1996 and 2011. Although the species still occurs in much of its historic range in the drainage, it may be extirpated from localized areas.

The fuzzy pigtoe is considered vulnerable to extinction because of its limited distribution and dwindling habitat by Garner *et al.* (2004, p. 101), who classified it as a species of high conservation concern in Alabama. Williams *et al.* (1993, p. 11) considered the fuzzy pigtoe a species of special concern throughout its range.

Summary of Factors Affecting the Species

Section 4 of the Act and its implementing regulations at 50 CFR part 424, set forth the procedures for adding species to the Federal List 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.

A. The Present or Threatened Destruction, Modification, or Curtailment of Its Habitat or Range

The habitats of freshwater mussels are vulnerable to water quality degradation and habitat modification from a number of activities associated with modern civilization. The primary cause of the decline of these eight mussels has been the modification and destruction of their stream and river habitat, with sedimentation as the leading cause. Their stream habitats are subject to pollution and alteration from a variety of sources including adjacent land use activities, effluent discharges, and impoundments.

Nonpoint-source pollution from land surface runoff originates from virtually all land use activities and includes sediments, fertilizer, herbicide and pesticide residues; animal wastes; septic tank leakage and gray water discharge; and oils and greases. Current activities and land uses that can negatively affect populations of these eight mussels include unpaved road crossings, improper silviculture and agriculture practices, highway construction, housing developments, pipeline crossings, and cattle grazing. These activities can result in physical disturbance of stream substrates or the riparian zone, excess sedimentation and nutrification, decreased dissolved oxygen concentration, increased acidity and conductivity, and altered flow. Limited range and low numbers make these eight mussels vulnerable to land use changes that would result in increases in nonpoint-source pollution.

Sedimentation is one of the most significant pollution problems for aquatic organisms (Williams and Butler 1994, p. 55), and has been determined to be a major factor in mussel declines (Ellis 1936, pp. 39–40). Impacts resulting from sediments have been noted for many components of aquatic communities. For example, sediments have been shown to abrade or suffocate periphyton (organisms attached to underwater surfaces); affect respiration, growth, reproductive success, and behavior of aquatic insects and mussels; and affect fish growth, survival, and reproduction (Waters 1995, pp. 173–175). Heavy sediment loads can destroy mussel habitat, resulting in a corresponding shift in mussel fauna (Brim Box and Mossa 1999, p. 100). Excessive sedimentation can lead to rapid changes in stream channel position, channel shape, and bed elevation (Brim Box and Mossa 1999, p. 102). Sedimentation has also been shown to impair the filter feeding ability of mussels. When in high silt environments, mussels may keep their valves closed more often, resulting in reduced feeding activity (Ellis 1936, p. 30); and high amounts of suspended sediments can dilute their food source (Dennis 1984, p. 212). Increased turbidity from suspended sediment can reduce or eliminate juvenile mussel recruitment (Negus 1966, p. 525; Box and Mossa 1999, pp. 101–102). Many mussel species use visual cues to attract host fishes; such a reproductive strategy depends on clear water. For example, increased turbidity may impact the southern sandshell life cycle by reducing the chance that a sight-feeding host fish will encounter the visual display of its superconglutinate lure (Haag *et al.* 1995, p. 475; Blalock-Herod *et al.* 2002, p. 1885). If the superconglutinate is not encountered by a host within a short time period, the glochidia will become nonviable (O'Brien and Brim Box 1999, p. 133). Also, evidence suggests that conglutinates of the southern kidneyshell, once released from the female mussel, must adhere to hard surfaces in order to be seen by its fish host. If the surface becomes covered in fine sediments, the conglutinate cannot attach and is swept away (Hartfield and Hartfield 1996, p. 373).

Biologists conducting mussel surveys within the drainages have reported observations of excessive sedimentation in the streams and rivers of the three basins. While searching for the Alabama pearlshell in headwater streams of the Conecuh and Alabama drainages, D. N. Shelton (1996, pp. 1–5 in litt.) reported many streams within the study area had experienced heavy siltation, and that all species of mollusks appeared to be adversely affected. M. M. Gangloff (Gangloff and Hartfield 2009, p. 253) observed large amounts of sand and silt in the mainstem Pea and Choctawhatchee rivers during a 2006–2007 survey, and considered this a possible reason for the decline of mussels in the drainage.

In 2009–2010, The Nature Conservancy completed an inventory and prioritization of impaired sites in the Yellow River watershed in Alabama and Florida (Herrington *et al.,* in prep.). The study identified and quantified the impacts of unpaved road crossings and streambank instability and erosion within the river corridor and riparian zone, to assess impairments that could impact the five species occurring in the drainage. A total of 339 unpaved roads and approximately 209 river miles of mainstem and tributaries were assessed using standardized methods. Out of these, 409 sites ranked ''High'' or ''Moderate'' in risk of excessive sedimentation according to the Sediment Risk Index. Many of the impaired sites (149) were located upstream of known mussel locations. In addition, habitat conditions were characterized at 44 known mussel locations; the sites were scored numerically and rated as poor, fair, good, or excellent. The majority of the mussel sites were assessed to be either fair or poor. Most of these locations were within the vicinity of bridge crossings and boat ramps and several, particularly in the Shoal River in Florida, were directly downstream of highly impaired unpaved road and river corridor sites. In summary, the study found the threat of sedimentation and habitat degradation is high throughout the Yellow River watershed with over 75 percent of sites assessed exhibiting high or moderate risk, and the majority of known mussel locations impaired.

Potential sediment sources within a watershed include virtually any activity that disturbs the land surface. Current sources of sand, silt, and other sediment accumulation in south-central Alabama and western Florida stream channels include unpaved road runoff, agricultural lands, timber harvest, livestock grazing, and construction and other development activities (Williams and Butler 1994, p. 55; Bennett 2002, p. 5 and references therein; Hoehn 1998, pp. 46–47 and references therein). The Choctawhatchee, Pea, and Yellow Rivers Watershed Management Plan (CPYRWMP) and the Conecuh–Sepulga–Blackwater Rivers Watershed Protection Plan (CSBRWPP) document water quality impairments to the Alabama portions of the watersheds. Both plans identify elevated levels of sediment as one of the primary causes of impairment (CPYRWMP, p. 156; CSBRWPP, p. 110). In the Choctawhatchee and Yellow river drainages, four out of the nine streams in which sediment loads were calculated by the Geological Survey of

Alabama had significant sediment impairment (CPYRWMP, p. 157). In Alabama, runoff from unpaved roads and roadside gullies is considered the main source of sediment transported into the streams of the drainages (Bennett 2002, p. 5 and references therein; CPYRWMP, p. 145). Unpaved roads are constructed primarily of sandy materials and are easily eroded and transported to stream corridors. In addition, certain silvicultural and agricultural activities cause erosion, riparian buffer degradation, and increased sedimentation. Uncontrolled access to small streams by cattle can result in destruction of riparian vegetation, bank degradation and erosion, and localized sedimentation of stream habitats.

Land surface runoff also contributes nutrients (for example, nitrogen and phosphorus from fertilizers, sewage, and animal manure) to rivers and streams, causing them to become eutrophic. Excessive nutrient input stimulates excessive plant growth (algae, periphyton attached algae, and nuisance plants). This enhanced plant growth can cause dense mats of filamentous algae that can expose juvenile mussels to entrainment or predation and be detrimental to the survival of juvenile mussels (Hartfield and Hartfield 1996, p. 373). Excessive plant growth can also reduce dissolved oxygen in the water when dead plant material decomposes. In a review of the effects of eutrophication on mussels, Patzner and Muller (2001, p. 329) noted that stenoecious (narrowly tolerant) species disappear as waters become more eutrophic. They also refer to studies that associate increased levels of nitrate with the decline and absence of juvenile mussels (Patzner and Muller 2001, pp. 330–333). Filamentous algae may also displace certain species of fish, or otherwise affect fish–mussel interactions essential to recruitment (for example, Hartfield and Hartfield 1996, p. 373). Nutrient sources include fertilizers applied to agricultural fields and lawns, septic tanks, and municipal wastewater treatment facilities.

Because of their sedentary characteristics, mussels are extremely vulnerable to toxic effluents (Sheehan *et al.* 1989, pp. 139–140; Goudreau *et al.* 1993, pp. 216–227; Newton 2003, p. 2543). Descriptions of localized mortality have been provided for chemical spills and other discrete point-source discharges; however, rangewide decreases in mussel density and diversity may result from the more insidious effects of chronic, low-level contamination (Newton 2003, p. 2543, Newton *et al.* 2003, p. 2554). Freshwater mussel experts often report chemical contaminants as factors limiting to unionids (Richter *et al.* 1997, pp. 1081–1093). They note high sensitivity of early life stages to contaminants such as chlorine (Wang *et al.* 2007 pp. 2039–2046), metals (Keller and Zam 1991, p. 542; Jacobson *et al.* 1993, pp. 879–883), ammonia (Augspurger *et al.* 2003, pp. 2571–2574; Wang *et al.* 2007 pp. 2039–2046), and pesticides (Bringolf *et al.* 2007a,b pp. 2089–2092, pp. 2096–2099). Pesticide residues from agricultural, residential, or silvicultural activities enter streams mainly by surface runoff. Agricultural crops locally grown within the range of these mussels associated with high pesticide use include cotton, peanuts, corn, and soybeans. Chlorine, metals, and ammonia are common constituents in treated effluent from municipal and industrial wastewater treatment facilities. A total of 62 municipal and 39 industrial wastewater treatment facilities are permitted in Alabama and Florida to discharge treated effluent into surface waters of the three river drainages (FDEP 2010b; ADEM 2010c).

States maintain water-use classifications through issuance of National Pollutant Discharge Elimination System (NPDES) permits to industries, municipalities, and others that set maximum limits on certain pollutants or pollutant parameters. The Alabama Department of Environmental Management (ADEM) has designated the water use classification for most portions of the Escambia, Yellow, and Choctawhatchee Rivers as ''Fish and Wildlife'' (F&W), and a few portions (mostly lakes) as ''Swimming'' (S). The F&W designation establishes minimum water quality standards that are believed to protect existing species and water uses like fishing and recreation within the designated area, while the S classification establishes higher water quality standards that are protective of human contact with the water. The Florida Department of Environmental Protection (FDEP) classifies all three river drainages as Class III waters. The Class III designation establishes minimum water quality standards that are believed to protect species and uses such as recreation. The Choctawhatchee and Shoal Rivers are also designated as Outstanding Florida Waters (OFW) by the State of Florida. The designation prevents the discharge of pollutants, which would lower existing water quality or significantly degrade the OFW.

Section 303(d) of the Clean Water Act requires States to identify waters that do not fully support their designated use classification. These impaired water bodies are placed on the State's 303(d) list, and a total maximum daily load (TMDL) must be developed for the pollutant of concern. A TMDL is an estimate of the total load of pollutants that a segment of water can receive without exceeding applicable water quality criteria. Alabama's 303(d) list identifies a total of 25 impaired stream segments within the Escambia, Yellow, and Choctawhatchee River basins that either support populations of the eight species or that flow into streams that support them. The list identifies metals (mercury and lead), organic enrichment, pathogens, siltation, excess nutrients, or unknown toxicity as reasons for impairment (ADEM 2010a, pp. 4–8). Various potential point and non-point pollution sources are identified, such as atmospheric deposition, pasture grazing, feedlots, municipal, industrial, urban runoff, agriculture, and land development. Florida's 303(d) list identifies a total of 22 impaired stream segments within the basins that either support populations of seven of the species (the Alabama pearlshell does not occur in Florida) or that flow into streams that support them. The list identifies coliform bacteria, low dissolved oxygen (nutrients), and mercury (in fish tissue) as reasons for inclusion (FDEP 2010a, pp. 4–6).

While the negative effects of point-source discharges on aquatic communities in Alabama and Florida have been reduced over time by compliance with State and Federal regulations pertaining to water quality, there has been less success in dealing with nonpoint-source pollution impacts. Because these contaminant sources stem from urban surface runoff, private landowner activities (construction, grazing, agriculture, silviculture), and public construction works (bridge and highway construction and maintenance), they are often more difficult to regulate.

The damming of rivers has been a major factor contributing to the demise of freshwater mussels (Bogan 1993, p. 604). Dams eliminate or reduce river flow within impounded areas, trap silts and cause sediment deposition, alter water temperature and dissolved oxygen levels, change downstream water flow and quality, affect normal flood patterns, and block upstream and downstream movement of mussels and their host fishes (Bogan 1993, p. 604; Vaughn and Taylor 1999, pp. 915–917; Watters 1999, pp. 261–264; McAllister *et al.* 2000, p. iii; Marcinek *et al.* 2005, pp. 20–21). Below dams, mollusk declines are associated with changes and fluctuation in flow regime, scouring and erosion, reduced dissolved oxygen

levels, water temperatures, and changes in resident fish assemblages (Williams *et al.* 1993, p. 7; Neves *et al.* 1997, pp. 63–64; Watters 1999, pp. 261–264; Marcinek *et al.* 2005, pp. 20–21). Because rivers are linear systems, these alterations can cause mussel declines for many miles below the dam (Vaughn and Taylor 1999, p. 916).

Three significant mainstem impoundments are situated within the three drainages, all in Alabama. Constructed in 1923 for hydroelectric power generation, Point A Lake and Gantt Lake dams are located on the mainstem of the Conecuh River in Covington County, AL. Combined, these two dams impound approximately 3,400 acres at normal pool. Both impoundments have limited storage capacity and are operated as modified run-of-river projects with daily peaking. For example, when inflows to Gantt are greater than 1,500 cubic feet per second (cfs), the outflow matches the inflow at Point A. However, during the summer months, when inflows can fall below 1,500 cfs, a portion of the inflow may be stored and released when power generation is in high demand. Regardless of the inflow, Point A Dam has a minimum continuous discharge requirement of 500 cfs and a requirement to meet a dissolved oxygen level of no less than 4.0 milligram per liter (mg/l).

The Elba Dam on the Pea River mainstem in Alabama was constructed in 1903 for power generation, but is no longer in use. The dam does not store water, so outflow basically equals inflow. The Elba Dam does not have a reservoir, only a widened channel, which is roughly one and a half to two times wider above the dam than below. Channel scour (deepening of the streambed as a result of erosion) is occurring downstream of the Elba Dam (Williams 2010 pers. comm.). All three dams are barriers to fish migration and to the movement of mussel host species. By blocking fish movement, the dams prevent gene exchange between upstream and downstream mussel populations. The three dams currently separate populations of southern sandshell, southern kidneyshell, Choctaw bean, tapered pigtoe, and fuzzy pigtoe. In addition, two smaller impoundments are located on tributary streams. Lake Frank Jackson is situated on Lightwood Knot Creek, a tributary to the Yellow River in Covington County, Alabama; and Lake Tholocco, on Claybank Creek, is a tributary to the Choctawhatchee River in Dale County, AL. Waters released from these shallow impoundments can have extremely elevated temperatures in summer, which alters the normal temperature cycle downstream (Williams *et al.* 2000 unpub. data).

The potential exists for more dams to be constructed within the three drainages, and at least four additional impoundments are proposed. These include proposed impoundments on Murder Creek and Big Escambia Creek in the Escambia drainage in Alabama, the Yellow River mainstem in Florida, and the Little Choctawhatchee River in Alabama. These proposed projects have implications for the populations of all eight species. Given projected population increases and the need for municipal water supply, other proposals for impoundment construction are expected in the future.

In summary, the loss of habitat and range from various forms of pollution and impoundments is a significant threat to the continued existence of these eight species. Degradation from sedimentation and contaminants threatens the habitat and water quality necessary to support these species throughout their entire range. Sedimentation can cause mortality by suffocation, impair the ability to feed, respire, and reproduce; and destabilize substrate. Contaminants associated with municipal and industrial effluents (metals, ammonia, chlorine) and with agriculture and silviculture (pesticides) are lethal to mussels particularly to the highly sensitive early life stages. The effects of impoundments are more discreet, but can cause severe alternations to mussel habitat both upstream and downstream of the dam, and can impair dispersal and breeding ability. While recent surveys for these species have documented several new populations, they have also documented a decline in (and the loss of) many of the known populations due to human impact. Therefore, we have determined that the present or threatened destruction, modification, or curtailment of habitat and range is a threat of high magnitude to the Alabama pearlshell, round ebonyshell, southern kidneyshell, southern sandshell, and Choctaw bean; and a threat of moderate magnitude to the tapered pigtoe, narrow pigtoe, and fuzzy pigtoe. This threat is current (as evidenced by population declines) and is projected to continue and increase into the future with additional anthropogenic pressures.

B. Overutilization for Commercial, Recreational, Scientific, or Educational Purposes

None of the eight mussels are commercially valuable species, and the streams and rivers that they inhabit are not subject to harvesting activities for commercial mussel species. Although the eight species have been taken for scientific and private collections in the past, collecting is not considered a factor in the decline of these species. Such activity may increase as their rarity becomes known; however, we have no specific information indicating that overcollection is currently a threat. Therefore, we find that overutilization for commercial, recreational, scientific, or educational purposes is not a threat to the eight mussels at this time.

C. Disease or Predation

Diseases of freshwater mussels are poorly known, and we have no specific information indicating that disease poses a threat to populations of these eight species. Juvenile and adult mussels are prey items for some invertebrate predators and parasites (for example, nematodes and mites), and provide prey for a few vertebrate species (for example, raccoons, muskrats, otters, and turtles) (Hart and Fuller 1974, pp. 225–240). However, we have no evidence of any specific declines in these species due to predation. Therefore, diseases and predation of freshwater mussels remain largely unstudied and are not considered a threat to the eight mussels at this time.

D. The Inadequacy of Existing Regulatory Mechanisms

There is no information on the sensitivity of the Alabama pearlshell, round ebonyshell, southern kidneyshell, southern sandshell, Choctaw bean, tapered pigtoe, narrow pigtoe, or fuzzy pigtoe to aquatic pollutants. Current State and Federal regulations regarding pollutants are designed to be protective of aquatic organisms; however, freshwater mussels may be more susceptible to some pollutants than test organisms commonly used in bioassay tests. A multitude of bioassay tests conducted on 16 mussel species (summarized by Augspurger *et al.* 2007, pp. 2025–2028), show that freshwater mussels are more sensitive than previously known to some chemical contaminants including chlorine, ammonia, copper, the pesticides chlorothalonil and glyphosate, and the surfactant MON 0818. For example, several recent studies have demonstrated that U.S. Environmental Protection Agency (EPA) criteria for ammonia may not be protective of freshwater mussels (Augspurger *et al.* 2003, p. 2571; Newton *et al.* 2003, pp. 2559–2560; Mummert *et al.* 2003, pp. 2548–2552).

Ammonia is an important aquatic pollutant because of its relatively high toxicity and common occurrence in

riverine systems. This has application to the expected sources of these chemicals in the environment. Significant sources of nutrient enrichment leading to elevated ammonia include industrial wastewater, municipal wastewater treatment plant effluents, and urban and agricultural runoff (chemical fertilizers and animal wastes) (Augspurger *et al.* 2007, p. 2026). Elevated copper in surface waters can result from natural runoff sources, but is more often associated with a private or municipal wastewater effluent. Pesticide residues enter streams from agricultural, residential, or silvicultural runoff. Environmental chlorine concentrations will most often be associated with a point source discharge such as a municipal wastewater treatment facility.

As indicated in the Factor A discussion above, sedimentation is considered the most significant threat to these eight species. Best Management Practices (BMPs) for sediment and erosion control are often recommended or required for construction projects, however, compliance, monitoring, and enforcement of these recommendations are often poorly implemented. Although unpaved roads likely contribute the majority of sediment to the river basins, other sources including forestry, row crops, and construction contribute to the total sediment load.

States are required under the Clean Water Act to establish a TMDL for the pollutants of concern that the water body can receive without exceeding the applicable standard (see discussion under Factor A). However, the Federal Clean Water Act is not fully utilized in the protection of these river systems. For example, of the 51 impaired water bodies identified within the drainages, less than one-fourth currently have approved TMDLs (ADEM 2010b, pp. 3–6; FDEP 2010a, pp. 4–6).

In summary, some regulatory mechanisms exist that protect aquatic species, however, these regulations are not effective at protecting mussels and their habitats from sedimentation and contaminants. This is apparent from the decline in all eight mussels. Pollution from non-point sources is the greatest threat to these eight mussels (see Factor A discussion); however, this type of pollution is difficult to regulate and not effectively controlled by State and Federal water quality regulations within the proposed designation. Therefore, we find current existing regulatory mechanisms are inadequate to protect the eight mussels throughout their ranges. This threat is current and is projected to continue into the future.

E. Other Natural or Manmade Factors Affecting Its Continued Existence

Random Catastrophic Events

The Gulf coastal region is prone to extreme hydrologic events. Extended droughts result from persistent high-pressure systems, which inhibit moisture from the Gulf of Mexico from reaching the region (Jeffcoat *et al.* 1991, p. 163–170). Warm, humid air from the Gulf of Mexico can produce strong frontal systems and tropical storms resulting in heavy rainfall and extensive flooding (Jeffcoat *et al.* 1991, p. 163–170). Although floods and droughts are a natural part of the hydrologic processes that occur in these river systems, these events may contribute to the further decline of mussel populations suffering the effects of other threats.

During high flows, flood scour can dislodge mussels where they may be injured, buried, swept into unsuitable habitats, or stranded and perish when flood waters recede (Vannote and Minshall 1982, p. 4105; Tucker 1996, p. 435; Hastie *et al.* 2001, pp. 107–115; Peterson *et al.* 2011, unpaginated). Heavy spring rains in 2009 resulted in severe flooding in the basins that destroyed numerous stream crossings.

During drought, stream channels may become disconnected pools where mussels are exposed to higher water temperatures, lower dissolved oxygen levels, and predators; or channels may become dewatered entirely. Johnson *et al.* (2001, p. 6) monitored mussel responses during a severe drought in 2000 in tributaries of the Lower Flint River in Georgia, and found that most mortality occurred when dissolved oxygen levels dropped below 5 mg/L. Furthermore, increased human demand and competition for surface and ground water resources for irrigation and consumption during drought can cause drastic reductions in stream flows and alterations to hydrology (Golladay *et al.* 2004, p. 504; Golladay *et al.* 2007 unpaginated). Extended droughts occurred in the Southeast during 1998 to 2002 and again in 2006 to 2008. The effects of these recent droughts on these eight mussels are unknown; however, substantial declines in mussel diversity and abundance as a direct result of drought have been documented in southeastern streams (for example, Golladay *et al.* 2004, pp. 494–503; Haag and Warren 2008, p. 1165). The Alabama pearlshell is particularly at risk during drought as its headwater stream habitats are vulnerable to dewatering. Shelton (1995, p. 4 unpub. data) reported one of the most common causes of mortality in the species is due to stranding by extreme low water.

There is a growing concern that climate change may lead to increased frequency of severe storms and droughts (McLaughlin *et al.* 2002, p. 6074; Golladay *et al.* 2004, p. 504; Cook *et al.* 2004, p. 1015). Specific effects of climate change to mussels, their habitat, and their fish hosts could include changes in stream temperature regimes, the timing and levels of precipitation causing more frequent and severe floods and droughts, and alien species introductions. Increases in temperature and reductions in flow may also lower dissolved oxygen levels in interstitial habitats which can be lethal to juveniles (Sparks and Strayer 1998, pp. 131–133). Effects to mussel populations from these environmental changes could include reduced abundance and biomass, altered species composition, and host fish considerations (Galbraith *et al.* 2010, pp. 1180–1182). The present conservation status, complex life histories, and specific habitat requirements of freshwater mussels suggest that they may be quite sensitive to climate change (Hastie *et al.* 2003, p. 45).

The linear nature of their habitat, reduced range, and small population sizes make these eight mussels vulnerable to contaminant spills. Spills as a result of transportation accidents are a constant, potential threat as numerous highways and railroads cross the stream channels of the basins. Also, more than 400 oil wells are located within Conecuh and Escambia Counties, Alabama. In Conecuh County, most of these wells are concentrated in the Cedar Creek drainage, which supports at least two populations of the Alabama pearlshell. These wells are subject to periodic spills either directly at the well site or associated with the transport of the oil. For example, on February 5, 2010, an oil spill occurred in the headwaters of Feagin Creek. Feagin Creek is located between two known pearlshell locations, Little Cedar and Amos Mill Creeks. The resulting spill discharged more than 150 gallons of oil into Feagin Creek. Although there were no known populations of the pearlshell in Feagin Creek, this type of spill could have easily occurred in one of the adjacent watersheds that supports the pearlshell. Since 2000, there have been 13 spills reported in Conecuh, 36 in Escambia, and 33 in Covington Counties, Alabama.

Reduced Genetic Diversity

Population fragmentation and isolation prohibits the natural interchange of genetic material between

populations. Low numbers of individuals within the isolated populations have greater susceptibility to deleterious genetic effects, including inbreeding depression and loss of genetic variation (Lynch 1996, pp. 493–494). Small, isolated populations, therefore, are more susceptible to environmental pressures, including habitat degradation and stochastic events, and thus are the most susceptible to extinction (Primack 2008, pp. 151–153). It is unknown if any of the eight mussel species are currently experiencing a loss of genetic diversity. However, surviving populations of the Alabama pearlshell, round ebonyshell, and southern kidneyshell do have highly restricted or reduced ranges, fragmented habitats, and extremely small population sizes.

Host Fish Considerations

As mentioned in the General Biology section above, all of these eight species require a fish host in order to complete their life cycle. Therefore, these mussels would be adversely affected by the loss or reduction of fish species essential to their parasitic glochidial stage. The blacktail shiner (*Cyprinella venusta*), a common and abundant fish species, was found to serve as a glochidial host for the tapered pigtoe and fuzzy pigtoe (White *et al.* 2008, p. 123). The specific hosts for the Alabama pearlshell, round ebonyshell, southern sandshell, southern kidneyshell, Choctaw bean, and narrow pigtoe have not been identified, however, other species of the same genera are known to parasitize cyprinids (minnows), centrachids (sunfish), and percids (darters) (Haag and Warren 1997, pp. 580–581, 583; Keller and Ruessler 1997, p. 405; O'Brien and Brim Box 1999, p. 134; Haag *et al.* 1999, p. 150; Haag and Warren 2003, pp. 81–82; Luo 1993, p. 16).

Nonindigenous Species

The Asian clam (*Corbicula fluminea*) has been introduced to the drainages and may be adversely affecting these eight mussels through direct competition for space and resources. The Asian clam was first detected in eastern Gulf drainages in the early 1960s, and is presently wide-spread throughout the Escambia, Yellow, and Choctawhatchee River drainages (Heard 1975, p. 2). The invasion of the Asian clam in these and in other eastern Gulf drainages has been accompanied by drastic declines in populations of native mussels (see observations by Heard 1975, p. 2; and Shelton 1995, p. 4 unpub. data). However, it is difficult to say whether the Asian clam competitively excluded the native mussels, or if it was simply tolerant of whatever caused the mussels to disappear. The Asian clam may pose a direct threat to native mussels, particularly as juveniles, as a competitor for resources such as food, nutrients, and space (Neves and Widlak 1987, p. 6). Dense populations of Asian clams may ingest large numbers of unionid sperm, glochidia, and newly metamorphosed juveniles, and may actively disturb sediments, reducing habitable space for juvenile native mussels, or displacing them downstream (Strayer 1999, p. 82; Yeager *et al.* 2000, pp. 255–256).

The flathead catfish (*Pylodictis olivaris*) has been introduced to the drainages and may be adversely impacting native fish populations. The flathead catfish is a large predator native to the central United States, and since its introduction outside its native range has altered the composition of native fish populations through predation (Boschung and Mayden 2004, p. 350). Diet and selectivity studies of introduced flathead catfish in coastal North Carolina river systems show it feeds primarily on other fish species (Guier *et al.* 1984, pp. 617–620; Pine *et al.* 2005, p. 909). The flathead catfish is now well-established in the Escambia, Yellow, and Choctawhatchee River drainages, and its numbers appear to be growing (Strickland 2010 pers. comm.). Biologists working in the Florida portions of these drainages have observed a correlation between the increase in flathead catfish numbers and a decrease in numbers of other native fish species, particularly of bullhead catfish (*Ameiurus* sp.) and redbreast sunfish (*Lepomis auritus*) (Strickland 2010 pers. comm.). Although we do not know the specific fish hosts for six of the mussel species, the loss or reduction of native fishes in general could affect their ability to recruit.

In summary, a variety of natural or manmade factors currently threaten these eight mussels. Stochastic events such as droughts and floods have occurred in these three river drainages in the past, and climate change may increase the frequency and intensity of similar events in the future. The withdrawal of surface and ground waters during drought can cause further drastic flow reductions and alterations that may cause declines in mussel abundance and distribution. Contaminant spills have also occurred in these drainages and currently are a threat, particularly in the Alabama portions of the Escambia River drainage where there are numerous oil wells. It is not known if these species are currently experiencing a loss of genetic viability; however, their restricted or reduced ranges, fragmented habitats, and small population sizes increases the risks and consequences of inbreeding depression and loss of genetic variation. Introduced species, such as the Asian clam, may adversely impact these mussels through direct competition for resources. Another introduced species, the flathead catfish, may consume host fishes, thereby affecting mussel recruitment. Therefore, we have determined that other natural or manmade factors, specifically threats from flooding, drought, and contaminant spills, are high in magnitude to the Alabama pearlshell, round ebonyshell, southern kidneyshell, southern sandshell, and Choctaw bean; and are moderate in magnitude to the tapered pigtoe, narrow pigtoe, and fuzzy pigtoe. These threats are currently impacting these species and are projected to continue or increase in the future. We have determined that threats from the Asian clam are moderate in magnitude to the Alabama pearlshell, round ebonyshell, southern kidneyshell, southern sandshell, and Choctaw bean; and are low in magnitude to the tapered pigtoe, narrow pigtoe, and fuzzy pigtoe. We have determined that reduced genetic diversity, the absence or reduction of fish hosts, and the presence of flathead catfish have the potential to adversely impact the eight mussels, however, we do not know the magnitude of these threats at this time.

Proposed Determination

We have carefully assessed the best scientific and commercial information available regarding the past, present, and future threats to the Alabama pearlshell, round ebonyshell, southern sandshell, southern kidneyshell, Choctaw bean, tapered pigtoe, narrow pigtoe, and fuzzy pigtoe. Section 3(6) of the Act defines an endangered species as ''any species which is in danger of extinction throughout all or a significant portion of its range,'' and defines a 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.'' As described in detail above, these eight species are currently at risk throughout all of their respective ranges due to ongoing threats of habitat destruction and modification (Factor A), inadequacy of existing regulatory mechanisms (Factor D), and other natural or manmade factors affecting their continued existence (Factor E). Specifically, these factors include sedimentation, municipal and industrial

effluents, pesticides, excessive nutrients, impoundment of stream channels, recurring drought and flooding, contaminant spills, and the introduced Asian clam. In addition, existing regulatory mechanisms are inadequate to ameliorate some of the threats affecting these mussels and their habitats. We believe these threats are currently impacting these species and are projected to continue and potentially worsen in the future. These eight mussels are also at increased threat due to the loss of genetic viability and the reduction or absence of fish hosts (described under Factor E); however, these threats are not currently known to be imminent.

Species with small ranges, few populations, and small or declining population sizes, are the most vulnerable to extinction (Primack 2008, p. 137). The effects of certain factors, particularly habitat degradation and loss, catastrophic events, and introduced species, increase in magnitude when population size is small (Soulé 1987, pp. 33, 71; Primack 2008, pp. 133–135, 152). We believe the impact of habitat degradation, catastrophic events, and introduced species are more severe (magnitude is higher) to the Alabama pearlshell, round ebonyshell, southern sandshell, southern kidneyshell, and Choctaw bean, which have few populations coupled with low numbers of individuals and/or very limited ranges, than they are to the tapered pigtoe, narrow pigtoe, and fuzzy pigtoe which have declining and fragmented populations and limited ranges. We believe that, when combining the effects of historical, current, and future habitat loss and degradation, historical and ongoing drought, and the exacerbating effects of small and declining population sizes and curtailed ranges, the Alabama pearlshell, round ebonyshell, southern sandshell, southern kidneyshell, and Choctaw bean are in danger of extinction throughout all of their ranges; and the tapered pigtoe, narrow pigtoe, and fuzzy pigtoe are threatened to become endangered within the foreseeable future throughout all of their ranges. In addition, any factor (*i.e.,* habitat loss or natural and manmade factors) that results in a further decline in habitat or individuals may be problematic for the long-term recovery of these species.

Therefore, based on the best available scientific and commercial information, we propose to list the Alabama pearlshell, round ebonyshell, southern kidneyshell, southern sandshell, and Choctaw bean as endangered species throughout all of their ranges; and we propose to list the tapered pigtoe, narrow pigtoe, and fuzzy pigtoe as threatened species throughout all of their ranges. Furthermore, we examined each of the five species proposed for endangered status and each of the three species proposed for threatened status to analyze if any significant portions of their ranges may warrant a different status. However, because of their limited and curtailed ranges, and uniformity of the threats throughout their entire respective, we find there are no significant portions of any of the species' ranges that may warrant a different determination of 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 through listing results in public awareness and conservation by Federal, State, 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 Effects of Critical Habitat Designation and are further discussed, in part, below.

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 that may affect the eight mussel species include, but are not limited to: the management of and any other landscape altering activities on Federal lands administered by the Department of Defense and U.S. Forest Service; issuance of section 404 Clean Water Act permits by the Army Corps of Engineers; licensing of hydroelectric dams, and construction and management of gas pipeline and power line rights-of-way approved by the Federal Energy Regulatory Commission; construction and maintenance of roads or highways funded by the Federal Highway Administration; and land management practices administered by the Department of Agriculture. It has been the experience of the Service from consultations on other species, however, that nearly all section 7 consultations have been resolved so that the species have been protected and the project objectives have been met.

The Act and its implementing regulations set forth a series of general prohibitions and exceptions that apply to all endangered wildlife. The prohibitions, codified at 50 CFR 17.21 for endangered wildlife make it illegal for any person subject to the jurisdiction of the United States to take (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. 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 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 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 nonnative species that compete with or prey upon these eight mussel species, such as the zebra mussel (*Dreissena polymorpha*) and the black carp (*Mylopharyngodon piceus*).

(3) The unauthorized release of biological control agents that attack any life stage of these species.

(4) Unauthorized modification of the channel or water flow of any stream or water body in which these species are known to occur.

Questions regarding whether specific activities would constitute a violation of section 9 of the Act should be directed to the Panama City 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 Boulevard, Suite 200, Atlanta, GA 30345; telephone: 404–679 –7140; facsimile: 404–679–7081.

Critical Habitat for the Alabama Pearlshell, Round Ebonyshell, Southern Sandshell, Southern Kidneyshell, Choctaw Bean, Tapered Pigtoe, Narrow Pigtoe, and Fuzzy Pigtoe

Background

It is our intent to discuss below only those topics directly relevant to the designation of critical habitat for the Alabama pearlshell, round ebonyshell, southern sandshell, southern kidneyshell, Choctaw bean, tapered pigtoe, narrow pigtoe, and fuzzy pigtoe 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 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.

For inclusion in a critical habitat designation, the habitat within the geographical area occupied by the species at the time it was listed must contain physical or biological features which are essential to the conservation of the species and which may require special management considerations or protection. 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), focusing on the principal biological or physical constituent elements (primary constituent elements) within an area that are essential to the conservation of the species (such as roost sites, nesting grounds, seasonal wetlands, water quality, tide, soil type). 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 Act, 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. 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. When the best available scientific data do not demonstrate that the conservation needs of the species require such additional areas, we will not designate critical habitat in areas outside the geographical area occupied by the species. An area currently occupied by the species but that was not occupied at the time of listing may, however, be essential to the conservation of the species and may be included in the critical habitat designation.

Section 4 of the Act requires that we designate critical habitat on the basis of the best scientific and commercial data available. Further, our Policy on Information Standards Under the Endangered Species Act (published in the **Federal Register** on July 1, 1994 (59 FR 34271)), the Information Quality Act (section 515 of the Treasury and General Government Appropriations Act for Fiscal Year 2001 (Pub. L. 106–554; H.R. 5658)), and our associated Information Quality Guidelines, provide criteria, establish procedures, and provide guidance to ensure that our decisions are based on the best scientific data available. They require our biologists, to the extent consistent with the Act and with the use of the best scientific data available, to use primary and original sources of information as the basis for recommendations to designate critical habitat.

When we are determining which areas should be designated as critical habitat, our primary source of information is generally the information developed during the listing process for the species. Additional information sources may include articles in peer-reviewed journals, conservation plans developed by States and counties, scientific status surveys and studies, biological assessments, or other unpublished

materials and expert opinion or personal knowledge.

Habitat is dynamic, and species may move from one area to another over time. Climate change will be a particular challenge for biodiversity because the interaction of additional stressors associated with climate change and current stressors may push species beyond their ability to survive (Lovejoy 2005, pp. 325–326). The synergistic implications of climate change and habitat fragmentation are the most threatening facet of climate change for biodiversity (Hannah and Lovejoy 2005, p. 4). Current climate change predictions for terrestrial areas in the Northern Hemisphere indicate warmer air temperatures, more intense precipitation events, and increased summer continental drying (Field *et al.* 1999, pp. 1–3; Hayhoe *et al.* 2004, p. 12422; Cayan *et al.* 2006, p. 10; Intergovernmental Panel on Climate Change (IPCC) 2007, p. 1181). Climate change may lead to increased frequency and duration of severe storms and droughts (Golladay *et al.* 2004, p. 504; McLaughlin *et al.* 2002, p. 6074; Cook *et al.* 2004, p. 1015).

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 insure 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.

Prudency Determination

Section 4(a)(3) of the Act, as amended, and implementing regulations (50 CFR 424.12), require that, to the maximum extent prudent and determinable, the Secretary designate critical habitat at the time the species is determined to be endangered or threatened. Our 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.

There is currently no imminent threat of take attributed to collection or vandalism under Factor B for any of these species, and identification and mapping of critical habitat is not expected to initiate any such threat. In the absence of finding that the designation of critical habitat would increase threats to a species, if there are any benefits to a critical habitat designation, then a prudent finding is warranted. Here, the 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. Therefore, because we have determined that the designation of critical habitat will not likely increase the degree of threat to the species and may provide some measure of benefit, we find that designation of critical habitat is prudent for the Alabama pearlshell, round ebonyshell, southern sandshell, southern kidneyshell, Choctaw bean, tapered pigtoe, narrow pigtoe, and fuzzy pigtoe.

Critical Habitat Determinability

Having determined that designation is prudent, under section 4(a)(3) of the Act we must find whether critical habitat for the eight species is determinable. Our regulations at 50 CFR 424.12(a)(2) state that critical habitat is not determinable when one or both of the following situations exist:

(i) Information sufficient to perform required analyses of the impacts of the designation is lacking, or

(ii) The biological needs of the species are not sufficiently well known to permit identification of an area as critical habitat. When critical habitat is not determinable, the Act allows the Service an additional year to publish a critical habitat designation (16 U.S.C. 1533(b)(6)(C)(ii)).

We reviewed the available information pertaining to the biological needs of the species and habitat characteristics where these species are located. This and other information represent the best scientific data available and led us to conclude that the designation of critical habitat is determinable for these eight species.

Physical and Biological Features

In accordance with section 3(5)(A)(i) and 4(b)(1)(A) of the Act and the regulations at 50 CFR 424.12, in determining which areas within the geographical area occupied at the time of listing to propose as critical habitat, we consider the physical and biological features (PBFs) essential to the conservation of the species 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 historic, geographical, and ecological distributions of a species.

We derive the specific PBFs required for the Alabama pearlshell, round ebonyshell, southern sandshell, southern kidneyshell, Choctaw bean, tapered pigtoe, narrow pigtoe, and fuzzy pigtoe based on their biological needs. Unfortunately, little is known of the specific habitat requirements of any of these eight mussel species other than all require flowing water, stable stream or river channels, adequate water quality, and fish hosts for larval mussel development to juvenile mussels. To identify the physical and biological needs of the species, we have relied on current conditions at locations where each of the species survive, the limited information available on these eight mussels and their close relatives, and factors associated with the decline and extirpation of these and other freshwater

mussels from portions of the Escambia, Yellow, and Choctawhatchee River basins.

Space for Individual and Population Growth and for Normal Behavior

The Alabama pearlshell, round ebonyshell, southern kidneyshell, southern sandshell, Choctaw bean, tapered pigtoe, narrow pigtoe, and fuzzy pigtoe are all historically associated with the Escambia, Yellow, and Choctawhatchee River drainages in Alabama and Florida. The Alabama pearlshell is also known from three locations in the Mobile River Basin; however, only one of those is considered to be currently occupied. The eight mussels are found embedded in stable substrates composed mainly of fine to coarse sand, with occasional patches of clay or gravel (Williams *et al.* 2008, pp. 32–34), and within areas of sufficient current velocities to remove finer sediments. These habitats are formed and maintained by water quantity, channel slope, and normal sediment input to the system. Changes in one or more of these parameters can result in channel degradation or channel aggradation, with serious effects to mussels. The decline of the mussel fauna of these eastern Gulf Coastal Plain drainages is not well understood, but is primarily associated with the loss of habitats and channel instability due to excessive sedimentation (Williams and Butler 1994, p. 55). Sedimentation has been determined to be a major factor in habitat destruction, resulting in corresponding shift in mussel fauna (Brim Box and Mossa 1999, p. 102). Stable stream bottom substrates not only provide space for populations of these eight mussel species, but also provide cover and shelter and sites for breeding, reproduction, and growth of offspring. Stream channel stability is essential to the conservation of the Alabama pearlshell, round ebonyshell, southern sandshell, southern kidneyshell, Choctaw bean, tapered pigtoe, narrow pigtoe, and fuzzy pigtoe.

Food

Freshwater mussels, such as these eight species, filter algae, detritus, and bacteria from the water column (Williams *et al.* 2008, p. 67). For the first several months, juvenile mussels employ pedal (foot) feeding, extracting bacteria, algae, and detritus from the sediment (Yeager *et al.* 1994, pp. 217–221). Food availability and quality are affected by habitat stability, floodplain connectivity, flow, and water quality. Adequate food availability and quality is essential for normal behavior, growth, and viability during all life stages of these species.

Water

The Alabama pearlshell, round ebonyshell, southern kidneyshell, southern sandshell, Choctaw bean, tapered pigtoe, narrow pigtoe, and fuzzy pigtoe are riverine species that depend upon adequate water flow. Continuously flowing water is a habitat feature associated with all of the eight species. Flowing water maintains the stream bottom habitats where these species are found, transports food items to the sedentary juvenile and adult life stages, removes wastes, and provides oxygen for respiration. Populations of the narrow pigtoe were recently discovered in Gantt and Point A Lakes (Williams *et al.* 2008, p. 317), manmade reservoirs on the Conecuh River mainstem in Alabama. We attribute the occurrence of the species in these impoundments to the relatively small size of the reservoirs, and to the operational regime of the dams. As mentioned in the Dams and Impoundments section (see Factor A, above), both impoundments have limited storage capacity and are operated as modified run-of-river projects with daily peaking. Therefore, most of the time, the outflow matches the inflow. Also, some areas in the reservoirs are narrow and riverine, for instance the area around Dunns Bridge on Gantt Lake. Here, narrow pigtoe were found in relatively high numbers in firm, stable sand substrates with little or no silt accumulation (Williams 2009 pers. comm.; Pursifull 2006 pers. obs.). Although the natural state of the river's hydrological flow regime is modified, it does retain the features necessary to maintain the benthic habitats where the species are found. Therefore, we believe that flowing water is essential to the conservation of all eight species.

The ranges of standard physical and chemical water quality parameters (such as temperature, dissolved oxygen, pH, and conductivity) that define suitable habitat conditions for the eight species have not been investigated. However, as relatively sedentary animals, mussels must tolerate the full range of such parameters that occur naturally within the streams where they persist. Both the amount (flow) and the physical and chemical conditions (water quality) where each of the eight species currently exist vary widely according to season, precipitation events, and seasonal human activities within the watershed. Conditions across their historical ranges vary even more due to watershed size, geology, geography, and differences in human population densities and land uses. In general, each of the species survives in areas where the magnitude, frequency, duration, and seasonality of water flow are adequate to maintain stable habitats (for example, sufficient flow to remove fine particles and sediments without causing degradation), and where water quality is adequate for year-round survival (for example, moderate to high levels of dissolved oxygen, low to moderate input of nutrients, and relatively unpolluted water and sediments). Therefore, adequate water flow and water quality (as defined below) are essential to the conservation of the Alabama pearlshell, round ebonyshell, southern sandshell, southern kidneyshell, Choctaw bean, tapered pigtoe, narrow pigtoe, and fuzzy pigtoe.

We currently believe that most numeric standards for pollutants and water quality parameters (for example, dissolved oxygen, pH, heavy metals) that have been adopted by the States under the Clean Water Act represent levels that are essential to the conservation of each of these eight mussels. However, some States' standards may not adequately protect mollusks, or are not being appropriately measured, monitored, or achieved in some reaches (see Factors A and D above). The Service is currently in consultation with the EPA to evaluate the protectiveness of criteria approved in EPA's water quality standards for threatened and endangered species and their critical habitats as described in the Memorandum of Agreement that our agencies signed in 2001 (66 FR 11201, February 22, 2011). Other factors that can potentially alter water quality are droughts and periods of low flow, non-point-source runoff from adjacent land surfaces (for example, excessive amounts of sediments, nutrients, and pesticides), point-source discharges from municipal and industrial wastewater treatment facilities (for example, excessive amounts of ammonia, chlorine, and metals), and random spills or unregulated discharge events. This could be particularly harmful during drought conditions when flows are depressed and pollutants are more concentrated. Therefore, adequate water quality is essential for normal behavior, growth, and viability during all life stages of the Alabama pearlshell, round ebonyshell, southern sandshell, southern kidneyshell, Choctaw bean, tapered pigtoe, narrow pigtoe, and fuzzy pigtoe.

Sites for Breeding, Reproduction, or Rearing

Freshwater mussels require a host fish for transformation of larval mussels

(glochidia) to juvenile mussels (Williams *et al.* 2008, p. 68). Thus, the presence of the appropriate host fishes to complete the reproductive life cycle is essential to the conservation of these eight mussels. The blacktail shiner was found to serve as a host for the fuzzy pigtoe and tapered pigtoe in a preliminary study trial (White *et al.* 2008, p. 123). This minnow species occurs in a variety of habitats in drainages throughout the coastal plain (Mettee *et al.* 1996, pp. 174–175). The specific host fish(es) for the Alabama pearlshell, round ebonyshell, southern kidneyshell, narrow pigtoe, southern sandshell, and Choctaw bean is currently unknown; however, other species of the same genera are known to parasitize cyprinids (minnows), centrachids (sunfish), and percids (darters) (Haag and Warren 2003, pp. 81–82; Haag and Warren 1997, pp. 580–581, 583; Keller and Ruessler 1997, p. 405; O'Brien and Brim Box 1999, p. 134; Haag *et al.* 1999, p. 150).

Juvenile mussels require stable bottom habitats for growth and survival. Excessive sediments or dense growth of filamentous algae can expose juvenile mussels to entrainment or predation and be detrimental to the survival of juvenile mussels (Hartfield and Hartfield 1996, p. 373). Geomorphic instability can result in the loss of habitats and juvenile mussels due to scouring or deposition (Hartfield 1993, p. 138). Therefore, stable bottom substrate with low to moderate amounts of filamentous algae growth is essential to the conservation of Alabama pearlshell, round ebonyshell, southern sandshell, southern kidneyshell, Choctaw bean, tapered pigtoe, narrow pigtoe, and fuzzy pigtoe.

Primary Constituent Elements for the Eight Mussel Species

Under the Act and its implementing regulations, we are required to identify the PBFs essential to the conservation of these eight mussel species in areas occupied at the time of listing, focusing on the features' primary constituent elements (PCEs). We consider PCEs to be the elements of PBFs 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.

Based on the above needs and our current knowledge of the life history, biology, and ecology of the species and the habitat requirements for sustaining the essential life-history functions of the species, we have determined that the PCEs for the Alabama pearlshell, round ebonyshell, southern sandshell, southern kidneyshell, Choctaw bean, tapered pigtoe, narrow pigtoe, and fuzzy pigtoe are:

(1) Geomorphically stable stream and river channels and banks (channels that maintain lateral dimensions, longitudinal profiles, and sinuosity patterns over time without an aggrading or degrading bed elevation).

(2) Stable substrates of sand or mixtures of sand with clay or gravel with low to moderate amounts of fine sediment and attached filamentous algae.

(3) A hydrologic flow regime (the magnitude, frequency, duration, and seasonality of discharge over time) necessary to maintain benthic habitats where the species are found, and to maintain connectivity of rivers with the floodplain, allowing the exchange of nutrients and sediment for habitat maintenance, food availability, and spawning habitat for native fishes.

(4) Water quality, including temperature (not greater than 32 °C), pH (between 6.0 to 8.5), oxygen content (not less than 5.0 mg/L), hardness, turbidity, and other chemical characteristics necessary for normal behavior, growth, and viability of all life stages.

(5) The presence of fish hosts. Diverse assemblages of native fish species will serve as a potential indication of host fish presence until appropriate host fishes can be identified. For the fuzzy pigtoe and tapered pigtoe, the presence of blacktail shiner (*Cyprinella venusta*) will serve as a potential indication of fish host presence.

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 that are essential to the conservation of the species and that may require special management considerations or protections. None of the portions of the critical habitat units proposed for these eight species below have been designated as critical habitat for other mussel species that are already listed under the Act. None of the areas proposed are presently under special management or protection provided by a legally operative management plan or agreement for the conservation of either the Alabama pearlshell, round ebonyshell, southern sandshell, southern kidneyshell, Choctaw bean, tapered pigtoe, narrow pigtoe, or fuzzy pigtoe. Various activities in or adjacent to each of the critical habitat units described in this proposed rule may affect one or more of the PCEs. Some of these activities include, but are not limited to, those discussed in the ''Summary of Factors Affecting the Species,'' above (see Factors A and D). Other activities that may affect PCEs in the proposed critical habitat units include those listed in the ''Available Conservation Measures'' section above.

Many of the threats to the eight mussels and their habitat are pervasive and common in all of the nine units. These include the potential of significant changes in stream bed material composition and quality by activities such as construction projects, livestock grazing, timber harvesting, and other watershed and floodplain disturbances that release sediments or nutrients into the water; the potential of significant alteration of water chemistry or water quality; the potential of anthropogenic activities such as channelization, impoundment, and channel excavation that could cause aggradation or degradation of the channel bed elevation or significant bank erosion; and the potential of significant changes in the existing flow regime due to such activities as impoundment, water diversion, or water withdrawal. Because the areas proposed for critical habitat below are facing these threats, they require special management consideration and protection.

Criteria Used To Identify Critical Habitat

As required by section 4(b) of the Act, we used the best scientific and commercial data available in determining areas within the geographical area occupied at the time of listing that contain the features essential to the conservation of the species, and areas outside of the geographical area occupied at the time of listing that are essential for the conservation of the species. We are proposing to designate as critical habitat all stream channels that we have determined are essential to the conservation of the eight species. These include streams that are currently occupied by one or more of the species, as well as some specific areas not currently occupied, but that were historically occupied, because we have determined that the additional areas are essential for the conservation of those species and that designating only occupied habitat is not sufficient to conserve them.

We began our analysis by considering historical and current ranges of each of the eight species. We used various sources including published literature and museum collection databases, as well as surveys, reports, and field notes prepared by biologists (see Background

section). We then identified the specific areas that are occupied by each of the eight mussels and that contain one or more of the PCEs. We defined occupied habitat as those stream reaches known to be currently occupied by any of the eight species. To identify the currently occupied stream reaches, we used post-1994 survey data. Several surveys were conducted in the basins between the years of 1995 to 2010 (Shelton 1995, 1999 unpub. data; Blalock–Herod *et al.* 2005; Pilarczyk *et al.* 2006, Shelton *et al.* 2007 unpub. data; Gangloff and Hartfield 2009). These surveys were used to assess the current conservation status of the species, and extended their known ranges. For this reason, we considered the year 1995 to be the demarcation between current and historical records. To identify the unoccupied stream reaches, we used survey data between the late 1800s and 1994. Therefore, if a species was known to occur in an area prior to 1995, but was not collected since then, the stream reach is considered unoccupied.

We then evaluated occupied stream reaches to delineate the probable upstream and downstream extent of each species' distribution. Known occurrences for some mussel species are extremely localized, and rare mussels can be difficult to locate. In addition, creek and river habitats are highly dependent upon upstream and downstream channel habitat conditions for their maintenance. Therefore, where more than one occurrence record of a particular species was found within a stream reach, we considered the entire reach between the uppermost and lowermost locations as occupied habitat.

We then considered whether this essential area was adequate for the conservation of each of the eight species. Small, isolated, aquatic populations are subject to chance catastrophic events and to changes in human activities and land use practices that may result in their elimination. Larger, more contiguous populations can reduce the threat of extinction due to habitat fragmentation and isolation. For these reasons, we believe that conservation of the Alabama pearlshell and southern kidneyshell requires expanding their ranges into currently unoccupied portions of their historical habitat. Given that threats to these two species are compounded by their limited distribution and isolation, it is unlikely that currently occupied habitat is adequate for their conservation. The range of each has been severely curtailed, their occupied habitats are limited and isolated, and population sizes are small. For example, the Alabama pearlshell is no longer believed to occur in the Limestone Creek system (Monroe County), several tributaries in the Murder Creek system, or in the Patsaliga Creek drainage. The southern kidneyshell once occurred in all three river basins, but is currently known only from the Choctawhatchee basin. While occupied units provide habitat for current populations, these species are at high risk of extirpation and extinction from stochastic events, whether periodic natural events or potential human-induced events (see ''Summary of Factors Affecting the Species''). The inclusion of essential unoccupied areas will provide habitat for population reintroduction and will decrease the risk of extinction. Based on the best scientific data available, we believe areas not currently occupied by the Alabama pearlshell and southern kidneyshell are essential for their conservation. However, we eliminated from consideration the Yellow River drainage as critical habitat for the southern kidneyshell. Its occurrence in the Yellow River is based on a 1919 collection of one specimen from Hollis Creek in Covington County, Alabama. We believe this single, historical collection is not sufficient to include any portions of the Yellow River drainage as essential to the conservation of the southern kidneyshell at this time. All of the stream habitat areas proposed as critical habitat that are currently not known to be occupied contain sufficient PBFs (e.g., geomorphically stable channels, perennial water flows, adequate water quality, and appropriate benthic substrates) to support life-history functions of the mussels. The stream reaches also lack major anthropogenic disturbance, and have potential for reoccupation by the species through future reintroduction efforts. Based on the above factors, all unoccupied stream reaches included in the proposed designations for the Alabama pearlshell and southern kidneyshell are essential to their conservation.

TABLE 1—OCCUPANCY AND STREAM LENGTH OF PROPOSED CRITICAL HABITAT UNITS BY SPECIES

Unit	Currently occupied?	Total stream length kilometers (miles)
Alabama pearlshell (*Margaritifera marrianae*)		
AP1: Big Flat Creek	Yes	92 (57)
AP2: Burnt Corn Creek, Murder Creek, and Sepulga River	Partially [1]	156 (97)
Total		248 (154)
Round ebonyshell (*Fusconaia rotulata*)		
GCM1: Lower Escambia-Conecuh	Yes	558 (347)
Southern sandshell (*Hamiota australis*)		
GCM3: Patsaliga Creek	Yes	149 (92)
GCM4: Upper Escambia-Conecuh River	Yes	137 (85)
GCM5: Yellow River	Yes	253 (157)
GCM6: Choctawhatchee River and Lower Pea River	Yes	892 (554)
GCM7: Upper Pea River	Yes	234 (145)
Total		1,665 (1,033)
Southern kidneyshell (*Ptychobranchus jonesi*)		
GCM1: Lower Escambia-Conecuh	No	558 (347)

TABLE 1—OCCUPANCY AND STREAM LENGTH OF PROPOSED CRITICAL HABITAT UNITS BY SPECIES—Continued

Unit	Currently occupied?	Total stream length kilometers (miles)
GCM3: Patsaliga Creek	No	149 (92)
GCM4: Upper Escambia-Conecuh River	No	137 (85)
GCM5: Choctawhatchee River and Lower Pea River	Yes	253 (157)
GCM7: Upper Pea River	Yes	234 (145)
Total		1,331 (826)
Choctaw bean (*Villosa choctawensis*)		
GCM1: Lower Escambia-Conecuh	Yes	558 (347)
GCM3: Patsaliga Creek	Yes	149 (92)
GCM4: Upper Escambia-Conecuh River	Yes	137 (85)
GCM5: Yellow River	Yes	253 (157)
GCM6: Choctawhatchee River and Lower Pea River	Yes	892 (554)
GCM7: Upper Pea River	Yes	234 (145)
Total		2,223 (1,380)
Tapered pigtoe (*Fusconaia burkei*)		
GCM6: Choctawhatchee River and Lower Pea River	Yes	892 (554)
GCM7: Upper Pea River	Yes	234 (145)
Total		1,126 (699)
Narrow pigtoe (*Fusconaia escambia*)		
GCM1: Lower Escambia-Conecuh	Yes	558 (347)
GCM2: Point A Lake and Gantt Lake Reservoirs	Yes	21 (13)
GCM3: Patsaliga Creek	Yes	149 (92)
GCM4: Upper Escambia-Conecuh River	Yes	137 (85)
GCM5: Yellow River	Yes	253 (157)
Total		1,118 (694)
Fuzzy pigtoe (*Pleurobema strodeanum*)		
GCM2: Lower Escambia-Conecuh	Yes	21 (13)
GCM3: Patsaliga Creek	Yes	149 (92)
GCM4: Upper Escambia-Conecuh River	Yes	137 (85)
GCM5: Yellow River	Yes	253 (157)
GCM6: Choctawhatchee River and Lower Pea River	Yes	892 (554)
GCM7: Upper Pea River	Yes	234 (145)
Total		1,686 (1,046)

[1] 17 km (11 mi) of Murder Creek mainstem are unoccupied.

Following the identification of occupied and unoccupied stream reaches, the next step was to delineate the probable upstream and downstream extent of each species' distribution. We used USGS 1:100,000 digital stream maps to delineate these boundaries of proposed critical habitat units according to the criteria explained below. The upstream boundary of a unit in a stream is the first perennial, named tributary confluence, a road-crossing bridge, or a permanent barrier to fish passage (such as a dam) above the upstream-most current occurrence record. Many of the Alabama pearlshell survey sites are located near watershed headwaters. In these areas, the upstream boundary of a unit is the point where the stream and its tributaries are no longer perennially flowing streams. The confluence of a tributary typically marks a significant change in the size of the stream and is a logical and recognizable upstream terminus. When a named tributary was not available, a road-crossing bridge was used to mark the boundary. Likewise, a dam or other barrier to fish passage marks the upstream extent to which mussels may disperse via their fish hosts. The downstream boundary of a unit in a stream is the confluence of a named tributary, the upstream extent of tidal influence, or the upstream extent of an impoundment, below the downstream-most occurrence record. In the unit descriptions, distances between landmarks marking the upstream or downstream extent of a stream segment are given in kilometers (km) and equivalent miles (mi), as measured tracing the course of the stream, not straight-line distance. Distances less than 10 km (6.2 mi) are rounded to the nearest half number; and distances of 10 km and greater are rounded to the nearest whole number.

Because mussels are naturally restricted by certain physical conditions within a stream or river reach (*i.e.,* flow, substrate), they may be unevenly distributed within these habitat units. Uncertainty on upstream and downstream distributional limits of some populations may have resulted in small areas of occupied habitat excluded from, or areas of unoccupied habitat included in, the designation. We recognize that both historical and recent collection records upon which we relied

are incomplete, and that there may be river segments or small tributaries not included in this proposed designation that harbor small, limited populations of one or more of the eight species considered in this designation, or that others may become suitable in the future. The exclusion of such areas does not diminish their potential individual or cumulative importance to the conservation of these species. However, we believe that, with proper management, each of the nine critical habitat units are capable of supporting one or more of these mussel species, and will serve as source populations for artificial reintroduction into designated stream units, as well as assisted or natural migration into adjacent undesignated streams within each basin. The habitat areas contained within the units described below constitute our best evaluation of areas needed for the conservation of these species at this time. Critical habitat may be revised for any or all of these species should new information become available.

Using the above criteria, we delineated a total of nine critical habitat units—two Alabama pearlshell units (AP1, AP2), and seven Gulf Coast mussels units (GCM1 through GCM7) for the other seven mussel species. We depicted the Alabama pearlshell units separately as this species tends to inhabit headwater stream environments and seldom co-occurs with the other seven species, although some critical habitat in the downstream portions of Unit AP2 overlaps with the upstream portions of Unit GCM1 in the Escambia River drainage. The round ebonyshell, southern sandshell, southern kidneyshell, Choctaw bean, tapered pigtoe, narrow pigtoe, and fuzzy pigtoe often co-occur within the same stream segments, so most of the GCM critical habitat units are designated for more than one species. Unit GCM2: Point A Lake and Gantt Lake Reservoirs is the only exception, and the unit is designated only for the narrow pigtoe.

When determining proposed critical habitat boundaries within this proposed rule, we made every effort to avoid including developed areas and other structures because these lack PCEs for the eight species. The areas proposed for critical habitat below include only stream channels within the ordinary high-water line and do not contain developed areas or structures. 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 and biological features in the adjacent critical habitat.

Proposed Critical Habitat Designation

We are proposing nine habitat units encompassing 2,406 km (1,495 mi) of stream channel in Alabama and Florida for these eight freshwater mussel species. Unit name, location, and the approximate stream length of each proposed critical habitat unit are shown in Table 2. The proposed critical habitat units include the creek and river channels within the ordinary high-water line only. For this purpose, we have applied the definition found at 33 CFR 329.11, and consider the ordinary high-water line on nontidal rivers to be the line on the shore established by the fluctuations of water and indicated by physical characteristics, such as a clear, natural 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.

States were granted ownership of lands beneath navigable waters up to the ordinary high-water line upon achieving statehood (*Pollard* v. *Hagan,* 44 U.S. (3 How.) 212 (1845)). Prior sovereigns or the States may have made grants to private parties that included lands below the ordinary high-water mark of some navigable waters that are included in this proposal. We believe that most, if not all, lands beneath the navigable waters included in this proposed rule are owned by the States of Alabama and Florida. The lands beneath most nonnavigable waters included in this proposed rule are in private ownership. Riparian lands along the waters are either in private ownership, or are owned by county, State, or Federal entities. Lands under county, State, and Federal ownership consist of managed conservation areas and Department of Defense lands, and are considered to have some level of protection. Table 2 identifies the approximate length of private and protected riparian lands.

TABLE 2—PROPOSED CRITICAL HABITAT UNITS, LOCATION, APPROXIMATE STREAM LENGTH, AND OWNERSHIP OF RIPARIAN LANDS

Unit	Location	Total length km (mi)	Private km (mi)*	Private/ protected km (mi)*	Protected km (mi)*
AP1	Big Flat Creek, AL	92 (57)	92 (57)	0	0
AP2	Burnt Corn Creek, Murder Creek, and Sepulga River, AL	156 (97)	156 (97)	0	0
GCM1	Lower Escambia River, AL, FL	558 (347)	482 (299)	18 (11)	59 (36)
GCM2	Point A Lake and Gantt Lake Reservoirs, AL	21 (13)	21 (13)	0	0
GCM3	Patsaliga Creek, AL	149 (92)	149 (92)	0	0
GCM4	Upper Escambia River, AL	137 (85)	130 (81)	7 (4)	0
GCM5	Yellow River, AL, FL	253 (157)	104 (64)	68 (42)	81 (50)
GCM6	Choctawhatchee and Lower Pea River, AL, FL	892 (554)	718 (446)	61 (38)	119 (74)
GCM7	Upper Pea River, AL	234 (145)	228 (142)	0	5 (3)
Overlap between units AP2 and GCM1		−85 (53)			
Total	2,406	(1,495)	1,993 (1239)	153 (95)	264 (164)

Note: Distances may not sum due to rounding.

*Ownership is categorized by private ownership on both banks of the river (Private); private on one bank and county, state or federal on the other (Private/Protected); and county, state, or federal on both banks (Protected).

Below we present brief descriptions of all units, and reasons why they meet the definition of critical habitat for each species. We also present any threats unique to the unit's features that may require special management of the PCEs. For each stream reach proposed as a critical habitat unit, the upstream and downstream boundaries are described generally below. More precise estimates are provided in the Regulation Promulgation section at the end of this proposed rule.

Unit AP1: Big Flat Creek Drainage, Alabama

Unit AP1 encompasses 92 km (57 mi) of the Big Flat Creek drainage, in Monroe and Wilcox Counties, AL. The unit is within the Mobile River basin. It includes the mainstem of Big Flat Creek from Hwy 41 upstream 56 km (35 mi), Monroe County, AL; Flat Creek from its confluence with Big Flat Creek upstream 20 km (12 mi), Monroe County, AL; and Dailey Creek from its confluence with Flat Creek upstream 17 km (11 mi), Wilcox County, AL.

Unit AP1 is proposed as critical habitat for the Alabama pearlshell. Based on collection records, the species was last collected in the Big Flat Creek system in 1995, when Shelton (1995, p. 3 unpub. data) documented a fresh dead individual. Although it is likely that the Alabama pearlshell has always been rare in Big Flat Creek, the unit currently supports healthy populations of several other native mussel species indicating the presence of PCEs 1, 2, 3, and 4. A diverse fish fauna, including potential fish host(s) for the Alabama pearlshell, are known from the Big Flat Creek drainage, indicating the potential presence of PCE 5.

Threats to the Alabama pearlshell and its habitat may require special management of the PCEs including maintaining natural stream flows and protecting water quality from excessive point- and non-point-source pollution. For example, runoff from agricultural and industrial sites can alter water quality through added nutrients and sediment. Runoff from unpaved roads can also add sediments, and poorly designed road culverts can degrade habitats and limit distribution of the species. Some culverts can isolate pearlshell populations by acting as a barrier for dispersion and movement of host fish(es).

Unit AP2: Burnt Corn Creek, Murder Creek, and Sepulga River Drainages, Alabama

Unit AP2 encompasses 156 km (97 mi) of the Burnt Corn Creek, Murder Creek, and Sepulga River drainages within the Escambia River drainage in Escambia and Conecuh Counties, AL. It includes the mainstem of Burnt Corn Creek from its confluence with Murder Creek upstream 66 km (41 mi), Conecuh County, AL; the mainstem of Murder Creek from its confluence with Jordan Creek upstream 17 km (11 mi) to the confluence of Otter Creek, Conecuh County, AL; Jordan Creek from its confluence with Murder Creek upstream 12 km (7 mi), Conecuh County, AL; Otter Creek from its confluence with Murder Creek upstream 9 km (5.5 mi), Conecuh County, AL; Hunter Creek from its confluence with Murder Creek upstream 8 km (5 mi), Conecuh County, AL; Sandy Creek from County Road 29 upstream 5 km (3.5 mi) to Hagood Road; two unnamed tributaries to Sandy Creek—one from its confluence with Sandy Creek upstream 8.5 km (5.0 mi) to Hagood Road and the other from its confluence with the previous unnamed tributary 2.5 km (1.5 mi) upstream to Hagood Road, Conecuh County, AL; Little Cedar Creek from County Road 6 upstream 8 km (5 mi), Conecuh County, AL; Amos Mill Creek from its confluence with the Sepulga River upstream 12 km (8 mi), Escambia and Conecuh Counties, AL; Polly Creek from its confluence with Amos Mill Creek upstream 3 km (2 mi), Conecuh County, AL; and Bottle Creek from its confluence with the Sepulga River upstream 5.5 km (3.5 mi) to County Road 42, Conecuh County, AL.

The Alabama pearlshell currently occurs in Jordan, Hunter, Otter, Sandy, and Little Cedar, Bottle, and Amos Mill Creek drainages. Although it historically occurred in the mainstem of Murder Creek, it has not been collected there in recent years. Therefore, this short reach of Murder Creek is considered unoccupied by the Alabama pearlshell, but essential to the conservation of the species. This unoccupied reach retains the features of a natural stream channel and supports other native mussel species. It has potential for reoccupation by the pearlshell, particularly if threats can be identified and mitigated.

The unit currently supports healthy populations of several other native mussel species indicating the presence of PCEs 1, 2, 3, and 4. In addition, other mussel species, requiring similar PCEs, co-occur with the pearlshell. A diverse fish fauna, including potential fish host(s) for the Alabama pearlshell, are known from these drainages, indicating the potential presence of PCE 5.

Threats to the Alabama pearlshell and its habitat may require special management of the PCEs including, alteration of natural stream flows, maintaining natural stream flows (including the construction of impoundments), and protecting water quality from excessive point- and non-point-source pollution.

Unit GCM1: Lower Escambia River Drainage, Florida and Alabama

Unit GCM1 encompasses 558 km (347 mi) of the lower Escambia River mainstem and 12 tributary streams in Escambia and Santa Rosa Counties, FL; and Escambia, Covington, Conecuh, and Butler Counties, AL. The unit consists of the main channel of the Escambia-Conecuh River from the confluence of Spanish Mill Creek, Escambia and Santa Rosa Counties, FL, upstream 204 km (127 mi) to the Point A Lake dam, Covington County, AL; Murder Creek from its confluence with the Conecuh River, Escambia County, AL, upstream 62 km (38 mi) to the confluence of Cane Creek, Conecuh County, AL; Burnt Corn Creek from its confluence with Murder Creek, Escambia County, AL, upstream 59 km (37 mi) to County Road 20, Conecuh County, AL; Jordan Creek from its confluence with Murder Creek, upstream 5.5 km (3.5 mi) to Interstate 65, Conecuh County, AL; Mill Creek from its confluence with Murder Creek upstream 2.5 km (1.5 mi) to the confluence of Sandy Creek, Conecuh County, AL; Sandy Creek from its confluence with Mill Creek upstream 5.5 km (3.5 mi) to County Road 29, Conecuh County, AL; Sepulga River from its confluence with the Conecuh River upstream 69 km (43 mi) to the confluence of Persimmon Creek, Conecuh County, AL; Bottle Creek from its confluence with the Sepulga River upstream 5.5 km (3.5 mi) to County Road 42, Conecuh County, AL; Persimmon Creek from its confluence with the Sepulga River, Conecuh County upstream 36 km (22 mi) to the confluence of Mashy Creek, Butler County, AL; Panther Creek from its confluence with Persimmon Creek upstream 11 km (7 mi) to State Route 106, Butler County, AL; Pigeon Creek from its confluence with the Sepulga River, Conecuh and Covington Counties upstream 89 km (55 mi) to the confluence of Three Run Creek, Butler County, AL; and Three Run Creek from its confluence with Pigeon Creek upstream 9 km (5.5 mi) to the confluence of Spring Creek, Butler County, AL.

Unit GCM1 is proposed as critical habitat for the round ebonyshell, southern sandshell, southern kidneyshell, Choctaw bean, narrow pigtoe, and fuzzy pigtoe. The southern kidneyshell is not currently known to occur in the unit; however, this portion of the Escambia River system is within

the species' historical range, and we consider it essential to the southern kidneyshell's conservation due to the need to re-establish the species within other portions of its historical range in order to reduce threats from stochastic events. The unit currently supports populations of round ebonyshell, southern sandshell, Choctaw bean, narrow pigtoe, and fuzzy pigtoe indicating the presence of PCEs 1, 2, 3, and 4. In addition, other mussel species, requiring similar PCEs, co-occur with these five species. A diverse fish fauna, including potential fish host(s) for the fuzzy pigtoe, are known from the Escambia River drainage, indicating the potential presence of PCE 5.

Threats to the five species and their habitat that may require special management of the PCEs include the potential of significant changes in the existing flow regime and water quality due to two upstream impoundments. As discussed in Summary of Factors Affecting the Species, under Dams and Impoundments, mollusk declines below dams are associated with changes and fluctuation in flow regime, scouring and erosion, reduced dissolved oxygen levels and water temperatures, and changes in resident fish assemblages. These alterations can cause mussel declines for many miles below the dam.

Unit GCM2: Point A Lake and Gantt Lake Reservoirs, Alabama

Unit GCM2 encompasses 21 km (13 mi) of the Point A Lake and Gantt Lake reservoir system in Covington County, AL. Both lakes are impoundments on the Conecuh River main channel in the Escambia River drainage. The unit extends from Point A Lake dam, Covington County upstream 21 km (13 mi) to the Covington-Crenshaw County line in Alabama.

Unit GCM2 is proposed as critical habitat for the narrow pigtoe. As mentioned in the PCEs for the narrow pigtoe (above), we attribute its occurrence in these two impoundments to the small size of the reservoirs and to the operational regime of the dams. This allows for water movement through the system, and prevents silt accumulation in some areas. The largest narrow pigtoe population occurs in the middle reach of Gantt Lake, where the reservoir narrows and becomes somewhat riverine. Although the natural state of the river's hydrological flow regime is modified, it does retain the features necessary to maintain the benthic habitats where the species are found. The persistence of the narrow pigtoe within these reservoirs indicates the presence of an appropriate fish host. Although its fish host(s) is unknown, other mussels of the genus *Fusconaia* are known to use cyprinid minnows, a fish species that occupies a variety of habitats including large, flowing rivers, and lakes and reservoirs (Mettee *et al.* 1996, p. 128). The unit currently supports narrow pigtoe populations, indicating the presence of PCEs 1, 3, 4, and 5. We consider the habitat in this unit essential to the conservation of the narrow pigtoe as it possesses the largest known population. The fuzzy pigtoe is known from this stretch of the Conecuh River (one specimen was collected in 1915). However, the collection was made prior to construction of the reservoirs in 1923, and it is not presently known to occur in this now-impounded section of the river.

Threats to the narrow pigtoe and its habitat that may require special management of the PCEs include the potential of significant changes in water levels due to periodic drawdowns of the reservoirs for maintenance to the dams. Within the two reservoirs, mussels occur in shallow areas near the shore, where they are susceptible to exposure when water levels are lowered. A drawdown of Point A Lake in 2005 and Gantt Lake in 2006 exposed and killed a substantial number of mussels (Johnson 2006a *in litt.;* Johnson 2006b *in litt.*). During the Gantt drawdown, 142 individuals of narrow pigtoe were relocated after being stranded in dewatered areas near the shoreline (Garner 2009 pers. comm.; Pursifull 2006 pers. obs.).

Unit GCM3: Patsaliga Creek Drainage, Alabama

Unit GCM3 encompasses 149 km (92 mi) of Patsaliga Creek and two tributary streams in Covington, Crenshaw, and Pike Counties, AL, within the Escambia River basin. The unit consists of the Patsaliga Creek mainstem from its confluence with Point A Lake at County Road 59, Covington County, AL, upstream 108 km (67 mi) to Crenshaw County Road 66–Pike County Road 1 (the creek is the county boundary), AL; Little Patsaliga Creek from its confluence with Patsaliga Creek upstream 28 km (17 mi) to Mary Daniel Road, Crenshaw County, AL; and Olustee Creek from its confluence with Patsaliga Creek upstream 12 km (8 mi) to County Road 5, Pike County, AL.

Unit GCM3 is proposed as critical habitat for the southern sandshell, southern kidneyshell, Choctaw bean, narrow pigtoe, and fuzzy pigtoe. The southern kidneyshell is not currently known to occur in the unit; however, this portion of the Patsaliga Creek system is within the species' historical range. We consider it essential to the conservation of the southern kidneyshell due to the need to re-establish the species within other portions of its historical range in order to reduce threats from stochastic events. The unit does currently support populations of southern sandshell, Choctaw bean, narrow pigtoe, and fuzzy pigtoe indicating the presence of PCEs 1, 2, 3, and 4. In addition, other mussel species, requiring similar PCEs, co-occur with these four species. A diverse fish fauna, including a potential fish host for the fuzzy pigtoe, are known from the Patsaliga Creek drainage, indicating the potential presence of PCE 5.

Prior to construction of the Point A Lake and Gantt Lake dams in 1923, Patsaliga Creek drained directly to the Conecuh River main channel. It now empties into Point A Lake and is effectively isolated from the main channel by the dams. The dams are barriers to upstream fish movement, particularly to anadromous fishes. Therefore, a potential threat that may require special management of the PCEs includes the absence of fish hosts.

Unit GCM4: Upper Escambia River Drainage, Alabama

Unit GCM4 encompasses 137 km (85 mi) of the Conecuh River mainstem and two tributary streams in Covington, Crenshaw, Pike, and Bullock Counties, AL, within the Escambia River drainage. The unit consists of the Conecuh River from its confluence with Gantt Lake reservoir at the Covington-Crenshaw County line upstream 126 km (78 mi) to County Road 8, Bullock County, AL; Beeman Creek from its confluence with the Conecuh River upstream 6.5 km (4 mi) to the confluence of Mill Creek, Pike County, AL; and Mill Creek from its confluence with Beeman Creek, upstream 4.5 km (3 mi) to County Road 13, Pike County, AL.

Unit GCM4 is proposed as critical habitat for the southern sandshell, southern kidneyshell, Choctaw bean, narrow pigtoe, and fuzzy pigtoe. The southern kidneyshell is not currently known to occur in the unit; however, this portion of the Conecuh River is within the species' historical range, and we consider it to be essential to the conservation of the southern kidneyshell due to the need to re-establish the species within other portions of its historical range in order to reduce threats from stochastic events. The unit does currently support populations of southern sandshell, Choctaw bean, narrow pigtoe, and fuzzy pigtoe indicating the presence of PCEs 1, 2, 3, and 4. In addition, other mussel species requiring similar PCEs co-occur

with these four species. A diverse fish fauna, including a potential fish host for the fuzzy pigtoe, are known from the upper Escambia River drainage, indicating the potential presence of PCE 5.

The Point A Lake and Gantt Lake dams on the Conecuh River mainstem are barriers to upstream fish movement, particularly to anadromous fishes. Therefore, a potential threat that may require special management of the PCEs includes the absence of fish hosts.

Unit GCM5: Yellow River Drainage, Florida and Alabama

Unit GCM5 encompasses 253 km (157 mi) of the Yellow River mainstem, the Shoal River mainstem and three tributary streams in Santa Rosa, Okaloosa, and Walton Counties, FL; and Covington County, AL. The unit consists of the Yellow River from the confluence of Weaver River, (a tributary located 0.9 km (0.6 mi) downstream of State Route 87), Santa Rosa County, FL, upstream 157 km (97 mi) to County Road 42, Covington County, AL; the Shoal River from its confluence with the Yellow River, Okaloosa County, FL, upstream 51 km (32 mi) to the confluence of Mossy Head Branch, Walton County, FL; Pond Creek from its confluence with the Shoal River, Okaloosa County, FL, upstream 24 km (15 mi) to the confluence of Fleming Creek, Walton County, FL; Five Runs Creek from its confluence with the Yellow River upstream 15 km (9.5 mi) to County Road 31, Covington County, AL; and Hollis Creek from its confluence with the Yellow River upstream 5.5 km (3.5 mi) to County Road 42, Covington County, AL.

Unit GCM5 is proposed as critical habitat for the southern sandshell, Choctaw bean, narrow pigtoe, and fuzzy pigtoe. The southern kidneyshell is known from the Yellow River drainage; however, its occurrence in the basin is based on the collection of one specimen in 1919 from Hollis Creek in Alabama. We believe this single, historical record is not sufficient to consider this unit as essential to the conservation of the southern kidneyshell. Therefore, we are not designating Unit GCM5 as critical habitat for the southern kidneyshell at this time. The unit does currently support populations of southern sandshell, Choctaw bean, narrow pigtoe, and fuzzy pigtoe indicating the presence of PCEs 1, 2, 3, and 4. In addition, other mussel species, requiring similar PCEs, co-occur with these four species. A diverse fish fauna are known from the Yellow River drainage, indicating the potential presence of PCE 5.

Unit GCM6: Choctawhatchee River and Lower Pea River Drainages, Florida and Alabama

Unit GCM6 encompasses 892 km (554 mi) of the Choctawhatchee River mainstem, the lower Pea River mainstem, and 29 tributary streams in Walton, Washington, Bay, Holmes, and Jackson Counties, FL; and Geneva, Coffee, Dale, Houston, Henry, Pike, and Barbour Counties, AL. The unit consists of the Choctawhatchee River from the confluence of Pine Log Creek, Walton County, FL upstream 200 km (125 mi) to the point the river splits into the West Fork Choctawhatchee and East Fork Choctawhatchee Rivers, Barbour County, AL; Pine Log Creek from its confluence with the Choctawhatchee River, Walton County, upstream 19 km (12 mi) to the confluence of Ditch Branch, Washington and Bay Counties, FL; an unnamed channel forming Cowford Island from its downstream confluence with the Choctawhatchee River upstream 3 km (2 mi) to its upstream confluence with the river, Washington County, FL; Crews Lake from its western terminus 1.5 km (1 mi) to its eastern terminus, Washington County, FL (Crews Lake is a relic channel southwest of Cowford Island, and is disconnected from the Cowford Island channel, except during high flows); Holmes Creek from its confluence with the Choctawhatchee River, Washington County, FL, upstream 98 km (61 mi) to County Road 4, Geneva County, AL; Alligator Creek from its confluence with Holmes Creek upstream 6.5 km (4 mi) to County Road 166, Washington County, FL; Bruce Creek from its confluence with the Choctawhatchee River upstream 25 km (16 mi) to the confluence of an unnamed tributary, Walton County, FL; Sandy Creek from its confluence with the Choctawhatchee River, Walton County upstream 30 km (18 mi) to the confluence of West Sandy Creek, Walton County, FL; Blue Creek from its confluence with Sandy Creek, upstream 7 km (4.5 mi) to the confluence of Goose Branch, Holmes County, FL; West Sandy Creek from its confluence with Sandy Creek, upstream 5.5 km (3.5 mi) to the confluence of an unnamed tributary, Walton County, FL; Wrights Creek from its confluence with the Choctawhatchee River, Holmes County, FL, upstream 43 km (27 mi) to County Road 4, Geneva County, AL; Tenmile Creek from its confluence with Wrights Creek upstream 6 km (3.5 mi) to the confluence of Rice Machine Branch, Holmes County, FL; West Pittman Creek from its confluence with the Choctawhatchee River upstream 6.5 km (4 mi) to Fowler Branch, Holmes County, FL; East Pittman Creek from its confluence with the Choctawhatchee River upstream 4.5 km (3 mi) to County Road 179, Holmes County, FL; Parrot Creek from its confluence with the Choctawhatchee River upstream 6 km (4 mi) to Tommy Lane, Holmes County, FL; the Pea River from its confluence with the Choctawhatchee River, Geneva County upstream 91 km (57 mi) to the Elba Dam, Coffee County, AL; Limestone Creek from its confluence with the Pea River upstream 8.5 km (5 mi) to Woods Road, Walton County, FL; Flat Creek from the Pea River upstream 17 km (10 mi) to the confluence of Panther Creek, Geneva County, AL; Eightmile Creek from its confluence with Flat Creek, Geneva County, AL, upstream 15 km (9 mi) to the confluence of Dry Branch (first tributary upstream of County Road 181), Walton County, FL; Corner Creek from its confluence with Eightmile Creek upstream 5 km (3 mi) to State Route 54, Geneva County, AL; Natural Bridge Creek from its confluence with Eightmile Creek Geneva County, AL, upstream, 4 km (2.5 mi) to the Covington-Geneva County line, AL; Double Bridges Creek from the Choctawhatchee River, Geneva County upstream 46 km (29 mi) to the confluence of Blanket Creek, Coffee County, AL; Claybank Creek from the Choctawhatchee River, Geneva County upstream 22 km (14 mi) to the Fort Rucker military reservation southern boundary, Dale County, AL; Claybank Creek from the Fort Rucker military reservation northern boundary, upstream 6 km (4 mi) to County Road 36, Dale County, AL; Steep Head Creek from the Fort Rucker military reservation western boundary, upstream 4 km (2.5 mi) to County Road 156, Coffee County, AL; Hurricane Creek from its confluence with the Choctawhatchee River upstream 14 km (8.5 mi) to State Route 52, Geneva County, AL; Little Choctawhatchee River from its confluence with the Choctawhatchee River, Dale and Houston Counties upstream 20 km (13 mi) to the confluence of Newton Creek, Houston County, AL; Panther Creek from its confluence with the Little Choctawhatchee River, upstream 4.5 km (2.5 mi) to the confluence of Gilley Mill Branch, Houston County, AL; Bear Creek from its confluence with the Little Choctawhatchee River, upstream 5.5 km (3.5 mi) to County Road 40 (Fortner Street), Houston County, AL; West Fork Choctawhatchee River from its confluence with the Choctawhatchee River, Dale County upstream 54 km (33 mi) to the fork of Paul's Creek and

Lindsey Creek, Barbour County, AL; Judy Creek from its confluence with West Fork Choctawhatchee River upstream 17 km (11 mi) to County Road 13, Dale County, AL; Sikes Creek from its confluence with West Fork Choctawhatchee River, Dale County upstream 8.5 km (5.5 mi) to State Route 10, Barbour County, AL; Paul's Creek from its confluence with West Fork Choctawhatchee River upstream 7 km (4.5 mi) to one mile upstream of County Road 20, Barbour County, AL; Lindsey Creek from its confluence with West Fork Choctawhatchee River upstream 14 km (8.5 mi) to the confluence of an unnamed tributary, Barbour County, AL; an unnamed tributary to Lindsey Creek from its confluence with Lindsey Creek upstream 2.5 km (1.5 mi) to 1.0 mile upstream of County Road 53, Barbour County, AL; and East Fork Choctawhatchee River from its confluence with Choctawhatchee River, Dale County upstream 71 km (44 mi) to County Road 71, Barbour County, AL.

Unit GCM6 is proposed as critical habitat for the southern sandshell, southern kidneyshell, Choctaw bean, tapered pigtoe, and fuzzy pigtoe. The unit currently supports populations of the five species and other mussel species requiring similar PCEs, indicating the presence of PCEs 1, 2, 3, and 4. A diverse fish fauna is known from the Choctawhatchee River, including a potential fish host for the fuzzy pigtoe and tapered pigtoe, indicating the potential presence of PCE 5.

Not included in this unit are two oxbow lakes now disconnected from the Choctawhatchee River main channel in Washington County, FL. Horseshoe Lake has a record of the southern kidneyshell from 1932, and Crawford Lake has records of the Choctaw bean and tapered pigtoe from 1934. It is possible these oxbow lakes had some connection to the main channel when the collections were made over 75 years ago. The three species are not currently known to occur in Horseshoe or Crawford lakes, and we do not consider them essential to the conservation of the southern kidneyshell, Choctaw bean, or tapered pigtoe.

Threats to the five species and their habitat that may require special management of the PCEs include the potential of significant changes in the existing flow regime and water quality due to the Elba dam on the Pea River mainstem. As discussed in Summary of Factors Affecting the Species, under Dams and Impoundments, mollusk declines below dams are associated with changes and fluctuation in flow regime, scouring and erosion, reduced dissolved oxygen levels and water temperatures, and changes in resident fish assemblages. These alterations can cause mussel declines for many miles below the dam.

Unit GCM7: Upper Pea River Drainage, Alabama

Unit GCM7 encompasses 234 km (145 mi) of the upper Pea River mainstem and six tributary streams in Coffee, Dale, Pike, Barbour, and Bullock Counties, AL. This unit is within the Choctawhatchee River basin and includes the stream segments upstream of the Elba dam. The unit consists of the Pea River from the Elba dam, Coffee County upstream 123 km (76 mi) to State Route 239, Bullock and Barbour Counties, AL; Whitewater Creek from its confluence with the Pea River, Coffee County upstream 45 km (28 mi) to the confluence of Walnut Creek, Pike County, AL; Walnut Creek from its confluence with Whitewater Creek upstream 14 km (9 mi) to County Road 26, Pike County, AL; Big Creek (Coffee County Big Creek) from its confluence with Whitewater Creek, Coffee County upstream 30 km (18 mi) to the confluence of Smart Branch, Pike County, AL; Big Creek (Barbour County Big Creek) from its confluence with the Pea River upstream 10 km (6 mi) to the confluence of Sand Creek, Barbour County, AL; Pea Creek from its confluence with the Pea River upstream 6 km (4 mi) to the confluence of Hurricane Creek, Barbour County, AL; and Big Sandy Creek from its confluence with the Pea River upstream 6.5 km (4 mi) to County Road 14, Bullock County, AL.

Unit GCM7 is proposed as critical habitat for the southern sandshell, southern kidneyshell, Choctaw bean, tapered pigtoe, and fuzzy pigtoe. The unit currently supports populations of the five species, and other mussel species requiring similar PCEs, indicating the presence of PCEs 1, 2, 3, and 4. A diverse fish fauna is known from the upper Pea River, including potential fish host(s) for the fuzzy pigtoe and tapered pigtoe, indicating the potential presence of PCE 5.

The Elba dam on the Pea River mainstem is a barrier to upstream fish movement, particularly to anadromous fishes. Therefore, a potential threat that may require special management of the PCEs includes the absence of potential host fishes.

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 Appeal 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,* 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 Alabama pearlshell, round ebonyshell, southern sandshell, southern kidneyshell, Choctaw bean, tapered pigtoe, narrow pigtoe, or fuzzy pigtoe. As discussed above, the role of critical habitat is to support life-history needs and provide for the conservation of these 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 Alabama pearlshell, round ebonyshell, southern sandshell, southern kidneyshell, Choctaw bean, tapered pigtoe, narrow pigtoe, or fuzzy pigtoe. These activities include, but are not limited to:

(1) Actions that would alter the geomorphology of their stream and river 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 these mussels, and could cause other direct or cumulative adverse effects to these species and their life cycles.

(2) Actions that would significantly alter the existing flow regime. Such activities could include, but are not limited to; impoundment, water diversion, water withdrawal, water draw-down, and hydropower generation. These activities could eliminate or reduce the habitat necessary for growth and reproduction of these mussels.

(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, hydropower discharges, or the release of chemicals, biological pollutants, or heated effluents into surface water or connected groundwater at a point source or by dispersed release (non-point source). These activities could alter water conditions that are beyond the tolerances of these mussels and result in direct or cumulative adverse effects to the species and their life cycles.

(4) Actions that would significantly alter stream bed material composition and quality by increasing sediment deposition or filamentous algal growth. Such activities could include, but are not limited to, construction projects, livestock grazing, timber harvest, and other watershed and floodplain disturbances that release sediments or nutrients into the water. These activities could eliminate or reduce habitats necessary for the growth and reproduction of these mussels by causing excessive sedimentation and burial of the species or their habitats, or nutrification leading to excessive filamentous algal growth. Excessive filamentous algal growth can cause reduced nighttime dissolved oxygen levels through respiration, and prevent juvenile mussels from settling into stream sediments.

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 resource 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.''

The U.S. Army-operated Fort Rucker Aviation Center, located in Daleville, AL, owns lands that include portions of the proposed critical habitat designation (specifically unit GCM6, Choctawhatchee River and Lower Pea River Drainage). Portions of Claybank and Steep Head Creeks are on lands within the Fort Rucker military reservation. Fort Rucker has completed an INRMP (BioResources 2007) that guides conservation activities on the installation through 2014. This INRMP does not mention any of the southern sandshell, southern kidneyshell, Choctaw bean, tapered pigtoe, and fuzzy pigtoe by name, but does specifically address maintaining and improving water quality through reduction in sedimentation and erosion control, land management practices, and improved treatment facilities (BioResources 2007, pp. 82–83, p. 90, pp.128–129). Based on the above considerations, and in accordance with section 4(a)(3)(B)(i) of the Act, we have determined that the identified lands are subject to the Fort Rucker INRMP and that conservation efforts identified in the INRMP will provide a benefit to the southern sandshell, southern kidneyshell, Choctaw bean, tapered pigtoe, and fuzzy pigtoe occurring in habitats within or downstream of the Fort Rucker military reservation. Therefore, lands within this installation are exempt from critical habitat designation under section 4(a)(3) of the Act. Pursuant to this exemption, we are not including approximately 16 mi (25 km) of stream habitat in this proposed critical habitat designation.

Eglin Air Force Base (AFB), located in Niceville, FL, owns the lands adjacent to the proposed critical habitat designation (specifically unit GCM5, Yellow River Drainage). The lower portions of the Shoal and Yellow Rivers form the northwestern boundary of the military reservation. However, no portions of stream or river channels proposed for critical habitat designation occur within the boundary of the military reservation, and therefore are not proposed for exemption. These reaches are also currently designated critical habitat for the Gulf sturgeon (*Acipenser oxyrinchus desotoi*) (68 FR 13370).

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.

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.

We will announce the availability of the draft economic analysis as soon as it is completed, at which time we will seek public review and comment. At that time, copies of the draft economic analysis will be available for downloading from the Internet at *http://www.regulations.gov,* or by contacting the Panama City, FL, 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, 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 where a national security impact might exist. In preparing this proposal, we have determined that some lands owned by the Department of Defense (Fort Rucker Army Aviation Center) are within the proposed designation of critical habitat for these eight mussels. However, this installation has a completed INRMP that provides for the conservation of aquatic fish and wildlife and their habitats, and therefore stream sections within the installation are already exempted from the definition of critical habitat under Section 4(a)(3)(B)(i) (see Exemptions above) so that there is no need to propose them for exclusion under Section 4(b)(2) based on national security impact. We have also proposed portions of the Yellow and Shoal Rivers that form the northwestern boundary of Eglin Air Force Base as critical habitat. However, these rivers are adjacent to the installation and not owned by the Department of Defense. Therefore, we do not propose to exclude them under Section 4(b)(2) based on national security concerns.

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 or other management plans for the Alabama pearlshell, round ebonyshell, southern sandshell, southern kidneyshell, Choctaw bean, tapered pigtoe, narrow pigtoe, and fuzzy pigtoe, 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. Accordingly, the Secretary does not propose to exert 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 critical habitat designation is based on scientifically sound data, assumptions, and analyses. We have invited these peer reviewers to comment during this public comment period on our specific assumptions and conclusions in this proposed designation of critical habitat.

We will consider all comments and information 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 the **ADDRESSES** 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

The Office of Management and Budget (OMB) has determined that this rule is not significant and has not reviewed this proposed rule under Executive Order 12866 (E.O. 12866). OMB bases its determination upon the following four criteria:

(1) Whether the rule will have an annual effect of $100 million or more on the economy or adversely affect an economic sector, productivity, jobs, the environment, or other units of the government.

(2) Whether the rule will create inconsistencies with other Federal agencies' actions.

(3) Whether the rule will materially affect entitlements, grants, user fees, loan programs, or the rights and obligations of their recipients.

(4) Whether the rule raises novel legal or policy issues.

Regulatory Flexibility Act

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), 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 RFA to require Federal agencies to provide a statement of the factual basis for certifying that the rule will not have a significant economic impact on a substantial number of small entities.

At this time, 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 prepared under section 4(b)(2) of the Act and E.O. 12866. This draft economic analysis will provide the required factual basis for the RFA finding. Upon completion of the draft economic analysis, 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. This includes information on hydroelectric generation, transportation, mining, permitted discharges, as well as other economic factors within the Escambia, Yellow, and Choctawhatchee River basins. 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.

Unfunded Mandates Reform Act

In accordance with the Unfunded Mandates Reform Act (2 U.S.C. 1501 *et seq.*), we make the following findings:

(a) This rule will not produce a Federal mandate. In general, a Federal mandate is a provision in legislation, statute, or regulation that would impose an enforceable duty upon State, local, or tribal governments, or the private sector, and includes both ''Federal intergovernmental mandates'' and ''Federal private sector mandates.'' These terms are defined in 2 U.S.C. 658(5)–(7). ''Federal intergovernmental mandate'' includes a regulation that ''would impose an enforceable duty upon State, local, or [T]ribal governments'' with two exceptions. It excludes ''a condition of Federal assistance.'' It also excludes ''a duty arising from participation in a voluntary Federal program,'' unless the regulation ''relates to a then-existing Federal program under which $500,000,000 or more is provided annually to State, local, and [T]ribal governments under entitlement authority,'' if the provision would ''increase the stringency of conditions of assistance'' or ''place caps upon, or otherwise decrease, the Federal Government's responsibility to provide funding,'' and the State, local, or tribal governments ''lack authority'' to adjust accordingly. At the time of enactment, these entitlement programs were: Medicaid; AFDC work programs; Child Nutrition; Food Stamps; Social Services Block Grants; Vocational Rehabilitation State Grants; Foster Care, Adoption Assistance, and Independent Living; Family Support Welfare Services; and Child Support Enforcement. ''Federal private sector mandate'' includes a regulation that ''would impose an enforceable duty upon the private sector, except (i) A condition of Federal assistance or (ii) a duty arising from participation in a voluntary Federal program.''

The designation of critical habitat does not impose a legally binding duty on non-Federal 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.

(b) We do not believe that the proposed designation of critical habitat for the Alabama pearlshell, round ebonyshell, southern kidneyshell, southern sandshell, Choctaw bean, tapered pigtoe, narrow pigtoe, and fuzzy pigtoe will significantly or uniquely affect small governments because these mussel species occur primarily in State-owned river channels, or in remote privately owned stream channels. As such, a Small Government Agency Plan is not required. We will, however, further evaluate this issue as we conduct our economic analysis and revise this assessment if appropriate.

Takings

In accordance with E.O. 12630 (Government Actions and Interference with Constitutionally Protected Private Property Rights), we have analyzed the potential takings implications of designating critical habitat for the Alabama pearlshell, round ebonyshell, southern sandshell, southern kidneyshell, Choctaw bean, tapered pigtoe, narrow pigtoe, and fuzzy pigtoe in a takings implications assessment. The takings implications assessment concludes that this designation of critical habitat for the eight species does not pose significant takings implications for lands within or affected by the designation.

Federalism

In accordance with E.O. 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 Alabama and Florida. The designation may have some benefit to these governments because the areas that contain the physical and biological features essential to the conservation of the species are more clearly defined, and 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

In accordance with E.O. 12988 (Civil Justice Reform), the Office of the Solicitor has determined that the rule does not unduly burden the judicial system and that it meets the requirements of sections 3(a) and 3(b)(2) of the Order. We have proposed designating critical habitat in accordance with the provisions of the Act. This proposed rule uses standard property descriptions and identifies the physical and biological features within the designated areas to assist the public in understanding the habitat needs of the Alabama pearlshell, round ebonyshell, southern kidneyshell, southern sandshell, Choctaw bean, tapered pigtoe, narrow pigtoe, and fuzzy pigtoe.

Paperwork Reduction Act of 1995

This rule does not contain any new collections of information that require approval by OMB under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). This rule will not impose recordkeeping or reporting requirements on State or local governments, individuals, businesses, or organizations. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

National Environmental Policy Act (NEPA)

It is our position that, outside the jurisdiction of the U.S. Court of Appeals for the Tenth Circuit, we do not need to prepare environmental analyses as defined by NEPA (42 U.S.C. 4321 *et seq.*) in connection with listing a species or 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:

(a) Be logically organized;

(b) Use the active voice to address readers directly;

(c) Use clear language rather than jargon;

(d) Be divided into short sections and sentences; and

(e) Use lists and tables wherever possible.

If you feel that we have not met these requirements, send us comments by one of the methods listed in the **ADDRESSES** section. To better help us revise the rule, your comments should be as specific as possible. For example, you should tell us the numbers of the sections or paragraphs that are unclearly written, which sections or sentences are too long, the sections where you feel lists or tables would be useful, etc.

Government-to-Government Relationship With Tribes

In accordance with the President's memorandum of April 29, 1994, Government-to-Government Relations with Native American Tribal Governments (59 FR 22951), E.O. 13175, and the Department of the Interior's manual at 512 DM 2, we readily acknowledge our responsibility to communicate meaningfully with recognized Federal Tribes on a government-to-government basis. In accordance with Secretarial Order 3206 of June 5, 1997 (American Indian Tribal Rights, Federal-Tribal Trust Responsibilities, and the Endangered Species Act), we readily acknowledge our responsibilities to work directly with Tribes in developing programs for healthy ecosystems, to acknowledge that tribal lands are not subject to the same controls as Federal public lands, to remain sensitive to Indian culture, and to make information available to Tribes.

We have determined that there are no Tribal lands occupied at the time of listing that contain the features essential for the conservation of, and no Tribal lands that are essential for the conservation of, these eight species. Therefore, we have not proposed designation of critical habitat for any of the eight species on Tribal lands.

Energy Supply, Distribution, or Use

On May 18, 2001, the President issued an Executive Order (E.O. 13211; Actions Concerning Regulations That Significantly Affect Energy Supply,

Distribution, or Use) on regulations that significantly affect energy supply, distribution, and use. E.O. 13211 requires agencies to prepare Statements of Energy Effects when undertaking certain actions. We do not expect the designation of critical habitat for the Alabama pearlshell, round ebonyshell, southern sandshell, southern kidneyshell, Choctaw bean, tapered pigtoe, narrow pigtoe, or fuzzy pigtoe to significantly affect energy supplies, distribution, or use. Although one of the proposed units is below hydropower reservoirs, current and proposed operating regimes have been deemed adequate for the species, and therefore their operations will not be affected by the proposed listing or designation of critical habitat. As discussed in the ''Summary of Factors Affecting the Species'' section, there is a large concentration of oil wells located in Conecuh and Escambia Counties, Alabama. Although this activity primarily affects Units AP2 and GCM1, we do not believe it is a significant threat to the species discussed in this rule. All other proposed units are remote from energy supply, distribution, or use activities. 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.

References Cited

A complete list of references cited is available on the Internet at *http://www.regulations.gov* and upon request from the Panama City Field Office (see **FOR FURTHER INFORMATION CONTACT**).

Author(s)

The primary author of this package is Sandra Pursifull of the Panama City, FL, Fish and Wildlife 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—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.

2. Amend § 17.11(h) by adding:

''bean, Choctaw,'' ''ebonyshell, round,'' ''kidneyshell, southern,'' ''pearlshell, Alabama'', ''pigtoe, fuzzy'', ''pigtoe, narrow'', ''pigtoe, tapered'', and ''sandshell, southern'' in alphabetical order under ''CLAMS'' to the List of Endangered and Threatened Wildlife to read as follows:

§ 17.11 Endangered and threatened wildlife.

(h) * * *

Species		Historic range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Common name	Scientific name						
* * *	*	*	*	*	*	*	
CLAMS	.....	.....		.....	.....	.....	.....
* * *	*	*	*	*	*	*	
bean, Choctaw	*Villosa choctawensis*	U.S.A. (AL, FL)	NA	E	.....	17.95(f)	NA
* * *	*	*	*	*	*	*	
ebonyshell, round	*Fusconaia rotulata*	U.S.A. (AL, FL)	*NA*	E	.....	17.95(f)	*NA*
* * *	*	*	*	*	*	*	
kidneyshell, southern	*Ptychobranchus jonesi*	U.S.A. (AL, FL)	NA	E	.....	17.95(f)	NA
* * *	*	*	*	*	*	*	
pearlshell, Alabama	*Margaritifera marrianae*	U.S.A. (AL)	NA	E	.....	17.95(f)	NA
* * *	*	*	*	*	*	*	
pigtoe, fuzzy	*Pleurobema strodeanum*	U.S.A. (AL, FL)	NA	T	.....	17.95(f)	NA
* * *	*	*	*	*	*	*	
pigtoe, narrow	*Fusconaia escambia*	U.S.A. (AL, FL)	NA	T	.....	17.95(f)	NA
* * *	*	*	*	*	*	*	
pigtoe, tapered	*Fusconaia burkei*	U.S.A. (AL, FL)	NA	T	.....	17.95(f)	NA
* * *	*	*	*	*	*	*	
sandshell, southern	*Hamiota australis*	U.S.A. (AL, FL)	NA	E	.....	17.95(f)	NA
* * *	*	*	*	*	*	*	

3. In § 17.95, amend paragraph (f) by adding an entry for ''eight mussel species in four northeastern Gulf of Mexico drainages'' and 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.

* * * * *

(f) *Clams and Snails.*

* * * * *

Eight mussel species in three northeast Gulf of Mexico drainages: the Choctaw bean (*Villosa choctawensis*), round ebonyshell (*Fusconaia rotulata*), southern kidneyshell (*Ptychobranchus jonesi*), Alabama pearlshell (*Margaritifera marrianae*), fuzzy pigtoe (*Pleurobema strodeanum*), narrow pigtoe (*Fusconaia escambia*), tapered pigtoe (*Fusconaia burkei*), and southern sandshell (*Hamiota australis*).

(1) Critical habitat units are designated in the following counties:

(i) Alabama. Barbour, Bullock, Butler, Coffee, Conecuh, Covington, Crenshaw, Dale, Escambia, Geneva, Henry, Houston, Monroe, and Pike Counties.

(ii) Florida. Bay, Escambia, Holmes, Jackson, Okaloosa, Santa Rosa, Walton, and Washington Counties.

(2) The primary constituent elements of critical habitat for the Alabama pearlshell, round ebonyshell, southern sandshell, southern kidneyshell, Choctaw bean, tapered pigtoe, narrow pigtoe, and fuzzy pigtoe are:

(i) Geomorphically stable stream and river channels and banks (channels that maintain lateral dimensions, longitudinal profiles, and sinuosity patterns over time without an aggrading or degrading bed elevation.

(ii) Stable substrates of sand or mixtures of sand with clay or gravel with low to moderate amounts of fine sediment and attached filamentous algae.

(iii) A hydrologic flow regime (the magnitude, frequency, duration, and seasonality of discharge over time) necessary to maintain benthic habitats where the species are found; and to maintain connectivity of rivers with the floodplain, allowing the exchange of nutrients and sediment for habitat maintenance, food availability, and spawning habitat for native fishes.

(iv) Water quality, including temperature (not greater than 32 °C), pH (between 6.0 to 8.5), oxygen content (not less than 5.0 mg/L), hardness, turbidity, and other chemical characteristics necessary for normal behavior, growth, and viability of all life stages.

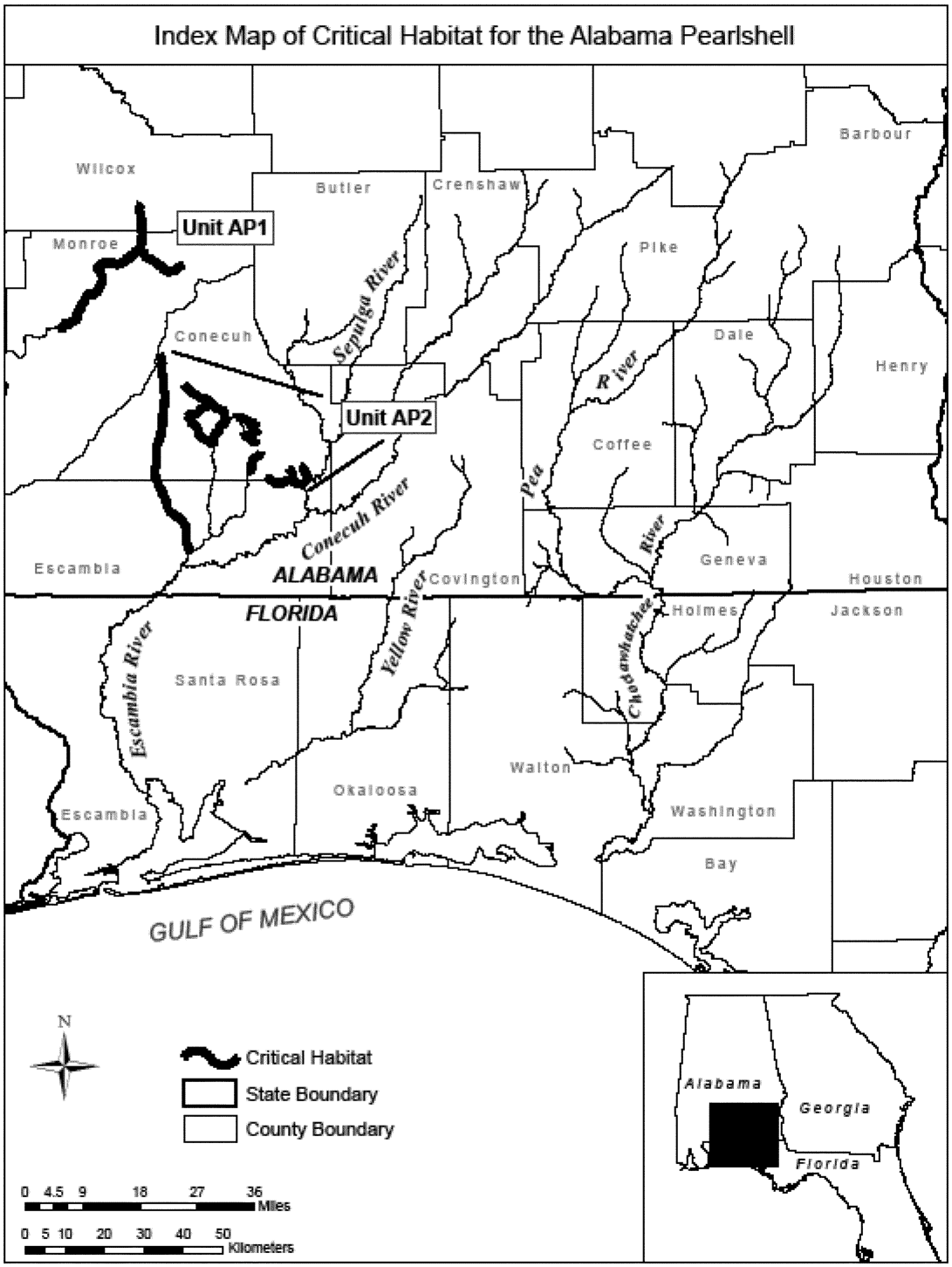
(v) The presence of fish hosts. Diverse assemblages of native fish species will serve as a potential indication of host fish presence until appropriate host fishes can be identified. For the fuzzy pigtoe and tapered pigtoe, the presence of blacktail shiner (*Cyprinella venusta*) will serve as a potential indication of fish host presence.

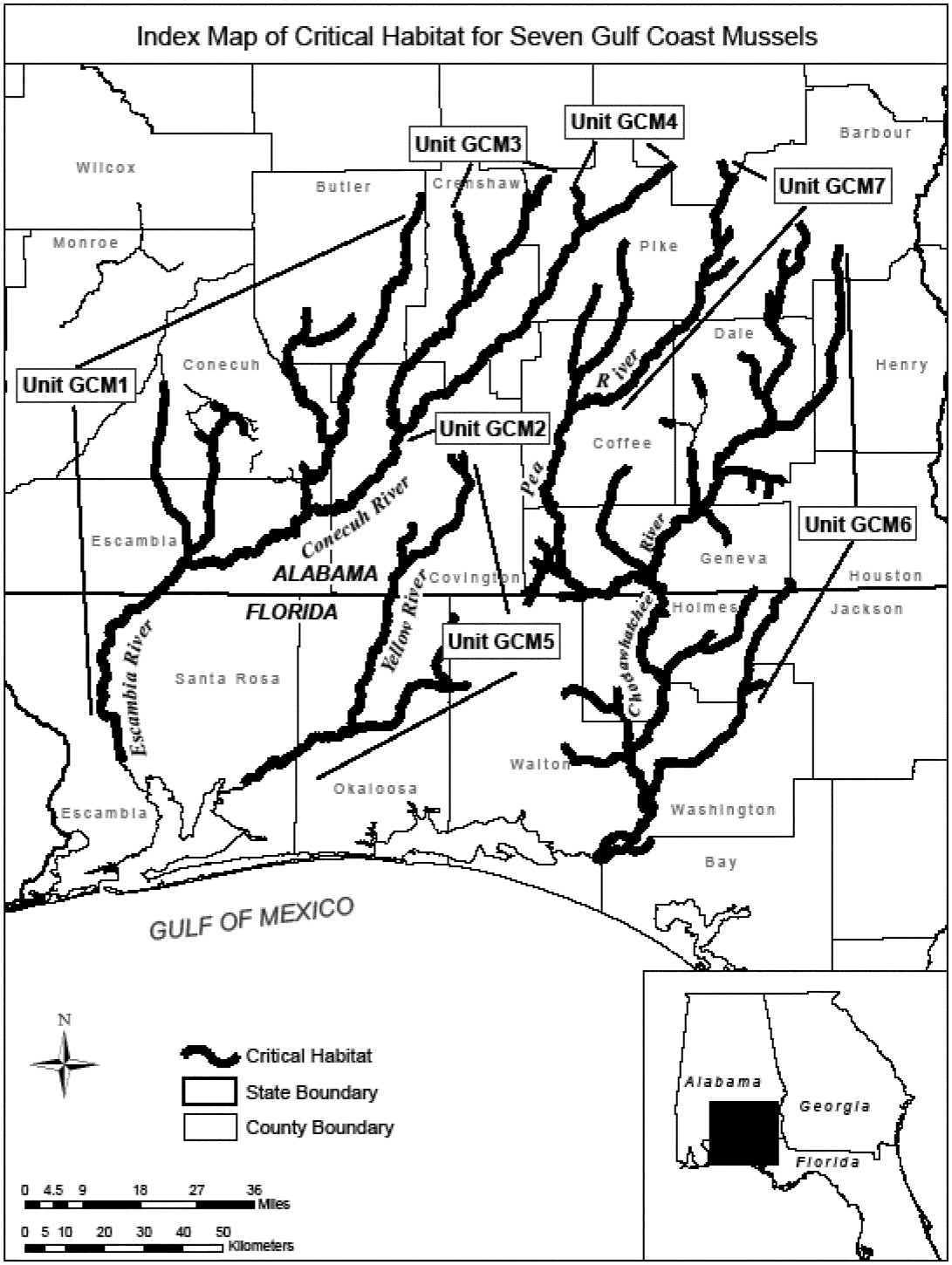
(3) Critical habitat does not include manmade structures (such as buildings, aqueducts, runways, dams, roads, and other paved areas) and the land on which they are located existing within the legal boundaries on the effective date of this rule, with the exception of the impoundments created by Point A and Gantt Lake dams (impounded water, not the actual dam structures).

(4) *Critical habitat map units.* Data layers defining map units were created with USGS National Hydrography Dataset (NHD) GIS data. The 1:100,000 river reach (route) files were used to calculate river kilometers and miles. ESRIs ArcGIS 9.3.1 software was used to determine longitude and latitude coordinates using decimal degrees. The projection used in mapping all units was Universal Transverse Mercator (UTM), NAD 83, Zone 16 North. The following data sources were referenced to identify features (like roads and streams) used to delineate the upstream and downstream extents of critical habitat units: NHD data, Washington County USFWS National Wetlands Inventory, 1999 Florida Department of Transportation Roads Characteristics Inventory (RCI) dataset, U.S. Census Bureau 2000 TIGER line waterbody data, ESRIs World Street Map Service, Florida Department of Transportation General Highway Maps, DeLorme Atlas and Gazetteers, and USGS 7.5 minute topographic maps.

(5) *Note:* Index map of critical habitat units for the Alabama pearlshell, and index map of critical habitat units for the round ebonyshell, southern sandshell, southern kidneyshell, Choctaw bean, tapered pigtoe, narrow pigtoe, and fuzzy pigtoe follows:

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Index Map of Critical Habitat for the Alabama Pearlshell
Wilcox
Butler
Crenshaw
Barbour
Monroe
Unit AP1
Pike
Sepulga River
Conecuh
Dale
Henry
Unit AP2
Coffee
Pea River
Conecuh River
Escambia
ALABAMA
Covington
Geneva
Houston
FLORIDA
Holmes
Jackson
Escambia River
Yellow River
Choctawhatchee River
Santa Rosa
Walton
Okaloosa
Escambia
Washington
Bay
GULF OF MEXICO
N
Critical Habitat
State Boundary
County Boundary
0 4.5 9 18 27 36
Miles
0 5 10 20 30 40 50
Kilometers
Alabama
Georgia
Florida



(6) Unit AP1: Big Flat Creek Drainage, Monroe and Wilcox Counties, AL. This unit is critical habitat for the Alabama pearlshell.

(i) The unit includes the mainstem of Big Flat Creek from Hwy 41 upstream 56 km (35 mi), Monroe County, AL; Flat Creek from its confluence with Big Flat Creek upstream 20 km (12 mi), Monroe County, AL; and Dailey Creek from its confluence Flat Creek upstream 17 km (11mi), Monroe and Wilcox Counties, AL.

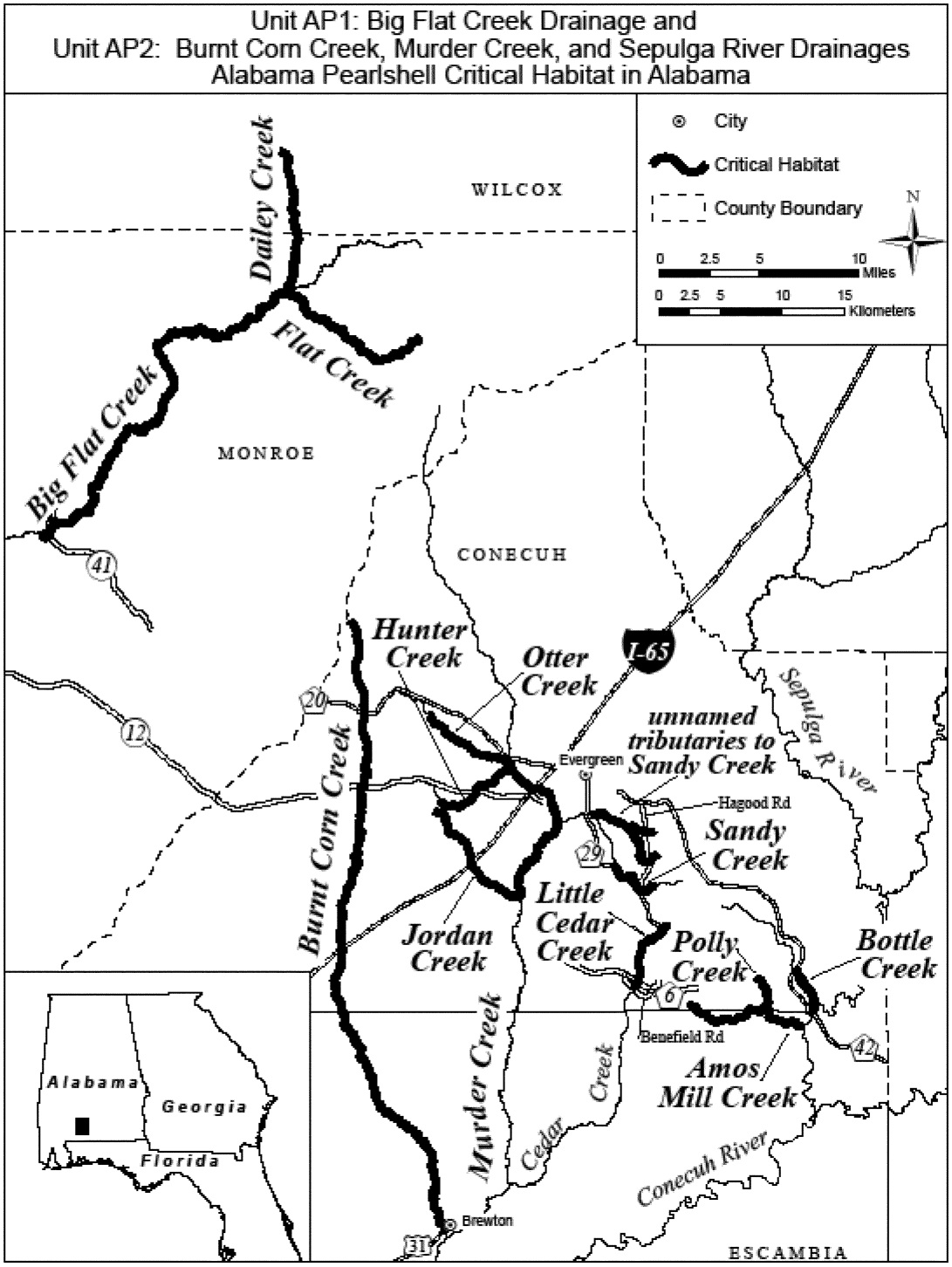
(ii) *Note:* Map of Unit AP1, Big Flat Creek Drainage, and Unit AP2, Burnt Corn Creek, Murder Creek, and Sepulga River Drainages, are combined and follows the Unit AP2 description.

(7) Unit AP2: Burnt Corn Creek, Murder Creek, and Sepulga River Drainages, Escambia and Conecuh Counties, AL. This unit is critical habitat for the Alabama pearlshell.

(i) The unit includes the mainstem of Burnt Corn Creek from its confluence with Murder Creek upstream 66 km (41 mi), Conecuh County, AL; the mainstem of Murder Creek from its confluence with Jordan Creek upstream 17 km (11 mi) to the confluence of Otter Creek, Conecuh County, AL; Jordan Creek from its confluence with Murder Creek upstream 12 km (7 mi), Conecuh County, AL; Otter Creek from its confluence with Murder Creek,

upstream 9 km (5.5 mi), Conecuh County, AL; Hunter Creek from its confluence with Murder Creek upstream 8 km (5 mi), Conecuh County, AL; Sandy Creek from County Road 29 upstream 5 km (3.5 mi), Conecuh County, AL; two unnamed tributaries to Sandy Creek—one from its confluence with Sandy Creek upstream 8.5 km (5.0 mi) to just above Hagood Road and the other from it confluence with the previous unnamed tributary upstream 2.5 km (1.5 mi) to just above Hagood Road; Little Cedar Creek from County Road 6 upstream 8 km (5 mi), Conecuh County, AL; Amos Mill Creek from its confluence with the Sepulga River upstream 12 km (8 mi), Escambia and Conecuh Counties, AL; Polly Creek from its confluence with Amos Mill Creek upstream 3 km (2 mi), Conecuh County, AL; and Bottle Creek from its confluence with the Sepulga River upstream 5.5 km (3.5 mi) to County Road 42, Conecuh County, AL.

(ii) *Note:* Map of Unit AP1, Big Flat Creek Drainage, and Unit AP2, Burnt Corn Creek, Murder Creek, and Sepulga River Drainages, follows:

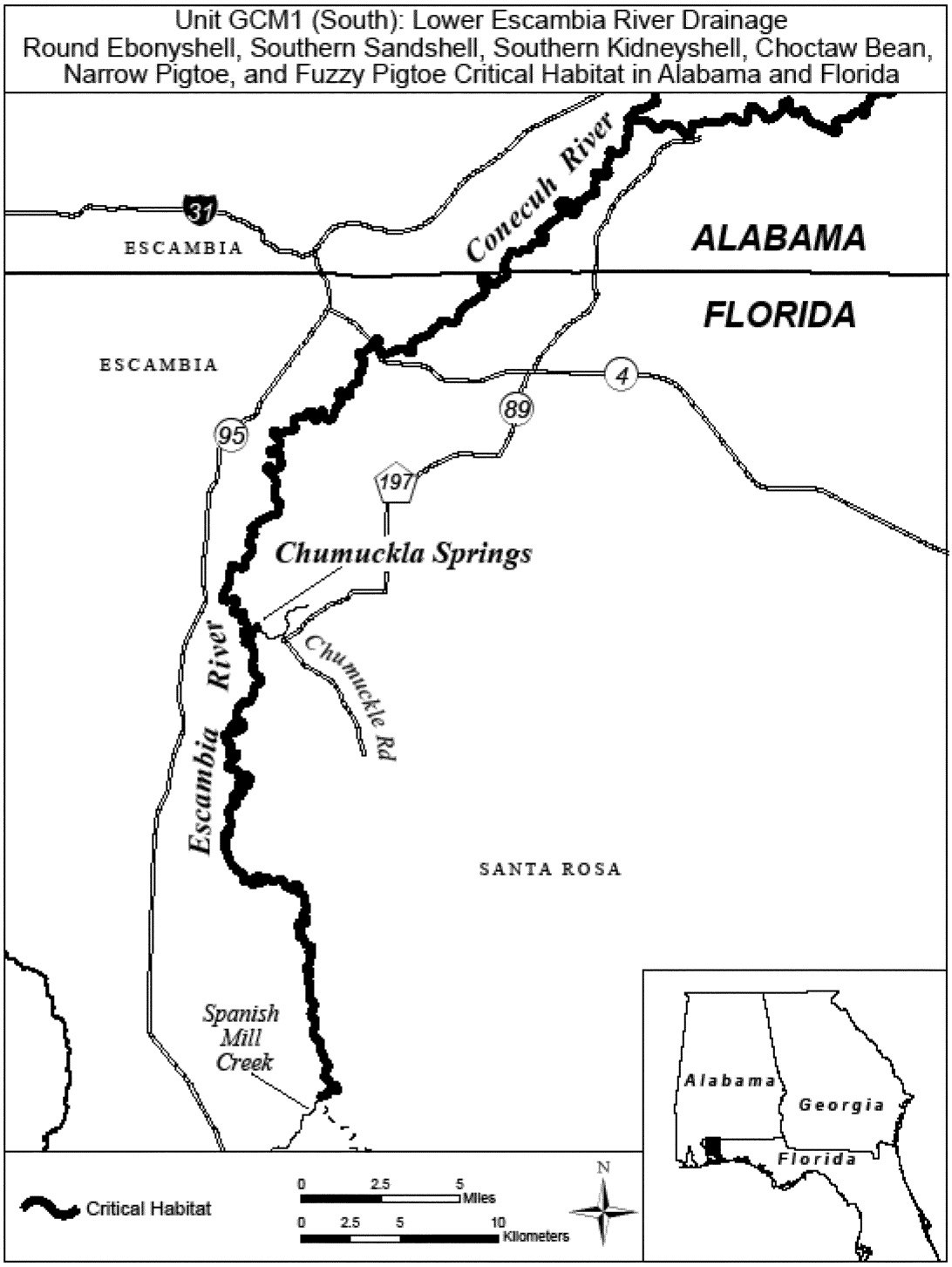


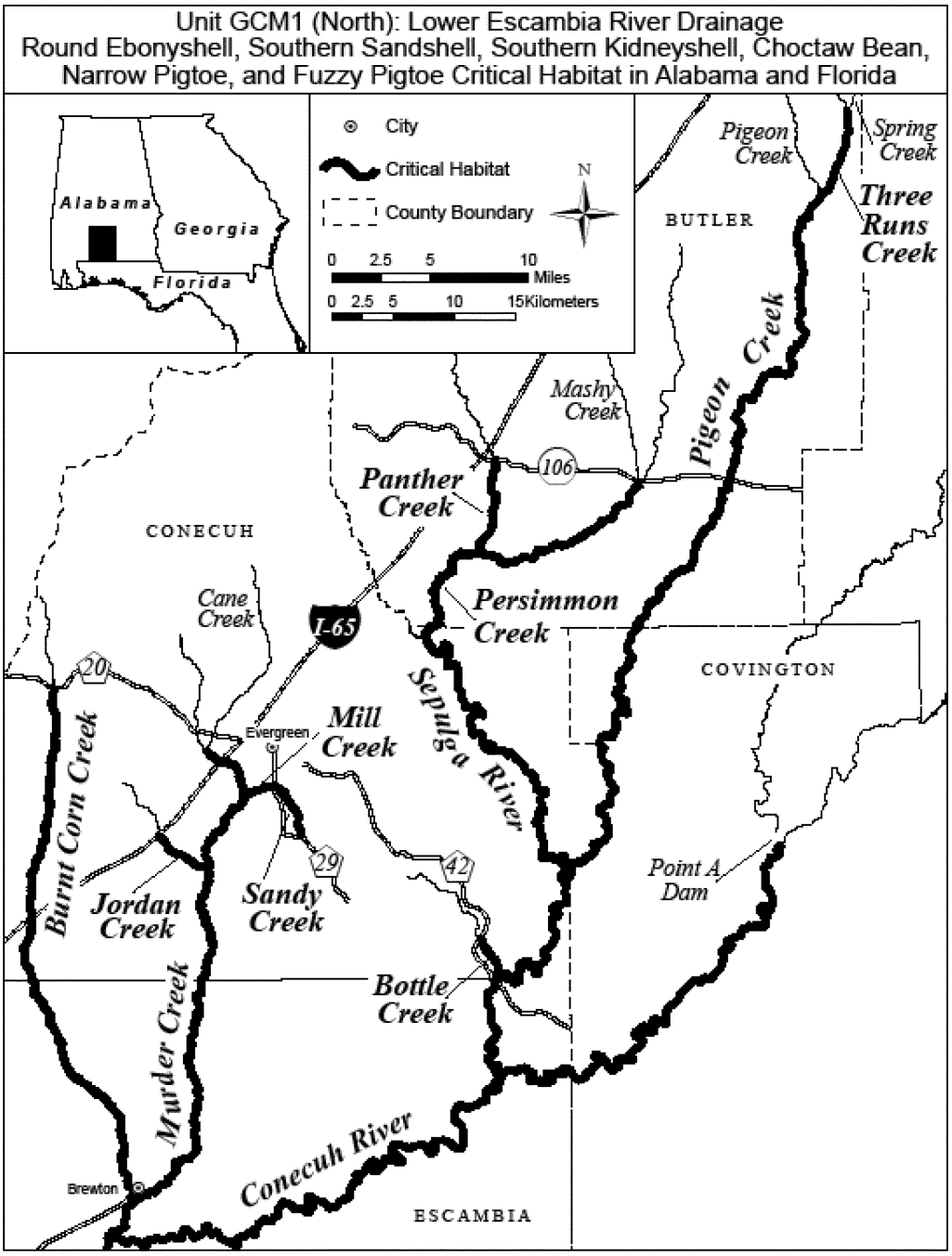
(8) Unit GCM1: Lower Escambia River Drainage in Escambia and Santa Rosa Counties, FL, and Escambia, Covington, Conecuh, and Butler Counties, AL. This unit is critical habitat for the round ebonyshell, southern sandshell, southern kidneyshell, Choctaw bean, narrow pigtoe, and fuzzy pigtoe.

(i) The unit includes the Escambia-Conecuh River mainstem from the confluence of Spanish Mill Creek Escambia and Santa Rosa Counties, FL upstream 204 km (127 mi) to the Point A Lake dam, Covington County, AL; Murder Creek from its confluence with the Conecuh River, Escambia County, AL upstream 62 km (38 mi) to the confluence of Cane Creek, Conecuh County, AL; Burnt Corn Creek from its confluence with Murder Creek, Escambia County, AL, upstream 59 km (37 mi) to County Road 20, Conecuh County, AL; Jordan Creek from its confluence with Murder Creek, upstream 5.5 km (3.5 mi) to Interstate 65, Conecuh County, AL; Mill Creek from its confluence with Murder Creek upstream 2.5 km (1.5 mi) to the confluence of Sandy Creek, Conecuh County, AL; Sandy Creek from its confluence with Mill Creek upstream 5.5 km (3.5 mi) to County Road 29, Conecuh County, AL; Sepulga River from its confluence with the Conecuh River upstream 69 km (43 mi) to the confluence of Persimmon Creek, Conecuh County, AL; Bottle Creek from its confluence with the Sepulga River upstream 5.5 km (3.5 mi) to County Road 42, Conecuh County, AL; Persimmon Creek from its confluence with the Sepulga River, Conecuh County upstream 36 km (22 mi) to the confluence of Mashy Creek, Butler County, AL; Panther Creek from its confluence with Persimmon Creek upstream 11 km (7 mi) to State Route 106, Butler County, AL; Pigeon Creek from its confluence with the Sepulga River, Conecuh and Covington Counties upstream 89 km (55 mi) to the confluence of Three Run Creek, Butler County, AL; and Three Run Creek from its confluence with Pigeon Creek upstream 9 km (5.5 mi) to the confluence of Spring Creek, Butler County, AL.

(ii) *Note:* Map of Unit GCM1, Lower Escambia River, follows (to preserve detail, the map is divided into south and north sections):

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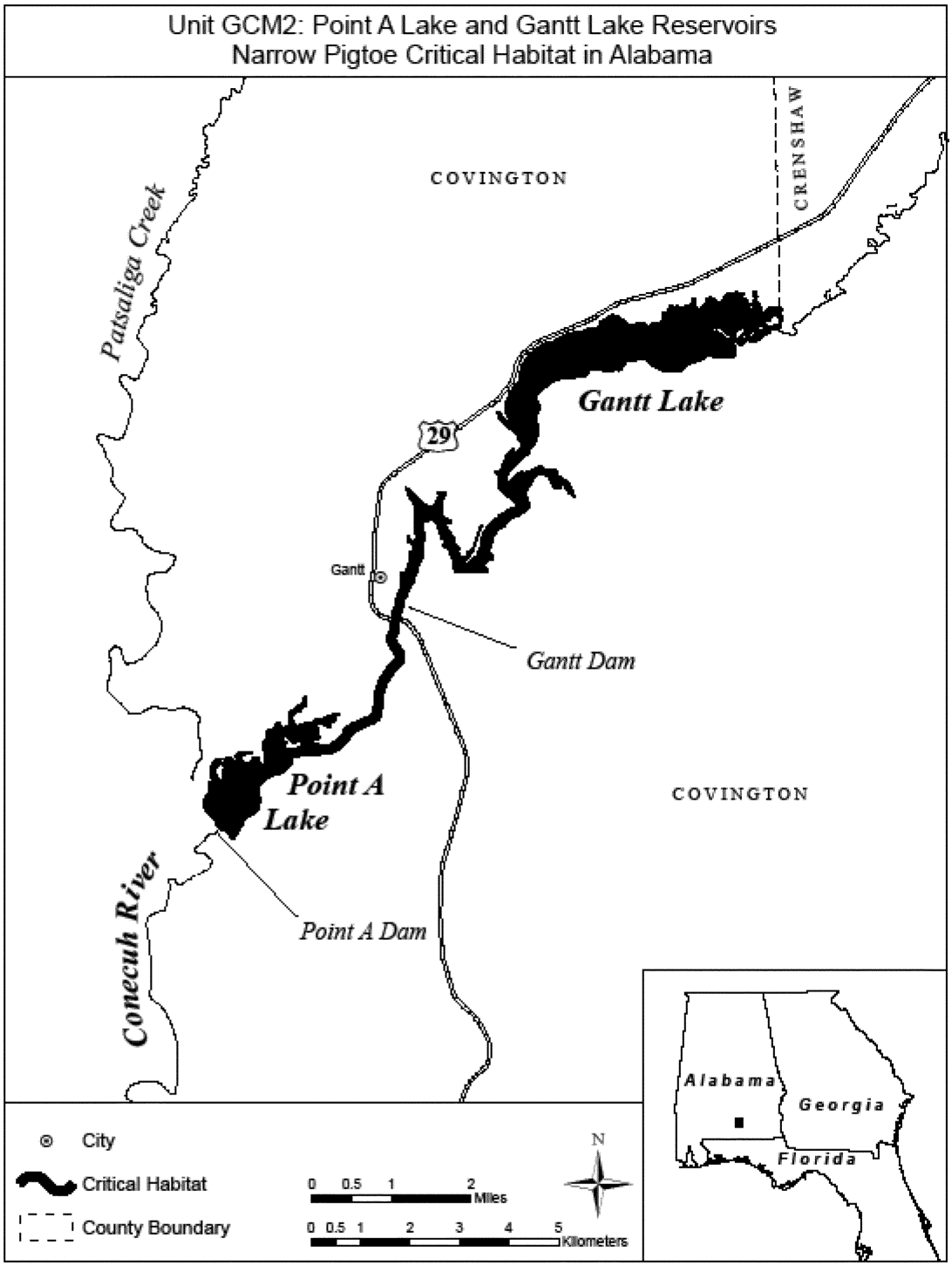

Unit GCM1 (South): Lower Escambia River Drainage
Round Ebonyshell, Southern Sandshell, Southern Kidneyshell, Choctaw Bean, Narrow Pigtoe, and Fuzzy Pigtoe Critical Habitat in Alabama and Florida
Conecuh River
31
ESCAMBIA
ALABAMA
FLORIDA
ESCAMBIA
4
89
95
197
Chumuckla Springs
Chumuckle Rd
Escambia River
SANTA ROSA
Spanish Mill Creek
Alabama
Georgia
Florida
Critical Habitat
0 2.5 5 Miles
0 2.5 5 10 Kilometers
N



(9) Unit GCM2: Point A Lake and Gantt Lake Reservoirs in Covington County, AL. This unit is critical habitat for the narrow pigtoe.

(i) The unit extends from Point A Dam, Covington County, upstream 21 km (13 mi) to the Covington-Crenshaw County line, AL.

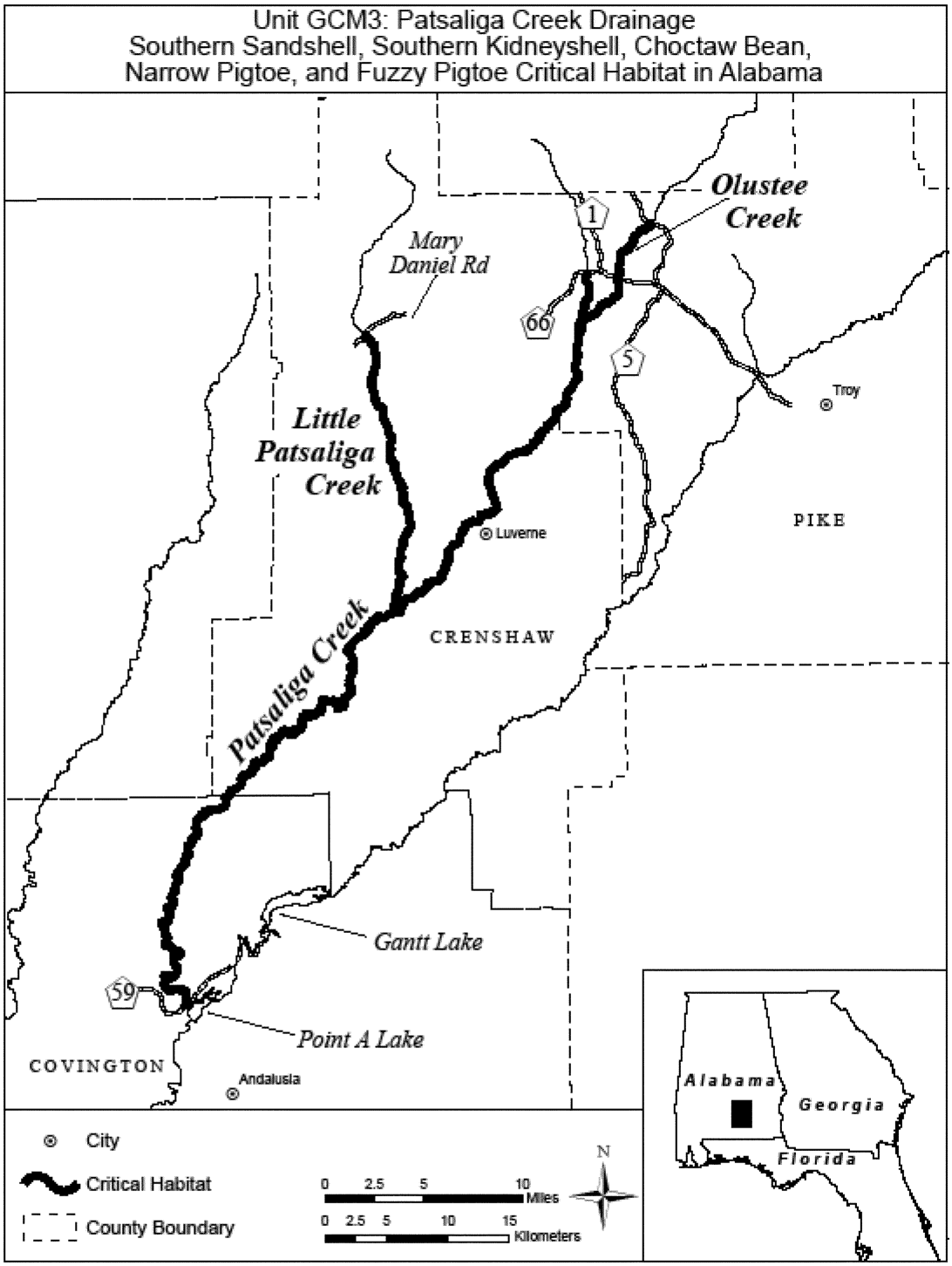
(ii) *Note:* Map of Unit GCM2, Point A Lake and Gantt Lake Reservoirs, follows:



(10) Unit GCM3: Patsaliga Creek Drainage in Covington, Crenshaw, and Pike Counties, AL. The Patsaliga Creek drainage is within the Escambia River basin. This unit is critical habitat for the southern sandshell, southern kidneyshell, Choctaw bean, narrow pigtoe, and fuzzy pigtoe.

(i) The unit includes Patsaliga Creek from its confluence with Point A Lake at County Road 59, Covington County, AL, upstream 108 km (67 mi) to Crenshaw County Road 66–Pike County Road 1, AL; Little Patsaliga Creek from its confluence with Patsaliga Creek upstream 28 km (17 mi) to Mary Daniel Road, Crenshaw County, AL; and Olustee Creek from its confluence with Patsaliga Creek upstream 12 km (8 mi) to County Road 5, Pike County, AL.

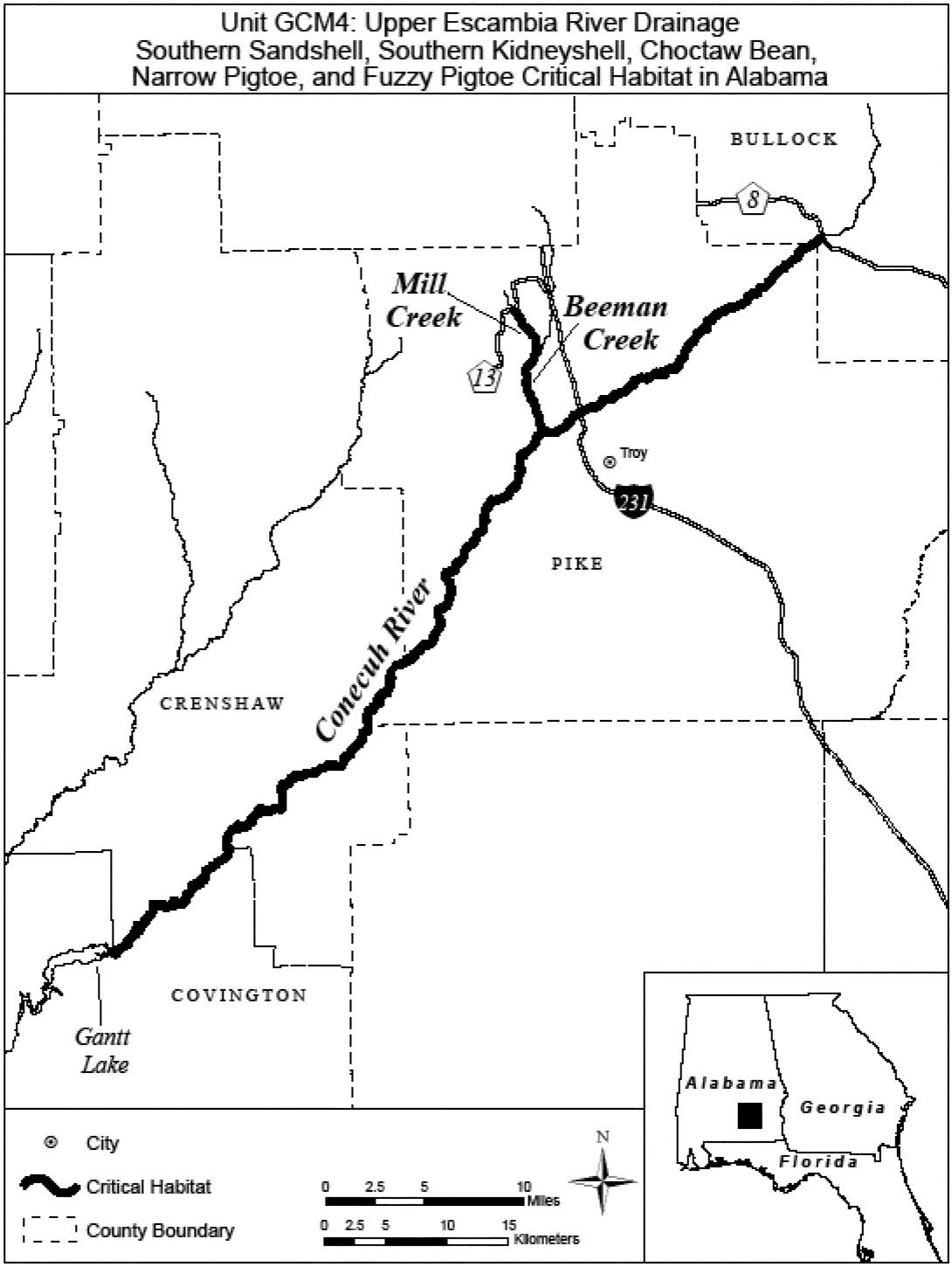
(ii) *Note:* Map of Unit GCM3, Patsaliga Creek Drainage follows:



(11) Unit GCM4: Upper Escambia River Drainage in Covington, Crenshaw, Pike, and Bullock Counties, AL. This unit is critical habitat for the southern sandshell, southern kidneyshell, Choctaw bean, narrow pigtoe, and fuzzy pigtoe.

(i) The unit includes the Conecuh River from its confluence with Gantt Lake reservoir at the Covington-Crenshaw County line upstream 126 km (78 mi) to County Road 8, Bullock County, AL; Beeman Creek from its confluence with the Conecuh River upstream 6.5 km (4 mi) to the confluence of Mill Creek, Pike County, AL; and Mill Creek from its confluence with Beeman Creek, upstream 4.5 km (3 mi) to County Road 13, Pike County, AL.

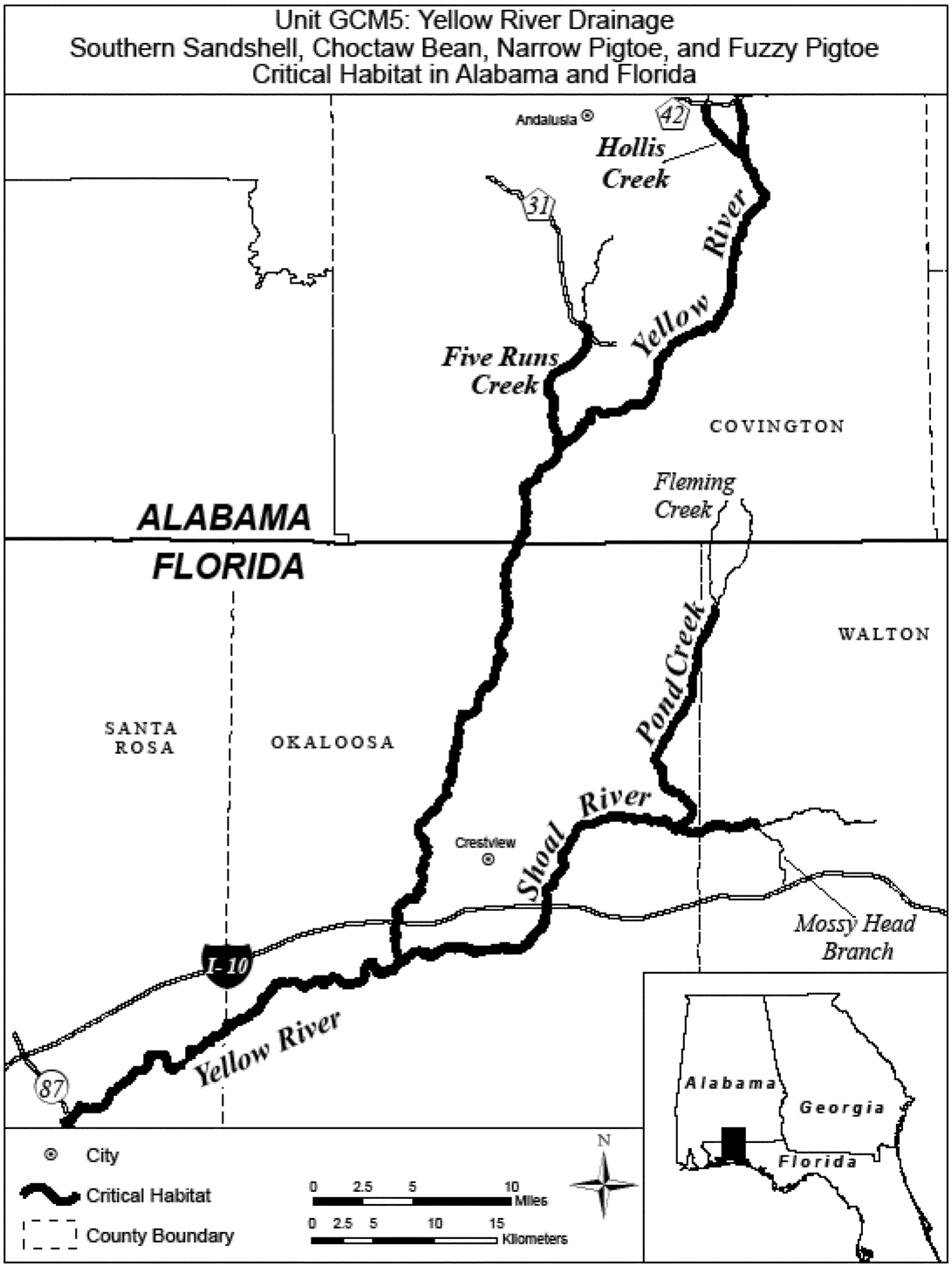
(ii) *Note:* Map of Unit GCM 4, Upper Escambia River Drainage, follows:



(12) Unit GCM5: Yellow River Drainage in Santa Rosa, Okaloosa, and Walton Counties, FL; and Covington County, AL. This unit is critical habitat for the southern sandshell, Choctaw bean, narrow pigtoe, and fuzzy pigtoe.

(i) The unit includes the Yellow River mainstem from the confluence of Weaver River, (a distributary located 0.9 km (0.6 mi) downstream of State Route 87), Santa Rosa County, FL, upstream 157 km (97 mi) to County Road 42, Covington County, AL; the Shoal River mainstem from its confluence with the Yellow River upstream 51 km (32 mi) to the confluence of Mossy Head Branch, Walton County, FL; Pond Creek from its confluence with the Shoal River upstream 24 km (15 mi) to the confluence of Fleming Creek, Walton County, FL; Five Runs Creek from its confluence with the Yellow River upstream 15 km (9.5 mi) to County Road 31, Covington County, AL; and Hollis Creek from its confluence with the Yellow River upstream 5.5 km (3.5 mi) to County Road 42, Covington County, AL.

(ii) *Note:* Map of Unit GCM5, Yellow River Drainage, follows:



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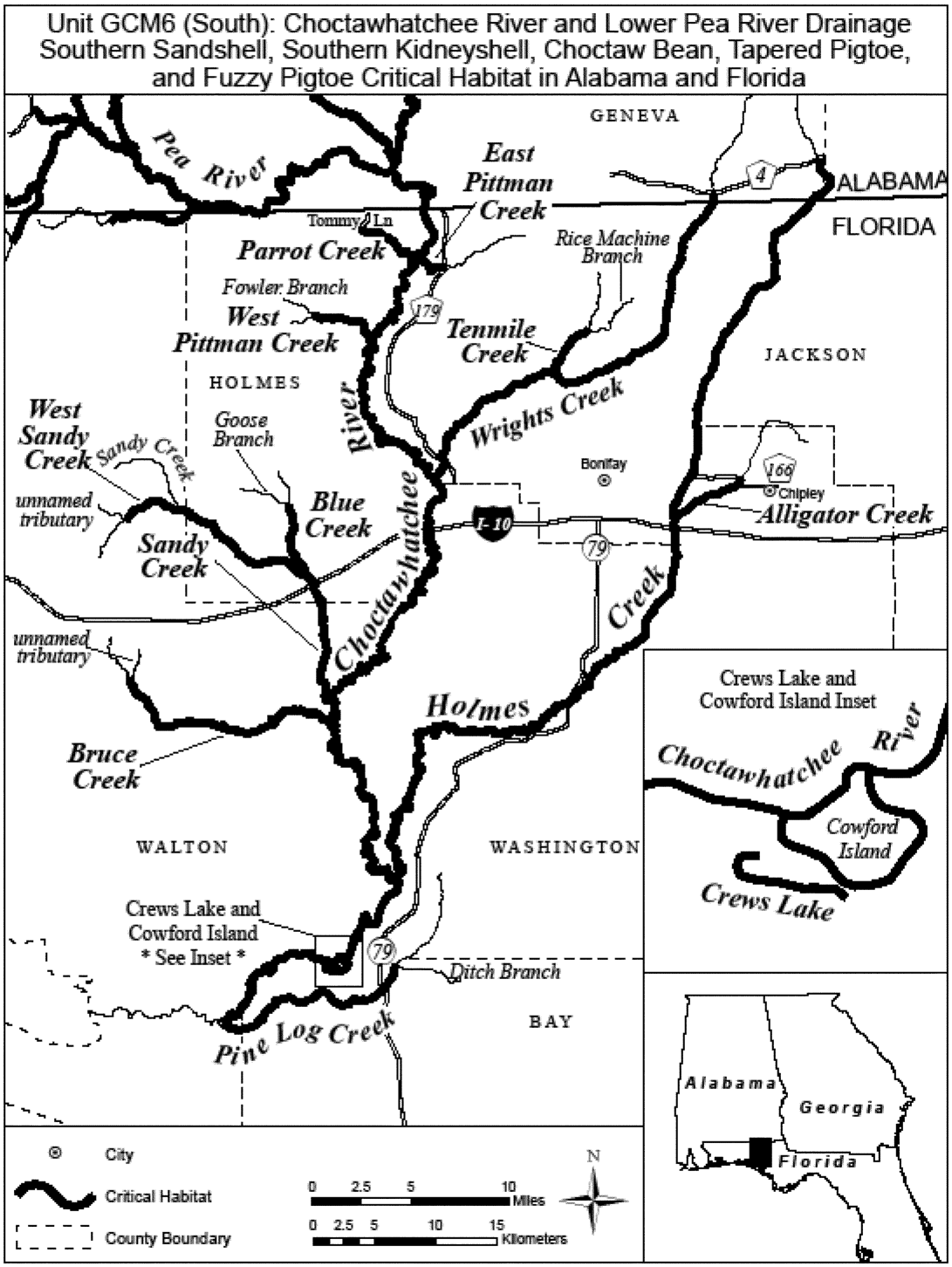
(13) Unit GCM6: Choctawhatchee River and Lower Pea River Drainages in Walton, Washington, Bay, Holmes, and Jackson Counties, FL; and Geneva, Coffee, Dale, Houston, Henry, Pike, and Barbour Counties, AL. This unit is critical habitat for the southern sandshell, southern kidneyshell, Choctaw bean, tapered pigtoe, and fuzzy pigtoe.

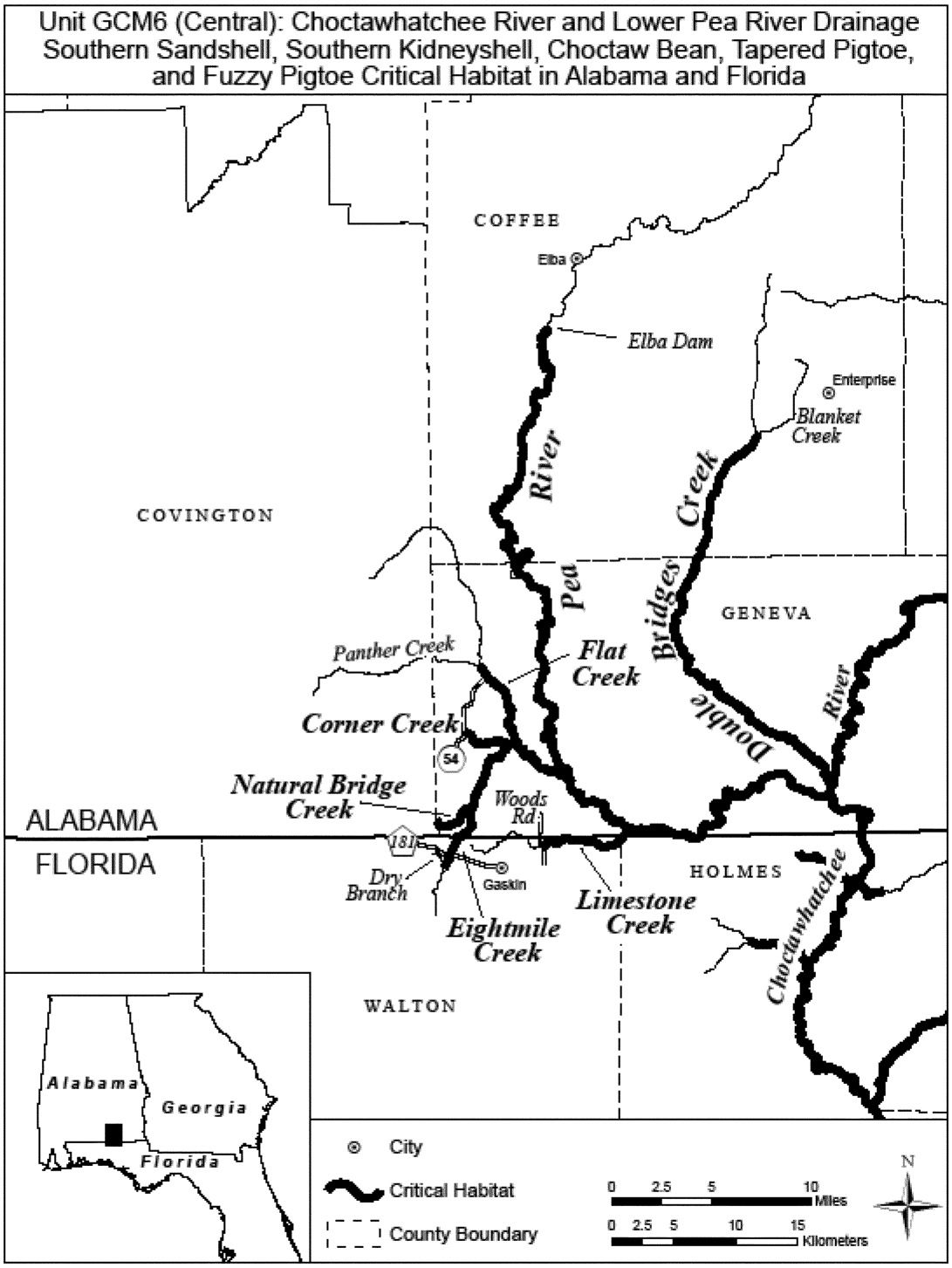
(i) The unit includes the Choctawhatchee River mainstem from the confluence of Pine Log Creek, Walton County, FL upstream 200 km (125 mi) to the point the river splits into the West Fork Choctawhatchee and East Fork Choctawhatchee Rivers, Barbour County, AL; Pine Log Creek from its confluence with the Choctawhatchee River, Walton County upstream 19 km (12 mi) to Ditch Branch, Washington and Bay Counties, FL; an unnamed channel forming Cowford Island from its downstream confluence with the Choctawhatchee River upstream 3 km (2 mi) to its upstream confluence with the river, Washington County, FL; Crews Lake from its western terminus 1.5 km (1 mi) to its eastern terminus, Washington County, FL (Crews Lake is a relic channel southwest of Cowford Island, and is disconnected from the Cowford Island channel, except during high flows); Holmes Creek from its

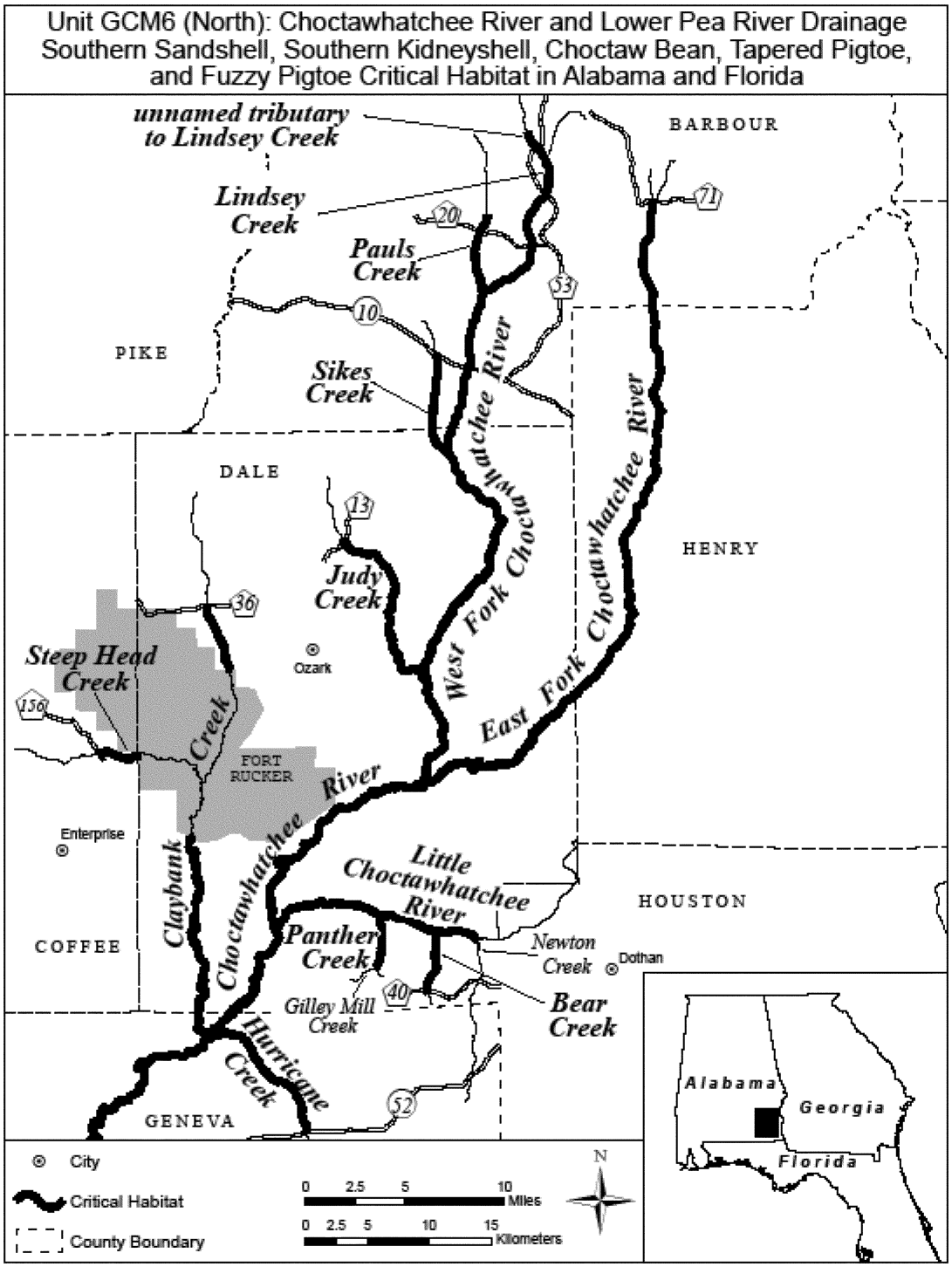
confluence with the Choctawhatchee River, Washington County, FL upstream 98 km (61 mi) to County Road 4, Geneva County, AL; Alligator Creek from its confluence with Holmes Creek upstream 6.5 km (4 mi) to County Road 166, Washington County, FL; Bruce Creek from its confluence with the Choctawhatchee River upstream 25 km (16 mi) to the confluence of an unnamed tributary, Walton County, FL; Sandy Creek from its confluence with the Choctawhatchee River, upstream 30 km (18 mi) to the confluence of West Sandy Creek, Holmes and Walton Counties, FL; Blue Creek from its confluence with Sandy Creek, upstream 7 km (4.5 mi) to the confluence of Goose Branch, Holmes County, FL; West Sandy Creek from its confluence with Sandy Creek, upstream 5.5 km (3.5 mi) to the confluence of an unnamed tributary, Walton County, FL; Wrights Creek from its confluence with the Choctawhatchee River, Holmes County, FL, upstream 43 km (27 mi) to County Road 4, Geneva County, AL; Tenmile Creek from its confluence with Wrights Creek upstream 6 km (3.5 mi) to the confluence of Rice Machine Branch, Holmes County, FL; West Pittman Creek from its confluence with the Choctawhatchee River, upstream 6.5 km (4 mi) to Fowler Branch, Holmes County, FL; East Pittman Creek from its confluence with the Choctawhatchee River upstream 4.5 km (3 mi) to County Road 179, Holmes County, FL; Parrot Creek from its confluence with the Choctawhatchee River upstream 6 km (4 mi) to Tommy Lane, Holmes County, FL; the Pea River from its confluence with the Choctawhatchee River, Geneva County upstream 91 km (57 mi) to the Elba Dam, Coffee County, AL; Limestone Creek from its confluence with the Pea River upstream 8.5 km (5 mi) to Woods Road, Walton County, FL; Flat Creek from the Pea River upstream 17 km (10 mi) to the confluence of Panther Creek, Geneva County, AL; Eightmile Creek from its confluence with Flat Creek, Geneva County, AL upstream 15 km (9 mi) to the confluence of Dry Branch (first tributary upstream of County Road 181), Walton County, FL; Corner Creek from its confluence with Eightmile Creek, upstream 5 km (3 mi) to State Route 54, Geneva County, AL; Natural Bridge Creek from its confluence with Eightmile Creek, Geneva County, AL, upstream 4 km (2.5 mi) to the Covington-Geneva County line, AL; Double Bridges Creek from the Choctawhatchee River, Geneva County upstream 46 km (29 mi) to the confluence of Blanket Creek, Coffee County, AL; Claybank Creek from the Choctawhatchee River, Geneva County upstream 22 km (14 mi) to the Fort Rucker military reservation southern boundary, Dale County, AL; Claybank Creek from the Fort Rucker military reservation northern boundary, upstream 6 km (4 mi) to County Road 36, Dale County, AL; Steep Head Creek from the Fort Rucker military reservation western boundary, upstream 4 km (2.5 mi) to County Road 156, Coffee County, AL; Hurricane Creek from its confluence with the Choctawhatchee River upstream 14 km (8.5 mi) to State Route 52, Geneva County, AL; Little Choctawhatchee River from its confluence with the Choctawhatchee River, Dale and Houston Counties upstream 20 km (13 mi) to the confluence of Newton Creek, Houston County, AL; Panther Creek from its confluence with Little Choctawhatchee River, upstream 4.5 km (2.5 mi) to the confluence of Gilley Mill Branch, Houston County, AL; Bear Creek from its confluence with the Little Choctawhatchee River, upstream 5.5 km (3.5 mi) to County Road 40 (Fortner Street), Houston County, AL; West Fork Choctawhatchee River from its confluence with the Choctawhatchee River, Dale County upstream 54 km (33 mi) to the fork of Pauls Creek and Lindsey Creek, Barbour County, AL; Judy Creek from its confluence with West Fork Choctawhatchee River upstream 17 km (11 mi) to County Road 13, Dale County, AL; Sikes Creek from its confluence with West Fork Choctawhatchee River Dale County upstream 8.5 km (5.5 mi) to State Route 10, Barbour County, AL; Pauls Creek from its confluence with West Fork Choctawhatchee River upstream 7 km (4.5 mi) to one mile upstream of County Road 20, Barbour County, AL; Lindsey Creek from its confluence with West Fork Choctawhatchee River upstream 14 km (8.5 mi) to the confluence of an unnamed tributary, Barbour County, AL; an unnamed tributary to Lindsey Creek from its confluence with Lindsey Creek upstream 2.5 km (1.5 mi) to 1.0 mile upstream of County Road 53, Barbour County, AL; and East Fork Choctawhatchee River from its confluence with Choctawhatchee River, Dale County upstream 71 km (44 mi) to County Road 71, Barbour County, AL.

(ii) *Note:* Map of Unit GCM6, Choctawhatchee River and Lower Pea River Drainages, follows (to preserve detail, the map is divided into south, central, and north sections):

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Unit GCM6 (South): Choctawhatchee River and Lower Pea River Drainage
Southern Sandshell, Southern Kidneyshell, Choctaw Bean, Tapered Pigtoe,
and Fuzzy Pigtoe Critical Habitat in Alabama and Florida
GENEVA
ALABAMA
FLORIDA
Pea River
East Pittman Creek
Tommy Ln
Parrot Creek
Rice Machine Branch
Fowler Branch
West Pittman Creek
179
Tenmile Creek
JACKSON
HOLMES
West Sandy Creek
Sandy Creek
Goose Branch
Choctawhatchee River
Wrights Creek
Bonifay
166
Chipley
unnamed tributary
Blue Creek
I-10
Alligator Creek
Sandy Creek
79
Creek
unnamed tributary
Holmes
Bruce Creek
WALTON
WASHINGTON
Crews Lake and Cowford Island * See Inset *
Ditch Branch
BAY
Pine Log Creek
Crews Lake and Cowford Island Inset
Choctawhatchee River
Cowford Island
Crews Lake
Alabama
Georgia
Florida
City
Critical Habitat
County Boundary
0 2.5 5 10 Miles
0 2.5 5 10 15 Kilometers
N


Unit GCM6 (Central): Choctawhatchee River and Lower Pea River Drainage
Southern Sandshell, Southern Kidneyshell, Choctaw Bean, Tapered Pigtoe,
and Fuzzy Pigtoe Critical Habitat in Alabama and Florida
COFFEE
Elba
Elba Dam
Enterprise
Blanket Creek
Pea River
Bridges Creek
COVINGTON
GENEVA
Panther Creek
Flat Creek
Double River
Corner Creek
54
Natural Bridge Creek
Woods Rd
ALABAMA
FLORIDA
181
Dry Branch
Gaskin
Eightmile Creek
Limestone Creek
HOLMES
Choctawhatchee
WALTON
Alabama
Georgia
Florida
City
Critical Habitat
County Boundary
0 2.5 5 10 Miles
0 2.5 5 10 15 Kilometers
N

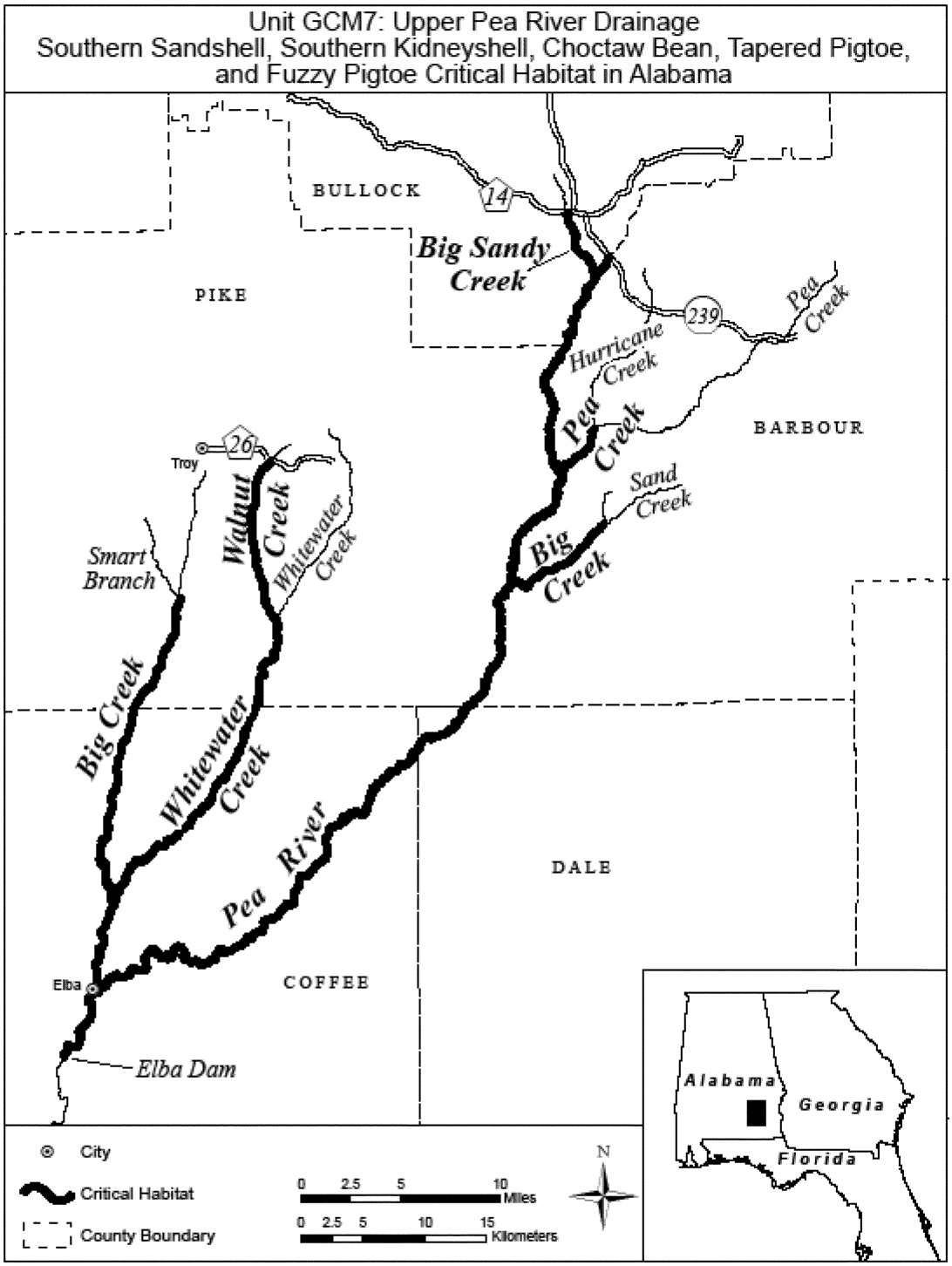


(16) Unit GCM7: Upper Pea River Drainage in Coffee, Dale, Pike, Barbour, and Bullock Counties, AL. The Pea River drainage is within the Choctawhatchee River Basin. This unit is critical habitat for the southern sandshell, southern kidneyshell, Choctaw bean, tapered pigtoe, and fuzzy pigtoe.

(i) The unit includes the Pea River mainstem from the Elba dam, Coffee County upstream 123 km (76 mi) to State Route 239, Bullock and Barbour Counties, AL; Whitewater Creek from its confluence with the Pea River, Coffee County upstream 45 km (28 mi) to the confluence of Walnut Creek, Pike County, AL; Walnut Creek from its confluence with Whitewater Creek upstream 14 km (9 mi) to County Road 26, Pike County, AL; Big Creek (Coffee County Big Creek) from its confluence with Whitewater Creek, Coffee County upstream 30 km (18 mi) to the confluence of Smart Branch, Pike County, AL; Big Creek (Barbour County Big Creek) from its confluence with the Pea River upstream 10 km (6 mi) to the confluence of Sand Creek, Barbour County, AL; Pea Creek from its confluence with the Pea River upstream 6 km (4 mi) to the confluence of Hurricane Creek, Barbour County, AL; and Big Sandy Creek from its confluence with the Pea River upstream

6.5 km (4 mi) to County Road 14, Bullock County, AL.

(ii) *Note:* Map of Unit GCM7, Upper Pea River Drainage, follows:



* * * * *

Dated: September 7, 2011.

Rowan W. Gould,

Acting Director, U.S. Fish and Wildlife Service.

[FR Doc. 2011–24519 Filed 10–3–11; 8:45 am]

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Part III

Department of the Interior

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; 90-Day Finding on a Petition To List 10 Subspecies of Great Basin Butterflies as Threatened or Endangered With Critical Habitat; Proposed Rule

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

[FWS–R8–ES–2010–0097; 92210–1111–0000–B2]

Endangered and Threatened Wildlife and Plants; 90-Day Finding on a Petition To List 10 Subspecies of Great Basin Butterflies as Threatened or Endangered With Critical Habitat

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of petition finding and initiation of status review.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), announce a 90-day finding on a petition to list 10 subspecies of Great Basin butterflies in Nevada and California as threatened or endangered under the Endangered Species Act of 1973, as amended (Act), and designate critical habitat. Based on our review, we find that the petition presents substantial scientific or commercial information indicating that listing the following 4 of the 10 subspecies as threatened or endangered may be warranted: Baking Powder Flat blue butterfly, bleached sandhill skipper, Steptoe Valley crescentspot, and White River Valley skipper. Therefore, with the publication of this notice, we are initiating a review of the status of these four subspecies to determine if listing these subspecies is warranted. To ensure that this status review is comprehensive, we are requesting scientific and commercial data and other information regarding these four subspecies. Based on the status review, we will issue a 12-month finding on these four subspecies, which will address whether the petitioned action is warranted under the Act.

We find that the petition does not present substantial scientific or commercial information indicating that listing the remaining 6 of the 10 subspecies as threatened or endangered may be warranted: Carson Valley silverspot, Carson Valley wood nymph, Mattoni's blue butterfly, Mono Basin skipper, and the two Railroad Valley skipper subspecies. However, we ask the public to submit to us any new information that becomes available concerning the status of, or threats to, these four subspecies or their habitat at any time.

DATES: To allow us adequate time to conduct this review, we request that we receive information on or before December 5, 2011. Please note that if you are using the Federal eRulemaking Portal (see **ADDRESSES** section, below), the deadline for submitting an electronic comment is 11:59 p.m. Eastern Standard Time on this date. After December 5, 2011, you must submit information directly to the Field Office (see **FOR FURTHER INFORMATION CONTACT** section below). Please note that we might not be able to address or incorporate information that we receive after the above requested date.

ADDRESSES: You may submit information by one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments to Docket No. FWS–R8–ES–2010–0097. Check the box that reads ''Open for Comment/Submission,'' and then click the Search button. You should then see an icon that reads ''Submit a Comment.'' Please ensure that you have found the correct rulemaking before submitting your comment.
- *U.S. mail or hand-delivery:* Public Comments Processing, Attn: Docket No. FWS–R8–ES–2010–0097; Division of Policy and Directives Management; U.S. Fish and Wildlife Service; 4401 N. Fairfax Drive, MS 2042–PDM; Arlington, VA 22203.

We will post all information we receive on *http://www.regulations.gov.* This generally means that we will post any personal information you provide us (see the Request for Information section below for more details).

FOR FURTHER INFORMATION CONTACT: Jill A. Ralston, Acting State Supervisor, Nevada Fish and Wildlife Office, U.S. Fish and Wildlife Service, 1340 Financial Blvd., Suite 234, Reno, NV 89502, by telephone (775–861–6300), or by facsimile (775–861–6301). If you use a telecommunications device for the deaf (TDD), please call the Federal Information Relay Service (FIRS) at 800–877–8339.

SUPPLEMENTARY INFORMATION: We announce a 90-day finding on a petition to list 10 subspecies of Great Basin butterflies in Nevada and California as threatened or endangered under the Act and designate critical habitat. The petitioners had requested that we list following 10 subspecies of Great Basin butterflies in Nevada and California as threatened or endangered under the Act and designate critical habitat: Baking Powder Flat blue butterfly (*Euphilotes bernardino minuta*), Mono Basin skipper (*Hesperia uncas giulianii*), bleached sandhill skipper (*Polites sabuleti sinemaculata*), Railroad Valley skipper (*Hesperia uncas fulvapalla*), Carson Valley silverspot (*Speyeria nokomis carsonensis*), Railroad Valley skipper (*Hesperia uncas reeseorum*), Carson Valley wood nymph (*Cercyonis pegala carsonensis*), Steptoe Valley crescentspot (*Phyciodes cocyta arenacolor*), Mattoni's blue butterfly (*Euphilotes pallescens mattonii*), and White River Valley skipper (*Hesperia uncas grandiose*).

Based on our review, we find that the petition presents substantial scientific or commercial information indicating that listing 4 of the 10 subspecies as threatened or endangered may be warranted, and we find that the petition does not present substantial scientific or commercial information indicating that listing the remaining 6 of the 10 subspecies as threatened or endangered may be warranted.

Request for Information

When we make a finding that a petition presents substantial information indicating that listing a species may be warranted, we are required to promptly review the status of the species (status review). For the status review to be complete and based on the best available scientific and commercial information, we request information on the four subspecies of butterflies from governmental agencies, Native American Tribes, the scientific community, industry, and any other interested parties. We seek information on:

(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.

If, after the status review, we determine that listing any of the six subspecies is warranted, we will propose critical habitat (see definition in section 3(5)(A) of the Act), under

section 4 of the Act, to the maximum extent prudent and determinable at the time we propose to list the species. Therefore, within the geographical range currently occupied by the six subspecies, we request data and information on:

(1) What may constitute ''physical or biological features essential to the conservation of the species'';

(2) Where these features are currently found; and

(3) Whether any of these features may require special management considerations or protection.

In addition, we request data and information on ''specific areas outside the geographical area occupied by the species'' that are ''essential to the conservation of the species.'' Please provide specific comments and information as to what, if any, critical habitat you think we should propose for designation if any of the six subspecies are proposed for listing, and why such habitat meets the requirements of section 4 of the Act.

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.

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. 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 information concerning this status review 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 you submit a hardcopy that includes personal identifying information, you may request at the top of your document that we withhold this personal identifying 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.*

Information and supporting documentation that we received and used in preparing this finding is available for you to review at *http://www.regulations.gov,* or you may make an appointment during normal business hours at the U.S. Fish and Wildlife Service, Nevada Fish and Wildlife Office (see **FOR FURTHER INFORMATION CONTACT**).

Background

Section 4(b)(3)(A) of the Act requires that we make a finding on whether a petition to list, delist, or reclassify a species presents substantial scientific or commercial information indicating that the petitioned action may be warranted. We are to base this finding on information provided in the petition, supporting information submitted with the petition, and information otherwise available in our files. To the maximum extent practicable, we are to make this finding within 90 days of our receipt of the petition and publish our notice of the finding promptly in the **Federal Register**.

Our standard for substantial scientific or commercial information within the Code of Federal Regulations (CFR) with regard to a 90-day petition finding is ''that amount of information that would lead a reasonable person to believe that the measure proposed in the petition may be warranted'' (50 CFR 424.14(b)). If we find that substantial scientific or commercial information was presented, we are required to promptly review the status of the species, which is subsequently summarized in our 12-month finding.

Petition History

On January 29, 2010, we received a petition dated January 25, 2010, from WildEarth Guardians, requesting that 10 subspecies of Great Basin butterflies in Nevada and California be listed as threatened or endangered and critical habitat be designated under the Act. The petition clearly identified itself as such and included the requisite identification information for the petitioner, as required by 50 CFR 424.14(a). In a March 26, 2010, letter to the petitioner, WildEarth Guardians, we responded that we had reviewed the information presented in the petition and determined that issuing an emergency regulation temporarily listing the 10 subspecies as per section 4(b)(7) of the Act was not warranted although this was not requested in the petition. We also stated that while we are required to complete a significant number of listing and critical habitat actions in Fiscal Year 2010 pursuant to court orders, judicially approved settlement agreements, and other statutory deadlines, we were able to secure funding in Fiscal Year 2010 to begin work on the initial finding to determine whether the petition provides substantial information indicating that the action may be warranted. This finding addresses the petition.

Previous Federal Actions

On May 22, 1984, we added Mattoni's blue butterfly as *Euphilotes* (=*Shijimiaeoides*) *rita mattonii* to our list of candidate species as a Category 2 candidate species (49 FR 21664). This subspecies is currently known as *Euphilotes pallescens mattonii.* This subspecies was again included in our Category 2 candidate list for November 21, 1991 (56 FR 58804), at which time we added the remaining nine petitioned subspecies as Category 2 candidate species. A Category 2 candidate species was a species for which we had information indicating that a proposal to list it as threatened or endangered under the Act may be appropriate, but for which additional information on biological vulnerability and threat was needed to support the preparation of a proposed rule. These nine subspecies included the Carson Valley wood nymph (*Cercyonis pegala* ssp.), now known as *Cercyonis pegala carsonensis.* The Baking Powder Flat blue butterfly was added as *Euphilotes battoides* ssp., now known as *Euphilotes bernardino minuta.* The two Railroad Valley skippers, the White River Valley skipper, and the Mono Basin skipper were added as *Hesperia uncas* ssp. and are now known as *Hesperia uncas fulvapalla, Hesperia uncas reeseorum, Hesperia uncas grandiosa,* and *Hesperia uncas giulianii,* respectively. The Steptoe Valley crescentspot was added as *Phyciodes pascoensis* ssp. and is now known as *Phyciodes cocyta arenacolor.* The bleached sandhill skipper was added under a different common name, Denio sandhill skipper (*Polites sabuleti sinemaculata*). The Carson Valley silverspot was added as *Speyeria nokomis ssp.* and is now known as *Speyeria nokomis carsonensis.* All of these subspecies were maintained as Category 2 candidates in our November 15, 1994 list (59 FR 58982). Please see Table 1.

TABLE 1—PETITIONED GREAT BASIN BUTTERFLIES, WITH THEIR PREVIOUS AND CURRENT COMMON AND SCIENTIFIC NAMES

Previous common name	Current common name	Previous scientific name	Current scientific name
Mattoni's blue butterfly	Mattoni's blue butterfly	*Euphilotes* (=*Shijimiaeoides*) *rita mattonii.*	*Euphilotes pallescens mattonii.*
Carson Valley wood nymph	Carson Valley wood nymph	*Cercyonis pegala ssp.*	*Cercyonis pegala carsonensis.*
Baking Powder Flat blue butterfly	Baking Powder Flat blue butterfly	*Euphilotes battoides ssp.*	*Euphilotes bernardino minuta.*
Railroad Valley skipper	Railroad Valley skipper	*Hesperia uncas ssp.*	*Hesperia uncas fulvapalla.*
Railroad Valley skipper	Railroad Valley skipper	*Hesperia uncas ssp.*	*Hesperia uncas reeseorum.*
Railroad Valley skipper/White River Valley skipper.	White River Valley skipper	*Hesperia uncas* ssp.	*Hesperia uncas grandiosa.*
Railroad Valley skipper/Mono Basin skipper.	Mono Basin skipper	*Hesperia uncas* ssp.	*Hesperia uncas giulianii.*
Steptoe Valley crescentspot	Steptoe Valley crescentspot	*Phyciodes pascoensis ssp.*	*Phyciodes cocyta arenacolor.*
Denio sandhill skipper	Bleached sandhill skipper	*Polites sabuleti sinemaculata*	*Polites sabuleti sinemaculata.*
Carson Valley silverspot	Carson Valley silverspot	*Speyeria nokomis* ssp.	*Speyeria nokomis carsonensis.*

In the February 28, 1996, Candidate Notice of Review (CNOR) (61 FR 7595), we adopted a single category of candidate species defined as follows: ''Those species for which the Service has on file sufficient information on biological vulnerability and threat(s) to support issuance of a proposed rule to list but issuance of the proposed rule is precluded.'' In previous CNORs, species meeting this definition were known as Category 1 candidates for listing. Thus, the Service no longer considered Category 2 species as candidates, including the 10 petitioned butterfly subspecies, and did not include them in the 1996 list or any subsequent CNORs. The decision to stop considering Category 2 species as candidates was designed to reduce confusion about the status of these species and to clarify that we no longer regarded these species as candidates for listing.

Evaluation of Information for This Finding

Section 4 of the Act (16 U.S.C. 1533) and its implementing regulations at 50 CFR 424 set forth the procedures for adding a species to, or removing a species from, 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 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; or

(e) Other natural or manmade factors affecting its continued existence.

In considering what factors might constitute threats, we must look beyond the mere exposure of the species to the factor to determine whether the species responds to the factor in a way that causes actual impacts to the species. If there is exposure to a factor, but no response, or only a positive response, that factor is not a threat. If there is exposure and the species responds negatively, the factor may be a threat and we then attempt to determine how significant a threat it is. If the threat is significant, it may drive or contribute to the risk of extinction of the species such that the species may warrant listing as threatened or endangered as those terms are defined by the Act. This does not necessarily require empirical proof of a threat. The combination of exposure and some corroborating evidence of how the species is likely impacted could suffice. The mere identification of factors that could impact a species negatively may not be sufficient to compel a finding that listing may be warranted. The information shall contain evidence sufficient to suggest that these factors may be operative threats that act on the species to the point that the species may meet the definition of threatened or endangered under the Act.

In making this 90-day finding, we evaluated whether information regarding threats to the 10 butterfly subspecies as presented in the petition and other information available in our files, is substantial, thereby indicating that the petitioned action may be warranted. Our evaluation of this information is presented below.

Summary of Common Information on Species

The 10 butterfly subspecies included in the petition and evaluated in this finding are invertebrates endemic to the Great Basin region of Nevada and California. All of the petitioned butterflies are from the phylum Arthropoda, class Insecta, order Lepidoptera. Taxonomic families for the 10 subspecies are: Hesperiidae (5), Nymphalidae (3), and Lycaenidae (2). In specific subspecies sections below, we have included a short summary of available population and life-history information for each subspecies, as provided in the petition, its references, and our files.

The petition provides information regarding the 10 subspecies' rankings according to NatureServe (WildEarth Guardians 2010, pp. 3–4). The petitioned butterflies are considered at the subspecies taxonomic level and all are ranked as critically impaired or impaired at the global, national, or State level (WildEarth Guardians 2010, pp. 3–4). While the petition states that the ''definitions of 'critically impaired' and 'impaired' are at least equivalent to definitions of 'endangered' or 'threatened' under the [Act],'' this is not an appropriate comparison. According to its own Web site, NatureServe's assessment of any species ''does not constitute a recommendation by NatureServe for listing [that species]'' under the Act (NatureServe 2010). In addition, NatureServe's assessment procedures include ''different criteria, evidence requirements, purposes and taxonomic coverage [from those of] government lists of endangered and threatened species, and therefore these two types of lists should not be expected to coincide'' (NatureServe 2010). We found the information related to the 10 Great Basin butterflies provided by NatureServe to be limited in its usefulness for determining that there is substantial information indicating that these species may be warranted for listing under the Act.

Summary of Common Threats

The petition identifies several threats as common to many of the petitioned butterfly subspecies using general information applicable to most butterfly species: Water development (diversions

and groundwater pumping), livestock grazing, agriculture, pesticides (herbicides and insecticides), inadequate regulatory mechanisms, and climate change (WildEarth Guardians 2010, pp. 6–10). In addition, the petition claims that all of the subspecies may be biologically vulnerable due to limited distribution and small population size or numbers of populations (WildEarth Guardians 2010, pp. 6, 10–11). The common threats presented in the petition are often associated with habitats or general areas that could be suitable for butterfly species, but the petition frequently does not associate the threats to actual locations known to be occupied by the petitioned subspecies. The threats are generally described in the petition, but with little or no information on existing or probable impacts to the individual petitioned subspecies. We have little to no information available in our files to identify potential common threats and connect them to existing or probable impacts to the 10 petitioned subspecies. In this section, we summarize these common threats to the petitioned subspecies as presented in the petition.

Our conclusion for each subspecies as it relates to each of the five factors is based on this summary, in addition to any specific threat information provided in the petition or available in our files. Our conclusion regarding whether there is substantial scientific or commercial information available to indicate that the petitioned action is warranted or not is indicated in specific subspecies sections below.

Factor A. The Present or Threatened Destruction, Modification, or Curtailment of its Habitat or Range

Water Development

The petition (WildEarth Guardians 2010, p. 6) suggests that the historical range for some of the petitioned butterflies has been reduced due to loss and mismanagement of riparian and aquatic habitats, including springs and seeps, in northern Nevada (Sada *et al.* 1992, p. 76; Noss *et al.* 1995, p. 76; Brussard *et al.* 1998, pp. 531–532; Sada *et al.* 2001, pp. 11–16; Sada 2008, pp. 49–50), and California (Dahl 1990 cited by Noss *et al.* 1995, p. 74).

The petition claims that water development, such as the large groundwater pumping project proposed by the Southern Nevada Water Authority (SNWA) in Nevada and western Utah, threatens to lower aquifers and will likely reduce or eliminate springs and wetlands and their associated habitats (Deacon *et al.* 2007, p. 689). Proposals by SNWA would pump 180,800 acre-feet per year (afy) (223,000,000 cubic-meters per year (m^3/year)) of groundwater from southern, central, and eastern Nevada to the Las Vegas Valley (Deacon *et al.* 2007, p. 692). Other communities are pursuing rights to an additional 870,487 afy (1,073,750,000 m^3/year) of groundwater (Deacon *et al.* 2007, p. 693). In Nevada, this groundwater pumping proposal could lower water tables in some valleys from a few feet to several hundred feet (Schaefer and Harrill 1995, p. 1; Myers 2006, p. 75). Models have predicted groundwater declines of about 1 to 1,600 feet (ft) (0.3 to 488 meters (m)) throughout 78 basins from Utah to California (Deacon *et al.* 2007, p. 692). Pumping is expected to reduce flow of regional springs 2 to 14 percent in the first 100 years, with continued declines over the next 100 years (Deacon *et al.* 2007, p. 692). Groundwater withdrawal can result in direct and indirect effects to the water table and is likely to impact the discharge amount from seeps and springs (Sanford 2006, p. 400).

The petition indicates riparian communities and associated springs, seeps, and small streams comprise a small area of the Great Basin and Mojave Desert regions, but provide habitat for 70 percent of the butterfly species in these regions (Brussard and Austin 1993 cited in Brussard *et al.* 1998, p. 508).

The petition cites a few instances where habitat loss or degradation due to water development has occurred at historical locations of the petitioned subspecies, or where it is occurring at locations currently known to be occupied. However, the petition more typically associates water development with habitat types or general areas that may be used by the petitioned subspecies.

Our files include information regarding groundwater development as it relates to perennial yield versus committed water resources within some hydrographic basins where petitioned butterflies occur or may occur. This file information is from the Nevada Division of Water Resources' (NDWR) database (*http://water.nv.gov/*), which we accessed and reviewed on January 12, 2010, saving hard copies of groundwater information for various basins in Nevada. Where we discuss perennial yield and committed water resources and effects of groundwater development within this finding, we are referring to information we have reviewed from the NDWR database.

The Nevada State Engineer (NSE) approves and permits groundwater rights in Nevada and defines perennial yield as ''the amount of usable water from a ground-water aquifer that can be economically withdrawn and consumed each year for an indefinite period of time. It cannot exceed the natural recharge to that aquifer and ultimately is limited to maximum amount of discharge that can be utilized for beneficial use.'' The NSE estimates perennial yield for 256 basins and sub-basins (areas) in Nevada, and may ''designate'' a groundwater basin, meaning the basin ''is being depleted or is in need of additional administration, and in the interest of public welfare, [the NSE may] declare preferred uses (such as municipal, domestic) in such basins.'' Some of the hydrographic areas in which the petitioned butterflies occur are ''designated'' by the NSE and permitted groundwater rights approach or exceed the estimated average annual recharge. Such commitments of water resources beyond perennial yield may result in detrimental impacts to habitats for some of the petitioned subspecies in the designated basins. When groundwater extraction exceeds aquifer recharge, it may result in surface water level decline, spring drying and degradation, or the loss of aquatic habitat (Zektser *et al.* 2005, pp. 396–397).

Determining whether groundwater development is a threat to springs, streams or wetlands or not depends upon: (1) The basins in which withdrawals are occurring or proposed exceed perennial yield or have a hydrologic connection to springs and groundwater flow systems; (2) springs, streams or wetlands are upgradient and outside of the zone of influence of the carbonate aquifer (*i.e.,* they occur in the alluvial aquifer or mountain block aquifer instead); or (3) springs, streams or wetlands are too far away from proposed pumping projects to be impacted (Welch *et al.* 2007, pp. 71–79). Specific information on water development impacts pertaining to a particular petitioned subspecies is included in specific subspecies sections below as appropriate.

Agriculture

The petition provides a general discussion of butterfly use of agricultural areas. It claims that agricultural practices are eliminating suitable habitat, resulting in losses of butterfly species. Fleishman *et al.* (1999, pp. 214–215) is referenced as stating that artificial riparian areas such as irrigated croplands support fewer butterfly species than native habitats; that most butterfly species found in agricultural sites are widespread generalists often found in disturbed

sites; that less common species, as well as those restricted in native larval host plants, are less likely to or do not occur in agricultural sites, and though agriculture can provide habitat for some butterfly species, these modified habitats cannot replace the natural undisturbed riparian ecosystems.

The petition claims that agriculture is a threat to some of the petitioned subspecies, but it does not present specific information to support the claim that this potential threat is impacting the petitioned subspecies, their host plants, or nectar sources, or is likely to in the future. The petition does not present information regarding which types of agricultural practices may be threats, nor is information presented concerning past, present, or projected acreage or intensity of these operations in or near occupied or suitable locations. The petition also does not report loss of populations or reduction in numbers of these butterfly subspecies related directly to agricultural practices. We have little to no information in our files related to agricultural practices impacting the petitioned subspecies. Specific information on agriculture pertaining to a particular subspecies is included in specific subspecies sections below as appropriate.

Pesticide Use

The petition claims that pesticide use is a threat to the petitioned butterfly subspecies (WildEarth Guardians 2010, p. 7). Use of pesticides (including drift) can impact butterfly habitat by killing butterfly nectaring and host plant species (Selby 2007, pp. 3, 30). This threat can be serious for those species that specialize in one host plant species (WildEarth Guardians 2010, p. 7). Use of insecticides on pastureland or croplands adjacent to butterfly habitat can be a direct threat to butterfly survival (Selby 2007, p. 30).

The petition does not present any specific supporting information that this potential threat may be impacting the subspecies or is likely to in the future. The petition does not present specific information concerning past, present, or projected intensity of pesticide use in or near occupied or suitable locations. The petition does not present specific information as to whether this potential threat has, is, or is likely to affect the subspecies, their host plants, or nectar sources. The petition also does not report loss of populations or reductions in numbers of these subspecies to pesticide use. We have no information in our files related to pesticide use impacting any of the petitioned subspecies or their habitats. Specific information regarding pesticide use and impacts to a particular petitioned subspecies is included in specific subspecies sections below as appropriate.

Livestock Grazing

The petition states that livestock grazing in general impacts riparian areas, wetlands, seeps, and springs by removing native vegetation, and by reducing cover, biomass, and the productivity of herbaceous and woody species. It also claims that trampling by livestock destroys vegetation and compacts the soil, increasing erosion and runoff, and that grazing spreads nonnative plant species (Fleishner 1994, pp. 631–635; Belsky *et al.* 1999, pp. 8–11; Sada *et al.* 2001, p. 15). Inappropriate livestock grazing can also trample butterfly larvae and host or nectar plants, degrade habitats, and assist in the spread of nonnative plant species that can dominate or replace native plant communities and thereby impact larval host and adult nectar species (WildEarth Guardians 2010, pp. 22–23). The petition indicates that light or moderate grazing can assist in maintaining butterfly habitats (WildEarth Guardians 2010, p. 23), but heavy grazing is considered incompatible with the conservation of some butterflies (Sanford 2006, p. 401; Selby 2007, pp. 3, 29, 33, 35).

The petition indicates that the threat from livestock grazing is occurring over widespread general habitat areas where the petitioned subspecies could be occurring, with a few site-specific instances. The petition provides little to no specific supporting information to indicate this potential threat may be impacting the petitioned subspecies or is likely to in the future. The petition provides little to no information related to the level of grazing utilization that has or may be occurring at occupied or suitable locations, or that it may increase in intensity in the future. The petition does not present information that indicates the degree, if any, that invasive plants are spreading in the petitioned subspecies' occupied habitats as a result of grazing activities. The petition does not report loss of populations or reduction in numbers of these petitioned subspecies due to livestock grazing. We have little to no information available in our files related to livestock grazing impacting the petitioned subspecies. Specific information related to livestock grazing and impacts to a particular subspecies is included in specific subspecies sections below as appropriate.

Climate Change

The petition claims that climate change in the Great Basin is a threat to the petitioned subspecies. The average temperature in the Great Basin has increased 0.6 to 1.1 degrees Fahrenheit (0.3 to 0.6 degrees Celsius) during the last 100 years (Chambers 2008a, p. 29) and is expected to increase by 3.6 to 9 degrees Fahrenheit (2 to 5 degrees Celsius) over the next century (Cubashi *et al.* 2001 cited by Chambers 2008a, p. 29).

The petition indicates that climate change is expected to affect the timing and flow of streams, springs, and seeps in the Great Basin (Chambers 2008b, p. 20) which support the moist meadows upon which some petitioned butterflies depend (WildEarth Guardians 2010, p. 9). Earlier spring snowmelt appears to be affecting the date of blooming for some plants in the Great Basin (Chambers 2008a, p. 29). Potential changes in the bloom date of meadow plants used by butterflies due to climate change could affect their use (WildEarth Guardians 2010, p. 9). The petition indicates that drought in the Great Basin could negatively affect riparian habitats, moist meadows, and similar habitats, especially those already stressed by other factors (Major 1963 cited by West 1983, p. 344). As climate changes, droughts may become more common in the Great Basin (Chambers *et al.* 2008, p. 3) and American Southwest (Seager *et al.* 2007, pp. 1181–1183), modifying future precipitation (WildEarth Guardians 2010, p. 8). Increased carbon dioxide (CO_2) may favor invasion of annual grasses such as the nonnative *Bromus tectorum* (cheat grass) (Smith *et al.* 2000, pp. 79, 81). Increased temperatures and CO_2 levels have various effects on plant growth and chemistry, which may affect insect abundance and persistence (Stiling 2003, pp. 486–488). Increasing temperatures can also affect insect development and reproduction (Sehnal *et al.* 2003, pp. 1117–1118).

According to Loarie *et al.* (2009, p. 1052), as referenced in the petition, species and ecosystems will need to shift northward an average of 0.3 mile (mi) (0.42 kilometer (km)) per year to avoid the effects of increasing temperatures associated with climate change. Loarie *et al.* (2009, p. 1053) also states that distances may be greater for species in deserts and xeric (dry habitat) shrublands, where climate change is predicted to have greater effect than in some other ecosystems. The petition states that it is unlikely that small, isolated populations of butterflies in the Great Basin, dependent on reduced

habitats, will be able to shift to other habitats in the face of climate change (WildEarth Guardians 2010, p. 9). Many species in the Great Basin have specialized habitat requirements and limited mobility, which influence their ability to adapt to anthropogenic environmental change (Fleishman 2008, p. 61). Species and habitats already stressed by other factors may be less able to cope with climate change (WildEarth Guardians 2010, p. 10). The petition did not provide climate change or drought information specific to Nevada or California, or the general areas known to be occupied by any of the 10 petitioned butterflies, or on the specific detrimental effects of climate change or drought to each subspecies.

Based on information in our files, recent projections of climate change in the Great Basin over the next century include: Increased temperatures, with an increased frequency of extremely hot days in summer; more variable weather patterns and more severe storms; more winter precipitation in the form of rain, with potentially little change or decreases in summer precipitation; and earlier, more rapid snowmelt (United States Environmental Protection Agency 1998, pp. 1–4; Chambers and Pellant 2008, pp. 29–33).

It is difficult to predict local climate change impacts, due to substantial uncertainty in trends of hydrological variables, limitations in spatial and temporal coverage of monitoring networks, and differences in the spatial scales of global climate models and hydrological models (Bates *et al.* 2008, p. 3). Thus, while the information in the petition and our files indicates that climate change has the potential to affect vegetation and habitats used by butterflies in the Great Basin in the long term, there is much uncertainty regarding which habitat attributes could be affected, and the timing, magnitude, and rate of their change as it relates to the 10 petitioned butterflies. Specific information pertaining to climate change and a particular petitioned subspecies is included in specific subspecies sections below as appropriate.

Factor B. Overutilization for Commercial, Recreational, Scientific, or Educational Purposes

The petition states that individuals of all of the petitioned butterfly subspecies have been collected by scientists and amateur collectors over the years, but it is not known whether collection is a threat to any of the subspecies as a whole (WildEarth Guardians 2010, p. 8). The petition does not provide information that overutilization has led to the loss of butterfly populations or a significant reduction in numbers of individuals for any of the petitioned butterflies.

We do not have information in our files to suggest overutilization as a threat to any of the petitioned subspecies. This discussion provides the basis for our determinations in specific subspecies sections below.

Factor C. Disease or Predation

The petition indicates that disease is not known to be a threat to any of the petitioned butterflies (WildEarth Guardians 2010, p. 8). A general statement is made in the petition that larvae and adult butterflies are subject to predation from a variety of wildlife; however, it is not known whether predation is a threat to any of the petitioned subspecies (WildEarth Guardians 2010, p. 8).

We do not have information in our files suggesting disease or predation as a threat to the petitioned butterfly subspecies. This discussion provides the basis for our determinations in specific subspecies sections below.

Factor D. The Inadequacy of Existing Regulatory Mechanisms

The petition considers the inadequacy of existing regulatory mechanisms to be a threat for all 10 petitioned subspecies (WildEarth Guardians 2010, p. 40). The petition claims that no Federal or State programs exist to manage sensitive invertebrate species in Nevada or the Great Basin, but it does not address existing regulatory mechanisms in California (WildEarth Guardians 2010, p. 8). Information provided in the petition's referenced material suggests that the general habitats that could be used by the petitioned subspecies may occur on lands under various combinations of private, State, tribal, and Federal management. The petition presents little to no specific information to support the claim that potential threats are associated with inadequate existing regulatory mechanisms, nor does the petition connect inadequate existing regulatory mechanisms by Bureau of Land Management (BLM) or other Federal agencies to impacts to or losses of populations or declining population trends of the petitioned subspecies.

All of the petitioned butterfly subspecies, with the exception of the Carson Valley wood nymph and Railroad Valley skipper (*Hesperia uncas reeseorum*), are included under the referenced 2007 BLM list of sensitive species (BLM 2007a, pp. J6–J7, J37). In 2008, BLM policy and guidance for species of concern occurring on BLM-managed land was updated under BLM's 6840 Manual, ''Special Status Species Management'' (BLM 2008a). This manual provides agency policy and guidance for the conservation of special status plants and animals and the ecosystems on which they depend, but it is not a regulatory document. The objectives for BLM special status species are ''to conserve and/or recover ESA-listed species and the ecosystems on which they depend so that ESA protections are no longer needed for these species and to initiate proactive conservation measures that reduce or eliminate threats to Bureau sensitive species to minimize the likelihood of and need for listing of these species under the ESA'' (BLM 2008a, p. 3). Inclusion as a BLM sensitive species does provide consideration of conservation measures for the subspecies under the National Environmental Policy Act.

Based on information presented in the petition and available in our files, Nevada does not have the ability to protect invertebrates under its current State law. The Nevada Department of Wildlife is limited in its ability to protect insects under its current regulations (Nevada Revised Statutes (NRS)). Nevada State law protects species that the Wildlife Commission determines to be imperiled (NRS 503.585 cited in WildEarth Guardians 2010, p. 8). While some invertebrates such as mollusks and crustaceans may be protected because they can be classified under wildlife (NRS 501.110 cited in WildEarth Guardians 2010, p. 8), butterflies are not covered under this statute (WildEarth Guardians 2010, p. 8). No butterfly species are currently protected by State law in Nevada (Nevada Administrative Code 503.020–503.080). The California Department of Fish and Game is unable to protect insects under its current regulations (P. Bontadelli, *in litt.,* 1990).

The petition presents little to no specific information supporting the claim that threats are associated with inadequate existing regulatory mechanisms. Additionally, the petition provides little to no specific supporting information to associate losses of butterfly populations or declining population trends to inadequate existing regulatory mechanisms by State wildlife agencies or other State agencies.

We have little to no information available in our files to suggest that inadequacy of existing regulatory mechanisms may be threatening the petitioned subspecies. For most of these subspecies, we have no information in our files related to this potential threat; however, for a few there is some

information in our files to suggest a potential threat due to the inadequacy of existing regulatory mechanisms. Specific information pertaining to the inadequacy of existing regulatory mechanisms and a particular subspecies is included in specific subspecies sections below as appropriate.

Factor E. Other Natural or Manmade Factors Affecting its Continued Existence

The petition states that all of the petitioned butterflies may be susceptible to the effects of biological vulnerability, which may increase the likelihood of extinction (WildEarth Guardians 2010, pp. 6, 10). Characteristic butterfly population fluctuations and short generation times, combined with small populations, can influence genetic diversity and long-term persistence (Britten *et al.* 2003, pp. 229, 233). The petition further asserts that many of the butterflies included in the petition occur as single populations or a few disparate ones, and that the number of populations may be more important than population size when assessing the status of a butterfly (Sanford 2006, p. 401). Some of the petitioned butterflies occur in isolated populations in patchy environments (WildEarth Guardians 2010, p. 11), and the lack of dispersal corridors or resistance to barriers to dispersal may inhibit gene flow between populations and increase the likelihood of extinction (Wilcox and Murphy 1985, pp. 882–883). Overall, the petition provides little information related to the distribution, numbers of populations, size of populations, or population trends for the 10 petitioned butterfly subspecies. However, the petition and its references indicate that most of the 10 subspecies are known to have more than one population. The petition provides little to no specific information that indicates that biological vulnerability may be a threat to any of the petitioned subspecies.

General biological information in our files indicates that the combination of few populations, small ranges, and restricted habitats can make a species susceptible to extinction or extirpation from portions of its range due to random events such as fire, drought, disease, or other occurrences (Shaffer 1987, pp. 71–74; Meffe and Carroll 1994, pp. 190–197). Limited distribution and small population numbers or sizes are considered in determining whether the petition provides substantial information regarding a natural or anthropogenic threat, or a combination of threats, that may be affecting a particular subspecies. However, in the absence of information identifying chance events, other threats, the potential for such chance events to occur in occupied habitats, and connecting these threats to a restricted geographic range of a subspecies, we do not consider chance events, restricted geographic range, or rarity by themselves to be threats to a subspecies. In addition, butterfly populations are highly dynamic and from year to year, butterfly distributions can be highly variable (Weiss *et al.* 1997, p. 2), and desert species seem prone to dramatic fluctuations in number (Scott 1986, p. 109).

We have little to no additional information related to the overall abundance, distribution, number and size of populations, or population trends for any of the 10 subspecies in our files. We do not have additional information in our files related to biological vulnerability as a threat to any of the petitioned butterfly subspecies. Specific information pertaining to biological vulnerability and a particular subspecies is included in specific subspecies sections below as appropriate.

Species for Which Substantial Information Was Not Presented

In this section, the butterfly subspecies are listed in alphabetical order by their common name.

Carson Valley silverspot (*Speyeria nokomis carsonensis*)

We accept the characterization of the Carson Valley silverspot as a valid subspecies based on its description by Austin (1998c, pp. 573–574). The Carson Valley silverspot's larval host plant is the violet, *Viola nephrophylla* (Austin *et al.* 2000, p. 2; Austin and Leary 2008, p. 97), and the primary nectar sources are *Cirsium* sp. (Austin *et al.* 2000, p. 2). A single brood flies during mid-July to mid-October (Austin 1998c, p. 574; Austin *et al.* 2000, p. 2).

The Carson Valley silverspot occurs in wet meadows along the east side of the Carson Range from southern Washoe County, Nevada, south to northern Alpine County, California. It occurs along the Carson River drainage in Douglas County, Nevada, and Alpine County, California. It also occurs in the Pine Nut Mountains of Douglas County, Nevada, and the Sweetwater Mountains (Austin 1998c, p. 574; Austin *et al.* 2000, p. 2; The Nature Conservancy 2009, p. 1), Pine Grove Hills, and Smith Valley of Lyon County, Nevada (Austin and Leary 2008, p. 97). Populations have been found along the Walker River drainage in Mono County, California (Austin *et al.* 2000, p. 2; The Nature Conservancy 2009, p. 1). The largest known colony occurs at Scossa Ranch, Douglas County, Nevada (Austin *et al.* 2000, p. 2). The subspecies has been documented from the Carson Range North, Washoe County; Snow Valley, Carson City County; and Mineral Valley, Pine Nut Creek, and Sugar Loaf, Douglas County (NNHP 2006, pp. 21–22, 36–37). The petition indicates there are 13 Nevada occurrences in the NNHP (NNHP 2009, p. 8) database, but location information is not indicated. However, review of the complete Nevada database, which we have in our files, includes additional locations at Davis Creek Park, Kingsbury Grade, Thompson Canyon, Dangberg Reservoir near Gardnerville, Daggett Pass, Veceey Canyon area, Haines Canyon, Thomas Creek, and Kings Canyon (NNHPD 2008). The petition notes that this subspecies may currently occur at 37 sites (M. Sanford, pers. comm., cited in WildEarth Guardians 2010, p. 18), but location information was not provided. The petition states that the subspecies is reduced from historical abundance (M. Sanford pers. comm., cited in WildEarth Guardians 2010, p. 17).

Factor A:

Information Provided in the Petition

The petition asserts that water development; land development; agriculture; livestock grazing; nonnative plant species invasion, such as by *Lepidium latifolium* (tall whitetop); and pesticide use may impact this subspecies (WildEarth Guardians 2010, p. 19). The petition indicates that these types of activities can eliminate, degrade, and fragment butterfly habitat (WildEarth Guardians 2010, p. 19). The petition adds that heavy livestock grazing on public and private land in the Sierra Nevada, Pine Nut Mountains, and Sweetwater Mountains has degraded habitat for the Carson Valley silverspot (WildEarth Guardians 2010, p. 20). The annual grazing removes vegetation from seep- and spring-fed meadows, and water diversions for grazing have dried up meadows, eliminating silverspot habitat (WildEarth Guardians 2010, p. 20). The petition mentions that climate change may result in the drying out of moist habitats in the Carson Valley (WildEarth Guardians 2010, p. 20).

According to the petition, most of the Carson Valley silverspot populations occur in habitats associated with the Carson River and its tributaries in ''Carson Valley'' (WildEarth Guardians 2010, p. 18). The petition indicates that the NNHP has ranked the Carson River among the 26 highest priority wetland areas in the State (NNHP 2007, p. 8).

Many other associated areas, including tributaries, riparian areas, wet meadows, marshes, ponds, and ephemeral pools in Carson Valley, Nevada, are also listed (NNHP 2007, pp. 12–14). According to NNHP (2007, p. 36) and The Nature Conservancy (2008, p. 31), numerous areas associated with these sites and others along the Middle Carson River have been degraded or converted to other lands uses. Moderate to high stressors impacting these areas in Carson Valley include water development and diversions, groundwater pumping, hydrogeomorphic modification, land development, agriculture, livestock grazing, recreation, fire suppression, wetland leveling, and nonnative species invasions. The petition implies these activities are negatively impacting the Carson Valley silverspot.

Evaluation of Information Provided in the Petition and Our Files

The petition does not provide specific, supporting information to indicate that the Carson Valley silverspot may be impacted from water development, land development, agriculture, livestock grazing, nonnative plant species invasion, pesticide use, or climate change at occupied locations in Nevada or California. The petition does not provide additional information or discussion regarding possible impacts to the Carson Valley silverspot from recreation, fire suppression, and wetland leveling. The petition does not provide specific, supporting information regarding past, present, or future conditions of these threats or their scope, immediacy, or intensity at occupied or suitable habitats in Nevada or California. The petition emphasizes habitat impacts along the Middle Carson River in Nevada; however, there are a number of populations located in several counties in both Nevada and California. Little to no information regarding habitat impacts to these additional populations is indicated. We have information in our files that indicate habitat disturbances such as water table changes may adversely impact larval food availability (Austin *et al.* 2000, p. 2), but details are not provided. Grazing has been associated with population declines (M. Sanford, pers. comm., cited in WildEarth Guardians 2010, p. 19), but details are not provided. We do not have any further specific, supporting information in our files regarding potential threats or resulting negative impacts to Carson Valley silverspot populations in Nevada or California. Also see the ''Summary of Common Threats'' section for information pertaining to water development, agriculture, livestock grazing, pesticide use, and climate change as potential threats.

While the petition reports losses of Carson Valley silverspot populations from their historical abundance (M. Sanford, pers. comm., cited in WildEarth Guardians 2010, p. 17), which could suggest a negative response to these potential threats, details regarding these losses and the reason(s) for them are not provided. The petition does not present specific information related to population numbers, size, or trends for the Carson Valley silverspot over any period of time. The petition does not provide additional information related to the reported population declines, regarding their locations, number of populations, or magnitude of them. We do not have this information in our files. As a result, it is not possible to put these reported declines into context to determine whether populations of the Carson Valley silverspot may be experiencing declines or not or their possible severity. These declines might be attributed to the normal natural fluctuations of butterfly populations. Butterfly populations are highly dynamic and numbers and distribution can be highly variable year to year (Weiss *et al.* 1997, p. 2).

Based on our evaluation of the information provided in the petition and in our files, we have determined that the petition does not present substantial information to indicate that listing the Carson Valley silverspot may be warranted due to the present or threatened destruction, modification, or curtailment of its habitat or range.

Factors B and C:

Information Provided in the Petition

The petition states that it is unknown whether overutilization, disease, or predation are threats to this subspecies (WildEarth Guardians 2010, p. 8). Based on information referenced in the petition, numerous individuals (432 males, 224 females) of this subspecies have been collected by several collectors between 1964 and 1989 at Scossa Ranch, Douglas County, Nevada (Austin 1998c, p. 574). Based on these total numbers over the 25-year time period, an average of 17 males and 9 females were collected per year. Ranges of individuals collected during a single day in a particular year were 1 to 39 for males and 1 to 54 for females. In some years, multiple collections occurred, and in some years collections occurred on consecutive days (Austin 1998c, p. 574).

Evaluation of Information Provided in the Petition and Our Files

The petition does not provide information that overutilization, disease, or predation has negatively impacted the subspecies. We have no information in our files related to overutilization, disease, or predation for this subspecies. According to Austin *et al.* (2000, p. 2), Scossa Ranch remains the largest known colony for this subspecies. As indicated earlier, there are also multiple populations of this subspecies occurring elsewhere in Nevada and California. We do not know if or to what extent these other populations have been impacted by collection efforts. The available information does not indicate collection efforts are negatively impacting the Carson Valley silverspot. Also see the ''Summary of Common Threats'' section for information pertaining to overutilization, disease, and predation as potential threats.

Based on our evaluation of the information provided in the petition and in our files, we have determined that the petition does not present substantial information to indicate that listing the Carson Valley silverspot may be warranted due to Factor B (overutilization for commercial, recreational, scientific, or educational purposes) or Factor C (disease or predation).

Factor D:

Information Provided in the Petition

The petition asserts that inadequate existing regulatory mechanisms are a threat to this subspecies (WildEarth Guardians 2010, pp. 8, 40). This butterfly is listed as a BLM sensitive species (BLM 2007a, p. J6). This designation can offer it some conservation consideration. The petition also indicates that some populations of the Carson Valley silverspot, as well as potential habitat, occur on properties covered by conservation easements (WildEarth Guardians 2010, p. 19). These easements may be protected from land development, but they are not protected from other activities such as groundwater pumping, invasive species, livestock grazing, and agricultural use (WildEarth Guardians 2010, p. 19).

Evaluation of Information in the Petition and Our Files

The petition does not provide specific information to support the assertion that existing regulatory mechanisms are inadequate to protect the subspecies from potential threats because it does not provide substantial information to support their assertion that threats are

occurring under the other factors. The petition does not connect inadequate existing regulatory mechanisms to losses of Carson Valley silverspot populations or declining population trends. We do not have information in our files related to the inadequacy of existing regulatory mechanisms for this subspecies. Also see the ''Summary of Common Threats'' section for information pertaining to the inadequacy of regulatory mechanisms as a potential threat.

Based on our evaluation of the information provided in the petition and in our files, we have determined that the petition does not present substantial information to indicate that listing the Carson Valley silverspot may be warranted due to the inadequacy of existing regulatory mechanisms.

Factor E:

Information Provided in the Petition

The petition indicates that this subspecies may be vulnerable to reduced population numbers (WildEarth Guardians 2010, p. 40) due to the observed subspecies' reduction in numbers from historical abundance (M. Sanford pers. comm., cited in WildEarth Guardians 2010, p. 17).

Evaluation of Information in the Petition and Our Files

The petition did not present, nor do we have, specific information in our files related to population numbers, size, or trends for the Carson Valley silverspot. The petition does not provide additional information related to the reported population declines, regarding the location, number of populations, magnitude of declines, or reasons for them. The petition does not provide information on chance events or other threats to the subspecies and connect them to small population numbers or size, or the potential for such threats to occur in occupied habitats in the future. Since this subspecies is distributed over a number of populations in two States, its extinction vulnerability due to stochastic events may be reduced. In the absence of specific information and connection, we do not consider small population numbers alone to be a threat to this subspecies. Also see the ''Summary of Common Threats'' section for information pertaining to small population size as a potential threat.

Based on evaluation of the information provided in the petition and our files, we have determined that the petition does not present substantial information to indicate that listing the Carson Valley silverspot may be warranted due to other natural or manmade factors affecting the subspecies' continued existence.

Carson Valley Wood Nymph (*Cercyonis pegala carsonensis*)

We accept the characterization of the Carson Valley wood nymph as a valid subspecies, based on its description by Austin (1992, pp. 10–11). The larval host plant is a grass or sedge species (Austin *et al.* 2000, p. 1). Adults nectar on a variety of white and yellow flowers from the families Apiaceae (carrot) and the Asteraceae (sunflower) (Austin 1992, p. 11). The single brood flies from early July to early September (Austin 1992, p. 11).

The Carson Valley wood nymph occurs in marshes of the western Great Basin along the base of the Carson Range, especially in Carson Valley from Carson City, Nevada, south to east-central Alpine County, California, and the Gardnerville area of Douglas County, Nevada, with a few northern specimens from the Reno area, Washoe County, Nevada (Austin 1992, p. 11). Austin *et al.* (2000, p. 1) mention unidentified localities in Lyon County, Nevada. The petition indicates there are 14 Nevada occurrences recorded in the NNHP database, but occurrence locations are not identified (NNHP 2009, p. 6). However, review of the complete Nevada database, which we have in our files, shows additional locations near Minden, Daggett Pass, Centerville, Genoa, and along the Carson River, with Cradlebaugh Bridge being a named location (NNHPD 2008). The largest colony occurs at Scossa Ranch, Douglas County (Austin *et al.* 2000, p. 1). According to the petition, populations appear to be declining between 10 to 30 percent in the short term with possible extirpation of populations in Washoe County (NatureServe 2009c, p. 2). Surveys conducted between 2001 and 2006 showed that some populations of the Carson Valley wood nymph have been extirpated (M. Sanford, pers. comm., cited in WildEarth Guardians 2010, p. 22).

Factor A:

Information Provided in the Petition

The petition asserts in general that water development; land development; agriculture; livestock grazing; invasion by nonnative plant species, such as *Lepidium latifolium;* and pesticide use may adversely affect Carson Valley wood nymph habitat (WildEarth Guardians 2010, pp. 22–23, 40). The petition indicates that these types of actions can eliminate, degrade, and fragment butterfly habitat (WildEarth Guardians 2010, p. 23). Threats mentioned by other sources pertaining specifically to this subspecies include land development, overgrazing, and lowering of the water table (NatureServe 2009c, p. 2).

The petition indicates that the NNHP (2007, pp. 8, 12–14) has ranked the Carson River in Nevada among the 26 highest priority wetland areas in the State, and many associated areas—including tributaries, riparian areas, wet meadows, marshes, ponds, and ephemeral pools in Carson Valley, Nevada—are also included. According to NNHP (2007, p. 36) and The Nature Conservancy (2008, p. 31), numerous areas associated with these habitats and others along the Middle Carson River have been degraded or converted to other land uses, and moderate to high stressors impacting these areas include water development and diversions, groundwater pumping, hydrogeomorphic modification, land development, agriculture, livestock grazing, recreation, fire suppression, wetland leveling, and nonnative species invasion.

Evaluation of Information in the Petition and Our Files

The petition does not provide specific, supporting information to indicate the Carson Valley wood nymph may be impacted from water development, land development, agriculture, livestock grazing, invasive plants, or pesticide use at occupied locations in Nevada or California. The petition does not provide additional information or discussion regarding possible impacts to the Carson Valley wood nymph from recreation, fire suppression, and wetland leveling. The petition does not provide specific, supporting information regarding past, present, or future conditions of these threats or their scope, immediacy, or intensity at occupied or suitable habitats in Nevada or California. The petition emphasizes habitat impacts along the Middle Carson River in Nevada; however, there are additional Carson Valley wood nymph populations located in several counties in both Nevada and California. No information is included to indicate habitat impacts to these additional populations. We have information in our files (Austin *et al.* 2000, p. 1) indicating, in general, that land development, overgrazing, and lowering of the water table could reduce or destroy habitat of the Carson Valley wood nymph, but further details are not provided. We do not have any further specific, supporting information in our files regarding other potential impacts or resulting adverse impacts to Carson Valley wood nymph populations in Nevada or California. Also see the

''Summary of Common Threats'' section for information pertaining to water development, agriculture, livestock grazing, and pesticide use as potential threats.

While the petition reports a loss of Carson Valley wood nymph populations with some possible extirpations (M. Sanford, pers. comm., cited in WildEarth Guardians 2010, p. 22), which could suggest a negative response to these potential threats, details regarding these losses and the reasons for them are not provided. The petition does not present specific information related to population numbers, size, or trends for the Carson Valley wood nymph over any period of time, including the 2001 to 2006 period. The petition does not provide additional information related to the reported population declines, regarding their locations, number of populations, or the magnitude of them. The context for the reported 10 to 30 percent decline between 2001 and 2006 is not clear as we do not know how many populations this range should apply or whether it is over the entire 5-year period or a portion of it. The identification of the possibly extirpated populations, their locations in Nevada or California, or the number of them are not provided. We do not have this information in our files. As a result, it is not possible to put these reported declines or extirpations into context to determine whether populations of the Carson Valley wood nymph may be experiencing declines or not or their possible severity. These declines might be attributed to the normal natural fluctuations of butterfly populations. Butterfly populations are highly dynamic and numbers and distribution can be highly variable year to year (Weiss *et al.* 1997, p. 2).

Based on our evaluation of the information provided in the petition and in our files, we have determined that the petition does not present substantial information to indicate that listing the Carson Valley wood nymph may be warranted due to the present or threatened destruction, modification, or curtailment of its habitat or range.

Factors B and C:

Information Provided in the Petition

The petition states that it is unknown if overutilization, disease, or predation are threats to this subspecies. Austin (1992, p. 11) reports numerous individuals (475 males, 428 females) of this subspecies were collected by several individuals between 1964 and 1989 at Scossa Ranch, Douglas County, Nevada, as referenced in the petition. Based on these total numbers over the 25-year time period, an average of 19 males and 17 females were collected per year. Ranges of individuals collected during a single day in a particular year were 1 to 108 for males and 1 to 80 for females. In some years, multiple collections occurred, and in some years collections occurred on consecutive days (Austin 1992, p. 11).

Evaluation of Information in the Petition and Our Files

The petition does not provide information that overutilization, disease, or predation has negatively impacted the subspecies. We do not have information in our files related to overutilization, disease, or predation for this subspecies. According to Austin *et al.* (2000, p. 1), Scossa Ranch remains the largest known colony for this subspecies. As indicated earlier, there are also multiple populations of this subspecies occurring elsewhere in Nevada and California. We do not know if or to what extent these other populations have been impacted by collection efforts. The available information does not indicate that collection efforts are negatively impacting the Carson Valley wood nymph. Also see the ''Summary of Common Threats'' section for information pertaining to overutilization, disease, and predation as potential threats.

Based on our evaluation of the information provided in the petition and our files, we have determined that the petition does not present substantial information to indicate that listing of the Carson Valley wood nymph may be warranted due to Factor B (overutilization for commercial, recreational, scientific, or educational purposes) or Factor C (disease or predation).

Factor D:

Information Provided in the Petition

The petition asserts that existing regulatory mechanisms are inadequate to protect this subspecies (WildEarth Guardians 2010, pp. 8, 40). The petition also indicates that most of the known or potential populations of the Carson Valley wood nymph do not occur on properties covered by conservation easements (WildEarth Guardians 2010, p. 23). While land under a conservation easement may be protected from land development, the area may not necessarily be protected from other activities such as groundwater pumping, invasive species, livestock grazing, and agricultural use (WildEarth Guardians 2010, p. 22). The petition states that the Carson Valley wood nymph is a BLM sensitive species (WildEarth Guardians 2010, p. 22); however, upon review, it is not included in the referenced document (BLM 2007a).

Evaluation of Information in the Petition and Our Files

The petition does not provide specific information to support the assertion that existing regulatory mechanisms are inadequate to protect the subspecies from potential threats because it does not provide substantial information to support their assertion that threats are occurring under the other factors. The petition does not connect inadequate existing regulatory mechanisms to losses of Carson Valley wood nymph populations or declining population trends. We do not have information in our files related to the inadequacy of existing regulatory mechanisms for this subspecies. Also see the ''Summary of Common Threats'' section for information pertaining to the inadequacy of regulatory mechanisms as a potential threat.

Based on our evaluation of the information provided in the petition and in our files, we have determined that the petition does not present substantial information to indicate that listing the Carson Valley wood nymph may be warranted due to the inadequacy of existing regulatory mechanisms.

Factor E:

Information Provided in the Petition

The petition indicates that this subspecies may be vulnerable to small populations (WildEarth Guardians 2010, pp. 21, 40) due to the possible decline and extirpations of Carson Valley wood nymph populations (M. Sanford, pers. comm., cited in WildEarth Guardians 2010, p. 22).

Evaluation of Information in the Petition and Our Files

The petition does not present additional information about the surveys conducted between 2001 and 2006, such as the locations, numbers, or causes of these presumed extirpations. We do not have information in our files related to population numbers, sizes, or trends. The petition does not provide information on chance events or other threats to the subspecies, nor does it connect these factors to small population numbers or size, or the potential for such chance events to occur in occupied habitats in the future. In the absence of this information and connection, we do not consider small population numbers alone to be a threat to this subspecies. Since the information indicates this subspecies is distributed over more than one population in two States, its vulnerability to extinction

due to stochastic events may be reduced. Also see the ''Summary of Common Threats'' section for information pertaining to small population size as a potential theat.

Based on our evaluation of the information provided in the petition and our files, we have determined that the petition does not present substantial information to indicate that listing the Carson Valley wood nymph may be warranted due to other natural or manmade factors affecting the subspecies' continued existence.

Mattoni's Blue Butterfly (*Euphilotes pallescens mattonii*)

We accept the characterization of Mattoni's blue butterfly as a valid subspecies based on its initial description by Shields (1975, p. 20) and its subsequent reclassification as indicated by Austin (1998a, p. 633). This subspecies' host plant, *Eriogonum microthecum* var. *laxiflorum* (slender buckwheat), flowers between June and October (Shields 1975, pp. 20–21). Adults fly during July (Shields 1975, p. 20; Austin and Leary 2008, p. 76). Female *Euphilotes* lay their eggs on young flowers of *Erigonum* sp., and the larvae feed on pollen and later developing seeds (Pratt 1994, p. 388).

Mattoni's blue butterfly is known from the west fork of Beaver Creek (Shields 1975, p. 20), west of Charleston Reservoir (Austin 1998a, p. 633; Nevada Natural Heritage Program Database (NNHPD) 2008), west of Pequop Summit (Austin and Leary 2008, p. 76; NNHPD 2008), and the Pilot-Thousand Springs, Long-Ruby Valleys, and Bruneau River watersheds in Elko County, Nevada (NNHPD 2008; NatureServe 2009a, p. 2). Shields (1975, p. 21) stated that since the host plant was common between 5,000 and 10,500 ft (1,524 to 3,200 m) in elevation in the western United States, Mattoni's blue butterfly may be more widespread than was known at that time. Austin *et al.* (2000, p. 3) indicate that this subspecies is ''apparently rare where it is found * * *.''

Factor A:

Information Provided in the Petition

The petition asserts that land use, livestock grazing and trampling, and climate change may affect this subspecies' habitat (WildEarth Guardians 2010, pp. 25, 40). The petition also states that land use and other factors could hinder dispersal (WildEarth Guardians 2010, p. 25).

Evaluation of Information Provided in the Petition and in Our Files

The petition provides no specific supporting information to indicate that Mattoni's blue butterfly is or may become impacted from land use, livestock grazing or trampling, or dispersal problems at any of its occupied sites in Elko County. The petition does not provide specific supporting information how climate change is or may impact this subspecies or its habitat. The petition does not provide supporting information regarding past, present, or future conditions of these threats or their scope, immediacy, or intensity at occupied or suitable habitats. The petition does not report loss of populations or reduction in numbers of this butterfly subspecies which could suggest a negative response to threats such as those claimed. Although we have a letter from a contractor indicating that any habitat disturbance could theoretically adversely affect this subspecies (Austin *et al.* 2000, p. 3), we do not have specific information in our files to support the assertion that land use, livestock grazing or trampling, or climate change is impacting Mattoni's blue butterfly populations. Evaluation of the available information indicates that there is not sufficient evidence to suggest that these potential threats are occurring in occupied areas to the extent that they may be affecting this subspecies' status such that it may warrant listing under the Act. Also see the ''Summary of Common Threats'' section for information pertaining to livestock grazing and climate change as potential threats.

Based on our evaluation of the information provided in the petition and in our files, we have determined that the petition does not present substantial information to indicate that listing Mattoni's blue butterfly may be warranted due to the present or threatened destruction, modification, or curtailment of its habitat or range.

Factors B and C:

Information Provided in the Petition

The petition states that it is not known whether overutilization, disease, or predation are threats to this subspecies (WildEarth Guardians 2010, p. 8). Information referenced in the petition indicates that one female and one male are known to have been collected in 1969 (Austin 1998a, p. 633).

Evaluation of Information Provided in the Petition and in Our Files

The petition does not provide information that overutilization, disease, or predation has negatively impacted the subspecies. We have no information in our files related to overutilization, disease, or predation for this subspecies. Also see the ''Summary of Common Threats'' section for information pertaining to overutilization, disease, and predation as potential threats.

Based on our evaluation of the information provided in the petition and in our files, we have determined that the petition does not present substantial information to indicate that listing the Mattoni's blue butterfly may be warranted due to Factor B (overutilization for commercial, recreational, scientific, or educational purposes) or Factor C (disease, or predation).

Factor D:

Information Provided in the Petition

The petition asserts that inadequate existing regulatory mechanisms are a threat to the subspecies (WildEarth Guardians 2010, pp. 8, 40). Mattoni's blue butterfly is listed as a sensitive species by BLM (BLM 2007a, p. J–7) which may offer some conservation consideration.

Evaluation of Information Provided in the Petition and in Our Files

The petition does not provide information to support the assertion that existing regulatory mechanisms are inadequate to protect the subspecies from potential threats because it does not provide substantial information to support their assertion that threats are occurring under the other factors. The petition does not connect inadequate existing regulatory mechanisms to losses of Mattoni's blue butterfly populations or declining population trends. We do not have information in our files related to the inadequacy of existing regulatory mechanisms for this subspecies. Also see the ''Summary of Common Threats'' section for information pertaining to the inadequacy of existing regulatory mechanisms as a potential threat.

Based on our evaluation of the information provided in the petition and in our files, we have determined that the petition does not present substantial information to indicate that listing Mattoni's blue butterfly may be warranted due to the inadequacy of existing regulatory mechanisms.

Factor E:

Information Provided in the Petition

The petition indicates that this subspecies may be vulnerable due to limited range (WildEarth Guardians

2010, pp. 10–11, 40). The petition asserts that Mattoni's blue butterfly may be restricted to its habitat in Elko County, Nevada (WildEarth Guardians 2010, p. 25). If the subspecies is dependent on its specific host plant, it may not be able to disperse far enough to other locations where the host plant can be found (Shields and Reveal 1988, p. 80). The petition also indicates Austin *et al.* (2000, p. 3) said that this subspecies is ''apparently rare where it is found * * *.''

Evaluation of Information in the Petition and Our Files

The petition does not present, nor do we have information in our files, related to population numbers, size, or trends for Mattoni's blue butterfly. The petition does not provide information on chance events or other threats to the subspecies and connect them to a possibly restricted range or small numbers for the subspecies or the potential for such chance events to occur in occupied habitats in the future. In the absence of specific information identifying threats to the subspecies and connecting them to a restricted geographic range or small numbers of the subspecies, or the potential for such events to occur in occupied habitats, we do not consider a restricted geographic range or rarity by themselves to be threats to this subspecies. Many naturally rare species have persisted for long periods within small geographic areas. The fact that a species is rare does not necessarily indicate that it may meet the definition of threatened or endangered under the Act. Also see the ''Summary of Common Threats section'' for information pertaining to limited distribution and small population size as potential threats.

Therefore, based on our evaluation of the information provided in the petition and in our files, we have determined that the petition does not present substantial information to indicate that listing Mattoni's blue butterfly may be warranted due to other natural or manmade factors affecting the subspecies' continued existence.

Mono Basin Skipper (*Hesperia uncas giulianii*)

We accept the characterization of the Mono Basin skipper as a valid subspecies based on its description by McGuire (1998, pp. 461–462). The Mono Basin skipper flies from May to mid-July (Austin and McGuire 1998, p. 780; Davenport *et al.* 2007, p. 8). Females lay their eggs on *Stipa* sp. (needlegrass) (McGuire 1998, p. 463).

The type locality for the Mono Basin skipper is the Adobe Hills area in Mono County, California (McGuire 1998, p. 462). Habitat at the type locality for the Mono Basin skipper is described as gently rolling hills with sandy soil between 6,800 and 7,500 ft (2,072 and 2,286 m) in elevation (McGuire 1998, p. 462). The vegetation consists of *Pinus monophylla* (singleleaf piñon) woodlands and Great Basin sagescrub with *Artemisia tridentata* (big sagebrush), *Chrysothamnus viscidiflorus* (yellow rabbitbrush), *Eriogonum umbellatum* ssp. (sulphurflower buckwheat), *Lupinus argenteus* (silvery lupine), and *Stipa* sp., including *Stipa pinetorum* (pinewoods needlegrass). At least one population was described as using ''open, sparse sage flats'' (McGuire 1998, p. 462). Individuals were seen within this area at Granite and Glass Mountains; near Bodie; and near Laws (McGuire 1998, p. 462). McGuire (1998, p. 462) indicates this subspecies may occur elsewhere in similar Adobe Hills habitat. The Adobe Hills extend into western Mineral County, Nevada, where a similar skipper phenotype was discovered (Austin and McGuire 1998, p. 780; McGuire 1998, pp. 462–463).

Factor A:

Information Provided in the Petition

The petition asserts that livestock grazing and its associated effects and climate change are threats to the subspecies (WildEarth Guardians 2010, pp. 28, 40). The petition also claims that unnatural fires that result from invasive plants spread by grazing eliminate shrub steppe habitat (WildEarth Guardians 2010, p. 28).

Evaluation of Information Provided in the Petition and in Our Files

The petition does not provide specific supporting information that livestock grazing is impacting the Mono Basin skipper in the Adobe Hills. The petition does not provide any information that would indicate past, current, or future livestock grazing practices have, are, or may negatively impact the Mono Basin skipper or its habitat. We do not have additional information in our files related to livestock grazing in the Adobe Hills. The petition does not present, nor do we have in our files, any specific, supporting information that indicates invasive plants are spreading in the Adobe Hills and that unnatural fire is resulting from invasive plants or that unnatural fire is eliminating shrub-steppe habitat. The petition does not present, nor do we have in our files, specific supporting information related to impacts due to climate change for the Mono Basin skipper. The petition does not report loss of populations or reduction in numbers of this subspecies which could suggest a negative response to threats such as those claimed. Evaluation of the available information does not establish that these potential threats are occurring in occupied areas and may be impacting this subspecies. Also see the ''Summary of Common Threats'' section for information pertaining to livestock grazing and climate change as potential threats.

Based on our evaluation of the information provided in the petition and in our files, we have determined that the petition does not present substantial information to indicate that listing the Mono Basin butterfly may be warranted due to the present or threatened destruction, modification, or curtailment of its habitat or range.

Factors B and C:

Information Provided in the Petition

The petition states that it is not known whether overutilization, disease, or predation are threats to this subspecies (WildEarth Guardians 2010, p. 8). Information referenced in the petition indicates that 17 males and 3 females are known to have been collected between 1978 and 1986 (McGuire 1998, p. 462).

Evaluation of Information Provided in the Petition and in Our Files

The petition does not provide information that overutilization, disease, or predation has negatively impacted the subspecies. While the petition's referenced material provides some information about known numbers of collections, the petition does not provide any information about the population sizes or trends during this time period. Given the low number of individuals collected over an 8-year time span, the length of time since these collections were made, and the lack of information about the relative impact to the population, the petition does not provide substantial information to indicate that collection may be a threat to the subspecies. We have no information in our files related to overutilization, disease, or predation for this subspecies. Also see the ''Summary of Common Threats'' section for information pertaining to overutilization, disease, and predation as potential threats.

Based on our evaluation of the information provided in the petition and in our files, we have determined that the petition does not present substantial information to indicate that listing the Mono Basin skipper may be warranted due to Factor B (overutilization for commercial, recreational, scientific, or educational

purposes) or Factor C (disease or predation).

Factor D:

Information Provided in the Petition

The petition asserts that inadequate existing regulatory mechanisms are a threat to this subspecies (WildEarth Guardians 2010, pp. 8, 40). The BLM lists the Mono Basin skipper as a sensitive species in Nevada (where it is not known to occur) but not in California (where it is known to occur) (BLM 2007a, p. J–37). This designation, where it is applied, can offer some conservation consideration.

Evaluation of Information Provided in the Petition and in Our Files

The petition does not provide specific information to support the assertion that existing regulatory mechanisms are inadequate to protect the subspecies from potential threats because it does not provide substantial information to support their assertion that threats are occurring under the other factors. The petition does not associate inadequate existing regulatory mechanisms to losses of Mono Basin skipper populations or declining population trends. We do not have information in our files related to the inadequacy of existing regulatory mechanisms for this subspecies. Also see the ''Summary of Common Threats'' section for information pertaining to the inadequacy of regulatory mechanisms as a potential threat.

Based on our evaluation of the information provided in the petition and in our files, we have determined that the petition does not present substantial information to indicate that listing the Mono Basin skipper may be warranted due to the inadequacy of existing regulatory mechanisms.

Factor E:

Information Provided in the Petition

The petition asserts that the Mono Basin skipper may be vulnerable due to limited range and small population numbers (WildEarth Guardians 2010, pp. 10–11, 40).

Evaluation of Information in the Petition and Our Files

The petition does not present, nor do we have information in our files related to, population numbers, size, or trends for the Mono Basin skipper. The petition does not provide information on chance events or other threats to the subspecies and connect them to a possibly restricted range for this subspecies or the potential for such threats to occur in occupied habitats in the future. In the absence of specific information identifying such threats to the subspecies and connecting them to a restricted geographic range or small population numbers of the subspecies, or the potential for such events to occur in occupied habitats, we do not consider restricted geographic range or small population numbers by themselves to be threats to this subspecies. In addition, this subspecies, as indicated above, is distributed over more than one population thereby reducing its extinction vulnerability due to stochastic (random) events. Also see the ''Summary of Common Threats'' section for information pertaining to limited distribution and small population size as potential threats.

Therefore, based on our evaluation of the information provided in the petition and in our files, we have determined that the petition does not present substantial information to indicate that listing the Mono Basin skipper may be warranted due to other natural or manmade factors affecting the subspecies' continued existence.

Railroad Valley Skipper (*Hesperia uncas fulvapalla*)

Because two of the petitioned subspecies share the same common name, Railroad Valley skipper, we also include their scientific name throughout the analyses for clarity.

We accept the characterization of the Railroad Valley skipper (*Hesperia uncas fulvapalla*) as a valid subspecies based on its description by Austin and McGuire (1998, p. 777). A single brood flies from mid June to mid July (Austin and McGuire 1998, p. 777). Adults have been documented nectaring on thistles (*Cirsium* sp.) (Austin and McGuire 1998, p. 777).

The Railroad Valley skipper's (*H. u. fulvapalla*) type locality is Lockes Ponds, a grassy alkaline meadow near Lockes in Railroad Valley, Nye County, Nevada (Austin and McGuire 1998, p. 777). The Nevada Natural Heritage Program (NNHP) (2006, p. 38; NNHPD 2008) indicates the subspecies has been documented near three spring sites (Currant, Duckwater, and Lockes) in Railroad Valley, Nye County. Austin and McGuire (1998, p. 777) indicate this subspecies is also known from other alkaline meadows in Railroad Valley and the Calleo area, Juab County, Utah. However, according to the petition, subsequent literature does not report this subspecies from Utah (WildEarth Guardians 2010, p. 29).

Factor A:

Information Provided in the Petition

The petition asserts that water development, agriculture, livestock grazing, energy production, and climate change may impact this subspecies (WildEarth Guardians 2010, pp. 30–31, 40). The petition provides information indicating that both Duckwater and Lockes Springs are considered ''highest conservation priority'' areas, while Currant Springs is considered a companion site (NNHP 2006, pp. 10–11). The NNHP includes Railroad Valley springs and marshes in general as one of the State's 26 highest priority wetland areas (NHHP 2007, p. 8), and they are considered 80 percent degraded and 20 percent converted to other uses (NNHP 2007, p. 41). Moderate to high stressors—activities, events, or other stimuli that cause stress to a species or environment—impacting these general wetland areas in Railroad Valley include water diversion and development, groundwater pumping, hydrogeomorphic modification, agriculture, livestock grazing, recreation, nonnative species invasion, and energy development (NNHP 2007, p. 41). The petition implies that these stressors impacting the general wetland areas are negatively impacting the Railroad Valley skipper (*H. u. fulvapalla*).

The petition claims that SNWA's proposal to pump groundwater in central Nevada is likely to affect spring discharges in Railroad Valley, including discharges for Duckwater and Lockes Springs (Deacon *et al.* 2007, p. 693). Current pumping plus water rights sought for future pumping represent 265 percent of the estimated groundwater perennial yield for Railroad Valley (Deacon *et al.* 2007, p. 691). The petition references information related to groundwater pumping simulations for SNWA's proposed project, and pumping could lower water levels in northern and southern Railroad Valley (Schaeffer and Harrill 1995, p. 29). The simulated drawdowns for Duckwater, occurring in the central part of northern Railroad Valley, are a few tenths of a foot in upper and lower cell layers (Schaeffer and Harrill 1995, p. 29) and are not demonstrated until simulated pumping occurs during phase four, decades later (Schaeffer and Harrill 1995, pp. 31–32). The simulated drawdowns in the southern part of Railroad Valley are more substantial, reaching about 100 ft (30.5 m) in upper and lower cell layers (Schaeffer and Harrill 1995, p. 29). Because pumping wells are to be placed primarily in the southern part of Railroad Valley, pumping will have a

greater impact in the south than in the north (Schaeffer and Harrill 1995, p. 29).

In addition, most of Nevada's oil production comes from several small oil fields in Railroad Valley (WildEarth Guardians 2010, p. 30), and this type of development may also affect spring aquifers in Railroad Valley (Deacon Williams and Williams 1989, p. 466).

Evaluation of Information Provided in the Petition and in Our Files

Although we have one letter from a contractor indicating that lowering the water table and overgrazing could theoretically threaten the subspecies (Austin *et al.* 2000, p. 3), our evaluation of all available information indicates that these threats are unlikely to impact the subspecies. Based on information in our files, the Railroad Valley skipper (*H. u. fulapalla*) occurs in the Railroad Valley Northern hydrographic area (#173B) (NDWR 2010). The perennial yield of the Railroad Valley Northern hydrographic area is 75,000 afy (92,510,000 m^3/year), and there are 24,943 afy (30,770,000 m^3/year) committed; thus, the permitted groundwater rights do not approach or exceed the estimated average annual recharge in this hydrographic area.

Furthermore, Service files provide information about native habitat restoration efforts conducted at both Duckwater Springs and Lockes Springs. In 2006 and 2008, restoration efforts were conducted at Big Warm Spring and Little Warm Spring on the Duckwater Indian Reservation to reduce impacts from water diversion (Poore 2008a, pp. 1–4). Big Warm Spring and Little Warm Spring are offered some protections through long-term Partners for Fish and Wildlife Program grant agreements, funding through section 6 of the Act, and a Safe Harbor Agreement (Fish and Wildlife Service and Duckwater Shoshone Tribe 2007, pp. 1–25; Fish and Wildlife Service 2009, pp. 1–36). These agreements should prevent future threats from spring development, water pollution, recreation, and overgrazing. In 2005, Lockes Ranch (where the Lockes Springs occur) was purchased by the State of Nevada through a Recovery Lands Acquisition grant for protection of the Railroad Valley springfish (*Crenichthys nevadae*), a federally listed threatened fish with designated critical habitat. While there is no formal protection for butterflies in the State of Nevada, this purchase and associated conservation measures for the springfish provides some protection to riparian habitat, spring systems, and associated wildlife. The State actively manages recreation and grazing or has eliminated these activities from portions of Lockes Ranch such that potential past threats to the subspecies have been reduced. In 2008, the four springs (Big, North, Hay Corral, and Reynolds) on Lockes Ranch underwent restoration, including re-creation of a sinuous channel, improvements to other existing channels, elimination of an irrigation ditch, and removal of nonnative vegetation from the spring systems (Poore 2008b, pp. 1–10). The land acquisition and the restoration activities have reduced impacts from livestock grazing and recreation, and eliminated impacts from spring diversion at these sites. While these restoration activities at both Duckwater and Lockes Ranch are directed at improving habitat conditions for the Railroad Valley springfish, they may also have provided habitat benefits to the Railroad Valley skipper (*H. u. fulvapalla*) (if it occurs in the immediate vicinity); this suggests that potential threats to the skipper from water diversions, livestock grazing, and invasive species have been significantly reduced for the long-term.

The information presented in the petition for this subspecies does not provide supporting information that groundwater development has or may affect habitat for the Railroad Valley skipper (*H. u. fulvapalla*). Information in our files demonstrates that the assertion that water development may impact the butterfly is likely unfounded, because the subspecies occurs in northern Railroad Valley where groundwater does not appear to be overcommitted. Information in our files indicates that SNWA's proposed project may result in only minor, if any, water table lowering in the area that the subspecies occurs, and that recent conservation efforts have significantly reduced threats.

The petition does not provide specific supporting information that the Railroad Valley skipper (*H. u. fulvapalla*) may be impacted by agriculture, livestock grazing, energy production, or climate change at occupied locations. The petition does not provide specific supporting information regarding past, present, or future conditions of these threats or their scope, immediacy, or intensity at occupied or suitable habitat. The petition does not report loss of populations or reduction in numbers of this subspecies to these potential threats, which could suggest a negative response to a threat such as those claimed. We do not have in our files specific information to support the concern of potential threats from agriculture, grazing, energy development, or climate change to impacts to Railroad Valley skipper (*H. u. fulvapalla*) populations or its habitat. Also see the ''Summary of Common Threats'' section for information pertaining to water development, agriculture, livestock grazing, and climate change as potential threats.

Based on our evaluation of the information provided in the petition and in our files, we have determined that the petition does not present substantial information to indicate that listing the Railroad Valley skipper (*H. u. fulvapalla*) may be warranted due to the present or threatened destruction, modification, or curtailment of its habitat or range.

Factors B and C:

Information Provided in the Petition

The petition states that it is not known whether overutilization, disease, or predation are threats to this subspecies (WildEarth Guardians 2010, p. 8). Information referenced in the petition indicates that 105 males and 75 females were collected between 1984 and 1990 (Austin and McGuire 1998, p. 777).

Evaluation of Information Provided in the Petition and in Our Files

The petition does not provide information that overutilization, disease, or predation has negatively impacted this subspecies. While the petition's referenced material provides some information about known numbers of collections, the petition does not provide any information about the population sizes or trends during this time period. Given the low number of individuals collected over a 6-year time span, the length of time since these collections were made, and the lack of information about the relative impact to the population, the petition does not provide substantial information to indicate that collection may be a threat to the subspecies. We have no information in our files related to overutilization, disease, or predation for this subspecies. Also see the ''Summary of Common Threats'' section for information pertaining to overutilization, disease, and predation as potential threats.

Based on our evaluation of the information provided in the petition and in our files, we have determined that the petition does not present substantial information to indicate that listing the Railroad Valley skipper (*H. u. fulvapalla*) may be warranted due to Factor B (overutilization for commercial, recreational, scientific, or educational purposes) or Factor C (disease or predation).

Factor D:

Information Provided in the Petition

The petition asserts that inadequate existing regulatory mechanisms are a threat to this subspecies (WildEarth Guardians 2010, p. 40). The BLM lists the Railroad Valley skipper (*H. u. fulvapalla*) as a sensitive species (BLM 2007a, p. J–37). This designation can offer it some conservation consideration.

Evaluation of Information Provided in the Petition and in Our Files

The petition does not provide information to support the assertion that existing regulatory mechanisms are inadequate to protect the subspecies from potential threats because it does not provide substantial information to support their assertion that threats are occurring under the other factors. The petition does not associate inadequate existing regulatory mechanisms to losses of Railroad Valley skipper (*H. u. fulvapalla*) populations or declining population trends. We do not have information in our files related to the inadequacy of existing regulatory mechanisms for this subspecies. Also see the ''Summary of Common Threats'' section for information pertaining to the inadequacy of existing regulatory mechanisms as a potential threat.

Based on our evaluation of the information provided in the petition and in our files, we have determined that the petition does not present substantial information to indicate that listing the Railroad Valley skipper (*H. u. fulvapalla*) may be warranted due to the inadequacy of existing regulatory mechanisms.

Factor E:

Information Provided in the Petition

The petition indicates the subspecies may be vulnerable due to small population numbers (WildEarth Guardians 2010, pp. 10–11, 40). Austin (1985, pp. 125–126) indicates *Hesperia uncas* spp. appear to be restricted to the valleys where they occur. The petition suggests that isolated populations of the Railroad Valley skipper (*H. u. fulvapalla*) are probably unable to disperse to suitable habitat or interconnect with other populations especially where habitat fragmentation has occurred due to various factors such as land use, water development, and climate change (WildEarth Guardians 2010, p. 30).

Evaluation of Information Provided in the Petition and in Our Files

The petition does not present, nor do we have specific information in our files, related to population sizes, numbers, or trends for the Railroad Valley skipper (*H. u. fulvapalla*). The petition does not provide information on chance events or other threats to the subspecies and connect them to potential small population size or restricted range or the potential for such chance events to occur in occupied habitats in the future. In the absence of specific information identifying such threats to the subspecies and connecting them to small populations or restricted range of the subspecies, or the potential for such events to occur in occupied habitats, we do not consider small population numbers or restricted range by themselves to be threats to this subspecies. In addition, this subspecies is distributed over more than one population thereby reducing its extinction vulnerability due to stochastic events. Also see the ''Summary of Common Threats'' section for information pertaining to limited distribution and small population size as potential threats.

Therefore, based on our evaluation of the information provided in the petition and in our files, we have determined that the petition does not present substantial information to indicate that listing the Railroad Valley skipper (*H. u. fulvapalla*) may be warranted due to other natural or manmade factors affecting the subspecies' continued existence.

Railroad Valley Skipper (*Hesperia uncas reeseorum*)

Because two of the subspecies share the same common name, Railroad Valley skipper, we also include their scientific name throughout the analyses for clarity.

We accept the characterization of the Railroad Valley skipper (*Hesperia uncas reeseorum*) as a valid subspecies based on its description by Austin and McGuire (1998, p. 776). This subspecies flies as a single brood during mid June to early August (Austin and McGuire 1998, p. 776). Adults have been documented using thistle (*Cirsium* spp.) for nectar (Austin and McGuire 1998, p. 776). The larval host plant is *Sporobolus airoides* (alkali sacaton) (Austin and Leary 2008, p. 11).

The Railroad Valley skipper (*H. u. reeseorum*) is known from the Reese River and Mason Valleys in central (Lander County) and western Nevada (Lyon County), respectively, where it occurs in alkaline, *Distichlis spicata* (saltgrass) flats (Austin and McGuire 1998, p. 776). The type locality is located along Nevada State Route 722 (previously State Route 2) approximately 4 mi (6.4 km) east-northeast of the Reese River in an extensive alkaline flat in the river's floodplain (Austin and McGuire 1998, p. 776).

Factor A:

Information Provided in the Petition

The petition asserts that water development, agriculture, livestock grazing, and climate change may impact this subspecies (WildEarth Guardians 2010, pp. 33–34, 40). The petition provides information indicating that the NNHP ranks the Mason Valley/Walker River riparian zone among the 26 highest priority wetlands in Nevada (NNHP 2007, p. 25). In this category, 100 percent of the wetland areas have been converted to other land uses or degraded (NNHP 2007, p. 38). Moderate to high stressors impacting wetlands in the Mason Valley/Walker River riparian zone include water diversion/development, groundwater pumping, hydrogeomorphic modifications, land development, agriculture, livestock grazing, mining, and nonnative species invasion (NNHP 2007, p. 38). In the lower Reese River Valley, 80 percent of the ''priority wetland areas'' have been converted to other land uses or degraded (NNHP 2007, p. 41). Moderate to high stressors impacting the wetlands in the lower Reese River Valley include water diversion/development, groundwater pumping, land development, agriculture, livestock grazing, and nonnative species invasion (NNHP 2007, p. 41). The petition implies that these activities which occur generally in wetland areas in Mason Valley/Walker River and lower Reese River Valley are impacting the Railroad Valley skipper (*H. u. reeseorum*).

Evaluation of Information Provided in the Petition and Our Files

The petition does not provide, nor do we have in our files, specific locations where this subspecies has been observed other than the type locality. The petition does not provide specific, supporting information to indicate that the Railroad Valley skipper (*H. u. reeseorum*) may be impacted by water development, agriculture, livestock grazing, or climate change. The petition does not provide supporting information regarding past, present, or future condition of these threats or their scope, immediacy, or intensity at occupied or suitable habitat. The petition does not report loss of populations or reduction in numbers of this subspecies which could suggest a negative response to threats such as those claimed. We do not have information in our files related to potential threats from water development, agriculture, livestock

grazing, or climate change to Railroad Valley skipper (*H. u. reeseorum*) populations or its habitat. Also see the ''Summary of Common Threats'' section for information pertaining to water development, agriculture, livestock grazing, and climate change as potential threats.

Based on our evaluation of the information provided in the petition and our files, we have determined that the petition does not present substantial information to indicate that listing the Railroad Valley skipper (*H. u. reeseorum*) may be warranted due to the present or threatened destruction, modification, or curtailment of its habitat or range.

Factors B and C:

Information Provided in the Petition

The petition states that it is not known whether overutilization, disease, or predation are threats to this subspecies (WildEarth Guardians 2010, p. 8). Based on information referenced in the petition, 138 male and 82 female specimens were collected between 1969 and 1984 (Austin and McGuire 1998, p. 776).

Evaluation of Information Provided in the Petition and Our Files

The petition does not provide information that overutilization, disease, or predation has negatively impacted the subspecies. While the petition's referenced material provides some information about known numbers of collections, the petition does not provide any information about the population sizes or trends during this time period. Given the low number of individuals collected over a 15-year time span, the length of time since these collections were made, and the lack of information about the relative impact to the population, the petition does not provide substantial information to indicate that collection may be a threat to the subspecies. We have no information in our files related to overutilization, disease, or predation for this subspecies. Also see the ''Summary of Common Threats'' section for information pertaining to overutilization, disease, and predation as potential threats.

Based on our evaluation of the information provided in the petition and our files, we have determined that the petition does not present substantial information to indicate that listing the Railroad Valley skipper (*H. u. reeseorum*) may be warranted due to Factor B (overutilization for commercial, recreational, scientific, or educational purposes) or Factor C (disease or predation).

Factor D:

Information Provided in the Petition

The petition asserts that inadequate existing regulatory mechanisms are a threat to this subspecies (WildEarth Guardians 2010, pp. 8, 40). The BLM does not list this subspecies as a sensitive species (BLM 2007a).

Evaluation of Information Provided in the Petition and in Our Files

The petition does not provide information to support the assertion that existing regulatory mechanisms are inadequate to protect the subspecies from potential threats because it does not provide substantial information to support their assertion that threats are occurring under the other factors. The petition does not associate inadequate existing regulatory mechanisms to losses of Railroad Valley skipper (*H. u. reeseorum*) populations or declining population trends. We do not have information in our files related to the inadequacy of existing regulatory mechanisms for this subspecies. Also see the ''Summary of Common Threats'' section for information pertaining to the inadequacy of existing regulatory mechanisms as a potential threat.

Based on our evaluation of the information provided in the petition and our files, we have determined that the petition does not present substantial information to indicate that listing the Railroad Valley skipper (*H. u. reeseorum*) may be warranted due to the inadequacy of existing regulatory mechanisms.

Factor E:

Information Provided in the Petition

The petition indicates that this subspecies may be vulnerable due to small population numbers (WildEarth Guardians 2010, pp. 10–11, 40). Austin (1985, pp. 125–126) indicates *Hesperia uncas* spp. appear to be restricted to the valleys where they occur. The petition suggests that isolated populations of this subspecies of the Railroad Valley skipper (*H. u. reeseorum*) are probably unable to disperse to suitable habitat or interconnect with other populations especially where land use, water development, or climate change fragment habitat (WildEarth Guardians 2010, pp. 33).

Evaluation of Information Provided in the Petition and in Our Files

The petition does not present, nor do we have specific information in our files related to population numbers, size, or trends for the Railroad Valley skipper (*H. u. reeseorum*). The petition did not provide information on chance events or other threats to the subspecies and connect them to small population numbers or restricted range or the potential for such chance events to occur in occupied habitats in the future. In the absence of specific information identifying such threats to the subspecies and connecting them to small population numbers or restricted range of the subspecies, or the potential for such events to occur in occupied habitats, we do not consider small population numbers or restricted range by themselves to be threats to this subspecies. In addition, this subspecies is distributed over more than one population, thereby reducing its extinction vulnerability due to stochastic events. Also see the ''Summary of Common Threats'' section for information pertaining to limited distribution and small population size as potential threats.

Therefore, based on our evaluation of the information provided in the petition and our files, we have determined that the petition does not present substantial information to indicate that listing the Railroad Valley skipper (*H. u. reeseorum*) may be warranted due to other natural or manmade factors affecting the subspecies' continued existence.

Species for Which Substantial Information Was Presented

In this section, the butterfly subspecies are listed in alphabetical order by their common names.

Baking Powder Flat Blue Butterfly (*Euphilotes bernardino minuta*)

We accept the characterization of the Baking Powder Flat blue butterfly as a valid subspecies based on its description by Austin (1998b, p. 549). The Baking Powder Flat blue butterfly is exclusively associated with *Eriogonum shockleyi* (Shockley's buckwheat), on which both larvae and adults are found (Austin 1993, p. 5; Austin and Leary 2008, pp. 68–69). Larvae of this subspecies are tended by ants (*Formica obtusopilosa*) (Shields 1973 cited by Austin 1993, p. 5). Pupae are likely formed in and protected by litter that is in and beneath the host plant (Austin 1993, p. 5). Adults fly between mid and late June (Austin 1993, p. 6; 1998a, p. 550), and there is one brood (Austin 1993, p. 6).

The Baking Powder Flat blue butterfly is only known from Baking Powder Flat in Spring Valley, in Lincoln and White Pine Counties, Nevada, a flat valley bottom with scattered sand dunes (Austin 1998b, p. 550; Austin and Leary 2008, pp. 68–69). Baking Powder Flat contains the largest known contiguous

habitat for the Baking Powder Flat blue butterfly (BLM 2009, p. 20). In 1993, Austin (1993, p. 5) reported two colonies in southern Spring Valley, and also suggested that other areas could support the host plant (Austin 1993, p. 6). *Eriogonum shockleyi* grows on relatively hard and bare areas between the sand dunes (Austin 1998b, p. 550). Searches of nearby areas in southern Spring Valley did not reveal additional colonies of the subspecies or its host plant (Austin 1993, p. 5; 1998b, p. 550); however, Austin and Leary (2008, pp. 68–69) list what appear to be seven discrete locations where this subspecies (adults and larvae) has been seen between 1969 and 2002. The NNHPD (2008) indicates that this subspecies occurs in the Baking Powder Flat area near Blind Spring. During a general terrestrial invertebrate survey conducted in 2006 at 76 sites in eastern Nevada, including 37 sites in Spring Valley (2 of which could be in or near known locations for this subspecies), the Baking Powder Flat blue butterfly was not encountered (Ecological Sciences, Inc. 2007, pp. 80–82).

Factor A:

Information Provided in the Petition

The petition asserts that water development, fire, nonnative plant invasion, livestock grazing, and climate change may impact this subspecies (WildEarth Guardians 2010, pp. 13–14, 40). The petition indicates that the NNHP has ranked the Baking Powder Flat playa/ephemeral pool/spring pool complex among the 26 highest priority wetland areas in the State (NNHP 2007, p. 8). The moderate- to-high stressors impacting the complex include water diversion and development, groundwater pumping, livestock grazing, agriculture, mining, and nonnative species invasion (NNHP 2007, p. 42). It is estimated that about 30 percent of the wetland area has been degraded or converted to other land uses (NHHP 2007, p. 42). The petition implies that these stressors impacting the wetland complex are negatively impacting the Baking Powder Flat blue butterfly.

The petition raises concerns about SNWA's proposal to pump and transfer approximately 91,200 afy (112,500,000 m^3/year) of groundwater from Spring Valley (Meyers 2006, p. 6) to Las Vegas, Nevada. This proposed project could lower the water table in Spring Valley by 200 ft (61 m) in 100 years, and 300 ft (91 m) in 1,000 years (Meyers 2006, p. 75), and Charlet (2006, p. 19) predicted that desertification of Baking Powder Flat would result. The SNWA's proposed project may directly impact the Baking Powder Flat area, including the Baking Powder Flat Area of Critical Environmental Concern (ACEC), due to monitoring and facility installation and construction activities (BLM 2009, pp. 20–21). The ACEC was established in 2008 (72 FR 67748, p. 67749; 73 FR 55867) to protect the Baking Powder Flat blue butterfly (BLM 2009, p. 20).

According to the petition, additional threats to this subspecies and its habitat include fire in the surrounding sagebrush habitat and subsequent nonnative plant species invasion (B. Boyd, pers. comm. cited by WildEarth 2010, p. 14) and climate change. The petition also mentions disturbance to this subspecies' host plant from trampling, and soil compaction from livestock grazing (B. Boyd, pers. comm. cited in WildEarth 2010, p. 13, NatureServe 2009b, p. 2). According to the petition, three grazing allotments appear to overlap with the Baking Powder Flat ACEC (BLM 2007b, Map 2.4 16–1). Areas of the ACEC can be ''heavily impacted'' by livestock grazing (BLM 2009, p. 21). In addition to livestock grazing, plant collecting and limited off-road vehicle use are also authorized within the ACEC (BLM 2007b, p. 2.4–101).

Evaluation of Information Provided in the Petition and Our Files

While several activities as listed above (water diversion and development, groundwater pumping, livestock grazing, agriculture, mining, and nonnative species invasion) may be impacting a portion (30 percent) of the Baking Powder Flat wetland complex, the petition does not provide supporting information that these activities are occurring in occupied Baking Powder Flat blue butterfly habitat and are negatively impacting it, especially since the subspecies' host plant does not occur in wetland areas. Adults and larvae utilize *Eriogonum shockleyi* to meet life-history requirements. This plant grows on relatively hard and bare areas between the sand dunes in Baking Powder Flat (Austin 1998b, p. 550) and mostly on gravelly, clayey, or sandy soils, or on rocky outcrops and ledges, in association with *Sarcobatus* (greasewood), *Atriplex* (shadscale), and *Artemisia* (sagebrush) (Kartesz 1987, p. 282). It has been described by BLM as common in Baking Powder Flat (BLM 2009, p. 20). We have information in our files that indicates the permitted groundwater rights in the Spring Valley hydrographic area (#184) exceed the estimated average annual recharge; the perennial yield of the Spring Valley hydrographic area is 80,000 afy (98,680,000 m^3/year), and there are 86,085 afy (106,200,000 m^3/year) committed (NDWR 2010). However, because the host plant grows in dry areas and not within the Baking Powder Flat wetland complex, it is unlikely that current overcommitted groundwater rights or SNWA's proposed water development project are or will indirectly impact the host plant, and thus the Baking Powder Flat blue butterfly, through possible lowering of the water table.

We have information in our files (Austin *et al.* 2000, p. 3; Austin 1993, p. 7) that indicates that soil compaction or direct destruction of host plants from activities such as livestock trampling and vehicles may impact the Baking Powder Flat blue butterfly, though no further specific, supporting information is provided.

For the other threats mentioned (fire and climate change), the petition and information in our files do not present specific supporting information regarding past, present, or future conditions of these potential threats or their scope, immediacy, or intensity at occupied or suitable habitats. The petition does not report loss of populations or reduction in numbers of this subspecies which could suggest a negative response to these threats. Also see ''Summary of Common Threats'' section for information pertaining to water development, livestock grazing, and climate change as potential threats.

Based on our evaluation of the information provided in the petition and in our files, we have determined that the petition does not present substantial information to indicate that listing the Baking Powder Flat blue butterfly may be warranted due to the present or threatened destruction, modification, or curtailment of its habitat or range from water development, fire, nonnative species invasion, or climate change.

However, due to potential adverse impacts from livestock grazing and disturbance to the host plant from trampling and soil compaction from livestock grazing and vehicles, we have determined that information in the petition and our files does present substantial information to indicate that the Baking Powder Flat blue butterfly may warrant listing due to the present or threatened destruction, modification, or curtailment of its habitat or range from livestock grazing and vehicle use. Injury to or loss of the host plant, *Eriogonum shockleyi,* populations would negatively impact larvae and adults as both life stages utilize this plant for food and shelter. During our status review for this subspecies, we

will further investigate these potential threats.

Factors B and C:

Information Provided in the Petition

The petition states that it is not known whether overutilization, disease, or predation are threats to this subspecies (WildEarth Guardians 2010, p. 8). According to Austin (1998b, p. 550) as referenced in the petition, 61 males and 41 females of this subspecies were collected between 1978 and 1980.

Evaluation of Information Provided in the Petition and Our Files

The petition does not provide information that overutilization, disease, or predation has negatively impacted the subspecies. While the petition's referenced material provides some information about known numbers of collections, the petition does not provide any information about the population sizes or trends during this time period. Given the relatively low number of individuals collected over a 2-year period, the length of time since the collections were made, and the lack of information about the relative impact to the population, the petition does not provide substantial information to indicate that collection may be a threat to this subspecies. We have no information in our files related to overutilization, disease, or predation for this subspecies. Also see ''Summary of Common Threats'' section for information pertaining to overutilization, disease, and predation as potential threats.

Based on our evaluation of the information provided in the petition and our files, we have determined that the petition does not present substantial information to indicate that listing the Baking Powder Flat blue butterfly may be warranted due to Factor B (overutilization for commercial, recreational, scientific, or educational purposes) or Factor C (disease or predation). However, during our status review for this subspecies, we will further investigate these potential threats.

Factor D:

Information Provided in the Petition

The petition asserts that inadequate existing regulatory mechanisms are a threat to this subspecies (WildEarth Guardians 2010, pp. 8, 40). The petition states that this subspecies is a BLM sensitive species (BLM 2007a, p. J6), which can afford it some conservation consideration. In addition, BLM has designated a portion of the Baking Powder Flat area as an ACEC (72 FR 67748, p. 67749; 73 FR 55867 entire). Livestock grazing, plant collecting, and limited off-road vehicle use are authorized within the Baking Powder Flat ACEC (BLM 2007b, p. 2.4–101). According to BLM (2009, p. 20), an ACEC is defined as an area ''within the public lands where special management attention is required (when such areas are developed or used or where no development is required) to protect and prevent irreparable damage to important historic, cultural, or scenic values, fish and wildlife resources, or other natural systems or processes, or to protect life and safety from natural hazards.'' The Baking Powder Flat ACEC is managed as an ''avoidance area [* * *] [G]ranting rights-of-way (surface, subsurface, aerial) within the area will be avoided, but rights-of-way may be granted if there is minimal conflict with identified resource values and impacts can be mitigated.''

Evaluation of Information Provided in the Petition and Our Files

According to information in our files, the Baking Powder Flat ACEC does not appear to cover the entire area where Baking Powder Flat blue butterflies have been known to occur (BLM 2008b, p. C–14). Also see the ''Summary of Common Threats'' section for information pertaining to the inadequacy of existing regulatory mechanisms as a potential threat.

We have determined that livestock grazing and vehicle use may be threats to the Baking Powder Flat blue butterfly, as discussed in Factor A. Thus, we have determined that the information in the petition and our files presents substantial information indicating that existing regulatory mechanisms may be inadequate as they relate to livestock grazing and vehicle use, in general on BLM lands, and also in relation to the ACEC. During our status review for this subspecies, we will further investigate these and other potential threats and whether existing regulatory mechanisms may be inadequate.

Factor E:

Information Provided in the Petition

The petition indicates that the Baking Powder Flat Blue butterfly may be vulnerable due to limited range and small population numbers (WildEarth Guardians 2010, pp. 10–11, 40).

Evaluation of Information in the Petition and Our Files

The petition does not present, nor do we have in our files, information related to population numbers, size, or trends for the Baking Powder Flat blue butterfly. The petition does not provide information on chance events or other threats to the subspecies and connect them to a restricted range or small population number or the potential for such threats to occur in occupied habitats in the future. Since this subspecies is distributed over more than one population, its extinction vulnerability due to stochastic events may be reduced. In the absence of this information and connection, we do not consider restricted geographic range or small population numbers by themselves to be threats to this subspecies. Also see the ''Summary of Common Threats'' section for information pertaining to limited distribution and small population size as potential threats.

Therefore, based on the information provided in the petition and our files, we have determined that the petition does not present substantial information to indicate that listing the Baking Powder Flat blue butterfly may be warranted due to other natural or manmade factors affecting the subspecies' continued existence. However, during our status review of this subspecies, we will further investigate whether biological vulnerability is a threat to this subspecies.

Bleached sandhill skipper (*Polites sabuleti sinemaculata*)

We accept the characterization of the bleached sandhill skipper as a valid subspecies based on its description by Austin (1987, pp. 7–8). *Distichlis spicata* may serve as the larval host plant (Austin 1987, p. 8). Adults have been seen nectaring on white and yellow composites (Asteraceae) (Austin 1987, p. 8). Adults are known to fly during late August to mid September, and it is unknown if earlier broods occur (Austin 1987, p. 8; Austin *et al.* 2000, p. 4).

The bleached sandhill skipper is known from one location (Baltazor Hot Spring) near Denio Junction, Humboldt County, Nevada (Austin 1987, p. 8; Austin *et al.* 2000, p. 4; NNHPD 2008; B. Boyd, pers. comm. cited in WildEarth Guardians 2010, p. 15). The area is a salt flat near a hot spring and is densely covered with *Distichlis spicata* (Austin 1987, p. 8). Thousands of bleached sandhill skippers have been seen in the past (A. Warren, pers. comm. cited in WildEarth Guardians 2010, p. 15), but the population appears to have declined 2 to 3 years ago (B. Boyd, pers. comm. cited in WildEarth Guardians 2010, p. 15). We have no information in the petition or our files about this subspecies population dynamics to

know if this level of population decline is unusual.

Factor A:

Information Provided in the Petition

The petition provides information indicating that the Baltazor Meadow-Continental Lake wetland area has been identified as a priority wetland in Nevada, and where 20 percent of this wetland area has been degraded or converted to other land uses (NHHP 2007, p. 36). The moderate-to-high stressors in this area include water diversion/development, groundwater pumping, livestock grazing, and energy development (NHHP 2007, p. 36). The petition implies these activities are adversely impacting the bleached sandhill skipper.

Evaluation of Information Provided in the Petition and Our Files

The petition suggests that threats (water development, livestock grazing, and energy development) to the Baltazor Meadow-Continental Lake wetland area could impact the bleached sandhill skipper; however, no additional information is provided. The petition does not provide specific supporting information regarding past, present, or future conditions of these threats or their scope, immediacy, or intensity at occupied or suitable habitat. The petition does not indicate the acreage of this occupied location. We do not we have information in our files indicating whether this location is large or small. The petition does indicate a recent reduction in numbers of the bleached sandhill skipper, which could suggest a negative response to these threats, but details regarding this decline and the reason(s) for it are not provided. The petition does not present information related to population numbers, size, or trends for the bleached sandhill skipper. The petition does not elaborate on when the apparent population decline occurred, its magnitude, or reasons for it. It is unknown whether this decline can be attributed to the normal natural fluctuations of butterfly populations. Butterfly populations are highly dynamic and numbers and distribution can be highly variable year to year (Weiss *et al.* 1997, p. 2). However, we are concerned with this potential decline in the only known population for this subspecies. Our files also include a statement that the bleached sandhill skipper could be impacted by water table changes (Austin *et al.* 2000, p. 4), but there is no specific supporting information related to this potential threat or resulting negative impacts to this subspecies. The SNWA's proposed water development project is not expected to impact groundwater in Humboldt County, located in northwest Nevada, where this species occurs. Also see the ''Summary of Common Threats'' section for information pertaining to water development and livestock grazing as potential threats.

Based on our evaluation of the information provided in the petition and in our files, we have determined that the petition does present substantial information to indicate that listing the bleached sandhill skipper may be warranted due to the present or threatened destruction, modification, or curtailment of its habitat or range resulting from water development (other than SNWA's proposed project) due to a reported possible decline in numbers of the bleached sandhill skipper known from a single location. During our status review for this subspecies, we will further investigate this and other potential threats.

Factors B and C:

Information Provided in the Petition

The petition states that it is not known whether overutilization, disease, or predation are threats to this subspecies (WildEarth Guardians 2010, p. 8). According to Austin (1987, p. 8), referenced in the petition, 27 males and 14 females were collected between 1984 and 1985.

Evaluation of Information Provided in the Petition and Our Files

The petition does not provide information that overutilization, disease, or predation has negatively impacted the subspecies. While the petition's referenced material provides some information about known numbers of collections, the petition does not provide any information about the population sizes or trends during this time period. Given the low number of individuals collected, the length of time since the collections were made, and the lack of information about the relative impact to the population, the petition does not provide substantial information to indicate that collection may be a threat to the subspecies. We have no information in our files related to overutilization, disease, or predation for this subspecies. Also see the ''Summary of Common Threats'' section for information pertaining to overutilization, disease, and predation as potential threats.

Based on our evaluation of the information provided in the petition, we have determined that the petition does not present substantial information to indicate that listing the bleached sandhill skipper may be warranted due to Factor B (overutilization for commercial, recreational, scientific, or educational purposes) or Factor C (disease or predation). However, during our status review for this subspecies, we will further investigate these potential threats.

Factor D:

Information Provided in the Petition

The petition asserts that existing regulatory mechanisms are inadequate (WildEarth Guardians 2010, pp. 8, 40). The petition states that the BLM lists the bleached sandhill skipper as a sensitive species in Nevada (BLM 2007a, p. J–37), a status that can offer it some conservation consideration.

Evaluation of Information Provided in the Petition and in Our Files

The petition does not provide specific supporting information connecting the potential threats indicated under Factor A, or the extent of these threats, to adverse effects to the known population of the bleached sandhill skipper, except to indicate a recent reduction in the number of individuals of this subspecies, which could suggest a negative response to potential threats. The details of this decline and the cause(s) of it were not described. We do not have information available in our files related to the inadequacy of existing regulatory mechanisms for this subspecies. Also see the ''Summary of Common Threats'' section for information pertaining to the inadequacy of existing regulatory mechanisms as a potential threat.

Based on our evaluation of the information provided in the petition suggesting that a reduction in the number of individuals of bleached sandhill skipper may have occurred at the single known population, possibly due to water development we have determined that the petition does present substantial information to indicate that listing the bleached sandhill skipper may be warranted due to the inadequacy of existing regulatory mechanisms. During our status review for this subspecies, we will further investigate these and other potential threats and whether existing regulatory mechanisms may be inadequate.

Factor E:

Information Provided in the Petition

The petition indicates that this subspecies is known from only one area; although thousands had been seen in the past, a decline appears to have occurred 2 to 3 years ago (A. Warren, pers. comm. and B. Boyd pers. comm., cited in WildEarth Guardians 2010, p. 15). Therefore, the petition asserts

this subspecies may be vulnerable due to limited distribution and small population numbers (WildEarth Guardians 2010, pp. 10–11, 40).

Evaluation of Information Provided in the Petition and in Our Files

The petition does not present detailed information, nor do we have information in our files, related to population numbers, size, or trends for the bleached sandhill skipper. The petition does not elaborate on when the apparent population decline occurred, its magnitude, or reasons for it. The petition does not indicate the size of this site. A small area may be at higher risk of extinction than a large site. The petition does not provide information on chance events or other threats to the subspecies and connect them to a restricted range or small population size, or the potential for such chance events to occur in occupied habitats in the future. In the absence of this information and connection, we do not consider restricted geographic range or small population numbers by themselves to be threats to this subspecies. Also see the ''Summary of Common Threats'' section for information pertaining to limited distribution and small population size as potential threats. However, due to the single known occupied location and reported decline in numbers, any other potential threat to the subspecies in addition to the possible threat due to water development could exacerbate this situation.

Therefore, based on the information provided in the petition and in our files, we have determined that the petition does present substantial information to indicate that listing the bleached sandhill skipper may be warranted due to other natural or manmade factors affecting the subspecies' continued existence due to the reported decline of its single known population. During our status review, we will further investigate this potential threat.

Steptoe Valley Crescentspot (*Phyciodes cocyta arenacolor*)

We accept the characterization of the Steptoe Valley crescentspot as a valid subspecies based on its description by Austin (1998c, p. 577) and recent updated nomenclature (NatureServe 2009d, p. 1; A. Warren, pers. comm. cited in WildEarth Guardians 2010, p. 34). Adults are known to fly as one brood (Austin 1993, p. 9) during early July to mid-August (Austin 1993, p. 9; Austin 1998c, p. 577). *Aster ascendens* (long-leaved aster) has been documented as a larval host plant (Austin and Leary 2008, p. 102).

The Steptoe Valley crescentspot occurs at Warm Springs in Steptoe Valley, White Pine County, Nevada (Austin 1998c, p. 577; Austin and Leary 2008, p. 102). Austin (1993, pp. 8–9) found this subspecies in the moist flats adjacent to the Duck Creek drainage in Steptoe Valley from Warm Springs to northwest of McGill. Specific locations include along Duck Creek and near Bassett Lake (Austin 1993, p. 9; NNHPD 2008). Occurrences have been reported at Monte Neva Hot Springs and near McGill, White Pine County, Nevada (NNHP 2006, p. 42). The NNHP (2009, p. 7) database indicates three Nevada occurrences, but the locations are not identified.

Factor A:

Information Provided in the Petition

The petition asserts that water development and climate change may impact the Steptoe Valley crescentspot (WildEarth Guardians 2010, pp. 36, 40). Information provided in the petition indicates that the NNHP considers Monte Neva Hot Springs of ''highest conservation priority'' (NNHP 2006, p. 11). The McGill site is considered a companion site associated with other higher priority conservation sites (NNHP 2006, p. 11). In 2007, the NNHP included Steptoe Valley, with a number of wetland areas found within the Valley, in the list of the 26 highest priority wetlands in the State (NNHP 2007, p. 42). The moderate-to-high stressors impacting this valley's wetland areas include water diversion/development, groundwater pumping, agriculture, grazing, nonnative species invasion, and energy development (NNHP 2007, p. 42). The petition implies these activities may impact the Steptoe Valley crescentspot.

Deacon (2009, p. 6), as referenced in the petition, states that SNWA's proposed groundwater development project could lower the water table by 700 ft (213.4 m) in several valleys, including Steptoe Valley, adversely impacting spring-fed habitats (WildEarth Guardians 2010, p. 36).

Evaluation of Information Provided in the Petition and Our Files

The petition does not provide specific supporting information to indicate that the Steptoe Valley crescentspot is impacted from livestock grazing, trampling and clearing of vegetation, agricultural pollution, or climate change. The petition does not provide specific supporting information regarding past, present, or future conditions of these threats, or their scope, immediacy, or intensity at occupied or suitable habitats. However, there is some information provided in the petition and in our files to suggest that water development may impact this subspecies due to overcommitment of groundwater in Steptoe Valley and this overcommitment's potential for adverse impacts to aquatic habitat. Since the Steptoe Valley crescentspot is associated with moist flats near wetland areas, potential adverse impacts to aquatic habitat could result in adverse impacts to the butterfly's habitat (*e.g.,* drying of moist habitat and reduction in larval or nectar plant abundance). Information in our files indicates that the Steptoe Valley hydrographic area (#179) has been classified as a ''Designated Groundwater Basin'' by the NSE and that permitted groundwater rights exceed the estimated average annual recharge; the perennial yield of Steptoe Valley is 70,000 afy (86,340,000 m^3/year); however, approximately 97,000 afy (119,600,000 m^3/year) is committed for use (NDWR 2010). When groundwater extraction exceeds aquifer recharge, the result may be surface water-level decline, spring drying, and degradation or loss of aquatic habitat (Zektser *et al.* 2005, pp. 396–397). Our files also include information indicating that habitat alterations, particularly water table changes and overgrazing (Austin *et al.* 2000, p. 2), may impact the Steptoe Valley crescentspot; however, this information is not specific. Austin (1993, pp. 9–10) indicates that potential threats to the subspecies appear to be habitat disturbance and destruction, such as overgrazing, trampling and clearing of vegetation, water diversion, and agricultural pollution; however, no specific supporting information is provided. We do not have specific supporting information in our files regarding the other potential impacts or any resulting adverse impacts to Steptoe Valley crescentspot populations. Also see the ''Summary of Common Threats'' section for information pertaining to water development, agriculture, livestock grazing, and climate change as potential threats.

Therefore, based on our evaluation of the information in the petition and our files, we have determined that the petition does present substantial information to indicate that listing the Steptoe Valley crescentspot may be warranted due to the present or threatened destruction, modification, or curtailment of its habitat or range resulting from water development. During our status review of this subspecies, we will further investigate these and other potential threats.

Factors B and C:

Information Provided in the Petition

The petition states that it is not known whether overutilization, disease, or predation is a threat to this subspecies (WildEarth Guardians 2010, p. 8). Austin (1998c, p. 577) indicates 39 males and 10 females were collected between 1981 and 1989, as referenced in the petition.

Evaluation of Information Provided in the Petition and Our Files

The petition does not provide information that overutilization, disease, or predation has negatively impacted the subspecies. While the petition's referenced material provides some information about known numbers of collections, the petition does not provide any information about the population sizes or trends during this time period. Given the low number of individuals collected over a 8-year time span, the length of time since these collections were made, and the lack of information about the relative impact to the population, the petition does not provide substantial information to indicate that collection may be a threat to the subspecies. We have no information in our files related to overutilization, disease, or predation for this subspecies. Also see the ''Summary of Common Threats'' section for information pertaining to overutilization, disease, and predation as potential threats.

Based on our evaluation of the information provided in the petition and our files, we have determined that the petition does not present substantial information to indicate that listing the Steptoe Valley crescentspot may be warranted due to Factor B (overutilization for commercial, recreational, scientific, or educational purposes) or Factor C (disease or predation). However, during our status review of this subspecies, we will further investigate whether these potential threats are impacting the Steptoe Valley crescentspot.

Factor D:

Information Provided in the Petition

The petition asserts that existing regulatory mechanisms are inadequate to protect this subspecies (WildEarth Guardians 2010, pp. 8, 40). The petition states that the BLM lists the Steptoe Valley crescentspot as a sensitive species (BLM 2007a, p. J–7). This designation can offer it some conservation consideration.

Evaluation of Information Provided in the Petition and in Our Files

We have determined that water development may be a threat to the Steptoe Valley crescentspot by adversely impacting its habitat, as discussed in Factor A. Thus, we have determined that the petition does present substantial information to indicate that listing the Steptoe Valley crescentspot may be warranted due to the inadequacy of existing regulatory mechanisms pertaining to groundwater permitting and the possible overcommitment of groundwater resources in Steptoe Valley. Also see the ''Summary of Common Threats'' section for information pertaining to the inadequacy of existing regulatory mechanisms as a potential threat. During our status review for this subspecies, we will further investigate this and other potential threats and whether existing regulatory mechanisms may be inadequate.

Factor E:

Information Provided in the Petition

The petition mentions limited range and small population numbers as threats to this subspecies (WildEarth Guardians 2010, pp. 10–11, 40).

Evaluation of Information Provided in the Petition and in Our Files

The petition does not present, nor do we have specific information in our files related to, population numbers, sizes, or trends for the Steptoe Valley crescentspot. The petition does not provide information on chance events or other threats to the subspecies and connect them to a possibly restricted range or small population numbers or the potential for such threats to occur in occupied habitats in the future. Since this subspecies is distributed over more than one population, its extinction vulnerability due to stochastic events may be reduced. In the absence of this information and connection, we do not consider small population numbers or limited range by themselves to be threats to this subspecies. Also see the ''Summary of Common Threats'' section for information pertaining to limited distribution and small population size as potential threats.

Based on the evaluation of the information provided in the petition and our files, we have determined that the petition does not present substantial information to indicate that listing the Steptoe Valley crescentspot may be warranted due to other natural or manmade factors affecting the species' continued existence. However, during our status review of this subspecies, we will further investigate whether biological vulnerability is a threat to the Steptoe Valley crescentspot.

White River Valley Skipper (*Hesperia uncas grandiosa*)

We accept the characterization of the White River Valley skipper as a valid subspecies based on its description by Austin and McGuire (1998, p. 778). The White River Valley skipper flies during June, July, and August (Austin and McGuire 1998, p. 778; Austin *et al.* 2000, p. 4). The apparent larval host plant is *Juncus mexicanus* (Mexican rush) (Austin and Leary 2008, p. 11).

The White River Valley skipper's type locality is a narrow marshy area in the White River channel located 1 mi (1.6 km) north of the Nye County boundary in White Pine County, Nevada (Austin and McGuire 1998, p. 778; NNHPD 2008). Other areas where the subspecies is known include alkaline *Distichlis spicata* flats in the White River Valley from Sunnyside (Nye County) and from Big Smokey Valley (northern Nye County) (Austin and McGuire 1998, p. 778). In 1998, Austin and McGuire (1998, pp. 778–779) tentatively included populations from Spring Valley (White Pine County) and Lake Valley (Lincoln County), Nevada, in this subspecies. The NNHP database (2009, p. 7) indicates one occurrence in Nevada, but its location is not identified. The subspecies has been observed at Ruppes Place/Boghole, White River Valley, White Pine and Nye Counties (NNHP 2006, p. 47). During a general terrestrial invertebrate survey conducted in 2006 at 76 locations in eastern Nevada, a single male was encountered east of Cleve Creek in Spring Valley (Ecological Sciences, Inc. 2007, p. 28). This location is near other areas where the subspecies has been previously documented, and is not considered to be a significant range extension (Ecological Sciences, Inc. 2007, p. 28).

Factor A:

Information Provided in the Petition

The petition asserts that water development, land development, rechannelization of the White River, overgrazing, and climate change may impact this subspecies (WildEarth Guardians 2010, pp. 38–40). The petition provides information that Ruppes Place/Boghole is considered of ''highest conservation priority'' by the NNHP (2006, p. 12). The NNHP also identified sites in the upper and lower White River Valley, including Ruppes Place/Boghole, as ''priority wetland areas'' (NNHP 2007, p. 26). Fifty percent of the springs and brooks in the upper White River (which includes Ruppes

Place/Boghole) have been eliminated, converted to other land uses, or degraded (NNHP 2007, p. 44). Fifty percent of the springs and brooks in the lower White River (which includes Sunnyside) have been converted to other land uses or degraded (NNHP 2007, p. 44).

The petition also provides information that several wetland areas in Big Smoky Valley are considered high-priority wetlands by the NNHP (2007, p. 25). Wetlands, springs, and brooks in Big Smoky Valley have been eliminated, converted to other land uses, or degraded by 60 percent (NNHP 2007, p. 35). The moderate-to-high stressors impacting wetland areas in the White River and Big Smoky Valleys include water diversion/development, groundwater pumping, hydrogeomorphic modification, land development, agriculture, livestock grazing, mining, nonnative species, and energy development (NNHP 2007, pp. 35, 44). The petition implies that these activities are negatively impacting the White River Valley skipper in the White River and Big Smokey Valleys. Threats mentioned by other sources specifically in relation to this subspecies include overgrazing, rechannelization of the White River, and water table drawdown (NatureServe 2009e, p. 2).

The proposed SNWA groundwater development project is predicted to reduce flow to springs in southern White River Valley by 50 percent in 15 years (Deacon 2007, p. 1), as referenced in the petition. This reduction could impact *Juncus mexicanus,* the apparent host plant for the White River Valley skipper, and which grows in moist habitats (Austin and Leary 2008, p. 11; WildEarth Guardians 2010, p. 39).

Evaluation of Information Provided in the Petition and Our Files

Information provided in the petition and available in our files suggests that overcommitment of groundwater could result in adverse impacts to aquatic habitats and thus impact the White River Valley skipper, especially its apparent larval host plant, *Juncus mexicanus,* a plant usually found in wetlands (Reed 1988, pp. 8, 10). We have information in our files that the perennial yield of the White River hydrographic area (#207) is 37,000 afy (45,640,000 m^3/year), and there are 31,699 afy (39,100,000 m^3/year) committed (NDWR 2010); thus, permitted groundwater rights are approaching but do not exceed the estimated average annual recharge. However, SNWA is proposing to withdraw groundwater from the Cave Valley hydrographic area (#180) (SNWA 2008, p. 1–1) (NDWR 2010). There is evidence for a hydrologic connection suggesting that groundwater may flow between Cave Valley and White River Valley (NDWR 2008, pp. 16–17). When groundwater extraction exceeds aquifer recharge, it may result in surface water-level decline, spring drying, and degradation or loss of aquatic habitat (Zektser *et al.* 2005, pp. 396–397). We have additional information in our files that indicates water diversions along the White River and other habitat disturbances may impact the White River Valley skipper (Austin *et al.* 2000, p. 4), though no specifics are provided.

The petition does not provide, nor do we have in our files, specific, supporting information to indicate that the White River Valley skipper is impacted from land development, rechannelization, livestock grazing, or climate change in the White River and Big Smokey Valleys. Also see the ''Summary of Common Threats'' section for information pertaining to water development, agriculture, livestock grazing, and climate change as potential threats.

Based on our evaluation of the information provided in the petition and in our files, we have determined that the petition does present substantial information to indicate that listing of the White River Valley skipper may be warranted due to the present or threatened destruction, modification, or curtailment of its habitat or range resulting from water development which may negatively impact its larval host plant. During our status review for this subspecies, we will further investigate these and other potential threats.

Factors B and C:

Information Provided in the Petition

The petition states that it is not known whether overutilization, disease, or predation is a threat to this subspecies. According to Austin and McGuire (1998, p. 778), 20 males and 14 females were collected between 1984 and 1989, as referenced in the petition.

Evaluation of Information Provided in the Petition and Available in Our Files

The petition does not provide information that overutilization, disease, or predation has negatively impacted the subspecies. While the petition's referenced material provides information about known numbers of collections, it does not provide any information about the population sizes or trends during this time period. Given the low number of individuals collected over a 5-year time span, the length of time since these collections were made, and the lack of information about the relative impact to the population, the petition does not provide substantial information to indicate that collection may be a threat to the subspecies. We have no information in our files related to overutilization, disease, or predation for this subspecies. Also see the ''Summary of Common Threats'' section for information pertaining to overutilization, disease, and predation as potential threats.

Based on our evaluation of the information provided in the petition and our files, we have determined that the petition does not present substantial information to indicate that listing the White River Valley skipper may be warranted due to Factor B (overutilization for commercial, recreational, scientific, or educational purposes) or Factor C (disease or predation). However, during our status review of this subspecies, we will further investigate these potential threats.

Factor D:

Information Provided in the Petition

The petition asserts that existing regulatory mechanisms are inadequate to protect this subspecies (WildEarth Guardians 2010, pp. 8, 40). The BLM lists this subspecies as a sensitive species (BLM 2007a, p. J–37) which can offer it some conservation consideration.

Evaluation of Information Provided in the Petition and in Our Files

We have determined that water development may be a threat to the White River Valley skipper by adversely impacting its habitat as discussed in Factor A. Thus, we have determined that the petition and our files do present substantial information to indicate that listing the White River Valley skipper may be warranted due to the inadequacy of existing regulatory mechanisms as they pertain to groundwater permitting and the possible overcommitment of groundwater resources in White River Valley. Also see the ''Summary of Common Threats'' section for information pertaining to the inadequacy of existing regulatory mechanisms as a potential threat. During our status review for this subspecies, we will further investigate this and other potential threats to determine whether existing regulatory mechanisms may be inadequate.

Factor E:

Information Provided in the Petition

The petition indicates this subspecies may be vulnerable to small population numbers (WildEarth Guardians 2010, p. 40). Austin (1985, pp. 125–126) indicates *Hesperia uncas* spp. appear to be restricted to the valleys where they occur. The petition suggests that isolated populations of the White River Valley skipper are probably unable to disperse or interconnect with other populations (WildEarth Guardians 2010, p. 38).

Evaluation of Information Provided in the Petition and in Our Files

The petition does not present, nor do we have specific information in our files, related to population sizes, numbers, or trends for the White River Valley skipper. The petition does not provide information on chance events or other threats to the subspecies and connect them to small population numbers or restricted range or the potential for such threats to occur in occupied habitats in the future. Since this subspecies is distributed over more than one population, its extinction vulnerability due to stochastic events may be reduced. In the absence of this information and connection, we do not consider small population numbers or restricted range by themselves to be threats to this subspecies. Also see the ''Summary of Common Threats'' section for information pertaining to limited distribution and small population size as potential threats.

Based on evaluation of the information provided in the petition and our files, we have determined that the petition does not present substantial information to indicate that listing the White River Valley skipper may be warranted due to other natural or manmade factors affecting the species' continued existence. However, during our status review for this subspecies, we will further investigate whether biological vulnerability is a threat to this subspecies.

Finding

On the basis of our determination under section 4(b)(3)(A) of the Act, we have determined that for 6 of the 10 subspecies (Carson Valley silverspot, Carson Valley wood nymph, Mattoni's blue butterfly, Mono Basin skipper, and two Railroad Valley skippers—*H. u. fulvapalla* and *H. u. reeseorum*) the petition does not present substantial scientific or commercial information indicating that listing throughout their entire range may be warranted.

On the basis of our determination under section 4(b)(3)(A) of the Act, we have determined that for 4 of the 10 Great Basin butterflies (Baking Powder Flat blue butterfly, bleached sandhill skipper, Steptoe Valley crescentspot, and White River Valley skipper) the petition presents substantial scientific or commercial information indicating that listing throughout their entire range may be warranted.

The petition presents substantial information indicating that the Baking Powder Flat blue butterfly may warrant listing due to threats under Factors A and D. The petition does not present substantial information indicating that the Baking Powder Flat blue butterfly may warrant listing due to current or future threats under Factors B, C, and E.

The petition presents substantial information indicating that the bleached sandhill skipper may warrant listing due to threats under Factors A, D, and E. The petition does not present substantial information indicating that the bleached sandhill skipper may warrant listing due to threats under Factors B and C currently, or in the future.

The petition presents substantial information indicating that the Steptoe Valley crescentspot may warrant listing due to threats under Factors A and D. The petition does not present substantial information indicating that the Steptoe Valley crescentspot may warrant listing due to threats under Factors B, C, and E currently, or in the future.

The petition presents substantial information indicating that the White River Valley skipper warrant listing due to threats under Factors A and D. The petition does not present substantial information indicating that the White River Valley skipper may warrant listing due to threats under Factors B, C, and E currently, or in the future.

Because we found that the petition presents substantial information indicating that listing 4 of the 10 Great Basin butterflies may be warranted, we are initiating a status review to determine whether listing these 4 subspecies under the Act is warranted.

The ''substantial information'' standard for a 90-day finding differs from the Act's ''best scientific and commercial data'' standard that applies to a status review to determine whether a petitioned action is warranted. A 90-day finding does not constitute a status review under the Act. In a 12-month finding, we will determine whether a petitioned action is warranted after we have completed a thorough status review of the species, which is conducted following a substantial 90-day finding. Because the Act's standards for 90-day and 12-month findings are different, as described above, a substantial 90-day finding does not mean that the 12-month finding will result in a warranted finding.

References Cited

A complete list of references cited is available on the Internet at *http://www.regulations.gov* and upon request from the Nevada Fish and Wildlife Office (see **FOR FURTHER INFORMATION CONTACT**).

Authors

The primary authors of this notice are the staff members of the Nevada and Ventura Fish and Wildlife Offices (see **FOR FURTHER INFORMATION CONTACT**).

Authority

The authority for this action is the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

Dated: September 20, 2011.

Gregory E. Siekaniec,

Acting Director, U.S. Fish and Wildlife Service.

[FR Doc. 2011–25324 Filed 10–3–11; 8:45 am]

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To designate the United States courthouse located at 80 Lafayette Street in Jefferson City, Missouri, as the Christopher S. Bond United States Courthouse. (Sept. 23, 2011; 125 Stat. 360)
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